

SILENTLY SILENCED

STATE-SANCTIONED KILLING OF
WOMEN



MARCH 2023



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FOREWORD

By Morris Tidball-Binz

United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

Over 40 years ago, the Convention on the Elimination of All Forms of Discrimination against Women came into force, with the aim of bringing half of humanity into its scope, ensuring the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights. Women's right to vote and the right to hold public office, rights to non-discrimination in education, employment and economic and social activities, as well as the right to reproductive choice are some of the fundamental rights enshrined in the Convention. Today, instead of enjoying these rights, many women around the world continue to be deprived of the most fundamental right: the right to life. Gendered stereotypes, customs and biased norms that hinder women's equality also operate to kill them.

In 2021 alone, a global known estimate of 81,100 women and girls were killed intentionally, according to the United Nations Office on Drugs and Crime. Most killings of women and girls were gender-based, also known as femicides; around half were killed by their intimate partners or by other family members. The overall number of female homicides has remained largely unchanged over the past decade, and the available evidence paints a bleak picture, with little progress in preventing gender-based killings of women and girls. A comprehensive and multisectoral approach is needed to develop comprehensive knowledge and to improve responses to gender-related killings and other forms of gender-based violence against women and girls, including effective investigations.

I wholeheartedly applaud Eleos Justice and the Cornell Center on the Death Penalty for joining forces to produce this excellent report *Silently Silenced: State-Sanctioned Killing of Women*. This report exposes how many States around the world are complicit in the killing of women, including the application of the death penalty. While women constitute a minority of the global death row population, the gendered impacts of the death penalty are manifold: some capital laws discriminate against or disproportionately affect women, and women endure unique experiences on death row. Some States also use the death penalty in the name of 'protecting' women. In other instances, States condone, excuse, and ignore the killing of women by non-State actors. Though femicides appear to be largely perpetrated by private individuals, States become complicit insofar as they fail in their duty to protect the victims' right to life and adequately respond to such violence, thereby breeding impunity.

Previous mandate holders have applied a gender lens, starting with the ground-breaking work by Asma Jahangir, integrating gender sensitivity to the mandate. My predecessor, Agnès Callamard, explored State responsibility to protect the right to life of women and girls, and the conditions under which their deaths may amount to arbitrary killings or arbitrary deprivation of life. I too believe that the adoption of a gender perspective is an essential element of the work of the mandate, and I intend to build on the work of my former mandate holders. In my career as a medical doctor specialized in forensic science, human rights and humanitarian action, I have learnt that gender-related killings are not inevitable but can be prevented, for which a proper investigation into every case of femicide, in accordance with international standards such as the Minnesota Protocol on

the Investigation of Potentially Unlawful Death (2016) and with due consideration of the specificities of these crimes, is essential. In consideration of this fundamental consideration, I shall be launching a report on femicide this year at the 53rd session of the Human Rights Council, focusing on the investigation and prevention of femicide.

I congratulate Eleos Justice and the Cornell Center on the Death Penalty Worldwide for shedding light on this important area.

March 2023

EXECUTIVE SUMMARY

*Silently Silenced: State-Sanctioned Killing of Women*¹ examines States' involvement in 'femicide'. Femicide is understood as the gender-motivated killing of women and girls that States actively engage in, condone, excuse, or fail to prevent. We use the term 'femicide' to refer to the various forms of State-sanctioned killing of women and girls. In this report, we outline States' direct involvement and complicity in the killings of women and girls and explain these deaths as a product of gendered forms of structural violence upheld and sustained by the State. We examine 3 types of femicide: gender-related killings of women directly perpetrated by the State, such as the death penalty and extrajudicial killings; gender-related killings of women committed by non-State actors that are excused or condoned by the State; and gender-related killings of women that the State failed to prevent.

Sections 1 and 2 position the death penalty as a form of femicide. **Section 1** of this report probes the gendered effects of the death penalty. In countries where women are sentenced to death, the legal processes that govern their arrest, trials, and sentencing are deeply gendered. Indeed, though rarely discriminating against women in substance, many capital laws are applied in a manner that replicate and/or exacerbate the gender discrimination and violence that led to their arrest. In particular:

- The majority of women on death row are those convicted of homicide. Capital homicide laws are applied in a fashion that is often blind to the contexts of gender-based violence within which women commit such crimes. For instance, in 26 countries where murder carries the mandatory death penalty, courts are barred from considering mitigating circumstances, such as histories of gender-based violence, during sentencing.
- The imposition of the death penalty under international standards is restricted to intentional killing. Nevertheless, large numbers of women on death row have been convicted of drug offences. Capital drug laws are often applied in a manner that is blind to the realities of drug crime; instead of disrupting drug cartels, capital drug laws in practice operate to punish women typically recruited from marginalised groups with intersecting vulnerabilities.
- While criminalisation of adultery is deeply problematic, capital adultery laws exist. These laws, though drafted in a gender-neutral manner, are frequently applied in a discriminatory fashion. For example, women are more likely to be prosecuted for adultery by virtue of social, cultural, and historical gender norms.
- In some countries, capital sorcery and political offences have targeted women. For example, political offences have been used to silence those advocating women's rights.

Section 2 examines the experiences of women facing the death penalty. Prison conditions for women facing the death penalty generally fall below international standards, and in some cases are even life-threatening.

¹ The title of the report is borrowed from Thomas Mathiesen's book *Silently Silenced: Essays on the Creation of Acquiescence in Modern Society* (2004, Waterside Press).

- In many countries, prison infrastructure is poor, prison diets are inadequate, and access to health services is minimal and mental health care is virtually non-existent.
- Women prisoners are often held in spaces designed for men. For instance, communal bathrooms afford no privacy, even during menstruation. It is very difficult to access to menstrual hygiene products.
- Some women’s prisons are staffed with male guards, heightening the risk of direct violence against and exploitation of female prisoners.
- In some countries, women on death row are held in long-term solitary confinement.
- Some women have diminished access to paid work in prison, earning negligible or even no wages.

This section also assesses the role of direct and structural violence in women’s pathways to death row. A disproportionate number of women facing the death penalty—including many women sentenced to death for murder—are survivors of gender-based violence. Women’s histories of such violence are routinely ignored by courts during capital sentencing. In some cases, women’s perceived transgression of gendered norms of social behaviour is treated as an aggravating circumstance.

Section 3 looks beyond the death penalty to consider 3 categories of femicides: where States (1) extrajudicially kill women and girls, (2) enable the killing of women and girls by non-State actors, and (3) fail to prevent the killing of women by non-State actors.

- Extrajudicial killings include the excessive use of force leading to death committed by State actors such as the police or security forces, and killings by insurrectional movements such as the Islamic State of Iraq and the Levant and the Taliban.
- States may enable the killing of women by non-State actors through legislative frameworks that lead to such violence. Laws that distinguish honour killings (on the basis of adultery or gender identity, for example) from murder legitimate such violence by reducing the penalties available for perpetrators, or by creating loopholes that may be exploited by perpetrators to avoid conviction altogether. Laws that criminalise abortion force women to seek out alternate options, leading to increased maternal mortality.
- Under international law, States have an obligation to protect women against arbitrary deprivation of life. This obligation is heightened where gender-based homicide is systematic. Dowry-related killings (including foeticides and infanticides), witchcraft-related killings, and deaths caused by female genital mutilation may all be imputed to the State when committed in societies where such violence is prevalent.

While the lack of enforcement undermines the legitimacy of such laws prohibiting these practices, criminalisation is not *the* solution in eradicating practices such as female genital mutilation, dowry, or witch hunting. The over-reliance on criminal punishment, such as imprisonment, contributes to mass incarceration, ignoring the devastating consequences of imprisonment on individuals and societies. In this vein, **Section 4** critiques the flawed narrative employed by States to justify the imposition of the death penalty for rape to ‘protect’ women. We found that 31 countries prescribe the death penalty for rape, and in the last 5 years, at least 58 individuals have been executed on this basis. We explain why

the death penalty is not the answer to rape, arguing that capital rape laws exploit the language of women's rights to violate the right to life.

SCOPE OF THE REPORT

Mai Sato and Sandra Babcock

FEMINICIDE: STATE-SANCTIONED KILLING OF WOMEN

The term ‘femicide’ was coined by American feminist Diana H. Russell in 1976 during the first International Tribunal on Crimes against Women:

I chose the new term femicide to refer to the killing of females by males *because* they are female. (Russell, 2011; emphasis original).

‘Femicide’ emerged as a corrector to the neutral term ‘homicide’ with the political aim of attracting attention to the systematic infliction of lethal violence on women (Russell, 2011). Though initially conceived as a form of killing perpetrated by men, most definitions of femicide now extend to the killing of women by men or women. This reflects the reality that some women internalise and reproduce the patriarchal systems that they grow up and engage in, or are complicit in (Grzyb, 2018: 25). The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) defines femicide as:

An intentional killing with a gender-related motivation ... driven by stereotyped gender roles, discrimination towards women and girls, unequal power relations between women and men, or harmful social norms’ (UN Women, 2022).

For the purposes of this report, we are not only interested in cases of ‘intentional’ killing as stated by UN Women. Indeed, in her report on a gender-sensitive approach to *arbitrary* killings, Agnès Callamard, former Special Rapporteur on extrajudicial, summary or arbitrary executions, argued for a broader reconceptualising of the right to life so as to reflect States’ complicity in femicide (Callamard, 2017).

This leads us to the related concept of ‘feminicide’, or *feminicidio* in Spanish, developed by Mexican anthropologist and feminist Marcela Lagarde y de los Ríos (Grzyb, 2018: 20). She coined the term in the 1990s to provide a framework by which to understand the rise in the killing of women in Mexico, with particular focus on impunity—that is, State failure to investigate, prosecute, and punish perpetrators. By defining feminicide in this way, certain forms of lethal violence against women become ‘State crime’ (Grzyb, 2018:20). According to the *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*, developed by the Regional Office for Central America of the United Nations High Commissioner for Human Rights, feminicide is understood as

Refer[ring] to the full set of facts that characterize the crimes against and disappearances of girls and women in cases in which the response of the authorities is one of omission, inertia, silence, and a failure to act to prevent and eradicate these crimes (Sarmiento, et al., 2014: para.35).

This report focuses on the State-sanctioned killing of women and girls, including intentional deaths as well as instances of feminicide.² This includes:

² We have used the term women to refer to people whose biological sex is female and people assigned to the male gender at birth, who identify themselves as a transwomen, regardless whether modifications have been made to their body.

- death penalty laws that have discriminatory impact on women and girls;
- extrajudicial killing of women, by State actors, motivated by the fact that they are women and girls;
- killing of women and girls by non-State actors, motivated by the fact that they are women and girls, which are subsequently excused by the state by way of lawful excuse; and
- State failure to prevent, condemn, or punish lethal violence against women and girls.

This report does not consider:

- State-sanctioned violence against women and girls that does not result in death;
- the killing of women and girls by non-state actors where this is followed by proper investigation, prosecution, and punishment by the State; or
- the death of a woman or girl that is an unintended consequence of the commission of another crime.

Studies of the death penalty often discuss the (un)lawfulness of capital laws and the treatment of individuals on death row by the criminal justice system and rarely engage with lethal violence against women committed in the private sphere or by non-State actors. Similarly, studies on femicide may not engage with the topic of the death penalty because of the idea that the death penalty is a ‘judicial’ execution, even though not all judicial executions are lawful. In this report, our aim is to rearticulate death penalty discourse. By expanding the remit of our investigation to all forms of *State-sanctioned* killing of women, we gain a more accurate understanding of the lethal violence to which women are subjected in which the State is directly involved or complicit.

DATA

This report is a review of publicly available sources: academic literature; reports published by NGOs, governments, and international organisations; news articles published between 2018 and 2022;³ and online databases on executions. Where gaps in the literature were identified, we contacted individuals working in the field. We carried out 14 interviews, after contacting 38 expert individuals and organisations.⁴ Appendix 1 provides a list of interviewees’ names and their organisational affiliations. Each interviewee has also been assigned a unique identifier (e.g., I-2) which is used whenever we quote or paraphrase the information that they shared with us.

These interviews form part of Section 2, which examines the experiences of women under the sentence of death. However, our starting point is that we know very little about these women, including the number of women on death row in each of the countries that retain the death penalty. Even in countries that publish the number of women under sentence of death, we do not know much about their lives. Much of what we know is through the legal representatives of these women, so the data are second-hand information about women with access to legal representation—and only from legal representatives who are willing and able to share information. In some instances, these women have received media attention and have managed to secure a team of legal representatives. The story of Mary Jane Veloso, a Filipina woman sentenced to death for drug trafficking in Indonesia, and her imminent execution sparked protests in the Philippines and Indonesia, with over 200,000 people from 127 countries signing

³The report refers to articles published before 2018 in cases where we were unable to find articles published between 2018 and 2022.

⁴ We received approval from the Monash University Human Research Ethics Committee (project ID: 36844).

the #SaveMaryJane petition (Andrews-Briscoe, 2021b). However, in Malaysia—where the so-called ‘war on drugs’ rhetoric justifies the imposition of the death penalty for drug offences, as in Indonesia and the Philippines—there is no information available about the women sentenced to death, other than the occasional total number released by the government of women on death row. One of our interviewees based in Malaysia explained that even though their organisation has had contact with at least 20-30 families of individuals on death row, ‘none of them [are families of] women’ (I-3).

Historically, death penalty scholarship has not paid serious attention to women under sentence of death. This has not been unique to this area of research, but applicable to the field of criminology more broadly (e.g., Smart, 1977). *Judged for More Than her Crime*, published in 2018 by the Cornell Center on the Death Penalty Worldwide, was the first report to focus on women condemned to death globally and how gender creates uniquely precarious conditions for these women (Lourtau, et al., 2018). Since then, the Center has produced two more publications: on women facing the death penalty for drug offences (Andrews-Briscoe, et al., 2021a), and on defending women and transgender persons facing the death penalty and other forms of extreme sentence (Babcock, et al., 2021) The Center’s work has quickly captured the imagination of civil society groups, inspiring them to take note of different intersecting forms of discrimination that impact women. The clearest examples of attitudinal change are the World Day Against the Death Penalty 2021 being dedicated to women sentenced to death, and the World Coalition Against the Death Penalty⁵ conducting a global mapping exercise of women under sentence of death, to be launched later this year (World Coalition Against the Death Penalty, forthcoming).

Looking beyond the death penalty, getting what may seem to be basic information—such as the number of honour killings committed against women and girls, or the number of cases of female genital mutilation leading to death—was no easy task. While femicides and feminicides are global phenomenon, there were no global or regional standardised statistical approaches governing the production of metrics on the killing of women and girls. This led to the publication of the *Statistical framework for measuring the gender-related killing of women and girls (also referred to as ‘femicide/feminicide’)* in 2022, prepared by the United Nations Office on Drugs and Crime and UN Women.⁶ Without publicly available official statistics, we look to local media reports and data gathered by local activists. However, we are mindful that media reports are a curated selection of those executions that States choose to publicise, and which journalists decide to publish. The accuracy and completeness of the data gathered by local activists depend on the resources available to them. While we have made efforts to triangulate the findings, this report is an illustrative, rather than exhaustive, account of feminicide worldwide. In sum, our primary objective is to view the killing of women through the lens of State responsibility, exposing instances where States are directly engaged in, or complicit in, the killing of women.

STRUCTURE OF THE REPORT

This report is divided into four sections. Section 1 provides a gendered analysis of the death penalty, examining how capital laws that may appear gender-neutral fail to take sufficient account of gendered patterns of exclusion and discrimination, stereotyped gender roles, inequality and unequal power relations between women and men. Section 2 provides a rare glimpse into the experience of women under the sentence of death while waiting for their execution. The vast

⁵ The World Coalition Against the Death Penalty is an umbrella organisation for anti-death penalty organisations.

⁶ Report available from: <https://data.unwomen.org/publications/statistical-framework-measuring-gender-related-killings-women-and-girls-also-referred>

majority of global prison populations are male (World Prison Brief, n.d.), and the same is true for individuals sentenced to death. This results in penal institutions that are designed for men, in terms of prison architecture, security protocols, visiting arrangements and other features. Prisons are overwhelmingly ill-equipped to provide gender-appropriate services, subjecting women prisoners to gender-based structural violence (Galtung, 1969) which in many instances is likely to have led to women's incarceration in the first place. We are fortunate to have a short note by Nestor Toko, a lawyer based in Cameroon, sharing his experience of representing women under the sentence of death in that country.

Section 3 looks beyond the death penalty and examines other forms of femicide: from dowry-related killings to female genital mutilation leading to death. This section is also informed by Agnès Callamard's explicit recognition of interdependence between the right to life and socioeconomic rights in protecting women's right to life:

A gender-based intersectional analysis calls for a greater conceptual and policy-based integration between the protection of the right to life and the realization of economic, social and cultural rights. The deprivation of women's life as a result of the failure by the State to realize socioeconomic rights, has been progressively analysed as falling within the remit of article 6 of the International Covenant on Civil and Political Rights (Callamard, 2017: paras.79-80).

We apply an approach adopted by Eleos Justice in its two previous reports on the State-sanctioned killing of sexual minorities (Sato and Alexander, 2021) and of so-called religious offenders (Alexander et al., 2021). Those reports use the lens of critical legal pluralism to demonstrate a functional equivalence between the death penalty and other forms of State-sanctioned killing, such as extrajudicial executions committed by State-actors as well as killings excused by the State. We apply the same lens in this report with respect to femicide.

Finally, Section 4 returns to the issue of the death penalty. This section differs from preceding ones in that it does not focus on the killing of women. Instead, it examines the use of the death penalty as a way of 'protecting' women from being killed. It argues that the language of women's rights is used to violate the right to life, construing lethal homicide by the State as a preventative policy to protect women's lives.



Reyhaneh Jabbari was sentenced to death for murdering her alleged rapist. The victim's family refused to pardon Reyhaneh. She was executed in 2014.

Reyhaneh
Archival pigment print
40 x 27 inches
2016
Sheida Soleimani

SECTION 1: GENDERED NATURE OF THE DEATH PENALTY: IN LAW AND PRACTICE

Christopher Alexander

WOMEN UNDER SENTENCE OF DEATH

Around the world, women face the death penalty for an array of crimes. The majority of women on death row globally are those sentenced to death for murder, while women convicted of capital drug offences comprise the second largest offender population (Lourtau et al., 2018). Other offences for which women have been sentenced to death include offences against sexual morality (such as adultery and same-sex intimacy), political and terrorism-related offences, witchcraft, blasphemy, kidnapping, and armed robbery (Ibid: 11-14). At present, at least 485⁷ women are believed to be on death row in at least 41 countries,⁸ 30 of which are classified as ‘retentionist’ (Table; World Coalition Against the Death Penalty, forthcoming). Moreover, women have been executed in at least 14 countries in the last 10 years.⁹ For example, Iran executed at least 13 women in 2022 (Rehman, 2023: para 63), and 17 women in 2021 (Rehman, 2022: para. 23).

At first blush, one may be inclined to assume that women are treated more leniently than men insofar as capital sentencing is concerned. Indeed, women comprise a very small minority of those persons subjected to the death penalty: of the 2,052 persons known to have been sentenced to death in 2021, at least 10 were women (Amnesty International, 2022: 12-13).¹⁰ Similarly, of the 579 people known to have been executed that year, at least 24 were women (Ibid: 10). Of the 21,919 people known to have been on death row at the end of 2017, at least 500 were women, representing less than 5 per cent of the global death row population (World Coalition Against the Death Penalty et al., 2018)—though this figure naturally varies between countries. For instance, during 2021-2022, women comprised less than 0.1 per cent of the death row population in Pakistan, and up to 17 and 25 per cent in Jordan and Niger, respectively (World Coalition Against the Death Penalty, forthcoming). While the majority of the 35 countries known to have carried out executions in the past 10 years have had women on death row, only 14 are recorded as having executed women (Ibid).

An assumption of leniency may be further inspired by the fact that in some countries, the law explicitly excludes women from application of the death penalty. For instance, in Zimbabwe, Article 48(2)(d) of the Constitution prohibits the sentencing of women to death. In 2004, Tajikistan amended its law to remove the death penalty for women—a promising step towards total abolition as the country has also not executed anyone since that year (Central Asian Bureau

⁷ This figure is comprised of the number of women known to be on death row in some of the 41 countries in question, and one woman from each of the remaining countries where women are known to be on death row but the precise number of those women is unknown.

⁸ In a further 10 countries (Algeria, Laos, Lebanon, Libya, Mali, Myanmar, Palestine, Somalia, Syria, and South Korea), it is unclear whether there are women on death row (World Coalition Against the Death Penalty, forthcoming).

⁹ Afghanistan, China, Egypt, Gambia, Indonesia, Iraq, Iran, Jordan, Kuwait, North Korea, Oman, Saudi Arabia, Somalia, and United States (World Coalition Against the Death Penalty, forthcoming).

¹⁰ We say ‘at least’ because Amnesty International was only able to ascertain the gender of persons sentenced to death in a handful of countries.

for Analytical Reporting, 2022).¹¹ Moreover, international law prohibits the execution of pregnant women (International Covenant on Civil and Political Rights, Article 6(5)), and certain instruments go further to ban the execution of (and in some cases even the passing of a death sentence against) mothers of infants and young children.¹² Some domestic laws also create exceptions to capital offences so as to protect women from the application of the death penalty in certain circumstances: for example, in Libya, a mother (or her relative) who commits infanticide ‘immediately after or during childbirth for the preservation of honour’ may be punished by imprisonment for a period of up to seven years (Libya Penal Code, Article 373), while the standard charge of ‘intentional homicide with premeditation’ carries the death penalty (Libya Penal Code, Article 368). In other instances, capital laws target only men: some countries define rape as an offence perpetrated by a man against a woman (see Section 4 of this report). The same can be said of same-sex intimacy laws: sexual intercourse between men is a capital offence in 11 countries, only two of which also recognise sexual intercourse between women as attracting the death penalty (Sato & Alexander, 2021).

These realities may appear to support the so-called ‘chivalry thesis’ (Pollack, 1950); that is, the idea that women are sentenced more leniently than men who commit similar crimes. However, as this section illustrates, such a conclusion is not accurate, nor is it any reason to ignore the gendered impacts of capital laws. Indeed, women are sometimes discriminatorily targeted with or disproportionately impacted by capital laws.¹³ These effects remain understudied as criminology has traditionally focused its attention on the lawbreaking of men (Smart, 1976). Moreover, efforts to investigate the gendered nature of the death penalty have been impeded by the fact that gender-disaggregated data on the death penalty is frequently unavailable (Amnesty International, 2022: 12-13).

EXTRAMARITAL SEX

In several States, extramarital sex, sometimes referred to as ‘adultery’, is punishable by death. For example, in July 2022, a woman convicted of adultery was sentenced to death by stoning in Sudan, though her sentence was subsequently reduced to six-months imprisonment (African Centre for Justice and Peace Studies, 2022). In November 2018, Iran sentenced two women convicted of adultery to death by stoning (Nawzad, 2018).

Capital adultery laws tend to appear gender neutral. For example, Article 63 of the Islamic Penal Code of Iran defines *zina* (a Shari’a concept loosely translating to adultery) as:

[S]exual intercourse of a man with a woman who is inherently prohibited to him, even if it is anal intercourse, except in the cases where the intercourse is done by mistake.

The death penalty is applicable to any person convicted of *zina*, and has indeed been applied to both men and women as recently as 2021 (Times of Israel, 2021). However, laws such as this have a discriminatory effect on women:

¹¹ Other countries include Belarus, Guatemala, and Russia (Hands Off Cain, n.d.).

¹² For example, African Charter on the Rights and Welfare of the Child (1990), Art 30(e); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003), Art 4(2)(j); Arab Charter on Human Rights (2004), Art 7(2); EU Guidelines on the Death Penalty.

¹³ For instance, the death penalty may be used to discriminatory effect against women by virtue of laws that define the age of criminal responsibility. In Iran, girls can be sentenced to death from the age of nine, while boys cannot be sentenced to death until they reach 15 years of age (Amnesty International, 2016: 22).

Criminal law definitions of adultery may be ostensibly gender neutral and prohibit adultery by both men and women. However, closer analysis reveals that the criminalization of adultery is both in concept and practice overwhelmingly directed against women and girls. (United Nations Working Group on the issue of discrimination against women in law and in practice, 2012)

This is reflected in the fact that women are convicted of *zina* ‘at a disproportionate rate’ to men (Advocates for Human Rights et al, 2021). It has been suggested that this imbalance is due, in part at least, to structural biases within the judicial system:

[W]hen women are perceived to be the victim, or when their behavior aligns with gender norms, such as the caregiver, they may benefit from leniency. In contrast, women perceived as the instigator of the crime, such as the adulterer or the witch, are more likely to receive a harsher punishment than men accused of similar offenses. (Ibid)

Particularly with respect to *zina*, the manifestation of such biases is likely the product of persisting social and historical conceptualisations of women’s deviance as tied to *sexual* deviancy.¹⁴

The discriminatory effects of *zina* laws also extend to the procedural barriers encountered by women facing *zina* charges.¹⁵ For example, extramarital pregnancy is *prima facie* evidence of *zina*—a rule that is both gender biased and inherently flawed, given that pregnancy could be the result of rape (Advocates for Human Rights et al, 2021). In Iran, this reversal of the burden of proof places an almost insurmountably high threshold upon the pregnant victim, requiring them to prove by four eyewitness accounts that their pregnancy was caused by rape (Lourtau et al., 2018: 13). The existence of *zina* laws also disincentivises women from reporting sexual violence. By reporting a non-consensual extramarital attack, a victim is admitting that such an encounter occurred, the ramification of this being that such an admission may be reframed as a *zina* accusation against the victim.

There are other ways in which adultery laws may have gendered impacts. For instance, Miller (2018: 460-461) reports that in Taiwan, the number of women prosecuted for and convicted of adultery is significantly higher than that of men because women are more likely to withdraw their complaints against their spouses. This is attributed to men being economic providers in the family: men are more willing to take legal action against their wives who tend to be economically disadvantaged and are often victims of domestic violence (Ibid). Moreover, while women often withdraw complaints against their husbands, they are less likely to do so against their husbands’ mistresses, resulting in further gender bias amongst those prosecuted, and convicted, of adultery (Ibid).¹⁶

¹⁴ See, for example, Karen E. Rosenblum. (1975). Female deviance and the female sex role: A preliminary investigation. *The British Journal of Sociology*, 26(2): 169-185.

¹⁵ For further discussion of this, see Abdel Salam Sidahmed (2001). Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women. *British Journal of Middle Eastern Studies*, 28(2), 187-204.

¹⁶ Adultery was not a capital offence in Taiwan, and that the country has since decriminalised adultery altogether: <https://taiwaninsight.org/2022/07/13/taiwan-decriminalized-adultery-but-does-the-public-support-the-change/>

SAME-SEX INTIMACY

Of the 11 countries in which the consensual same-sex intimacy may be punished by death,¹⁷ sexual intercourse between women is a capital offence in two: Iran and Nigeria (Sato & Alexander, 2021: 21-24).¹⁸ In Iran, rather than criminalising same-sex intimacy generally, the law carves an explicit distinction on the basis of gender, defining the sexual act (*livat, tafkehiż, musabaqah*),¹⁹ and prescribing a unique punishment for each. As regards women, *musabaqah*—vaginal contact between two women—is punishable by death upon the fourth conviction (Islamic Penal Code of Iran, Articles 238 & 240). A global study of the State-sanctioned killing of sexual minorities identified 11 men convicted of same-sex sexual acts as having been executed in Iran and Saudi Arabia during 2015-2020, but was unable to identify any instances of women having been sentenced to death or judicially executed on this basis (Sato & Alexander, 2021).

Sexual and gender minorities, and those who advocate for LGBTIQ rights, have also been persecuted by capital political offences. For instance, the vague offence of ‘corruption on Earth’—though ostensibly a political one—has been used in Iran to target sexual minorities, including women. For example, in August 2022, two women who were both members of and advocates for the LGBTIQ community were sentenced to death on this basis. UN experts claim that these women were ‘prosecuted on the discriminatory basis of sexual orientation or gender identity’ (OHCHR, 2022a).

HOMICIDE

Murder, or aggravated murder, carries the death penalty in all retentionist countries (Cornell Center for the Death Penalty Worldwide Database, n.d.). These laws are gender-neutral on paper; for example, Article 230 of the Egypt Penal Code reads that ‘capital punishment shall be the penalty inflicted on *whoever* premeditatedly murders another person’ (emphasis added).²⁰ In practice, men constitute the overwhelming majority of persons sentenced to death, and executed, for murder—and indeed commit about 90 per cent of all homicides recorded worldwide (United Nations Office on Drugs and Crime, 2019: 23).

However, this analysis largely ignores the qualitative difference in homicides committed by men and women. Many of the women on death row for murder are those involved in the homicides committed in contexts of gender-based violence (Lourtau et al., 2018: 11). Indeed, in countries such as Ghana, Iran, Jordan, Kenya, and Nigeria, women in such situations constitute the greatest offender population on death row (Coalition Against the Death Penalty, forthcoming). Where a criminal justice system is ill-equipped to address situations where women kill as a response to gender-based violence, judges may have no choice but to sentence these women to

¹⁷ Same-sex intimacy between men may be punishable Afghanistan, Brunei, Iran, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, United Arab Emirates, and Yemen (Sato & Alexander, 2021: 20).

¹⁸ On 21 March 2023, Uganda passed a law making certain same-sex sexual offences punishable by death (Madowo & Nicholls, 2023). The law appears to extend to women; however, we were unable to verify to which sexual acts the death penalty applies (*The Anti-Homosexuality Bill*, 2023). Accordingly, the figures cited in this sentence exclude Uganda.

¹⁹ *Livat* is penetrative anal intercourse between men, while *tafkehiż* is non-penetrative putting of one’s penis between the thighs or buttocks of another man. Punishment varies on the basis of whether the intercourse was consensual, and on the sexual position and religion of the ‘offender’ (Sato & Alexander, 2021: 23).

²⁰ Other examples include: ‘A person who kills another person is punished by the death penalty or imprisonment for life or for a definite term of not less than 5 years’ (Article 199 of the Japan Penal Code) and ‘Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life’ (Section 1111 of Title 18 of the United States Code).

death. It has been observed that it is ‘extremely rare’ for domestic abuse to be considered as a mitigating factor in capital sentencing (Callamard et al, 2017). This is especially so in the 26 countries where murder carries the mandatory death penalty,²¹ meaning mitigating factors are altogether excluded from the sentencing calculus.

While some studies—the majority of which focus on the US—have been conducted assessing the gendered nature of sentences awarded to persons convicted of homicide, these have produced mixed results. In some cases, women have been sentenced more punitively than men; in others, women seem to have benefited from leniency.²² There does not appear to be any consistent thread or identifiable rationale for such punitiveness/leniency. Finally, it is also worth noting that the crimes for which women are convicted may determine their prospects of pardon or release from prison. For example, a 2022 study of women sentenced to death in Iran concludes that women sentenced to death for victimless crimes (such as adultery) are more likely to be released from death row than women convicted of murder, particularly in cases of partner and familial homicide (Alasti, 2022: 5).

DRUG OFFENCES

As mentioned earlier, women convicted of drug offences are the second largest constituent population among women on death row globally—a trend that is particularly pronounced in Asia (World Coalition Against the Death Penalty et al, 2018: 2). While capital drug laws do not necessarily discriminate against women on paper, their application is often blind to the unique vulnerabilities faced by women which may lead them to drug crime.

A report by the United Nations Office on Drugs and Crime (2018) observes that women play various roles in drug production and distribution. While some women assume high or intermediary positions in drug trafficking networks, many—indeed the vast majority—become involved as drug ‘mules’ (Maher & Hudson, 2007; United Nations Office on Drugs and Crime, 2018). Of course, this may in some cases be a result of women enacting their agency and becoming involved in drug trafficking operations by choice (Fleetwood and Leban, 2023). However, the drug trade remains dominated by men (Ibid: 251), and women’s so-called ‘chosen’ participation ‘can often be attributed to vulnerability and oppression’ (United Nations Office on

²¹ The Cornell Centre on the Death Penalty Worldwide Database (n.d.) has identified 26 countries in which murder or aggravated murder may carry the mandatory death penalty. These countries are Afghanistan, Botswana, Brunei, Gambia, Ghana, Iran, Libya, Malaysia, Mauritania, Myanmar, Niger, Nigeria, Pakistan, Palestine, Qatar, Saudi Arabia, Singapore, Somalia, South Sudan, Sri Lanka, Sudan, Tanzania, Thailand, Trinidad and Tobago, United Arab Emirates, and Yemen.

²² Armstrong (1999: 71-73) identifies women who target strangers or commit other ‘male-like crime’ as being significantly more likely to go to prison than those who kill family members. The same study does, however, note that women are nonetheless sentenced to shorter jail terms than their male counterparts, evidencing a broader leniency effect. Messing and Heeren (2009: 179) identify several gendered factors as influencing prosecutors’ decisions to seek the death penalty and juries’ decisions to impose death sentences in cases of multiple domestic homicide in the US. For instance, in cases of child killing, prosecutors more readily sought the death penalty for women charged with the killing of a child with a gun or a knife than for men similarly charged, and juries more readily returned death sentences against women than men (indeed, all women against whom the death penalty was sought were sentenced to death). Such findings are, however, far from unanimous. Indeed, there is a wealth of scholarship evidencing the leniency effect—including in instances where women defy gender norms. For example, Gurian (2015: 555) concludes that female serial killers are less likely to be sentenced to death than their male counterparts. Fridel (2019: 335) similarly finds that women convicted of multiple homicide enjoy greater leniency in sentencing than men, bolstering a long line of literature indicating that ‘benevolent sexism protects women in the criminal justice system’.

Drugs and Crime, 2018: 7). A report by Cornell Center on the Death Penalty Worldwide (Andrews-Briscoe et al., 2021a: 20) identifies economic insecurity as a gendered phenomenon, and as instrumental in pushing women to committing drug offences. It has also been noted that women ‘are frequently used as drug couriers because they are less likely to be caught and more easily controlled as they lack resources to buy or sell drugs for their own profit’ (World Coalition Against the Death Penalty et al, 2018: 2). Women may also be compelled to act as drug ‘mules’ through coercion and intimidation, or by being deceived into unknowingly trafficking drugs, or in an attempt to assist those they love (United Nations Office on Drugs and Crime, 2018: 29). Compulsion, coercion, and deception are often born of manipulative relationships—including so-called ‘romance scams’ (Andrews-Briscoe et al., 2021a: 22-26).

In Indonesia, Malaysia, and Thailand, a large majority of women on death row are those convicted of drug offences. In these States, the proportion of women on death row for drug offending greatly outweighs the proportion of men on death row for such crimes. In Malaysia, 95 per cent of women on death row in 2019 had been convicted of drug offences, compared to 70 per cent of men (Amnesty International, 2019b: 20). In Thailand, these figures were 94 per cent of women versus 60 per cent of men (Andrews-Briscoe et al., 2021a: 16). It is also worth noting that in Malaysia, of the 129 women on death row for drug offences in 2019, 95 per cent were foreign nationals (Amnesty International, 2019b: 52-56).

SORCERY

In some countries, sorcery (sometimes referred to as ‘witchcraft’) is punishable by death.²³ While these laws do not substantively discriminate on the basis of gender, they may do so in effect; indeed, sorcery laws routinely operate in a manner that discriminates against women and other vulnerable groups (Forsyth, 2016: 341). While there is an extensive body of sociological literature detailing the relationship between women and sorcery, little has been written on the gendered impacts of sorcery *laws*—though it would appear that the gendered effects of such laws stem largely from the fact that sorcery has historically been, and continues to be, associated with women (Lourtau et al., 2018: 14). Though women have been sentenced to death and executed on the basis of sorcery, there is insufficient data to ascertain whether capital sorcery laws have been used against women in a discriminatory fashion. It has, however, been observed that women are disproportionately *accused* of sorcery compared to men (Ibid).

The majority of sorcery-related executions in recent years have taken place in Saudi Arabia, where such laws are used ‘as a convenient way to punish a whole range of transgressive behaviour’ (Forsyth, 2016: 341). However, we have only been able to identify a single case of a woman being executed on this basis in recent years: in 2011, a woman convicted of ‘witchcraft and sorcery’ was beheaded in Saudi Arabia (Amnesty International, 2011). In May 2017, two women were arrested on allegations of practicing witchcraft (Cusack, 2017), and in 2019, two Indonesian women convicted of witchcraft in Saudi Arabia were released from death row (Middle East Monitor, 2019). Saudi Arabia has also persecuted men on this basis: a man was beheaded on sorcery charges in 2011 (Amnesty International, 2011), as was another man in 2012 (BBC News, 2012). In 2009, a Lebanese national was sentenced to death for sorcery in Saudi Arabia (Amnesty International 2021b); it is unclear whether or not he has been released.

²³ In certain Nigerian States that implement Sharia law, witchcraft and juju offences are punishable by the mandatory death penalty (Cornell Center on the Death Penalty Worldwide Database, n.d.).

Finally, it is worth noting that many women are accused of witchcraft and killed at the community level each year (see Section 4 of this report).²⁴ Studies reveal that while women are generally more likely than men to fall victim to such violence, men are disproportionately victimised in certain communities (such as parts of Kenya and Melanesia) (Forsyth, 2016: 335-336).

POLITICAL OFFENCES

Women have been subjected to capital political offences. In 2018, Iraq sentenced 14 women accused of supporting Islamic State (ISIS) to death in consecutive ‘trials’, each lasting mere minutes (Institut Kurde de Paris, 2018). While such convictions are not necessarily born of, or characterised by, gender-based discrimination, the denial of fair trial rights on the basis of affiliation with ISIS—whether women are accused of travelling to live under ISIS rule, or of being married to ISIS members, or of receiving financial benefits from ISIS after their husbands died—is discrimination (World Coalition Against the Death Penalty et al., 2018: 2).

Iran has also used capital political offences to target persons advocating women’s rights. At the time of writing, at least 100 people—including women—have been charged with capital offences such as ‘enmity against God’ and ‘corruption on Earth’ in connection with protests following the September 2022 death in custody of Mahsa Amini, a 22-year-old woman accused of wearing her headscarf improperly. Several of these individuals that participated in the protests were subsequently sentenced to death (Iran Human Rights, 2022). As of January 2023, at least four people have been executed in connection with these protests (Armbrecht et al, 2023). At least 476 people, including 34 women and 64 children, were extrajudicially killed by security forces during the protests (Iran Human Rights, 2022) (discussed in Section 4 of this report).

As this section reveals, capital laws have an array of gendered effects. While rarely discriminating against women in substance, many such laws are applied in a manner whereby women are discriminatorily targeted or disproportionately impacted. Though women comprise only a small minority of those persons facing the death penalty globally, these realities underscore the need for greater scholarly focus and advocacy effort on the gendered impacts of capital laws.

²⁴ See, for example, Amnesty International. (2011). *Papua New Guinea: Violence against women, sorcery-related killings and forced evictions*; BBC News. (2019, January 30). *India ‘witch hunters’ kill mother and four children*. <https://www.bbc.com/news/world-asia-india-47053166>; Esslemont, Tom. (2015, November 26). *Witch burning rebels stoke Central African Republic violence*. *Reuters*. <https://www.reuters.com/article/us-centralafrica-witchcraft-idUSKBN0TF03920151126>.

Table: Number of Known Women on Death Row

| Country | Women on death row | Country status |
|----------------------|--------------------|--------------------------|
| Afghanistan | ≥1 | Retentionist |
| Bangladesh | 37 (as of 2021) | |
| Cameroon | 14 (as of 2019) | Abolitionist in practice |
| China | ≥1 | Retentionist |
| Egypt | | |
| Ghana | 6 (as of 2022) | Abolitionist in practice |
| Guyana | 3 (as of 2021) | Retentionist |
| India | 15 (as of 2022) | |
| Indonesia | 11 (as of 2021) | |
| Iraq | ≥1 | |
| Iran | | |
| Japan | | |
| Jordan | 20 (as of 2021) | |
| Kenya | 22 (as of 2022) | |
| Kuwait | 5 (as of 2021) | Retentionist |
| Malaysia | 129 (as of 2022) | Abolitionist in practice |
| Maldives | 1 (as of 2021) | |
| Mauritania | 1 (as of 2021) | |
| Morocco | 1 (as of 2022) | |
| Niger | 1 (as of 2022) | |
| Nigeria | 61 (as of 2021) | Retentionist |
| North Korea | ≥1 | |
| Oman | | |
| Pakistan | 3 (as of 2022) | |
| Qatar | ≥1 | |
| Saudi Arabia | | |
| Singapore | | |
| South Sudan | | |
| Sri Lanka | 12 (as of 2022) | Abolitionist in practice |
| Sudan | ≥1 | Retentionist |
| Taiwan | 1 (as of 2022) | Abolitionist in practice |
| Tanzania | 6 (as of 2022) | |
| Thailand | 25 (as of 2021) | Retentionist |
| Tunisia | 4 (as of 2022) | Abolitionist in practice |
| Uganda | 3 (as of 2022) | Retentionist |
| United Arab Emirates | 9 (as of 2018) | |
| United States | 48 (as of 2021) | |
| Vietnam | ≥1 | |
| Yemen | | |
| Zambia | 24 (as of 2020) | Abolitionist in practice |
| Zimbabwe | 2 (as of 2018) | Retentionist |

Source: World Coalition Against the Death Penalty (forthcoming).

Note: World Coalition Against the Death Penalty (forthcoming) was unable to collect data for 10 countries (Algeria, Laos, Lebanon, Libya, Mali, Myanmar, Palestine, Somalia, South Korea, Syria), meaning it is possible that there are also women on death row in these countries.



Fati was sentenced to death in Cameroon in November 2016. She was incarcerated in Maroua Prison until her release in February 2023.
Photo credit: Nestor Toko.

SECTION 2: WOMEN FACING THE DEATH PENALTY

Delphine Lourtau

Having examined the gendered nature of capital laws (Section 1), we now shift focus to the experiences of women facing the death penalty: their lives before death row; their experiences of the criminal justice process leading to death row; and their conditions on death row. We do not attribute all these realities to gender-based discrimination; for instance, many of the death row conditions under which women find themselves may be experienced by their male counterparts.²⁵ Indeed, we have too little information to be able to make any rigorous comparisons between the experiences of men and women facing the death penalty. Our aim in this section is to provide a detailed account of women's lives on death row, based on the information available to us. In doing so, we stress that many women have been sentenced to death using capital laws that appear gender-neutral but fail to take sufficient account of gendered patterns of exclusion and discrimination, and in many cases violate international standards (Section 1). In this sense, this section is not primarily concerned with the question whether women are treated better or worse than men on death row. The experience of these women detailed in this section should be read on the basis that there are serious doubts about the lawfulness of many women who are currently facing the death penalty. Nevertheless, where possible, we highlight the experiences of women who have found themselves on death row likely by virtue of gendered effects of criminal justice processes or capital sentencing, or gender-based experiences, such as intimate partner violence.

ON DEATH ROW

In almost all prisons around the world, women and men are detained separately.²⁶ However, because women on death row constitute a relative minority compared to men (Section 1), they are often held in separate units *within* male prisons.²⁷ This is the case, for example, in both Cameroon (I-14),²⁸ where women are held in quarters separated from men's by a metal gate, and Nigeria (I-5).²⁹ In Nigeria, bathrooms are communal, affording women little to no privacy (I-9). In Sri Lanka, women prisoners are kept in units staffed by men, 'expos[ing] women on death row to ongoing risks of gender-based violence... abusive searches, physical and psychological violence, and rapes' (World Coalition Against the Death Penalty, 2022).

Individuals on death row are subject to harsh conditions. In Cameroon, a defence lawyer who frequently visits women on death row described a typical cell as 'narrow, dilapidated, badly ventilated and totally uncomfortable' (I-14). In Sri Lanka, women on death row live in 'tiny cells' where 'temperatures in unventilated rooms reach dangerously high levels' (World Coalition,

²⁵ However, in Pakistan, interviewees described conditions for women on death row as 'better' than for men (I-7), explaining that women have access to better food, a mattress and a blanket, and sometimes air coolers, to all of which men do not have access (I-1).

²⁶ International standards require separate prison *buildings* for men and women: Rule 43, The Bangkok Rules.

²⁷ In Pakistan, only central state prisons have separate buildings for incarcerated men and women (I-4).

²⁸ As noted in the section 'Scope of the Report', we carried out 14 interviews with experts. Each interviewee has also been assigned a unique identifier (e.g., I-2) which is used whenever we quote or paraphrase the information that they shared with us.

²⁹ In 35 out of 36 Nigerian States, women are kept in separate units within male prisons (I-5).

2022). In Malaysia, in-cell toilets are located in full view of guards, meaning that prisoners have no privacy (Berrih & Ngeow, 2020). In Democratic Republic of the Congo, toilets are located outside women's cells, forcing women to use buckets when cells are locked at night (Berrih & Ngondji, 2020). Moreover, because household cleaning products are prohibited, prisoners in Lebanon use toothpaste to clean their cells (Berrih & El Mufti, 2020: 107).

FROM OVERCROWDING TO SOLITARY CONFINEMENT

In a prison in Cameroon, a 40-square-meter cell holds 60 women, including those on death row, equating to less than 1-square metre per prisoner (I-14). In Democratic Republic of the Congo and Thailand, cells are so crowded that women on death row must take turns sleeping on bare floors (Lourtau et al., 2018: 21).³⁰ Small cement windowless cells hold up to 6 women, and the only ventilation is a small hole over the door leading to the hallway (Advocates for Human Rights et al., 2022b: 4-5).³¹

In other countries, individuals on death row are kept in solitary confinement. In Malaysia, individuals on death row are kept in solitary confinement for up to 23 hours a day, and time outside their cell is restricted to walking in their dormitories (Berrih and Ngeow, 2020). Windows in cells are too small to read or write by natural light or sufficiently ventilate rooms (SUHAKAM, 2017: para. 4.56).³² The use of death row solitary confinement is also a standard practice in a number of US States (Liman, 2016).

In other countries, solitary confinement is not standard practice. In Cameroon, prison officers use solitary confinement to punish death row prisoners for bad behaviour (I-14). In Nigeria, men on death row are more likely to be kept in solitary confinement than women (I-9). In Malawi, there is only one woman on death row; she is kept in solitary confinement (Advocates for Human Rights et al., 2022b: 4-5). The adverse mental health consequences of prolonged solitary confinement are acute. For example, the Malaysian Human Rights Commission reported observing a female death row prisoner 'repeatedly hit her head against the cell door' during a 2017 visit (SUHAKAM, 2017: para.4.55).

The following example demonstrates the devastating isolation of a woman on death row. In 1996, Christa Pike was sentenced to death for a murder she committed at age 18. At age 20, she became (and remains) the youngest woman ever sent to death row in the United States. Christa has been on death row in Tennessee for 26 years, at least 25 of which she has spent in solitary confinement. She spends 22 to 24 hours per day in a cell that is approximately 2.5 x 3 metres. As a result, her eyesight has deteriorated, and her overall mobility has decreased. On weekdays, she is allowed to take 'recreation' for an hour in an outdoor cage with concrete flooring measuring about 5 x 9 metres. She is excluded from all prison group activities, including religious services. For years at a time, she has been prohibited from receiving so-called 'contact visits', meaning

³⁰ One woman in the Democratic Republic of Congo described sharing a single person cell with 3 other women and a baby (Berrih & Ngondji, 2020: 105)

³¹ Overcrowding has also been reported in Houthi-controlled parts of Yemen, where several women have been sentenced to death. Prison conditions have deteriorated substantially where 'detainees are crammed into filthy, overcrowded cells, and are systematically extorted for money' (Amnesty International, 2018a).

³² For disciplinary infractions, they may be sent to 'dark rooms,' where they are left in complete darkness with little food (Berrih and Ngeow, 2020). Foreign nationals, who make up 86 per cent of women on death row in Malaysia, are even further isolated (Ibid.). Language barriers make it difficult for them to communicate with prison officers, fellow prisoners, and medical staff. They are also not permitted any reading material in their mother tongue because it cannot be reviewed by guards, depriving them of one of the few activities permitted (Berrih & Ngeow, 2020: 82).

that a glass panel separates her from all visitors. Decades of solitary confinement have aggravated her pre-existing psychological and physical conditions, and she has developed new ones, including obsessive-compulsive disorder (I-10; I-11). Her lawyers explain that she has ‘struggled continuously with thoughts of suicide and self-harm due to the hopeless and stark nature of her life’ (*Pike v. Helton et al.*: para. 6).³³

ACCESS TO FOOD AND WATER

Access to water is not always guaranteed to women on death row. In Cameroon, death row prisoners have limited access to clean water: there are insufficient water taps, many of which are broken, and those that work produce unclean water resulting in frequent cholera outbreaks (I-14). In Lebanon, prisoners must store water in barrels and receive about 2 litres each day for drinking and washing (Berrih & El Mufti, 2020: 106-107). In Nigeria, there is little to no running water (I-9).

Food provided in some prisons falls far short of nutritional standards. In Cameroon, the prison diet revolves around rice, maize, and peanuts; prisons do not provide meat, fish, fruits, or vegetables (I-14). Similarly, in the Democratic Republic of Congo, prisoners are fed beans and maize (I-6). The same is fed to prisoners in Malawi, who receive only one meal per day (Advocates for Human Rights et al., 2022b).³⁴ In many prisons, prisoners need to purchase items that prisons fail to provide. For instance, women prisoners in Indonesia pool funds to purchase bottled water so that they do not have to drink unclean water (I-7). In Yemen, prisoners pay for food (Amnesty International, 2018a).³⁵

ACCESS TO HEALTH CARE

The quality of health care afforded to individuals on death row is extremely poor, and in some cases life-threatening.³⁶ While almost all prisons have a medical clinic, these are chronically under-staffed. In Nigeria and Pakistan, prisons housing several thousand people might have a single doctor (I-9; I-4). At Semarang Women’s Prison in Indonesia, the only prison doctor on staff is a dentist (I-7). In many countries, prison clinics dispense no medication beyond paracetamol.³⁷ Given the dearth of medical practitioners working in prisons, women prisoners often cannot choose to be treated by a female doctor (I-14).

Despite the inadequacy of in-house medical services, prison authorities are typically reluctant to grant prisoners access to medical services outside prisons. Interviewees explained that transport to hospital is only authorised when a prisoner is close to death. For example, in Cameroon, it takes a life-threatening emergency for a prisoner to be transported to hospital, and the prisoner’s family must cover hospital fees (I-14). Similarly, in the Democratic Republic of Congo, prisoners

³³ On 15 August 2022, Christa Pike’s legal team filed a complaint alleging various violations of her Constitutional and human rights, alleging—among other things—the infliction of cruel and unusual punishment (*Pike v. Helton et al.*, paras. 140-154).

³⁴ In Malawi, detention conditions for prisoners in general are so poor that the life expectancy after imprisonment is only 10 years (Advocates for Human Rights et al., 2022b: 4-5).

³⁵ Information based in Sana’a Central Prison.

³⁶ In Malawi, Alice Nungu, who spent 12 years on death row for killing her abusive husband, received no treatment for HIV (Advocates for Human Rights et al., 2022b: 4-5). While in prison, she experienced pneumonia, malaria, and a chronic cough, all of which went untreated. When she was eventually released after a re-trial, she was frail, barely walking, and short of breath. She died of complications from AIDS a few weeks after returning home (Ibid.).

³⁷ E.g., Democratic Republic of Congo (I-6), in Pakistan (I-1), in Indonesia (Berrih and Kontras, 2020: 96), and in Malaysia (Berrih and Ngeow, 2020: 86).

are transported to hospital only when their condition is critical (I-6). In Pakistan, prisoners receive hospital treatment only if their family or organisations advocate strongly on their behalf (I-4).³⁸ During hospital visits, prisoners may be shackled and accompanied by guards (I-2). While some countries (such as Pakistan: I-1) make exceptions for pregnant prisoners, no special treatment is permitted for pregnant women in Cameroon prisons (I-14).

Access to menstrual hygiene products is especially difficult. In Indonesia, Nigeria and Sri Lanka, prisons provide no menstrual hygiene products (I-7, I-9; World Coalition Against the Death Penalty, 2022).³⁹ Since 2019, prisons in Pakistan have begun to distribute hygiene products, though in insufficient numbers (I-1). In Lebanon, women’s prisons used to distribute sanitary pads together with soap, toothpaste, and other toiletries, but have stopped doing so for budgetary reasons (Berrih & El Mufti, 2020: 107). In Malaysia, prisons hand out 2-3 sanitary pads each month; women must purchase additional ones (Berrih & Ngeow, 2020).

MOTHERS ON DEATH ROW WITH THEIR CHILDREN

Prisons often allow young children to live with their mother on death row. According to a 2014 report, domestic legislation in more than 90 countries—including 40 that retain the death penalty⁴⁰—permit children to be detained with a parent in prison (Law Library of Congress, 2014). The various laws prescribe age limits for the cohabitation of children: this varies from a 1-year-old in Cuba (Ibid)⁴¹ to a 6-year-old in India (I-8) and Pakistan⁴² (I-1).⁴³

It is worth noting that these rules only recognise women as caregivers for their children, dismissing the parental role of men. As of March 2023, we found reports of children living on death row with their mothers in Cameroon, Democratic Republic of the Congo, Nigeria and India (I-6; I-8; Cornell Center on the Death Penalty Worldwide, 2020b), but identified no instances of children detained on death row with their father. In Pakistan, advocates report that ‘most women’ held in the general wards have small children with them, but that fewer women on death row are held with children because their families had cut contact with them (I-1).

³⁸ Kanizan Bibi developed severe mental illness over the course of 3 decades she spent on death row in Pakistan: eventually, she stopped speaking or caring for her basic needs. At the behest of her lawyers, prison authorities allowed several transfers to a mental health institute, where she was continuously shackled. Every time the authorities moved her back to prison, her treatment was discontinued (I-1, I-4). It was only after her sentence was commuted in 2021 and she moved permanently to the mental health institute that her mental health improved (I-1, I-4). For more information on her case, see Cornell Center on the Death Penalty Worldwide. (2020a, March 27). *Kanizan Bibi: Wrongfully Convicted as a Girl After Enduring Police Violence*. <https://deathpenaltyworldwide.org/kanizan-bibi-alice-profile>

³⁹ While Nigerian charities sometimes provide hygiene products to incarcerated women, these are always insufficient (I-9). The situation is similar in Cameroon, with one interviewee noting that it is ‘very rare’ for organisations to receive funding to distribute such products (I-14).

⁴⁰ Algeria, Botswana, Cameroon, Cuba, Egypt, Eswatini, Ethiopia, India, Indonesia, Iraq, Jamaica, Japan, Jordan, Kenya, Kuwait, Libya, Malawi, Malaysia, Mali, Morocco, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, Singapore, South Korea, South Sudan, Sri Lanka, Sudan, Taiwan, Tanzania, Tonga, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, Yemen, and Zimbabwe. In addition, an interviewee in the Democratic Republic of Congo confirmed that children are detained with their mothers on death row (I-6).

⁴¹ Cuba retains the death penalty law but no one is currently under the sentence of death.

⁴² Women may keep their children with them in prison until the age of 3 (*Pakistan Prison Rules 1978*: Rule 326), but in Punjab, Sindh, and Khyber Pakhtunkhwa, children may remain until the age of 6.

⁴³ In Botswana, children may stay with their mother while breastfeeding,⁴³ while Nigeria allows children to remain with their mothers until they are 18 months old if not weaned earlier (Nigeria).⁴³ In Democratic Republic of the Congo, children may remain with their mother until reaching school age (I-6).

In countries that do not allow women to keep their infants with them, incarcerated mothers suffer significant distress. Sunny Jacobs, who spent 16 years wrongfully incarcerated on death row in Florida, describes the pain of being separated from her 10-month-old daughter:

You can't even think about your own situation because you're worried about what's happening to your children...I still had milk, so I was expressing the milk...into a plastic bowl...I still wanted to be connected to her and be able to feed her when I got home...So I kept expressing the milk into the bowl...I did that for a whole year, until finally I had to come to terms with [the fact] that...I wasn't going to be able to go home to her (Shapiro, 2020).

Living conditions for children in prisons are generally very poor, creating additional anguish for their mothers. One mother on death row in Nigeria told her lawyer that the prison provided no separate accommodations for her infant and herself in prison; she was held in a crowded cell and received no additional food for her child (I-5; I-9). Children are often denied pediatric health care: for instance, in Cameroon and Democratic Republic of the Congo, a child may only be brought to a hospital in cases of emergency and where the family funds both medical services and transport (I-6, I-14). One exception to this is the central prison in Lagos (Nigeria), where an interviewee spoke about the 'decent' living conditions for prisoners' children, helped by civil society organisations that provide diapers and formula (I-2). Facilities for the education of children of incarcerated women vary widely between prisons. Most prisons offer none, but there are exceptions: for example, the Central Prison of Karachi (Pakistan) has a well-appointed nursery (I-1).

ACTIVITIES IN PRISON

Whether women on death row can access activity programs and work varies widely. In Indonesia, prisons grant women on death row the same programs as other female prisoners (I-7). In contrast, in Malaysia (and some US States), women on death row are kept in solitary confinement and are excluded from all activities in prison (Berrih & Ngeow, 2020). Beyond praying, reading, and listening to music in their cells (available to those who have external networks that brings them books and electronic devices to play music), there is nothing for them to do (Ibid.). Even in prisons that do not separate women on death row from other women prisoners, the activities available to women on death row are limited. In Ghana, a woman on death row explained that she was denied all educational opportunities; she noted: 'I don't do anything. I sweep and I wait' (Amnesty International, 2017: 6). In Sri Lanka, women on death row are denied access to work (World Coalition Against the Death Penalty, 2022).

Prisoners who have access to paid work inside prisons are often grossly underpaid. In Indonesia, incarcerated women earn around 5 per cent of the national minimum wage, while at the same time being overcharged for essential items such as sanitary products that the prisons fail to provide (I-7). In Pakistan, women prisoners, including those on death row, can earn money as beauticians, teachers, or embroiderers, using any skills they already have; those without particular skills can work in the prison kitchen (I-4). In Nigeria, no work is made available through the prison, but they often make crafts to sell to prison visitors, including lawyers and visiting government officials (I-9).⁴⁴

⁴⁴ Access to formal education is the exception. In Nigeria, a handful of prisons, notably the women's prison in Lagos, offers education programs to death-sentenced women, including the ability to obtain a high school diploma (I-9).

Gender-based stereotypes and discrimination result in different work opportunities and activities being open to women and men. In Cameroon, men on death row are authorised to work outside of the prison, return to their cells in the evening, and keep their earned income (I-14). Women, on the other hand, are prohibited from engaging in paid work and are instead required to clean their prison quarters without pay (Ibid.). Without an income, they are unable to pay for personal hygiene items or medical care without the support from external organisations (Ibid.). In Nigeria, women are offered courses in tailoring, bead-making, and hair-plaiting, while male prisoners learn furniture-making (I-9). Similarly in Cameroon, activities are rarely offered to women prisoners, but when they are, they include sewing, hairdressing, weaving, and soap-making (I-14).⁴⁵

CONTACT WITH FAMILY AND COMMUNITY

Women on death row tend to lose the support of their kin and communities more often than their male counterparts. In Cameroon, Nigeria, and Pakistan, women on death row receive fewer family visits than men; many of them receive none (I-1, I-9, I-14). Women convicted of killing a family member are more likely to be abandoned by their families than men (I-9). Without the support of families, these women bear the full brunt of prisons' inadequate diet, negligible health services, and social isolation—having profound impacts on their physical and mental health (I-1, I-14). As one interviewee from Pakistan explains, 'families offer a big support to life in jail, and if you don't have that, you will have a hard time' (I-4). At the appeals stage, defendants are often no longer entitled to state-funded legal representation, and while families of male death row inmates in Nigeria and Pakistan may go so far as selling major family assets to raise the funds for appellate legal defence, they very rarely go to the same lengths for women (I-1; I-9). In Cameroon, husbands often divorce their wives on death row, whereas wives of men on death row usually continue to support their husband (I-14).

Even in cases where individuals on death row have managed to maintain family ties, prison rules can be restrictive. In Malaysia, only lawyers, family members, and religious counsellors are allowed to visit individuals on death row; one family visit is permitted each week, but writing a letter uses up the weekly allowance (Berrih & Ngeow, 2020: 80). In Sri Lanka only one visit per year is allowed for those on death row (World Coalition Against the Death Penalty, 2022). Several Nigerian interviewees explained that visitors only gain access to prisons if they bribe a prison officer (I-2, I-5). Moreover, visiting an individual on death row may require special permissions in Indonesia (a visitor must get permission from a prosecutor) and in Cameroon (permission required from a prosecutor or a trial court) (I-7; I-14). In Democratic Republic of the Congo, men are entitled to spousal visits in the relative privacy of their prison cell but women are not (I-6).

Long geographical distances between prisons and family residences are often a barrier to maintaining regular contact. When prisons are located in an isolated area, many families cannot afford the trip. Kanizan Bibi, who spent over 30 years on death row in Pakistan, received only 2 visits a year from her relatives, who are day labourers and could not afford to visit her regularly (I-1). This is exacerbated by the fact that in countries such as Cameroon, Indonesia, Nigeria, and Pakistan, women are moved to a different prison after they are sentenced to death (I-1; I-7; I-9; I-14). For foreign nationals on death row, family visits are rare. A Chinese woman on death row in Malaysia received two family visits in 5 years. She describes the isolation of her situation as follows:

⁴⁵ Women on death row are not formally excluded from these activities, but they reportedly rarely participate (I-14).

As a foreigner, I have no one here. Being so far away from home and from my family hurts. I feel lonely and hopeless...Thinking about my mother and my son makes me feel better. I have a picture of them, I look at it all the time. (Berrih & Ngeow, 2020: 82).

Maintaining familial contact is made even harder by the fact that most prisons prohibit the use of personal cell phones. In Indonesia (I-7) and in Malaysia (Berrih & Ngeow, 2020), phone booths are available, but prisoners must pay for their calls. In Cameroon, prisons do not permit prisoners to make any phone calls, and the punishments for using a personal cell phone include not only phone confiscation but food deprivation (I-14).

GENDER-BASED VIOLENCE ON DEATH ROW

In Tanzanian prisons, there are reportedly ‘transactional relationships’ between male prison officers and female prisoners, in which women receive food and protection in exchange for sex (Lourtau, et al. 2018: 23). Maroua Prison in northern Cameroon has mixed gender staff in the women’s section (I-14).⁴⁶ No phones are available for prisoners to use, though some guards will agree to pass on a message in exchange for payment (Ibid.) An interviewee told us that one of his clients was so desperate to reach him to share vital information about her case that she agreed to give sexual favours in exchange for being able to contact her lawyer (Ibid.). Another woman had to pay a guard to drive her to the local courthouse so that she could register an appeal from her death sentence (Ibid.). An investigation by the United States Department of Justice uncovered years of severe and pervasive sexual abuse and rape perpetrated by prison staff at the Lowell Correctional Institution (Florida) where women on death row are held (United States Department of Justice, 2020). Staff sometimes demanded that women prisoners undress, for no reason, in exchange for necessary items such as toilet paper. If women reported the abuse, guards would send them to punitive solitary confinement and would threaten to kill them. Prisoners described sex between staff and prisoners as a ‘regular event’ (Ibid: 8).

HISTORIES OF GENDER-BASED VIOLENCE

PATHWAYS TO OFFENDING

Johan Galtung argued the importance of highlighting less visible forms of violence: in contrast to direct violence that involves physical harm and an identifiable perpetrator, structural violence ‘is built into the structure, and shows up as unequal power and consequently as unequal life chances’ (Galtung 1969: 171). Structural violence has been defined as:

Forms of violence that are built into the fabric of society and create and maintain inequalities within and between social groups, including on the basis of gender, sexuality, ethnicity, religion, ability, socioeconomic position, and immigration status. Structural violence arises because of differential access to power, and leads to differential access to information, resources, voice, agency, and representation. It is upheld by institutions (including government and government institutions) through custom, practice, and law, and manifests in access to both material conditions and power (Hourani et al., 2021: 3; citations omitted).

Structural inequalities are especially harmful for women, because of the intersection of gender with existing conditions such as poor health, inadequate education, and other intersectional

⁴⁶ Since early 2023, Maroua Prison only employs female staff in the women’s section of the prison (I-14).

vulnerabilities (Cross, 2013:). Using the lens of structural violence, we can understand the gendered pathways of offending that led to women being sentenced to death.

In some countries, the majority of women on death row are foreign nationals, many of whom sought better job opportunities in the country that sentenced them to death. As of 2018, there were 9 women on death row in the United Arab Emirates, 8 of whom were foreign national domestic workers (Lourtau, 2018: 17). In Saudi Arabia, 74 per cent of the women executed between 2010 and 2021 were foreign nationals, more than half of whom were domestic workers (European Saudi Organization for Human Rights and Reprieve, 2023).⁴⁷ Bhuyan (2018: 614) argues that ‘the structural violence of migrant care work is a form of gender-based violence produced through gendered migration of domestic workers from the Global South to wealthier nations that lack protection for migrant workers who are financially and legally dependent on their employer’. We contend that, in countries where migrant women are significantly overrepresented on death row, the structural violence of gendered migration contributed to these women facing the death penalty.

The same analysis is possible when analysing women on death row for drug-related offences. In countries that punish drug-related offences with death, an overwhelming majority of women on death row were sentenced for drug trafficking, and many of these are foreign nationals. In Malaysia, 95 per cent of the women on death row are convicted of drug offences (Amnesty International 2019b). Women transport drugs, knowingly or unwittingly, for a range of reasons, but their pathways to offending are almost always linked to lack of access to resources, such as economic insecurity and a lack of familial or social support (Andrews-Briscoe, et al., 2021a). This lack of resources increases the vulnerability of women to structural violence (Heiss 1998: 263), attempted avoidance of which may lead them to transporting drugs. In other words, transporting drugs is a product of structural violence; for women, it is ‘just another precarious job, albeit one that exposes them to the risk of capital punishment’ (Andrew-Briscoe, et al., 2021: 6).

GENDER-BASED VIOLENCE DURING DETENTION AND BEFORE ARREST

Reports of direct gender-based violence in police detention are frequent (see case note on Zeinab Sekaanvand in Appendix 2). In Nigeria, there are many allegations of police harassing women, and in particular female sex workers, in police jails. According to an interviewee, it is ‘common practice’ for police to request sexual favours in exchange for bail (I-5). In Democratic Republic of the Congo, detainees not yet charged are generally held in police stations that do not have a separate women’s section; they are detained either in offices, in hallways, or sometimes together with men, which increases the chance of sexual assaults (I-6). A woman on death row reported that during her interrogation, police had beaten her and stripped her naked in front of her child (Berrih & Ngondji: 75-76).

Of the 14 interviewees with extensive experience defending women facing capital punishment, many concluded that the majority of women sentenced to death are survivors of domestic violence (see case notes of Lemi Limbu and Erica Sheppard in Appendix 2). An interviewee from Nigeria, who has worked on more than 30 death penalty cases involving women, stated that she had ‘almost never met a woman facing a capital charge of homicide that is not linked to gender-based violence’ (I-5). This was corroborated by another Nigerian lawyer (I-2). In Pakistan, interviewees did not have information concerning women’s experiences of domestic

⁴⁷ For example, Tuti Tursilawati, an Indonesian national working as a housekeeper in Saudi Arabia, was executed in 2018, after being convicted of killing her employer in self-defence when he attempted to rape her (European Saudi Organization for Human Rights and Reprieve, 2023).

violence, but noted that the majority of women on death row had been sentenced to death for killing their intimate partner or a family member. Similar findings have been made in China, Egypt, Jordan, Kenya, Malawi, Morocco, Taiwan, and Uganda (Advocates for Human Rights et al., 2022a,b; Egyptian Initiative for Personal Rights, 2021; Lourtou, 2018; World Coalition Against the Death Penalty, 2022), indicating that family violence plays a key role in many women's pathways to death row.

DISMISSAL OF GENDER-BASED VIOLENCE BY COURTS

There is a widespread failure by courts to consider women's history of being subjected to gender-based violence (see case note on Erica Sheppard in Appendix 2). A study from Indonesia examining recent cases of women charged with capital offences found that in 5 of 32 cases where defendants' history of gender-based violence was raised, the court did not consider such history as relevant (Institute for Criminal Justice Reform, 2021: 29-30). In one case, the court dismissed the relevance of the defendant's history of gender-based violence by preaching the defendant to 'respect and love her husband', despite his violence towards her (Ibid.). This is an example of how courts, in dismissing the history of gender-based violence as irrelevant, legitimise and normalise gender-based violence.

In some judgments, courts have relied on harmful gender stereotypes to assess the culpability of defendants. A defendant charged with a drug offence in Malaysia argued successfully at trial that she should be spared the death penalty because she had unwittingly transported the drugs and had helped the police identify her boyfriend, who had played a bigger part in drug trafficking. On appeal, however, the court found that:

To suggest because of that endless love she was too carefree in accepting the yellow bag from Stanly without questions is too incredible to be believed. After all this is not the first time she is in love. She acted and portrayed herself like a damsel in her maiden love but with respect her background would indicate this most probably is a concoction of her real self. We noted she herself gave evidence she was in the process of divorcing her husband and on top of that they have a child. Thus it would not be too remote in finding that she fully knew the effect, danger and pitfall of anyone madly and blindly in love. (*Oui Jieru v. Public Prosecutor*: 48)

In this case and in others, courts show reluctance to accept the argument that the defendant was tricked into transporting drugs unless she presents herself as a 'helpless female victim: poor, uneducated, and—in cases involving a male co-conspirator—inexperienced with men' (Andrews-Briscoe et al., 2021a: 7).⁴⁸

Furthermore, lack of effective legal representation also impacts the outcome of the case. Due to the lack of resources and training, the quality of capital defence is subpar in many death penalty countries; some lawyers fail to raise critical arguments, such as self-defence (Advocates for Human Rights et al., 2022b: 6). Without the funds to hire a lawyer in private practice, most women must rely on state-appointed lawyers who have less time to prepare a defence. Moreover, with less access to schooling, women are more likely to lack knowledge about the legal system. In

⁴⁸ Women's unequal relationships with men who are potential co-defendants lie at the heart of other types of drug cases. Some women are pushed into transporting drugs by manipulative or coercive intimate partners. One study from Thailand reported that of 16 women imprisoned for drug offences, a quarter had been manipulated into transporting drugs by their romantic partners (Jeffries et al., 2021). In another case in Malaysia, the police arrested a couple for drug trafficking. The man spoke to the police in English, a language his partner did not speak, to declare that the drugs belonged to her. He was eventually released and disappeared. Meanwhile, she received a death sentence (Andrews-Briscoe, et al., 2021a: 46).

Uganda, women prisoners come from marginalised and disadvantaged communities; many of them choose to plead guilty because they lack the resources to hire a lawyer and are likely to be ignorant of their legal rights (Advocates for Human Rights et al., 2022a).⁴⁹ In sum, women generally face greater difficulties than men in secure an effective lawyer, as a result of unequal access to money and to education; this is what Johan Galtung (1969) referred to as ‘structural violence’ to which we turn in analysing women’s gendered pathways to offending.

In sum, women on death row are, both before and after being sentenced to death, routinely subjected to both direct and structural violence. Many of these women experience direct violence growing up. After their arrest, they are subjected to various manifestations of abuse, and are sentenced to death by judges who disregard their histories of gendered violence. In other cases, women face gendered forms of structural violence that limit their life choices, leading them to commit a capital offence. While awaiting execution, these women continue to experience gender-based violence and live in conditions that fail to reflect their gender-specific needs.

⁴⁹ In Nigeria, some lawyers hesitate to represent women facing capital charges because of the degree of social stigma associated with defending women charged with a capital offence. An interviewee in Nigeria described the backlash that she received on social media when she posted about her women clients charged with a capital offence (contrary to when she shared stories about her male clients): she was asked ‘are you going to kill your husband now?’. The prosecutors asked ‘don’t you have something else to do with your life?’ (I-5).



Portrait of Erica Sheppard at the age of 12, taken around 1985. Erica has been incarcerated on death row in Texas since 1995.
Used with permission from Erica's legal team.

OVERTURNING CONVICTIONS OF WOMEN SENTENCED TO DEATH IN CAMEROON: A LAWYER'S PERSPECTIVE

Nestor Toko

MY JOURNEY

In this note, I share my experience of defending women sentenced to death in Cameroon. Despite the Constitution of Cameroon guaranteeing the right to life (Article 3) and prohibiting torture and other cruel, inhuman, or degrading treatment or punishment (Article 5), our law prescribes the death penalty for approximately 30 offences. Our country has not carried out any executions since 1997, but judges have continued to hand down death sentences, making the death penalty a significant element of the current criminal justice system in Cameroon.⁵⁰

I started representing women sentenced to death in 2018, after visiting the central prison of Maroua, the capital of the Far North Region of Cameroon. I was leading a team of lawyers from the Cameroonian Lawyers' Network Against the Death Penalty (RACOPEM). We were conducting interviews with individuals on death row to understand their living conditions. As part of this initiative, we interviewed women on death row, most of whom had been convicted of terrorist offences. I still remember the tears of these women who, for the first time since receiving their death sentence, had the opportunity to speak with lawyers. During trial, these women had been represented by court-appointed lawyers, who had abandoned them after sentencing. Despite not having access to legal aid, many of these women had drafted their own appeals, including those who were illiterate, relying on the help of other women. A woman on death row expressed her confusion and frustration about her case not being heard by the appeal court after more than four years since filing her application for an appeal. In some cases, women had not been informed that their cases were not progressing because their appeal lawyers had not turned up to the hearings.

I also became aware of many of the challenges these women faced. The prisons in Cameroon fail to meet their particular needs, including the failure to hygiene products, medical care, and mental health care. This is exacerbated by the lack of family support that they receive. In almost all cases that we represented, women sentenced to death no longer had contact with their families. This was partly because their families were concerned that visits could trigger unwanted attention from the authorities, including arrests for terrorist offences. A further factor was the remote location of Maroua prison. (We had to drive 1,374 km from our residence in Douala to Maroua each time we met our clients.)

Listening to the women on death row in Maroua, and later in other prisons around the country, we soon realised that their death sentences were often not based on compelling evidence. For example, I still remember a case where a woman—clearly suffering from a severe mental illness—was charged with murder and sentenced to death on the grounds that she was a 'witch.' At the same time, I have seen cases where the court returned a non-guilty verdict to a man charged with murder, acknowledging his mental illness, in accordance with the defence of

⁵⁰ Cameroon has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. The government has refused to abolish the death penalty on the grounds that it is a deterrent to crimes, and that public opinion is in favour of retaining it.

insanity in Article 78 of the Penal Code. We became convinced that we could be of assistance to these women and took the necessary steps to ensure that they received effective legal representation.

CHALLENGES

Defending women accused of terrorism and being known as anti-death penalty lawyers have exposed us to death threats. Advocating the abolition of the death penalty remains controversial, and I have had to resist and fight the pressure from security forces to obstruct our investigations. I was most surprised when the Public Prosecutor's Office refused us access to the case files of the women facing the death penalty for terrorism offences. Ultimately, we managed to obtain the files after a judge reminded the prosecution of the need to respect the fair trial principles of adversarial proceedings. However, judges were reluctant to recognise that international human rights protection extended to cases of terrorism, despite our Penal Code clearly stating that 'every provision of criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published' (Section 2). We cannot prove that these incidents were due to us representing women charged with terrorism offences and challenging the imposition of the death penalty. However, we had not experienced these challenges before we took on these cases.

Furthermore, during the COVID-19 pandemic, when it was difficult for us to travel to Maroua, our clients were encouraged to dismiss us from their case and to accept representation by a court-appointed lawyer. Faced with the threat that our clients may experience further delays if their lawyers could not visit them or attend hearings, we opted to work as a team by integrating local lawyers who could more easily visit them.

STRATEGIES

When we decided to represent these women, we knew that there was a lot of work to be done beyond our usual work as lawyers. We began by organising a workshop to raise awareness among practitioners about international standards concerning the death penalty, bringing together judges, lawyers, and the prison administration. We also organised a media campaign around some of our terrorism cases. In all cases where women had been sentenced to death for terrorism, they had been convicted with virtually no solid evidence. Police investigations were poor to say the least, with evidence of forced confessions, which in turn were believed at face value by the trial judges. Even though the judiciary is independent of the executive on paper, it is in reality subject to monitoring by the executive—especially for terrorism cases—making it difficult to overturn a conviction. An effective media campaign was organised with the support of Debevoise and Plimpton LLP and the Cornell Center on the Death Penalty Worldwide to alert the national and international community to the possibility of wrongful conviction in these cases.

OVERTURNING CONVICTIONS

Accused of espionage under Article 103 of the Penal Code, Marie Dawandala, Damaris Doukouya, and Martha Weteya were convicted and sentenced to death for shooting in a public square. An appeal was pending before the court. The women, who had not heard from their court-appointed lawyer for 3 consecutive hearings, asked me to represent them in court. From our discussions, it emerged that these women had no birth certificates and could not recall how

long they had been on death row. At the hearing, I requested a medical examination to estimate the ages of our clients. The examination found that the women were likely to have been 17 years old when the alleged offence was committed. According to our law, persons under the age of 18 cannot be tried before military courts. The appeal court vacated the military trial court's judgment, but the case was transferred to a court of general jurisdiction, resulting in my clients being charged again for the same offence. Thanks to the great work of the defence team, made up of local and international lawyers, our clients were released after 7 years of detention.

In a separate case, Zara Boukar and her 3 co-defendants were convicted and sentenced to death for committing acts of terrorism before the military court. The appeal hearing was postponed several times because their lawyer stopped coming to the hearings. When we agreed to take on their case, the first thing we did was organise a visit to the prison to discuss their case. During the first trial, Zara and her co-defendants did not have the opportunity to discuss their case with their court-appointed representative. This lawyer was still in training and did not consider it useful to go to prison to meet his clients. We realised during our meeting that Zara and her co-defendants were not informed of their procedural rights during the preliminary investigation by the police: they were unaware of the right to have visitors, the right of access to counsel, and the right to an interpreter. On appeal, we persuaded the court to vacate the original conviction on the grounds that our clients' procedural rights had been violated. My clients were freed after 5 years of detention.

Of the 11 women sentenced to death whom we defended on appeal, we managed to secure an acquittal for all of them. Their acquittals were the result of the tenacity of the defence team made up of local and international lawyers, effective communication with our clients, and creative advocacy, including training and media campaigns, that went beyond our usual work as lawyers.



Vanessa (30) Beaten and burned by her boyfriend in an empty lot near her home in 2013. August 2014
Antofagasta, Chile
Cristóbal Olivares

SECTION 3: STATE COMPLICITY IN FEMINICIDE

Reyhaneh Bagheri and Christopher Alexander

DIFFERENT FORMS OF FEMINICIDE

The preceding sections examined the ways in which the death penalty is gendered in law and in practice (Section 1) and the experiences of women on death row (Section 2). In this section, we look beyond the death penalty to other forms of femicide. The killing of women is a pervasive issue globally: 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 (UNODC & UN Women, 2022: 5).⁵¹ Evidence indicates that most killings of women and girls are gender motivated, and that while the overwhelming majority of homicides globally are committed against men and boys, women and girls are disproportionately affected by homicidal violence in the private sphere (Ibid).⁵²

As noted at the beginning of this report, we are not only interested in cases of intentional killing. We use a gender-sensitive approach to arbitrary killings, appreciating States' complicity in the killing of women (see section on the 'Scope of the Report'). Femicide is concerned with State impunity: though femicides are almost exclusively perpetrated by non-State actors, States become complicit insofar as they fail to adequately respond to and prevent such violence, thereby breeding impunity. In this section, we examine various forms of femicide in which States are complicit. We have divided these forms of violence into 3 main categories: (1) killings perpetrated by the State; (2) killings that are enabled by the State; and (3) killings that the State fails to prevent. Of course, no such categorisation can be perfect; however, viewing the various manifestations of femicide in this manner helps us conceptualise State responsibility according to the degree of State involvement in it.

KILLINGS PERPETRATED BY THE STATE

Extrajudicial killings are those deliberately committed by State actors in the absence of legal authority. Such killings may take various forms—from deaths due to excessive use of force by law enforcement officials, to unlawful violations of the right to life during armed conflicts (OHCHR, n.d.).

⁵¹ According to the first Global Study on Homicide in 2011, women killed by an intimate partner constitute 34 per cent of all women killed globally (UNODC, 2019: 17). This figure varies according to region, from as low as 29 per cent in Europe to as high as 42 per cent in Oceania (Ibid). When accounting also for killings by other family members, this number rises to 58 per cent globally, and is as high as 69 per cent in Africa (Ibid).

⁵² Data collection is especially limited for femicide committed in the public sphere. Strengthening the technical capacities of civil society organisations to collect and monitor femicide data is key. Collecting intersectional data can complement help ensure that marginalised women and girls are not left invisible (UNODC & UN Women, 2022). The information on homicides involving marginalised groups such as aboriginal and indigenous women (ethnic femicide) is extremely limited. Evidence available from Canada and Australia show that indigenous women bear a disproportionate burden of homicidal violence (Ibid).

KILLINGS BY LAW ENFORCEMENT AND SECURITY FORCES

Deaths in custody include those of persons who are deliberately killed by authorities (Walsh, 2022).⁵³ On 16 September 2022, 22-year-old Kurdish woman Mahsa (Jina) Amini died in a hospital in Tehran, Iran. She had suffered severe head trauma after being arrested by State ‘morality police’ for allegedly breaching laws mandating women to cover their hair with a headscarf (Lythgoe, 2022). Police claimed that she had a heart attack at a police station and fell into a coma before being transferred to a hospital; however, eyewitnesses—including women who were detained alongside Mahsa—reported that she had been severely beaten (Iran International, 2022). Authorities denied these accusations, and Iran’s coroner attributed Mahsa’s death to ‘underlying diseases’ (Al Jazeera, 2022b).

Of course, not all deaths of women in custody may be characterised as femicide. However, Mahsa’s death was part of a broader context of systematic gendered violence:

The death of Jina Mahsa Amini was not an isolated event but the latest in a long series of extreme violence against women and girls committed by the Iranian authorities, the obligatory wearing of the hijab and its enforcement by State authorities being emblematic of this violence and of the denial of fundamental women’s human rights and dignity for decades. (Rehman, 2023: para 14)

Mahsa’s death sparked nationwide outrage. The slogan ‘Women, Life, Freedom’ became the rallying cry of protests across the country (Shahrokni, 2022). As of 27 December 2022, at least 476 people—including 34 women and 64 children—had been killed by security forces during the protests (Iran Human Rights, 2022). Commenting on these deaths, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has condemned the authorities for attributing responsibility for these deaths to ‘enemies of the Islamic Republic of Iran’ (Rehman, 2023: para 9). Indeed, he went so far as to declare that the scale and gravity of State violence⁵⁴ carried out in response to the protests may amount to crimes against humanity (Rehman, 2023: para. 75(f)).

KILLINGS BY INSURRECTIONAL GROUPS

Between 2014 and December 2017, Islamic State of Iraq and the Levant (ISIL) controlled swathes of territory in Iraq and Syria (Farrall, 2020). During this period, ISIL waged a violent campaign against the Yazidi minority group, which has since been widely recognised as

⁵³ In many instances, deaths in custody are not the result of direct killing by State authorities. Rather, such deaths may stem from, for example, inadequate healthcare in prisons, or suicide, or prisoner-to-prisoner violence. Despite the absence of direct State involvement, these ‘preventable’ deaths may be nonetheless classified as State-sanctioned by virtue of States’ obligations under international law. Indeed, while States bear obligations to protect the right to life of all persons, State ‘have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States... assume the responsibility to care for their lives and bodily integrity’ (Human Rights Committee, 2019: para. 25).

State responsibility for deaths in custody is assumed until proven otherwise, and where women die in custody, this could well constitute femicide (for example, where pregnant women die in custody due to inadequate healthcare). However, since such deaths are often not investigated—and, where they are investigated, are not done so through a gendered lens—there is inadequate data to conclusively determine whether such killings constitute femicide. It must be noted that not all custodial deaths are necessarily State-sanctioned; for example, unpreventable deaths—such as natural deaths from old age—fall beyond the purview of State responsibility.

⁵⁴ In addition to killings, State authorities are reported to have carried out unlawful imprisonments, enforced disappearances, torture, rape and sexual violence, and persecution (Rehman, 2023: para. 75(f))

genocide.⁵⁵ This campaign was characterised by egregious abuses, including various manifestations of violence (such as slavery, forced marriage, and sexual violence), specifically targeting Yazidi women. This includes mass killings—often of elderly women deemed ‘unsuited’ for sexual slavery or forced physical labour (Global Justice Center, 2016). For instance, on 16 August 2014, after killing men and forcibly transferring women and children away from Kocho village, ISIL sequestered older women from the group and executed them, with a mass grave being subsequently discovered (Independent International Commission of Inquiry on the Syrian Arab Republic, 2016: para. 48). ISIL also executed women and girls—often by stoning—on charges of adultery (Independent International Commission of Inquiry on the Syrian Arab Republic, 2018: paras. 74-75). Finally, several Yazidi women are reported to have committed suicide, including in ISIL custody, presumably to avoid being sold as slaves (Independent International Commission of Inquiry on the Syrian Arab Republic, 2016: para. 53). Several mass graves have been uncovered in the Sinjar District of Iraq, indicating that the ISIL have committed the killing of Yazidi women there in recent years (UN Human Rights Council, 2016).

While ISIL also subjected men and boys to extreme violence, the violence perpetrated against women and girls was gender-based, stemming from and reinforcing female subjugation. For instance, women and girls living under ISIL rule were placed in the control of male relatives, were prevented from freely choosing their occupation or education, could only leave home if completely veiled and accompanied by a male relative, and were prohibited from being in contact with men to whom they were not related (Independent International Commission of Inquiry on the Syrian Arab Republic, 2018: paras. 72-78). Violation of the latter led to several executions, while infringing the former examples would often attract corporal punishment (Ibid):

Executions of women via stoning [were] carried out in public, usually in a square, and witnessed by relatives, including children, of the woman and other members of her community. These public displays of brutality, which [were] often filmed and circulated online, were *used to instil fear among women for disobeying ISIL edicts*. (Independent International Commission of Inquiry on the Syrian Arab Republic: para. 74; emphasis added)

As this demonstrates, these killings were both products of, and used to reinforce, harmful gender norms.

It goes without saying that ISIL is not a ‘State’, traditionally construed. However, international law allows for killings by insurrectional movements to be treated as acts of a State where the movement ‘succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration’ (Articles on State Responsibility: Art. 10(2)). While scholars have debated the statehood of ISIL under international law (e.g. Tomuschat, 2015),⁵⁶ ISIL did indeed declare itself the *de facto* government in the absence of the effective governance of formal State authorities. Moreover, the International Law Commission (2001: 51, para. 11) confirms that the clear illegitimacy and unlawfulness with which ISIL claimed and administered its ‘caliphate’ is insufficient to legally absolve such movements of international legal

⁵⁵ The Office of the United Nations High Commissioner for Human Rights first acknowledged the possibility of genocide in March 2015 (A/HRC/28/18), and in November 2021, a German Court found a member of ISIL guilty of genocide for purchasing a Yazidi woman and her daughter as slaves, marking the first Yazidi genocide conviction globally (Amnesty International, 2021c).

⁵⁶ It is undisputed that ISIL controlled significant territory in both Iraq and Syria between 2014 and 2017; however, it is contested as to whether the group ever established effective governmental authority in that territory and whether the population therein can be deemed a population for these purposes.

responsibility for their wrongful acts. Accordingly, we have characterised the violence perpetrated by ISIL against Yazidi women within its territory⁵⁷ as State-sanctioned.

KILLINGS ENABLED BY THE STATE

In this section, we examine feminicides that are attributable to States by virtue of laws that enable such violence, namely, honour killing laws that legitimise the killing of women, and laws that criminalise abortions and lead to maternal mortality.

HONOUR KILLINGS

The term ‘honour killing’ refers to situations where a killer justifies their homicidal actions on the basis of preserving or restoring the dignity and reputation of an individual or family that was supposedly marred by the victim. Honour killings tend to stem from the victim’s behaviour being deemed as having transgressed traditional beliefs and socially-acceptable standards of conduct (Singh & Bhandari, 2021). Accordingly, women and girls can be killed for a variety of reasons: their choice of clothing, employment, or education; refusal to accept an arranged marriage; getting married without her family’s consent; talking with an unrelated male; having intimate or sexual relations before, or outside of, marriage; seeking a divorce; or being a victim of rape or sexual assault (Ibid). Perpetrators of honour killings against women and girls are typically men; however, there have been rare cases in which female family members who have internalised and reproduced the gender norms that they grew up in have carried out honour killings (Singh & Bhandari, 2021).

In several countries, the law creates a distinction between murder and these so-called ‘honour killings.’ For example, Article 409 of the Iraqi Penal Code permits ‘honour’ as a mitigation for crimes of violence and allows for lenient punishments for honour killings if the accused had ‘honourable motives.’⁵⁸ By carving such a distinction, the State is designating honour-related killing as justifiable and less morally culpable than other forms of killing—essentially condoning such violence. We contend that it is this that renders honour killings State-sanctioned, as illustrated by the following case study of Iran.

Iran records around 375-450 honour killings each year (United States Department of State, 2022); however, actual numbers are estimated to be much greater, as many of these murders are recorded as suicides or accidents, or are not reported at all (Ershad, 2022). Indeed, during 2010-2014, some 8,000 honour-related killings were reported (Karami et al., 2019). Under Iranian law, murder is punishable by death; however, its Penal Code provides various loopholes that may be exploited by the perpetrators of honour killings.

First, a man cannot be sentenced to death for murder if he is the father or paternal grandfather of the victim (Penal Code of Iran: Article 301). Given that honour killings are routinely committed by male family members against female victims, this provision enables such violence. For example, in May 2020, a 14-year-old girl, Romina Ashrafi, was beheaded with a farming sickle by her father while sleeping in her room. His father was enraged after she ran away with her 34-year-old boyfriend. Five days after she escaped, she reportedly told the police that she

⁵⁷ Legally speaking, the acts ‘of State’ perpetrated by ISIL against civilians *within* the caliphate must be distinguished from acts of terrorism committed *outside* its borders (that is, in other sovereign states).

⁵⁸ For more, see United Kingdom Home Office (2021, March) *Country Policy and Information Note: Iraq: ‘Honour crimes’*: paras. 2.5.2-2.5.5.

feared a violent reaction from her father (Kar & Pourzand, 2021). According to media reports, her father allegedly sought legal counsel before killing his daughter and was aware that the maximum penalty was 10 years in prison.⁵⁹

Second, a man cannot be sentenced to death for murder where he kills his adulterous wife (Article 630). Such a law is not unique to Iran. In Egypt, premeditated murder is a capital offence (Egypt Penal Code: Article 230); however, a man who kills his wife and her lover upon discovering her infidelity will enjoy a reduced sentence (Art 237). This law does not, however, apply to women who kill their adulterers: such women will be sentenced to death (MEMO, 2020). In Iraq, murder carries the death penalty; however, a *man* who murders his wife or other female dependent (or his intimate partner) after discovering their infidelity can be sentenced to no more than three years imprisonment (Iraq Penal Code: Art 409). The same law exists in Libya; however, the duration of imprisonment is not specified (Libya Penal Code, Article 375). In Jordan, both men and women claiming to have killed their spouse or their spouse's lover upon discovering their infidelity can seek to have their sentence reduced (Jordan Penal Code: Art 340). While this law is ostensibly gender-neutral, adultery-related killings nonetheless disproportionately impact women and girls; indeed, such killings are the most prevalent of all forms of homicide in Jordan (Hayajneh & Alshdaifat, 2022).

Third, an offender is exempt from the death penalty where the victim committed a *badd* offence (Penal Code of Iran: Article 302) or is believed to have done so (Article 303). For example, *zina* ('adultery' or 'extramarital sex') is a *badd* offence; thus, whereas a husband may avoid the death penalty for killing his adulterous wife on the grounds set out in the preceding section, *anyone* may avoid the death penalty for killing a woman deemed to have committed adultery under these provisions.

Fourth, an offender may avoid the death penalty if pardoned by the victim's family (Penal Code of Iran: Article 290). This is because murder is a *qisas* ('retaliation') offence, meaning that murder is only punishable by death where the victim's family requests such a penalty (as opposed to *hudud* offences, where the penalty is fixed). Honour killings are typically committed within the family; therefore, there is no incentive for the victim's family to call for the death penalty against themselves (Karami et al., 2019). For instance, in 2019, a transgender woman was killed by her father and other male relatives. Because all parties involved in the homicide were of the same family, there was nobody to request *qisas* (i.e., the death penalty) or entitled to *dija* ('blood money' i.e., the family could not pay compensation to itself), so the offenders were released (Dehkordi, 2020). This case is also illustrative of the manifest violence to which transgender women are subjected in Iran and beyond (Frazier, 2021).⁶⁰

⁵⁹ Similarly, in June 2022, the father of a 16-year-old girl, Ariana Lashkari, shot his daughter in the chest with a hunting rifle, for allegedly 'laughing with a boy at a park' (Sinaee, 2022).

⁶⁰ In addition to honour-related killings, hate crimes against LGBTQ+ persons—including women—are a global problem. For instance, 'transphobic femicide' refers to the killing of a transgender woman because of her gender identity and trans status (Joseph, 2020). In addition to high rates of interpersonal violence, sexual assault, and discrimination (Nematollahi et al., 2022), transgender women are frequently the victims of transphobic hate crimes and State violence (Duggan & Mason-Bish, 2021). The annual number of trans women killed by cis men has been steadily growing around the world, from Turkey (Zengin, 2016) to the United States (Human Rights Campaign Foundation, 2020). In 2022, Doski Azad, a 23-year-old transgender woman, was shot in the head and chest by her brother in the Kurdistan Region of Iraq. Her murder was reportedly motivated by transphobia (Stroumsa et al., 2019), which is prevalent in Iraq (Zitser, 2022). Even where carried out by private citizens, such killings may be imputed to the State where the State is deemed to have failed to discharge its obligations to protect life under international human rights law (Human Rights Committee, 2019).

The laws concerning *qisas* and *diya* may also be engaged in cases of inter-family violence. For example, Mona Heydari, aged 17, fled to Turkey to escape violence from her husband to whom she was married at age 12 and bore a child at age 14. Her family convinced her to come back to Iran, assuring her that she would not face any danger upon her return. However, her husband and his brother bound her hands and feet and severed her head. Her husband then paraded her severed head through the streets (Center for Human Rights in Iran, 2022). In January 2023, he was sentenced to 7.5 years in prison for murder and an additional 8 months for assault (Moshtaghian et al., 2023). The leniency of this sentence was due to Mona's parents pardoning her husband, rather than seeking the death penalty (Gritten, 2023).

Where a victim's family requests the death penalty in accordance with the *qisas* doctrine, Iranian law further discriminates against women with respect to the payment of *diya* ('blood money'). *Diya* is payable in any instance of killing; thus, a murderer must pay *diya* to the family of the victim. However, in some instances, the victim's family may also need to pay *diya*. This is because the death penalty for murder is not a *hadd* offence (i.e. not mandatory), but rather is a form of *qisas* (meaning 'retaliation').⁶¹ Accordingly, a murderer will only be sentenced to death if requested by the victim's kin—and because the sentencing of a person to death is a form of killing, the requesting party (i.e., the victim's family) must pay *diya* also. The monetary value of a woman is half that of a man (Islamic Penal Code of Iran: Art 544). Accordingly, where a man murders a woman, and her family requests that he be sentenced to death, the amount of *diya* payable by the family is double that of the *diya* payable by the murderer (Bakhshizadeh, 2018: 61). In other words, victims' family will end up paying more for the execution of the murderer, than the payment received for the murder of their family member.

In Pakistan, victims' families may similarly pardon killers by waiving their right to *qisas* and any compensation at any stage of the trial or after conviction (Pakistan Penal Code: Section 309). In an attempt to stem honour killings, Pakistan passed a new law in 2016 making honour killings specifically punishable by life imprisonment, rather than *qisas*. Accordingly, when Qandeel Baloch, a social media celebrity, was killed by her brother for posting what he called 'shameful' pictures on Facebook, her brother was sentenced to life imprisonment. However, in 2022, a Court overturned this judgment, ruling that the murder was not an honour killing, thus obviating the protection of the 2016 law and allowing the killer's family to pardon him (Al Jazeera, 2022a). As this demonstrates, even where laws criminalising honour killings exist, such killings may still be excused by gendered biases of judges.

Finally, we note that in Iran, Article 629 of the Penal Code provides a complete defence to murder where the killing is carried out for the purpose of defending the honour of the killer and his family. However, we have been unable to identify any instance of this provision being used, and it is unclear whether this would be justiciable in cases of honour killing, or whether 'honour' has a different meaning in this context (for example, a father defending his daughter against a rapist). If this law does indeed extend to honour killings, it would be unique: no other country has been identified as having a law that altogether abrogates criminal responsibility for honour killings.

Even in jurisdictions where these laws excusing honour killings are not being actively implemented, their mere existence serves as a formal declaration by the State that such killings are justified. This breeds a culture in which such violence is seen as tolerated, and potentially even encouraged, by the State. In States where perpetrators of honour-related killings are held to account, the leniency with which such perpetrators are afforded based on their gender renders

⁶¹ This is because it is victims and their families, rather than the State, that are treated as the aggrieved party in cases of murder.

such killings State-sanctioned killing of women and girls. Recent examples of such killings are widespread.⁶²

CRIMINALISATION OF ABORTION LEADING TO MATERNAL MORTALITY

In 2017 alone, an estimated 295,000 women died during and following pregnancy and childbirth (WHO, 2019b: 32). Maternal mortality rates are highest in the world's least developed countries, with Sub-Saharan Africa accounting for approximately 66 per cent of the maternal deaths estimated globally in 2017 (WHO, 2019b, p. 33). Chad, Sierra Leone, and South Sudan have the highest maternal mortality ratios in the world, with over 1,100 deaths per 100,000 live births (UNFPA, 2022, pp. 120–124). The World Health Organization has observed that the vast majority of maternal deaths worldwide are preventable (WHO, 2019a).

One of the leading causes of maternal death globally is unsafe abortion (UNFPA, 2022, p. 26). Global estimates from 2010-2014 indicate that 45 per cent of abortions are unsafe (WHO, 2021). Women may resort to unsafe abortions when faced with barriers to accessing safe alternatives. One such barrier is the legal restriction or complete criminalisation of abortion. Almost all maternal deaths attributable to unsafe abortion take place in countries where abortion is severely restricted in law or in practice (OHCHR, 2020). Legal regulation of abortion raises a gamut of human rights implications, suggesting potential State complicity in maternal deaths linked to unsafe abortion. The UN Human Rights Committee has affirmed that States bear obligations with respect to abortion under the right to life, including that States 'must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk' and 'may not regulate pregnancy or abortion... in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions' (OHCHR, 2019, para. 8).

According to the Center for Reproductive Rights (2023), 16 countries prohibit abortion under all circumstances,⁶³ exhibiting flagrant disregard for the aforementioned human rights principles. In several other countries, abortion is only lawful where it is necessary to save the life of the mother. For instance, the Penal Code of Malawi makes it a criminal offence to receive, provide, or assist with an abortion (Sections 149-151), except where the life or health of the mother is in danger (Section 243). The Malawi High Court affirmed this law in 2021 (Center for Reproductive Rights, 2021), despite unsafe abortion accounting for approximately 18 per cent of all maternal deaths in Malawi (Jackson et al., 2011; Kangaude & Mhango, 2018). In June 2022, the US Supreme Court overturned *Roe v. Wade*, finding that there is no constitutional right to abortion (Dobbs, 2022). As of February 2023, abortions are now restricted in 18 US States. In several States, abortion is banned in all circumstances, with no exceptions for rape, incest, or where the health of the mother is at risk (The New York Times, 2023). In March 2023, Republicans in South Carolina proposed a bill that could subject women who have abortions to the death penalty (Shabad, 2023).

⁶² For example, on 31 January 2023, 22-year-old YouTube star Tiba al-Ali was murdered by her father in Iraq for wanting to live alone in Turkey (Al Jazeera and News Agencies, 2023). And in May 2022, Sisters Arooj and Aneesa Abbas were tortured and murdered in Pakistan by several male family members in for wanting to divorce their husbands (The Guardian Newspaper, 2022).

⁶³ Congo, Dominican Republic, Egypt, El Salvador, Haiti, Honduras, Iraq, Jamaica, Lao, Madagascar, Mauritania, Nicaragua, Philippines, Senegal, Sierra Leone, Suriname.

Finally, other maternal deaths, such as those caused by inaccessible or inadequate healthcare, may be imputed to the State where States fail to observe their obligations with respect to the right to health.⁶⁴

STATE FAILURE TO PREVENT KILLINGS

Under international human rights law, the right to life confers upon States both positive and negative obligations. One of these obligations is the duty to protect life, which requires States to:

Take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of... pre-existing patterns of violence. (Human Rights Committee, 2019: para. 23)

In this section, we consider 3 categories of femicide born of widespread and systematic violence at the community level where States have been negligent: deaths caused by female genital mutilation, dowry-related killings, and killings related to witchcraft.

FEMALE GENITAL MUTILATION LEADING TO DEATH

Female genital mutilation (FGM), also known as ‘female circumcision’, is a term used to refer to a variety of procedures that involve injury to the female genital organs absent medical reason. FGM is practiced for various reasons: some societies deem it a rite of passage, while others use it to suppress female sexuality (UNICEF, n.d.). It is estimated that at least 200 million girls and women have been subjected to this practice in 31 countries globally (UNICEF, 2023). Among the plethora of potential health complications of FGM are the death of the girl or woman victim—generally from excessive bleeding—and the death of victims’ new-borns during childbirth (WHO, 2023).

Somalia has one of the highest rates of FGM practice in the world: 2020 data indicates that over 99 per cent of girls and women aged 15-49 years have been subjected to the practice (Somalia National Bureau of Statistics, 2020). In July 2021, 13-year-old Fartun Hassan Ahmed bled to death following an FGM procedure (Abdirahman & Davies, 2022). 10-year-old Deeqa Dahir Nuur similarly died from haemorrhaging in July 2018 (Hodal, 2018). While the Constitution of Somalia prohibits FGM, terming it ‘tantamount to torture’ (Article 15(4)), there is no national legislation criminalising this practice (UNFPA Somalia, 2021:1). Moreover, the State appears to

⁶⁴ States are obliged to respect, protect, and fulfil the right to health of all persons, and may violate this right either directly or via other entities insufficiently regulated by the State (OHCHR, 2000, para. 48). The obligation to protect may be violated where a State fails to take ‘all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties’ (OHCHR, 2000, para. 51), while the obligation to fulfil may be infringed where a State ‘fail[s] to take all necessary steps to ensure the realization of the right to health’ (OHCHR, 2000, para. 52). Concern thus arises where members of certain social groups are disproportionately represented among maternal deaths. For example, in 2020, the maternal mortality rate for non-Hispanic black women in the United States was 2.9 times higher than that of non-Hispanic white women (Hoyert, 2022). Moreover, maternal mortality rates in the US are increasing, with such increase from 2019 and 2020 being termed statistically significant with respect to non-Hispanic black women and Hispanic women, but not significant with respect to non-Hispanic white women (Hoyert, 2022). In the US context, it has been observed that inequities in broader social and economic factors and structural and systemic racism and discrimination are primary drivers for maternal and infant health. Notably, disparities in maternal and infant health persist even when controlling for certain underlying social and economic factors, such as education and income, pointing to the roles racism and discrimination play in driving disparities (Hill et al., 2022). The UN Committee on Economic, Social and Cultural Rights (2000, paras. 43, 47) has affirmed that the obligation to ensure access to health facilities, goods and services *on a non-discriminatory basis* is non-derogable, meaning a State can never justify its non-compliance, even on the basis of resource constraints.

be taking no measures to address this issue: between 2018 and 2020, law enforcement performed zero arrests, prosecutions, or convictions for FGM (UNFPA Somalia, 2021:1). Similar findings exist in Sierra Leone: 83 per cent of girls and women aged between 15 and 49 years have undergone the procedure (UNFPA Sierra Leone, 2018). In December 2021, 21-year-old Maseray Sei died from acute bleeding and shock following FGM (Equality Now, 2022). UN human rights experts have criticised Sierra Leone's failure to expressly criminalise FGM, terming this a 'systemic failure to protect women and girls' (OHCHR, 2022b).

Under international human rights law, FGM has been recognised as a violation of myriad rights, including the right to health, the right to integrity of the person, the right to be free from cruel, inhuman or degrading treatment, and—where the procedure results in death—the right to life (WHO, 2008). However, mere criminalisation of FGM is not enough, as the following example illustrates. In January 2020, 14-year-old Nada Abdul Maksoud died following FGM in Egypt (BBC News, 2020a). This is despite Egypt's criminalisation of FGM in 2008, and the imposition of increased penalties in 2016 following the death of a teenage girl (BBC News, 2016). Indeed, such criminalisation appears to have had little effect in practice, with Egypt maintaining one of the highest rates of FGM in the world: 87 per cent of girls and women aged between 15 and 49 years in Egypt have been subjected to this practice (UNICEF, 2020). Nada Abdul Maksoud's parents and aunt, as well as the doctor who performed the procedure, were arrested (BBC News, 2020a); however, the outcome of this case remains unclear.

Finally, it is worth noting that in many cases, FGM procedures are carried out by medical professionals (WHO, 2023). Particularly where such professionals are operating in State-run or State-operated facilities, the characterisation of such violence as State-sanctioned is further underscored.

DOWRY-RELATED KILLINGS

Dowry is broadly described as any transfer of wealth, typically in the form of gold, money, or other gifts, from a bride's parents to the groom or his parents in the lead up to the marriage (Lankes et al., 2022). The term 'dowry death' refers to the killing of women over dowry disputes (Kanbur et al., 2021; Karakasi et al., 2022), including an inability to provide a dowry (Kumar, 2020). Dowry-related killings are regularly recorded in South Asian nations, when brides are killed or forced to commit suicide after being subjected to persistent dowry-related harassment and abuse by the groom's family Manjoo, 2012: para. 56). The burning of the bride is a common expression of this practice (Mishra, 2022).

Many South Asian nations where dowry killings are prevalent have legislation outlawing the practice; however, it remains ingrained in their religious and cultural traditions (ESCAP, 2012). Indeed, the practise of dowry is becoming more common in India (Srivastava et al., 2021), despite the criminalisation of both giving and receiving dowry (*Dowry Prohibition Act 1961*). This may be, in part at least, a result of the State not enforcing this law. Indeed, in Bangladesh, where dowry-related killings are also prevalent (Rahman, 2018), poor policing has been blamed for the inadequate enforcement of laws banning the giving/receiving of dowry (Taher and Jamaluddin, 2014).

States are also turning a blind eye to dowry-related deaths. In India, even when dowry-related deaths are reported, legal authorities often disregard these cases, deeming violence against women in the home a private family matter (Vindhya, 2000). This is despite the fact that dowry-related killing is persistent and pervasive throughout the country: 20 women are murdered or coerced to commit suicide every day (Dhillon, 2018). For example, Mamta, Kalu, and Kamlesh

were sisters who married brothers from the same family. Their husbands and parents-in-law abused them constantly when their father failed to meet demands for more dowry money. On 28 May 2022, their bodies, along with those of Kalu's four-year-old son and infant child, were found in the village well. Both Kamlesh and Mamta were pregnant. They had left the following message: 'our in-laws are the reason behind our deaths. We are dying together because it's better than dying every day' (AFP, 2022).

In India, a causal relationship has been identified between dowry and foeticide/infanticide. Despite a law prohibiting pre-natal diagnostic testing to determine the sex of the foetus,⁶⁵ 10 million girls have reportedly been killed by their parents before or shortly after birth during the previous two decades in India. Indeed, approximately 2,000 unborn girls are killed every day through illegal abortions (Vijayalakshmi, 2018). Several research studies have identified a causal relationship between financial burden of dowry, variation in gold prices on the world market, and parents preferring to have sons rather than daughters (Bhalotra et al., 2020; Srivastava et al., 2021). They found that monthly changes in gold prices significantly increase girl abortion or neonatal mortality rates relative to boys (Ibid.). Moreover, the lives of those girls who survive birth are shorter due to neglect in the first month of their life, which easily translates into death (Ibid). In sum, dowry is the primary cause of female foeticide and female infanticide; the only way to end this practise is to eradicate the dowry system from Indian culture (Raj, 2019).⁶⁶

Finally, in India, the law distinguishes dowry-related killings from murder: while murder is punishable by death or life imprisonment (India Penal Code: Article 302), dowry-related killing is punishable by seven years imprisonment (India Penal Code: Article 304B). This law is, however, unique: we were unable to identify similar laws in other jurisdictions (hence our inclusion of dowry-related killings in this category, rather than the former).⁶⁷

WITCHCRAFT-RELATED KILLINGS

Witchcraft, or the use of magic to manipulate everyday events, has been practised since ancient times. Witches may be either good or evil, using so-called 'white magic' to help people or 'black magic' to harm them. Throughout history, witches have frequently been women, upon whom neighbours would call to cure illnesses, assist mothers in childbirth, and recover lost objects (Levy, 2022). The women could, however, also be blamed for unfortunate occurrences such as sickness and death, or droughts and floods (Levy, 2022; Owusu, 2020).

More recently, witchcraft has come to be understood in a negative sense as 'supernatural activity, believed to be the result of power given by the Devil, and causing physical damage, for instance death' (MacFarlane, 2020: 1). People—frequently women—deemed to be witches are subjected to murder, burning, torture (committed with a variety of weapons and instruments), forceful

⁶⁵ The *Pre-Conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994* was enacted to 'provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations of sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto' (Preamble).

⁶⁶ China's 'One-Child Policy' similarly ensued in the killing of female foetuses and infants due to Chinese society's preference for sons. It led to illegal sex-selective abortions of female foetuses and disproportionately high female infant mortality in order to secure male heirs (Alpermann & Zhan, 2019; Liu et al., 2019).

⁶⁷ We have identified a 2009 Bill that, if passed, would have amended the Pakistan Penal Code to mirror the Indian Penal Code. However, this amendment did not take place. Bill available at https://na.gov.pk/uploads/documents/1302136647_669.pdf.

detention and slavery, neglect, and child labour (Owusu, 2020). A significant share of harassment and violence against women, especially older women, in Africa is motivated by superstitious beliefs, notably witchcraft (Ibid). In India, older women, many of whom are widows, are most vulnerable to being the targets of witchcraft-related violence (Mohanty, 2021).⁶⁸

In Africa, Asia, and the Pacific Islands, there have been reports of women being killed following accusations of witchcraft (Manjoo, 2012: para. 36; Gurung, 2016; NAN, 2022; S. Sharma, 2022).⁶⁹ Although witchcraft-related killings are criminalised in Papua New Guinea, they are still prevalent (Neubauer, 2022). Concern has been raised as to the inadequacy of State responses to such violence: a 2017 study found that only 115 of 15,000 alleged perpetrators had been sentenced for their crimes, indicating a pattern of impunity (Forsyth et al., 2017). Where perpetrators have been prosecuted, questions have arisen as to the propriety of the criminal justice process: in 2018, Papua New Guinea convicted 97 people accused of sorcery-related killings in a mass trial (RNZ News, 2018), raising questions as to compliance of the proceedings with fair trial standards. 8 of the 97 perpetrators were sentenced to death, while the others were sentenced to life imprisonment (Graue, 2018).⁷⁰

According to police data published by the Times of India, 123 people—mostly women—were accused of practising witchcraft and murdered by mobs in Jharkhand, a State in eastern India, between May 2016 and 2019 (Gopalakrishnan, 2019). According to India's National Crime Records Bureau, more than 2,500 people were killed in witch hunts in India between 2000 and 2016; however, activists and journalists believe that the true figure is significantly higher because most Indian States do not report witchcraft as a motive for murder (Yasmin, 2018). Women are the primary targets of witch hunts, and men who accuse women of witchcraft frequently do so through adherence to deeply rooted misogynistic and patriarchal beliefs and systems (Ibid). Witchcraft accusations are often made to explain rising infant mortality rates and deaths from malaria, typhoid, and cholera, as well as to oust women from valuable land that men covet for agricultural advantages (Ibid). Despite the prevalence of 'witch hunting' in India, it is not specifically criminalised at the national level; therefore, the prosecutions must be brought under alternate provisions⁷¹ (Aslam, 2021). However, prosecutions often fail due to a lack of evidence. This is because witch-hunting is a socially manifested crime; thus, people remain silent out of either fear or acceptance of the practice (Aslam, 2021). Aside from this, it is generally observed that those who engage in witch hunts are influential individuals, and no one speaks out against them due to their fear or threat (Ibid.).

⁶⁸ In some countries, witchcraft-related femicide happens when women are killed as a consequence of witches' superstitions. In Nigeria, for instance, a 17-year-old girl, who was selling street snacks, was attacked and murdered in order to use parts of her body in rituals believed to bring wealth. There is evidence that some of her body parts were sold to a witch doctor for \$25 (£18) and then her decapitated body was dumped in a well in the village of Idosemo in the State of Ogun (BBC News, 2017). This is common among some pastors in Democratic Republic of Congo (DRC). Athalia Bombando, a two-year-old toddler, was raped and murdered as part of a ritual by her mother and uncle originally from the DRC, as they believed she was possessed by demons.

⁶⁹ According to media reports, at least fifteen people—mostly women—were burned alive after being accused of witchcraft in Cross River State, southern Nigeria in May 2020 (Igwe, 2020). In November 2022, more than 20 women accused of witchcraft were killed by Boko Haram militants in Borno State, northern Nigeria (Ibid). Similarly, in some provinces of the Democratic Republic of the Congo, officials and human rights activists report an increase in the murder of women accused of witchcraft. In September 2021, eight women were reportedly burned to death or lynched in three districts of South Kivu province. Five women were burned to death in the Kalehe district, and four others were taken to unknown locations by so-called self-defence militias (Agence France-Presse in Bukavu, 2021).

⁷⁰ Papua New Guinea abolished the death penalty in January 2022 (Pascoe & Novak, 2022).

⁷¹ These include murder (section 302), attempted murder (section 307), hurt (section 323), rape (section 376), and outraging a woman's modesty (section 354).

In this sub-section, we considered 3 categories of femicide where States have been negligent. In States where deaths caused by female genital mutilation, dowry-related killings, and killings related to witchcraft are common, some have responded by criminalising these practices. While the lack of enforcement undermines the legitimacy of such laws prohibiting these practices, criminalisation is not *the* solution in eradicating FGM, dowry, and witch hunting. Indeed, over-reliance on criminal punishment, such as imprisonment, results in further contributing to the rising prison population—a trend that is ‘not a viable, long-term solution to reducing overcrowding and the devastating consequences of imprisonment on individuals and societies’ (Penal Reform International, 2022: 13). The next section explains why States should focus on changing people’s attitudes to harmful gender norms beyond the use of criminal law, by using the example of capital rape laws.



A protest sign made for Daisy (30) Burned with their two children inside her house in 2012.
August 2014
Antofagasta, Chile
Cristóbal Olivares

SECTION 4: THE USE OF THE DEATH PENALTY TO ‘PROTECT’ WOMEN

Leavides Domingo-Cabarrubias and Sara Kowal

CAPITAL RAPE LAWS

So far, this report has focused on the State-sanctioned killing of women; that is, where women are the targets of such killing. In this section, we come back to the issue of the death penalty examined in Section 1. We discuss how the death penalty has been used as a convenient tool to create an illusion that women can be protected from lethal violence by judicially executing people who kill women. For example, in 2022 a man was sentenced to death in Egypt for killing a fellow university student who turned down his advances. The case drew public outrage after a video of the victim being stabbed went viral. The court proposed that the execution of the killer be aired live; in a letter to parliament, the court asserted that the broadcast ‘could achieve the goal of deterrence’ (The Arab Weekly, 2022). In this section, we examine States’ responses to sexual violence against women, focusing on the flawed narrative that the death penalty for rape ‘protects’ women.

Globally, 31 States that prescribe the death penalty for rape⁷² (Appendix 3). This number includes States whose legislation explicitly prescribes the death penalty for rape as the main offence, but not those where rape is an aggravating factor of another offence. Five of the 31 States—Bangladesh, Malawi, Pakistan, Qatar, and Uganda—have the death penalty for rape without any aggravating circumstance, while also prescribing the death penalty for aggravated rape.⁷³ All 31 States prescribe the death penalty for rape if aggravated by other circumstances, the most common of which is the death of the victim. In 12 States, rape resulting in death is a capital offence. The term ‘resulting in death’ covers cases where the victim dies as a result of rape, without any requirement to prove the perpetrator’s intent to cause death. Other aggravating circumstances commonly identified in legislation are: age of the victim; rape resulting in serious physical or psychological injury; rape preceded, accompanied, or followed by abduction or torture; rape committed by an offender previously convicted of the same crime; rape by an offender who knows that they have a sexually transmitted disease; rape committed by more than one person against one person; rape committed by a guardian, a caretaker, a person of authority, or a servant of the victim; and rape committed with a weapon. In States such as Brunei,

⁷² The definition of rape varies from jurisdiction to jurisdiction, but a key element common to these definitions is engaging in ‘sexual intercourse’ with another person against the will or without the consent of the victim. Note that States also differ in their definition of ‘sexual intercourse’. For example, Pakistan does not limit rape to vaginal penetration by a penis; penetration by an object without consent constitutes rape. ‘Without consent’ covers cases where consent was obtained through force, intimidation, or deceit, or when the victim is unable to express consent due to circumstances such as intoxication, intellectual disability, or when the victim is too young to consent. The majority of States with capital rape laws define rape as an offence committed by a man against a woman or a girl; however, in some jurisdictions, such as in Brunei and Pakistan, perpetrators and victims may be male or female. Qatar, Sudan and the United Arab Emirates impose the death penalty for both rape of a female and rape of a male (Brunei Syariah Penal Code Order (22 October 2013) Articles 75 and 76; Pakistan Penal Code 1860 as amended by Criminal Law (Amendment) Ordinance 2020 and by Criminal Laws (Amendment) Act 2021 Section 375; Qatar Penal Code (Law No. 11 of 2204) Articles 279, 280, 283 and 284; Criminal Act 1991 of Sudan, Sections 149 and 150; and United Arab Emirates Penal Code Federal Law No. 3 of 1987, Article 354).

⁷³ Section 6, Oppression of Women and Children (Special Enactment) Act, 1995 of Bangladesh; Section 133, Malawi Penal Code (Act 22 of 1929) as amended through to 2016; Article 279, Qatar Penal Code (Law No. 11 of 2004); Sections 375 and 376, Pakistan Penal Code 1860, last amended 16 February 2017; Sections 123 and 124, Uganda Penal Code 1950, as amended 20 July 2007.

Mauritania, Nigeria, and Sudan, the offender being married to someone other than the victim serves as an aggravating factor to rape.

The list of 31 States does not include States where rape is an aggravating factor of another offence. These include instances where the law contains phrases such as ‘rape on the occasion or in furtherance’ of another offence. For example, the Bahamas⁷⁴, Egypt⁷⁵, Jamaica⁷⁶, Niger⁷⁷, Saint Lucia⁷⁸, and Zimbabwe⁷⁹ are excluded from our list of countries with capital rape laws because it is clear from the law that the *main* offence is not rape. On the other hand, Japan is included in the list, based on Article 241 of the Penal Code of Japan, which covers both ‘rape committed during the course of robbery’ and ‘robbery committed during the course of rape’, thus covering both eventualities. Furthermore, we have excluded one of the capital rape laws in South Korea, which states that ‘a person who murders⁸⁰ after committing or attempting rape is punishable by death’. This is because murder alone is a capital offence in South Korea.

In sum, of the 79 States that retain the death penalty under law, a substantial minority (31 States) retain the death penalty for rape.⁸¹ According to the International Covenant on Civil and Political Rights, the application of the death penalty is permitted only for the ‘most serious crimes’—understood as intentional killing. These 31 States that prescribe the death penalty for rape do so in clear violation of this international standard. In the last 5 years, at least 58 individuals were executed for rape. The majority of executions occurred in Iran: 46 people convicted of rape were executed during 2018-2020, including two minors (Amnesty International, 2019a, 2020, 2021a).⁸² In India, 4 of the 6 individuals convicted of raping a woman on a bus (the Nirbhaya case, discussed below) were executed in March 2020, when the government broke its five-year moratorium on executions.⁸³ In Egypt, 2 men convicted of rape were executed in 2020; in Saudi Arabia, 6 convicted rapists were executed between 2018 and 2019 (Amnesty International 2019a, 2020, 2021a). By executing rapists and retaining the death penalty in law, States declare that rapists must be eliminated and acknowledge that killing human beings forms part of their justice

⁷⁴ Not only is the particular provision included under the section on murder, but the law itself (Penal Code (Amendment) Act, Act No. 34 of 2011) amends the Bahamas Penal Code specifically to set out on the circumstances that attract the death penalty for murder. The law is available at [International Labour Organization](#) website.

⁷⁵ Article 290 of the [Egypt Penal Code](#) (Law No. 58 of 1937, as amended) identifies ‘lying with the kidnapped female without her consent’ as an aggravating factor for kidnapping, making the offence liable to death sentence.

⁷⁶ Under sections 2(1) and 3(1) of [Jamaica Offences Against the Person Act](#) 2005, as amended, any person who commits murder if, in the course or furtherance of, arising out of, or ancillary to, that murder, the person commits an offence, including ‘any sexual offence’ shall be sentenced to death or to life imprisonment for life.

⁷⁷ Based on the [Penal Code of Niger](#) (Law No. 61 of 1961, as amended), robbery preceded or followed by rape (Article 310), and cattle theft preceded or followed by rape (Articles 321 and 324) are punishable by death.

⁷⁸ Section 86 (on Capital Murder) of the [Criminal Code of St Lucia](#) (Act 9 of 2004) provides that murder committed by a person in the course or furtherance of ‘(iv) any sexual offence’ is capital murder.

⁷⁹ Under the [Zimbabwe General Laws Amendment Act](#), 2016, murder committed in the course of, or in connection with, or as the result of, the commission of ‘(ii) the rape or other sexual assault of the victim’ (Part XX Section 8(2)(a)-ii), is punishable by death, imprisonment for life or imprisonment for any definite period of not less than 20 years (Section 8(4)(a)).

⁸⁰ ‘Murder’ in this context is to be understood as a separate offence characterised by an intent to cause death, as differentiated from ‘rape resulting in death’.

⁸¹ The number of States that retain the death penalty is based on the database of Cornell Center on the Death Penalty Worldwide.

⁸² Mehdi Sohrabifar and Amin Sedaghat were 15 years of age when they were arrested and convicted on multiple rape charges. They were 17 years old when they were executed on 25 April 2019. Reports obtained by Amnesty International revealed that their convictions were preceded by an unfair trial, and that the legal proceedings flagrantly violated the principles of juvenile justice. They were held for two months in police detention following their arrest, where they were allegedly beaten. They did not have access to a lawyer during police investigation (Amnesty International, 2020).

⁸³ Before 2020, India’s last execution was carried out in 2015 for an individual convicted of financing the 1993 Mumbai bombings (Cornell Center on the Death Penalty Worldwide Database, n.d.).

system. However, the effectiveness of such an approach in dealing with sexual violence is another matter. In the following section, drawing on findings from a recent publication by the Anti-Death Penalty Asia Network (ADPAN), Eleos Justice and the South Asia Middle East Network (SAME), we examine 3 countries in South Asia—Bangladesh, India and Pakistan—to analyse how the imposition of the death penalty has been justified by States (Kowal et al., 2022).

NARRATIVE USED TO JUSTIFY THE DEATH PENALTY FOR RAPE

The imposition of capital punishment for rape has been justified by the notion that rape is a ‘fate worse than death’ for the survivor (Mehta, 2020). Based on patriarchal thinking that a woman who is raped is ‘destroyed’, a woman who loses her honour has no place in society (FAOW, et al., n.d.). In societies that place primacy on a woman’s sexual purity, rape is one of the the worst thing that can happen to a woman. As observed by Zimring and Johnson (2013: para. 6), the death penalty for rape persists primarily ‘where women are treated as property and where “honour killings” reflect the perverse valuation of sexual purity over human life’. Following this logic, when a crime is worse than murder and murder justifies the death penalty, the use of the death penalty for rape is justified (Rayburn, 2004).

Government officials have defended the imposition of capital punishment for rape as necessary to ‘protect’ women. Indian Prime Minister Narendra Modi, commenting in 2020 on the execution of four individuals involved in the Nirbhaya case, highlighted the ‘utmost importance’ of ensuring the ‘dignity and safety of women’ (Modi quoted in BBC News, 2020b). In this case, which happened in December 2012, the victim⁸⁴ was thrown to the roadside after being gang-raped and physically assaulted and died from her injuries days later. The incident sparked public outrage and thousands of protesters took to the streets to demand justice for the victim. By April 2013, India had amended its Penal Code to introduce two capital rape offences: rape resulting in death or persistent vegetative state of the victim, and rape in instances of repeat offending. Later that year, 4 of the 6 individuals involved in the Nirbhaya case were sentenced to death (Singh et al., 2013).

In Bangladesh and Pakistan, the respective governments similarly responded to widespread public protests against a string of high-profile rape cases by introducing or expanding capital rape laws. In Bangladesh, after footage of a young woman being gang raped went viral on Facebook, thousands of protesters called for stricter punishment of rapists (The Hindu, 2020). These protests precipitated the reintroduction⁸⁵ in October 2020 of the discretionary death penalty for rape and the introduction of the discretionary death penalty for attempting to cause death or harm after rape. In Pakistan—where the discretionary death penalty has been available as a punishment for rape since 2006—the government made substantial revisions to its rape law in 2020, including expanding the definition of rape from an offence that is committed by a man against a woman to one where both perpetrators and victims may be cisgender male or female, or transgender.⁸⁶ The law also introduced the offence of ‘gang rape’, punishable by death or life

⁸⁴ Reports on sexual violence use terms such as ‘victim’, ‘survivor’, or ‘victim/survivor’ to refer to individuals who have experienced rape, with each term serving a context-dependent purpose. Within the criminal justice system, the term victim describes a person who has been subjected to a crime; the word serves also as a status that provides certain rights under the law. However, the word does not imply weakness, assume guilt, or assign blame.

⁸⁵ Discretionary death penalty for rape was introduced in 1995 but was repealed in 2000 where, under the Women and Children Repression Prevention Act, only the penalty for rape or gang rape resulting in death were punishable by death or ‘rigorous life imprisonment’ and fine. *Women and Children Repression Prevention Act 2000* sec. 9(1), (2), (3).

⁸⁶ Note that in Bangladesh, India, and Sri Lanka, rape is narrowly defined as an offence committed by a man against a woman. Note also that Pakistan law defines ‘transgender’ as ‘any person whose gender identity and/or gender (footnote continued)

imprisonment, and a fine. The revisions were triggered by nationwide protests over the rape and robbery of a woman by two men in front of her two children on a highway in Punjab Province (Deutsche Welle, 2020). In response to the protests, then Pakistani Prime Minister Imran Khan endorsed public hanging, stating that ‘rapists should be handed down the most severe punishments to curb rising sexual violence in the country’ (DAWN, 2020). In March 2021, the two offenders were sentenced to death (BBC News, 2021).

The adoption or expansion of capital rape laws as a response to public clamour can be explained using the concept of penal populism. Penal populism is a political discourse whereby the views of professional decision-makers such as penological experts and practitioners are devalued and replaced with a more expressive emotivism by politicians who claim to represent the views of the public (e.g., Pratt, 2007). Expansion of capital rape laws has been so justified on the basis that governments had ‘listened’ to public demands for harsher penalties for rape. The mass media plays a crucial role in penal populism, feeding the public with sensationalised reporting on crime and criminal justice. Media coverage of rape cases are often sensationalised to make headlines, pandering to the public appetite for the ‘gory details’ of sexual violence. Indeed, in India, media clamour following the Nirbhaya gang rape case included calls for the execution of the accused (Arya, 2015).

In addition to politicians justifying the introduction of harsher penalties based on alleged public clamour, penal populism also involves the ignoring and side-lining of penological experts and practitioners from the discussion. In India, the decision to introduce capital punishment for certain rape offences was made—despite the position of the Justice J S Verma Committee, made up of experts—that sexual offences should not carry the death penalty. In Bangladesh, Umama Zillur, a member of the Feminists Across Generations alliance, criticised the government’s decision to introduce capital punishment for rape and rape causing death or injury, saying it was a ‘knee-jerk response to public protests following high-profile rape cases’ (Zillur cited in Zargar, 2020). In Pakistan, Sana Farrukh (2020), a lawyer at Justice Project Pakistan, a non-government organisation that campaigns for the abolition of the death penalty in Pakistan, similarly criticised the government’s decision to introduce the death penalty for rape offences. In practice, penal populism delivers the political advantage of appearing to sympathise with and respond to the masses, while ignoring criminological evidence, to which we turn.

WHY THE DEATH PENALTY IS NOT THE ANSWER TO RAPE

Many scholars, human rights activists, feminists, and women’s organisations have argued that the death penalty is not the answer to rape. First, there is no evidence to show that the death penalty has a deterrent effect. No evidence exists—either in the 3 countries examined in this section or elsewhere—showing that the death penalty has deterred individuals from committing rape or that the death penalty was more effective in deterring rapists than other punishments. These governments in fact lack even basic official data on the number of death penalty convictions and executions since the introduction of capital rape laws, or the number of individuals on death row convicted of rape.

Second, the imposition of the death penalty may reduce reporting of rapes by victims. In most cases, victims are raped by people known to them: rapists are often relatives, neighbours, friends, acquaintances, and even teachers. Victims and their families may be unwilling to report when

expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth’. *Transgender Persons (Protection of Rights) Act 2018* (Pakistan) sec. 2(n), 2(n)(iii).

there is a possibility that the perpetrator—a family member or someone they know—will be executed. In cases where children are raped, it would be even more difficult for them to testify against their guardian and those they know. The imposition of the death penalty for rape therefore risks further reducing the reporting of rape, which is already low in the countries studied. Due to patriarchal culture and views about women's chastity and honour, a large proportion of rape cases are not reported. In many Asian cultures, women are expected to preserve the family's honour by guarding their virginity and chastity (Tripathi and Yadav, 2005). In a culture where a women's chastity is of 'utmost importance', any allusion to being sexually harassed would seriously compromise a woman's reputation in society (Khair, 1998). Rape victims are often faced with feelings of contamination, of having been defiled or desecrated—exacerbated by cultural judgements that treat raped women as dirty and impure (Bhatnagar et al., 2019). Further, women who make sexual offence allegations would 'invite unwarranted attention that would be socially demeaning', and often have their lifestyles 'analysed to determine whether they qualify for protection or denigration' (Khair, 1998: 97). The strong culture of victim-blaming, stigmatisation, and lack of support from families and law enforcement agencies lead to the overall under-reporting of sexual offences in these countries. In some cases, victims face backlash and reprisals, or even threats of death from their own kin who view them as having brought shame on the family (Bhatnagar et al., 2019).

Third, due to deficiencies in criminal justice systems, neither victims nor accused persons can be guaranteed a just outcome, regardless of whether the death penalty is applied or not. In fact, the introduction of capital rape laws within a deficient criminal justice system would mean an increased likelihood of miscarriages of justice, leading to the unnecessary taking of life. Manjesh (2020) remarks that '[a]n expansion of offences attracting the death penalty in a country where the death-penalty sentencing framework is fractured and inconsistent is a combination that spells disaster'. Aside from the reluctance of, or refusal by, police officers to process victim reports, as mentioned above, police investigations have also been observed to be grossly inadequate, particularly in India and Pakistan (Kowal et al., 2022). Further, police officers in Bangladesh are reported to routinely use torture to extract confessions from accused individuals (Edston, 2005). Across all 3 jurisdictions, inadequate resourcing and insufficient training in relation to forensic medical services raise issues of quality of, and delay in, forensic results. During trial, accused persons who cannot afford to engage a private lawyer are represented by state-appointed lawyers who are not always competent in representing the accused (Kowal et al., 2022). Because of their inability to access effective legal representation, the majority of people on death row in the 3 countries come from very poor backgrounds.

Whereas accused persons without financial means may be denied a fair trial, those who have financial means may escape justice through, for instance, offering financial pay-outs to victims and their families in exchange for the cessation of the prosecution. Indeed, in Pakistan, courts have reportedly endorsed out-of-court settlements of rape cases, a practice that has been criticised as 'enhancing the perpetuation of violence against women' (Pakistan National Commission on the Status of Women, 2017).

Fourth, the death penalty does not guarantee justice to victims. Although political rhetoric equates justice with the application of capital punishment, an execution cannot heal the pain and anguish felt by victims. In a 2021 study by Equality Now and Dignity Alliance International, survivors of sexual violence did not include the death penalty in their ideas of 'justice'. Rather, for them, justice meant speedy trials, certainty of conviction, sensitivity and accountability from the criminal justice system, and wider change in attitudes toward sexual violence:

Survivors across countries including Bangladesh, India and Nepal highlighted speedy trials as vital in dispensing justice. It is also key to note that the essence of this expectation is not necessarily limited to successful convictions, but it is linked to reclaiming their dignity and honour within a society where a ‘raped woman’ is looked down upon and further victimised by different actors. Lengthy trials undoubtedly contribute to the frustration and hopelessness that survivors face, often leading to them dropping the cases (Equality Now and Dignity Alliance International, 2021: 58).

Moreover, the imposition of the death penalty as punishment for rape was not a demand by women, but was instead historically based on patriarchal and misogynistic views of a woman’s chastity as linked to a man’s honour. Ancient rape laws—particularly in Western legal systems, but also adopted in many parts of the world due to European colonisation—were based on patriarchal views of women as the property of men (Duque, 2021). The death penalty, as the ultimate penalty, was the only way to guarantee a husband’s exclusive control his property—that is, his wife. Rape was considered as a property crime, and thus, rape laws were not aimed at protecting women from sexual violence, but rather at protecting men’s property:

The rationale behind these early laws was that rape was a property crime against a man’s interest in preserving his wife’s chastity. The patriarchal structure of these laws rested on the belief that preserving the ‘purity’ of women was a proper function of criminal justice. Death was an appropriate punishment because a husband’s exclusive sexual access to his wife was threatened by rapists. Thus, the only way to guarantee exclusive control of women by husbands was to threaten the ultimate punishment: death (Rayburn, 2004: 1126-7).

Justice for the victims cannot be achieved by putting perpetrators to death while allowing the patriarchal culture that perpetuates sexual violence to go unchallenged. Punishing the perpetrator alone ‘will not address the underlying belief systems, based on patriarchal culture that gives rise to various myths that trigger, promote and sustain sexual assaults and rape on women’ (Sarkar, 2017). Execution of rapists, rather than deterring rape, deters governments—and broader society—from confronting and taking responsibility for rape culture. According to the Coalition Against Sexual Violence and the Death Penalty in India (2020), what is needed is to commit to do the hard work it takes to dismantle institutions that perpetrate sexual violence against women.

Finally, the death penalty is a disappearing punishment. There is a growing trend towards abolition and restriction of capital punishment. More than half of the countries around the world have moved away from the death penalty. Capital punishment is increasingly being perceived as: an infringement of the right to life; as a form of torture or cruel, inhuman, and degrading punishment; a punishment that is irreversible when errors are made; and a punishment that is often applied in an arbitrary and discriminatory manner.

In sum, capital punishment for rape is not grounded on a recognition of the need to protect women. Although capital rape laws have been justified as ‘protecting’ women, the inverse is true: capital rape laws use the language of women’s rights to violate the right to life.



Tens of thousands protest outside parliament against gender-based violence following a week of brutal murders of young South African women. The protestors demanded the South African government clamp down on gender-based violence. President Cyril Ramaphosa spoke to the crowd and promised more stringent measure against those convicted of rape and sexual violence. University of Cape Town student Uyinene Mrwetyana was brutally raped and murdered inside the Clareinch Post Office by a post office worker earlier in the week, sparking a national outcry and rolling protests in the wake of her death.

05 September 2019
Cape Town, South Africa
EPA-EFE / Nic Bothma

CONCLUSION

Mai Sato and Sandra Babcock

GENDERED FORMS OF STRUCTURAL VIOLENCE AS PREDICTOR OF FEMINICIDE

The title of this report is borrowed from Thomas Mathiesen's book *Silently Silenced: Essays on the Creation of Acquiescence in Modern Society* (2004, Waterside Press). In his book, Mathiesen uncovers the political silencing processes that are 'hidden rather than open, unnoticed rather than noticeable, [and] unseen rather than seen' (Mathiesen, 2004: 9). This idea helps us to see the less than obvious ways that States sustain patriarchy, and how they enable and engage in an array of State-sanctioned killing of women.

Those who play the numbers game will point out that men are the primary victims of homicides: 81 per cent of victims of homicide are men and boys (UN Women, 2022). The same is true for offenders: male offenders—serving a prison sentence or facing the death penalty—are the numerical majority, resulting in research that focus on their offending (e.g., Smart, 1977; Section 1). However, if we determine the significance of an issue or what deserves attention solely based on numbers, female victims and offenders will continue to be side-lined. Given the right to life is a non-derogable right, numbers alone do not justify the near exclusion of female victims and offenders from public discourse. Until we pay appropriate attention to this numerical minority, we shall not understand how and why some women and girls offend or are victimised, and what can be done to prevent their deaths.⁸⁷

Evidence shows that women and girls are disproportionately affected by homicidal violence in the private sphere: roughly 56 per cent of female homicides are committed by intimate partners or other family members, compared to 11 per cent of all male homicides (UN Women, 2022). While efforts are made to gather more data—globally, regionally, and locally—data gaps persist especially for gender-related killings committed in the public sphere, such as killings of women accused of witchcraft (Ibid.). In this report, our aim is to contribute to the small but growing number of works on feminicide. We have done so in two ways: by looking at the *State*-sanctioned killing of women in the private and public spheres; and by positioning the death penalty as a further form of feminicide, thus reinvigorating the discourse on this topic.

The discussion on feminicide is clear that most killings of women and girls are gender motivated, meaning that the factors that hinder women's equality—such as gendered stereotypes, harmful gendered customs, and biased norms—also operate to kill them (Sarmiento, et al., 2014). Looking at the killing of women in this way helps us go beyond individual and proximate determinants of violence, and consider the broader contexts and inequalities that lie at the root of violence against women:

Rather than focusing on dichotomi[s]ed notions of 'victims' and 'perpetrators', which locate the problem of violence within individuals who are deemed good or bad, violent or non-violent, our attention to *structural violence* directs us to examine the 'everydayness' of violence from the vantage point of complex political, social, historic, and economic processes (Montesanti and Thurston, 2015: 3; emphasis added).

⁸⁷ It is worth nothing that, when men are killed, women are subsequently forced to 'confront the associated stigma, fear, insecurity and economic deprivation' by virtue of their gender and associated sociocultural gender roles (Callamard, 2017: para.49).

We introduced the concept of ‘structural violence’ (Galtung, 1969) in Section 2. Here, in concluding the report, we revisit this concept. The concept of structural violence was introduced by Johan Galtung in 1969 in his seminal work *Violence, Peace, and Peace Research*. He distinguished between physical violence and structural violence, arguing that in the latter, ‘the violence is built into the structure and shows up as unequal power and consequently as unequal life chances’ (Galtung, 1969: 170-171).⁸⁸ Differential access to power and resources is referred to as structural *violence* because it can lead to injury and death; it is *structural* because it is a product of social systems and institutions borne out of ‘human decisions and not natural occurrences’, and therefore ‘correctable and preventable’ (Lee 2019: 123). Structural violence is particularly dangerous for women because of patriarchal norms and the harmful practices that enact them are embedded in social systems and institutions. We need to recognise the harm caused by culturally constructed ideas about gender roles and the ‘power disadvantaged women bring to relationships by virtue of their lack of access to resources’ (Heiss 1998: 263). In sum, when a woman is killed because she is a woman, she is killed because of societal expectations and norms that define what it means to be a woman and how she is to be treated. In a society where institutions and structures produce and reinforce misogynistic and patriarchal views, beliefs, and norms, homicidal violence against women is a product of gendered structural violence.

While this approach is key in understanding and preventing the killing of women and girls, we do not often trace the chain of responsibility back to the State, especially for killings that occur in the private sphere.⁸⁹ This report has outlined States’ direct involvement and complicity in the killings of women and girls, and explained these deaths as a product of gendered forms of structural violence upheld and sustained by the State. Broadly speaking, we have examined 3 types of femicide: gender-related killings of women perpetrated by the State, such as the death penalty and extrajudicial killing committed by State-actors; gender-related killings of women committed by non-State actors that are excused or condoned by the State; and gender-related killings of women that the State failed to prevent.

THE DEATH PENALTY AS A FORM OF FEMINICIDE

When analysing femicide, the death penalty has not usually been treated as falling within the concept. Studies on femicide have not engaged with the death penalty as a form of gender-motivated State-killing because of the idea that the death penalty is a *judicial* execution functioning as part of the legitimate criminal justice system, even though not all judicial executions are lawful. In this report, in contrast, we have argued that there is a functional equivalence between the death penalty and other forms of femicide (Sections 1 and 2).

While in some countries women are excluded from the purview of capital punishment altogether, the gendered impacts of the death penalty are manifold (Section 1). In some States, capital laws are applied in a manner that impacts women disproportionately. Capital laws that appear gender-neutral often fail to take sufficient account of gendered patterns of exclusion and discrimination. Based on available data, the majority of women on death row globally are those sentenced to death for murder and those convicted of capital drug offences. Mandatory death penalty laws—or laws that allow very little discretion for judges—result in judges unable to consider the individual circumstances that led to the offending. Capital homicide laws are applied

⁸⁸ Galtung (1969: 171) explained that ‘when one husband beats his wife there is a clear case of personal violence, but when one million husbands keep one million wives in ignorance there is structural violence.’

⁸⁹ However, see Callamard’s (2017) report that paid special attention to State responsibility.

in a fashion that is often blind to the context of gender-based violence: in 26 countries, murder carries the mandatory death penalty, meaning mitigating factors such as intimate partner violence are altogether excluded from the sentencing calculus. The same applies to capital drug laws: instead of disrupting drug cartels, capital drug laws in practice operate to punish women typically recruited from marginalised groups with intersecting vulnerabilities. In other cases, political offences, such as ‘enmity against God’, have been used to silence those (of all genders) advocating women’s rights in Iran.

In addition, not all judicial executions are lawful. Established international standards are clear that the death penalty is permitted for intentional killing only, meaning that other crimes such as drug trafficking or political offences are prohibited (Section 1). Moreover, there are capital offences that according to international standards should not even be criminalised, such as adultery laws: while definitions of adultery in penal codes may appear to be gender neutral, a closer analysis shows that in practice, they are overwhelmingly directed against women and girls. Furthermore, not all women on death row have committed the offence for which they have been convicted: Nestor Toko’s note powerfully demonstrates the chilling reality that all 11 women facing the death penalty in Cameroon were wrongfully convicted.

Procedural safeguards must also be followed when sentencing an individual to death. However, the experiences of women before and after being sentenced to death demonstrate that they have been subjected to direct and structural violence (Section 2). Writing about forced migrant women, Hourani et al. (2021: 3) assert that structural violence occurs ‘when institutions fail to respond to ... women’s needs; disrespect and mistreat them; and uphold and reproduce discriminatory sexist, patriarchal and misogynistic norms that sustain female subordination.’ This too is the experience of women facing the death penalty. Before being sentenced to death, women often experience structural violence by the judiciary. Judges often fail to consider the violence or the difficult socio-economic realities women have experienced—hardships that are themselves linked to gender oppression—as mitigating circumstances. In some cases, women’s perceived transgression of gendered norms of social behaviour is treated as an aggravating circumstance. While awaiting execution, women around the world live in conditions that fail to reflect their gender-specific needs. They often lack access to sanitary and menstrual hygiene products and to proper health care during pregnancy and birth. They are also vulnerable to violence and exploitation due to lack of privacy in prisons, toilets designed for men, and the lack of female prison guards. They also suffer from the same inhumane conditions as male prisoners, including poor infrastructure and lack of access to a nutritious diet and competent health services.

Based on what we know about the gendered impacts of the death penalty in law and practice, the illegitimacy of the death penalty as a form of punishment, and the gendered forms of structural violence women experience in various stages of the criminal justice process, we believe that the State’s execution of women amounts to unlawful killing tantamount to femicide.

OTHER FORMS OF FEMINICIDE

In addition to the death penalty, extrajudicial killings by State actors are another example of femicide. Such killings may take various forms—from deaths caused by excessive use of force by law enforcement officials, to the killing of women by insurrectional groups that have effective control over a territory (Section 3). The recent death of Mahsa (Jina) Amini in Iran was caused by severe head trauma after being arrested and beaten by State ‘morality police’ for allegedly breaching laws requiring women to cover their hair with a headscarf. Amini’s death sparked

nationwide outrage, inspiring the slogan ‘Women, Life, Freedom’, though protests advocating women’s rights again resulted in the use of lethal violence by Iranian security forces with at least 476 people dead—including 34 women and 64 children.

While these extrajudicial killings are a clear example of femicide committed directly by the State, in our report, we also examined how the State-sanctioned killings of women and girls are a product of gendered forms of structural violence facilitated and condoned through administrative and legal regulation, processes, and organisations:

Structural violence ... is upheld by institutions (including government and government institutions) through custom, practice, and law, and manifests in access to both material conditions and power (Hourani et al., 2021: 3; citations in the quote omitted).

We found that in several countries, the law created a distinction between murder and so-called ‘honour killings’ (Section 3). By carving out such a distinction, the State is labelling honour-related killing as justifiable and less morally culpable compared to other forms of homicides. This is an example of the State using the law to excuse the killing of women who have transgressed traditional beliefs and socially acceptable standards of conduct for women. Similarly, criminalisation, including total prohibition of abortion, is another example of State-complicity in maternal deaths linked to unsafe abortion. Almost all maternal deaths attributable to unsafe abortion take place in countries where abortion is severely restricted in law or in practice. Using criminal law, States are enforcing norms that view ‘women’s place being in the home under the care of men’ (Opondo and Harper, 2022), and that women are born to nurture children—norms which, in reality, result in maternal deaths.

Our report also found that some States are failing to prevent widespread lethal violence: deaths caused by female genital mutilation (FGM), dowry-related killings, and killings related to witchcraft. Some States have responded by criminalising these practices, though lack of enforcement remains a problem. However, examining FGM, dowry and witchcraft-related deaths from the perspective of structural violence helps us recognise that punishing the perpetrator of such lethal violence does not address the root causes of such offending. Unless gendered customs and superstitions that drive these killings are addressed, individuals who have internalised these harmful norms will continue to engage in these killings. Given that many of the States that have criminalised such practices are failing to enforce these laws,⁹⁰ the laws serve symbolic ends, but in practice States are silently upholding the patriarchy that justifies the control of women’s bodies.

The use of the death penalty to ‘protect’ women from sexual violence is another extreme example of States’ superficial attempts to uphold women’s rights by attributing the blame to individual perpetrators and killing them (Section 4). Capital punishment or periods of imprisonment do not prevent rape or necessarily provide justice to those few victims who have sought a formal justice response. (Of course, many victims do not report rape because they fear the gendered forms of structural violence inherent in the criminal justice system.) Tracing the origin of criminalisation shows that rape was considered a crime against property, where women were treated as men’s property. By responding to sexual violence with the death penalty, States exploit the language of women’s rights to violate the right to life.

⁹⁰ Over-reliance on criminal punishment, such as imprisonment, results in further contributing to the rising prison population—a trend that is ‘not a viable, long-term solution to reducing overcrowding and the devastating consequences of imprisonment on individuals and societies’ (Penal Reform International, 2022: 13).

All forms of State-sanctioned killing of women and girls covered in this report repeatedly show that their deaths were a product of gendered forms of structural violence. States are sometimes direct perpetrators of femicide; sometimes they excuse and condone the killing of women and girls committed by non-State actors; in others, they are silent observers of lethal violence, ignoring the widespread killing of women and girls occurring in the private and public spheres. Differential access to power has led to their deaths, and as noted earlier, structural violence is borne out of 'human decisions', and is therefore 'correctable and preventable' (Lee 2019: 123). Women and girls will continue to be killed because they are women, until States take seriously the role that they play in femicide.

APPENDICES

Appendix 1: List of Interviewees

| Interview Number | Name of Interviewee | Affiliation |
|-------------------------|----------------------------|--|
| I-1 | Zainab Mahboob | Justice Project Pakistan |
| I-2 | Pamela Nwune | The Inclusion Project, Nigeria |
| I-3 | Dobby Chew | Anti-Death Penalty Asia Network, Malaysia |
| I-4 | Fakhra Irshad | Justice Project Pakistan |
| I-5 | Funke Adeoye | Hope Behind Bars, Nigeria |
| I-6 | Esther Bashugi Ntumulo | Nouvelle Dynamique pour le Développement Intégral de Kalehe (NDDIKa), Democratic Republic of the Congo |
| I-7 | Aisya Humaida | LBH Masyarakat, Indonesia |
| I-8 | Maitreyi Misra | Project 39A, University of New Delhi, India |
| I-9 | Angela Uwandu | Avocats Sans Frontieres France Nigeria |
| I-10 | Kelly Gleason | Tennessee Office of the Post-Conviction Defender, USA |
| I-11 | Randy Spivey | Tennessee Office of the Post-Conviction Defender, USA |
| I-12 | Adeeba Kamarulzaman | Faculty of Medicine, Universiti Malaya, Malaysia |
| I-13 | Michelle Umaña | Public Defender Office of Ohio, USA |
| I-14 | Nestor Toko | Droits et Paix, Cameroon |

Appendix 2: Case Notes

Zeinab Sekaanvand (Iran)

On 2 October 2018, Iran executed Zeinab Sekaanvand.

Zeinab was born into a poor Kurdish family. At age 15, she ran away from her family with the hope of finding a better life. She married a man who soon became violent and abusive. Her brother-in-law also began to rape her. Although she filed several reports with the police, they did nothing to protect Zeinab's safety or investigate the allegations she had made against her husband or brother-in-law. When Zeinab asked her husband for a divorce, he refused. She tried to return to her family, but they disowned her. Then, in February 2012, Zeinab was arrested at the age of 17 for the murder of her husband.

After a 20-day interrogation in which she was beaten by the police and denied a lawyer, she signed a 'confession'. When finally appointed a lawyer at the final hearing of her trial, Aisha told the court that her confession had been coerced and that she wanted to retract it, alleging instead that it was her brother-in-law who had actually committed the crime with which she was charged. The court disregarded this, sentencing her to death despite her status as a juvenile offender and the illegitimate confession being the only shred of evidence against her.

Aisha's death sentence was a form of *qisas* ('retribution'): in Iran, the family of a murder victim decides whether or not the accused perpetrator will be sentenced to death (akin to the principle of 'an eye for an eye'). In other words, the family of Aisha's abuser determined her fate. Indeed, Aisha claimed that her brother-in-law had promised to pardon her (as is his right under the doctrine of *qisas*) if she confessed to the crime.

In addition to torture at the hands of police, a grossly unfair trial, and a death sentence issued in violation of international law, Aisha endured gross mistreatment during her detention. In 2015, she became pregnant to a fellow prisoner. The prison refused to grant her access to maternal healthcare, despite the prison doctor requesting that she be given an ultrasound. In September 2015, she gave birth to a stillborn child. She was returned to prison the very next day.

Source: Amnesty International (2018b)

Lemi Limbu (Tanzania)

In August 2015, Lemi Limbu was sentenced to death for the murder of her daughter. Following a retrial, despite extensive evidence of disability, gender-based violence, and trauma presented at her re-trial hearing, she was resentenced to death.

Background

Lemi grew up in a poor rural community in Tanzania, and experienced violence her entire life. Her father beat her mother, leading her mother to eventually flee with Lemi and her siblings. Lemi herself was beaten by multiple family members; her mother beat her so severely that neighbours intervened, fearing that Lemi would die from her injuries. Men in her village started abusing her as a child, taking her from her family home and raping her. She gave birth to her first child, Thereza, when she was 15. When she was about 18, she married an older man, Maimazi, with whom she had two children, Kuchuma and Tabu. Maimazi was violent; her husband forced her to steal neighbours' crops and would beat her when there was insufficient food for the family. The abuse was so severe that Lemi's father eventually helped her flee her husband. She moved to her uncle's house in a different village with her three children.

After she moved to her uncle's village, Lemi was accosted by a man called Kijiji Nyamagu, whom the other villagers avoided because of his bad reputation. He promised to marry her and convinced her to leave her uncle's house and bring her daughter Tabu with her. Lemi later explained that she 'did what Kijiji taught her', demonstrating the control and power imbalance that characterised this relationship. Kijiji subsequently killed Lemi's daughter. By the time Lemi brought the authorities to her daughter's body, Kijiji had fled.

Two mental health experts who examined Lemi in prison post-conviction found that she has a severe intellectual disability, characterised by physical, cognitive, and behavioural impairment. These experts concluded that Lemi had the intellectual age of a 10-year-old child.

Experience with the criminal justice system

The authorities arrested Lemi for her daughter's murder on 26 August 2011. Police took down a written statement which she did not sign. She later testified that she did not understand its content. At her trial, it became apparent that years of pre-trial detention without access to adequate care had led to a deterioration of her intellectual capacity. Lemi could not remember the name of her village, the ages of her children, or the last name of her husband. She was not even sure how to spell or pronounce her name. Nevertheless, the High Court of Tanzania sentenced her to death.

Lemi's lawyers appealed the High Court's decision. In February 2018, the Court of Appeal nullified the judgment and ordered a retrial, finding that the High Court had failed to comply with certain requirements of criminal procedure. By that time, Lemi had spent close to 7 years in prison, 3 of which were spent on death row. She was moved from death row but remained incarcerated.

At her retrial in 2022, Lemi's lawyers presented extensive evidence as to her intellectual disability and her history of violence and abuse. They underlined that her disability made her more vulnerable to abuse, and that this abuse further diminished her ability to function. In Tanzania, murder carries the mandatory death penalty, precluding judges from considering mitigating circumstances; however, Lemi's lawyers had hoped that the Prosecution and Court would reduce

the charges against Lemi to manslaughter by virtue of her background, thus sparing her a death sentence. Instead, the High Court affirmed her murder conviction and re-sentenced her to death.

Today, after more than a decade of incarceration, Lemi cannot name the days of the week, remember the full names of her family members, or estimate how old she is. She is currently appealing this sentence with the help of her legal team.

Source: Case documents shared by Lemi's legal team

Erica Sheppard (United States)

On 30 June 1993, Erica Sheppard and James Dickerson were out walking with Erica's infant daughter. When James spotted a woman returning to her home, he forced Erica to follow her and enter the building with him, threatening to kill Erica and her baby if she did not comply. Planning to carry out a robbery, James instructed Erica to get a knife from the kitchen. She complied out of fear. James cut the woman's throat with the knife, killing her. When the police found the pair hiding in a hotel two days later, they arrested both for murder. On 3 March 1995, Erica was sentenced to death for murder.

Background

Erica grew up in poverty and violence. From a very young age, Erica and her brother were beaten by their mother with various objects. Erica recalls once seeing her mother beat her brother with barbed wire. These beatings continued into Erica's adolescence, becoming compounded with verbal abuse, her mother calling her 'slut', 'whore', and 'bitch'. When Erica became pregnant at 13 after being raped, her mother beat her 'half to death'. Erica was also abused by other caregivers: as a preschooler, she was beaten by her babysitter and repeatedly sexually assaulted by the babysitter's boyfriend. Erica told her mother and grandmother about these assaults, but neither of them took action to protect her. Instead, her mother called her a liar. As a child, Erica also witnessed her mother endure violence from her intimate partners: one boyfriend once struck her mother so hard that she fell through a wall panel.

Fearing for the safety of both herself and her baby, 16-year-old Erica sought help from police after her mother strangled her with a phone cord. Police referred her to a shelter, but she was expelled after two days due to her mother's refusal to give the parental permission required for minors to stay there. The shelter contacted child protection services, but nobody followed up. Without a place to stay, Erica and her baby drifted between friends' and boyfriends' homes. During this period, Erica experienced multiple sexual assaults, including a gang rape by classmates. She did not tell anyone about the rapes, believing that no one would believe her. She never received any care or counseling. Unable to manage her mental health symptoms or find childcare, she dropped out of high school. For a short time, Erica found refuge at the home of her grandmother, who encouraged her to continue her studies. Erica took classes at a local adult education centre, found a job, and gave birth to her second child.

At the age of 17, Erica met Jerry Bryant Jr., a man ten years her senior. He routinely raped and threatened to kill her, describing in detail how he would slit her throat while holding a knife to her body. After giving birth to their daughter, Erica tried to remain at the hospital with the newborn who required medical care. Furious at her absence, Bryant beat Erica in the hospital parking lot until she lost consciousness. Erica called the police, but they did nothing. Jerry began following Erica around and escalated his death threats: Erica would regularly wake to find a rifle pointed at her face. When she became pregnant again at the age of 19, Erica fled to a women's shelter with her children. Determined not to have another child with Jerry, she visited an abortion clinic. After the procedure, she was heavily medicated and had no transportation to return to the shelter before curfew. When she returned late, the shelter expelled her for breaking their rules. Unable to return to Jerry, Erica moved to her brother's house. It was there that she met James Dickerson, her brother's friend.

Erica developed Post-Traumatic Stress Disorder (PTSD) and began to suffer from episodes of dissociation, best understood as a numbness or 'out of body' experience resulting from a breakdown of her ability to integrate information. According to the psychiatrists who examined

Erica after her conviction, Erica's brain development had been irreversibly impaired by the constant fear and violence of her childhood and the head injuries she suffered. Psychiatrists estimated that Erica had the mental age of a 14-year-old.

Erica described feeling confused and shocked as James cut his victim's throat. After the murder, James forced Erica to flee with him, continuing to threaten her and her baby. The extraordinary violence and stress of this moment triggered what psychiatrists later described as a dissociative state of mind. In Erica's own words, she felt that: 'I was not [sic] longer in my body, I was looking at myself...I felt like a zombie on autopilot...my body [was] in the room but I don't [sic] feel nothing'. These responses are indicative of a PTSD response.

Experience with the criminal justice system

Erica was assigned an inexperienced lawyer who presented only isolated snippets of her childhood trauma and failed to uncover her mental illness and borderline intellectual functioning. The prosecution ridiculed the defence case, accusing Erica of making up the assaults. Exploiting stereotypes that have long been used against black women, the prosecutor de-feminised Erica, calling her a bad mother and adding that she 'may be a woman, but she's certainly no lady'. Deprived of any context for Erica's crime, the jury sentenced her to death.

Erica has spent the past 26 years in a 60-square-foot cell on Texas's death row. She is physically disabled as a result of a spinal condition stemming from childhood abuse, and lives with chronic pain. She struggles to cross the short distance from her bed to the toilet, using the furniture and walls for support. 'It's like my body can't hold itself up on its own', she wrote to the prison's medical department two years ago. 'The pain is debilitating and unbearable.' Because the prison refuses to provide her with a wheelchair, it takes her a long, painful hour to walk from her cell to the visiting area with the help of a walker.

Source: Cornell Center on the Death Penalty Worldwide (n.d.)



A cell on death row in the women's prison where Erica is housed.

Appendix 3: Capital Rape Offences by Country

| | Country | Offence | Penalty |
|---|----------------------------|---|---|
| 1 | Bahrain | Statutory rape (sexual intercourse with someone below the age of 14) | Death or life imprisonment |
| | | Rape, sexual assault, or statutory rape resulting in death | Death |
| 2 | Bangladesh | Rape Gang rape | Death or life imprisonment |
| | | Rape resulting in death | Death |
| 3 | Brunei Darussalam | Rape (<i>zina bil-jabr</i>), defined as a married man or woman having non-consensual sex with a person they are not married to forcibly or by deceit | Death by stoning |
| 4 | Central African Republic | Rape resulting in death Rape, if preceded, accompanied, or followed by abduction or torture | Death |
| 5 | People's Republic of China | Aggravated rape Sexual relations with a girl under the age of 14, involving 'serious' circumstances Raping an abducted or trafficked person if circumstances are 'especially serious' Forcing someone into prostitution after rape if circumstances are 'especially serious' | Death |
| 6 | Cuba | Rape resulting in serious injury by an offender previously convicted of the same crime or by an offender who knows that s/he has a sexually transmitted disease Rape of a child under the age of 12 | Death |
| 7 | India | A person who in the course of a sexual assault inflicts injury that causes the victim to die or to be left in a 'persistent vegetative state' Repeated gang rapes | Death |
| | | Rape of a girl under 12 years of age | Minimum 20 years in prison and fine up to death |
| | | Gang rape of a girl under 12 years old | Death or life imprisonment |

| | | | |
|----|-------------|--|----------------------------|
| 8 | Iran | Rape (<i>zina</i>), defined as sexual intercourse between a man and a woman who are not married to each other, if done by coercion or force | Death |
| 9 | Iraq | Incestuous rape, resulting in death Rape or attempted rape of an abductee Incestuous rape with a female relative to the third degree who is under 15 years of age Kidnapping aggravated by rape or attempted rape of the victim | Death |
| 10 | Japan | Rape committed during the course of robbery, resulting in death (or robbery committed during the course of rape, resulting in death) | Death or life imprisonment |
| 11 | Jordan | Rape of a girl under the age of 15 | Death |
| 12 | Kuwait | Rape committed by a relative, guardian, or servant Statutory rape of a woman unable to consent because she is mentally incapacitated, when committed by a relative, guardian or servant Statutory rape of a girl under the age of 16, when carried out by a relative, guardian, or servant | Death |
| 13 | Lesotho | Sexual assault by a person with the knowledge or reasonable suspicion of having HIV | Death |
| 14 | Malawi | Rape | Death or life imprisonment |
| 15 | Malaysia | Rape or attempted rape resulting death | Death |
| 16 | Mauritania | Hudud penalty for rape is applied if the offender is married (death without flogging) if the offender is unmarried (flogging and hard labour as a substitute for exile) Rape of a child | Death |
| 17 | Nigeria | Rape committed by a married person (applicable in States applying Sharia law) | Death |
| 18 | North Korea | Aggravated rape, if considered 'especially serious' | Death |

| | | | |
|----|--------------|--|---|
| 19 | Pakistan | <p>Rape Kidnapping or abducting in order to subject a person to unnatural lust</p> <p>An assault on a woman, stripping off her clothes, and intentional displaying her body in public view Rape committed by 2 or more persons Rape of a minor or a person with mental or physical disability Rape by a public servant taking advantage of his official position</p> | <p>Death or imprisonment up to 25 years</p> <p>Death or life imprisonment</p> |
| 20 | Qatar | <p>Rape of a female</p> <p>Rape of a male or female committed by an ascendant, guardian, caretaker, a person of authority, or servant of the victim</p> <p>Copulating with a male or female without compulsion if s/he has diminished capacity or under 16 years of age if committed by an ascendant, guardian, caretaker, a person of authority, or servant of the victim</p> | <p>Death or life imprisonment</p> <p>Death</p> <p>Death</p> |
| 21 | Saudi Arabia | Rape is punishable by death as hadd or 'a'zir, depending on the circumstances | Death |
| 22 | South Korea | <p>Rape of a physically or mentally disabled person, resulting in death</p> <p>Rape of a child below the age of 13, resulting in death</p> | Death or life imprisonment |
| 23 | Sri Lanka | Rape committed with the use of a gun | Death or life imprisonment |
| 24 | Sudan | <p>Homosexual rape (sodomy)</p> <p>Rape by a married person (adultery)</p> <p>Homosexual incest or incest by a married person; in some cases, this would involve the statutory rape of a child</p> | Death |

| | | | |
|----|----------------------|---|--|
| 25 | Taiwan | Rape aggravated by intentional killing of the victim Rape with aggravating circumstances—e.g., rape of a minor (below the age of 14), rape in a public place causing serious injury or death | Death or life imprisonment Imprisonment not less than 10 years, life imprisonment, or death |
| 26 | Tajikistan | Rape of a girl under the age of 14 Rape of a close relative Raped committed by an organised group Rape in the course of a public calamity or mass riots, or caused grave consequences Rape committed with the use of a weapon | Imprisonment up to 20 years or death |
| 27 | Thailand | Rape resulting in death Statutory rape resulting in death Rape of a woman or girl under the age of 15 with a gun or explosives, resulting in grievous bodily harm to the victim | Death or life imprisonment |
| 28 | Tunisia | Rape committed with violence, threat or use of a weapon Rape of a child under the age of 10 Rape of a child older than 10 old with violence, threat or use of a weapon | Death |
| 29 | Uganda | Rape Detention with sexual intent, where a person with legal custody of a detainee participates in or facilitates unlawful sexual intercourse with the detainee Unlawful sexual intercourse with minors: Defilement, or ‘unlawfully having sexual intercourse with another person under the age of 14’ Sexual intercourse with a person under the age of 18: if the offender has HIV, is a parent or guardian of the victim, or is a serial offender; or if the victim has a disability Military Offence: Rape committed by members of Uganda People’s Defence Forces | Death |
| 30 | United Arab Emirates | Sexual intercourse with a female or sodomy with a male using coercion (Coercion is presumed if the victim is below the age of 14) | Death |

| | | | |
|----|---------|--|--|
| 31 | Vietnam | Rape of a person under 16 years old if aggravated by: rape by more than one person resulting in physical or mental disability resulting in death or suicide of the victim; if the offender knows about his HIV infection | 20 years imprisonment, life imprisonment, or death |
|----|---------|--|--|

Sources: Cornell Center on the Death Penalty Worldwide Database (n.d.) and the respective Penal Laws of countries. The Table covers countries whose legislation explicitly provide for death penalty for the crime of rape as the main offence. It does not include countries where rape is considered as an aggravating factor of another offence.

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Christopher holds an LLB(Hons)/BA from Monash University and conducts cross-disciplinary (socio-legal) research on criminal, human rights, and humanitarian matters. He has co-authored several publications on the death penalty and state-sanctioned killing, including two Eleos Justice reports: *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (February 2021) and *Killing in the Name of God: State-Sanctioned Violations of Religious Freedom* (October 2021).

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Nestor Toko is a lawyer, a member of the Cameroon Bar Association and a human rights champion. He has been working as a lawyer since 2001. In 2005, he decided to focus on defending human rights and founded the organisation Droits et Paix (Rights and Peace). He has represented people facing the death penalty in Cameroon. In 2010, he decided to campaign for abolition of capital punishment in Cameroon. He is the author of *Mythes et réalités sur la peine de mort* (Myths and realities about the death penalty). He leads the Cameroonian Lawyers' Network Against the Death Penalty (RACOPEM), the aim of which is universal abolition of the death penalty.

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Mai Sato is an Associate Professor at the Faculty of Law, Monash University, Australia. She is the inaugural director of Eleos Justice, a collaboration between Capital Punishment Justice Project and Monash Law launched in 2020. Mai is also Deputy Director of CrimeInfo, an anti-death penalty NGO based in Japan. Mai is a social scientist by training and has led and worked on projects on the death penalty in Japan, Malaysia, the Philippines, India, Kenya, Zimbabwe and Iran. Mai has a PhD from King's College London and has worked at the School of Regulation and Global Governance (RegNet), the Australian National University; the School of Law, University of Reading; the Centre for Criminology, the University of Oxford; and the Institute for Criminal Policy Research in the UK.

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Sandra is a Clinical Professor at Cornell Law School, and is the Faculty Director and founder of the Cornell Center on the Death Penalty Worldwide. Over the last thirty years she has helped defend hundreds of men and women facing execution around the world. In 2018, she launched the Alice Project, which seeks to build awareness of how gender bias affects the capital prosecutions of women and gender minorities. She is currently assisting in the defense of ten women on death row in the U.S., Malawi and Tanzania. She has authored more than two dozen articles, reports, and guides relating to the application of the death penalty. She has won numerous awards for her work. She received her J.D. from Harvard Law School in 1991.

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Sara Kowal has practiced as a criminal lawyer since 2004. Sara is the Deputy Director of Eleos Justice at Monash University, a research, advocacy and teaching hub focused on abolition of the death penalty in the Asia-Pacific region. Since 2018, Sara has run the Eleos Anti-Death Penalty Clinic, working with law students and lawyers and NGOs on case work and advocacy. Sara is the Vice-President of the Capital Punishment Justice Project. In 2019, Sara joined the Executive Committee of the Anti-Death Penalty Asia Network (ADPAN), which has members across 20 countries within the Asia-Pacific region. She also sits on three country specific working groups of the World Coalition Against the Death Penalty.

ABOUT ELEOS JUSTICE

What is Eleos Justice?

Eleos Justice is a collaboration between Capital Punishment Justice Project and the Faculty of Law at Monash University. Eleos is a Greek goddess of compassion and mercy. We like what Eleos stands for, which encapsulates the key message of our initiative on non-violence and humane punishment. Eleos has a straightforward agenda: we want to be part of the anti-death penalty movement and help strengthen it. We plan to do this by becoming a leading regional hub for evidenced-based research, teaching, and advocacy on State-sanctioned killing, including the death penalty.

What are its aims?

Eleos wants to see a significant shift in the debate about the death penalty, and capital punishment policy. We hear a lot about the death penalty in the US. While each execution is significant, what we hear much less about are the executions carried out outside of the US. Asia lags behind the global trend of moving away from the death penalty along with the Middle East, so we think it's important to focus on this region.

Who is involved?

Eleos alone cannot achieve abolition in Asia and beyond. Our vision is to be part of the anti-death penalty movement by becoming a significant regional hub for researchers, activists, practitioners, and governments to be able to come together—both physically and virtually—to share ideas. We've had the privilege of meeting with many advocates in the region. While their political, social, and cultural situations may differ, these advocates face similar challenges: censorship, online trolling, and in some cases threats to personal security. Individual NGOs, lawyers, and academics hold little political power or influence, but by creating a network of advocates in this region—alongside existing umbrella organisations such as Anti-Death Penalty Asia Network (ADPAN)—we can become a powerful voice for death penalty abolition.

How to get involved

We have big ambitions for death penalty research in the Asia Pacific region, but Eleos is still a small team. We welcome approaches from colleagues across the globe who would like to collaborate on any of our three activities: research, teaching, and advocacy. We don't discriminate between students, PhD scholars, Clinic staff, and academics, so please get in touch if you would like to be involved. Thanks to seed funding from the Australian Government, we've been able to launch Eleos Justice. But to truly unlock transformational impact across the Asia-Pacific region, we need the support of like-minded philanthropic partners. We invite passionate philanthropists to join our mission.

Upcoming events

'Eleos Justice Conversation Series' (offered online) brings together academics, practitioners, advocates to weigh in on topical issues pertaining to the death penalty in the Asia Pacific region. For other events and updates, please check our website.

ABOUT THE CORNELL CENTER ON THE DEATH PENALTY WORLDWIDE

The Cornell Center on the Death Penalty Worldwide (CCDPW) engages in research, litigation, and advocacy on behalf of people facing execution around the world. The Center's staff and faculty director have defended hundreds of prisoners facing the death penalty in the United States, Tanzania, and Malawi. In addition, through its renowned Makwanyane Institute, CCDPW has provided intensive training and mentorship to over a hundred capital defenders in Sub Saharan Africa and Asia. Our Makwanyane Defenders have prevented executions and secured the release of persons wrongly convicted and sentenced to death in sixteen countries. In Malawi, CCDPW spearheaded a collaborative resentencing project that resulted in the release of over 150 former death row prisoners.

CCDPW's online database of capital punishment laws and practices is the go-to source for scholars, practitioners, and journalists seeking reliable and transparent information on the application of the death penalty around the world. In 2018, CCDPW published its groundbreaking report: "Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty." The report, which was the first global study of gender discrimination in capital cases around the world, galvanized the abolitionist community to look more closely at how gender and intersectional discrimination permeate the capital sentences of women and gender minorities. Later that year, eleven United Nations experts cited the report and urged states to implement 'gender-specific responses and policies . . . to address the multiple violations of human rights and gender-based discrimination faced by women and girls on death row.' Because of CCDPW's advocacy and insistence that gender matters in capital punishment, the 2021 World Day Against the Death Penalty focused on women and the death penalty for the first time. Organizations around the world held more than 500 events focusing on the theme.

CCDPW is now leading efforts to train legal teams how to defend women and gender minorities, and in 2021 published the first practical guide to defending women and transgender persons facing extreme sentences. CCDPW's Alice Project is named after one of our clients, Alice Nungu, who was sentenced to death after killing her abuser in an act of self-defense. The Alice Project seeks to expose how gender discrimination intersects with racial bias, homophobia, ableism, classism, and other forms of bigotry to place women and gender minorities, especially those who deviate from gender norms, in positions where they are more likely to receive extreme sentences like the death penalty. CCDPW practices radical collaboration, and actively seeks to expand the movement to abolish the death penalty by broadening its appeal to other social justice struggles.

For more information or to join our network, email us at deathpenaltyworldwide@cornell.edu.

