



## **Lebanon's Compliance with Convention on the Elimination of All Forms of Discrimination against Women: The Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**The World Coalition Against the Death Penalty**

**The Lebanese Association for Civil Rights**

**The Association Justice et Miséricorde**

and

**Ensemble contre la peine de mort**

**for the 81<sup>st</sup> Session of the Committee on the Elimination of Discrimination against Women**

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty** (World Coalition), an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

**The Lebanese Association for Civil Rights (LACR)** was founded in 2003 as a continuation of an action experienced since 1983 by two pioneers of the culture of non-violence in Lebanon and the Arab world: Walid Slaybi and Ogarit Younan. They are both writers, researchers, sociologists, pioneers of active training in Lebanon and grassroots activists. Dr. Younan and Dr. Slaybi were also the founders in 1997 of the National Coalition/Campaign to abolish the death penalty. Recognized for its innovative expertise in the field of active training and non-violent direct action, LACR works for civil peace, citizenship and change the confessional system, socio-economic and political rights, humanistic education, and justice. LACR is a member of several local, regional and international networks, three of which were initiated and coordinated by it.

**The Association Justice et Miséricorde (AJEM)** is a Lebanese Association, a non-political non-profitable NGO founded in 1996 by Father Hadi Aya “Antonine Order” taking a leading role in the active civil movements targeting various Lebanese prisons. AJEM strongly believes that humanity is a valuable moral shared without discrimination of any kind, and that prison has a rehabilitation role rather than a punitive role. Since 1996, AJEM is working closely with prisoners, prisoners’ families, providing them legal, psychological and social services in addition to vocational trainings. AJEM also works on enhancing the penal justice system and seeking change in the level of respect of basic human rights, preparing the prisoner for reintegration in society, stimulating first-hand mechanisms of freedom deprivation to convey basic humanitarian principles and values, ensuring the right of a fair trial and proper detention conditions, and the rights of refugees in detention or at risk of detention. In addition to that, AJEM helps ensuring detainees get proper health, social, psychological and legal care, advocating against acts of torture and other degrading treatments opposing to basic human rights and works to abolish the death penalty through the establishment of the National coalition. against the death penalty and headed the campaign management for several years and carried out many activities.

**ECPM (Together Against the Death Penalty)** is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM earned its legitimacy as a unifying group of the abolitionist movement because of its strong sense of ethics and values. ECPM is the organiser of the World Congresses against the death penalty and a founding member of the World Coalition Against the Death Penalty.

## Executive Summary

1. This report addresses Lebanon's compliance with human rights obligations under the Convention on the Elimination of All Forms of Discrimination Against Women regarding its use of the death penalty.
2. Lebanon has not abolished the death penalty or established a *de jure* moratorium on the death penalty. The legal system does not protect women in conflict with the law from discrimination on the basis of sex or gender. Nor does it limit capital offenses to the "most serious" crimes.
3. Women migrant domestic workers appear to be at an elevated risk of being sentenced to death. Indeed, all three women known to be on death row in Lebanon are Sri Lankan migrant domestic workers. Such women face heightened obstacles to realizing their right to a fair trial. Moreover, there is no evidence that sentencing authorities take into account a woman's history of abuse when determining an appropriate sentence. Finally, women under sentence of death face degrading conditions of detention.

### **Lebanon fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women with its retention of the death penalty**

#### **I. Lebanon retains the death penalty and has no legislative protections to guard against gender-based discrimination in the context of the death penalty (List of Issues paragraph 4).**

4. The Government of Lebanon has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights and has not abolished the death penalty or instituted a *de jure* moratorium on the practice. In a positive development, Lebanon for the first time voted in favor of the UN General Assembly resolution calling for a worldwide moratorium on the use of the death penalty in December 2020.
5. Lebanon has observed a *de facto* moratorium on executions since 2004, yet judges continue to pass death sentences amidst allegations of due process violations and the absence of gender-responsiveness and gender-sensitive practices in the criminal justice system. Since 2015, Lebanese courts have sentenced at least 90 people to death.<sup>1</sup> Lebanese courts sentenced at least 23 people to death in 2019 and at least one person in 2020.<sup>2</sup> While there has been a significant decrease in the issuance of death sentences since 2016, and last execution occurred in 2004, the death penalty in Lebanon remains in effect today. There are approximately 53 people on death row today, 3 of whom are women (of whom 2 are waiting for their verdicts to be finalized).<sup>3</sup>
6. The Lebanese Constitution guarantees equality before the law, but it makes no explicit reference to discrimination on the basis of sex.

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<sup>1</sup> ECPM, AJEM, LACR, *Vivants, Sans l'être: Mission d'Enquête Liban* (2020), at 26, available at <https://www.ecpm.org/wp-content/uploads/mission-enquete-LIBAN-FR-2020-120120-WEB.pdf>.

<sup>2</sup> Amnesty International, *Death Sentences and Executions 2020*, at 13, available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT5037602021ENGLISH.pdf>.

<sup>3</sup> ECPM, AJEM, LACR, *Vivants, Sans l'être: Mission d'Enquête Liban* (2020), at 30, available at <https://www.ecpm.org/wp-content/uploads/mission-enquete-LIBAN-FR-2020-120120-WEB.pdf>.

7. Lebanon continues to impose the death penalty for approximately 20 offenses, including offenses that cannot be considered “most serious” crimes under international law.<sup>4</sup>
8. Lebanon’s government legislatively repealed mandatory death penalty sentences for some offenses in 2001.<sup>5</sup> The Penal Code usually prescribes set penalties for each crime, with a generic provision for aggravating and attenuating circumstances. Lebanese courts can and do acknowledge extenuating circumstances and instead issue life sentences in lieu of death sentences.<sup>6</sup> Anyone who has been sentenced to death may apply for a special pardon, which can only be granted by the President. It is not known how many people have been granted clemency or a pardon in Lebanon following a death sentence.<sup>7</sup>

## **II. Women migrant domestic workers are particularly at risk of being sentenced to death (List of Issues paragraph 18), and courts sentencing women to death fail to take into account gender-based violence (List of Issues paragraphs 9-10).**

9. The Committee took note of the lack of legal protections for migrant domestic workers and requested information on measures taken to “[e]nsure that women domestic migrant workers are aware of their rights and have access to legal aid and protection, including shelters, as well as to effective legal recourse in criminal and civil courts.”<sup>8</sup> The Lebanese Government’s response to the List of Issues concedes that it has not abolished the sponsorship system, and acknowledges that it has suspended implementation of a decree issued on 8 September 2020 concerning a new standard employment contract for domestic workers pending resolution of a lawsuit related to the standard contract.<sup>9</sup> The response further notes that although the sponsorship system remains in place, when a domestic worker leaves the employer’s home, the employer is now prohibited from filing a criminal flight complaint but must instead simply file an administrative notification that she has “left the workplace.”<sup>10</sup> The response also states that the Ministry of Labour has established a hotline to receive complaints from domestic workers who are victims of exploitation and violence and is “studying the possibility of amending the Labour Act in order to enshrine the rights of domestic workers.”<sup>11</sup>

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<sup>4</sup> Offenses punishable by death include aggravated murder, murder, acts of terrorism, destruction of a building containing one or more persons, gang robbery, certain types of arson, espionage, treason, bearing arms against Lebanon, sedition, importing hazardous waste, and certain military crimes. Lebanon Penal Code arts. 110-35, 152-71, 257, 273-76, 282, 284, 308, 314-15, 336, 549, 591, 599, 643, 673; Law of the Maintenance of the Environment from Pollution by Hazardous Waste and Materials, art. 10, 11, No. 64 of 1988, amended by Law No. 266 of 1993. See also Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Third periodic reports of States parties due in 1999: Lebanon*, (Dec. 28, 2016), U.N. Doc CCPR/C/LBN/3, ¶¶ 53-54.

<sup>5</sup> Cornell Center on the Death Penalty Worldwide, available at <https://deathpenaltyworldwide.org/database/#/results/country?id=41> (last visited Jan. 10, 2022).

<sup>6</sup> Penal Reform International, *Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen*, (March 2012), at 30, available at <https://cdn.penalreform.org/wp-content/uploads/2013/05/MENA-research-report-on-death-penalty-and-alternative-sanctions-ENGLISH-March-20121.pdf>.

<sup>7</sup> *Id.* at 49.

<sup>8</sup> Committee on the Elimination of Discrimination against Women, *List of issues and questions in relation to the sixth periodic report of Lebanon*, UN Doc. No. CEDAW/C/LBN/Q/6 (17 Nov. 2020), ¶ 18.

<sup>9</sup> Committee on the Elimination of Discrimination against Women, *Replies of Lebanon to the list of issues and questions in relation to its sixth periodic report*, UN Doc. No. CEDAW/C/LBN/RQ/6, at 20 (18 Feb. 2021).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

10. The Committee also requested information about gender-based violence, including any steps the State Party has taken to criminalize all forms of gender-based violence against women and to ensure that victims have access to appropriate redress.<sup>12</sup> The State Party's response does not suggest that domestic workers are covered under the Protecting Women and All Family members from Domestic Violence Act as amended in 2021.<sup>13</sup> The response further asserts that “[i]t is not possible to give accurate statistics” on the number of reported cases of violence against women and the number of prosecutions, convictions and sentences imposed on perpetrators disaggregated by nationality and relationship between the victim and the perpetrator, because “court registries do not have automated systems.”<sup>14</sup>
11. There is limited information about women who have been sentenced to death in Lebanon, but available information suggests that women migrant domestic workers are particularly at risk of being sentenced to death. According to a recently released report about a fact-finding mission by Ensemble contre la peine de mort (ECPM), as of the end of 2020, there were three women on death row in prisons in Beirut and Tripoli. All three are Sri Lankan women who had been employed as domestic workers.<sup>15</sup> (During the 2018 fact-finding mission, ECPM also interviewed a Lebanese woman who had been sentenced to death, but by the end of 2020 the Court of Cassation had reduced her sentence to life imprisonment.<sup>16</sup> She was a homemaker.<sup>17</sup>) As of September of 2020, an appellate court had confirmed the death sentence of one of the Sri Lankan women, while appeals in the cases of the other two women were still pending.
12. According to ECPM, all three women had the support of a lawyer from the Sri Lankan embassy during their trials, and Sri Lankan authorities had visited each of them at least once.<sup>18</sup> The Sri Lankan women, however, have not been able to communicate with their families directly; one of the women, who had recently been sentenced to death, had not yet been able to tell her family about her sentence.
13. Sri Lankan domestic workers are one of the largest female migrant groups in Lebanon, and they are particularly vulnerable to abuse.<sup>19</sup> A study from 2009 estimated that there were 100,000 Sri Lankan women working as domestic workers in Lebanon at the time.<sup>20</sup> A recent study of women migrant domestic workers in Lebanon found that a majority “reported being subject at least once to humiliating and dehumanizing treatment by their employers.”<sup>21</sup> According to Amnesty International, “[t]he isolation of migrant domestic workers, their dependence on their employer and their lack of protection under Lebanese law place them at

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<sup>12</sup> Committee on the Elimination of Discrimination against Women, *List of issues and questions in relation to the sixth periodic report of Lebanon*, UN Doc. No. CEDAW/C/LBN/Q/6 (17 Nov. 2020), ¶¶ 9-10.

<sup>13</sup> Committee on the Elimination of Discrimination against Women, *Replies of Lebanon to the list of issues and questions in relation to its sixth periodic report*, UN Doc. No. CEDAW/C/LBN/RQ/6, at 14 (18 Feb. 2021).

<sup>14</sup> Committee on the Elimination of Discrimination against Women, *Replies of Lebanon to the list of issues and questions in relation to its sixth periodic report*, UN Doc. No. CEDAW/C/LBN/RQ/6, at 14-15 (18 Feb. 2021).

<sup>15</sup> ECPM, AJEM, LACR, *Vivants, Sans l'être: Mission d'Enquête Liban* (2020), at 34, available at <https://www.ecpm.org/wp-content/uploads/mission-enquete-LIBAN-FR-2020-120120-WEB.pdf>.

<sup>16</sup> *Id.* at 32-33.

<sup>17</sup> *Id.* at 34.

<sup>18</sup> *Id.* at 79, 114.

<sup>19</sup> Nayla Moukarbel, *Sri Lankan Housemaids in Lebanon: A Case of 'Symbolic Violence' and 'Everyday Forms of Resistance'*, IMISCOE Dissertations (2009), at 10, available at <https://www.imiscoe.org/docman-books/367-sri-lankan-housemaids-in-lebanon-a-case-of-symbolic-violenceandeveryday-forms-of-resistance/file>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Amnesty International, *Their House Is My Prison*, (2019), at 20, available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1800222019ENGLISH.pdf>.

risk of physical and sexual violence. . . . Underlying the power imbalance between employers and migrant domestic workers, many said they were particularly subjected to such abuse when they tried to challenge their employers.”<sup>22</sup> Women domestic workers do not report their employers to the authorities or try to take them to court because they fear arrest, being unable to get new employment, and being falsely accused of theft, for example.<sup>23</sup> According to Amnesty International, “[o]ne of the major barriers facing migrant domestic workers who consider seeking justice is the fear of arrest. If a migrant domestic worker leaves her employer without the latter’s consent, even in a situation of abuse, she risks losing her residency status and therefore detention and deportation.”<sup>24</sup>

14. According to the Cornell Center on the Death Penalty Worldwide, migrant worker status is one “facto[r] that increase[s] the risk that a woman will be sentenced to death.”<sup>25</sup> Foreign migrant workers “are particularly vulnerable to unfair capital trials: they are poor, they lack linguistic, cultural, and institutional knowledge of the criminal justice process, and they are often denied access to effective legal representation and translation. In addition, language barriers, illiteracy, and economic vulnerability may leave migrant workers at particular risk of forced and false confessions.”<sup>26</sup>
15. Even though Sri Lankan authorities provided legal assistance to the three women migrant domestic workers who are currently on death row, women domestic workers are at elevated risk of unfair capital trials.
16. Moreover, there is no indication that sentencing authorities take into account the vulnerable status of women migrant domestic workers and the context of abuse when considering mitigating circumstances. According to a comprehensive study conducted by the Cornell Center on the Death Penalty Worldwide, data indicate that most women on death row have been sentenced to death for the crime of murder.<sup>27</sup> The State Party’s response overlooks the need for comprehensive training programs for prosecutors and judges when women are in conflict with the law. Specialized training is particularly important when women are defending themselves against gender-based violence (*i.e.*, defending against an abuser and acting in self-defense). Such training programs are especially important when women are subsequently charged with death-eligible offenses. Self-defense is often not an available defense for women who kill following a *history* of abuse, particularly if they cannot show an actual threat at the time the woman used responsive force. Moreover, many women domestic workers experience non-physical abuse, such as emotional and economic abuse, which courts may disregard as not sufficiently severe to justify physical violence as self-defense.
17. Regarding the hotline for domestic workers referenced in the State Party response, Amnesty International attempted to call the hotline on 12 occasions in December 2018 and February 2019, but there was never a response. Moreover, none of the 32 domestic workers Amnesty interviewed was aware of the hotline.<sup>28</sup>

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<sup>22</sup> *Id.* at 21.

<sup>23</sup> *Id.* at 28.

<sup>24</sup> *Id.* at 28.

<sup>25</sup> The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, at 15, available at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>26</sup> *Id.* at 17.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Id.* at 27.

18. The three women on death row are currently housed at Beirut Women's Prison (Barbar Khazen) and Qobbeh Prison (Tripoli, North Lebanon).<sup>29</sup> In Qobbeh women's prison, the cells are shared by around ten people. At Barbar Khazen prison, five to seven women share a cell, sometimes with infants.<sup>30</sup>
19. The women under sentence of death told ECPM that they experience the same detention conditions as other people in detention.<sup>31</sup> According to a survey conducted by the Institute for Women Studies in the Arab World, in Lebanon "prison cells . . . are not equipped with adequate lighting, proper ventilation, or hygienic bathrooms."<sup>32</sup> ECPM reported that neither prison where women were under sentence of death provided hygiene products to the women, such as soap, toothpaste, detergent, cleaning products, or menstrual hygiene products.<sup>33</sup>

### III. Suggested recommendations<sup>34</sup> for the Government of Lebanon

20. The authors offer the following suggested recommendations for Lebanese authorities:
  - Abolish the death penalty and replace it with a sentence that is fair, proportionate, and consistent with international human rights standards.
  - In the interim, eliminate the death penalty as a possible sentence for less serious crimes and for other offenses that do not involve an intentional killing committed by the person being sentenced, in accordance with international human rights standards and maintain the moratorium on the executions.
  - Renew Lebanon's vote in favor of the UN General Assembly Resolution calling for a universal moratorium on the application of the death penalty in 2022.
  - In collaboration with civil society organizations, provide all judges who have sentencing authority with comprehensive gender-sensitization training, including with respect to women and girls in conflict with the law who have experienced gender-based violence, focusing on gender-based discrimination, domestic violence, violence targeting women domestic workers, and tactics of coercive control that may lead women to commit death-eligible offenses.
  - Ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in capital representation and ensure that the defense has sufficient funding to conduct a thorough investigation and secure relevant expert witnesses.

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<sup>29</sup> ECPM, AJEM, LACR, *Vivants, Sans l'être: Mission d'Enquête Liban* (2020), at 30, available at <https://www.ecpm.org/wp-content/uploads/mission-enquete-LIBAN-FR-2020-120120-WEB.pdf>.

<sup>30</sup> *Id.* at 103.

<sup>31</sup> *Id.* at 102.

<sup>32</sup> Mona Chemali Khalifa, Women in Lebanese Prisons: Facts and Perspectives, available at <http://www.alraidajournal.com/index.php/ALRJ/article/view/503/501>.

<sup>33</sup> ECPM, AJEM, LACR, *Vivants, Sans l'être: Mission d'Enquête Liban* (2020), at 107, available at <https://www.ecpm.org/wp-content/uploads/mission-enquete-LIBAN-FR-2020-120120-WEB.pdf>.

<sup>34</sup> Some of these recommendations are borrowed or adapted from *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 35, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

- Guarantee that all woman migrant workers are afforded their rights to consular notification under the Vienna Convention on Consular Relations and educate all arresting authorities of their obligation to provide such notification in a timely manner.
- Ensure that all persons sentenced to death have access to legal aid to assist them in seeking amnesty from the President.
- Ensure that detention conditions for women are improved, particularly with respect to food, health care, sanitation, personal hygiene, and ensure that all women have sufficient access to free menstrual hygiene products.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated.
- Implement legislative reforms to prevent the application of the death penalty against women and girls when they have experienced gender-based violence, including early and forced marriage as well as rape and sexual assault, and subsequently engage in criminal conduct against their abusers. Collaborate with civil society organizations to conduct trauma-informed gender-sensitization training for all judges handling serious criminal cases.
- Guarantee that each woman receives an individualized judicial process and is not charged through association with a male spouse, partner, or family member.
- Commute the sentences of women sentenced to death for killing people in their family or household who perpetrated gender-based violence against them.
- Conduct a comprehensive awareness-raising campaign among women migrant domestic workers about the hotline and ensure that the hotline is adequately staffed, 24 hours a day, with trained responders who can communicate in the primary languages spoken by women migrant domestic workers. Maintain a database of calls to the hotline, including demographic information about each caller, topic of the call, response provided by hotline staff, and any relevant follow-up, and regularly publish disaggregated data from the database to facilitate analysis of the hotline's efficacy.
- Provide and publish transparent information on the number of women sentenced to death and on death row, disaggregated by age, age of dependent children (if any), nationality, race / ethnic group, relationship to the victim, date of arrest, date of notification of the right to consular notification (if applicable), crimes of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.
- Create a centralized reporting database and mandate the regular reporting and collection of the number of reported cases of violence against women and the number of prosecutions, convictions, and sentences imposed on perpetrators, disaggregated by nationality and relationship between the victim and the perpetrator, and publish this information on at least an annual basis.