



## Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade

6 December 2022

### RE: Inquiry into the rights of women and children

Eleos Justice is an initiative based at the Faculty of Law Monash University and funded by the Department of Foreign Affairs and Trade. A collaboration between Capital Punishment Justice Project and Monash Law, it was formally launched in October 2020. With over 90 per cent of the world's executions taking place in Asia, Eleos' vision is to become the region's leading institute for evidence-based research, policy and clinical casework devoted to abolishing the death penalty and other forms of State-sanctioned killing.

Eleos will be launching a report on the *State-sanctioned Killing of Women* in March 2023 to mark International Women's Day. This submission is based on our preliminary research on this topic. Our submission should be read in conjunction with the submission by the Department of Forensic Medicine, Monash University. Eleos' report and the work carried out by the Department of Forensic Medicine will contribute to the upcoming report on femicide/feminicide by Dr Morris Tidball-Binz, the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions.

### State involvement in, and responses to, homicidal violence against women

This submission reviews the various ways in which States are involved in, and respond to, violence against women involving violations of the right to life—that is, where a woman is killed, or where a homicide impacts a woman. First, we review State-sanctioned killings of women, including the death penalty (where the State is directly involved in the act of homicide), honour killings in jurisdictions where the State legally distinguishes such killings from murder and reduces the criminal culpability of killers in such cases, and inadequate State responses (such as failure to investigate or prosecute) to femicide. Second, we review ways in which the State deploys the death penalty for physical and sexual violence against women under the guise of 'protecting' women. Third, we assess ways in which women are hidden victims of State killing.

#### I. State-sanctioned killing of women

##### A. Death penalty

It is estimated that there are at least 500 women on death row worldwide.<sup>1</sup> The majority of women on death row have been sentenced to death for murder, and in many cases, these women were convicted of killing the person perpetrating gender-based violence against

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<sup>1</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (September 2018), 9.

them.<sup>2</sup> It has been noted that the lives of such women are often characterised by similar gender-specific hardships: long-term abuse, economic dependence, fear of losing child custody, societal acceptance of violence against women, and stigmatisation of divorce.<sup>3</sup> Evidentiary issues arise in such cases: abuse often occurs without adult witnesses, and women may be reluctant to speak out due to stigma, shame, or lack of trust in the criminal justice system.<sup>4</sup> Moreover, even where evidence of abuse is available, such abuse is rarely considered as a mitigating factor during sentencing, despite being known to engender serious physical and mental harms.<sup>5</sup> Imposition of the death penalty in spite of such evidence may, in cases of self-defence, amount to arbitrary killing.<sup>6</sup>

Drug offences are the next most common crimes for which women are sentenced to death, predominantly in Asia and the Middle East.<sup>7</sup> Women offenders are often led to drug crime as a result of ‘gendered pathways’ to offending—such as economic insecurity (enhanced due to gender segregation in the labour market) and manipulative relationships (such as so-called “romance scams”).<sup>8</sup> In such cases, gender bias infiltrates capital sentencing where the personal and gender-specific circumstances of women defendants are not accounted for.<sup>9</sup>

It has been noted that women capital defendants may receive lighter sentences than their male counterparts when their criminal conduct is compliant with social expectations of women; however, upon transgressing such norms, women are punished more harshly.<sup>10</sup> Moreover, though women are overall sentenced to death at a significantly lower rate than men, women are disproportionately represented amongst those sentenced to death for certain crimes. Examples of such offences include adultery, prostitution, and sorcery/witchcraft.<sup>11</sup> In some Sharia jurisdictions, *zina* (roughly translating to “extramarital sex”) carries the death penalty, and while such laws may appear to be gender-neutral, they are applied in a discriminatory manner vis-à-vis women, with women more likely to be sentenced to death as a result of sociocultural gender norms and evidentiary requirements (such as pregnancy).<sup>12</sup> For example, in Iran, a woman victim of domestic violence and forced into prostitution by her husband was convicted of adultery and as an accessory to murder when one of her clients killed her husband. She was sentenced to death by stoning due to the adultery charge, while her client—who engaged in both adultery and murder—was sentenced to only eight years imprisonment.<sup>13</sup> Finally, the risk of being prosecuted for *zina*

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<sup>2</sup> Ibid, 11.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> United Nations Office of the High Commissioner for Human Rights, ‘Death penalty disproportionately affects the poor, U.N. rights experts warn’ (6 October 2017) <<https://www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn>>.

<sup>6</sup> Ibid.

<sup>7</sup> Cornell Center on the Death Penalty Worldwide (n 1), 12.

<sup>8</sup> Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses” (5 October 2021) <[https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/?version=html#\\_Toc80027242](https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/?version=html#_Toc80027242)>.

<sup>9</sup> Ibid.

<sup>10</sup> Cornell Center on the Death Penalty Worldwide (n 1), 6.

<sup>11</sup> Ibid, 11-14.

<sup>12</sup> Ibid, 13.

<sup>13</sup> United Nations General Assembly, *Pathways to, conditions and consequences of incarceration for women: Report of the Special Rapporteur on violence against women, its causes and consequences* (21 August 2013) UN Doc. A/68/340, para. 8.

strongly disincentivises women from reporting sexual violence, as this may be interpreted as a confession of extramarital sex.

Other crimes for which women have been sentenced to death include apostasy,<sup>14</sup> blasphemy,<sup>15</sup> same-sex relationships,<sup>16</sup> terrorism,<sup>17</sup> and witchcraft.<sup>18</sup>

Women facing the death penalty encounter discrimination as a result of compounding factors—including socio-economic status, gender stereotypes, stigma, patriarchal cultural norms, and gender based violence—all of which inhibit their ability to access justice on an equal basis to men.<sup>19</sup> Moreover, the vulnerability of these women is exacerbated by membership of other marginalised group: juveniles, survivors of forced marriage, women with mental illnesses and intellectual disabilities, migrant workers, women living in poverty, and racial, ethnic, and religious minorities.<sup>20</sup>

In 2021, at least 24 women were executed (in Egypt, Iran, Saudi Arabia, and USA), representing four per cent of persons executed that year.<sup>21</sup> This number was an increase from the previous year: in 2020, Amnesty International recorded the execution of 16 women (3 per cent of all executions that year).<sup>22</sup>

### *B. Honour killing laws*

In several countries, the law creates a distinction between murder and so-called ‘honour killings’; that is, where a killer justifies their homicidal actions on the basis of preserving or restoring the dignity and reputation of an individual or family which was supposedly marred by the victim.

In Iran, the Islamic Penal Code provides that a father or paternal grandfather cannot be sentenced to death for killing his child or grandchild.<sup>23</sup> Similarly, a man is permitted to kill any person having committed a crime punishable by death under Sharia law—including

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<sup>14</sup> Mark Tran, ‘Sudanese woman spared death sentence for apostasy arrives in Italy’, *The Guardian* (24 July 2014) <<https://www.theguardian.com/world/2014/jul/24/sudanese-woman-meriam-ibrahim-spared-death-sentence-apostasy-italy>>.

<sup>15</sup> Saroop Ijaz, ‘Facing the Death Penalty for Blasphemy in Pakistan’, *Human Rights Watch*, <<https://www.hrw.org/news/2016/10/12/facing-death-penalty-blasphemy-pakistan>>.

<sup>16</sup> UN News, ‘Iran: UN experts demand stay of execution for two women LGBT rights activists’ (28 September 2022) <<https://news.un.org/en/story/2022/09/1128181>>.

<sup>17</sup> Ariana Jacobberger, Delphine Lourtau, Fanny Gauthier and Ramsay McCulloch, ‘Fati: An Innocent Woman Sentenced to Death for Terrorism After Being Falsely Accused by a Rejected Suitor’, *Cornell Center on the Death Penalty Worldwide* (11 November 2021) <<https://deathpenaltyworldwide.org/fati-an-innocent-woman-sentenced-to-death-for-terrorism-after-being-falsely-accused-by-a-rejected-suitor/>>.

<sup>18</sup> Human Rights Watch, ‘Saudi Arabia: Halt Woman’s Execution for “Witchcraft”’ (13 February 2008) <<https://www.hrw.org/news/2008/02/13/saudi-arabia-halt-womans-execution-witchcraft>>.

<sup>19</sup> United Nations Office of the High Commissioner for Human Rights, ‘Death penalty disproportionately affects the poor, U.N. rights experts warn’ (6 October 2017) <<https://www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn>>.

<sup>20</sup> Cornell Center on the Death Penalty Worldwide, (n 1), 15-19

<sup>21</sup> Amnesty International, *Death Sentences and Executions 2021* (May 2022) 10.

<sup>22</sup> Amnesty International, *Death Sentences and Executions 2020* (April 2021) 10.

<sup>23</sup> Islamic Penal Code of Iran, Article 301.

adultery.<sup>24</sup> This breeds a culture of impunity for perpetrators of honour-related killings. For example, in February 2022, a man beheaded his 17-year-old wife and paraded her head through the streets.<sup>25</sup> Similarly, in June 2022, a man killed his daughter for allegedly 'laughing with a boy at a park'.<sup>26</sup> Such violence also impacts sexual and gender minorities: in 2019, a transgender woman was killed by her male relatives, and because all parties involved in the homicide were of the same family, there was nobody entitled to blood money, resulting in the offenders being released without charge.<sup>27</sup>

Similar laws exist in other jurisdictions. In Egypt, a man who kills his wife and her lover upon discovering her adultery will enjoy a reduced sentence.<sup>28</sup> Likewise, in Iraq, a man who murders his wife (or other female dependent) or her intimate partner upon discovering her adultery can be sentenced to no more than three years imprisonment.<sup>29</sup> Under this law, a father was sentenced to only two years imprisonment for killing two of his daughters (and attempting to kill a third) whom he suspected of having sex, despite medical examinations showing that the girls were virgins.<sup>30</sup> In Jordan, both men and women claiming to have killed their spouse (or, in the case of male perpetrators, his female descendants or ancestors) or their spouse's lover upon discovering their adultery can seek to have their punishment mitigated.<sup>31</sup> While this law is ostensibly gender-neutral, this masks the reality that honour killings disproportionately impact women and girls, and are the most prevalent of all forms of homicide in Jordan.<sup>32</sup>

A similar phenomenon called "dowry death" refers to the killing of women over disputes concerning dowry. In India, the law distinguishes such killings from murder: while murder is punishable by death or life imprisonment,<sup>33</sup> "dowry death" is punishable by as little as seven years' imprisonment, up to life imprisonment.<sup>34</sup>

### *C. Inadequate State responses to femicide*

Femicide is a pervasive issue globally: it is estimated that in 2021 alone, an estimated 81,100 women were intentionally killed, around 45,000 of whom were killed by their intimate partners or other family members.<sup>35</sup> Evidence indicates that most killings of women and girls are gender motivated, and that while the overwhelming majority of

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<sup>24</sup> Ibid, Article 302.

<sup>25</sup> Center for Human Rights in Iran, 'Honor killings will continue as long as Iran's laws protect killers' (11 February 2022) <<https://hrwf.eu/iran-honor-killings-will-continue-as-long-as-irans-laws-protects-killers/>>

<sup>26</sup> Maryam Sinaee, 'Father Shoots Young Daughter To Death In Iran 'Honor Killing'', *Iran International* (2 July 2022) <<https://www.iranintl.com/en/202207027658>>.

<sup>27</sup> Maryam Dehkordi, 'A Dark History: Honor Killings of Iran's LGBTQ Citizens', *Iranwire* (2 August 2020) <<https://iranwire.com/en/features/67398/>>.

<sup>28</sup> Egypt Penal Code, Article 237.

<sup>29</sup> Iraq Penal Code, Article 409.

<sup>30</sup> Yara Bayoumy and Aseel Kami, "'Honor Killings' require tougher laws, say Iraqi women', *Reuters* (6 March 2012), <<https://www.reuters.com/article/us-iraq-women-idUSTRE82510920120306>>.

<sup>31</sup> Jordan Penal Code, Article 340.

<sup>32</sup> Ahmad M. Hayajneh and Shadi A. Alshdaifat, 'Is the law *Per Se* to Blame for Exacerbating So-Called 'Honour Killings'? The Case of Jordan', *Journal of Human Rights Practice* (2022) 648-675.

<sup>33</sup> India Penal Code, Article 302

<sup>34</sup> Ibid, Article 304B

<sup>35</sup> United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-related killing of women and girls (femicide/feminicide)* (2022), 5.

homicides globally are committed against men and boys, women and girls are disproportionately affected by homicidal violence in the private sphere.<sup>36</sup> Though femicides are almost exclusively perpetrated by non-State actors, States become complicit insofar as they fail to adequately respond to such violence, thereby breeding impunity for such violence. For example, inadequate investigation of femicides in Mexico have led commentators to conclude that the State has violated the rights to life, access to justice, and personal integrity of femicide victims.<sup>37</sup>

In some jurisdictions, women have been killed after being accused of sorcery (or 'witchcraft'): in 2022 alone, such violence has been identified in several countries, including India<sup>38</sup> and Nigeria.<sup>39</sup> Sorcery-related killings are particularly prevalent in Papua New Guinea,<sup>40</sup> and concern has been raised as to the inadequacy of State responses to such violence: a 2017 study found that only 115 of 15,000 perpetrators had been sentenced for their crimes, signalling a pattern of impunity.<sup>41</sup> Where perpetrators have been prosecuted, questions may arise in the propriety of the criminal justice process: in 2018, Papua New Guinea convicted 97 people accused of sorcery-related killings in a mass trial,<sup>42</sup> raising questions as to compliance of the proceedings with fair trial standards. Eight of the 97 perpetrators were sentenced to death, while the others were sentenced to life imprisonment.<sup>43</sup>

## II. Death penalty used to 'protect' women

In some jurisdictions, the death penalty is justified by the State as a means of 'protecting' women from (sexual) violence. The death penalty is an available punishment for rape offences in at least 25 countries.<sup>44</sup> When accounting for countries wherein rape is an aggravating factor in the sentencing of other offences (such as murder or kidnapping), and those wherein theoretical scope exists for rape to be prosecuted as *zina* (a Sharia law offence akin to 'adultery' or 'extramarital sex'), this number rises to 38.<sup>45</sup>

These laws are neither archaic nor dormant. In recent years, high-profile rape cases have inspired the reintroduction or expansion of the death penalty for rape in Bangladesh, India,

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<sup>36</sup> Ibid.

<sup>37</sup> Amnesty International, *Justice on Trial: Failures in Criminal Investigations of Femicides Preceded by Disappearance in the State of Mexico* (September 2021), 3.

<sup>38</sup> Shweta Sharma, 'Hundreds accused after woman is burned alive 'for being a witch' in Indian village', *The Independent* (11 November 2022) <<https://www.independent.co.uk/asia/india/bihar-india-withcraft-arrests-burnt-alive-b2222148.html>>.

<sup>39</sup> The Guardian, 'Witchcraft: Court sentences man to death by hanging for killing daughters' (16 February 2022) <<https://guardian.ng/news/witchcraft-court-sentences-man-to-death-by-hanging-for-killing-daughters/>>

<sup>40</sup> Ian Neubauer, 'Papua New Guinea fails to end 'evil' of sorcery-related violence', *Al Jazeera* (16 August 2022) <<https://www.aljazeera.com/news/2022/8/16/papua-new-guinea-struggles-to-end-evil-of-sorcery-related-violence>>.

<sup>41</sup> Miranda Forsyth, Judy Putt, Thierry Bouhours and Brigitte Bouhours, *Sorcery Accusation-Related Violence in Papua New Guinea – Part 3: State and Non-State Responses (In Brief 2017/30)*, (Department of Pacific Affairs, Australian National University), <<https://regnet.anu.edu.au/sites/default/files/publications/attachments/2017-11/Sorcery%20Accusation-Related%20Violence%20in%20Papua%20New%20Guinea%20Part%203%20State%20and%20Non-State%20Responses.pdf>>

<sup>42</sup> Radio New Zealand, '97 convicted in mass trial for PNG 'sorcery' killings' (16 January 2018) <<https://www.rnz.co.nz/international/pacific-news/348161/97-convicted-in-mass-trial-for-png-sorcery-killings>>.

<sup>43</sup> Catherine Graue, 'Eight sentenced to death, 88 get life in prison over PNG sorcery murders', *ABC News* (26 July 2018) <<https://www.abc.net.au/news/2018-07-26/papua-new-guinea-sorcery-murders-death-sentence/10038442>>.

<sup>44</sup> Cornell Center on the Death Penalty Worldwide, 'Database' (n.d.) <<https://deathpenaltyworldwide.org/database/>>.

<sup>45</sup> Ibid.

and Pakistan.<sup>46</sup> Moreover, since 2010, persons convicted of rape offences have been executed in at least nine countries: Belarus, China, India, Iran, Jordan, Pakistan, Palestine, Saudi Arabia, and Yemen.<sup>47</sup>

Those who advocate the death penalty for rape routinely cite deterrence as the rationale underpinning their support.<sup>48</sup> This is despite the fact that the deterrent effect of the death penalty is yet to enjoy empirical support;<sup>49</sup> on the contrary, it has been suggested that the death penalty deters victims from reporting sexual violence, and may inhibit the efficacy of criminal justice responses to such violence.<sup>50</sup> In July 2022, an Egyptian court called for the amendment of the country's laws so as to allow the live broadcast of executions, contending that the execution of a man convicted of murdering a female student could deter further femicides.<sup>51</sup> Similarly, in March 2022, China's chief justice called for expansion of the death penalty in serious cases of 'cruel treatment' of women (and children and the elderly), in apparent response to public outcry over recently publicised human trafficking cases.<sup>52</sup>

### III. Women as hidden victims

Much of the extant research on the death penalty has tended to treat death row prisoners as a homogenous population. Of that research which scrutinises death row identities, the majority has been conducted in the US, focussing on race, ethnicity, and socioeconomic variables. Gender, on the other hand, remains grossly understudied, with the experiences of women—and, to an even greater extent, gender minorities—remaining largely unknown. While women comprise only a minute proportion of the global death row population, limited research has indicated that the experience of women on death row is unique.<sup>53</sup> For instance, women death row prisoners are particularly vulnerable to physical and sexual violence by male staff or other prisoners, and are frequently denied access to adequate female-specific healthcare and hygiene products.<sup>54</sup>

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<sup>46</sup> Sara Kowal, Scott Walker, Zaman Ashraf and Mai Sato, *A Deadly Distraction: Why the Death Penalty is not the Answer to Rape in South Asia* (Monash University, 2022).

<sup>47</sup> Cornell Center on the Death Penalty Worldwide (n 44).

<sup>48</sup> United Nations Office of the High Commissioner for Human Rights, 'Rape is a monstrous crime, perpetrators must be held accountable – but death penalty and torture are not the answers – Bachelet' (15 October 2022), <<https://www.ohchr.org/en/press-releases/2020/10/rape-monstrous-crime-perpetrators-must-be-held-accountable-death-penalty-and>>.

<sup>49</sup> Daniel Nagin and John Pepper, *Deterrence and the Death Penalty* (The National Academies Press, 2020). Moreover, a recent review of the extant literature was 'unable to locate any research showing the deterrent effect of the death penalty for rape offences' specifically: Sara Kowal, Scott Walker, Zaman Ashraf and Mai Sato, *A Deadly Distraction: Why the Death Penalty is not the Answer to Rape in South Asia* (Monash University, 2022) 27.

<sup>50</sup> Sara Kowal et al (n 46) 27-28.

<sup>51</sup> The New Arab, 'Egypt court calls for femicide execution to be broadcast live on television' (24 July 2022), <<https://www.newarab.com/news/egypt-calls-femicide-execution-be-broadcast-live>>.

<sup>52</sup> Mimi Lau, 'China's chief justice calls for death penalty for 'cruel treatment' of women, children and the elderly', *South China Morning Post* (8 March 2022) <<https://www.scmp.com/news/china/politics/article/3169686/chinas-chief-justice-calls-death-penalty-cruel-treatment-women>>.

<sup>53</sup> American Civil Liberties Union, *The Forgotten Population: A Look at Death Row in the United States Through the Experiences of Women* (November 2004); Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (September 2018).

<sup>54</sup> World Coalition Against the Death Penalty and Cornell Center on the Death Penalty Worldwide, *Prison conditions for women facing the death penalty* (October 2018), <[https://cdn.penalreform.org/wp-content/uploads/2018/10/PRI-Women-on-death-row-briefing-paper\\_SINGLES-003.pdf](https://cdn.penalreform.org/wp-content/uploads/2018/10/PRI-Women-on-death-row-briefing-paper_SINGLES-003.pdf)>.

State-sanctioned killing also impacts women in their capacities as mothers, partners, and caregivers. Where their relatives—generally men—are killed by State actors, women are subsequently being forced, by virtue of their gender and associated sociocultural gender roles, to ‘confront the associated stigma, fear, insecurity and economic deprivation’ and grappling with ‘the burdens of identifying and burying their dead loved ones and seeking justice’.<sup>55</sup> Former Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Agnes Callamard, identified the ‘war on drugs’ in the Philippines as a token example of such secondary victimisation: thousands of people, predominantly men, have been killed as part of this State campaign, with their female family members and associates encountering various barriers as a result of their relationship to the victim.

Yours faithfully,

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<sup>55</sup> Agnes Callamard, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings* (6 June 2017) UN Doc A/HRC/35/23, para. 49.