

10 QUESTIONS ON THE DEATH PENALTY FOR LGBTQIA+ PEOPLE

2022



A REPORT ON THE APPLICATION OF THE DEATH PENALTY
FOR CONSENSUAL SAME-SEX CONDUCTS



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ABBREVIATIONS

CSOs	Civil Society Organisations
ECPM	<i>Ensemble Contre la Peine de Mort</i> (Together Against Death Penalty)
HRDs	Human Rights Defenders
ICJ	International Commission of Jurists
ILGA	International Lesbian, Gay, Bisexual, Trans* and Intersex Association
LGBTQIA+	Lesbian, Gay, Bisexual, Trans*, Queer, Intersex, Asexual people and all other gender identities and sexual orientations
UAE	United Arab Emirates
UN	United Nations
UN HCR	United Nations Human Rights Council

GLOSSARY & CONCEPTS

Asexual: an asexual person has no sexual feelings or desires, or who is not sexually attracted to anyone.

Bisexuality: sexual orientation of people who are emotionally, physically and/or sexually attracted to both women and men.

Cross-dressing: describes a person who dresses, at least partially, as a gender other than their assigned sex; it carries no implications of sexual orientation.

Death Penalty: the death penalty is a criminal sanction aimed at the execution of the convicted person. ECPM supports abolition because the death penalty is contrary to human rights, not a deterrent, revenge not justice, irreversible, torture, discriminatory, a tool of political repression, traumatic, an obstacle to the truth and incompatible with rehabilitation.¹

Extrajudicial execution or killing (or targeted murder): is the deliberate killing of a person by government authorities or agents, or civilians, without trial or other legal authority.

Gay: refers to a person who is sexually and/or emotionally attracted to people of the same gender. It traditionally refers to men, but other people who are attracted to the same gender or multiple genders may also define themselves as gay.

Gender expression: refers to the manifestation of gender identity, and the one that is perceived by others. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

Gender identity: refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism (Yogyakarta Principles).

Homophobia: is the irrational hatred and fear of LGBTQIA+ people, which includes prejudice, discrimination, harassment, and acts of violence brought on by fear and hatred. It occurs at personal, institutional, and societal levels.

Homosexuality: describes a sexual orientation in which a person feels physically and emotionally attracted to people of the same gender.

Intersex: individuals are born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female. The term "intersex" is an umbrella term for the spectrum of variations of sex characteristics that naturally occur within the human species. The term intersex acknowledges the fact that physically, sex is a spectrum and that people with variations of sex characteristics other than male or female exist.

Lesbian: a woman who is sexually and/or emotionally attracted to women.

Moratorium on executions: is a temporary suspension of executions and, more rarely, of death sentences. It is provisional and often depends on the will of a key decision maker (President, Minister of Justice, etc.).

Queer: previously used as a derogatory term to refer to LGBT individuals in the English language, the term has been reclaimed by people who identify beyond traditional gender categories and heteronormative social norms. However, depending on the context, some people may still find the use of the term offensive. Also refers to queer theory, an academic field that challenges heteronormative social norms concerning gender and sexuality.

Sexual orientation: refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Trans*: is an inclusive umbrella term referring to people whose gender identity and/or gender expression differ from the sex/gender they were assigned at birth. It may include, but is not limited to: people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant, gender non-conforming, or with any other gender identity and/or expression which does not meet the societal and cultural expectations placed on gender identity.

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¹ ECPM, 10 Reasons to abolish death penalty, 2020, available at https://www.ecpm.org/wp-content/uploads/ECPM_ARGU_2020_webEN.pdf (19 October 2022).

INTRODUCTION

“Laws don’t sleep: LGBTQ+ people are at constant risk when homosexuality is criminalised”²

While 69 United Nations (UN) Member States criminalise consensual same-sex sexual conduct and cross-dressing, the death penalty is still part of the legal framework in 11 of them.

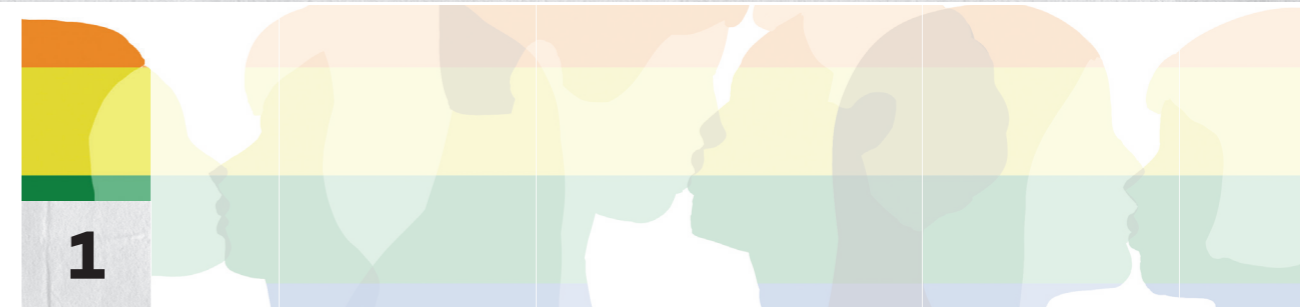
In interviews with various stakeholders working on abolition of the death penalty and/or Lesbian, Gay, Bisexual, Trans*, Queer, Intersex, Asexual (LGBTQIA+) people issues, reactions ranged from “I didn’t know... which countries still apply the death penalty for homosexuality?” to “It hasn’t been applied for years, there are other more important issues”. Taking into account the scarcity of literature on this specific topic, ECPM (Together Against Death Penalty) seeks to provide answers to 10 main questions:

- 1 Why is the issue of the death penalty and homosexuality important?
- 2 Which states apply the death penalty for homosexuality and under what legislation?
- 3 How did the death penalty come to be applied to homosexuality?
- 4 What does international law say about applying the death penalty for homosexuality?
- 5 How many people are currently on death row for homosexuality?
- 6 What are the main risks for LGBTQIA+ people facing the death penalty?
- 7 Is the death penalty and homosexuality an issue addressed by the United Nations?
- 8 Do regional human rights mechanisms have a role?
- 9 What about other countries criminalising same-sex relationships and cross-dressing?
- 10 What are the risks for foreign nationals in a state which applies the death penalty for homosexuality?

This paper is based on a desk review drawing on the work carried out as part of ECPM’s campaign “Love is not a crime”³; analysis of the political, legal and socio-cultural contexts of states criminalising consensual same-sex sexual conduct; and the main publications on the issue (research reports, index, maps, ...) by relevant stakeholders, including ILGA-World, Monash University, Human Dignity Trust and Human Rights Watch. The second phase of research included conducting interviews with relevant actors and collecting testimonies from activists, lawyers, LGBTQIA+ community members, etc.

² Julia Ehart (ILGA-World), “OPINION: Laws don’t sleep: LGBTQIA+ people are at constant risk when homosexuality is criminalised”, on Thomas Reuters Foundation News available at <https://news.trust.org/item/20220912155058-13y6a> (14 September 2022).

³ ECPM, *Love is not a crime* campaign webpage, available at <https://www.ecpm.org/en/campaigns/love-is-not-a-crime-3/>.



WHY IS THE ISSUE OF THE DEATH PENALTY FOR LGBTQIA+ PEOPLE IMPORTANT?⁴

The very existence of such laws exist violates people’s fundamental rights and they should be abolished. The imposition of the death penalty is increasingly regarded as “incompatible with the fundamental tenets of human rights, in particular human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment”⁵.

As of October 2022, 55 countries retained the death penalty for ordinary crimes,⁶ 11 of them for same-sex sexual conduct. All 11 countries persecute LGBTQIA+ individuals as per the Franklin & Marshall Global Barometers on Gay and Trans rights.⁷ Abolitionist activists have recently united to raise awareness on this issue.

On 17 May 2022, abolitionist and broader Asian Civil Society Organisations (CSOs) and LGBTQIA+ Human Rights Defenders (HRDs) came together to publish a joint-statement with a call to “Abolish the Death Penalty and Halt Its Discriminatory Use to Punish Same-sex Sexual Conduct”. Daron Tan, Associate International Legal Adviser at the International Commission of Jurists (ICJ), highlighted that:

“The retention and imposition of the death penalty for consensual, same-sex sexual conduct is a violation of the right to life and of the right to freedom from cruel, inhuman and degrading treatment or punishment. Furthermore, legal provisions criminalising consensual same-sex sexual relations result in violations of a number of other human rights, including the rights to dignity; equality, including equality before the law and equal protection of the law; non-discrimination; liberty and security of person; privacy; opinion and expression; association and peaceful assembly. They may also often lead to denials of the right to access health services and care without discrimination”⁸.

On 10 October 2022, World Day Against the Death Penalty, 59 CSOs of the World Coalition Against the Death Penalty issued a statement to “draw attention to gender bias in the use of torture in the judicial process leading to the imposition of the death penalty; Emphasize that violence against women and LGBTQIA+ individuals in detention – including gender and sexual abuse and harassment, inappropriate touching during searches, rape, and sexual coercion – can rise to the level of torture (...); Highlight that women and LGBTQIA+ individuals have specific needs, including sexual and reproductive health care, medical and

⁴ For readers unfamiliar with the distinction between sexual orientation (for instance homosexuality) and gender identity and expression, see ILGA-Europe glossary (in its latest version, 2014) – See also Glossary p. 2. Although offenses related to gender identity and expression can be criminalised, the death penalty for homosexuality is based only on sexual orientation, and in particular on the technicality of the sexual act.

⁵ UN Human Rights Council, Resolution “The question of the death penalty”, 22 September 2017 A/HRC/36/26.

⁶ Al-Jazeera, Infographic: Which countries still have the death penalty? 10 October 2022, available at <https://www.aljazeera.com/news/2022/10/10/infographic-which-countries-still-have-the-death-penalty-2> (19 October 2022).

⁷ Franklin & Marshall College Global Barometers, *Results*, last update 2021, available at <https://www.fandmglobalbarometers.org/results/> (14 September 2022).

⁸ ILGA-Asia et al., Statement “Abolish the Death Penalty and Halt Its Discriminatory Use to Punish Same-sex Sexual Conduct”, 17 May 2022, available at <https://www.ilgaasia.org/news/2022/5/17/abolish-the-death-penalty-and-halt-its-discriminatory-use-to-punish-same-sex-sexual-conduct> (14 September 2022).

mental health care, harm reduction services for those using drugs, and protection from gender-based violence, among others; and stress that in many countries, particularly those with the mandatory death penalty, women and LGBTQIA+ individuals may be sentenced to death without considering their experiences of gender-based violence, among their other vulnerability aspects, prior to incarceration”.⁹

Finally, LGBTQIA+ communities worldwide face urgent conditions, requiring the mobilisation of funding to support these communities by financially resourcing the movements that can meet these needs. According to the latest Global Philanthropy Project (GPP) report, in the 11 countries that retain and implement the death penalty for same-sex sexual conduct, there is little funding available to support LGBTQIA+ activism and advocacy work.¹⁰



WHICH STATES APPLY THE DEATH PENALTY TO LGBTQIA+ PEOPLE AND UNDER WHAT LEGISLATION?¹¹

As of November 2022, there were **11 United Nations Member States** with legislation providing for the imposition of the death penalty for homosexuality.

Among them, 5 states effectively implement such legislation, 3 of which apply the penalty country-wide (**Iran, Saudi Arabia and Yemen**), and 2 of which (**Nigeria and Somalia**) apply it in certain provinces (Kano State in Nigeria and territories controlled by al-Shabab in Somalia).

In 6 other States (**Afghanistan, Brunei, Mauritania, Pakistan, Qatar and the UAE**), legislation allows for the application of the death penalty for sodomy. However, to the knowledge of experts working on this issue, these provisions are not implemented, with authorities often preferring to sentence people under civil codes applying lesser penalties (e.g. fines).

In **Brunei**, the Sultan announced his intention to fully implement the Shariah Penal Code Order 2013 from April 2019, which includes provisions imposing more severe punishments, including the death penalty, for sexual activity between men (as well as criminalising various gender expressions and sexual activity between women for the first time). Following intense international backlash, boycotts and diplomatic pressure, the Sultan of Brunei extended the application of a moratorium on the death penalty. Nevertheless, the criminalising provisions are implemented, and LGBTQIA+ people face other draconian punishments.

In 2020, the **Government of Sudan removed the death penalty** as a punishment for homosexuality, although Article 148 of the Penal Code of 1991, known as the Sodomy Law, remains in force and carries a sentence of imprisonment not exceeding 7 years.¹²

In some other countries, **non-state actors** in local territories carry out extra-judicial killings for homosexuality.¹³ In many other states which retain the death penalty for other offences, LGBTQIA+ individuals may be sentenced to death on the basis of other crimes. These situations fall outside the scope of this research, which focuses on the provisions of national legislation.

⁹ World Coalition Against the Death Penalty, Joint statement on the death penalty and human rights of women and LGBTQIA+ individuals, 10 October 2022 available at <https://worldcoalition.org/2022/10/10/world-day-20th-anniversary-joint-statement/> (19 October 2022).

¹⁰ Global Philanthropy Project, 2019–2020 Global Resources Report: Government & Philanthropic Support for Lesbian, Gay, Bisexual, Transgender, and Intersex Communities, 2022 available at <https://globalresourcesreport.org/> (19 October 2022).

¹¹ For readers unfamiliar with the distinction between sexual orientation (for instance homosexuality) and gender identity and expression, see ILGA-Europe glossary (in its latest version, 2014) – See also Glossary p. 2. Although offenses related to gender identity and expression can be criminalised, the death penalty for homosexuality is based only on sexual orientation, and in particular on the technicality of the sexual act.

¹² ILGA World, “Pan Africa ILGA welcomes the decision by the government of Sudan to remove the death penalty as a punitive measure for homosexuality”, Statement, 16 July 2020, available at <https://ilga.org/sudan-removes-death-penalty-same-sex-relations> (14 September 2022).

¹³ For instance, ISIS in occupied territories in Syria and Iraq.



AFGHANISTAN

Leading LGBTQIA+ organisations and media report that a strict interpretation of Sharia law is gradually being implemented, under which same-sex sexual conduct is punishable by death.¹⁴

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Article 130 of the Constitution allows for the implementation of Sharia law, which prohibits same-sex sexual conduct in general, but does not contain specific provisions. Only article 427 refers to the imposition of a “lengthy term of imprisonment” for the offence of “pederasty”.¹⁵ Under Sharia law, the maximum penalty for sexual conduct is death, applicable in cases of sex between men or between women.

IMPLEMENTATION Yes – At the time of writing, Sharia law was being enforced. In July 2021, the media reported a Taliban judge stating that gay men will be subjected to death by stoning or crushing under strict Sharia law.¹⁶ Reports compiled by ILGA-World in *Our identities are under arrest*, suggest that several gay men were executed by stoning in August 2021 and subsequently.¹⁷



BRUNEI

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Section 82 of the Syariah Penal Code criminalises “*liwat*” (sexual intercourse between men), punishable in certain circumstances with death by stoning, or with whipping and imprisonment.

IMPLEMENTATION No – As mentioned above, following considerable international criticism, the Sultan of Brunei extended a moratorium on the death penalty to the offences set out in the Syariah Penal Code, including “*liwat*”. Nevertheless, these laws remain in place and the other draconian punishments for same-sex intimacy (whipping, imprisonment, and fines) remain applicable.



IRAN

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

As explained in ECPM’s latest annual report on the death penalty in Iran,¹⁸ there are 3 offences related to same-sex sexual conduct:

Lawat: Article 233 of the Iran Penal Code defines the offence of *lawat* (sodomy) and article 234 sets out the penalties. In same-sex relations between men, the law makes a distinction between the “active party” and the “passive party”. The death penalty is

imposed on the “active party” if he is married or commits rape, but the “passive party” is liable to the death penalty regardless of his marital status. According to commentary 1 to article 234, if the “active party” is non-Muslim and participates in a sexual act with a Muslim man, the former is also liable to the death penalty.

Tafkhiz: The offence of *tafkhiz* (intercrural coitus) is defined in article 235 of the Iran Penal Code. Under article 236, both parties are punished with one hundred lashes. However, the

commentary to the article states that the “active party” is liable to the death penalty if he is not Muslim and the “passive party” is Muslim.

Mosahegheh: The offence of *mosahegheh* (sexual relations between women) is defined in article 238 of the Iran Penal Code. In terms of penalties, no distinction is

made based on whether parties are “active” or “passive”, their religion, their marital status or their consent (article 240). Under article 239, the penalty for *mosahegheh* is one hundred lashes. However, as it is a *hadd* crime, it carries the death penalty from the fourth time the offence is committed, if the “offenders” are found guilty and sentenced to lashes on the first three occasions. While this is not expressly stated in the law, it is deduced from the provisions on “repeat offending” in article 136 of the Iran Penal Code. In June 2019, in answer to a journalist asking why homosexuals were executed in Iran based on their sexual orientation, Mohammad Djavad Zarif, then Iranian Foreign Minister, said: “Our society has moral principles. And we live according to these principles. These are moral principles that relate to the behaviour of individuals in general. And that’s because the law is upheld and you abide by laws.” According to human rights activists, there have been many executions for homosexuality since the Islamic revolution of 1979.

IMPLEMENTATION Yes – Although it is difficult to document the grounds for execution in Iran, there is evidence that several gay men were executed in 2005–2006 and 2016, mostly on charges of rape. In early 2022, two gay men were executed on charges of sodomy after spending years on death row.¹⁹

In early September 2022, two LGBTQIA+ activists, Zahra Sedighi-Hamadani and Elham Choubdar, were sentenced to death by a tribunal in Northern Iran. The death sentences were condemned by UN Human Rights Experts.²⁰ Both women were charged with “spreading corruption on earth” — a charge frequently imposed on people deemed to have broken the country’s Sharia laws.²¹ The tribunal stated that “Contrary to the news published in cyberspace and the rumours that have been spread, these two individuals have been accused of deceiving women and young girls and trafficking them to one of the countries of the region”.²² Amnesty International had published an alert in January 2022 stating that the charges against Zahra Sedighi-Hamadani, known as Sareh, stemmed from her activism on social media in defence of gay rights.²³ She also appeared in a BBC documentary aired in May 2021 about the abuses suffered by LGBTQIA+ people in the Kurdistan region of northern Iraq. This is the first documented case of women being sentenced to death for their sexual orientation.



MAURITANIA

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Article 308 of the Mauritanian Penal Code criminalises a Muslim man who has sexual relations with another man, punishable with death by stoning.

IMPLEMENTATION No – Mauritania has observed a de facto moratorium on the death penalty since 1987. However, activists highlight that LGBTQIA+ people can still be targeted with prosecution, harassment, and other forms of discrimination. Same-sex intimacy between women is punishable with up to two years imprisonment and a fine.

14 See for example, France 24, “The Taliban has a hit list for the Afghan LGBT community”, NGO says, 2 November 2021, <https://www.france24.com/en/asia-pacific/20211102-the-taliban-has-a-kill-list-for-the-afghan-lgbt-community-ngo-says>; Human Dignity Trust, “Afghanistan”, <https://www.humandignitytrust.org/country-profile/afghanistan/>; ILGA World, *Our Identities under Arrest*, <https://ilga.org/our-identities-under-arrest>

15 ILGA-World, *Our Identities under Arrest*, *ibid*, p.141 see also explicative note on “pederasty”.

16 Pink News, “Taliban-controlled Afghanistan will ‘crush gay men to death with 10ft walls’, warns judge”, 14 July 2021, <https://www.pinknews.co.uk/2021/07/14/taliban-afghanistan-gay/>.

17 ILGA-World, *Our Identities under Arrest*, *op. cit.*, p. 141-142.

18 ECPM, Annual report on the death penalty in Iran 2021, 2022, p. 28-29, available at <https://www.ecpm.org/en/annual-report-on-the-death-penalty-in-iran-sharp-rise-in-executions-in-2021/>.

19 AFP, “Iran purportedly executes 2 gay men over sodomy charges”, 1 February 2022, on CBS NEWS, available at <https://www.cbsnews.com/news/iran-purportedly-executes-2-gay-men-over-sodomy-charges/> (14 September 2022).

20 OHCHR, “Iran: UN experts demand stay of execution for two women, including LGBT activist”, 28 September 2022, available at <https://www.ohchr.org/en/press-releases/2022/09/iran-un-experts-demand-stay-execution-two-women-including-lgbt-activist> (19 October 2022).

21 Shirin Shakib, “Iran: Rights groups slam death sentences for LGBTQ activists”, 9 September 2022, on DW available at <https://www.dw.com/en/iran-rights-groups-slam-death-sentences-for-lgbtq-activists/a-63069473> (14 September 2022).

22 David Gritten, “Iran sentences two LGBT activists to death”, 6 September 2022, BBC News, available at <https://www.bbc.com/news/world-middle-east-62793573> (14 September 2022).

23 Amnesty International, “Iran: Ill-treated Iranian LGBTI defender at risk: Zahra Sedighi-Hamadani”, 25 January 2022, available at <https://www.amnesty.org/en/documents/mde13/5180/2022/en/> (14 September 2022).



NIGERIA

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Sharia law in 12 northern states criminalises same-sex intimacy between men and between women.

IMPLEMENTATION No – There is no record of execution on this basis, even though some are suspected in Kano state.



PAKISTAN

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Section 4 of the Zina provisions of the Hudood Ordinance 1979 criminalises sexual intercourse outside marriage, in accordance with Sharia law principles. Since non-heterosexual marriages are not legally recognised in Pakistan, all same-sex sexual intercourse inevitably takes place outside marriage and therefore falls under this provision. The penalty is death by stoning for married individuals, and one hundred lashes for unmarried individuals. In addition, section 377 of the Penal Code criminalises “carnal intercourse against the order of nature” (only applicable to intercourse between men), with a maximum penalty of life imprisonment.

IMPLEMENTATION No – There is no record of any executions taking place on this basis in the last few years. Indeed, there is no evidence that the Zina provisions of the Hudood Ordinance 1979 are used against LGBTQIA+ people and this interpretation of the law is contested.²⁴

QATAR

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

In addition to the Penal Code provisions, Qatar operates Sharia courts in which it is possible for men who engage in same-sex intimacy to be sentenced to death.

IMPLEMENTATION No – There is no record of any executions taking place on this basis in the last few years.



SAUDI ARABIA

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Saudi Arabia applies an uncodified criminal code based on Sharia law. Under this framework, sexual relations outside marriage are illegal. Given that same-sex marriage is not permitted, same-sex intimacy is inevitably criminalised. The punishment varies depending on the circumstances: married men and interfaith sexual relations are punished with the death penalty, while non-married men are punished with flogging.

IMPLEMENTATION – A report by the Immigration and Refugee Board of Canada published in 2011 suggested that, due to the nature of law enforcement in the country, information on the number of successful prosecutions is “almost non-existent”. The report also included contradictory views on whether the death penalty is actively applied against individuals found guilty of same-sex sexual relations.²⁵

²⁴ Human Rights Dignity Trust, “Pakistan”, last updated 2022, available at <https://www.humandignitytrust.org/country-profile/pakistan/> (14 September 2022).

²⁵ Human Rights Dignity Trust, “Saudi Arabia”, last updated 2021, available at <https://www.humandignitytrust.org/country-profile/saudi-arabia/> (14 September 2022).



SOMALIA

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Article 409 of the Somali Penal Code criminalises “carnal intercourse with a person of the same sex”, with a penalty of between three months and three years’ imprisonment, with a lesser punishment for “an act of lust different from carnal intercourse”. Under article 410, security measures may also be

imposed. Same-sex sexual intimacy between men and between women is criminalised under this provision. The death penalty has been imposed by local groups.

IMPLEMENTATION – In January 2017, the US Department of State Human Rights Report on Somalia stated that al-Shabab, a militant Islamist group, announced that it had executed a teenage boy and a young man for engaging in homosexual activity. This was the first report of such executions taking place; however, this was an extra-judicial killing performed by a non-state actor.



UNITED ARAB EMIRATES

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

In addition to the provisions of the Criminal Code, under Sharia Law same-sex intimacy is punishable by death.

IMPLEMENTATION No – A 2014 report by the Fahamu Refugee Programme indicates that the death penalty has never been applied for consensual same-sex sexual conduct.



YEMEN

LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY TO SAME-SEX SEXUAL CONDUCT

Article 264 criminalises the act of sodomy, whether between men or between a man and a woman, with a maximum punishment of one hundred lashes or up to one years’ imprisonment if the accused are unmarried. If the accused is married, a penalty of death by stoning can be imposed.

IMPLEMENTATION No – The 2017 US Department of State Human Rights Report on Yemen stated that there had been no known executions of LGBTQIA+ persons in more than a decade.

CRIMINALISATION OF HOMOSEXUALITY: FROM PRISON TO THE DEATH PENALTY

**ABOLITION
NOW**

- 61 countries have jurisdictions which criminalise private, same-sex, consensual sexual activity. All of them criminalise men and 42 criminalise women.
- 11 jurisdictions can or do impose the death penalty for same-sex intimacy.

MAURITANIA

Despite the moratorium on executions observed since 1987, Article 308 of the Criminal Code stipulates that "any adult Muslim man who has committed an indecent act or an act against nature with an individual of the same sex will be punished to death by public stoning". For women, the sentence is 2 years' imprisonment and a fine.

SAUDI ARABIA

Under Sharia law, sexual relations between men are deemed an offence but punishment is not clearly specified. Although the sentence to be imposed may however be subject to debate between courts, given that sexual relations outside marriage* are in any event illegal, punishment for a married man is generally stoning (and 100 lashes, as well as one year of exile for men who are single).

QATAR

The 2004 Criminal Code no longer makes sodomy or other same-sex relations between consenting persons crimes per se. Notwithstanding, courts may also refer directly to Sharia law and as such sentence Muslim men to death for homosexual relations.

IRAN

The 1991 Criminal Code makes sodomy a crime punishable by death for responsible, consenting adult men. The punishment for female homosexuality is one hundred lashes for the first 3 offences recorded, then the death penalty is applied for a 4th offence.

AFGHANISTAN

Although the Afghan Criminal Code does not contain any explicit provisions prohibiting consensual sexual relations between people of the same sex, Article 130 of the Constitution enables Sharia law to be invoked. As such, any sexual relation outside marriage* may be punishable by death.

PAKISTAN

Homosexuality, made illegal in the 1860 Criminal Code, is punishable by death. In this country, where Sharia law is applied, homosexuality, bisexuality and transidentity are profoundly taboo.

BRUNEI

New legislation implementing Sharia law in this country was scheduled for May 2014, whereby homosexuality was to become a crime punishable by death whereas until this date a maximum sentence of 10 years' imprisonment was prescribed. In May 2019, the Sultan of Brunei announced a moratorium on the death penalty for homosexuality and adultery.

YEMEN

Pursuant to Article 264 of the 1994 Criminal Code, sodomy is punishable by death by stoning for married men (and 100 lashes or one year's imprisonment for unmarried men). Article 268 punishes sexual relations between consenting women with up to 3 years' imprisonment.

UNITED ARAB EMIRATES

Under Sharia law, any sexual act outside marriage* is punishable by death. The States of Abu Dhabi and Dubai have federal laws which stipulate prison sentences for sodomy (respectively 14 and 10 years' imprisonment).

SOMALIA

Sharia law is applied in Southern Somalia, in Emirates controlled by al-Shabaab, as well as in Somaliland. It punishes same-sex relations to death or flogging.

NIGERIA (12 NORTHERN STATES)

Under Sharia law, 12 States in the north of the country impose the death penalty for male homosexuality. Women incur prison sentences or flogging. Since January 2014, same-sex marriage, organizations linked to LGBTI+ persons and intimate relationships in public are criminalized by law. In States where homosexuality is not as severely repressed, punishments currently range from 10 to 14 years' imprisonment.

In July 2020, Sudan abolished the death penalty for homosexual people (which applied until then to repeat «offenders»). Homosexuality, however, is still criminalised there today.

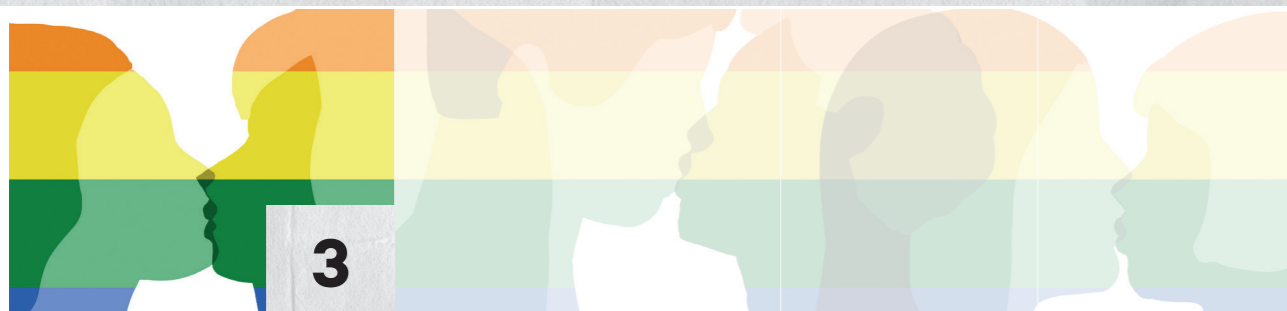
* Here, marriage refers exclusively to heterosexual marriage, i.e. between two persons of different sex.

** A new Sharia-based Criminal Code came into effect in Brunei on 3 April 2019. On 5 May, the Sultan announced that he would continue to maintain the moratorium on the death penalty in effect since 1957.



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SEXUALITY IS PUNISHABLE BY DEATH / IN 11 COUNTRIES, HOMO



HOW DID THE DEATH PENALTY COME TO BE APPLIED TO LGBTQIA+ PEOPLE?

LGBTQIA+ people have faced legal proscription for hundreds of years, initially under religious laws, in particular those imposed by the Abrahamic faiths, and later under secular legal codes, often drawing heavily on the theological traditions that preceded them. Legal codes first implemented in Europe proliferated during the colonial period. As the European powers expanded their control and influence over much of the world, they took their legal systems and the laws criminalising LGBT people with them, imposing them over diverse indigenous traditions where same-sex activity and gender diversity did not always carry the same social or religious taboo.²⁶

In many cases the implementation of the death penalty for homosexuality takes its **roots in Section 377 of the British Criminal Code** imposed during the 19th Century and its colonisation of large parts of the world. Inspired by the 1533 Buggery Act introduced by Henry VIII that outlawed homosexuality in England and imposed the death penalty for homosexuality between men, it was reportedly aimed to protect soldiers and colonial administrators from “corruption” out of a fear that these men sent far from home (and their wives) would turn to homosexuality.²⁷ It took nearly 300 years for the Buggery Act 1533, to be replaced by the Offences Against the Person Act 1828. The new Act narrowed the offence to focus solely on same-sex sexual activity between men, which remained punishable by death. It was in force until the Offences Against the Person Act 1861, which replaced the death penalty for “buggery”, with life imprisonment or hard labour “for a term not less than ten years”. The last two men to be executed for same-sex acts in England, James Pratt and John Smith, were executed by hanging on 27 November 1835.²⁸

Other countries colonised by Britain and its legal system maintained capital punishment for homosexual sexual activity for some time afterwards. For instance, such provisions were maintained in Australia until 1861²⁹, and in the United States of America until 1873 in South Carolina State.³⁰

In addition, it is worth noting that, unrelated to such legal provisions, during the period of Nazi Germany from 1933 to 1945, homosexual people were persecuted with thousands being imprisoned in concentration camps (including in extermination camps). It is estimated that between 5,000 and 15,000 were sent to concentration camps, with an approximate death rate of 60%.³¹

²⁶ Human Rights Dignity Trust, *A History of Criminalisation*, available at <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>.

²⁷ Enze Han and Joseph O'Mahoney, *British Colonialism and the Criminalization of Homosexuality*, Routledge Focus, 2018.

²⁸ Human Rights Dignity Trust, *A History of Criminalisation*, op. cit.

²⁹ Carbery, Graham (2010), “Towards Homosexual Equality in Australian Criminal Law: A Brief History”, (2nd ed.), Australian Lesbian and Gay Archives Inc.

³⁰ Crompton, Louis (1976), “Homosexuals and the Death Penalty in Colonial America”, *Journal of Homosexuality*, 1 (3): 277–293.

³¹ Giles, Geoffrey J (2001), *Social Outsiders in Nazi Germany*, Princeton, New Jersey: Princeton University Press, p.240.

As mentioned above, while Britain and most of its colonies abolished such crimes years ago, dozens of countries still perpetuate this infamous law.

Sharia law continues to criminalise LGBTQIA+ people, imposing various corporal punishments, including the death penalty. **Not all countries applying Sharia law apply the death penalty for homosexuality.** For instance, in Morocco and Algeria, where Sharia is applicable only to Muslims (not non-Muslims) and plays a role only in personal status issues (such as marriage, divorce, inheritance, and child custody).

In recent years, two countries have abolished the death penalty for same-sex sexual conduct: Liberia in 2012 and Sudan in 2020. In the case of Sudan, activists and researchers interviewed highlighted that the change was part of a package of democratic reforms pushed by western countries rather than based on grassroots advocacy, and activists were not consulted. Although it represents a major victory, it was not achieved through combating discrimination in the political class or the general population, meaning that it risks being overturned at any time.

Finally, all Penal Codes in these 11 countries provide for the death penalty for consensual same-sex sexual conduct between men. **Women usually receive lower sentences, although under Sharia law they can receive a death sentence if they are convicted of the same offence four times.**



WHAT DOES INTERNATIONAL LAW SAY ABOUT APPLYING THE DEATH PENALTY TO LGBTQIA+ PEOPLE?

The right to life is a fundamental human right. The 1948 Universal Declaration on Human Rights, the 1966 International Covenant on Civil and Political Rights, and the Yogyakarta Principles +10 prohibit arbitrary deprivation of life.

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR OP2) is specifically dedicated to the abolition of the death penalty. Under article 1, States Parties undertake not to execute anyone within their jurisdiction and to take all necessary measures to abolish the death penalty.³² Additionally, under Article 6 of the ICCPR, states that do impose the death penalty must limit its application to only the most serious crimes and cannot impose it on persons under 18 years of age or on pregnant women.³³ As the UN Human Rights Committee stressed in General Comment 6, the death penalty must be a truly exceptional measure of punishment.³⁴ Given the UN's stance that same-sex sexual relations should not be criminalised at all,³⁵ such acts cannot be considered among the "most serious crimes."

In 2017, the UN Human Rights Council passed a resolution³⁶ condemning the imposition of the death penalty for consensual same-sex sexual conduct. The resolution urged member states that have not yet abolished the death penalty to ensure that it is "not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law".³⁷

CASE LAW ON CRIMINALISATION OF CONSENSUAL SAME-SEX CONDUCT

In 1981, the **European Court of Human Rights (ECtHR)** was the first court to declare laws criminalising consensual same-sex acts between adults incompatible with international law. In the case of *Dudgeon v. United Kingdom*, the ECtHR ruled that the existence of these

laws violated the **right to privacy**.³⁸ This case served as a precedent for subsequent cases.³⁹ In 1988, in *Norris v. Ireland*, the Court found that although there was no record of the actual enforcement of the law, its very existence was dangerous and violated the right to privacy.⁴⁰

In 1994, the **UN Human Rights Committee's** decision in *Toonen v. Australia* led to the repeal of "sodomy" laws in a sub-national jurisdiction in Australia (Tasmania) on the basis that such legislation was incompatible with the **right to privacy** and the **right to equality before the law**.⁴¹ Following the lead of the ECtHR, the Committee declared it was irrelevant whether the laws are enforced in practice or not, as their very existence is a continuing and direct interference with the privacy of individuals.⁴²

In 2020, Inter-American Commission on Human Rights (IACHR) in the case of *Gareth Henry and Simone Carline Edwards v. Jamaica* emphasised that such laws represent a violation of the right to privacy⁴³ as well as the **principle of equality and non-discrimination**.

On 23 March 2022, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) ruled that the criminalisation of same-sex intimacy between women is a **human rights violation**.⁴⁴

These cases have contributed to building a solid body of case law on the criminalisation of same-sex sexual conduct. As yet, however, there have not been cases on the issue of the application of the death penalty to such conduct.

32 "1. No one within the jurisdiction of a State Party to the present Protocol shall be executed. 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction."

33 "1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life; 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court; 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide; 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases; 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women; 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

34 UN Human Rights Committee, General Comment No. 6, 30 April 1982, HRI/GEN/1/Rev.1 at 6, para. 7.

35 See for example, UN High Commissioner for Refugees, UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008, para. II.B.i.19, available at <http://www.refworld.org/pdfid/48abd5660.pdf> (last visited 17 November 2017).

36 UN HRC, Resolution on the question of the death penalty, A/HRC/36/L.6, 22 September 2017, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/276/68/PDF/G1727668.pdf?OpenElement> (19 October 2022).

37 See also ILGA-Asia et al., "Abolish the death penalty and halt its discriminatory use to punish same-sex sexual conduct", 17 May 2022, op. cit.

38 European Court of Human Rights, *Dudgeon v. United Kingdom* (Judgment No. 7525/76), 22 October 1981, para. 41, available at <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22695350%22%5D,%22itemid%22:%5B%22001-57473%22%5D%7D> (21 March 2022). ECHR Article 8, Right to respect for private and family life: "1. Everyone has the right to respect for his private and family life, his home and his correspondence; 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

39 See ILGA-World, *Our Identities under Arrest*, op. cit., p. 29.

40 European Court of Human Rights, *Norris v. Ireland* (Judgment No. 10581/83), 26 October 1988, para. 33, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57547%22%7D%7D> (21 March 2022).

41 Human Rights Committee, Communication No. 488/1992, *Toonen v. Australia*, CCPR/C/50/D/488/1992, 31 March 1994, paras 8.1 and 8.2, available at <https://juris.ohchr.org/Search/Details/702> (21 March 2022).

42 Ibid., para. 8.2.

43 Inter-American Commission on Human Rights, *Gareth Henry and Simone Carline Edwards v. Jamaica*, Merits Report, (OEA/Ser.L/V/II.173), 31 December 2020, para. 85, available at http://www.oas.org/es/cidh/decisiones/2020/JM_13637_ES.PDF (21 March 2022).

44 CEDAW Committee, *Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 134/2018, Rosanna Flamer-Caldera v. Sri Lanka*, CEDAW/C/81/D/134/2018, 23 March 2022, available at <https://www.humandignitytrust.org/wp-content/uploads/resources/CEDAW-C-81-D-134-2018-English-clean-copy.pdf>.



HOW MANY LGBTQIA+ PEOPLE ARE CURRENTLY ON DEATH ROW BECAUSE OF THEIR SEXUALITY?

We do not know!

Globally, there is no record of the number of people sentenced to death or executed for homosexuality.

The ILGA-World research team in their 2021 report *Our identities are under arrest*, highlighted several problems when collecting data on this topic, including the non-existence of police and/or judicial records and issues with media reporting. The report states that “police and other authorities in several countries have a propensity for keeping many cases off the books [...] resulting in... a sizeable number of cases that will never get officially recorded”. For instance, Saudi Arabia has no public records of executions carried out. It is therefore impossible to know whether individuals have been executed for same-sex sexual conduct or other crimes.

In addition to technical difficulties in gathering data, there are safety concerns. As mentioned in interview with an activist working on the situation in Iran who asked to remain anonymous for safety reasons:

“Numbers do not matter. What matters is that the very existence of these laws is putting LGBTIQ people in these countries at risk. Not at risk of execution, but to be discriminated against, to be beaten, and even killed by other citizens and/or police authorities.”

Finally, death sentences for same-sex sexual conduct may be hidden behind other crimes. For instance, in Iran, there are cases of individuals sentenced to death for rape in which the sentence is largely motivated by the accused’s sexual orientation.



WHAT ARE THE MAIN RISKS FOR LGBTQIA+ PEOPLE FACING THE DEATH PENALTY?⁴⁵

RISK OF EXECUTION

The biggest risk to LGBTQIA+ people is not the death penalty but criminalisation more generally. Legal systems that discriminate against LGBTQIA+ people increase their vulnerability and increase the risk that they may suffer extra-judicial discrimination, violence or death.

DENIAL OF DUE PROCESS

In states that impose the death penalty for SOGI, or criminalize certain expressions of SOGI, trials do not respect due process and LGBTQIA+ persons rarely have access to a proper defence. Many LGBTQIA+ detainees do not have access to legal aid and therefore cannot defend themselves adequately. In too many jurisdictions that criminalize LGBTQIA+ identity, LGBTQIA+ persons are deprived of their human rights.

RISKS IN DETENTION

Specific issues arise when LGBTQIA+ persons are detained. Whether LGBTQIA+ people are on death row because of their SOGI status or for other reasons, LGBTQIA+ detainees are particularly at risk of violence and may be killed as a result of official negligence, or intentionally, because of who they are.

Trans and intersex people also face particular risks if they do not receive medication they need. Some states do not make such medication available.

⁴⁵ ECPM, Brussels 2019, Proceedings, “The death penalty and LGBTI persons” available at <http://bruxelles2019.ecpm.org/lgbti/> (19 October 2022).



IS THE DEATH PENALTY FOR LGBTQIA+ PEOPLE AN ISSUE ADDRESSED BY THE UNITED NATIONS?

All 11 countries imposing the death penalty for consensual same-sex sexual conduct are among the 193 UN member states. The UN General Assembly regularly reiterates its call to states that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it. The most recent call was issued in a resolution adopted in December 2020, urging States to ensure that the “death penalty is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law”.

The UN Human Rights Council (UN HRC), together with the UN Treaty Bodies and Special Procedures have affirmed that the death penalty must never be imposed as a sanction for consensual same-sex relations. A resolution adopted in 2017 by the 47-member UN HRC on “the question of the death penalty” emphasises the disproportionate impact of death penalty on different groups, its **discriminatory use based on gender or sexual orientation**, and in particular the use of the death penalty for adultery, apostasy, blasphemy or **consensual same-sex relations**.

“It is unconscionable to think that there are hundreds of millions of people living in States where somebody may be executed simply because of whom they love” said Renato Sabbadini, Executive Director of The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). “This is a monumental moment where the international community has publicly highlighted that these horrific laws simply must end.”⁴⁶

Interestingly, when this resolution was adopted by the UN HRC, 3 of the 11 countries that retain the death penalty for homosexuality (Nigeria, Qatar, UAE) were members of the Council. They voted against the resolution.

Additionally, in 2007, the UN Human Rights Committee which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), stated that the imposition of the death penalty for offences which should not be criminalised, such as same-sex relations, is incompatible with article 6 of the Covenant on the right to life.⁴⁷

In 2018, more than 10 years later, the UN Human Rights Committee issued General Comment (GC) 36 on article 6 of the International Covenant on Civil and Political Rights on the right to life, in which it highlights that “the term ‘the most serious crimes’ must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing. Crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty.”⁴⁸

⁴⁶ ILGA-World, “UN resolution condemns death penalty for same-sex relations”, 2 October 2017, available at <https://ilga.org/un-resolution-death-penalty-same-sex-relations> (21 March 2022).

⁴⁷ UN Human Rights Committee, (90th sess.: 2007: Geneva), *Concluding observations of the Human Rights Committee: The Sudan*, 29 August 2007, CCPR/C/SDN/CO/3, available at <https://digitallibrary.un.org/record/606085?ln=en> (14 September 2022).

⁴⁸ UN Human Rights Committee, (2018: Geneva), *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, CCPR/C/GC/36, available at https://tbineternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf (14 September 2022).



DO REGIONAL HUMAN RIGHTS MECHANISMS HAVE A ROLE?

Among the 11 countries that retain the death penalty for homosexuality, 4 are in Asia, 4 in the Arabic peninsula and 3 are in Africa. All 3 regions have regional and/or subregional human rights mechanisms.

AFRICAN COMMISSION ON HUMAN AND PEOPLE’S RIGHTS

In 2014, for the first time, the African Commission adopted Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.

The resolution urged states “to end all acts of violence and abuse, whether committed by state or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.”⁴⁹

ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

ASEAN is the only Asian regional mechanism with a Human Rights Charter and Commission. While the Philippines and Cambodia are the only ASEAN member states to have abolished capital punishment in law, three other countries—Laos, Myanmar, and Brunei Darussalam—are considered abolitionist in practice, having not executed anyone in the past 25 years. However, the five remaining countries (Indonesia, Malaysia, Singapore, Thailand, and Vietnam) retain capital punishment.⁵⁰ In this context, where the founding countries of the subregional mechanism are against abolition of the death penalty, the issue of the capital punishment for same-sex consensual sexual act has not been addressed by this mechanism.

LEAGUE OF ARAB STATES

The League of Arab States adopted the Arab Charter on Human Rights in 2004.⁵¹ Article 6 of the Charter provides that “Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgement rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.” The Charter also refers to international law, including the ICCPR (and therefore UN Human Rights Committee GC No 36).

⁴⁹ African Commission on Human and People’s Rights, *Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, ACHPR/Res.275(LV)2014, available at <https://www.achpr.org/sessions/resolutions?id=322> (14 September 2022).

⁵⁰ Asian Parliamentarians for Human Rights, Southeast Asian MPs alarmed by planned executions of four Myanmar political prisoners, 6 June 2022, available at <https://aseanmp.org/tag/death-penalty/#:~:text=While%20the%20Philippines%20and%20Cambodia,in%20the%20past%2025%20years>, (14 September 2022).

⁵¹ United Nations, *League of Arab Nations, Arab Human Rights Charter*, 2004, available at <https://digitallibrary.un.org/record/551368?ln=fr> (14 September 2022).



WHAT ABOUT OTHER COUNTRIES CRIMINALISING SAME-SEX RELATIONSHIPS AND CROSS-DRESSING?



<https://www.humandignitytrust.org/>, 11 September 2022.

Two Caribbean States, Antigua and Barbuda and St Kitts and Nevis decriminalised same-sex sexual conduct in July and August 2022 respectively, bringing down the number of UN Member States still criminalising consensual same-sex sexual activity to 69. Most of these are in Africa, the Middle East, Southeast Asia and the Caribbean. More information on criminalisation is available in ILGA's latest report "Our Identities under arrest" published in 2021.

Cf. ECPM, Map of *Countries criminalising consensual same-sex sexual conduct*, page 12-13.

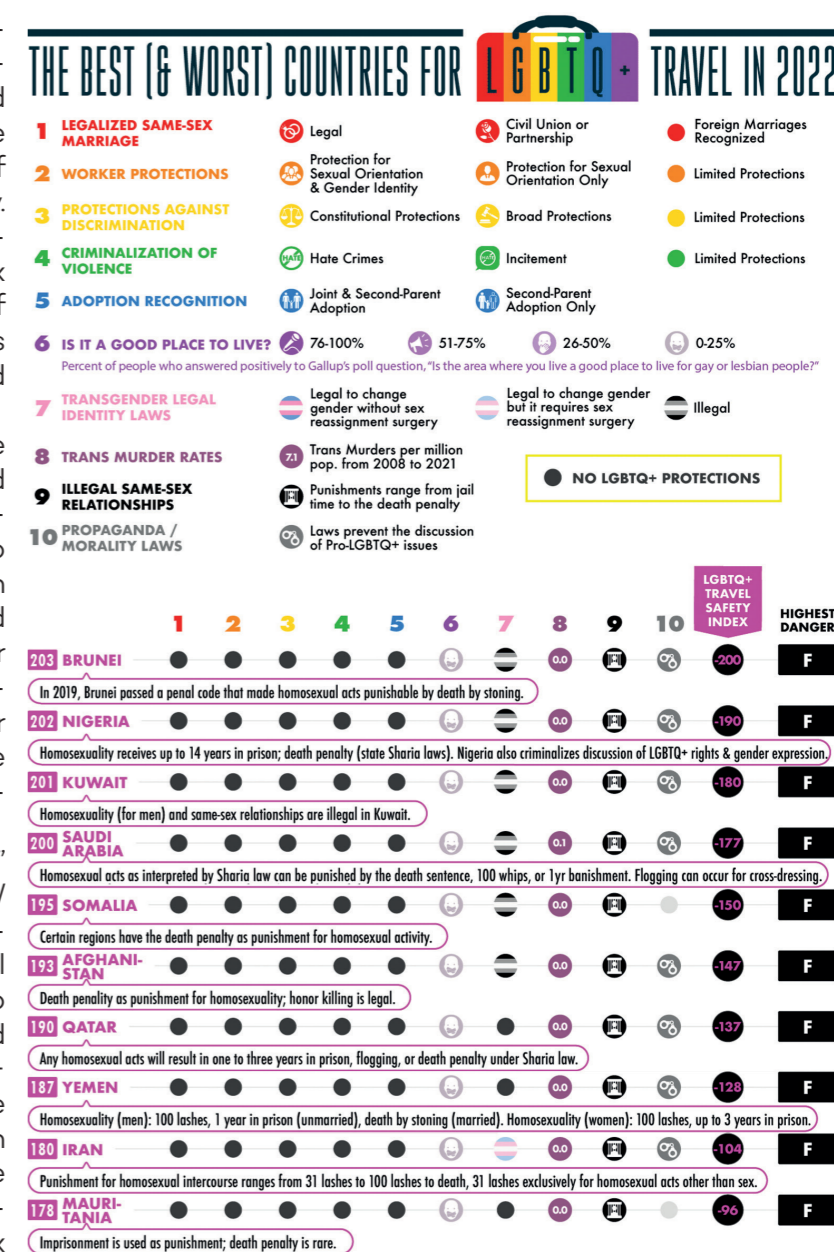


WHAT ARE THE RISKS FOR FOREIGN NATIONALS IN A STATE WHICH APPLIES THE DEATH PENALTY TO LGBTQIA+ PEOPLE?

In accordance with the principle of sovereignty under international law, national laws (and international law ratified by the state) apply within the borders of a state regardless of nationality. Thus, any foreign national engaging in a consensual same-sex sexual act with an adult in one of the 11 above-mentioned states can be convicted and sentenced to death for homosexuality.

In practice, almost all the above-mentioned states would rather avoid a diplomatic incident and would be expected to avoid sentencing foreigners on such grounds. Travelers should refer to guidance issued by their own government when traveling to a foreign country, and/or contact local organisations to be better informed on the local context and laws.

In 2022, an "LGBT Travel Index" was released by two journalists/influencers, which has been endorsed by many international publications. The index aims to inform travellers of the legal and practical context for LGBTQIA+ individuals in each country.⁵² The 11 states that retain the death penalty for homosexuality are among the worst ranked countries (see extracts from the index below).



⁵² Asher & Lyric, The 203 Worst (& Safest) Countries for LGBTQIA+ Travel in 2022, <https://www.asherfergusson.com/lgbtq-travel-safety/>.

10 QUESTIONS ON THE DEATH PENALTY FOR LGBTQIA+ PEOPLE



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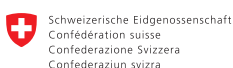
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