

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

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(Please use this reference in your reply)

31 March 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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, 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 **imminent execution of Ms. Melissa Lucio**, scheduled to take place on 27 April 2022 in the State of Texas, following judicial proceedings that resulted in an allegedly hasty conviction based on inconclusive evidence and that failed to adequately address her lifetime experience of abuse, including gender-based violence.

According to the information received:

Imminent execution of Ms. Melissa Lucio

Melissa Lucio, a Mexican-American citizen from the Rio Grande Valley, is scheduled to be executed by lethal injection on 27 April 2022. She was sentenced to death on 22 July 2008 by the 138th District Court of Cameron County in the State of Texas for capital murder in connection with the death of her daughter Mariah on 17 February 2007. The date for Ms. Lucio's execution was allegedly set prematurely, against inconclusive evidence, and despite the judges of the Fifth Circuit Court of Appeals recognising that Ms. Lucio had been deprived of her constitutional right to defend herself, resulting in the jury hearing an allegedly misleading and incomplete account of her interrogation.

Allegations of the use of coercive interrogation methods

On 15 February 2007, Ms. Lucio's daughter fell down a steep outside staircase leading to the family's home. Although Ms. Lucio's daughter's injuries reportedly did not appear life-threatening immediately after the fall, she succumbed to her wounds two days later.

On 17 February 2007, Ms. Lucio accepted responsibility for the murder of her daughter in the course of an allegedly flawed and coercive interrogation that

took place immediately after her daughter's death. The main evidence against Ms. Lucio consisted of a series of statements she made to police authorities following a reportedly aggressive interrogation while she was sleep-deprived, pregnant and in shock from having recently learned of her daughter's death. Ms. Lucio denied killing her daughter during the interrogation. However, the police officers reportedly threatened her and used interrogation techniques that were coercive to the extent that social scientists classify them as “risk factors” for false confessions because they tend to elicit them, especially when used on trauma survivors like Ms. Lucio.¹ At around 3:15 am, 5 hours after her interrogation began, Ms. Lucio told the police authorities “I guess I did it,” confirming that she had killed her daughter. At the time of her confession, Ms. Lucio was reportedly physically and mentally exhausted.

Furthermore, one of the law enforcement officers stated that he “knew” immediately that Ms. Lucio was responsible for her daughter's death because she adopted a slumped posture and did not make eye contact during her interrogation. The officer also showed Ms. Lucio how to hit a baby doll, which she imitated after the officer requested her an act that was later taken as evidence of Ms. Lucio's propensity to do the same. As a result, the Cameron County District Attorney's team described Ms. Lucio's behaviour as inclined toward the use of violence against her children and as an admission of murder, although further physical evidence or eyewitnesses confirming that she killed her daughter were lacking.

Allegations of lack of due process and inadequate consideration of Ms. Lucio's mental health, her experiences of abuse and gender discrimination

Ms. Lucio's personal history of child abuse from the age of six, repeated incidents of rape and domestic violence, and resulting trauma were not adequately considered as mitigating factors during the interrogation and judicial process. Ms. Lucio was sentenced to death in a hasty trial without clear and convincing evidence against her and without the jury being able to hear her defence.

At the age of 16, Ms. Lucio married to escape the abuse she suffered and witnessed in her family home. While her first husband was addicted to alcohol and subjected her to domestic violence, her second husband continued the cycle of violence by beating, choking, raping and threatening to kill her. Her children also reported being beaten by Ms. Lucio's husband. In addition, Ms. Lucio's family lived in extreme poverty and was temporarily homeless. By the time Ms. Lucio was 35 years old, she was struggling with abuse, cognitive and mental impairment, addiction and poverty. She has further been diagnosed with Post-Traumatic Stress Disorder (PTSD), clinical depression and dissociative and panic disorder.

¹ Motion at pp. 8-11.

In this context, Ms. Lucio was particularly vulnerable to the aggressive, intimidating and psychologically manipulative interrogation tactics of police and male authority figures due to previous experiences of abuse, including gender-based violence.

Ms. Lucio's attempt to present two expert witnesses to testify that her confession was not credible was rejected by the prosecution. According to a psychologist and a social worker who examined her case, her reaction to the interrogation showed clear symptoms of traumatic abuse. However, the judge excluded the social worker's testimony on grounds that she did not have the professional expertise necessary to testify, while deeming the psychologist's testimony to be "irrelevant." By excluding expert explanations for Ms. Lucio's statements during her interrogation, the court reportedly denied Ms. Lucio the right to defend herself.

Moreover, Ms. Lucio's lawyers were not prepared for the penalty phase of the trial. The lead defence lawyer hamstrung his mitigation specialist and expert witness until weeks before the trial began. As a result, Ms. Lucio's mitigation expert was not able to complete her examination and the jury never learned about the extent of Ms. Lucio's history of child sexual abuse and domestic violence. The failure to raise this as mitigating evidence was particularly damaging as the existing evidence was considered weak for a death sentence as it did not point to a history of violence, and the State's only evidence of Ms. Lucio's future dangerousness was the death of her daughter and a prior conviction for driving under influence of alcohol. It is also alleged that the evidence against Ms. Lucio was tainted, including the testimony of a prison expert who allegedly falsely reported the risk that she would commit violent acts in prison.

On 17 October 2018, Ms. Lucio's conviction and death sentence were overturned by the 5th Circuit Court of Appeal due to the exclusion of Ms. Lucio's proffered expert witnesses on the credibility of her confession and the resulting limitation on her constitutional right to present a full defence.

On 9 February 2021, however, the State appealed and an allegedly deeply divided court reinstated Ms. Lucio's conviction. The dissenting judges held that Ms. Lucio's restrained behaviour and acquiescence during interrogation resulted from previous trauma as a survivor of abuse.

Alleged inadequate investigation into the causes of death of Ms. Lucio's daughter

Law enforcement authorities reportedly hastily concluded that Ms. Lucio's daughter was killed in a homicide without relying on adequate investigation to exclude the possibility that she may have died from injuries sustained in a fall. Ms. Lucio's two-year-old daughter fell frequently due to a mild physical disability, making her unstable when walking, which had been documented

prior to the fatal incident.² In addition to her daughter's frequent falls in foster care, she reportedly had breathing difficulties, chronic asthma, and required regular medical appointments to monitor her condition.

A proper forensic investigation was reportedly not conducted to determine the circumstances and causes of Ms. Lucio's daughter's death. The forensic pathologist in charge of the case reportedly assumed homicide and did not consider the two-year-old's extensive medical history. In addition, the forensic evidence, including the results of the autopsy, was disputed by a neurosurgeon and a pathologist who specialises in deaths caused by child abuse. In a motion filed on 8 February 2022 in the 138th District Court of Cameron County to vacate or modify Ms. Lucio's execution date, dissenting judges pointed out that Ms. Lucio was convicted despite forensic medical examinations and eyewitness accounts showing that her daughter died from a head injury sustained in a fall and that her daughter's death would therefore not constitute murder.

Pending review and evaluation of Ms. Lucio's case

The date of execution in Ms. Lucio's case was set in a rushed manner while Ms. Lucio's lawyers were still developing new evidence of her factual innocence and the State's use of false testimony at trial. Moreover, setting a date so close to the statutory minimum of 91 days after the issuance of the execution order will not give Ms. Lucio a fair opportunity to file her clemency petition.

On 18 February 2022, the Inter-American Commission on Human Rights also issued a resolution calling on the authorities not to execute Ms. Lucio before the Commission had the opportunity to make a final decision in her case.³ The Commission considered the evidence that Ms. Lucio's life was marked by physical, emotional and sexual abuse and that these same experiences affected her response to coercive interrogation.

Consequently, maintaining the current execution date would prevent new evidence from being fully developed and presented.

Pattern of wrongful convictions of women of Latin American origin previously subjected to gender-based violence

Ms. Lucio's case should be seen as part of a broader pattern of wrongful convictions of women of Latin American origin living in the United States who have been subjected to abuse, including gender-based violence, in the past. Reportedly, about 70% of women exonerated since 1989 were wrongfully convicted of crimes that ultimately turned out to be accidents, suicides or fabricated crimes, according to data from the National Registry of Exonerations.⁴ Nearly one in three exonerated women was wrongly convicted

² Motion at pp. 6-7.

³ See https://www.oas.org/en/iachr/decisions/mc/2022/res_10-22_mc_1170-21_us_en.pdf.

⁴ See <https://innocenceproject.org/who-is-melissa-lucio-death-penalty-texas-execution-innocent/>

of injuring a child. While available data suggest gender-based discrimination, leading studies show that law enforcement officials tend to believe women of colour even less when they report domestic violence. The prosecution's stance in Ms. Lucio's trial allegedly demonstrated a similar attitude of intersectional discrimination, belittling, diminishing or disregarding altogether the significance of the evidence of Ms. Lucio's history of sexual abuse and domestic violence.

While we do not wish to prejudge the accuracy of the information received, we wish to express serious concern that the death penalty may have been imposed on Ms. Lucio 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 are particularly concerned that the conviction does not seem to be based on any evidence or eyewitness; that judges do not seem to have taken into account the emotional distress in which she may have been as a result of the death of her daughter, and the alleged coerced confession during her interrogation proceedings; that she had reportedly no history of violence against her child; that her lifetime of experiences of poverty and abuse, including domestic and gender-based violence, was not taken in due account; that no prompt and effective forensic investigation was carried out into the circumstances of her daughter's death.

Without expressing at this stage an opinion on the facts of the case, if confirmed, the above allegations would be in contravention of the right of every individual to life, liberty and security and the prohibition of torture as set out in article 6 and 7 of the International Covenant on Civil and Political Rights which the United States of America ratified on 8 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

Paragraph 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. In this regard, we stress that the alleged obstruction of Ms. Lucio from exercising her right to defend herself would violate a fundamental principle of fair trial, should it be proven to be true. Furthermore, article 6(4) of the ICCPR and paragraphs 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 capital punishment shall not be carried out pending any appeal or other recourse or evaluation procedure or other proceeding relating to pardon or commutation of the sentence.

We are also alarmed by the information received that indicates bias, harmful gender stereotyping and a lack of understanding of the trauma and mental health issues

associated with gender-based violence, well documented by experts, on the part of law enforcement and judges during Ms. Lucio's interrogation and trial process. The death penalty should never be imposed in a discriminatory manner and the element of non-discrimination applies both procedurally and substantively.

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 significantly influence a capital defendant's motivations, situation and conduct. A death sentence imposed after unfair trial may amount to a violation of the ICCPR even if the sentence is not executed.⁵

Ms. Lucio's personal history of being the victim of an extreme level of physical and sexual abuse as well as poverty throughout her life and her mental impairments are essential facts which appear not having been considered as mitigating circumstances during the legal process. We also note the apparent lack of professionalism and gender sensitivity of the Cameron County District Attorney's team in charge of Ms. Lucio's case and the withdrawal by the judge of expert testimonies by psycho-social personnel, who could have testified to what appears to be coercive and discriminatory interrogation methods used against Ms. Lucio.

There are meaningful similarities among women sentenced to death across jurisdictions, including histories of long-term abuse and absence of effective assistance. 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, para. 104). Furthermore, the Special Rapporteur referred to the duty of States to "modify, transform and eliminate wrongful gender stereotyping in recognition of the fact that the perpetuation of harmful gender stereotypes constitutes one of the determining factors of discrimination and violence" (para. 67). In this regard, we remind that 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.

In its report on women deprived of liberty submitted to the Human Rights Council (A/HRC/41/33), the Working Group on discrimination against women and girls stressed that links between economic and social inequalities and the criminal justice system can lead to trapping people in vicious cycles of poverty and criminalization. The case of Ms. Lucio would seem to illustrate that finding. Those cycles are aggravated in times of austerity, when social services are cut, and women are particularly affected because, owing to the feminization of economic deprivation, they rely more than men on Governments for legal, social, health and other services. Poverty shapes not only the crimes of which women are accused, but also their interactions with the criminal justice system, which also have an effect on the likelihood of their incarceration and its length. In particular, lack of income and wealth limits women's

⁵ See *Henry and Douglas v Jamaica*, Communication No. 571/1994, Views adopted by the Human Rights Committee on 25 July 1996, paras. 10-12.

access to quality legal representation, negatively impacting their ability to obtain favourable outcomes in the court system. It also limits their ability to post bail, which not only subjects them to pre-trial detention, but has also been found to dramatically increase the likelihood of their eventual conviction.

The Special Rapporteur on violence against women also noted in a thematic report on the incarceration of women (A/68/340) that a gendered approach to women and incarceration requires acknowledging that gender stereotyping can have a disproportionate negative effect on women, including increased sentencing patterns and specific forms of violence as compared to male prisoners. Also, women belonging to ethnic and racial minorities face a disproportionate rate of incarceration. She stressed that since prisons were made with men in mind, opposition and hostility from policy makers and male corrections officials is common. She also noted that States have a duty to address the structural causes that contribute to women's incarceration and to address root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies.

Lack of Effective Investigations in the Causes of Death

We are troubled by the alleged lack of a proper forensic investigation, including autopsy, into the death of Ms. Lucio's daughter. We would like to highlight the importance of conducting prompt, independent, impartial, effective, thorough and transparent investigations into all potentially unlawful killings in accordance with international standards, particularly the *United Nations Minnesota Protocol on the Investigation of Potentially Unlawful Death*⁶. In particular, we note that investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence (para. 28) while investigations of any potentially unlawful death must recover and preserve all material probative of the cause of death and determine the cause, manner, place and time of death, and all of the surrounding circumstances (para. 25). In particular, in determining the manner of death, the investigation should distinguish between natural death, accidental death, suicide and homicide⁷ and should be carried out by the performance of an autopsy. In this regard, we would like to refer to Principle 12 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council), indicating that the body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology.

The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984, in particular, paragraphs 4 and 5, which provide that capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts, that it may only be carried out after a legal process which provides all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages. In this regard, we highlight

⁶ Available at <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>.

⁷ Inter-American Court of Human Rights, *Véliz Franco and others v. Guatemala*, 2011, para. 191.

that “the execution of sentenced persons whose guilt has not been established beyond reasonable doubt also constitutes an arbitrary deprivation of life”, therefore, States parties are required to “take all feasible measures in order to avoid wrongful convictions in death penalty cases, to review procedural barriers to reconsideration of convictions and to re-examine past convictions on the basis of new evidence, including new DNA evidence” (CCPR/C/GC/36, para. 43).

In its General Recommendation 33 on women’s access to justice, the CEDAW Committee stressed that stereotyping and gender bias in the justice system have far-reaching consequences for women’s full enjoyment of their human rights. They impede women’s access to justice in all areas of law. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women’s voices, arguments and testimony. Such stereotyping can cause judges to misinterpret or misapply laws. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice. While not a State party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the United States, as signatory to this instrument since 1980, is bound to ensure that nothing is done which would defeat the object and purpose of the treaty, pending a decision on ratification.

The death penalty cannot be reconciled with the full respect for the right to life, and that abolition is both desirable and necessary for the enhancement of human dignity and progressive development of human rights (Human Rights Committee, General comment No. 36 (2018) on the right to life, CCPR/C/GC/36, para. 50). The Human Rights Committee has expressed its deep concern at the de facto reinstitution of death sentences and executions in a State party to the International Covenant on Civil and Political Rights (CCPR/CO/84/SYR, para. 7).

In this regard, 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, Constantine 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.

Against this background, we consider that continuous application of the death penalty is incompatible with the United States of America’s international commitments.

In view of the above, we respectfully call upon your Excellency's Government as a matter of urgency to halt the execution of Ms. Melissa Lucio scheduled for 27 April 2022. On the data made available to us, her execution appears to be a violation of applicable international human rights norms and thus an arbitrary execution. We further urge your Excellency's Government to undertake a meaningful review of Ms. Lucio's case as 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.

Several United Nations human rights bodies, including Special procedures independent experts mandated by the Council of Human Rights, have previously expressed concern about the continuous application of the death penalty and its discriminatory manner by your Excellency's Government.

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(s) 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 recommend that prompt steps be taken to stop the execution of the death penalty against Ms. Lucio, that her case be thoroughly reviewed by a separate court, taking into account the multiple mitigating factors referred to in this communication, and which seem to have been repeatedly disregarded. In the light of this case, we also recommend that similar judicial process in capital punishment cases be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions. We also take this opportunity, duly referencing previous communications, to encourage your Excellency's Government to firm its commitment to women's rights through the ratification of CEDAW.

Given the importance and urgency of the matter – a human being's life is at risk – we may consider to publicly express our concerns in this case as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting undivided 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 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.

Morris Tidball-Binz

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