

[1] ANTI-LGBTQIA+ DISCRIMINATION & THE DEATH PENALTY

Throughout the judicial process

LGBTQIA+ people face arrest, imprisonment and community supervision at higher rates than non-LGBTQIA+ people. For example, while LGBTQIA+ youth represent just 9.5% of the general population in the United States, they account for 20% of all youth in the juvenile justice system.¹

On death row

Aside from the discriminatory use of the death penalty for consensual same-sex sexual acts, hereafter referred to as CSSSA, LGBTQIA+ people are particularly vulnerable to abuse and mistreatment.²

Intersectional discrimination

LGBTQIA+ people experience compounded discrimination due to other axes of identity. For example, Black trans people experience higher lifetime rates of incarceration than other trans people.³

[2] DEATH PENALTY FOR CONSENSUAL SAME-SEX SEXUAL ACTS (CSSSA)

Private CSSSA are punishable by death in **12 countries**. The majority of these countries prohibit these acts only between men and **six** of them actually implement the death penalty.^{4,5}

Afghanistan

Under Sharia law, death is the maximum penalty for CSSSA between men and between women. Since the Taliban came to power, several gay men have been executed by stoning.

Brunei

Liwat or CSSSA between men can be punishable by death, but Brunei's moratorium on the death penalty has been extended to include this offense.

Iran

The "active party" of *lawat* (sodomy) or *tafkhez* (intercrual coitus) can be punished by death if he is married or not Muslim when the "passive party" is

Muslim. Those convicted of *mosahegheh* (CSSSA between women) for the fourth time can also be liable to the death penalty.

Mauritania

Muslim men who engage in CSSSA with a non-Muslim man can be put to death. However, a de facto moratorium has been in place for more than 30 years.

Nigeria

12 states in Northern Nigeria prohibit CSSSA between men and between women. There is no public record of executions for this offense.

Pakistan

Zina provisions prohibit all sexual relations outside marriage. As same sex marriage is not recognized, this essentially covers CSSSA. There have been no executions on this basis for the past few years.

Qatar

Sharia courts can sentence Muslim men engaging in CSSSA to death. However, public records show that this hasn't been done in recent years.

Saudi Arabia

Married men and men of different religions engaging in CSSSA can be liable to the death penalty. However, it is not clear if the death penalty is applied for this offense, and evidence on prosecutions is difficult to gather.

Somalia

"Carnal intercourse between persons of the same sex" is prohibited for men and women. There is no record of state executions for this offense, but local non-state actors have been executing men for CSSSA.

UAE

Sharia law and criminal code provisions criminalize CSSSA. However, the death penalty has never been applied.

Uganda

Under the new Anti-Homosexuality Act (2023), "aggravated homosexuality" is punishable by death.

¹ Jones, A. (2021). Visualizing the unequal treatment of LGBTQ people in the criminal justice system. *Prison Policy Initiative*.

² World Coalition Against the Death Penalty. (2023). Making gender discrimination in capital punishment visible. <https://worldcoalition.org/campaign/making-gender-discrimination-in-capital-punishment-visible/>

³ Grant, J. M., Motter, L. A., & Tanis, J. (2011). Injustice at every turn: A report of the national transgender discrimination survey.

⁴ Human Dignity Trust. (2023). Map of Countries that Criminalise LGBT People. <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>

⁵ ECPM. (2022). 10 Questions on the death penalty for LGBTQIA+ : A report on the application of the death penalty for consensual same-sex conducts.

Yemen

Married men or women engaging in “sodomy” can be put to death by stoning, but there haven’t been executions for this offense in more than a decade.

[3] TRANSGENDER PEOPLE & THE DEATH PENALTY

Global data on trans people sentenced to death is largely unavailable. Self-identification is not possible in many jurisdictions. However, evidence in the US suggests that trans women are overrepresented on death row. They represent 8% of women on death row,⁶ while only less than 1% of the general population is trans.⁷

[4] CASE STUDY: SAREH & ELHAM

This is the summary of the most recent high-profile case of LGBTQIA+ people sentenced to death.

In October 2021, Iranian authorities arrested Zahra Sedighi-Hamadani, an LGBTQIA+ rights activist also known as Sareh while she was trying to cross the border to Turkey. She was accused of “promoting homosexuality.” A few days later, her friend Elham Chubdar was also charged with “encouraging corruption and prostitution.”

In September 2022, they were both sentenced to death for “corruption on Earth,” using evidence gained through forced confessions and other acts of torture. After intense public outrage and international pressure, their death sentences were overturned in December 2022. While they were also released on bail in March 2023, they are still set to face their fate in court.⁸

Take action for Sareh and Elham on action.allout.org.

[5] LGBTQIA+ PEOPLE, TORTURE AND THE DEATH PENALTY

SEXUAL ABUSE. LGBTQIA+ are particularly vulnerable to physical and sexual abuse in prisons, which may amount to torture and cruel, inhumane or degrading treatment (CIDT).⁹ Trans people can be placed in prisons that do not match their gender, exposing them to rape and other acts of sexual violence.¹⁰ Trans and intersex people are also

subjected to invasive strip and search practices to determine their sex.¹¹

ACCESS TO CARE. Failing to consider the specific needs of LGBTQIA+ people, including sexual and reproductive health care, gender-affirming care, HIV care, mental health care and protection from gender-based violence, can turn detention into torture.¹²

DETENTION CONDITIONS. Trans people are discriminatorily placed in solitary confinement supposedly to protect them from violence.¹³ Long-term solitary confinement has been condemned by United Nations experts as torture.¹⁴

[6] INTERNATIONAL STANDARDS

UN Human Rights Committee

Toonen v. Australia: The criminalization of CSSSA violates the right to privacy and the right to equality before the law.

General Comment No. 36: “Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including...homosexuality...”

UN Human Rights Council

Resolution on the question of the death penalty: “Condemning the imposition of the death penalty as a sanction for specific forms of conduct, such as...consensual same-sex relations...”

UN Committee on the Elimination of Discrimination Against Women

Flamer-Caldera v Sri Lanka: The criminalization of CSSSA between women violates their right to non-discrimination.

⁶ The Cornell Center on Death Penalty Worldwide (2022). Database. <https://deathpenaltyworldwide.org/database>.
⁷ Flores, A. R., Herman, J., Gates, G. J., & Brown, T. N. (2016). *How many adults identify as transgender in the United States?* (Vol. 13). Los Angeles, CA: Williams Institute.
⁸ All Out. (2023). Iran: Save Sareh and Elham’s Lives. <https://action.allout.org/en/m/66561cda/>
⁹ World Coalition Against the Death Penalty. (2022). Joint statement on the death penalty and human rights of women and LGBTQIA+ individuals. <https://worldcoalition.org/2022/10/10/world-day-20th-anniversary-joint-statement/>
¹⁰ World Coalition Against the Death Penalty, FIACAT, The Advocates for Human Rights & Cornell Center on the Death Penalty Worldwide. (2021). *Primer on transgender individuals facing the death penalty.*

https://worldcoalition.org/document/primer-on-transgender-individuals-facing-the-death-penalty/trans-rights-and-death-penalty-factsheet_v1-0-2/
¹¹ Milton, J. Intersex woman suffers ‘cruel and degrading treatment’ in men’s prison despite court pleas (July 2022), available at: <https://www.thepinknews.com/2022/07/05/intersex-australia-yatala-labor-prison/>
¹² World Coalition Against the Death Penalty. (2022). Joint statement on the death penalty and human rights of women and LGBTQIA+ individuals.
¹³ McCauley, E., Ekstrand, K., Desta, B., Bouvier, B., Brockmann, B., & Brinkley-Rubinstein, L. (2018). Exploring healthcare experiences for incarcerated individuals who identify as transgender in a southern jail. *Transgender health*, 3(1), 34-41.
¹⁴ Méndez, J. (2011). Solitary confinement should be banned in most cases, UN expert says. *UN News*, 18.

[7] RECOMMENDATIONS

- (1) Pending full abolition, enact a de jure moratorium** on executions with a view to abolishing the death penalty and, in the meantime, commute all death sentences.
- (2) Decriminalize** consensual same-sex sexual activity between adults and gender diversity and repeal all other discriminatory laws against LGBTQIA+ people.
- (3) Commute the sentences** of all individuals convicted of these crimes, release any individual detained under these laws, and instruct prosecutors and police to cease prosecutions and arrests on these charges.
- (4) Ensure that the specific needs** of LGBTQIA+ prisoners are met and that they are protected from all forms of abuse, harassment and violence.
- (5) Institute prison and judicial policies** to recognize and affirm the gender identity of trans prisoners and prevent and investigate discriminatory treatment, torture and CIDT.

[8] THINGS YOU CAN DO

- (1) Advocate against discriminatory laws.**
- (2) Visit and maintain contact with LGBTQIA+ people on death row and/or their families.**
- (3) Raise awareness about the criminalization of LGBTQIA+ people and their conditions in prison.**
- (4) Mainstream gender in abolitionist actions.**
- (5) Join or support LGBTQIA+ and abolitionist groups!**

[9] RESOURCES

- [State-Sanctioned Killing of Sexual Minorities \(Monash University\)](#)
- [ECPM Resources: Love is Not a Crime](#)
- [Primer on transgender individuals facing the death penalty \(World Coalition Against the Death Penalty\)](#)
- [State-Enabled Killing of Same-Sex-Attracted People: A Legal Pluralist Account \(Cambridge University\)](#)
- [Briefing Note : Abolish the death penalty and halt its arbitrary use to punish LGBTIQ persons \(ILGA Asia\)](#)
- [Defending Women and Transgender Persons Facing Extreme Sentences: A Practical Guide \(Cornell Center on the Death Penalty Worldwide\)](#)