

Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls

REFERENCE:
UA USA 28/2020

13 November 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 44/10, 44/13, 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of Ms. Lisa Montgomery, who is scheduled to be executed on 8 December 2020 following judicial proceedings which failed to adequately consider her mental health conditions.

According to the information received:

Imminent execution of Ms. Lisa Montgomery

Ms. Lisa Montgomery is scheduled to be executed on 8 December 2020, after being sentenced to death by the U.S. District Court for the Western District of Missouri for federal kidnapping resulting in death in connection with her murder of a pregnant woman and cutting the baby from her stomach in 2004.

Ms. Montgomery's mental health conditions and previous trauma were not adequately considered during the legal process and she received inadequate legal assistance. She has accepted responsibility for her crime and expressed deep remorse. She is the only woman under a federal death sentence.

Ms. Montgomery's mental health conditions

Ms. Montgomery is a survivor of child abuse, domestic violence, incest, and multiple rapes.

She grew up with a violent and neglectful mother and stepfather who subjected her to physical abuse from a young age. When Ms. Montgomery was 11 years

old, her stepfather began to fondle her and raped her regularly in the years following, threatening to kill her and her entire family or rape her sister if she told anyone. The family moved several times, eventually to a rundown trailer, where he built a small room where he could rape her without being heard. Ms. Montgomery began to drink alcohol as a coping mechanism. At age 15, her mother began to force Ms. Montgomery into prostitution, telling her she had to “pay” for her room and new plumbing and forcing her to have sexual relations with men one after the other who would also beat and slap her if she was “doing it wrong.”

The authorities missed several opportunities to intervene and end her abuse. While her sister was removed from the custody of her mother by social services, Ms. Montgomery was not removed by social services. A school administrator also suspected abuse but failed to take steps to investigate or report it to the police. During her mother’s divorce from her stepfather, Ms. Montgomery told a judge that her stepfather had raped her. The judge scolded Ms. Montgomery’s mother but did not report the abuse to authorities despite it still being within the statute of limitations. A police officer, who was informed about the sexual violence that Ms. Montgomery had been subjected to, did not report the allegations.

At her mother’s instigation, Ms. Montgomery married her stepbrother when she was 18 and was subjected to further abuse, some of which was captured on video. Ms. Montgomery gave birth to four children, before her mother pressured her to have an involuntary sterilization. Her mental health continued to deteriorate and her behavior became erratic. Ms. Montgomery and her children lived in poverty, with no running water, furniture or beds. By the age of 34 she had moved 61 times.

Ms. Montgomery was born with organic brain damage. She later developed multiple mental health conditions related to her trauma including Complex Post-Traumatic Stress Disorder, bipolar disorder and temporal lobe epilepsy. An expert on torture and trauma has testified that the impact of the abuse was massive and that Ms. Montgomery’s was one of the most severe cases of dissociation the expert had seen. Ms. Montgomery’s trauma also compromised her neurological functioning and development meaning she has difficulties processing information, navigating social relationships and planning simple tasks. Prior to being imprisoned she had not been able to access medical care.

Ms. Montgomery has divorced her husband and remarried. She told her new husband that she was pregnant, which he knew to be untrue as he was aware of the fact that she had been sterilized. Two days before she committed the murder, her former husband threatened to obtain custody of her children.

In 2004, Ms. Montgomery killed a pregnant woman and cut the baby from her stomach, taking the baby home to care for it as if it were her own. The crime is directly linked to her mental health conditions. While rare, this crime is not

unprecedented. While there have been other similar incidents, the death penalty has not been applied in other cases.

Since she has been on death row, Ms. Montgomery has had access to treatment for her mental health conditions and has been prescribed a variety of medications to prevent psychosis, which she did not have access to prior to her arrest. She has maintained a connection with her children since her conviction and is now a grandmother.

Allegations of inadequate legal assistance, failure to adequately consider Ms. Montgomery's mental health conditions and gender discrimination

Ms. Montgomery, as a result of her trauma, finds it difficult to trust men. Her male lawyer, who had never previously defended a capital case, was ill-equipped to address her complex trauma. A female attorney, with experience of dealing with trauma victims, was appointed. However, the male co-counsel requested the federal judge to remove her from the case due to a “friction” in the team. The judge dismissed the female lawyer without hearing from her and without the consent of Ms. Montgomery. After this, Ms. Montgomery’s mental health further deteriorated.

During the trial, the defense failed to present critical evidence of Ms. Montgomery’s sexual exploitation and abuse and failed to explain why it was relevant. Rather than presenting expert testimony on her disorders and on how they linked to the traumas she had experienced throughout her life, the defense attorney read a poem about rape during closing arguments. The prosecutors ridiculed the information that was presented on Ms. Montgomery’s rapes calling it an “abuse excuse,” and faulted her parenting skills indicating she lived in a “filthy home” and that “[s]he didn’t cook, and [s]he didn’t clean.” After five hours of deliberations, the jury sentenced Ms. Montgomery to death.

Resumption of federal executions

Prior to 2020, no federal executions had been carried out since 2003. In July 2019, the US introduced a revised lethal injection protocol, permitting the use of Pentobarbital as a single-drug. Five executions were scheduled for December 2019 and January 2020, which were put on hold for litigation until June 2020.

In July 2020, the US federal government carried out three federal executions in contradiction with the national and global trends on reduction of the death penalty. No reason was provided for the resumption in executions. The five individuals first scheduled for execution had been convicted between 1999 and 2004. The US Department of Justice claimed the men had been chosen because their crimes involved child or female victims but provided no information on the reasons behind the prioritization of individual cases.

The resumption of executions for no reason other than the view of the rotating executive renders the decision to resume executions arbitrary.

The executions were carried out, despite one individual having serious mental health conditions and being unfit for execution and in two cases despite appeals being pending. In one case the execution process lasted over 4 hours.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern that the death penalty may have been imposed on Ms. Montgomery following judicial procedures that may not fulfill the most stringent guarantees of fair trial and due process that are required under international human rights law, when capital punishment is imposed. We express further concern about the resumption of federal executions which goes against international trends towards the reduction and eventual abolition of the death penalty.

In view of the above, we call upon your Excellency's Government as a matter of urgency to halt the execution of Ms. Montgomery scheduled for 8 December 2020. On the allegations made available to us, her execution may constitute a violation of applicable international human rights standards and thus an arbitrary execution. We further urge your Excellency's Government to commute the death sentence and to ensure that she is re-tried in compliance with international standards relating to due process and fair trial.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the right of every individual to life, liberty and security as set out in article 6 and 7 of the International Covenant on Civil and Political Rights which the USA ratified on 08 Jun 1992 and articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the USA ratified on 21 Oct 1994.

Fair trial and due process guarantees and non-discrimination

We would like to highlight that article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, provides that capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR. Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Furthermore, article 6(4) of the ICCPR and article 7 and 8 of the above mentioned safeguards establish that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that amnesty, pardon or commutation of the sentence of death may be granted. Moreover, capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

We note with concern that Ms. Montgomery did not receive effective representation during the initial proceedings.

We underline that the death penalty must not be imposed in a discriminatory manner and the element of non-discrimination applies both procedurally and substantively.

We remind the authorities that under universal standards of due process and fair trial, the imposition of the death penalty is always arbitrary and unlawful when the court ignores or discounts essential facts that may have significantly influenced a capital defendant's motivations, situation and conduct, including their exposure to domestic violence and other abuse. With regards to Ms. Montgomery's legal proceedings, we are particularly alarmed at the failure of the Court to consider the significance of gender-based violence.

Ms. Montgomery's personal history of being the victim of an extreme level of physical and sexual abuse throughout her life and her mental health conditions are essential facts which were not considered as mitigating circumstances during the legal process.

The failure to consider Ms. Montgomery's personal history is especially egregious given that the authorities had reportedly missed several opportunities to intervene and end her abuse. In this regard, we remind that the duty to protect the right to life requires States to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific or pre-existing patterns of violence (Human Rights Committee, General Comment 36) and that domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prevent prohibited acts, of which they knew or should have known, in the private sphere (A/HRC/74/148). We also note the lack of professionalism and gender sensitivity from Ms. Montgomery's counsel and that an additional counsel with expertise in dealing with trauma victims was removed without her consent. We are further concerned by allegations that sexist and discriminatory language and stereotypes appear to have been used during the trial.

We note that there are meaningful similarities among women sentenced to death across jurisdictions, including histories of long-term abuse and absence of effective assistance. We remind that the Special Rapporteur on extrajudicial, summary or arbitrary executions called on states in 2017 to review laws, criminal procedures and judicial practices to ensure that they take full account of women's backgrounds, including histories of prior abuse and mental illness, noting that such considerations are particularly crucial in cases involving capital punishment (A/HRC/35/23). In her report on the situation of women deprived of liberty, the Special Rapporteur on violence against women noted that being victims of gender-based violence may be a cause of women's involvement in criminal offences and subsequent imprisonment. Consequently, States have a duty to address the structural causes that contribute to women's incarceration, and to recognize women's histories of victimization when making decisions about incarceration and sentencing. The Rapporteur reminded States

of their due diligence obligation under international law to prevent, respond to, protect against, and provide redress for all forms of gender-based violence (A/68/340). Likewise, the Working Group on discrimination against women has recommended that States take steps to address women's deprivation of liberty and all of its root causes including by making available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, by integrating into the national system the standards provided in the Bangkok Rules, and by addressing the underlying factors leading to women coming into contact with the criminal justice system (A/HRC/41/33).

Mental health conditions

With regards to allegations that Ms. Montgomery has mental health conditions, article 13 of the Convention on the Rights of Persons with Disabilities enshrines an explicit right to access to justice on an equal basis with others. In particular, all persons with disabilities, and especially persons with intellectual disabilities and psychosocial disabilities shall be informed about, and provided access to, promptly and as required, appropriate support and accommodation to facilitate their effective participation, as well as procedural accommodations to ensure fair trial and due process.

Furthermore, article 10 of the Convention explicitly recognizes and protects the right to life, including protection against State conduct that threatens this right. Furthermore, the Human Rights Committee has explicitly stated that persons with disabilities, including psychosocial and intellectual disabilities, are entitled to specific measures of protection to ensure their effective enjoyment of the right to life on equal basis with others. Such measures of protection shall include the provision of reasonable accommodation in all stages of the process, access to essential facilities and services, and other specific measures (CCPR/C/GC/36 para. 24). Moreover, States must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial and intellectual disabilities impeded their effective defense (CCPR/C/GC/36 para. 49).

In addition, and especially relevant to the case, is the Economic and Social Council resolution 1989/64, which recommends that States strengthen further the protection of the rights of those facing the death penalty by eliminating it for persons with intellectual or psychosocial disabilities, whether at the stage of sentence or execution. In conjunction with the several resolutions adopted by the Commission on Human Rights urging all States not to impose the death penalty on, or to execute, any person with intellectual or psychosocial disabilities (e.g., Commission resolution 2005/59 para. 7 (c)).

Additionally, we would like to call your attention to an emerging international customary norm prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment. The cruelty of the death penalty goes beyond the execution itself. The concept of the "death row phenomenon" explains that prisoners on death row may experience severe mental trauma and physical deterioration, which may cross into the territory of degrading, cruel or inhuman treatment or punishment, or even torture. The

Inter-American Court of Human Rights stated in *Hilaire, Constantione and Benjamin et al. v. Trinidad and Tobago* (2002) that being on the death row for a prolonged period, awaiting execution could cause severe mental and physical anguish that constituted a violation of the prohibition of torture and cruel, inhuman or degrading treatment. In the 1993 case of *Pratt and Morgan v. Jamaica*, the Judicial Committee of the Privy Council of the British House of Lords held that spending more than five years on death row was enough to consider the existence of the death row phenomenon on its merits.

The Human Rights Committee clarified that the right to security of persons protects individuals from intentional infliction of bodily or mental harm (General Comment 35, CCPR/C/GC/35). The Committee added that the right to security of persons may overlap with the right to life guaranteed by article 6 of the ICCPR.

The resumption of federal executions

We would also like to recall that resumptions of federal executions run counter to the international trend towards the reduction and eventual abolition of the death penalty. The Human Rights Committee has expressed its deep concern at the de facto reinstatement of death sentences and executions in a State party to the International Covenant on Civil and Political Rights (CCPR/CO/84/SYR, para. 7).

Against this background, we consider that resuming executions would be incompatible with the United States of America's international commitments. It would also run counter to the international trend towards the reduction and the eventual abolition of the death penalty (see Report of the Secretary-General, Question of the death penalty, A/HRC/27/23).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to clarify all cases brought to our attention, we would be grateful for your observations and/or considerations concerning the case.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Given the importance and urgency of the matter – a human being's life is at risk – we intend to publicly express our concerns in this case as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting the most immediate attention. We indeed believe that given the above circumstances the public should be alerted to these concerns and the human rights implications of the case. Any public

statement on our part would indicate that we have been in contact with your Government's to clarify the issue in question, and recall the State's international legal obligations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls