MONASH University

STATE-SANCTIONED KILLING OF SEXUAL MINORITIES

LOOKING BEYOND THE DEATH PENALTY



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In partnership between

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Except where otherwise noted, all photography featured in this report is by Robin Hammond, founder of Witness Change, from *Where Love Is Illegal*, a Witness Change project.

Cover image: 'Untitled', *There Are No Homosexuals In Iran*, 2014-2016, Laurence Rasti.

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‘I have the right to live.’

Ibrahim, Nigeria

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PREFACE

By Capital Punishment Justice Project

In 2019, then President of Capital Punishment Justice Project (formerly Reprieve Australia), Julian McMahon AC SC, devised an ambitious idea for further research in the area of state-sanctioned killing of sexual minorities. The purpose of this research was to uncover the true extent to which the death penalty and state-sanctioned killings are being perpetrated against sexual minorities, thereby, empowering further advocacy and more focused policy in this area.

Just as with many continuing rights abuses around the globe, there is an unscientific sentiment that the march of human progress has eliminated some of the most egregious and intrusive acts of states that interfere with the lives, dignity, diversity and relationships of some. Yet we know that despite the evolution of many domestic legal systems, and the international legal framework, sexual minorities continue to face the most extreme threat of all in some places, the threat to their lives.

This research is important because it highlights the need for ongoing advocacy and support for sexual minorities as a necessary element of any abolitionist work and any work to challenge state-sanctioned killings. As an abolitionist organisation that develops legal and policy solutions to save lives, this report guides us to hone, further, our advocacy work, policy work and casework on sexual minorities, given their greater vulnerability in this context, just as we would give heightened attention to the state-sanctioned killing of other particularly at-risk groups.

CPJP is grateful to the Australian Government Department of Foreign Affairs and Trade (DFAT) for supporting this essential research aimed at combating discrimination at its sharpest end. CPJP was able to commission this report and launch it thanks to the Australian Government's grant under an ad hoc program to support research into the discrimination against minorities in the application of the death penalty. We anticipate that this report will be the first and vital step in developing advocacy strategies, policy solutions and case interventions to protect sexual minorities from execution and other forms of state-sanctioned killings.

CPJP would also like to thank Monash University for its ongoing collaboration and partnership, and its commitment to building and strengthening Eleos Justice and providing the institutional support to ensure that our joint initiative is a leading regional hub for evidenced-based research, teaching, and advocacy on the death penalty in Asia. Eleos Justice is already contributing significantly to CPJP's legal, policy, advocacy and case work and this report is an example of how our collaboration can produce an evidence-based piece of research that is used to inform and propel action to promote abolition of the death penalty.

The research will help open the conversation and create greater awareness concerning lawful excuses for homicides committed on the basis of an individual's sexual orientation, and that legal protections for sexual minorities require strengthening. It is CPJP's hope that we and our abolitionist partners, including the Australian Government, can devise strategies and policy to effect change in this area, by promoting that change in our relations with both abolitionist and retentionist states.

CPJP would also like to thank the authors of the report, Mai Sato and Christopher Alexander for their work to shed light on this topic. Mai Sato was the obvious candidate to commission for this unique study, having worked on projects on the death penalty in Japan, Malaysia, the Philippines, India, Kenya and Zimbabwe. Mai was ably supported in this ambitious task by the dedicated and thorough research of Christopher Alexander. In August 2020, Mai Sato became the inaugural director of CPJP's partner organisation, Eleos Justice, at Monash University. We are delighted that the report can now be launched, collaboratively, and the research used to promote our joint work. We look forward to the next chapter and to building upon the report to achieve change and save lives for those individuals who face the risk of death at the hands of the state for the private matter of their sexual orientation.

FOREWORD

By Victor Madrigal-Borloz
United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity

'All human beings are born free and equal in dignity and rights.' The Universal Declaration of Human Rights is unequivocal that lesbian, gay, bisexual, trans, and gender non-conforming persons enjoy the same rights as everyone else. Yet, across the world, many such people face flagrant violations of their human rights. They face discrimination in schools, workplaces, and hospitals; at home, they can be disowned by their families. In recognising that violence and discrimination based on sexual orientation and gender identity is both local and global, it requires strong national and international responses. In 2016, the United Nations Human Rights Council created a mandate for an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identify (IE SOGI). I am honoured to be the current mandate holder.

Access to information is key in any policy and advocacy work. However, in countries where same-sex sexual conduct is criminalised, lesbian, gay, bisexual, trans and gender non-conforming persons will rarely dare to report abuses. Fear of being outed, of being subjected to law enforcement processes, or of being subjected to judicial or extrajudicial killing forces many into silence. Information about the lived realities of lesbian, gay, bisexual, trans and gender non-conforming persons around the world is, at best, incomplete and fragmented. And, of course, states do not readily disclose their involvement in the killing of sexual minorities.

This report, written by Mai Sato and Christopher Alexander, is a valuable addition to the body of knowledge on violence perpetrated against actual or perceived sexual minorities. The report is unique in that it focuses on the *killing* of actual or perceived sexual minorities, in which *states* are directly or indirectly involved. Exposing the structural and cultural violence that sexual minorities are subjected to is important; however, by focusing on the visible, and the most extreme form of violence, this report reminds us that even today, lesbian, gay, bisexual, trans, and gender non-conforming persons are being deprived of one of our most fundamental rights—the right to life.

By examining the *state*-sanctioned killing of sexual minorities, the authors go beyond the handful of states that retain the death penalty for same-sex intimacy. This report shows that a rather larger number of states condone or are complicit in the killing of perceived or actual sexual minorities. Such people are being killed even in countries that do not impose the death penalty as well as in countries that do not criminalise same-sex sexual conduct at all.

This report is a significant contribution to the scholarly understanding of state crime, and violence towards minorities, as well as to public policy and advocacy at the regional and international levels. It also deserves attention for giving a voice to those who became victims of state-sanctioned killing based on their perceived or actual sexual orientation.

FOREWORD

By the Honourable Michael Kirby AC CMG*

'This is not a text solely about capital punishment. It is not a text only about the human rights of sexual minorities. It is a text that requires us all to meditate on how we can turn empirical analysis and principled reflection into action and reform.

POWERFUL FORCES

This report describes a number of powerful forces at work in the world. These forces include *Death* and the infliction of death as a punishment for crimes treated as especially repugnant and heinous. *Love*, that is part of the redeeming elements in the life of human beings in relation to one another. *Sex*, which is a remarkable driving force in human beings, celebrated by poets but feared by rulers and others because of the strength of its emotive forces. *Dignity*, which is an inherent feature of living creatures but especially of humans. For them, endowment with inherent dignity is declared to be a source of universal human rights. *Law*, both national and international, which has grown in power and influence to replace brute force and wealth in the organisation of nations and communities and in controlling human conduct and restraining violence and disorder. *Customs and religion*, that can play an important and continuing role in offering guidance for human life and inspiration for how to live life to the full. *Rationality*, that drawing on science, research and human inquisitiveness that, sometimes, encourages the modern generation to question old beliefs and to search for justice, peace, security, equality and mutual respect, according to new and ever-changing principles.

And *Violence*, which is often mobilised, dating back to historical times, to enforce scriptural rules and suggested laws of nature that can brook no exceptions and variations. It is when ancient instruction based on suggested religious imperatives comes into conflict with scientific research, love and respect for fellow human beings and the apparent demands of rationality that a serious interplay of potent forces presents our world with uncomfortable and difficult challenges.

This report offers guidance to the reader, and especially to human beings with power and influence over law and human society, to reconcile past norms with modern principles and knowledge. In this foreword, I wish to explore ways in which a report like this can contribute to the reconciliation of the powerful forces that struggle to prevail in our world. And how the lessons of this report and the research that it provides can be turned into persuasion, action and the triumph of positive forces that reflect the better angels in human nature.

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* Patron of the Capital Punishment Justice Project; Former Justice of the High Court of Australia (1996-2009); President of the International Commission of Jurists (1995-8) and Co-Chair of the International Bar Association Human Rights Institute (2017-21).

WHAT'S THE FOCUS?

The report has attempted to gather the provisions of legal codes and statutes in many countries, providing for the imposition of capital punishment on the forbidden conduct of LGB people. The enactment or proclamation of criminal laws to punish so-called "sodomy", "buggery" and other "unnatural crimes" with the sentence of death comprises both a political and religious cultural heritage. Nonetheless, the authors did not wish to overstate the reality of the role that capital punishment plays in the suppression of same-sex conduct or desire. In some, the provision of the death penalty in the formal criminal code or statute is not the problem. That problem arises from the availability to prosecutors of various offences punishable under the religious (Sharia) law rather than secular laws. Moreover, in still other countries, in response to protests against the imposition of the death penalty for consensual same-sex sexual conduct, the offences charged are dressed up to include references to other crimes (such as terrorism) or other elements (involvement of minors or the presence of other aggravating features, such as the marriage or religion of the 'victim').

Yet, when the gathered research was examined, there were still 11 countries in which same-sex sexual acts might carry the death penalty and at least 2 where it did so in practice. But to confine the full description of same-sex 'offences' that attract state sanctioned violence and the punishment of death by these formal criteria would seriously understate the ambit of the violence to which sexual minorities are constantly exposed.

The clearest instance of cases where penal statutes permit the infliction of death can be seen in those cases where the law affords a defence for the murder of a same-sex attracted person and where self-defence or provocation can be invoked successfully to escape punishment. Such a defence was invoked in a case before the High Court of Australia in which I participated early in my service there: *Green v The Queen* (1998) 191 CLR 334. When the prosecutor in that appeal questioned the legal justification of permitting such a defence for an "amorous" approach on the part of the dead victim the majority of the Court held that it was open to a jury to find that a gentle approach by the same-sex deceased was so utterly offensive as, arguably, to warrant violently stabbing an acquaintance to death. With one other judge, I dissented. Fortunately, every Australian State has since redefined that decision on the defences to homicide to make it clear that this view of the law is wrong.

WHAT CAN BE DONE?

The ultimate lesson of this report is that, to confine the problem of violence against sexual minorities to those who are actually executed on conviction of a capital offence, derived from the colonial law books or religious texts, would gravely underestimate the challenge that such violence presents to these minorities and to those who champion their fundamental human dignity and universal human rights.

The research conducted by the authors makes it abundantly clear that the hostility toward sexual minorities is not confined to adherents of Islam or to citizens of Islamic countries. As the authors point out, there are many nations, often actually or nominally Christian in religion, that might foster the hostility that denies those in sexual minorities the "dignity and rights" that is their birth right as the distinguished United Nations Independent Expert on Sexual Orientation Gender Identity mentions in his Foreword.

The Human Rights Commission of the United Nations and, more recently, the Human Rights Council, its Special Procedures, the work of the Independent Expert on SOGI and the decisions of regional courts and commissions may condemn those who inflict or condone violence and would humiliate these minorities. But what can be done to convert detailed findings and well-grounded advocacy in publications such as this into principled responses, political reform, community and professional education? What more can be done to advance the momentum of this international movement? Calling out the oppressors may itself stimulate and contribute to recalcitrant nations questioning their resistance to change. It may inspire dissident voices. It may encourage trans-national sharing of viewpoints and openness to reform. It may evoke calls for reform in civil society. It may give rise to new insights in religious institutions.

At various points in this report, the authors demonstrate the extent to which countries that formerly may have imposed the infliction of the death penalty on sexual minorities for their 'unspeakable crimes' are now gradually backing away from doing so. This is a virtue of transparent global dialogue. Data and information appeal to the human emotions of love, respect for human dignity, the embrace of rationality and the advance of scientific knowledge.

The ultimate value of this report is that it calls out the conduct of oppressive states and governments. It does so on a foundation of detailed and accurate analysis conducted with scrupulous fairness. It truthfully charts the dimensions of the challenge that sexual minorities face in our world. It describes the dimensions of the violence, the cruelty, irrationality and the unscientific character of what is happening both in the letter of the law and in practice. In doing this, it speaks up for humanity. It beckons its readers to a future time when the human dignity of sexual minorities will be respected, and their rights protected.

This will not happen overnight. But it will not happen at all if the wrongs that are happening are hidden under a blanket of silence and fear of retaliation.

In this way, the authors have rendered an admirable service to the struggle of humanity to attain universal human rights and to ensure the accountability of those who are in breach of those rights. Because they have contributed in these most useful ways to the human rights journey of humanity, I express thanks to the authors and praise for their report.



This image, and the image on the following page, were taken in a town which mostly leaves gay men to be, on the condition that they conceal their sexuality from the outside world. Tehran-born photographer Hoda Afshar was invited inside a traditional bathhouse to document their hidden lives.

(From *Behold*, a series by Hoda Afshar)



EXECUTIVE SUMMARY

Many readers will take for granted the acceptability of consensual sexual activity between persons of the same sex, and the total inappropriateness of the state interfering with—let alone prohibiting—such behaviour. It may come as a surprise, then, that around the world, numerous states are complicit in the most extreme response to sexual diversity: homicide.

This report examines the extent to which states sanction the killing of sexual minorities. We look beyond those countries that impose the death penalty for same-sex intimacy to the far greater number of countries in which state actors commission, condone, endorse and enable such killings. We argue that the state-sanctioned killing of sexual minorities is often perpetrated well beyond the boundaries of the law, and even in countries that do not criminalise such conduct.

Thirty years ago, consensual same-sex sexual acts between adults were criminalised in the majority of countries worldwide. Today (as of January 2021), 69 countries continue to do so (Appendix 1).[1] Punishments range from psychiatric treatment to fines, flogging and imprisonment, and in 11 countries, the death penalty (Human Dignity Trust, n.d.; Mendos et al., 2020).

An examination of death penalty practice between 2015 and 2020 found that:

- Two states—Iran and Saudi Arabia—actively execute persons convicted of having engaged in same-sex sexual acts. During 2015-2020, Iran hanged at least 6 men for *livat* (penetrative anal intercourse with men). In the same period, Saudi Arabia beheaded at least five men convicted of same-sex intercourse.
- Both Iran and Saudi Arabia distort the realities of these executions, either by presenting consensual same-sex acts as rape or by bundling same-sex offences with other serious crimes, in an attempt to mediate domestic and international condemnation.
- Four states—Brunei, Mauritania, Nigeria and Yemen—codify the death penalty for same-sex sexual acts, but are not believed to enforce these laws in practice.
- Depending on judicial interpretations of Sharia law, scope remains for same-sex sexual acts to be punishable by death in a further five states: Afghanistan, Pakistan, Qatar, Somalia and the United Arab Emirates.
- Despite Islam being the majority religion in each of these 11 countries, and many governments justifying their retention of the death penalty on Sharia precepts, there is no inevitable link between Islam and the killing of sexual minorities. Rather, the retention and imposition of the death penalty for same-sex sexual act is motivated by political agendas under the guise of religion. Of the 69 countries that criminalise consensual same-sex sexual acts, more than half are non-majority Muslim states. Accordingly, to attribute the criminalisation of same-sex sexual conduct to Islam *per se* is erroneous.

Iran remains the most prolific executor of sexual minorities. A closer examination of death penalty practice and state-sanctioned killing in Iran found that:

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[1] This figure includes Iraq and Egypt, which *de facto* criminalise consensual same-sex sexual acts (Mendos et al., 2020), but does not include Cook Islands (non-UN member state), Palestine (where consensual same-sex sexual acts are legal in the West Bank but remain illegal in Gaza), and Indonesia (where some provinces criminalise same-sex sexual acts). See Appendix 1 for the list of countries that criminalise consensual same-sex sexual acts.

- Since 2004, Iran has carried out at least 79 executions for same-sex sexual offences. This includes the executions of two children and six juvenile offenders.[2]
- In addition to the death penalty, Iran's honour killing laws and state-sponsored conversion practices make it complicit in numerous homicides motivated by the victim's sexual orientation.
- Historically, Iran has had a paradoxical relationship with same-sex desire and intimacy, fluctuating between acceptance and denunciation of such conduct. In the 20th century, the desire to 'modernise' underpinned Iran's official criminalisation of same-sex sexual acts, reflecting Western attitudes towards homosexuality at the time. Somewhat ironically, as Iran became increasingly hostile towards sexual 'deviancy', the West—from whom Iran had learnt to consolidate its homophobic attitudes in the form of statutory proscription—was becoming more accepting of homosexuality. The Iranian Revolution of 1979 further entrenched Iran's intolerance towards, and persecution and criminalisation of, same-sex intimacy.

Looking beyond the death penalty, the following forms of state-sanctioned killing of sexual minorities have been established during 2015–2020:

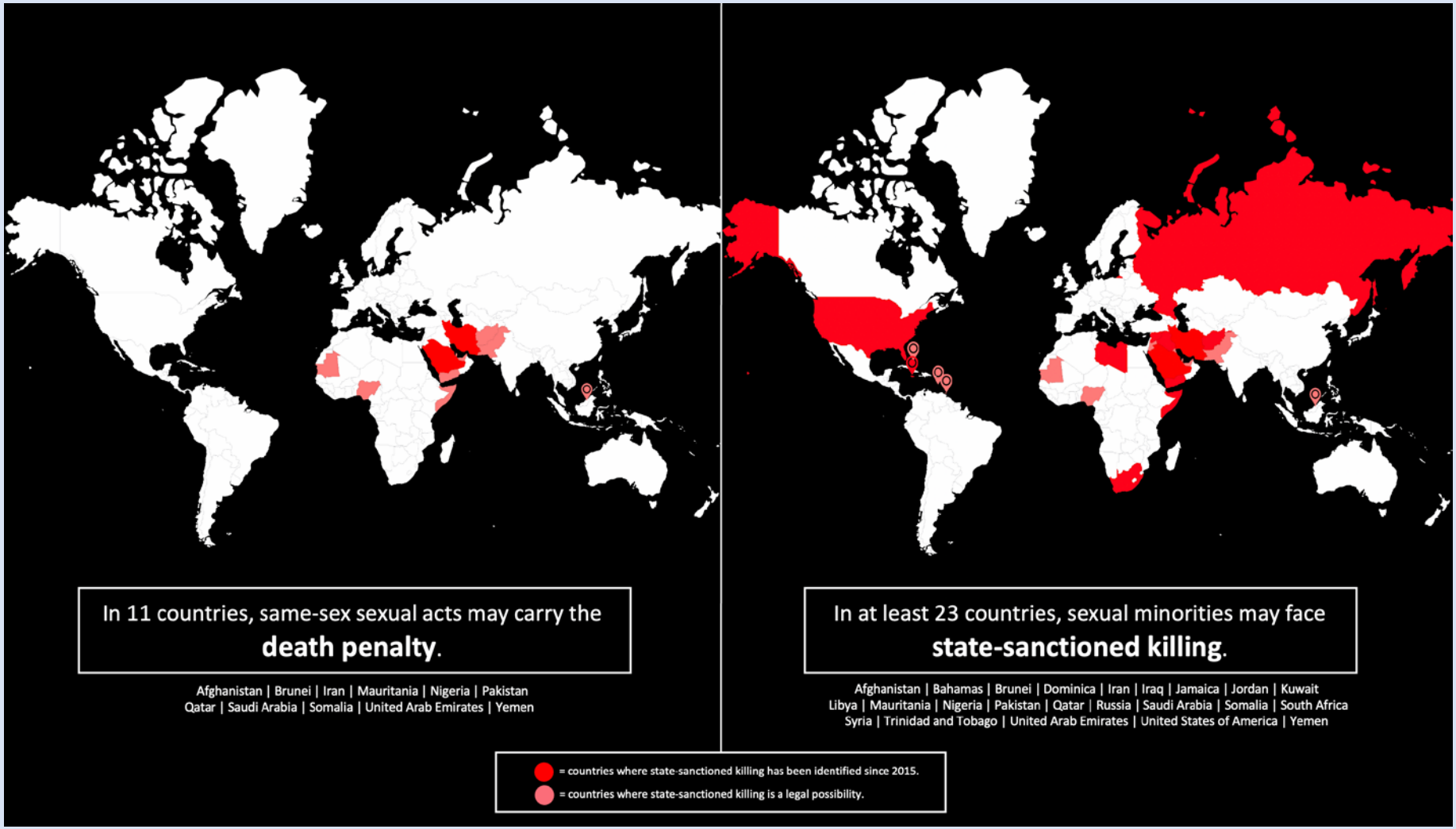
- Extrajudicial killings, including:
  - State-perpetrated 'gay purge' campaigns in the Chechen Republic, characterised by enforced disappearances, torture, deaths in custody, and impunity for 'honour killings'.
  - Executions by insurgent groups exercising effective governance in default of the state in Afghanistan, Iraq, Libya, Somalia, Syria, and Yemen.
- Lawful excuses for homicides committed on the basis of the victim's sexual orientation, reducing both culpability and sentences, including:
  - Legal provisions distinguishing 'honour killing' from murder. In both Iran and Jordan, killers have received reduced sentences—or been acquitted entirely— upon claiming that they killed their relative perceived to be gay or lesbian to preserve family honour.
  - The 'gay panic' defence. In 2018, a United States court sentenced a convicted killer to six-months' imprisonment after he claimed that he killed his victim—a gay man—in response to being sexually propositioned. On 1 December 2020, South Australia became the final Australian jurisdiction to abolish the gay panic defence.
  - The operation of judicial and juror biases. In 2019, a man convicted of killing a gay man was given a suspended sentence by a South African court, which ruled that he had 'reacted in a way that any other person in his situation would have'.
- Conversion therapies—administered, funded or otherwise endorsed by the state—that lead to death or pose significant risk to life. In Iran, at least three people have died from improper sex-reassignment surgeries, encouraged and funded by the state.

We identified a total of 11 countries in which same-sex sexual acts may carry the death penalty. Looking beyond the death penalty, we identified at least 23 countries in which sexual orientation—whether actual or perceived—may be the motivating factor in state-sanctioned killings. See Figure 1 for a visual representation of our findings.

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[2] 'Juvenile offenders' are persons convicted of crimes allegedly committed as children (below the age of 18) but executed as adults (18 and above).

Figure 1: Countries Where State-Sanctioned Killings of Sexual Minorities Take Place



SCOPE OF THE REPORT

STATE-SANCTIONED KILLING

This report focuses on the state-sanctioned killing of sexual minorities. In addition to states that impose the death penalty for consensual same-sex sexual acts, we examine:

- extrajudicial killings, by state actors, motivated by the actual or perceived sexual orientation of the victim;
- killings by non-state actors, motivated by the actual or perceived sexual orientation of the victim, which are subsequently excused by the state by way of lawful excuse (honour killing laws, or the 'gay panic defence') or prejudiced judicial decision-making; and
- deaths stemming from state-sponsored 'conversion practices'.

We do not consider:

- state-sanctioned violence against sexual minorities that does not result in death (e.g., the punishment of consensual same-sex sexual acts by non-lethal means);[3]
- the killing of sexual minorities by non-state actors, in instances divorced from the state (e.g., hate crimes perpetrated by civilians against sexual minorities); or
- state failure to prevent, condemn, or punish lethal violence against actual or perceived sexual minorities, even where compelled by law to do so (e.g., failure to ban life-threatening 'conversion practices', or to investigate homicides in custody committed by a fellow detainee).

Had we confined our investigation to an examination of death penalty practice, we would have concluded that very few states kill members of sexual minorities, and that the number of known executions is small (see Part 1 of this report). By expanding the remit of our investigation to 'state-*sanctioned* killing', we have identified a far greater number of killings, in a far greater number of states. This, in our view, provides a more accurate representation of the lethal violence—in which the state is complicit—to which sexual minorities are subjected.

SEXUAL MINORITIES

Sexual orientation and gender identity are often misunderstood and poorly addressed in both policy and advocacy as a result of being treated as a unified category: commonplace acronyms such as LGBT and SOGI are testament to this lexical grouping (McGill, 2014). Intersex status has also become increasingly included within these categories (e.g., LGBTI, SOGII). In the interests of accuracy, we have disaggregated these minorities, and focused on the state-sanctioned killing of persons on the basis of actual or perceived *sexual orientation*. Accordingly, the term 'sexual minorities' has been chosen to refer to any and all persons whose sexual activity and/or orientation is not, or is not perceived to be, exclusively heterosexual.

[3] For a detailed review of the law on the criminalisation of consensual same-sex sexual acts, see ILGA's annual report 'State-Sponsored Homophobia' available from: https://ilga.org/state-sponsored-homophobia-report (last accessed on 6 February 2021).

We use the term 'homophobia' to refer to prejudice against people exhibiting, or perceived to exhibit, same-sex desire, and is therefore intended to capture all instances where any person is discriminated against on such a basis.

Despite the above disclaimer, instances of violence against transgender and other gender-diverse persons have been included where such violence is akin to that endured by sexual minorities.

DATA: ACCESS, COMPLETENESS, & ACCURACY

This report is a review of publicly available sources: academic literature; reports published by NGOs, governments, and international organisations; news articles published between 2015 and 2020; and online databases on executions. Where necessary, we contacted the authors of these sources to verify the accuracy or reliability of findings.

Where gaps in the literature were identified, we reached out to persons working in the field. Of the 58 expert individuals and organisations we approached, 18 were willing to speak with us (see Appendix 2).[4] We believe that the overwhelming reluctance of many to participate in our research project is indicative of the sensitivity surrounding speaking up against the persecution of sexual minorities, particularly where such persecution is perpetrated by the state. The fact that the majority of persons with whom we spoke were situated outside, or had relocated from, the countries under investigation supports this position.

In criminological research, self-reported victimisation surveys serve to identify the volume of unreported and unrecorded crimes that are excluded from official police statistics (Hough and Maxfield, 2007). In our area of research, however, such statistics are wholly or largely unavailable: states choose not to record or publish them, victims cannot speak up because they have been killed, and families are often silenced by stigma against sexual 'deviancy'. For example, in Iran:

> Information about these particular cases that a member of the LGBT community is involved in is very hard to get, it's not published for different reasons. First of all, the Iranian Government doesn't want any publicity. Second of all, the families—because of the transphobic and homophobic culture—don't want to contact the media or human rights organisations. So when I say that I have not heard of such cases, it doesn't mean those cases didn't happen. (I-1)[5]

Getting what may seem basic information, such as the number of executions carried out for engaging in consensual same-sex sexual acts, was no easy task. States that have the capacity to record and monitor their own criminal justice system choose not to disclose the full realities of their death penalty practice. Unsurprisingly, statistics are even sparser for extrajudicial killings and other forms of covert state-sanctioned killings (I-2; I-9). Without publicly available official criminal justice 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 (I-2; I-10).

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[4] We received approval from the ANU Human Research Ethics Committee (protocol number: 2019/464) and the Monash University Human Research Ethics Committee (project ID: 26324).

[5] Each interviewee has been assigned a unique identification number (e.g., I-1, I-2), allowing quotes to be attributed to them with anonymity. The list of interviewees is available in Appendix 2.

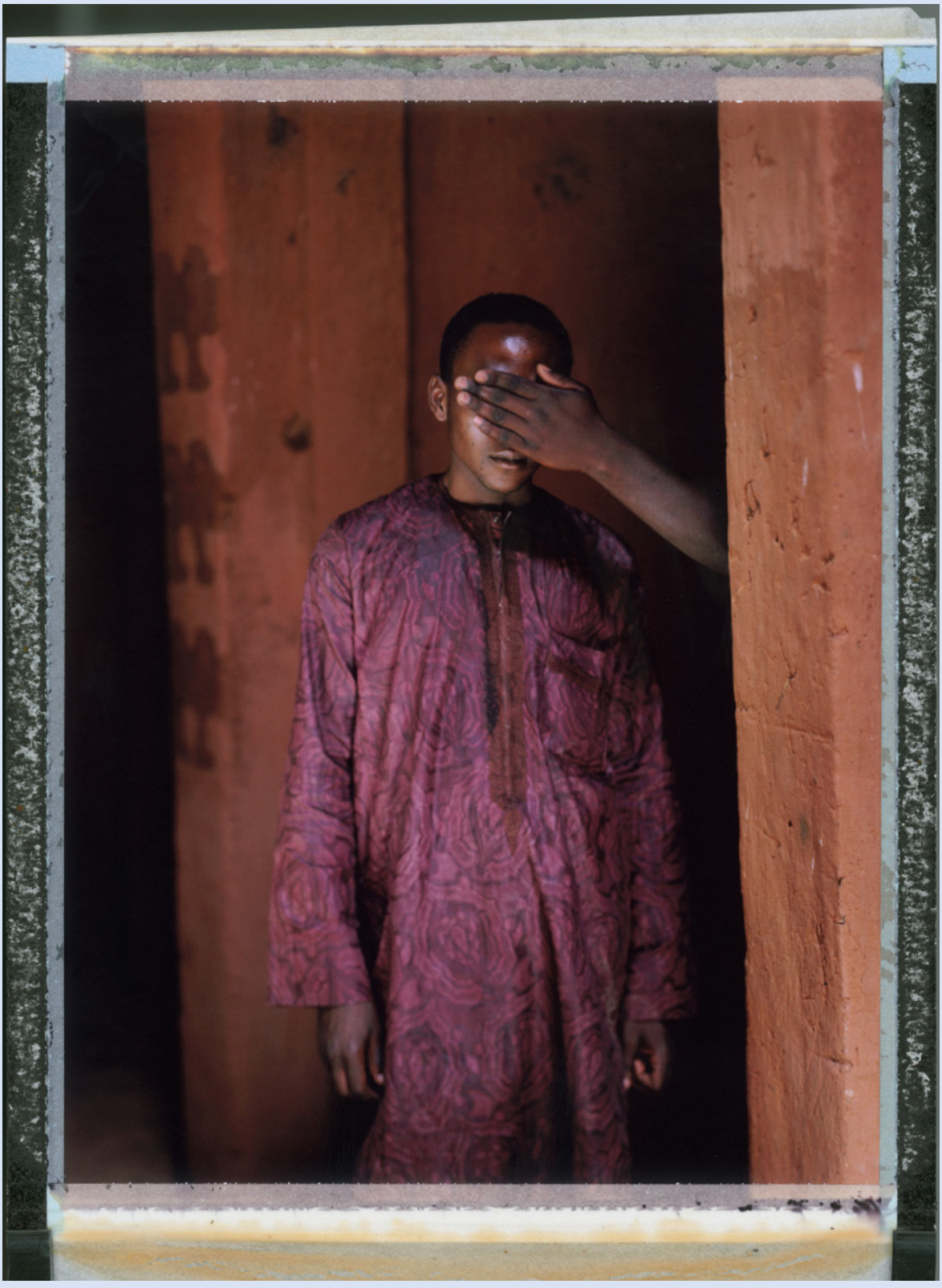
The accuracy and the completeness of the data gathered by local activists depend on the resources available to organisations and the willingness of locals activists to risk their security (Mendos et al., 2020:165–82).

On some topics, our interviewees disagreed, again bringing to light the fact that 'the lack of transparency . . . makes it very difficult to figure out what is happening' (I-2). For example, when we asked about the extent to which sex-reassignment surgeries were encouraged or coerced by the Iranian state as an alternative avenue to the death penalty for same-sex sexual acts (Carter, 2011), we received different responses. Some agreed that the state 'strongly encouraged' (I-2) sex-change surgeries and that the state 'force[s] doctors and psychologists to encourage those homosexuals to undergo sexual reassignment surgeries' (I-10). Others only knew about sex-change surgeries 'being publicised quite well' (I-4). One strongly disagreed with the assertion about state coercion and individuals being pressured into it:

> A gay man would not go cut himself, because [he] wants to avoid execution. No! No, you think people are silly? . . . I have no proof whatsoever of individual[s] being completely gay going under the surgery based on their own decisions, and there is no force [by the state]. But there was . . . encouragement, politically and also because of lack of knowledge as I said—they were confusing between two identities—to encourage them to do surgery because it was easy for the government to label you as man or woman. (I-11)

These hurdles lead us to believe that our findings are but the tip of the iceberg. The lack of data does not mean states are not involved in the killing of sexual minorities (I-1). While we have made efforts to triangulate the findings, this report is an illustrative, rather than exhaustive, account of the state-sanctioned killing of sexual minorities. To our knowledge, this is the first report that examines the killing of sexual minorities in this manner. Accordingly, our primary objective is to expose state complicity in homophobic homicide and rearticulate anti-death penalty discourse such that countries are not misguidedly deemed to be safe havens simply because they do not punish same-sex sexual acts by death.

This report is divided into two parts. Part 1 provides an overview of the countries that prescribe the death penalty and the extent to which these laws are enforced. It also examines the relationship between Islam and the death penalty for same-sex sexual conduct, followed by a case study on Iran. Part 2 looks beyond the death penalty to other forms of state-sanctioned killing of sexual minorities.



'I will never forgive you in my life for what you [did] to me in prison…
If only you had had the chance, you would have executed me.'

Gabriel, Nigeria

PART 1: THE DEATH PENALTY

SOURCES PRESCRIBING THE DEATH PENALTY

While the number of countries that retain the death penalty as a form of criminal punishment has been decreasingly steadily (Amnesty International, n.d.), a minority of states continue to execute prisoners. Indeed, the end of Donald Trump's United States presidency was marked by an unprecedented spree of federal executions (Death Penalty Information Center, 2021). Although the International Covenant on Civil and Political Rights permits the execution of persons convicted of crimes involving 'intentional killing', many abolitionists take the position that the death penalty is wrong under all circumstances.[6] When it comes to the execution of individuals for same-sex sexual conduct, the majority of governments that retain the death penalty concur with the abolitionists. International human rights law is also clear that imposing the death penalty for same sex sexual conduct is prohibited:

> 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. . . Under no circumstances can the death penalty ever be applied as a sanction against conduct the very criminalization of which violates the Covenant, including adultery, *homosexuality*, apostasy, establishing political opposition groups or offending a head of State. (United Nations Human Rights Committee, 2019b:35–36; emphasis added)

Of the 84 countries that retain the death penalty (Amnesty International, 2020:53), same-sex sexual acts *could* be punished by death in only 11 countries (Human Dignity Trust, n.d.; Mendos et al., 2020). In six countries—Brunei, Iran, Mauritania, Nigeria, Saudi Arabia, and Yemen—consensual same-sex conduct is punishable by death, according to the UN Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Madrigal-Borloz, 2018: para. 51).[7] The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) confirms with 'full legal certainty'[8] that the death penalty is the prescribed punishment for consensual same-sex sexual acts in these countries.[9] In its latest report, the ILGA goes further, identifying five additional countries—Afghanistan, Pakistan, Qatar, Somalia, and the United Arab Emirates (UAE)—where the death penalty *may* be imposed, qualifying that there is 'no full legal certainty' (Ibid.). The Human Dignity Trust (n.d.) identifies the same 11 countries, but differs from the ILGA's categorisation: it labels five countries—Iran, Nigeria, Saudi Arabia, Somalia and Yemen—as 'implementing' the death penalty and argues that the death penalty is a 'legal possibility' in six countries—Afghanistan, Brunei, Mauritania, Pakistan, Qatar, and UAE (Ibid.).

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[6] Although Article 6 of the International Covenant on Civil and Political Rights does not expressly prohibit the death penalty in all circumstances, instead fixing a 'most serious crimes' threshold, many death penalty abolitionists take the view that the international community is on an irrevocable path towards complete eradication of the death penalty.

[7] The report was published in 2018 and included Sudan as one of the countries that prescribes the death penalty for same-sex sexual acts. The change in law in Sudan is discussed below.

[8] 'Full legal certainty' is defined as 'the absence of disputes about whether the death penalty can be legally imposed for consensual same-sex conduct.' (Mendos et al., 2020:31).

[9] For a comprehensive legal analysis into each of these countries, see Mendos et al. (2020:31–86).

The two organisations differ in their classification of Brunei, Mauritania, and Somalia. The ILGA focuses on the *legal* framework, thereby dividing countries that prescribe the death penalty with 'full legal certainty' and those that do not meet this threshold. On the other hand, the Human Dignity Trust (n.d.) focuses on the 'implementation' of the death penalty, i.e. executions being carried out. Accordingly, the ILGA classifies Brunei and Mauritania as countries that clearly prescribe the death penalty under law, while the Human Dignity Trust classifies both states in the second tier due to the lack of executions in practice. Conversely, the ILGA categorises Somalia in the second tier because its penal code does not prescribe the death penalty for same-sex sexual conduct and uncertainty exists around the interpretation of Sharia law, but the Human Dignity Trust views Somalia as an executing state on the basis that of al-Shabaab, a militant group, carrying out 'executions' (in this report, we discuss the killing of sexual minorities by militant groups in Part 2).

First, we examine how codified laws and Sharia law in these 11 countries prescribe, or have the potential to prescribe, the death penalty as punishment for consensual same-sex sexual acts. In each of these jurisdictions, the scope of the relevant offences is defined as follows:

- In **Brunei**, the punishment for same-sex sexual conduct is death by stoning: 'for the purpose of this Order, *liwat* means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus' (Section 82, Syariah Penal Code Order 2013; came into force in April 2019).
- **Iran** has the most extensive framework codifying the criminalisation of sexual minorities, and prescribes the death penalty for *liwat* (penetrative anal intercourse between men), *tafkhiz* (putting one's penis between the thighs or buttocks of another man), and *musaheqeh* (vaginal contact between two women) (see Table 1 for a summary of the relevant legislative provisions in the Penal Code 2013).
- In **Mauritania**, the law states: 'Any adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning.' (Act Against Nature, Penal Code 1984, Article 308).[10]
- In **Nigeria**, twelve states have introduced Sharia Penal Codes (Human Rights Watch, 2004).[11] While the wording of the relevant provisions differs slightly between states, the language typically used to prescribe the death penalty for same-sex sexual acts is as follows: 'Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offences of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.' (Sharia Penal Code 2001, State of Gombe). In two of the 12 states, women also face the death penalty for same-sex sexual conduct.[12]

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[10] English translation provided by Human Dignity Trust (n.d.). For the Penal Code 1984 in French, see: https://www.refworld.org/pdfid/491c1ffc2.pdf (last accessed on 23 January 2021).

[11] The 12 states are Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara. The State of Niger is the only state that did not enact codified local laws implementing Sharia Criminal Codes (Mendos et al., 2020:54).

[12] See Mendos et al. (2020) for a comprehensive summary of the legal provisions in 12 Nigerian states.

- In **Saudi Arabia**, no codified law exists for same-sex sexual acts. However, the state claims that such acts ought to be punished by death according to Sharia law (Mendos et al., 2020:70).
- In **Yemen**, 'Homosexuality is the contact of one man to another through his posterior; both sodomites whether males or females are punished by whipping of one hundred strokes if not married. It is admissible to reprimand it by imprisonment for a period not exceeding one year, punishment by stoning to death if married.' (Homosexuality, Penal Code 1994, Article 264)[13]
- In **Afghanistan**,[14] **Pakistan**,[15] **Qatar**,[16] **Somalia**[17] and the **UAE**,[18] the respective penal codes do not prescribe the death penalty for same-sex sexual acts. However, these countries operate dual or hybrid legal systems, meaning that codified law is administered in parallel to Sharia law. Under Sharia law, same-sex sexual acts *may* be punishable by death if construed by the courts as *zina* (adultery) (see Mendos et al., 2020).

Examining the legislative measures in these jurisdictions makes clear that codified laws in Brunei, Iran, Mauritania, Nigeria, and Yemen 'unequivocally' prescribe the death penalty for same-sex conduct (Mendos et al., 2020:31), bearing in mind that in some of these countries the implementation of the death penalty is unlikely (discussed below). Afghanistan, Pakistan, Somalia, Qatar, and the UAE operate a hybrid legal system; accordingly, although the death penalty is not prescribed for same-sex sexual acts in codified law, scope remains for the death penalty to be used against sexual minorities in accordance with Sharia law. In Saudi Arabia, there is a complete absence of codified law concerning same-sex sexual conduct. The courts instead apply an iteration of Sharia law which imposes the death penalty for same-sex intimacy (Mendos et al., 2020:31). In sum, a global analysis shows that 11 countries *could* prescribe the death penalty for same-sex sexual acts. That being said, the application of the death penalty in some countries turns on the gender, age, marital status, religion and sexual position of the 'offender' (see Table 2).

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13 The English translation of the Penal Code 1994 is available from: https://www.refworld.org/docid/3fec62f17.html (last accessed on 23 January 2021).

14 In Afghanistan, the Penal Code 2017 criminalises various same-sex sexual acts: *musahaqah* (same-sex intimacy between women), sodomy, *tafkhiz* (same-sex intimacy between men absent penetration), *ghavadi* (inciting two or more people to commit sodomy by introducing them to each other and finding them a place to do so). However, these offences carry a term of imprisonment. Translation of the Penal Code 2017 available from (Mendos, 2019:429–30).

15 In Pakistan, 'carnal intercourse against the order of nature' is punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine. (Section 377, Unnatural Offences, Penal Code 1860).

16 In Qatar, whoever 'copulates' with a 'female over sixteen' (Article 281), 'male over sixteen (Article 285), or whoever leads, instigates or seduces in any way to commit sodomy or dissipation (Article 296) are punished with a term of imprisonment (Penal Code 2004).

17 In Somalia, 'whoever has carnal intercourse with a person of the same sex' shall be punished with imprisonment from three months to three years (Article 409, Homosexuality, Penal Code 1962). According to the 2012 Constitution, Sharia law prevails above the Constitution (Mendos et al., 2020:38). The Constitution is available from: https://www.constituteproject.org/constitution/Somalia_2012.pdf?lang=en (last accessed on 24 January 2021).

18 In the UAE, 'unnatural sex with another person' (Unnatural Sex, Criminal Code of Abu Dhabi 1970, Article 80), sodomy (Sodomy, Criminal Code of Dubai 1970, Article 177), and 'voluntary debasement' (Federal Penal Code 1987, Article 356) are all punishable by imprisonment.

Table 1: Criminalisation of Same-Sex Sexual Acts in the Iranian Penal Code 2013

Livat (penetrative anal intercourse between men) Article 233	**Non-consensual:** • Punishable by death for the insertive/active party if committed by force or coercion (Article 324) **Consensual:** • Punishable by death for the passive party (Article 234) • Punishable by death where the insertive/active party is a non-Muslim and the receptive/passive party is a Muslim, (Article 234, Note 1) • Punishable by death if a man is past the age of puberty and married to a wife past the age of puberty, and while he has been sane has had vaginal intercourse with the same wife, and he can have an intercourse with her in the same way [vaginal] whenever he so wishes (Article 234, Note 2); otherwise, 100 lashes (Article 234). • Punishable by death for the active party upon fourth conviction (Article 136).
Tafkhiz (putting one's penis between the thighs or buttocks of another man) Article 235	• Punishable by death upon fourth conviction (Article 136); otherwise, 100 lashes (Article 236). • Punishable by death upon first conviction if the active party is a non-Muslim and the passive party is a Muslim (Article 236, Note).
Musahaqah (vaginal contact between two women) Article 238	• Punishable by death upon fourth conviction (Article 136); otherwise, 100 lashes (Article 239). • No distinction drawn between 'active' and 'passive', or 'Muslim' and 'non-Muslim' (Article 240).

Sources: English translation of the Islamic Penal Code is available at: https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#44 (last accessed on 23 January 2021).

Gender: States criminalising same-sex sexual acts regularly distinguish between offenders on the basis of gender. Men who have sex with men are criminalised in all instances: in seven countries (Brunei, Iran, Mauritania, Nigeria, Qatar, Saudi Arabia, and Yemen) the prescribed punishment for men engaging in same-sex sexual acts is the death penalty. In the remaining four countries (Afghanistan, Pakistan, Somalia, and the UAE marked as 'unclear' in Table 2), the lack of clarity comes from the interpretation of *zina* (adultery). If same-sex sexual conduct can be considered *zina* because same-sex marriages are not recognised, both genders could theoretically be executed.

Women who have sex with women face the death penalty in two countries: Iran and Nigeria. In Iran, a woman will only be executed upon her fourth conviction for such acts, whereas a man may be executed upon his first conviction. We have been unable to identify any instances where women were judicially executed in any of the 11 countries.[19] However, women are

[19] This excludes the execution of lesbians by ISIS in Iraq, which is discussed in Part 2 of the report.

subjected to harsh punishments for engagement in same-sex intimacy: in Mauritania and Yemen, women may be imprisoned, while in Iran, women may be sentenced to 100 lashes (for the first three convictions).[20]

Age: In at least three countries—Brunei, Iran, and Nigeria—minors, defined as persons under 18 years, may be executed. In Iran, the age of criminal responsibility is nine years for girls, and 15 years for boys, and persons having attained those respective ages can be sentenced to death (Islamic Penal Code of Iran, Article 147; Iranian Lesbian & Transgender Network (6Rang) 2015:1). In Brunei, children who have reached puberty are punishable as adults (Syariah Penal Code, Section 13; Child Rights International Network, n.d.). In Nigeria, children having reached puberty, or 'the age of attaining legal and religious responsibility', may be executed (Cornell Center on the Death Penalty Worldwide, n.d.). In Mauritania, while the death penalty cannot be carried out against children below the age of 15 years, the position regarding children between 15 and 18 years, and juvenile offenders (adults who committed crimes as children), remains unclear (Ibid.)

In other countries, while the age of criminal responsibility may be set as low as seven years, safeguards have been implemented so as to prevent the imposition of capital sentences against children. For example, Article 20 of the Qatar Penal Code provides that individuals convicted of crimes committed below the age of 18 cannot be executed. In Mauritania, domestic safeguards ensure that death sentences cannot be carried out against children below the age of 15 years, while its international legal obligations prohibit the use of the death penalty against all persons under 18 years, as well as juvenile offenders, i.e. adults who committed crimes as children (Cornell Center on the Death Penalty Worldwide, n.d.).

That being said, the utility of such safeguards may be called into question. For instance, in Yemen, children cannot be lawfully executed (Republican Decree, By Law No. 12, 1994 Concerning Crimes and Penalties, Article 31). In practice, however, persons face 'serious obstacles' when required to prove their age, due to a lack of birth registration documentation (Human Rights Watch, 2013). Similarly, despite issuing a royal decree prohibiting the sentencing of juvenile offenders to death in April 2020, at least five juvenile offenders remain on death row in Saudi Arabia as of January 2021 (House, 2021). As both these examples illustrate, children may face the risk of execution despite the existence of safeguards intended to protect them.

Marital status, religious affiliation & sexual position: In some jurisdictions, distinctions are carved between offenders on the basis of other statuses. Excluding the countries marked as 'unclear' in Table 2, the death penalty is prescribed for Muslims, while non-Muslims may also be executed in Saudi Arabia, Iran, and Nigeria. Similarly, while three countries—Iran, Nigeria, and Mauritania— impose the death penalty for same-sex sexual acts irrespective of marital status, a further four only criminalise married persons (Brunei, Yemen, Afghanistan, and Qatar).

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[20] Mauritania Penal Code, Articles 306, 308; Yemen Penal Code, Article 268; Islamic Penal Code of Iran, Article 239.

Iran has a particularly intricate legal framework: Article 234 of its Penal Code, concerning livat (penetrative anal intercourse between men), distinguishes between offenders on the basis of marital status, religious affiliation, and sexual position. Appendix 3 provides a matrix identifying when certain statuses carry the death penalty, while the rationale behind these legislative distinctions is explained in the 'Case Study: Iran' section.

ISLAM & THE DEATH PENALTY

Islam is the majority religion in all the 11 countries that prescribe, or could prescribe, the death penalty for same-sex sexual conduct (Appendix 4). Moreover, Nigeria is the only one of these where Islam is not the official state religion.[21] Based on this information, it may be tempting to associate Islam with the imposition of the death penalty for same-sex sexual conduct in these jurisdictions, and perhaps the criminalisation of same-sex sexual conduct more generally. To do so, however, would be misguided.

Forty-six countries are identified as majority Muslim populations, according to the Pew Research Center (2017a). Of those, the majority of countries criminalise same-sex sexual acts (34 out of 46), but less than a third of those retain the death penalty as punishment for such 'offences' (11 out of 34). In addition, there are 12 Muslim majority countries that do not criminalise same-sex sexual conduct at all (Appendix 4). To put it another way, of the 69 countries that criminalise consensual same-sex sexual acts (Mendos, 2020), more than half are non-majority Muslim states (Pew Research Center, 2017a). Accordingly, to attribute the criminalisation of same-sex sexual conduct to Islam *per se* is erroneous.

The retention of the death penalty is often justified by states on the basis of Islam, and in particular Sharia law. For example, in Iran, it is argued that—being an Islamic country—the government has no choice but to impose the death penalty for same-sex sexual conduct (Azhar, 2013). However, a closer examination of Sharia law makes clear that such a claim is far from uncontroversial. A report by Penal Reform International entitled *Sharia law and the death penalty: Would abolition of the death penalty be unfaithful to the message of Islam?* convincingly argues that retention and imposition of the death penalty for homosexuality cannot be attributed to Islam:

> Many authorities of Islamic law and legal theory from as early as the classical period of Islamic history rejected the application of the death penalty for homosexual acts on the grounds that such a penalty had no foundational basis either in the Quran or authentic teachings of Prophet Muhammad (Mumisa et al., 2015:28).

Sharia law prescribes three categories of crimes: *qisas* (crimes punishable by retribution), *hudud* (crimes against God, carrying mandatory punishments) and *ta'zir* (crimes against society, carrying discretionary punishments). In certain circumstances, the death penalty may be imposed in relation to each of these categories. *Qisas* is akin to the notion of 'an eye for an eye' and is applicable to crimes threatening the sanctity of human life, such as murder

[21] In Nigeria, just over half of the population—concentrated in Northern Nigeria—is Muslim. The remaining population is mostly Christian.

(Mumisa et al., 2015:11). The punishments for hudud crimes are prescribed by the Sharia and are mandatory. Three such crimes—adultery, apostasy, and *hirabah* (waging war against God and society)—carry the death penalty (Ibid.:15). *Ta'zir* crimes are those where the public interest is threatened. As the Sharia does not provide a particular form of punishment for such offences, the arbiter is awarded discretion to impose whatever punishment is deemed appropriate. As *ta'zir* offences are deemed the least serious of the three categories, most schools of Islamic legal theory concur that the death penalty cannot be applied unless there are extraordinary circumstances (Ibid.:26). The application of the death penalty in relation to same-sex sexual acts falls beyond each of these three categories, and accordingly 'go[es] far beyond Sharia law' (Ibid.).

Sharia law stems from numerous sources. The Quran and the *sunnah* and *hadith* (the teachings of the Prophet Muhammed) are its primary sources; secondary sources include *ijma* (general consensus), *qiyas* (analogical reasoning) and *masalih al-mursala* (public interest) (Mumisa et al., 2015:8–9). Proponents of the death penalty for same-sex intimacy do not cite the Quran but claim that a particular *hadith* serves as the religious source of such punishment: Prophet Muhammad is reported to have said 'if you find anyone doing as Lot's people did, kill the one who does it and the one to whom it is done' (Ibid.:27). However, the authenticity of this *hadith* has, as early as the ninth century (approximately two centuries after the death of the Prophet Muhammad), been widely questioned by various *hadith* scholars, who argue that the statement could not be traced back to the Prophet (Ibid.). This led to the conclusion that it was 'very likely that it [*hadith*] was fabricated after his death in order to justify the imposition of capital punishment for homosexual acts' (Ibid.:27).

Even if this *hadith* were to be authentic, the Hanafi school of jurisprudence provides that a narration from a single source (*'khabar wahid'*) is insufficient to justify the imposition of the death penalty, due to the potential inaccuracy of that source (Mumisa et al., 2015:27). Others have posited that certain Quranic verses, referring to 'the people of Lot', speak to the sinful nature of homosexuality. However, contemporary interpretations by eminent scholars suggest that such passages in fact refer to—and condemn—sexual *violence*, rather than consensual acts (Ibid.:28). As to the application of the death penalty to individual cases, Sharia also enshrines numerous stringent—almost impossible—evidential requirements before the imposition of *hudud* punishments, and calls for the avoidance of mandatory punishments: 'it is better for the ruler to err in granting a pardon than to err in enforcing a punishment' (Ibid.:16). In sum, the imposition of the death penalty for same-sex sexual acts cannot be directly attributed to Islam. Rather, the retention of the death penalty involves choices disguised as religious imperatives: that is, that 'governments frequently use Sharia to justify why they retain and apply capital punishment' (Ibid.:6). We argue, therefore, that the Islamic countries (as well as non-Islamic countries) *choose* to prescribe the death penalty for same-sex sexual acts.

Table 2: Countries that (Could) Impose the Death Penalty for Same-Sex Sexual Acts

Country	Most recent execution	Who could be executed?					Source
		Men	Women	Children (persons under 18)	Marital status	Religious affiliation	
Saudi Arabia	2019	✔	✘	✘	Unclear	Applies irrespective of religious affiliation	Sharia law
Iran	2019/2014[a]	✔	✔	✔	Married and unmarried persons may be executed in certain circumstances	Muslims and non-Muslims may be executed in certain circumstances	Codified law
Nigeria	No confirmed executions[b]	✔ (12 states)	✔ (2 states)	✔	Applies irrespective of marital status	Applies to Muslims, and non-Muslims who consent to being tried by a Sharia Court	
Brunei	No confirmed executions	✔	✘	✔	Applies to married men only	Applies to Muslims. Application to non-Muslims is unclear	
Mauritania	No executions since at least 1983	✔	✘	Unclear[c]	Applies irrespective of marital status	Likely applies only to Muslims	
Yemen	No confirmed executions	✔	✘	✘[d]	Applies to married persons only	Unclear	
Afghanistan		Unclear			Married Muslims may theoretically be executed by stoning for same-sex sexual acts as a form of *zina* (extra-marital sex)		Sharia law (in the ory)[e]
Pakistan		Unclear					
Qatar		✔	✘	✘	Married Muslim men may theoretically be executed by stoning for same-sex sexual acts as a form of *zina*		
Somalia		Unclear					
United Arab Emirates		Unclear					

Sources: Cornell Centre for the Death Penalty Worldwide (n.d.); Human Dignity Trust (n.d.); I-17; I-5; Islamic Penal Code of Iran; Mendos et al. (2020); Qatar Penal Code; Reuters (2020); Syariah Penal Code (Brunei), Yemen Penal Code.

Notes:

[a] In 2019, a man was executed for 'forced sodomy' (rape) and kidnapping charges. While this constitutes a non-consensual sexual act, we have received anecdotal evidence that consensual same-sex sexual acts are sometimes prosecuted under the guise of rape in Iran. Between 2014 and 2019, there have been numerous executions on the ground of same-sex rape. The 2014 case cited is the most recent reported execution for *consensual* same-sex sexual acts (Mendos et al., 2020:49).

[b] While no executions have been reported in Nigeria, it was confirmed in 2005 that a man was on death row, awaiting execution by stoning after being convicted of sodomy. The outcome of this case remains unclear: Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to Nigeria (27 June – 7 July 2005) (Alston, 2005: para. 22).

[c] In Mauritania, domestic safeguards ensure that the death sentences cannot be carried out against children below the age of 15 years; however, Mauritania's international legal obligations prohibit the use of the death penalty against all persons under 18 years, as well as juvenile offenders (adults who committed crimes as children).

[d] In Yemen, children cannot be executed: if convicted of an offence punishable by death, children may only be punished by imprisonment by up to 10 years (Republican Decree for Law No. 12 for 1994 Concerning Crimes and Penalties, Article 31). In practice, however, persons face 'serious obstacles' when required to prove their age, due to a lack of birth registration documentation (Human Rights Watch, 2013). [e] In these five countries, the death penalty is not a codified punishment for same-sex sexual acts. These countries do, however, operate on a dual or hybrid legal systems, meaning their codified and Sharia law operate in parallel. In these jurisdictions, although there are no reported instances of enforcement, there is scope for the death penalty to be imposed for same-sex sexual acts as per the Sharia concept of *zina* (extramarital sex, or 'adultery'

KNOWN JUDICIAL EXECUTIONS & ENFORCEMENT BY CRIMINAL JUSTICE AGENCIES

Of the eleven countries that *could* prescribe the death penalty for same-sex sexual acts, two—Iran, and Saudi Arabia—have been identified as carrying out judicial executions in the last 10 years for same-sex sexual conduct (Table 2). In this section, we examine judicial executions only; killings carried out by military groups or 'parallel justice courts' are discussed in Part 2 of this report.

Iran is the most prolific executor of persons convicted of same-sex sexual acts. During 2015–2020, at least 6 men were executed for *livat* (penetrative anal intercourse between men), (Appendix 5). Juvenile offenders (persons who committed crimes as children) have been executed for same-sex sexual conduct. For example, in 2016, Hassan Afshar was hanged after being convicted of forced sodomy of another male teenager, though he had consistently maintained that the sexual acts were consensual (Amnesty International, 2016). Although 19 at the time of execution, Afshar was 17 when he was arrested without access to a lawyer, and was sentenced to death within two months. International law—including the Convention on the Rights of the Child, to which Iran is a state party—prohibits the use of the death penalty for crimes committed when the defendant was below 18 years of age. The situation in Iran is examined more closely in the 'Case Study: Iran' section.

In 2019, **Saudi Arabia** beheaded 37 men for terror-related charges, five of whom were also convicted of same-sex intercourse (Qiblawi and Balkiz, 2019; Villarreal, 2020).[22] The prosecution relied heavily on confessions; one of the men allegedly confessed to having sexual intercourse with four of his co-accused terrorists. Although terrorism and sodomy may seem like a peculiar combination of charges, it is common for individuals executed for same-sex sexual acts to be accused and convicted of additional criminal offences such as terrorism, extremism, theft, murder, child abuse, and rape:

> It is often unclear how many (if any) of those offences are factual, and whether 'sodomy' is used as an aggravating circumstance or purposely conflated with other crimes by state authorities for arbitrary reasons. In light of the opaqueness surrounding these cases, gathering reliable and consistent data on incidents of enforcement of capital punishment for consensual same-sex sexual acts in the Kingdom [of Saudi Arabia] is extremely difficult. (Mendos et al., 2020:74)

The man's confession about his sexual relations was presented in court and was published in official statements together with details about anti-government violence (Qiblawi and Balkiz, 2019). The Saudi authorities were probably eager to send a message to the Saudi public that same-sex sexual conduct is not tolerated, and to associate such conduct with offenders committing heinous crimes that threaten national security. Before 2019, the last known executions for same-sex sexual conduct were recorded in 2002[23] and 2000[24]. In both cases, men were executed 'partly', if not primarily, due to their alleged sexual conduct (Mendos et

22 The severed head of one of the prisoners was pinned to a pole in a public square (Qiblawi and Balkiz, 2019).

23 Three Saudi men were beheaded for homosexual acts and for violating children's rights and harming others without providing any further details, according to Amnesty International (2002).

24 Three Yemeni men were executed for committing the extreme obscenity of homosexuality, imitating women, and molesting young boys (Mendos et al., 2020:74).

al., 2020:74). Given that Saudi Arabia does not shy away from carrying out judicial executions for other offences, the fact that authorities choose to carry out executions for same-sex sexual acts sparsely, and in combination with other heinous offences, indicates that such executions likely serve a declaratory purpose, tempered with a desire to avoid or minimise international condemnation.

Considering that Saudi Arabia is such a prolific executor for other crimes, the relative lack of data on executions for same-sex sexual acts may be interpreted as meaning that such executions are rarely carried out. However, we must be cognisant of the fact that these are only the *known* executions, a rough indicator of state and local activity. We only know of executions that states choose to make public, or those that became public knowledge due to the capacity of local activists to collect and publish information. We should be mindful that executions of sexual minorities may take place in secret:

> When it comes to death penalty, of course Saudi [Arabia] has laws on the books. But at the same time, we haven't documented in recent years the actual implementation of the process. That is not to say that it doesn't exist, but when it does, it's very hidden and not really talked about in the press. It's also very difficult to reach the Saudi Government for any type of comment because of their complete rejection of the existence of LGBT people. (I-16)

Despite the relative infrequency of known executions for same-sex intimacy, criminal justice agencies in Saudi Arabia continue to persecute sexual minorities. In 2016, 35 people were convicted and imprisoned for sodomy. Prosecutors who dealt with these cases (unsuccessfully) called for the death penalty to be applied (Lavers, 2016). Moreover, sexual minorities are actively prosecuted and convicted of alternative morality-based offences, such as 'cross dressing' and 'attacks against public morals' (Mendos et al., 2020:74). For example, a Saudi man was sentenced to three years imprisonment and 450 lashes for 'promoting the vice and practice of homosexuality' after he was caught using Twitter to arrange dates with other men (Simpson, 2014).

Certain persons are more likely to encounter criminal justice processes than others. For instance, while Westerners are rarely prosecuted, migrant workers—particularly from South and South-East Asia—are readily pursued by the state (I-17). Similarly, people of lower socioeconomic status are the most likely to be punished, while affluent citizens are reported to lead quite comfortable lives, provided they are relatively discreet as to their sexual preferences (Ibid).

In the twelve states in Northern **Nigeria**, although no executions for same-sex sexual conduct have been reported, cases have been processed through the criminal justice system. We have identified a case where a man was on death row awaiting execution by stoning for sodomy (Alston, 2005: para. 22); however, his fate remains unclear. In other cases, judges have passed death sentences for same-sex sexual conduct, but they are either overturned on appeal or commuted to imprisonment following pressure from human rights groups (BBC News, 2007). In 2014, in the State of Bauchi, a local Sharia court found a 20-year-old man guilty of sodomy (Associated Press in Bauchi, 2014). The judge decided against death by stoning (the prescribed punishment) because the incident had occurred seven years prior to the trial and the defendant showed great remorse; he was whipped in public and ordered to pay a fine (Ibid.). This man was one of 12 arrested for belonging to a 'gay organisation': the

arrest involved the police luring and later torturing the men into providing a list of 168 gay men belonging to the gay organisation (Associated Press in Bauchi, 2014).[25] There is much enthusiasm amongst the police for enforcing the laws against homosexuality: as recently as September 2020, two men aged 32 and 20 were arrested for homosexual acts at a hotel in the State of Jigawa, after residents of the area overheard them arguing over money (dnbstories, 2020).

In its 2019 Universal Periodic Review, the Nigerian Government justified its opposition to sexual minorities. It denied any policy or practice of 'witch-hunting people based on their sexual orientation' and claimed that the laws reflect the views of the 'majority of Nigerians' who object to same-sex relationships because of their 'deep religious, cultural and moral orientation' (United Nations Human Rights Council, 2018: para. 61).

Indeed, the public is also keen to 'sanitize', 'root out', and see sexual minorities punished (Nossiter, 2014). According to a 2019 survey carried out in 34 countries about the social acceptability of homosexuality, Nigeria was the least accepting: only 7 per cent of people believed that homosexuality should be accepted (Pew Research Center, 2020). In the aforementioned case (where the judge refused to impose the death penalty and sentenced the man to public whipping instead), the crowd was disappointed and threw stones and bottles outside the court, and demanded that the man should have been stoned to death, 'ready to take the law into their own hands to combat homosexuality' (Nossiter, 2014). The man went into hiding upon being released. In cases such as this, persons are disowned by their families, have difficulties accessing legal representation, and are likely to be tortured in detention and isolated to prevent other prisoners being 'corrupted'. Coming out is not an option: 'in the north [of Nigeria], you will be killed . . . You will bring total shame to your family' (one of the few supporters of alleged gay men awaiting trial in Bauchi, quoted in Nossiter, 2014).

Despite having codified laws prescribing the death penalty for same-sex sexual acts, **Brunei** and **Mauritania** are 'abolitionist in practice',[26] having not carried out executions since 1957 and 1987, respectively (Amnesty International, 2020).[27] In **Brunei**, there have been no instances of enforcement of capital same-sex sexual offences under their new Penal Code, which came into force in 2019 (Mendos et al., 2020:45). In **Mauritania**, no one was sentenced to death for same-sex sexual conduct during 2015-2019 (Human Rights Watch, 2020).[28] However, in January 2020, a video of an alleged 'gay wedding' was circulated on social media, which led to the arrest of eight men and two others (a woman and the venue owner). According to the defendants' lawyer, the police report states that the eight men

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25 Belonging to a gay organisation became a criminal offence in Nigeria under the Same-Sex Marriage (Prohibition) Act 2013. It also criminalises the 'public show of same sex amorous relationship directly or indirectly' punishable by 10 years of imprisonment, targeting persons on the basis of sexual orientation, evincing a deep-seated, state-perpetrated homophobia. The legislation is available from: https://www.refworld.org/pdfid/52f4d9cc4.pdf (last accessed on 25 January 2021).

26 Amnesty International defines 'abolitionist in practice' as countries that have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions.

27 In 2019, Brunei recorded zero death sentences while Mauritania imposed eight death sentences and 123 were on death row (Amnesty International, 2020).

28 Mauritania rejected recommendations to abolish the death penalty and decriminalise homosexuality during its second Universal Periodic Review in 2016 (United Nations Human Rights Committee, 2019a: paras. 55). In 2019, the Human Rights Committee expressed concern as to the continued discrimination and stigmatisation against sexual minorities and called on Mauritania to repeal Article 308 (United Nations Human Rights Committee, 2019a: paras. 12-13).

confessed about their homosexuality and refers to them as 'sodomisers', which is punishable by death under Article 308 of the Penal Code. Eventually, the eight men were charged and convicted of 'indecency' and 'inciting debauchery' for 'imitating women', and sentenced to two years in prison (Human Dignity Trust, n.d.). The police justified the arrest by arguing *in flagrante delicto* (caught in the act of committing a crime), despite the video only showing people singing and dancing. While the men were not sentenced to death, this case shows that the current law can be used to threaten sexual minorities with the capital offence even with evidence as inconclusive as this video.

In **Pakistan**,[29] **Qatar**, and the **UAE**, there have been no reported cases of judicial executions for same-sex sexual activity (Mendos et al., 2020). The same can be said of **Afghanistan**, **Yemen**,[30] and **Somalia**; however, quasi-judicial executions in these states have been identified, and are discussed in Part 2 of this report.

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29 Pakistan rarely prosecutes and sentences sexual and gender minorities for offences under the relevant laws. Few cases are prosecuted every year in different regions, only a handful are serving sentences, with two reportedly serving 10 years under Section 377, Unnatural Offences, Penal Code 1860 (I-5). As far as the interviewee was aware, one has been executed under the Hudood Ordinance offence (the death penalty may be imposed for *zina* (adultery), if consensual same-sex sexual acts are interpreted as a form of *zina*).

30 The Yemeni Ministry of Justice stated that judicial authorities have not kept a formal record of cases involving consensual same-sex sexual activity (Mendos et al., 2020). Following the takeover of significant portions of Yemen by Houthi militia in 2013, the degradation of law and order has become palpable. While no judicially-sanctioned executions have been recorded, the situation for sexual minorities has worsened (Mendos, 2019; Mendos et al., 2020). Despite such concerns being raised in civil society submissions, no state formally recommended the decriminalisation of homosexuality in Yemen's Third Universal Period Review in 2019 (United Nations Human Rights Council, 2019c), nor in its Second Universal Periodic Review in 2014 (United Nations Human Rights Council, 2014). Such silence of the international community fosters a sense of impunity regarding the retention of such laws.



Saman is a 26-year-old bisexual woman from Iran. She hides her identity from her family because they would never approve. She has since left Iran, and can now live freely.

(From *Hidden Iran*, a series by Ura Iturralde)

CASE STUDY: IRAN

Having identified 11 states in which same-sex sexual acts carry the possibility of the death penalty, we had hoped to focus on the two countries that actively execute individuals convicted of such 'crimes'. Difficulties in accessing information ruled out a study of Saudi Arabia.[31] In this section, we take a closer look at the history of same-sex intimacy in Iran, as well as its current death penalty practice.

Looking back in history, Iran (what was then Persia) has had a 'paradoxical' relationship with same-sex desire and conduct (Bahreini and Nayyeri, 2021). Throughout the majority of Iran's history, same-sex sexual conduct was viewed as a 'religious sin and a transgression of the natural role and purpose of sexual activity' while at the same time 'same-sex love and sexuality was also accommodated, revered and sometimes even institutionalised' (Bahreini and Nayyeri, 2021:297).

Before the Arab invaders brought Islam to Persia in the seventh century, Zoroastrianism, which disapproved of same-sex sexual conduct between adult men, was the dominant religion (Bahreini and Nayyeri, 2021). When Persia was conquered by the Arabs in the seventh century, Islam became the dominant religion. While the Quran is widely regarded as forbidding (some) same-sex practices, homoeroticism was a prominent feature in Persian culture between the ninth and 20th centuries (Encyclopedia Iranica, 2012). For example, a so-called 'Mirror for Princes', written as exhortation to a future ruler, advises:

> As between women and youths, do not confine your inclinations to either sex; thus you may find enjoyment from both kinds without either of the two becoming inimical to you . . . During the summer let your desires incline toward youths, and during the winter towards women (Qabus Nameh (1082-1083) cited in Afary, 2009a).

There is also evidence of social acceptance of same-sex intimacy by a 12th century Chief Judge of the city of Balkh, who published a fictional 'dispute' between a 'sodomite' and a 'fornicator'. After each argues the merits of their chosen ways, the judge concludes that one should keep contact with both sexes and follow both practices (Encyclopedia Iranica, 2012). However, homoerotic love took the form of an asymmetrical affair between an adult male and a boy or young man, rather than a same-sex *relationship* between equals in the modern sense (Bahreini and Nayyeri, 2021; Encyclopedia Iranica, 2012). Such same-sex love was generally accepted particularly among the elites and the ruling class (Bahreini and Nayyeri, 2021). Despite the Quran forbidding same-sex sexual conduct amounting to *livat* (penetrative anal intercourse between men), rulers famously had love affairs with boys (Najmabadi, 2005).[32] Boy concubines also became a common feature of many professions, observed in the military, merchant community, notaries, and street vendors (Iran Human Rights Documentation Center, 2013a). The societal acceptance of homoerotic love reached its peak during the Qajar dynasty (1785-1925) when kings openly celebrated same-sex unions (Bahreini and Nayyeri, 2021).

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31 The death penalty is 'very hidden' in Saudi Arabia, and the government hardly comments on this issue because of its 'complete rejection of the existence of LGBT people' (I-16).

32 Historian Afsaneh Najmabadi argues that: 'It was (is) also the case that if men performed their procreative obligations, the larger community was generally not much concerned with the rest of their sex lives.' This is reflected in the contemporary notion of 'men who have sex with men', as opposed to 'gay men', highlighting a distinction between one's acts and one's identity. (Najmabadi, 2005:20)

Attitudes towards same-sex intimacy began to change from the 20th century: modernisers in Persia looked to emulate 'Western' ideas and attitudes, including the strict outlawing of homoerotic practices (Afary, 2009b; Azhar, 2013). When Reza Pahlavi became the Prime Minister in 1923, and then Shah in 1925, he expressed his strong desire for 'westernisation' and advocated the rejection of Islam (Azhar, 2013). The country underwent a series of developments motivated by a drive to modernise the country, including the renouncing of homoerotic literature and tradition (Iran Human Rights Documentation Center, 2013a). His 1925 Penal Code stipulated the death penalty for *livat*, lumping it together with adultery and rape, while female same-sex acts were not explicitly acknowledged (Karimi and Bayatrizi, 2018). Six years later, the punishment for *livat* was reduced to three and ten years imprisonment (Bahreini and Nayyeri, 2021). Attitudes towards same-sex intimacy became more tolerant under the rule of Mohammad Reza Pahlavi (1941-1979): gay-friendly nightclubs started to emerge in the 1970s, though the news of a gay wedding sparked public outrage (Bahreini and Nayyeri, 2021).

The Iranian Revolution of 1979 witnessed the reinstatement of Sharia law under Ayatollah Ruhollah Khomeini. The Revolution brought about the rearticulation of the death penalty for same-sex sexual acts as a religious prerogative:

> By constructing the death penalty as a practice allowed by Islam, anyone who questions its validity would be seen as questioning the religion as a whole. (Azhar, 2013)

Intolerance towards open homosexuality escalated following the Revolution and the subsequent war with Iraq (1980-1988), reflecting the collective social need to emphasise strength, discipline and virility (Azhar, 2013). Somewhat ironically, as Iran was becoming increasingly averse to sexual 'deviancy', the West—from whom Iran had learnt to consolidate its homophobic attitudes by officially criminalising same-sex sexual conduct—was becoming more accepting of homosexuality. This time, Iran chose not to emulate 'Western' ideas. Instead, Iranian psychiatric specialists denounced the removal of homosexuality from the Diagnostic and Statistical Manual of the American Psychiatric Association as 'unscientific', and continued practising in accordance with outdated Western science (Forbes, 2017). This sentiment has continued—in defending itself against allegations of human rights violations before the UN Human Right Council in 2013, Iran asserted the following:

> The very countries that impose [the acceptance of] this deadly sin as a sign of progress on the world prohibited homosexuality up to about two decades ago. They considered it a disease, and even [a] prosecutable [offence]. These countries had written and ratified these documents for over a half century; therefore, the Special Rapporteur's claims about international obligations are completely baseless. (Chair of the Islamic Republic's High Council for Human Rights quoted in Iran Human Rights Documentation Center, 2013a)

In 1991, the Islamic Penal Code was introduced: it criminalised same-sex sexual acts ranging from flogging to the death penalty. The Code was revised in 2013. As previously mentioned, the 2013 Penal Code is extremely detailed insofar as it distinguishes between 'offenders' on various grounds—marital status, religious affiliation and sexual position—in ascribing punishment. Only the 'passive' or the 'receptive' party receives the death penalty in all instances of consensual anal intercourse between men. On the other hand, the 'active' or the 'insertive' party only faces the death penalty for consensual intercourse if he is married, or if

he is non-Muslim and his sexual partner is Muslim.[33] In effect, the passive party is regarded as having adopted 'the woman's role' in the sexual encounter. In the context of Iran, this is underpinned by Islamic precepts:

> The distinction between punishments for the active and passive participant in the act of sodomy originated from early Islamic scholars' conceptions of God's prescriptions for the role of males and females…who argued that 'maleness' is the source of action, and 'femaleness' is the source of reaction. Thus, if a male becomes a passive participant in anal intercourse, he is behaving contrary to God's wisdom. This position finds further support in a *hadith* in which a man who has been sodomized is referred to in feminized terms, comparing him to a woman who is penetrated during intercourse. (Iran Human Rights Documentation Center, 2013a:8)

One of the interviewees noted that, in Iran, the 2013 Penal Code criminalises same-sex sexual *acts*, rather than same-sex *love* or *relationships* (I-11). Same-sex attraction, on the other hand, is pathologised, and dealt with in the medical space:

> The situation for lesbian, gay, and bisexual people in Iran is characterized by a fundamental dichotomy between concepts of perversion and deviation (*enheraf*) on the one hand and pathology and disorder (*ekhtelal*) on the other. This dichotomy is instituted by a legal framework in which homosexual acts are treated as crimes, whereas homosexual desires are taken as symptoms of a gender identity disorder in need of cure. (Bahreini and Nayyeri, 2021)

Medicalisation of same-sex attraction manifests in the form of various conversion practices, founded upon the misguided premise that such interventions may bring gay people into line with the strict binary model of human sexuality espoused by the clerics. One particularly heinous method embraced by the state is coerced sex-reassignment surgeries (Iran Human Rights Documentation Center, 2013b; Iranian Lesbian & Transgender Network (6Rang), 2014; Villarreal, 2020). Unsurprisingly, conversion practices are often unsuccessful, instead leading to depression and suicide (Iran Human Rights Documentation Center, 2013; discussed in more detail in Part 2 of this report).

As same-sex intimacy is criminalised in Iran, the victims of same-sex rape, as well as persons blackmailed on the basis of their sexual orientation, have little means of recourse—whether to the police, the *Pasdaran* (the 'Revolutionary Guards', a branch of the Iranian Armed Forces), or the *Basij*, a paramilitary volunteer militia acting as a 'morality police' , who have free rein to commit acts of homophobic violence in a veritable 'Guerrilla War' against sexual minorities (Iranian Railroad for Queer Refugees, 2018). In 2017, the police on several occasions arrested individuals perceived to belong to sexual minorities and detained them for almost seven months without charge (I-10). Prolonged detention and the threat of execution were used to extract names of other queer persons in exchange for freedom: 'you're faggots, you're homosexuals, you should be killed, your execution sentences were already issued, you're being taken to the death row soon' (Ibid.).

When prosecuted for same-sex sexual conduct, defendants often struggle to find a lawyer:

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[33] If he is married, the 'active' party is regarded as having committed adultery, which is a capital offence. If he is non-Muslim and anally penetrates a Muslim man, the active/insertive party is deemed to have 'corrupted' the Muslim man, and is ascribed the death penalty accordingly.

> One of our biggest challenges in Iran is to find a legal representative . . . No one would like to do it. We had just a couple of lawyers who take LGBT case several years ago, and they had to escape Iran and claim asylum . . . And the reason is that homosexuality is punishable by death in Iran according to Islamic punishment code. If anyone wants to challenge that rule, [they are deemed to be] against this rule, therefore you are against Islamic rule, therefore you are against Islam, and therefore you are against God. That person [the lawyer] can be executed or killed for being immoral or infidel . . . A lot of lawyers are reluctant to take those cases because they don't want to lose their license, they don't want to be accused that they're supporting LGBT causes. (I-10)[34]

Judges have the power to sentence defendants accused of same-sex sexual acts to death with little evidence. The evidentiary requirements for proving *livat* (penetrative sex between men) are varied, and may include the confession of the offender, the testimony of four male witnesses who claim to have witnessed the sexual act, or the 'knowledge of the judge' (Jafari, 2015:22). The latter is particularly concerning, insofar as it 'enables judges to rely on vague circumstantial evidence to determine whether a crime has occurred even in the absence of other evidence or in the presence of exculpatory evidence' (Ibid.) Our interviewees explained how this provision operates in practice:

> A lot of time, that Article [knowledge of the judge] is being used, because there are [otherwise] a lot of conditions [to prove the same-sex sexual acts… But if none of them exist, and the judge thinks, 'okay, you look gay, and it's obvious for me that you are not a macho, patriotic man, I am comfortable to sentence you.' (I-10)

> The 'knowledge of the judge' [may] be proved with some small, small evidence, [like] the atmosphere and environment of the case… […] Even if the accused stays silent and did not confess, the judge may write something [like] 'he had behaviour like a woman. Behaviour like an LGBT.' (I-12)

> Because this [the prosecution of same-sex sexual acts] is so reliant on individual judges' perception of a case, it is very arbitrary to find out where the sentence is coming from. There are some constituencies and entities within the government that are pretty supportive of LGBT issues, even though privately, [so] when it comes to individual judges and a lack of legal precedents for these cases, you know, we see that the attack is arbitrary... (I-16)

Even if one avoids contact with the Iranian criminal justice system, sexual (and gender) minorities often face persecution in their homes. Individuals report being subjected to various forms of abuse by their family members, including beatings and flogging, enforced seclusion and isolation from friends and society, neglect and abandonment, verbal insults and death threats (Iran Human Rights Documentation Center, 2013a). Whereas same-sex attracted men are more punitively treated in the Penal Code, women—and in particular lesbian and trans women—are disproportionately subjected to violence in the domestic sphere (I-1). In addition, 'honour killings' are distinguished from murder under Iranian law, carrying significantly diminished penalties which may be construed as incentivising such violence (discussed in more detail in Part 2 of the report).

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[34] A human rights lawyer who used to practice in Iran spoke about how the Iranian authorities were not happy with him defending death penalty cases including sexual minorities, children, and women, which led to his eventual departure from Iran (I-12).

For some, such rampant and pervasive homophobia forces them to leave the country (I-10).[35] One of our interviewees, a gay man who has since left Iran, spoke of the realities of life in Iran as a gay person:[36]

> You have this fear, and this fear is always with you—every day, every night. It's like you expect death every day. And then, you have two options basically. You can let go of your desires and your nature just to follow heteronormative life, and try to, you know, blend into the heterosexual lifestyle, or you can just take the risk, and try to live your life, although you consider all of those years of threats. And I chose the latter one—so, I decided not to cancel myself and not to abandon my nature and desires. So, but at the same time, the level of stress you are living under is enormous. That is my insight. But then again, you need to live. That's the reason that we have a very large, I can say, underground life in Iran. And, so the connections are secret, but because all of us are living under the fear, we help each other and try to [find] ways to survive. But all the time, you have the risk. Even when you want to have a very, very private party with your gay friends, for your LGBTQI friends, you need to consider all the risks, and everyone should be aware of the risks. But we had them. Although, we knew that the parties could have been raided virtually at any time. (I-4)

Uncompromising attitudes towards sexual minorities are seen as an important point of distinction between the theocratic Islamic Republic of Iran and the 'liberal' West. One oft-quoted source suggests that, since the 1979 Iranian Revolution, between 4,000 and 6,000 people are thought to have been executed as a result of these attitudes (Amnesty International quoted in Independent Advisory Group on Country Information, 2019).[37] However, based on our research, it is almost impossible to determine, or even estimate with any accuracy, the number of executions carried out for same-sex sexual conduct:

> The lack of transparency and lack of due process that makes it very difficult to figure out what is happening in Iran's criminal justice [system], and in particular for crimes such as this one [same-sex sexual conduct], where the state tries to hide it from the international community. (I-2)

> [The] Iranian regime always change[s] the story… and it makes our organisation and activists' jobs more difficult to prove what exactly happened. (I-10)

In addition to the government and the criminal justice system, the public is reluctant to speak on this issue. As noted in the section on 'Data: Access, Completeness, & Accuracy', data concerning cases involving sexual minorities are difficult to collect: 'because of the transphobic and homophobic culture, [families] don't want to contact the media or human rights organisations' (I-1). Accordingly, we used publicly available information such as media reporting and existing databases to trace the number of executions carried out each year since 1979 (Figure 2), and created a list of executions for same-sex sexual conduct (2004-2020) (Appendix 5).

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35 A lawyer who worked on many cases involving sexual minorities explained that 'the only way that we could deal with [these cases] was to find a way for those people to escape Iran and seek asylum, because we couldn't do anything in Iran to challenge the situation.' (I-12)

36 One of our interviewees explained that 'laws became almost unbearable in Iran for me as a gay man, and I really wanted to live in a free country without, you know, being under fear and pressure for my homosexuality.' (I-4)

37 We were unable to find the original Amnesty International publication. In response to these figures, one of our interviewees noted the following: 'According to an Iranian magazine based in Sweden, between 1979—the Islamic Revolution in Iran—and 2000, 4000 people were killed for homosexuality in Iran. And according to some of the human rights organisations in Iran, up to 2012, 6000 were killed in Iran for homosexuality. *We don't have any way of confirming these executions, whether they were homosexual or not.'* (I-10; emphasis added)

Between 1979 and 2020, we identified 241 known executions for same-sex sexual conduct (Figure 2). Several years after the 1979 Revolution, the number of executions dropped to single digits (1984 onwards). The higher levels of executions carried out for same-sex sexual acts in the period immediately after the Revolution may not represent the actual number of executions, as the Iranian authorities used homosexual and other capital offences as a cover to execute opponents (I-10). Known executions were sparse between the 1990s and the early 2000s: we were unable to identify any executions between 1998 and 2003. Executions appear to have recommenced in 2004.

Since 2004, 79 executions for same-sex sexual offences have been identified (Appendix 5). In all 79 cases, the 'offender' was male; in fact, we have been unable to identify a single instance of a woman being judicially executed (even prior to 2004), despite Iran being one of the few countries in which same-sex intimacy between women carries the death penalty.[38] We identified two instances involving the execution of a child (aged 16 and 17), and a further six involving juvenile offenders (persons convicted of crimes committed as children, but executed as adults), the youngest of whom was 13 at the time of the alleged sexual encounter. With the exception of a single man from Afghanistan, all persons executed were Iranian nationals. Lastly, while some of the earlier executions were carried out in public, the majority appear to have been carried out in prison, without a civilian audience.

Iran has carried out executions for same-sex sexual offences as recently as 2019. In January 2019, 'a state controlled Iranian news outlet' (Mendos et al., 2020:49) reported that a 31-year old gay man was publicly hanged for forced sodomy and kidnapping (Iran HRM, 2019).[39] In July 2019, another man was executed for forced sodomy, but this was not reported in the Iranian media (Iran Human Rights, 2019).

Although both these cases concern same-sex *rape*, it is widely believed that such convictions often stem from consensual acts. By imposing the death penalty only on the passive/receptive sexual partner in consensual same-sex intercourse, the 2013 Penal Code creates a legal imbalance between sexual partners.[40] Once arrested, the Penal Code has a perverse effect of encouraging false accusations of rape: it incentivises persons alleged to have engaged in consensual acts to 'accuse their partner of rape to save their [own] lives' (I-2). In addition to avoiding the death penalty, a false rape accusation may also be motivated by a desire to avoid the stigma associated with being gay (I-12). The Penal Code could also discourage genuine accusations of rape: victims face the risk of being disbelieved about the coercive nature of the sexual act, which could result in an execution. This is because the disclosure of same-sex sexual interactions to the authorities—even where such acts were non-consensual—constitutes a 'confession' of having engaged in such acts, and could be used as evidence to prosecute the victim.

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38 *Musahaqah* (a woman putting her sex organ on the sex organ of another woman) carries the death penalty upon fourth conviction.

39 The state-run Iranian Students' News Agency (ISNA) site provides further information that the man abducted two 15-year-old boys and raped them. The news report in Farsi is available from: https://www.isna.ir/news/97102010834/ (last accessed on 30 January 2021).

40 The 1991 Penal Code, on the other hand, did not discriminate on the basis of sexual position, and imposed the death penalty on both parties.

While the majority of executions for same-sex sexual offences since 2004 ostensibly concern same-sex *rape*, the veracity of this may be questioned. It has been suggested that the Iranian authorities are controlling how executions for same-sex sexual intimacy are reported:[41]

> Iranian News Agency reports come in as is and very few people have access to it. Then it gets filtered to go to the deputies and the government officials, and then it gets filtered another time to get to the public. And in this filtering, homosexual acts is obviously either changed, eliminated or changed into homosexual rape. And that's why [we] haven't seen these news reports outside in, you know, in public sources. (I-2)

Such factual distortion in the reporting of executions may be a result of the authorities recognising that executing people for non-consensual same-sex conduct is less likely to incur condemnation from domestic and international observers (I-2; I-3):

> In the early days of the revolution, the government announced officially executions for homosexual acts. But this caused an uproar outside the country. Advocacy of the LGBT community, advocacy at the UN, I mean, you know, it was really … And so they started not to say 'homosexual act', and then officially announce of the 'homosexual rape. . . The lack of transparency and lack of due process that makes it very difficult to figure out what is happening in Iran criminal justice, and in particular for crimes such as this one, where *the state tries to hide it from the international community.* (I-2, emphasis added)

> Because they didn't like to, you know, attract international media… they would hide these cases behind rape (I-15).

Indeed, the reporting of an execution for rape successfully diverts attention away from the 'same-sex' aspect of the case. Such a desire to dissipate condemnation is further evidenced by the fact that persons executed for same-sex sexual acts are commonly convicted of other crimes such as murder and kidnapping. This is particularly apparent in relation to persons executed for *consensual* same-sex sexual acts: the majority of people executed for consensual same-sex conduct since 2004 (14 out of 23 cases) were also convicted of multiple other offences. By way of comparison, rape was accompanied by other charges in only a minority of cases (15 out of 55 cases).

Assuming that the Iranian authorities are able to manipulate both the number of offences one is convicted of and the manner in which such crimes are reported, the bundling of same-sex sexual offences with other crimes appears to serve the state prerogative (I-3; I-4):

> Just saying that 'someone is gay and we're going to execute that person' is not enough, so they associate other crimes with that person so they can justify execution. . . The media… is against homosexuality… [they] want to criminalise persons before execution by saying 'it's ok, look at that person—that person is gay' . . . and then they associate being gay to those [other] crimes, which means that if someone is gay, that person can also be a murderer [or] a paedophile. (I-4).

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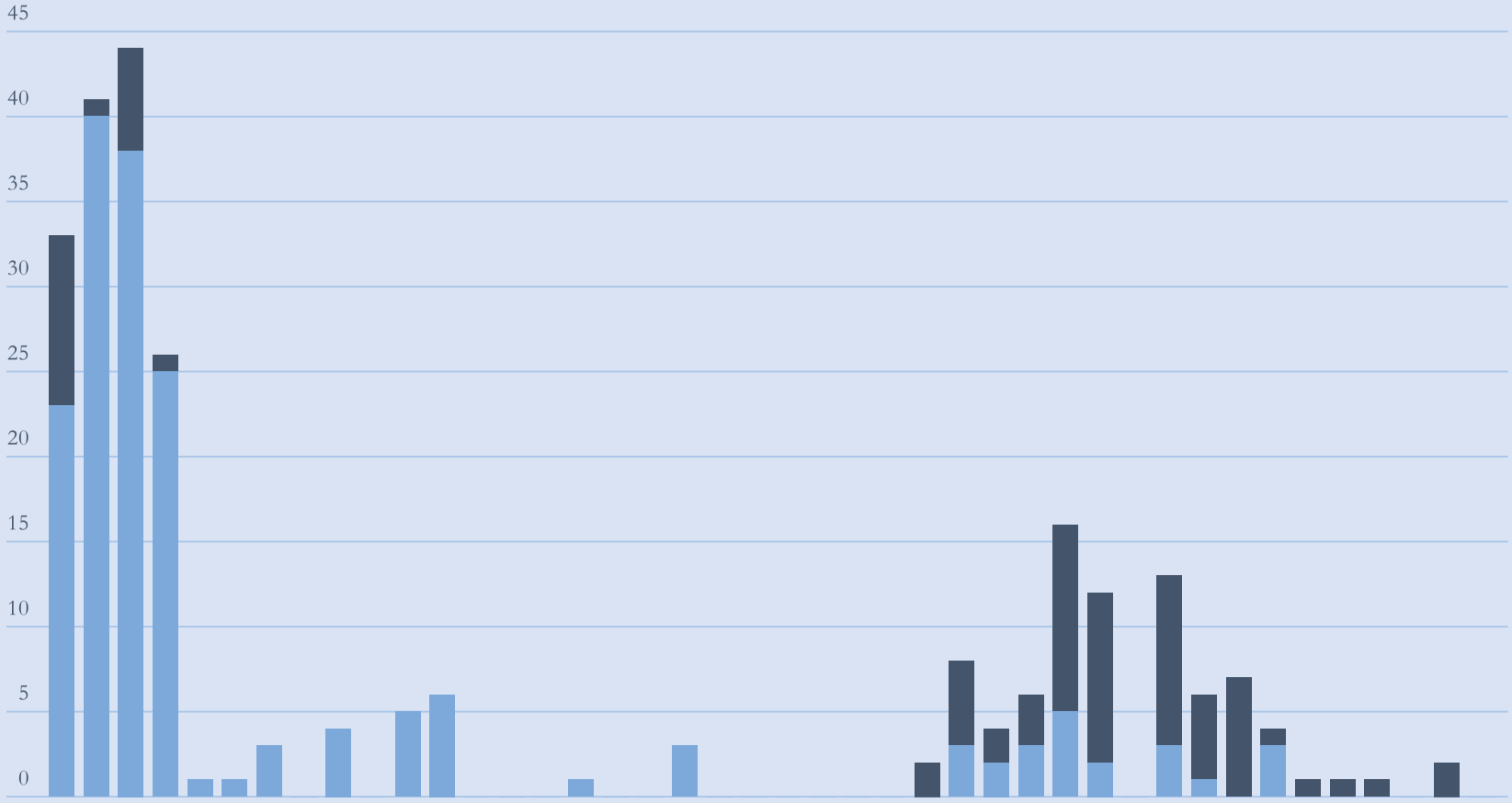
[41] Alternatively, the fact that the number of executions for same-sex rape so drastically outweighs the number of executions for consensual same-sex intercourse could be ascribed to the Iranian authorities simply withholding information concerning the latter. One of our interviewees spoke to us about the executions carried out in secret: 'We run into people who tell us [that] 'I have a neighbour who was executed in x town in xx, he was gay. His father was running the local theatre', but in our news reports we don't have any trace of anyone executed in that town, in that year, or that month, let alone for that crime. And so that's why I tell you that this is not an area where we have you know a lot of information because that's one of the most difficult investigation arms in Iran.' (I-2)

Our interviewees indicated that the execution of sexual minorities is both 'politically costly' with regard to the international community (I-2) and is becoming increasingly unpopular among the Iranian public due to growing understanding and acceptance of homosexuality (I-2; I-4; I-12).

Foreign Minister Mohammed Javad Zarif stated: 'Our society has moral principles. And we live according to these principles' (Walsh, 2019). We have shown, however, that the social and even judicial treatment of same-sex sexual activity throughout Persian history is more complex than the fact of its formal proscription; today, that proscription enjoys neither unwavering public support nor the consensus of all Muslim scholars (Alipour, 2018). Whether or not those who support it genuinely believe it is a matter of religious obligation, the imposition of the death penalty for same-sex sexual activity acts, among other things, as a means of social control:

> The intrusion of the state in Iranians' private space and private life is… a form of persecution of society as a whole. It's an excuse to punish [and] to show strength…It's just a means of control, the moral aspect of it is just pretence … It's like the veil—it's one more way… to remind the population that they are in control. (I-2)

Figure 2: Number of Executions for Consensual and Non-consensual Same-Sex Sexual Act in Iran: 1979-2020



	'79	'80	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19	'20
Total	**33**	**41**	**44**	**26**	**1**	**1**	**3**	**0**	**4**	**0**	**5**	**6**	**0**	**0**	**0**	**1**	**0**	**0**	**3**	**0**	**0**	**0**	**0**	**0**	**0**	**2**	**8**	**4**	**6**	**16**	**12**	**0**	**13**	**6**	**7**	**4**	**1**	**1**	**1**	**0**	**2**	**0**
Non-consensual	10	1	6	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	5	2	3	11	10	0	10	5	7	1	1	1	1	0	2	0
Consensual	23	40	38	25	1	1	3	0	4	0	5	6	0	0	0	1	0	0	3	0	0	0	0	0	0	0	3	2	3	5	2	0	3	1	0	3	0	0	0	0	0	0

Sources: Abdorrahman Boroumand Center n.d.; Dehghan 2011; Iran Human Rights n.d.; Iran Human Rights Documentation Center n.d.; Mendos 2019; Weinthal 2019.



Ari is a 19-year-old gay man living in Iran. His family accepts him,
but he hides his true identity out of fear.

(From *Hidden Iran*, a series by Ura Iturralde)

RECENT DEVELOPMENTS

Death penalty laws and policies change not because offending rates change, but because governments or courts exercise leadership in bringing about change. In relation to the decriminalisation of homosexuality, the Human Dignity Trust (2015) argues that external influence is crucial:

> If the international community had remained silent on these instances, the current situation would be far graver. . . History tells us that progress is possible, but only with ongoing, deliberate efforts from the international community. (Human Dignity Trust, 2015:14)

Recent developments in Sudan, Brunei, and Uganda reinforce this position: domestic shifts in death penalty law and policy are mediated by the country's international relations.

In July 2020, **Sudan** abolished the death penalty for same-sex sexual acts (Barkawi and Savage, 2020).[42] Under the old law, the death penalty was available upon a third conviction of sodomy, while the first two convictions were punishable by up to five years' imprisonment and flogging of a hundred lashes.[43] Under the amendments, sodomy remains criminalised, but the death penalty and flogging were repealed (Ibid.).[44] Our interviewees confirmed that nobody had been sentenced to death or executed under the old law, but that many persons perceived as belonging to sexual minorities had been arrested and prosecuted under other criminal provisions, such as indecent acts or prostitution (I-8; I-14).

One interviewee explained that human rights defenders (including the interviewee) and civil society organisations[45] supported and advocated various reforms including the complete decriminalisation of same-sex sexual conduct (I-8). Though the 'Harvard educated'[46] Minister of Justice was ostensibly supportive of the reform, he was forced to compromise with the Sovereignty Council of Sudan—the collective head of state—who refused to accept all the reforms proposed (Ibid.). The continued criminalisation of sodomy, albeit without the death penalty, was one such concession.

The reform was not welcomed by all,[47] and the situation remains dire for sexual minorities in Sudan. In early 2020, one man was killed and another was severely injured in Abu Hamad

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42 The amendments have been reflected in textbooks used in schools: a section on sodomy that was supportive of the death penalty for same-sex sexual conduct has been deleted (Dadouch, 2021). The abolition of the death penalty for sodomy was part of a larger reform announced by the Ministry of Justice, which included plans to decriminalise apostasy, permit non-Muslims to consume alcohol, ban female genital mutilation, and allow women to travel with their children without a permit from a male relative (Barkawi and Savage, 2020).

43 Sodomy is defined as 'any man who inserts his penis or its equivalent into a woman's or a man's anus or permitted another man to insert his penis or its equivalent in his anus' (Article 148, Penal Code 1991). The English translation of the Penal Code is available from: https://www.ecoi.net/en/file/local/1219135/1329_1202725629_sb106-sud-criminalact1991.pdf (accessed on 28 January 2021).

44 The punishment for a second conviction was raised, however, from five to seven years' imprisonment.

45 In Sudan, the majority of civil society organisations and human rights defenders oppose the criminalisation of same-sex sexual acts but the majority of political parties, professional unions, and charitable societies support the criminalisation (I-8).

46 The interviewee implied that due to his education, the Minister was aware of international attitudes towards sexual diversity, and thus how Sudan's criminal justice system may be perceived by the international community.

47 Our interviewee was also concerned that the reforms will be reversed: 'the political situation in Sudan is not stable now, and the supporters of the old regime are now protesting every day and trying to change the situation, and we think this may happen in the coming months, we are not sure. One of their promises is that they will abolish all the amendments and recover the old situation, so this is expected also.' (I-8)

after allegations were made that a party they had attended was in fact their same-sex wedding (Bedayaa, 2020). Video footage, either of this incident or a similar one, was subsequently posted online, accompanied by a homophobic social media campaign inciting civilians to kill sexually diverse persons (Bedayaa, 2020; I-13; I-14). In Sudan, sexual minorities are subjected to honour killings (Mendos, 2019:371; I-13), and conversion practices known as *ruqyah* (exorcisms) are performed by religious leaders (I-13).[48] The police also seek out and torture sexual minorities.[49] Our interviewees in Sudan shared very similar stories of the police raping and beating men whom they perceived as gay (I-8; I-13; I-14). For example, in 2016, the police arrested a man in Khartoum for wearing pink socks (I-8). In police custody, he was severely beaten and brutally sodomised with a stick, causing severe injury and bleeding. When his lawyer tried to meet him, the police refused, asking 'why are you helping those people?'. After three days, he was released and hospitalised, but declined to bring any legal action against the police (I-8). Another of our interviewees spoke about being repeatedly raped by a police officer, unable to escape the violence as a result of being blackmailed by his rapist with a video recording of their previously consensual sexual activity (I-13).

Given that no person is believed to have ever been executed for sodomy in Sudan, the importance of the abolition of the death penalty lies more in its declaratory value than its practical impact. However, the legislature appears to be sending mixed messages: despite abolishing the death penalty, the new amendments also *increase* the prison sentence for a second conviction of sodomy from five to seven years. Accordingly, these reforms were considered by many activists to be a façade, motivated by a desire to 'impress the world', lacking any real policy backbone (I-8; I-13; I-14, I-16). As one interviewee noted, despite the legislative reforms, 'they [the government] did not change at all their approach or rhetoric or criminalisation of homosexuality' (I-16).

This is reminiscent of the situation in **Brunei**. The Penal Code prescribing stoning for *liwat* (anal intercourse between men) was originally introduced in 2013, but did not come into force until April 2019 due to international outcry (Ochab, 2019). The Prime Minister's office announced that Brunei is a 'sovereign Islamic and fully independent country and, like all other independent countries, enforces its own rule of laws' (Ibid.).

The Penal Code's entry into force was once again met with international condemnation: Amnesty International labelled the provisions 'vicious', 'heinous' and 'indefensible' (Amnesty International, 2019; Amnesty International UK, 2019a, 2019b); and the UN High Commissioner for Human Rights condemned the code as 'draconian', signifying 'a serious setback for human rights protection' (United Nations Human Rights Office of the High Commissioner, 2019). Multinational companies also boycotted the country: businesses stopped accommodating employees in hotels owned by the Sultan, and travel companies stopped the promotion of Brunei as a tourist destination (Oppenheim, 2019).[50] Brunei's Sultan quickly announced that the state's de facto moratorium on the death penalty—

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48 The therapy involved religious or village leaders beating his sexuality out of the interviewee (I-13). The interviewee's aunt had died from such therapy; it was not about homosexuality, but the family thought that she was haunted by a devil.

49 One of our interviewees explained that: 'almost all the cases end in police custody, and it is very rare that these cases go to the court' (I-8).

50 However, campaigns, boycotts and external pressures are not necessarily always effective, and may instead have adverse effects on the population of the sanctioned state (Gerber, 2019).

observed since 1957—would remain in place (Ghoshal 2019; Westcott and Wright 2019). Brunei reiterated this in its 2019 Universal Periodic Review, where numerous countries expressed their condemnation of the new Code (United Nations Human Rights Council, 2019a, 2019b).

Concern remains that the *de facto* moratorium could be lifted at any moment. Brunei has sought to defend the new Code by claiming that the criminalisation of same-sex sexual acts is 'to safeguard the sanctity of family lineage and marriage', and that Sharia law 'focuses more on prevention than punishment. Its aim is to educate, deter, rehabilitate and nurture rather than to punish' (BBC News, 2019). The state also claimed that evidentiary burdens for capital offences are so high that prosecutions and convictions are, in reality, extremely unlikely (Ibid.). Brunei is sending contradictory messages: one for the international community that Brunei will not carry out the death penalty for same-sex sexual conduct, and one for its people that the same conduct will not be tolerated and shall be punished by death.

In **Uganda**, same-sex sexual conduct has been criminalised since British colonial rule.[51] In 2013, the Parliament passed the Anti-Homosexuality Act, initially prescribing the death penalty for same-sex sexual acts. Though the punishment was subsequently reduced to life imprisonment, additional offences against sexual minorities were included. For example, the Act expanded the offence of 'homosexuality' to include 'attempts to commit homosexuality' and the 'promotion of homosexuality', and prescribed greater penalties for 'aggravated homosexuality' (Sexual Minorities Uganda, 2014:1–4).

Sexual Minorities Uganda (SMUG), an NGO advocating the rights of LGBTI Ugandans, found that the passing of the Anti-Homosexuality Act gave rise to 'a culture of extreme and violent homophobia whereby both state and non-state actors are free to persecute Uganda's LGBTI people with impunity' (Sexual Minorities Uganda, 2014:1). The day after the Act was signed, a Ugandan tabloid printed the names of 200 individuals claimed to be LGBTI. In the four months following the passing of the Act, SMUG recorded 162 reported incidences of persecution against LGBTI persons in Uganda, compared to 19 in 2012 and eight in 2013 (Sexual Minorities Uganda, 2014:3). This included violent attacks, arbitrary police arrests, torture, blackmail, evictions, the denial of medical treatment,[52] and a concerted effort to drive LGBTI activism underground. In its 2016 report titled 'And That's How I Survived Being Killed', SMUG carried out 115 interviews with LGBT persons between May 2014 and December 2015, and found 48 accounts of physical violence due to being a gender or sexual minority reported, including 13 accounts of police torture (Sexual Minorities Uganda, 2016). While SMUG has not identified any known cases where violence by state actors resulted in the killing of sexual minorities, these reports illustrate multiple incidents of arbitrary violence by the police, with four cases of suicide and at least 17 attempted suicides involving LGBTI persons within months of the Anti-Homosexuality Act being implemented (Sexual Minorities Uganda, 2014:13).

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51 The Ugandan Penal Code 1930, amended in 2000, imposes life imprisonment for 'carnal knowledge of any person against the order of nature.' The legislation is available from: http://www.osall.org.za/docs/2011/03/Uganda-Penal-Code-Act-1950-Ch-120.pdf (last accessed on 28 January 2021).

52 It is not uncommon for sexual minorities to be denied access to HIV treatment. Upon entering a HIV clinic, a man—after disclosing his sexual orientation—was called 'this rotten person' and that the clinic does not 'offer services to such people' (Sexual Minorities Uganda, 2016:43). Uganda's HIV prevalence among adults was 6 per cent with nearly one in seven households with at least one HIV positive member (Ministry of Heath Uganda, 2019:13).

In August 2014, the Constitutional Court of Uganda annulled the Anti-Homosexuality Act. The Ugandan government spokesperson stated that the court's ruling demonstrated to 'Western donors' that Uganda's democracy was functioning well and that they should 'reinstate any aid they had cut' (BBC News, 2014). In June 2014, the US had cut funds to a number of programs, following the actions of Denmark, Norway, the Netherlands and Sweden (Ibid.) The Court did not discuss the substance of concerns about the criminalisation of homosexuality but found the Act unconstitutional on procedural grounds.

In 2019, Minister of Ethics and Integrity, Simon Lokodo, announced plans to reintroduce the Anti-Homosexuality Act. This iteration of the legislation, which became known as 'Kill The Gays' Bill, sought to impose the death penalty for 'aggravated homosexuality'. The government quickly denied that there were plans to reinstate the Act after major donors—European Union, World Bank, the US, and the Global Fund—announced that they were closely monitoring the proposal (Bhalla, 2019). The announcement of the introduction of the death penalty for same-sex sexual activity, and the subsequent retraction, again illustrates how domestic death penalty policy is informed by a country's international reputation amongst abolitionist nations and organisations. To the citizens living in these jurisdictions, the recent backflips by their governments to prescribe, or abolish, the death penalty, for same-sex sexual conduct do not instil confidence about state willingness to protect the rights of sexual minorities. Instead, these developments depict these states as tweaking their policy to satisfy their international audience while maintaining their objection towards same-sex sexual relationships. In the case of Uganda, the state continues to actively engage in the persecution of sexual minorities: a 2020 report by SMUG identifies the police and local councils as 'one of the key perpetrators' of insecurity and violence against sexual and gender minorities (Sexual Minorities Uganda, 2020). In April 2020, 23 people living at a shelter for LGBTI people in Kampala were arrested for allegedly gathering in public and violating the lockdown imposed amid the COVID-19 pandemic (Ghoshal, 2020). The town mayor was captured on video leading the raid and beating residents at the shelter with a stick; the detainees were charged with 'carnal knowledge' under the Penal Code which criminalises consensual same-sex sexual activity and detained for weeks before a court order was handed down for their release (Ibid.).



'We heard people stoning the door and windows while shouting, telling us to immediately leave the house because they were tired of us, claiming that we are curse to the village… The door broke and we were pulled out, thrown on the ground, beaten and flogged for almost an hour. We were half dead.'

Miiro, Uganda

PART 2:
BEYOND THE DEATH PENALTY

In this part of the report, we broaden our focus beyond judicial executions. While the death penalty is perhaps the most visible form of state-sanctioned killing, we have identified numerous other manifestations of homicidal violence in which states are undeniably complicit. In some cases, as with the death penalty, the killing is carried out by the state itself: extrajudicial killings, for example, are carried out by state actors, including insurgents in instances where militia groups who have become the *de facto* state. In other cases, state involvement comes *after* the killing: lawful excuses to homicide and biases in judicial decision-making involve the state excusing and legitimising the killing of sexual minorities by private actors. Finally, we examine instances where the state has endorsed 'conversion therapies' of such inherent violence that they result in death or pose significant risks to life.

EXTRAJUDICIAL KILLINGS

Even in jurisdictions where same-sex sexual acts are not punishable by death, states have been complicit in the killing of sexual minorities outside of the judicial process. Some extrajudicial killings are perpetrated directly by the state; others are committed parallel to, or in default of, the state. We first examine instances of extrajudicial killings of sexual minorities perpetrated by the state or its agencies in the **Chechen Republic (Russia)**. We then examine the extrajudicial killing of sexual minorities by insurrectional movements in **Afghanistan**, **Iraq**, **Libya**, **Syria**, **Somalia** and **Yemen**. In this section, we do not include cases where the state or its state agencies *failed* to respond to the killing of sexual minorities;[53] rather, our focus is on extrajudicial killings commissioned by the state itself.[54]

'GAY PURGES'

Between 2017 and 2019, state-perpetrated 'gay purge' campaigns took place in the **Chechen Republic (Russia)**: men, and to a lesser extent women, were covertly abducted, detained and tortured on the basis of their actual or perceived sexual orientation (Russian LGBT Network and Milashina, 2017).

These enforced disappearances created an environment in which violence could transpire with impunity.[55] In 2017 alone, more than 100 men were detained and subjected to beatings,

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53 For example, in Indonesia, a 43-year-old transgender woman died as a result of several people dousing her with petrol and setting her on fire (Reuters, 2020). Within days, the police decided not to press murder charges against the suspects because they believed that they had not burned her intentionally. Amnesty International criticised the decision of the Indonesian police in that it was 'too early' to conclude no intent (Reuters, 2020). In this case, while it is entirely plausible to argue that the state had a role to play in dealing with her death, the *failure* of the police (or any other state actors) to investigate such killing is beyond the scope of this report.

54 An example of an extrajudicial killing by the police occurred in Jamaica. Victor Jarrett was reportedly chopped, stabbed and stoned to death by Montego Bay residents on 18 June 2004. It is alleged that the police participated in this incident, first beating him with batons and then urging others to beat him because he was a homosexual (United Nations Economic and Social Council, 2005). Our report focuses on state-sanctioned killing that occurred between 2015–2020; therefore, this case is not included.

55 The United Nations defines 'enforced disappearance' as: '[T]he arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law' (United Nations Human Rights Office of the High Commissioner, 2006).

electrocution, starvation, dehydration, sleep deprivation, suffocation, and being sodomised with barbed wire (Human Rights First, 2017; Human Rights Watch, 2017; Russian LGBT Network and Milashina, 2017). Release from detention did not bring an end to this persecution. Chechen authorities encouraged the victims' relatives to kill them, guaranteeing immunity from prosecution should they do so (Russian LGBT Network and Milashina, 2017:16):

> One day, all my relatives were informed about the fact that I was detained. […] He [Magomed Daudov, the spokesperson of the Parliament of the Chechen Republic] talked to our relatives, saying that we brought disgrace to the nation and to our families. He told them that if they hono[u]r the traditions, they must kill us. And that if they did everything, they would not be punished for it. After all this talk, a few people were released to their relatives (Testimony of a victim quoted in Russian LGBT Network and Milashina, 2017:17).

During this wave of violence, at least three men were killed, either by Chechen officials or by their own families (Russian LGBT Network and Milashina, 2017).

In December 2018, a second wave of violence resulted in approximately 40 people being detained. At least two people are known to have died as a result of torture in detention (Prilutskaya, 2019); however, the true number of deaths is likely to be higher, given the invisible nature of both enforced disappearances and honour killings.

Testimonial evidence gives an insight into the sheer brutality of the torture to which victims were subjected:

> Finally, you faint, it all goes dark, but when you come to your senses, they start all over again. And once they're done with you and you get your bearings, you hear other inmates screaming, and the sounds of torture are just there all day, and at some point, you start losing you mind. (Human Rights Watch, 2017: 18)

Such evidence from survivors also indicates that those detained and tortured by the Chechen authorities were almost exclusively men: of the 130+ people known to have been violated, only four were women (I-7). This disparity may be explained by a closer consideration of the context in which such organised violence occurred. Chechnya is a highly conservative and masculine society, underpinned by values to which any digression from the heteronormative standard—and in particular, male homosexuality—is deemed an affront (Human Rights Watch, 2017:2):

> On every single scale, being labelled or arrested for same-sex sexuality… is on the lowest level of humanity . . . The shame that accompanies [homosexuality is] . . . harder on a person than any other situation . . . there is such a stigma (I-7).

This alone, however, does not explain why the state has taken such a disproportionately aggressive stance towards same-sex-attracted men. Rather, the relative absence of state-perpetrated violence against same-sex attracted women may be attributed to the fact that women are viewed as less than 'full' citizens (I-17). Accordingly, a lack of violence cannot be construed as tantamount to state acceptance of same-sex intimacy between women; rather, it must be viewed as a result of women not existing in the same public sphere as that in which 'full' citizens operate, and therefore not coming into direct contact with the state:

> Imprisonment . . . represents that you are a subject in the [eyes of the] Government . . . Women . . . lack that subjectivity, and they're not necessarily of interest for police officers. (I-7)

That said, women are not immune from violence in Chechnya; rather, they are more likely to fall victim to honour killings. Homophobia is so pervasive in the Chechen Republic that the stigmatisation of sexual minorities extends to their families (Human Rights Watch, 2017:2), who consequently murder the 'tainted' individual to 'cleanse' the family name. As one interviewee describes:

> The government doesn't recognise them as citizens, but also their families don't recognise them as human beings anymore'. (I-7)

While such violence is not directly perpetrated by Chechen authorities, the state is reported to have *actively* encouraged the carrying out of such homicides during the period in question (Human Rights Watch, 2017:2).

Despite a wealth of evidence—including video footage[56] —corroborating the extent of the violence, the purges have been denied by both Chechen and Russian officials (Human Rights Watch, 2017; Prilutskaya, 2019; Steinmetz, 2019). The swift and coordinated nature of the violence suggests otherwise: victim testimonies confirm that these crimes were not the actions of rogue police officers or vigilantes, but a systematic, state-orchestrated assault against sexual (and gender) minorities (Russian LGBT Network and Milashina, 2017:9).[57]

Moreover, these coordinated sprees of homophobic violence form part of a larger system of assaults targeting marginalised communities. Chechnya has been described as a place where 'unlimited violence' can be meted out to 'any group' by the government (I-7). Under Ramzan Kadyrov's rule, state actors are given permission to abuse various 'undesirables', from 'alleged Islamist militants' to 'family members perceived to be Kadyrov's critics' (Human Rights Watch, 2017:2). When asked about the possibility of another 'purge', an interviewee responded as follows:

> There is a high possibility that something like this happens [again]. I feel like violence in Chechnya is always happening. And the pandemic itself has shown that the people who are suspected of having COVID are the new terrorists. . . the new targets for the Chechen government. (I-7)

One of the most alarming features of the 'gay purges' is the fact that they took place in a country that does not criminalise same-sex sexual conduct. The Chechen Republic does not have its own criminal code, and under Russian law, same-sex intimacy between men has been lawful since 1993, while sexual acts between women have never been criminalised.[58] However, lawfulness does not necessarily correlate with social and cultural attitudes: a survey carried out in 2020 found that only 14 per cent of Russians thought homosexuality should be accepted. By way of comparison, the median acceptance rate among the 34 countries surveyed was 52 per cent (Pew Research Center, 2020).[59]

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56 Clips of such footage are included in the documentary film *Welcome To Chechnya* (see 'Useful Resources' section).

57 Even if it were established that Chechen authorities were conducting the purges without being ordered or authorised to do so, their conduct is nonetheless attributable to the Russian State under Article 7 of the Articles on State Responsibility: 'The conduct of an organ of a State or a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, *even if it exceeds its authority or contravenes instructions.*' (emphasis added).

58 Note, however, that Federal Law No 135-FZ referred to as the 'gay propaganda law' prohibits the promotion of non-traditional sexual relations among minors and has been used to prosecute activists, websites and the media.

59 However, domestic acceptance for homosexuality may be growing: a survey carried out in 2020 found that 18 per cent of Russians wanted to 'eliminate' gay and lesbian people from society, and 32 per cent believed they should be 'isolated from society'. This was a slight improvement from 2015, when the same answers were given by 21 and 37 per cent, respectively (Kuhr, 2020).

While no state-sanctioned deaths have been recorded since 2019, sexual minorities in Chechnya continue to be persecuted by the authorities. Further, such persecution appears to transcend the borders of the Republic, now involving Russian (c.f. Chechen) authorities. In February 2021, two gay men who had previously fled Chechnya after being tortured by police were apprehended by Russian police in Nizhny Novgorod and 'forcibly returned' to the Republic (BBC News, 2021).

Zurab's story (Human Rights Watch, 2017: 22-23)

One night, Zurab (pseudonym) was at home in Grozny (capital of the Chechen Republic) when a neighbourhood police officer came for him. The officer ordered Zurab to come with him. When Zurab asked why, the officer said he did not know. As Zurab was getting dressed, he deleted all evidence of his communications with other gay men from his mobile phone. Zurab was taken to a security compound, where officials dragged him into a room. In the room were two of his gay acquaintances, one of whom was bloodied and bruised from a recent beating. The officials then demanded that Zurab disclose his relationship to the men:

> They positioned me in front of those two guys while the powerful man was watching us and told me to tell the truth about who I was and my relationship with them. I never had any sexual relations with those two and I said they were just business contacts.

Zurab was then brutally tortured by the officials:

> They beat me, they gave me electric shocks attaching wires to my earlobes. I was actually very surprised how high my tolerance for pain is. I would not give in. I insisted those two lied about me–and they eventually confessed they had lied just to avoid more torture.
>
> The electric shocks and the bad beatings were only on the first day. During the rest of my time there, it was mainly random kicks and punches and being hit with a plastic hose. But the humiliation was the worst part of it. They called me a 'woman,' a 'fag,' an 'ass-bugger'... the most offensive things one can call a man. They mocked me, taunted me. I could not stand it. I wished they just killed me.

Zurab was detained for seven days in a cell, alongside the two other men. The officials deprived him of food for the entire week, causing him to lose ten kilograms. When Zurab was eventually released, officials threatened him, telling him to 'stay put'. A few weeks later, Zurab learnt that an acquaintance of his had been taken by the officials. Fearing that the acquaintance may have information that could compromise Zurab's safety, he immediately fled Chechnya. 'I could not face another detention', he said. He was also conscious of the possibility that the authorities would share this newfound information with his family: 'if my father doesn't kill me, my uncle will'.



'Going to the police is not beneficial. They do nothing.'

Ruslan, Russia

INSURRECTIONAL MOVEMENTS

In this section, we examine the extrajudicial killing of sexual minorities by insurgent groups exercising effective governance over any given jurisdiction. Under international law, such acts constitute acts of 'state':

> The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law. (Articles on Responsibility of States for Internationally Wrongful Acts, Article 10(2)).[60]

Note, however, that such violence must be distinguished from acts of terrorism carried out by these same organisations within the territory of other sovereign states.

In **Afghanistan**, a 'parallel justice court' in 2015 sentenced two men and a boy to death for homosexuality (United Nations Assistance Mission in Afghanistan, 2016): The executions were carried out by way of 'wall-toppling', a method of execution where the offender is crushed under a falling wall. The two adult men died, but the minor survived and was subsequently allowed to live (Ibid.). Violence of this nature, when carried out by insurrectional actors, has been described as follows:

> Cases such as this evince the blurred boundaries between what could technically be considered an instance of enforcement of the death penalty and extrajudicial, summary or arbitrary executions carried out by non-official justice mechanisms ran by power factors that may have effective control over a portion of the State's territory. (Mendos et al., 2020:41)

Violence of this nature is perhaps most prominent in the case of ISIL, who established, and subsequently terrorised sexual minorities within the borders of, their self-declared 'caliphate'.[61] Between late 2014 and December 2017, ISIL controlled swathes of territory in **Iraq**.[62] During this period, ISIL is reported to have killed more than 30 people on the basis of perceived sexual orientation or gender identity (IraQueer, 2018). On its website, ISIL proclaims that:

> The religiously-sanctioned penalty for sodomy is death, *whether it is consensual or not.* Those who are proven to have committed sodomy, whether sodomiser or sodomised should be killed (The translation of the Nusr website quoted in Mendos et al., 2020). [Emphasis added]

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60 Moreover, the International Law Commission (2007:51) has confirmed that: 'No distinction should be made for the purposes of article 10 between different categories of movements on the basis of any international 'legitimacy' or of any illegality in respect of their establishment as a Government, despite the potential importance of such distinctions in other contexts. From the standpoint of the formulation of rules of law governing State responsibility, *it is unnecessary and undesirable to exonerate a new Government or a new State from responsibility by reference to considerations of legitimacy and illegitimacy of its origin.* Rather, the focus must be on the particular conduct in question, and on its lawfulness or otherwise under the applicable rules of international law.' (Emphasis added)

61 The international legal status of ISIL—that is, whether ISIL ever enjoyed statehood in a strictly legal sense—remains disputed. Although the organisation undoubtedly controlled significant territory, it is doubtful as to whether ISIL ever established true governmental authority within that territory (Tomuschat, 2015). Moreover, the complete and absolute disregard of international standards evinced by the organisation's flagrant and egregious violation of various peremptory norms of international human rights law casts serious doubts on the legitimacy of the self-declared 'state' (Ibid.). Nonetheless, this report is not strictly confined by international legal principles. In this instance, having declared itself the de facto government of the caliphate, and in the absence of effective governance of Iraqi authorities, acts perpetrated by ISIL within the borders of the caliphate come within the ambit of this report.

62 For a visual representation of territory controlled by ISIL in 2015 and 2018, see map available at: https://www.bbc.com/news/world-middle-east-27838034 (last accessed on 31 January 2021).

The cases extracted below are illustrative of the sheer brutality of the killings perpetrated by ISIL during the reign of the caliphate:

- In March 2017, a boy accused of homosexuality was thrown from a building and, having survived the fall, was subsequently stoned to death (Mendos, 2019).
- In June 2016, ISIL executed two women, accused of being lesbians on the basis of phone conversations and photos, by shooting them in the head. In June 2015, another two women were killed in identical circumstances (IraQueer et al., 2019:5).
- In 2015, at least 23 men were executed by ISIL for engaging in same-sex sexual acts. Executions were most commonly carried out by throwing the 'offender' from a building; other methods included shooting, beheading and stoning. All executions are confirmed by photo or video evidence, posted online by ISIL itself (OutRight Action International, 2016b).

In some instances, there was some degree of judicial involvement preceding these executions (that is, by ISIL judges); thus, their categorisation as *extra*judicial is not entirely accurate. However, given the near certainty that such judicial processes fell well short of fair trial standards, they appear to be 'quasi-judicial' at best, hence their inclusion in this section of the report.

Violence perpetrated by ISIL is just the latest episode in a series of coordinated assaults targeting sexual (and gender) minorities in Iraq since 2003 (MADRE et al., 2019). For example, the 'League of the Righteous' have been carrying out such campaigns for over a decade: in 2014, the group beheaded two teenage boys thought to be gay (OutRight Action International, 2014). In fact, between 2015 and 2018, only 10 per cent of crimes against queer persons were committed by ISIL: 22 per cent were perpetrated by the Iraqi Government, 31 per cent by militias, and 27 per cent by family members (MADRE et al., 2019). These figures reflect a complex web of deep-seated homophobia among different powers controlling the territory which 'permeates Iraq's institutions and society' (IraQueer et al., 2019).

Persecution of sexual minorities carried out by the Iraqi Government is particularly concerning given that same-sex sexual acts between consenting adults have been lawful since 1969 (Mendos et al., 2020). Sexual minorities are reported to have been prosecuted under the guise of other criminal provisions, including 'public indecency' and 'prostitution' (Mendos et al., 2020). Accordingly, as with Chechnya, the actions of the Iraqi Government confirm that, in practice, the legalisation of same-sex sexual acts does not necessarily safeguard the lives of sexual minorities.

ISIL has also carried out executions on the basis of sexual orientation in other jurisdictions. In December 2015, an ISIL judge sentenced two men convicted of homosexuality to death in Palmyra, **Syria** (Mroue, 2015), a city which ISIL controlled at the time (Shaheen, 2015). Earlier that year, three men were similarly sentenced in Derna, **Libya**, a city in which ISIL had established a Sharia a court and 'imposed rigid Sharia law' (Malta Today, 2015).

In **Somalia**, al-Shabaab militants operate in parts of the country and enforce strict interpretations of Sharia law, including the death penalty for homosexuality, as a means of attracting funding from religious groups and sects (Ali, 2013). Like ISIL, al-Shabaab is reported to have carried out executions quasi-judicially, as some form of self-administered judicial process seems to have preceded the killings. In 2017, al-Shabaab publicly executed two men, aged 15 and 20, for engaging in same-sex sexual conduct (CBS, 2017; Mendos et al., 2020). They were convicted by an al-Shabaab court and shot in a field in the presence of hundreds of civilians (Akwei, 2018).

Since 2013, the rebel Houthi militia have held significant swathes of territory in **Yemen**, and are reported to have carried out numerous killings. Unlike ISIL and al-Shabaab, the Houthis do not appear to administer any form of quasi-judicial process prior to executing their victims by shooting (Al-Haj, 2014). By 2014, at least 35 men suspected of being gay had been killed on various occasions by either the Houthi militia or Al Qaeda (Al-Haj, 2014; Mendos et al., 2020). In 2015, a further four gay men were killed in Aden (Manea, 2015; Mendos et al., 2020). One of our interviewees described the impunity with which these killings take place: 'if a gay person was killed, whether by the government or by militant groups … no one would care' (I-6).



'What we are facing is beyond what anyone could imagine, because reality is much worse…'

Khalid, Iraq

Even in jurisdictions where same-sex sexual acts are not judicially punishable by death, states provide lawful excuses to persons having committed homicidal violence motivated by the sexual orientation of the victim. Such excuses operate so as to reduce—and in some cases altogether obviate—the offender's criminal responsibility, and subsequent punishment, for the killing. First, we discuss legislation that distinguishes honour killings from murder, or creates legal loopholes that may be exploited by persons having killed so as to protect their own honour from being tarnished by the sexual orientation of the victim. Second, we examine the 'gay panic' defence, a legal strategy mitigating culpability in instances where the perpetrator claims that the victim made a 'homosexual advance' on them.

HONOUR KILLING

'Honour killing' is a complex issue, born of sociocultural norms. While the rationales underpinning such violence vary between societies, the overwhelming majority of honour killings are perpetrated by the family of the individual who is perceived to have tainted the family's honour (Mor, 2015). Honour killings have been carried out for sexual 'deviancy':

> LGBT persons are also among the victims of so-called 'honour' killings, carried out against those seen by family or community members to have brought shame or dishonour on a family, often for transgressing gender norms or for sexual behaviour, including actual or assumed same-sex sexual activity. (United Nations Office of the High Commissioner for Human Rights, 2011).

A 2018-9 survey found that honour killings are deemed more acceptable than homosexuality in the following countries (Arabbarometer, 2019):

- In Algeria, 27 per cent accepted honour killings, while 26 per cent accepted homosexuality.
- In Morocco, 25 per cent accepted honour killings, while 21 per cent accepted homosexuality.
- In Jordan, 21 per cent accepted honour killings, while 7 per cent accepted homosexuality.
- In Tunisia, 8 per cent accepted honour killings, while 7 per cent accepted homosexuality.
- In Lebanon, 8 per cent accepted honour killings, while 6 per cent accepted homosexuality.
- In the Palestinian territories, 8 per cent accepted honour killings, while 5 per cent accepted homosexuality.
- In Sudan, sentiments were reversed: 14 per cent accepted honour killings and 17 per cent accepted homosexuality.

Although both men and women are subjected to honour-related violence (Landinfo, 2009), women are disproportionately victimised: it is estimated that 5,000 women worldwide are victims of honour killings each year (Iran-Other Countries Friendship Association Supreme Council Network, 2010).[63] Moreover, lesbians (and trans women) are particularly vulnerable, given the compounding of marginalised identities (often referred to as 'double discrimination') (Independent Advisory Group on Country Information, 2019; United Nations Office of the High Commissioner for Human Rights, 2011).

[63] One of our interviewees also confirmed that in Iran, 'women are more subjected to honour killings than men, much more. And lesbians are not an exception. But in the context of LGBTI community, male-to-female trans people are the most vulnerable to [honour killings], even more than lesbians.' (I-1)

Some states—including Afghanistan, Libya and Syria—have passed legislation explicitly distinguishing honour killing from murder, offering reduced penalties for such crimes (Bangs, 2018; Iran-Other Countries Friendship Association Supreme Council Network, 2010; Mendos, 2019). A Bill seeking to abolish a similar law in Kuwait has been signed, but remains backlogged (Bangs, 2018). Other states, while not expressly condoning honour killings, have created legislative loopholes which may be exploited by perpetrators of honour killings so as to mitigate their culpability and diminish their sentence: **Iran** and **Jordan** are examined as examples of this.

In **Iran**, the Penal Code provides that, where an offender is the father or paternal ancestor of the victim, *qisas*—meaning 'retaliation'—is removed as an available penalty (Islamic Penal Code of Iran 2013, Article 301). In other words, should a person meeting these criteria murder their same-sex attracted relative, the death penalty would not be an available punishment (OutRight Action International, 2016a). Furthermore, if the honour killing was carried out due to the victim having committed a capital offence, the offender will avoid a *qisas* punishment, and will instead be required to make payment of *divat* (meaning 'compensation', or 'blood money') (Article 302(a)). Accordingly, given that same-sex sexual acts are punishable by death in Iran, the punishment for carrying out an honour killing against a same-sex attracted individual may be a mere fine. Even if the killer is unable to prove that their victim had engaged in same-sex sexual acts, they may nonetheless avoid *qisas* by claiming that they mistakenly believed the victim had done so (Article 303; I-1).

Due to a lack of judicial transparency, the extent to which these legislative provisions are employed remains unclear. Regardless, the mere existence of such provisions is concerning, given the existence of numerous reports of honour killings against sexual and gender minorities in Iran. For example:

- In 2019, a transgender woman was killed by her father, brother-in-law and cousins. Police made arrests; however, because all parties involved in the homicide were of the same family, there was nobody entitled to *divat*. Accordingly, the offenders were released (Dehkordi, 2020).
- In 2010, a transsexual woman was killed by her two brothers due to her 'immoral lifestyle'. The death sentences of both offenders were commuted because their father – also the father of the victim – forgave them (Iranian Queer Organisation, 2011).
- In 2005, a gay man was burned alive by his father. The authorities took no action against the offender, because he suffered injuries after attempting to take his own life (Iranian Queer Organisation, 2011).

Our interviewees confirmed that such killings are particularly rife in rural areas (I-4; I-10):

> Honour killings are still happening in small villages… the story I told you about the father who set his son on fire [after finding out that he was gay], that's a clear case of honour killing. […] The Iranian regime supports these causes and don't give those people a hard time even if they kill their family member, as long as they said 'that person did something wrong to us, for example, she was homosexual, or I killed her in order to keep my name or save the name of Islam'. (I-10)

This case mentioned by this interviewee received very little media attention in Iran, demonstrating the normalisation of violence within families and towards sexual minorities:

> At that time, only one local media reported this incident, in three lines – only three lines. We had to have an investigation in order to find out what exactly happened. A lot of things are happening—I am sure that in small cities, people or local clergies order to stoning to death people, or hanging them. (I-10)

In contrast to Iran, consensual same-sex sexual relations are not criminalised in **Jordan**. However, heteronormative sociocultural values and stigma persist, and lead to honour killings. The extent to which honour—and, by extension, honour killings—is ingrained and justified in Jordanian culture is distilled in the following comment by the Chief Justice of Jordan's High Criminal Court:

> Nobody can really want to kill his wife or daughter or sister. But sometimes circumstances force him to do this. Sometimes, it's society that forces him to do this, because people won't forget. Sometimes, there are two victims—the murdered and the murderer (Warrick, 2005:338)

A 2013 study of 856 Jordanian youth showed that 70 per cent of boys and 30 per cent of girls believe that killing is justified where it is done in the name of family honour (Eisner and Ghuneim, 2013). A similar study of Jordanian adults indicated that while 95 per cent of adults disapproved of honour killings, 72 per cent agreed that honour killings were nonetheless required by Jordanian culture to restore family honour where a family member has been 'promiscuous' (Kulczycki and Windle, 2011).

Historically, killers could seek a diminished sentence by claiming they had killed 'in a fit of fury … motivated by dishonourable and provocative behaviour of the victim' (Jordanian Penal Code, Article 98, prior to November 2017 amendments). We have identified at least one instance of the Jordanian legal system exercising leniency in response to an honour killing motivated by sexual orientation. In this case, a father received a reduced prison term having killed his lesbian daughter so as to preserve family honour (Dunbar, 2019). A local activist claims to know of at least four other honour killings on the basis of sexual orientation (Alami, 2014).

Recent legislative changes have amended this provision, which is now limited exclusively to instances where an offender kills his wife or female relative, or the lover 'in a state of adultery or illegitimate bed' (Alqahtani 2019:13, citing Articles 98 and 340 of the Jordanian Penal Code). However, despite this reform, scope remains under the Jordanian Penal Code for perpetrators of honour killings to receive reduced sentences where 'extenuating reasons' exist (Article 99). A review of the case law indicates that the most common 'extenuating reason' is that the family of the victim (which also happens to be the family of the offender) opts to drop their personal charges against the defendant (Alqahtani, 2019). This is often done to protect the perpetrator, and to conceal the shame associated with the victim's behaviour (Ibid.).

Although honour killings are almost exclusively perpetrated by non-state actors, the state is effectively condoning such killings by retaining legislation such as Article 99:

> The practice of allowing the family – which is complicit in the crime – to be involved in determining the defendant's punishment supports the cultural construction that honor crimes and their punishment is a domestic or private family concern, outside the realm of the law. Moreover, it demonstrates how Jordanian society still accept and tolerate these crimes. Article 99 becomes a tool to regulate the crime rather than to deter it. The [perpetrator]… does not hesitate in killing… because he knows that the family will drop the charge against him. Furthermore, this practice confirms that these victims are alienated by their families even after death (Alqahtani, 2019).

Honour killings may also be viewed as a form of state-sanctioned killing where the state in fact directs the family to carry out such killings. As discussed, **Chechen** authorities encouraged families to kill same-sex attracted persons and guaranteed them immunity from prosecution (Russian LGBT Network and Milashina, 2017:16). In some cases, families opted to conduct exorcisms to avoid honour killings. However, should the mullah conducting the ritual determine that there is no 'djinn' inhabiting the subject, the subject is instead deemed to have made a conscious decision to be sexually 'deviant' (as opposed to being possessed) and is considered deserving of death (Mendos, 2020:155).



‘After I came out, my older brother came to my house with three of my other brothers. He showed me a gun, and said “you destroyed the honour of our family, be prepared to die”.’

Khalaf, Jordan

'GAY PANIC' DEFENCE

The term 'gay panic' refers to a legal strategy, raised as a subset of the defences of provocation or self-defence, whereby a defendant (in practice a heterosexual cisgender male) argues that his victim's (perceived) sexual orientation ought to mitigate his culpability for murder. In the context of provocation, 'gay panic' is employed by a male defendant to argue that his killing of another man was the result of the latter making a non-violent sexual advance toward him, and his homicidal conduct being retaliatory thereto (McGeary and Fitz-Gibbon, 2018).[64] The 'non-violent' aspect of the 'gay panic' defence is important, as it distinguishes provocation—grounded exclusively in homophobia—from self-defence, which may be arguable should the sexual advance in these cases be accompanied by the threat of harm.

The defence of provocation is subject to widespread criticism: it has been suggested that the defence legitimises violence (Wheatle, 2019), and that 'as a basic issue of policy, the law should not accept that in the 21st century, a person might lose self-control and kill someone' (Plater et al., 2017). This is particularly so given that the defence 'reinforces and institutionalises prejudice at the expense of norms of self-control, tolerance, and compassion, which the law should encourage' (Federal Gay and Trans Panic Defence Act 2019 (USA), section 2(6)). The outdatedness of the 'gay panic' defence is particularly pronounced in jurisdictions where contemporary values and attitudes towards homosexuality are increasingly accepting. Ultimately, retention of the defence 'promote[s] a culture of legal discrimination towards the LGBTIQ community', and where the defence is successfully engaged, it 'inscribes the ordinary man as a violent homophobe and sets a standard for future homicide cases involving a homosexual advance'(McGeary and Fitz-Gibbon, 2018:580).

The defence of provocation is further criticised for its heteronormative and patriarchal underpinnings, operating so as to diminish the criminal liability of men who offend in instances where their dignity or honour is compromised (Plater et al., 2018). The defence is underscored by an inherent gender bias, favouring heterosexual cisgender male offenders, in violation of the fundamental precept that the law be fair and non-discriminatory in operation (Plater et al., 2017). By shifting the focus from the conduct of the offender to the identity of the victim, provocation also engenders victim blaming (Plater et al., 2018). It seeks to manufacture a narrative whereby the roles of offender and victim are reversed, suggesting that the offender was in fact victimised by the sexual orientation of his victim, and that the victim is therefore responsible for their own death (Gray and Braun, 2017). Lastly, the idea that one may be provoked to such an extent that he becomes divorced from his faculties is both medically and scientifically questionable (Select Committee on the Partial Defence of Provocation, 2013: para. 4.153).

The common law doctrine of provocation operates in **Australia** as a partial defence: rather than removing culpability altogether and leading to an acquittal, provocation operates so as to reduce what would otherwise be a murder conviction to manslaughter where the offender killed the victim while labouring under a temporary loss of self-control (Plater et al., 2017). The 'gay panic' defence—a subsidiary of provocation—was first employed in Australia in

64 The extant literature suggests that this defence has historically been abused by men, hence our gendering of this discussion. We have been unable to identify a single instance of a woman (successfully) raising the 'gay panic' strategy.

1992 (Ibid.). Referred to in Australia as the 'homosexual advance' defence, it was thrust into the spotlight in 1997, when the High Court of Australia quashed the murder conviction of Malcolm Green, finding that he laboured under a 'special sensitivity' that had resulted in him losing control and killing Donald Gillies in response to a sexual advance made (*Green v The Queen* [1997] 191 CLR 334). In 2015, the Court similarly quashed the murder conviction of Michael Lindsay, who kicked, punched, and stabbed Andrew Negre to death after Negre had allegedly sexually propositioned him (*Lindsay v The Queen* (2015) HCA 16). Between 2000 and 2014, the defence was raised at least eight times in the states of New South Wales and Queensland (McGeary and Fitz-Gibbon, 2018). On 1 December 2020, South Australia passed the *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act,* becoming the final Australian jurisdiction to abolish the gay panic defence.[65]

As well as being raised in the context of provocation, defendants in the **United States** have successfully relied on the 'gay panic' strategy to bolster claims of self-defence. For example, in September 2015, Daniel Spencer was murdered by his neighbour, Robert Miller. Miller claimed that he had rejected a sexual advance from Spencer and had acted in self-defence when Spencer became agitated, despite physical evidence casting doubt on his claim that he was ever in danger (The National LGBT Bar Association, 2020). Miller was convicted of criminally negligent manslaughter, a lesser offence than murder and manslaughter, and sentenced to a mere six months in prison and ten years' probation (Wootson, 2018). An examination of 104 US homicide trials between 1970 and 2020 found that the 'gay panic' defence successfully reduced the charge from murder to a lesser offence in 32 per cent of cases: in four cases, the offender was acquitted altogether (Carsten Andresen, 2020). Almost half of these homicides were characterised by extreme violence, which may be regarded as unusual in cases of 'self-defence' (Ibid.). In 2020, New Jersey, Washington and Colorado joined eight other US states that had abolished the 'gay panic' defence.[66] Legislation has been introduced in a further nine states, as well as at the Federal level (The National LGBT Bar Association, 2020).[67]

Even where the defendant does not raise 'gay panic' as a legal strategy, homophobic attitudes in the courtroom may elicit similar outcomes. As the following examples illustrate, the biases of both the judge and jury may sway the outcome of any given trial. In 2019, Nkosinathi Madlala pleaded guilty to the culpable homicide of Sduduzo Buthelezi in Durban, **South Africa**. Madlala claimed that Buthelezi had touched his thigh and kissed his chin and, feeling 'embarrassed and humiliated by his actions and laughter', he punched Buthelezi in the neck, accidentally killing him. Madlala admitted he then dumped the victim's body in a panic and handed the car over to a friend to dispose of it. Madlala was sentenced to a 10-year suspended sentence, anger management classes and a month of community service for three years. In delivering the sentence, the judge is reported to have said that Madlala 'reacted in a way that any other person in his situation would have' (Davis, 2019; Masuku, 2019).

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65 All other states have either abolished provocation in its entirety, or codified the defence of provocation so as to exclude the abuse of the defence in instances of alleged 'gay panic'. Tasmania, Victoria and Western Australia abolished the defence of provocation entirely in 2003, 2005 and 2008, respectively. New South Wales abolished the defence in 2014, replacing it with the legislative defence of 'extreme provocation'. The Australian Capital Territory has narrowed the scope of the defence to prohibit its operation in instances of a non-violent sexual advance. The position is similar in the Northern Territory. In 2017, Queensland enacted legislation excluding 'unwanted sexual advance' from the ambit of provocation, other than in 'exceptional circumstances' (Plater et al., 2017).

66 California was the first state to ban the defence in 2014. Since then, Illinois, Rhode Island, Nevada, Connecticut, Maine, Hawaii and New York have followed suit (The National LGBT Bar Association, 2020).

67 An interactive map, indicating the status of the 'gay panic' defence in each US state, is available at https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/gay-trans-panic-defense-legislation/ (last accessed on 6 February 2021).

Such overt judicial bias has been identified in numerous jurisdictions. In **Trinidad and Tobago**, the Court of Appeal acquitted a man charged with pinning a gay man down while another hacked him to death. In delivering its ruling, the Court described homosexuality as 'unnatural', and that any 'right-thinking person' would have done the same (*Marcano v The State* (unreported, Court of Appeal, Trinidad and Tobago, 26 July 2002:20). This is not an isolated occurrence: leniency in the sentencing of offenders convicted of committing murder on the basis of sexual orientation has been identified throughout the Caribbean,[68] reflecting the deep-seated homophobia that appears to pervade the region. As recently as 2019, the 'gay panic' defence was successfully used in **Jamaica** (*R v Brown, Romario*, Supreme Court, Judicature of Jamaica) [2019] JMSC Crim 1, 24 May 2019).

Biases may similarly influence the decision-making of juries. The 2019 execution of Charles Rhines in the **United States** illustrates how the offender's sexual orientation may influence the decision of the jury to impose the death penalty. In 1993, Rhines was convicted of murder. The jury knew that Rhines was gay, as sexual orientation had been addressed during jury selection and trial testimony. After the guilty verdict was delivered, the jury was tasked with determining Rhines' sentence. During these deliberations, the jurors sent a note to the judge, asking whether Rhines would be allowed to 'mix with the general inmate population', 'discuss his crime with other inmates, especially new and/or young men', 'marry or have conjugal visits', or 'have a cellmate' (*Charles Russell Rhines v State of South Dakota: Petition for a Writ of Certiorari*, 2 May 2018:2). The judge refused to answer the questions, and the jury sentenced Rhines to death (Ibid.:6).

Subsequent interviews with jurors provided compelling support for Rhines' suspicions of anti-gay bias. It was reported that there had been 'lots of discussion of homosexuality' and 'a lot of disgust' in the jury room. One juror stated that the jury, knowing Rhines was gay, 'thought that he shouldn't be able to spend his life with men in prison'. Two jurors reported that a third had said that imprisoning Mr Rhines with other men 'would be sending him where he wants to go'. Another suggested that Rhines might be a 'sexual threat to other inmates and take advantage of other young men in or outside of prison' (*Charles Russell Rhines v State of South Dakota: Petition for a Writ of Certiorari*, 2 May 2018:7-8). Despite being recorded in the form of sworn statements given by the jurors (American Bar Association, 2019), Rhines was barred from using this evidence to appeal his conviction, because of a law protecting the sanctity of the jury room and prohibiting the impeachment of jury verdicts (*Charles Russell Rhines v State of South Dakota: Petition for a Writ of Certiorari*, 2 May 2018:2).

In 2017, the US Supreme Court addressed the tension between these two concepts (in *Penã-Rodriguez v. Colorado* (2017) 137 S. Ct. 855). The Court held that 'where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in

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[68] Although outside the 2015-2020 period, we identified the following cases that may set precedent for future killers to be lawfully excused. In 2010, the **Bahamas** Court of Appeal upheld the sentence of Latherio Jones, who received three years' probation for killing Trevor Wilson, who had allegedly made sexual advances towards him (*The Attorney General v Latherio Jones* (Court of Appeal, Commonwealth of The Bahamas), 31 May 2010). In 2009, another defendant was acquitted, despite confessing to killing another man in defence of 'his manhood' (PinkNews, 2009). In 2012, the Director of Public Prosecutions in **Dominica** discontinued proceedings against an accused altogether on the basis that the accused had been subjected to 'unnatural advances', following an earlier decision of the Eastern Caribbean Court of Appeal where a murder conviction had been quashed on those same grounds (Amnesty International, 2013:3).

order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee' (Ibid., at 869). In light of this ruling, Rhines appealed to the Supreme Court; however, the Court rejected the application, ruling that *Penã-Rodriguez* does not apply to juror bias on the basis of sexual orientation (*Charles Russell Rhines v State of South Dakota: Petition for a Writ of Certiorari*, 2 May 2018:10).

This ruling has been widely condemned. The American Civil Liberties Union stated that 'a decision to sentence a person to death because he is gay violates the Sixth Amendment no less than a decision to sentence him to death because he is black' (de Vogue, 2019). Rhines' lawyers similarly decried the decision:

> Like race-based bias, anti-gay bias causes systemic harm to the justice system and, in particular, capital jury sentencing. (*Charles Russell Rhines v State of South Dakota: Petition for a Writ of Certiorari*, 2 May 2018:15).
>
> To allow a juror to vote for a man's death sentence on the basis of anti-gay animus and stereotypes violates… the foundational principle that "[o]ur law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle." (Ibid.: 20, citing *Buck v Davis* (2017) 137 S. Ct. 759, 778).

Rhines was executed on 4 November 2019 (American Bar Association, 2019).



'He said to me [that] God made no[body] gay. If a man accepts himself as gay, he is a devil.'

Brice, Cameroon

CONVERSION PRACTICES

The term 'conversion therapies' is used as an umbrella term to refer to 'any sustained effort to modify a person's sexual orientation, gender identity or gender expression' (Mendos, 2020:17). They are carried out under the assumption that sexual orientation and gender identity 'can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm' (Madrigal-Borloz 2020). Given the inherently violent and scientifically dubious nature of such 'therapies', for the purposes of this report, we use the term 'conversion *practices*'. A review published in 2020 found that such practices are carried out in at least 68 countries (Bothe, 2020:5).

In this section, we focus on conversion practices that can be traced back to the state,[69] and have identified 19 countries in which this occurs (Bothe 2020; Iran Human Rights Documentation Center 2013; Justice For Iran and Iranian Lesbian & Transgender Network (6Rang) 2014; Madrigal-Borloz 2020). State involvement manifests in a myriad of ways: conversion practices may be carried out by state actors or in state-run institutions, judicially ordered as a form of lawful punishment, or funded or otherwise encouraged by the state (see Table 3).

It might be surprising to see the inclusion of conversion practices as a form of state-sanctioned *killing*, given that the intention behind such practices—albeit misguided—is to 'cure' sexual or gender non-conformity, rather than to kill LGBTQ persons. Nonetheless, we have identified a handful of instances where state-sanctioned conversion practices have directly ensued in death (in addition to numerous instances of suicide stemming from such practices).[70] Moreover, the often-clandestine nature of conversion practices means that such practices often go undetected and unreported; accordingly, the number of deaths is most probably far greater. For these reasons, such practices have been included here.

In **Iran**, at least three people have died from grossly improper sex-reassignment surgeries. Each of these deaths was occasioned by insufficient post-surgical care: one casualty bled to death in a hotel, having been poorly operated on and discharged from hospital without appropriate medical attention (Justice For Iran and Iranian Lesbian & Transgender Network (6Rang), 2014). Numerous human rights activists and organisations have expressed concern as to the performance of such surgeries—intended as a form a gender-affirming care for the benefit of some *transgender* persons—on *sexual* minorities in Iran (Iran Human Rights Documentation Center, 2013b; Justice For Iran and Iranian Lesbian & Transgender Network (6Rang), 2014; Mendos, 2020; Sanei and Human Rights Watch, 2010). These practices are founded upon an erroneous premise that surgical alteration of sex characteristics would transform same-sex attracted persons 'into gender conforming men or women' (Justice For Iran and Iranian Lesbian & Transgender Network (6Rang), 2014; Mendos, 2020; I-2; I-10).

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69 While beyond the remit of our report, religious leaders and organisations are currently one of the most vocal proponents of conversion practices, and in some countries extremely violent practices have been documented (Mendos, 2020). In many instances, exorcisms are filmed and disseminated by the religious authority conducting the rituals, confirming the widespread and brutal nature of these practices: one pastor, active in East Africa, is shown conducting exorcisms of gay and lesbian persons fainting, screaming and vomiting while being restrained, hit and kicked (Mendos, 2020). In the United States, teenage children have been isolated, beaten, and subjected to electroconvulsive therapies in Christian camps due to their sexual orientation (Richmond, 2019). In Russia, there have been reports of sexually diverse and gender diverse children being beaten with rods at church while others prayed for them (Golubeva, 2017).

70 In addition to the three cases in Iran (discussed below), one of our interviewees was aware of anecdotal evidence of at least one death allegedly caused by a drug therapy overdose, and another by electroconvulsive therapy (I-9).

Such practices have been classified as 'state-sanctioned' due to the Iranian Government's promotion and funding of these procedures (Iran Human Rights Documentation Center, 2013b):

> Iran's official policy of sponsoring and coercing the conversion of homosexuals into the opposite sex via surgery and legally treating them as heterosexuals is unique. The state has deemed homosexual acts between men or women a capital offence punishable by death. However, a man or woman can have a state-sponsored, state-subsidized surgery and not run afoul with the law. The dramatic change in policy came more than two decades ago, when Ayatollah Ruholla Khomeini issued a *fatwa* declaring sex changes permissible for 'diagnosed transsexuals'. This legal title is given to whomever the authorities deem appropriate, and after one has undergone sexual reassignment surgery, the person is legally treated as the other sex. There are some individuals who are transsexual and would undergo the surgery voluntarily; however, the key word in this legal title is not 'transexual', but 'diagnosed'. Given the fact that judges, clerics, and doctors can make this diagnosis in a country with the highest death penalty enforcement per capita in the world and second highest rate of sexual reassignment surgery, something far more serious is occurring. The intersection of the crime and punishment for homosexual acts and the state-sponsored sex-change policy reveals a far more nefarious agenda (Carter, 2011).

In addition to constituting irrefutable involvement of the state in any preventable deaths flowing from such procedures, this creates a dangerous environment in which sexual minorities are faced with an ultimatum—whether intended by the state or otherwise—requiring their choosing between unnecessary, generally irreversible, potentially fatal sex reassignment surgeries, or criminalisation and the possibility of the death penalty:

> Human rights groups believe that the Iranian government's promotion of [sex reassignment surgeries], coupled with the fact that same-sex conduct is criminalized in Iran, creates a powerful incentive for gays, lesbians, bisexuals and transgender Iranians who do not wish to undergo surgery, to become, in effect, 'legal' (Sanei and Human Rights Watch, 2010).

> Distressed with the traumas sustained due to family and community violence, and discriminated against by laws criminalizing consensual homosexual acts… [sexual minorities] feel increasingly pressured to opt for psychiatric, hormonal and surgical treatments. This pressure is exerted by various laws and policies, which considers homosexuality as a form of crime, sin and deviation, but treats transsexuality as a legitimate health problem for which the sanctioned cure is sex reassignment surgery (Justice For Iran and Iranian Lesbian & Transgender Network (6Rang), 2014).

Ashkan, a gay Iranian man, speaks of his experience when confronted with the realities of this state policy. Wishing to be exempted from military service on the basis of his sexual orientation, he was required to acquire a letter from his doctor explaining that he had been diagnosed with 'Gender Identity Disorder'. After being granted the military exemption, he received a letter demanding that he commence hormone therapy, and subsequently undergo a court-ordered sex-reassignment operation. 'I did not want to change my gender, he says; 'I was happy with the person I was.' However, should he have failed to undergo the sex-reassignment procedure as ordered by the court, he feared being sentenced by that same court to death, having 'confessed' his sexual orientation to his doctor. His only option was to flee Iran (Justice For Iran and Iranian Lesbian & Transgender Network (6Rang), 2014).

Ashkan's story has been corroborated by our interviewees: one Iranian activist refers to such procedures as 'strongly encouraged' (1-2). Another indicates that these procedures are presented to the public as the only viable alternative to a conviction—and potential execution—for same-sex intimacy (I-10). A third recalls such procedures being 'publicised quite well' (I-4), noting also that the state is willing to facilitate sex-reassignment procedures for same-sex attracted men, but not same-sex attracted women: 'because they [the state] look down on females, it's not a threat if a man converts to a woman, but the other way around can be a threat to them' (Ibid.).

Sex reassignment surgeries are one of the many ways in which the state tries to 'treat' sexual minorities. With the tacit approval of the state, prominent psychiatrists, psychologists, and sexologists have counselled hundreds of Iranians to diagnose and 'treat' their sexual 'deviancy' (Sanei and Human Rights Watch, 2010). This 'treatment' often involves electroshock therapy or strong psychoactive medications. One particularly violent form of psychotherapy—aversion therapy—involves a person being subjected to a negative or painful sensation while being exposed to a homoerotic stimulus, on the premise that the stimulus will become associated with the pain, and thus obviated (Madrigal-Borloz 2020: para. 43). A 2019 study found that, in two per cent of cases studied, electroconvulsive therapies cause major, and potentially life-threatening, adverse cardiac events (Duma et al., 2019).

In addition to the medical and religious interventions discussed above, other manifestations of conversion practices have been reported to include beatings, 'corrective' rape, forced nudity, force-feeding, food deprivation, isolation and confinement, forced medication, verbal abuse, humiliation and electrocution (Madrigal-Borloz 2020: para. 55). The consequential damage of conversion practices has been reported to include 'significant loss of self-esteem, anxiety, depressive syndrome, social isolation, intimacy difficulty, self-hatred, shame and guilt, sexual dysfunction, *suicidal ideation* and *suicide attempts* and symptoms of post-traumatic stress disorder, as well as often significant physical pain and suffering' (Ibid.; paras. 56-58). We acknowledge that *suicide* is distinguishable from state-sanctioned *homicide*; however, to excuse states from all responsibility for suicides resulting from state-sanctioned conversion practices is also problematic. There is a growing consensus among the international community that the right to life should 'not be interpreted narrowly' (para.2) and that 'states should take adequate measures … to prevent suicides, especially among individuals in particularly vulnerable situations' (para.9) (United Nations Human Rights Committee, 2019b). The 2020 ILGA report entitled *Curbing Deception: A World Survey on Legal Regulation of So-Called 'Conversion Therapies* argues that suicide is a real risk of conversion practices:

> Policy makers need to take into account that these practices have the potential [to lead] people to their death. These completely unfair, avoidable deaths constitute one of the most deplorable outcomes of the ideas that support the existence of 'conversion therapies'. Ideas that kill people by completely depriving them of their self-esteem, by preventing them from feeling loved and appreciated as they are, and—in the case of people of faith—by leading them to believe that their god abhors them. (Mendos, 2020:62)

Table 3: State Involvement in Conversion Practices

State involvement	Examples
Conversion practices carried out by state authorities.	In Tajikistan, police are reported to subject sexual and gender minorities to 'corrective violence'.
Conversion practices carried out by private individuals upon state orders.	In Dominica, section 16 of the Sexual Offences Act provides psychiatric treatment as a lawful penalty for consensual same-sex sexual acts.
	In Tunisia, psychiatrists in juvenile detention facilities reportedly carry out conversion practices on minors upon the orders of a judge. Similar practices have been reported in adult prisons in Indonesia.
Conversion practices carried out in facilities administered, or regulated by, the state.	In Turkey, conversion practices are provided in public hospitals. In China, they are performed in private clinics that are licensed and supervised by governmental institutions.
	In the United States, state funding is available to universities that provide conversion practices. In one particular institution, a student was threatened with expulsion should they not undertake the therapy program.
Conversion practices funded by the state.	In Switzerland and Germany, health professionals performing conversion practices can claim reimbursement from state-run health insurance companies.
	In Iran, sex-reassignment surgeries against sexual minorities (c.f. transgender persons) are funded by the state.
Conversion practices encouraged by the state.	In Hong Kong and Malaysia, the state promotes conversion practices in secondary schools and university programmes, respectively.
	In South Korea, the state provides locations where conversion practices are hosted.
	In El Salvador, Indonesia, Israel, Moldova, Poland and Uganda, government officials have publicly endorsed conversion practices.

Sources: Bothe 2020; Iran Human Rights Documentation Center 2013; Justice For Iran and Iranian Lesbian & Transgender Network (6Rang) 2014; Madrigal-Borloz 2020.

CONCLUSIONS

In 2020 alone, countries across the globe took positive steps towards legally protecting the rights of sexual minorities. In **Africa**, Gabon decriminalised same-sex relations (Paletta, 2020). In **Asia**, both houses of parliament in Bhutan approved a bill to decriminalise same-sex sexual conduct, awaiting approval by the King to become law (The New York Times, 2020). In **Australia**, South Australia passed legislation abolishing the 'gay panic' defence, becoming the final Australian state to do so (Dayman, 2020). In **Europe**, law makers voted to legalise same-sex marriage in Switzerland, which will be put to a nationwide referendum in 2021 (Savage, 2020). In **North America**, Costa Rica legalised same-sex marriage, becoming the first State in Central America to recognise marriage equality (Gonzalez Canberra, 2020). In **South America**, Bolivia's Constitutional Court ruled that a ban on same-sex civil union was both unconstitutional and in violation of international human rights standards (Al Jazeera, 2020).

As the world shifts towards increased acceptance, inclusion, and celebration of sexual diversity, it is easy to overlook the fact that in some countries, including those that *appear* to embrace sexual diversity, sexual minorities continue to be subjected to stigmatisation, discrimination, and violence at the hands of the state. In this report, we have focused on the most extreme form of such violence: homicide. This is not to trivialise or underestimate the myriad of physical, sexual, emotional, structural and cultural abuses to which sexual minorities are subjected. Rather, by focusing on the *killing* of sexual minorities, we hope to inform advocacy efforts and policy reform by highlighting that state involvement in the killing of sexual minorities does not necessarily end with the abolition of the death penalty.

The death penalty

Between 2015 and 2020, individuals convicted of same-sex sexual conduct were executed in **Iran** and **Saudi Arabia**. In Northern **Nigeria**, state agencies have taken active steps to enforce similar laws, though no death sentences are believed to have been imposed or carried out. In a further eight countries, the death penalty remains a legal possibility. Thus, in eleven countries, sexual minorities still live with the possibility of being executed:

> [The] death penalty becomes a dark shadow for a lot of people—maybe a lot of people don't experience or are not being condemned to be executed, but this shadow is existing in their life. (I-10)

Both domestic and international politics influence the pace of decriminalisation and the abolition of the death penalty for same-sex sexual conduct. The legislative changes witnessed in **Brunei**, **Sudan**, and **Uganda** were not stories of linear and progressive reform, but the outcomes of political tensions, where governments were forced to reconcile the preservation of international reputation with the satisfaction of domestic pressures to repress sexual minorities. Even in **Iran** and **Saudi Arabia**, where individuals are executed for same-sex sexual conduct, the respective states appeared not to be carrying out execution in large numbers—or else were hiding the number of executions carried out against sexual minorities. To control their image, both governments have sought to mediate the perceptions of both domestic and international audiences: when executions have been announced, same-sex sexual offences have been bundled with other crimes in order to mitigate backlash.

We argued that the retention of the death penalty and the condoning of lethal violence against sexual minorities is a political choice, and not the result of religious imperatives. Our review of the historical treatment of homosexuality in Iran concluded that there is nothing inevitable about the death penalty for same-sex conduct. In fact, **Iran** has had a paradoxical relationship with same-sex desire and intimacy, fluctuating between acceptance and denunciation of such conduct. The criminalisation of same-sex sexual acts was consolidated by the country's desire, prior to the 1979 Revolution, to emulate the 'West', which again confirms the influence of external forces on shaping a country's death penalty policy.

State complicity in the killing of sexual minorities

Broadening our focus beyond judicial executions, we identified various other manifestations of homicidal violence in which state complicity is undeniable, the clearest of these being the extrajudicial killing of sexual minorities commissioned by the state itself. State-perpetrated 'gay purge' campaigns in the **Chechen Republic, Russia** involved the enforced disappearances and torture of more than one hundred persons perceived to belong to sexual (and gender) minorities, and led to deaths at the hands of both the state and those families to whom the state guaranteed impunity for 'honour killings'. Extrajudicial executions were also identified in **Afghanistan**, **Iraq**, **Libya**, **Somalia**, **Syria** and **Yemen**, having been carried out by insurgent groups exercising effective governance in default of the state.

A less obvious form of state-sanctioned killing took the form of state-sponsored conversion practices of such inherent violence that they directly resulted in death. In **Iran**, at least three people have died from improper sex-reassignment surgeries, encouraged and funded by the state. We also identified numerous examples of extremely violent conversion practices posing significant risk to life—ranging from beatings to electrocution—often carried out against children. Although distinguishable from state-sanctioned homicide, suicide is an all-too-common corollary of conversion practices, and to excuse states from all responsibility for such deaths is inappropriate.

In other cases, state involvement in the killing of individuals on the basis of actual or perceived sexual orientation came *after* the killing has taken place: lawful excuses to homicide and biases in judicial decision-making involve the state excusing and legitimising the killing of sexual minorities by private actors. In some states, legal provisions distinguish 'honour killing' from murder: we identified cases in **Iran** and **Jordan** where killers received reduced sentences—or were acquitted entirely—upon claiming that they killed their allegedly same-sex attracted family member to preserve family honour. The gay panic defence, which similarly excuses homicide on the basis of the victim's sexual orientation, has been identified in **Jamaica**, **South Africa**, **Trinidad and Tobago**, and the **United States**. As these examples illustrate, even in countries where same-sex sexual acts do not carry the death penalty (and, in some instances, are not criminalised whatsoever), the operation of lawful excuses reverses the blame from the killer to the victim, labelling the victim as deserving of death due to their actual or perceived sexual orientation. Such excuses constitute the tacit allowance of the state to commit violence against sexual minorities.

Looking forward

As this report makes clear, the complicity of the state in the killing of sexual minorities extends far beyond the boundaries of the death penalty. An examination of death penalty practice alone would have overlooked more than half of the states identified as being complicit in such violence, and given the difficulties in accessing data, it is likely that we have only uncovered the tip of the iceberg.

We are currently witnessing the emergence of right-wing populist authoritarian governments around the world. A return to extreme social conservatism in dysfunctional democracies is perfectly conceivable. Inaction could, in the not-too-distant future, lead to populist democracies responding to, exploiting, and legitimating homophobic agendas.

We call upon civil society organisations, universities, and governments to support reform-minded local organisations and advocates within countries in which the state remains complicit in the killing of sexual minorities. As the pinnacle of power in any given jurisdiction, governments are able to take concrete measures to protect sexual minorities from violence committed by others. Equally, civil society organisations situated outside of countries involved in the killing of sexual minorities, and universities that are protected by academic freedom, must continue to take a stand and actively engage in dialogues with the countries identified in this report.

But to do so, we need information; for this, local organisations and advocates must also be supported. As noted at the beginning of this report, testimonies and statistics of state-sanctioned killing of sexual minorities are extremely difficult to uncover. In writing this report, we heavily relied on local media reports and information gathered by local activists. Our ability to accurately and comprehensively document, examine and respond to the state-sanctioned killing of sexual minorities depends on the resources available to local organisations and the courage of local activists who risk their security to make invisible deaths visible.



Eric, an avid campaigner for the rights of sexual and gender minorities, was 'critical of state-sponsored discrimination' in Cameroon. His activism and perceived homosexuality lead to him being brutally tortured and murdered: his limbs and neck were broken, he had been severely burnt, and his eyes and tongue had been cut out. His killers were never brought to justice.

'Words cannot express the pain that I carry in my heart,' says his sister, Alice.

APPENDICES

Appendix 1: Criminalisation and Legalisation of Same-sex Sexual Acts

As of January 2021, 69 countries criminalise same-sex sexual acts (36 per cent of countries)

- Afghanistan
- Algeria
- Antigua and Barbuda
- Bangladesh
- Barbados
- Bhutan
- Brunei
- Burundi
- Cameroon
- Chad
- Comoros
- Dominica
- Egypt*
- Eritrea
- Eswatini
- Ethiopia
- Gambia
- Ghana
- Granada
- Guinea
- Guyana
- Iran
- Iraq*
- Jamaica
- Kenya
- Kiribati
- Kuwait
- Lebanon
- Liberia
- Libya
- Malawi
- Malaysia
- Maldives
- Mauritania
- Mauritius
- Morocco
- Myanmar
- Namibia
- Nigeria
- Oman
- Pakistan
- Papua New Guinea
- Qatar
- Saint Kitts & Nevis
- Saint Lucia
- Saint Vincent & The Grenadines
- Samoa
- Saudi Arabia
- Senegal
- Sierra Leone
- Singapore
- Solomon Islands
- Somalia
- South Sudan
- Sri Lanka
- Sudan
- Syria
- Tanzania
- Togo
- Tonga
- Tunisia
- Turkmenistan
- Tuvalu
- Uganda
- United Arab Emirates
- Uzbekistan
- Yemen
- Zambia
- Zimbabwe

Note: * indicates *de facto* criminalisation of same-sex sexual acts: states do not expressly criminalise same-sex sexual acts, but regularly use alternate provisions to persecute persons for alleged engagement therein.

Proportion of countries that legalised same-sex sexual acts: 1980-2021

1980	1981–1990	1991–2000	2001–2010	2011–Jan 2021
36%	**40%**	**53%**	**58%**	**64%**
69 states legalised same-sex sexual acts (or never criminalised)	8 states legalised same-sex sexual acts	25 states legalised same-sex sexual acts	10 states legalised same-sex sexual acts	12 states legalised same-sex sexual acts
1. Argentina 2. Austria 3. Bahrain 4. Belgium 5. Benin 6. Bolivia 7. Brazil 8. Bulgaria 9. Burkina Faso 10. Cambodia 11. Canada 12. Central African Republic 13. Congo 14. Costa Rica 15. Côte d'Ivoire 16. Croatia 17. Cuba 18. Czech Republic 19. Democratic Republic of Congo 20. Denmark 21. Djibouti 22. Dominican Republic 23. East Timor 24. El Salvador 25. Equatorial Guinea 26. Finland 27. France 28. Germany 29. Greece 30. Guatemala 31. Haiti 32. Honduras 33. Hungary 34. Iceland 35. Indonesia 36. Italy 37. Japan 38. Jordan 39. Laos 40. Luxembourg 41. Madagascar 42. Mali 43. Malta 44. Mexico 45. Micronesia 46. Monaco 47. Mongolia 48. Montenegro 49. Netherlands 50. Niger 51. North Korea 52. Norway 53. Peru 54. Philippines 55. Poland 56. Rwanda 57. Slovakia 58. Slovenia 59. South Korea 60. Spain 61. Suriname 62. Sweden 63. Switzerland 64. Thailand 65. Turkey 66. Uruguay 67. Vanuatu 68. Venezuela 69. Vietnam	1. Andorra 2. Colombia 3. Israel 4. Liechtenstein 5. New Zealand 6. Paraguay 7. Portugal 8. United Kingdom *(some parts decriminalised as early as 1967)*	1. Albania 2. Australia *(some states decriminalised as early as 1975)* 3. Azerbaijan 4. Bahamas 5. Belarus 6. Belize 7. Chile 8. China 9. Ecuador 10. Estonia 11. Georgia 12. Guinea-Bissau 13. Ireland 14. Kazakhstan 15. Kyrgyzstan 16. Latvia 17. Lithuania 18. Moldova 19. North Macedonia 20. Romania 21. Russia 22. Serbia 23. South Africa 24. Tajikistan 25. Ukraine	1. Armenia 2. Bosnia & Herzegovina 3. Cabo Verde 4. Fiji 5. Marshall Islands 6. Nepal 7. Nicaragua 8. Panama 9. San Marino 10. United States *(some states decriminalised as early as 1962)*	1. Angola 2. Botswana 3. Gabon 4. India 5. Lesotho 6. Mozambique 7. Namibia 8. Nauru 9. Palau 10. Sao Tome & Principe 11. Seychelles 12. Trinidad and Tobago

Source: Mendos et al. (2020:325–30).

Appendix 2: List of Interviewees

Hind Al-Eryani	Hind is a journalist, writer and human rights activist, with a focus on Yemen. Her work has involved leading campaigns in support of sexual and gender minorities. In 2017, she was named Arab Woman of the Year in Social Change.
Shadi Amin	Shadi is the Executive Director of Iranian Lesbian and Transgender Network (6Rang). 6Rang's mission is to eradicate stigmatisation, discrimination and violence against LGBTI persons in Iran. The network places specific focus on lesbian and transgender persons, whom they consider to be particularly vulnerable.
Roya Boroumand	Executive Director, Abdorrahman Boroumand Center for Human Rights in Iran (ABC). ABC is a non-governmental, non-profit organisation dedicated to the promotion of human rights and democracy in Iran.
Sana Farrukh	Sana is a lawyer in Pakistan, with expertise in criminal and human rights laws in that jurisdiction.
Bijan Kardouni	Bijan is a PhD candidate at the University of Western Sydney. His thesis examines the execution of gay men in Iran, and how media reporting of such executions influences homophobia within Iranian society.
Mehri Jafari	Mehri is a lawyer and human rights activist. Prior to relocating to England, her work focused on women, children and LGBT issues in Iran.
Veronika Lapina	Veronika is a member of the Russian LGBT Network. As a human rights defender, she has worked closely with persons facing discrimination and violence on the basis of sexual orientation and gender identity in the Chechen Republic. Her work has helped relocate more than 100 persons to safety.
Victor Madrigal-Borloz	Victor is the incumbent UN Independent Expert on Protection Against Violence And Discrimination Based On Sexual Orientation And Gender Identity. His recent output includes a report on global conversion practices and an examination of the impacts of COVID-19 on LGBTI+ persons.
Osman Mobarak	Osman is a lawyer in Sudan, with expertise in human rights law. He has represented clients facing the death penalty, including those charged with same-sex sexual offences and religious crimes.
Arsham Parsi	Arsham is the Founder and Executive Director of International (formerly Iranian) Railroad for Queer Refugees (IRQR). IRQR provides a wide range of services, including financial and resettlement assistance to LGBT refugees.
Hossein Raeesi	Hossein worked as a lawyer in Iran for 20 years, specialising in human rights and criminal law. He represented numerous clients accused of same-sex sexual acts, including minors. All his clients avoided the death penalty.
Mehran Rezaei	Academic (Iran)
Rasha Younes	Rasha is a researcher with the Lesbian, Gay, Bisexual and Transgender Program at Human Rights Watch. Her work involves investigating abuses against LGBT persons in the Middle East and North Africa region.
Anonymous	An Iranian national currently living in Germany.
Anonymous	A gay person in Sudan and Egypt.
Anonymous	A human rights activist working in Sudan. Their work involves advocating the rights of women and sexual minorities.
Anonymous	A former senior diplomat to Saudi Arabia.

Appendix 3: Punishment for Livat (Penetrative Anal Intercourse Between Men) in Iran

	Muslim		Non-Muslim
	Married	**Unmarried**	
Active sexual role (consensual)	✔	✘ (100 lashes instead)	✔ (if the passive party is Muslim) ✘ (if both parties are non-Muslim)
Passive sexual role (consensual)	✔		
Active sexual role (rape)	✔		

Source: Islamic Penal Code of Iran 2013, available from: https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#44 (last accessed on 27 January 2021).

Appendix 4: Criminalisation of Same-Sex Sexual Acts in Majority Muslim States

States with majority Muslim populations (above 50 per cent)	Is Islam the official state religion?	Are same-sex sexual acts criminalised?	Do same-sex sexual acts carry the death penalty?
Afghanistan	✔	✔	✔
Brunei	✔	✔	✔
Iran	✔	✔	✔
Mauritania	✔	✔	✔
Pakistan	✔	✔	✔
Qatar	✔	✔	✔
Saudi Arabia	✔	✔	✔
Somalia	✔	✔	✔
UAE	✔	✔	✔
Yemen	✔	✔	✔
Nigeria		✔	✔
Algeria	✔	✔	
Bangladesh	✔	✔	
Comoros	✔	✔	
Egypt	✔	✔	
Iraq	✔	✔	
Libya	✔	✔	
Malaysia	✔	✔	
Maldives	✔	✔	
Oman	✔	✔	
Palestine	✔	✔	
Morocco	✔	✔	
Tunisia	✔	✔	
Chad		✔	
Gambia		✔	
Guinea		✔	
Indonesia		✔	
Lebanon		✔	
Senegal		✔	
Sierra Leone		✔	
Sudan		✔	
Syria		✔	
Turkmenistan		✔	
Uzbekistan		✔	
Bahrain	✔		
Djibouti	✔		
Jordan	✔		
Albania			
Azerbaijan			
Burkina Faso			
Kazakhstan			
Kyrgyzstan			
Mali			
Niger			
Tajikistan			
Turkey			
TOTAL	25/46 countries	34/46 countries	11/46 countries

Sources: Pew Research Centre (2017a, 2017b); Mendos et al. (2020)

Appendix 5: Executions for Same-Sex Sexual Acts in Iran: 2004-2020

Year	Name	Sex	Age		Nationality	Offending			Public execution	Reported in local media
			At time of offending	At time of execution		Consensual same-sex acts	Same-sex rape	Other non-sexual offences		
2004	M R B	M		28	Iran	✔		✔	✔	✔
	M R	M			Iran		✔		✔	✔
2005	A A	M		25	Iran	✔				✔
	M N	M		24	Iran	✔				✔
	H Safdari	M		27	Iran	✔			✔	✔
	M Asgari	M	15	16	Iran		✔		✔	✔
	Hossein	M			Iran		✔			✔
	A Marhuni	M	17	18	Iran		✔		✔	✔
	Ruhollah	M			Iran		✔			✔
	Yunes	M			Iran		✔			✔
2006	S Darvishi	M			Iran	✔			✔	✔
	M R Rafi'nia	M	32	35	Iran	✔		✔	✔	✔
		M	20	20	Iran		✔	✔	✔	✔
		M	17	17	Iran		✔	✔	✔	✔
2007	E G	M			Iran	✔		✔	✔	✔
	S Morovati	M		27	Iran	✔		✔	✔	✔
	M Sadeqi	M		26	Iran	✔				
	M Moloudzadeh	M	13	20	Iran		✔			✔
	Q Y	M		28/35	Iran		✔	✔		✔
		M	26	26	Iran		✔	✔	✔	✔
2008	Hadi	M		24	Iran	✔		✔		
	Hossein	M		19	Iran	✔		✔		
	Javad	M		24	Iran	✔		✔		
	Mehdi	M		24	Iran	✔		✔		
	Morteza	M		21	Iran	✔		✔		
	Abdozzahra	M		31	Iran		✔	✔		✔
	Hamid	M		22	Iran		✔			
	M Reza	M		37	Iran		✔			

Year	Name	Sex	Age		Nationality	Offending			Public execution	Reported in local media
			At time of offending	At time of execution		Consensual same-sex acts	Same-sex rape	Other non-sexual offences		
2008 continued	M N	M		20	Iran		✔	✔		
	G R	M		48	Iran		✔			
	A R Golshan	M		24	Iran		✔	✔		
	R Sharifi	M		21	Iran		✔			✔
2009		M					✔			
		M					✔			
		M					✔			
	HA	M			Iran	✔				
	R Mohammadi	M			Iran	✔				
	B J	M		40	Iran		✔			
	T K	M		24	Iran		✔			
							✔			
							✔			
							✔			
							✔			
	H N	M			Iran		✔			
2011	Q Atakeshzadeh	M			Iran		✔			
	H B	M	17	20	Iran		✔	✔	✔	✔
	R Dehqan	M			Iran		✔			
	M K Khaneqah	M			Iran		✔			
	P M P Rizeh	M			Iran		✔			
	A N	M	17	20	Iran		✔	✔	✔	✔
	S N	M	18	21	Iran		✔	✔	✔	✔
	N Ahmad	M		40	Afghanistan		✔			
				19			✔			
						✔		✔		
						✔		✔		
						✔		✔		

Year	Name	Sex	Age		Nationality	Offending			Public execution	Reported in local media
			At time of offending	At time of execution		Consensual same-sex acts	Same-sex rape	Other non-sexual offences		
2012	B Tajik	M		30	Iran	✔		✔		
	H A	M		34	Iran		✔			
	S M	M			Iran		✔			
							✔	✔		
		M					✔	✔		
2013	S A	M		27	Iran		✔			
	A B Hafshajani	M		26	Iran		✔			
	S B Hafshajani	M		21	Iran		✔			
	A M	M		23	Iran		✔			
	A R	M			Iran		✔			
				21			✔			
				22			✔			
2014	M Q	M				✔		✔		
	S Q Chahanjiri	M		33		✔				
	A Q Chahanjiri	M		31	Iran	✔				
	R F Banatkuhi	M		28	Iran		✔			
2015	A H	M			Iran		✔			
2016	Hassan Afshar	M	17	19	Iran		✔			✔
2017	A R Tajiki	M	15	21	Iran		✔			✔
	Shahin Parsajoo	M		24/42						
2019		M		31	Iran		✔	✔	✔	✔
	Ali Lavashak	M			Iran		✔			

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USEFUL RESOURCES

The Human Dignity Trust works globally to support strategic litigation to challenge laws that persecute people on the basis of their sexual orientation and/or gender identity. It provides technical legal, communications and security assistance to lawyers and activists who are defending human rights in countries where private, same-sex, consensual sexual activity is criminalised. Map of Countries that Criminalise LGBT People & Country Profiles provides an overview of the countries across the world where lesbian, gay, bisexual and transgender people are criminalised.	The International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) is a federation of 1679 member organisations from 162 countries, campaigning for the rights of LGBTI persons globally. It supports LGBTI civil society worldwide through advocacy and research projects, and gives grassroots movements a voice within international organisations. State-Sponsored Homophobia report examines the situations of LGBTI persons in all countries worldwide, including a section on the death penalty for same-sex sexual acts.
The Abdorrahman Boroumand Center for Human Rights in Iran is a non-governmental, non-profit organisation dedicated to the promotion of human rights and democracy in **Iran**. Omid Memorial is a database of persons sentenced to death in Iran, cataloguing over 25,000 executions.	The Cornell Center on the Death Penalty Worldwide is an initiative sharing knowledge, empowering human rights defenders, and building transnational communities to ensure justice for those facing the death penalty. It has compiled a database of country reports, summarising death penalty laws and practices in worldwide jurisdictions.
Death Penalty News provides the latest news concerning death penalty practice around the world.	Human Rights Watch strives to investigate and expose human rights abuses happening globally. It has compiled a database providing snapshot profiles of the situations of LGBT persons on a country-by-country basis.
The Iran Human Rights Documentation Center is an independent, non-profit organisation that seeks to establish a comprehensive and objective historical record of the human rights situation in **Iran**, and make this record accessible to the public. The Center hopes to promote respect for human rights in Iran, as well as accountability for violations thereof, by encouraging an informed dialogue among scholars and the general public. The Center has created charts of reported executions by year, as recently as 2020.	The Iranian Lesbian and Transgender Network (6Rang) strives to eradicate stigmatisation, discrimination and violence against LGBTI persons in **Iran**. The network places specific focus on lesbian and transgender persons, whom they consider to be particularly vulnerable.

IraQueer is dedicated to advancing LGBTI rights in **Iraq** through knowledge production, advocacy, and providing direct services.	The Russian LGBT Network is an interregional, non-governmental human rights organisation that promotes equal rights and respect for human dignity, regardless of sexual orientation and gender identity, in **Russia**. It unites and develops regional initiatives, advocacy groups, and provides social and legal services.
Sexual Minorities Uganda is a non-profit, non-government organisation advocating the fundamental human rights of LGBTI persons in **Uganda**.	Rainbow Railroad helps relocate LGBTQI persons at risk of violence and persecution to safety.
The Initiative for Equal Rights (TIERs) is a not-for-profit organisation in **Nigeria** working to create a society where human rights are guaranteed regardless of status, identity, orientation and affiliation. Its goal is to protect, uphold and promote the rights and humanity of all persons through advocacy, empowerment, education, and the provision of safe platforms of convergence.	The UN Independent Expert on sexual orientation and gender identity is mandated to explore ways to better protect persons who suffer from violence and discrimination on the basis of their sexual orientation or gender identity. The current mandate holder, Victor Madrigal-Borloz, has published thematic reports on a range of issues, including so-called "conversion therapies", and the impacts of COVID-19 on LGBTI persons worldwide.
Welcome To Chechnya is a documentary film depicting the realities of life in, and the extraordinary efforts of activists to rescue LGBTQI persons from the ongoing violence in, the Chechen Republic (**Russia**).	Where Love Is Illegal is a multimedia initiative by *Witness Change*, documenting photographic and anecdotal testimonials of LGBTQI persons around the world.

ABOUT THE AUTHORS

Mai Sato
Director, Eleos Justice; Associate Professor, Faculty of Law, Monash University

Mai is the inaugural director of Eleos Justice and her academic focus is on the death penalty. She is a social scientist by training and has led and worked on projects on the death penalty in Japan, Malaysia, the Philippines, India, Kenya, and Zimbabwe. Her monograph The Death Penalty in Japan: Will the Public Tolerate Abolition? (Springer, 2014), and her documentary film which captured a social experiment exploring what the death penalty meant to ordinary Japanese citizens, influenced the decision by the Japan Federation of Bar Associations to become an abolitionist organisation in 2016.

Mai's interest in the death penalty is not limited to scholarly understanding of punishment and the criminal justice system. After completing a European Commission funded project, Mai has created and currently co-runs an NGO CrimeInfo which promotes the abolition of the death penalty in Japan.

Mai has a PhD from King's College London. She relocated to Australia in February 2019 and joined the School of Regulation and Global Governance (RegNet) at the Australian National University. Prior to joining the ANU, she worked at the School of Law, University of Reading; the Centre for Criminology, the University of Oxford; and at the Institute for Criminal Policy Research (UK).

Christopher Alexander
Fellow, Eleos Justice

Christopher completed his LLB(Hons)/BA at Monash University. Since undertaking the Eleos Justice Anti-Death Penalty Clinic, he has been actively involved in the abolitionist movement, collaborating with local and international partners on the development of advocacy tools, and contributing legal assistance in death row matters.

Beyond Eleos Justice, Christopher has provided research assistance to the School of Regulation and Global Governance (RegNet), Australian National University, and the Faculty of Law, Monash University.

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 evidence-based research, teaching, and advocacy on the death penalty in Asia.

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, which translate to 97 per cent of global executions (according to 2019 figures, excluding the number of executions carried out in China). 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

'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 and Twitter (@EleosJustice).

ABOUT CAPITAL PUNISHMENT JUSTICE PROJECT

What is Capital Punishment Justice Project?

Capital Punishment Justice Project (CPJP) (formerly Reprieve Australia) stands for a world without the death penalty. We work with our partner organisations, volunteers, interns, and board to develop legal and policy solutions that will help save lives.

Since its establishment in Melbourne, Australia, in 2001, by criminal barristers Richard Bourke, Nick Harrington, Pia Dimitina and Susan Brennan, CPJP has provided legal representation and humanitarian assistance to those at risk of execution. Initially, our task was to provide volunteer assistance to capital defence centres in the US, and while we remain committed to this essential work (having dedicated over 70,000 volunteer hours to it over the years), our focus is on challenging the death penalty in Asia.

Underlying all of CPJP's work is a refusal to accept that a state can choose to end the life of a human being, and a commitment to holding governments to account for their arbitrary and cruel use of capital punishment.

We operate on a small budget comprised of donations and grants, which cover the costs of providing essential legal, casework, advocacy and policy support to key stakeholders, including partner organisations, human rights defenders, lawyers, and individuals facing the death penalty.

What is CPJP's strategy?

CPJP supports research, casework, policy work and advocacy in pursuit of abolition. Our work advances the debate on the death penalty both within Australia and in Asia. We leverage the relationships that Australia has with its neighbours to encourage an end to the use of the death penalty.

We work for those facing the most extreme rights abuse of all – deprivation of life at the hands of the state – and we do not charge a cent to assist them. It is their cases that are the prisms that expose the many injustices of the death penalty. CPJP's proximity to these individuals gives us the ability to make their voices heard and to move the public consciousness against the death penalty.

In addition to casework support, our work focuses on assisting the Australian government with initiatives aimed at promoting abolition, supporting a global coalition to strengthen the international dimension of the fight against the death penalty, and supporting partner organisations, institutions and advocates (including lawyers) in Asia to assist those facing the death penalty and to promote an end to its use.

Who is involved?

Key to our efficacy, integrity and impact are our Board of 7 volunteers, led by barrister and Law Council President's Award 2020 recipient Stephen Keim SC, and supported by our Vice Chair Sara Kowal, a criminal lawyer with a Masters of Public Policy and Management who heads the Eleos Anti-Death Penalty Clinic at partner organisation Monash University's Eleos Justice.

CPJP is led by its Chief Executive Officer, Simone Abel, a lawyer by training, who has a Masters of Laws (international law and human rights), and a background in management of human rights NGOs and anti-death penalty work.

In 2018, CPJP commenced a partnership with Monash University. Eleos Justice was launched in October 2020. Eleos Justice supports CPJP with evidence-based research, teaching, and collaborative input on advocacy, policy and casework.

CPJP's other partners include the Julian Wagner Memorial Fund, Australians Against Capital Punishment and Savage Films. We work closely with law firms and academic institutions in the region.

CPJP is a member of the World Coalition Against the Death Penalty, and the Anti-Death Penalty Asia Network (ADPAN).

How to get involved

CPJP works with academic institutions and partner organisations to attract skilled volunteers to its formal volunteer program. CPJP is also developing online training resources for individuals who wish to volunteer with our organisation. There are also opportunities to assist CPJP's work through university internship programs, and to be hosted at CPJP for an internship in return for academic course credit.

CPJP also holds events and publicises upcoming events on its website: https://cpjp.org.au and through its social media (@capitalpunishmentjusticeproject on Facebook and @cpjp_org_au On Twitter).

Supporters are encouraged to join CPJP's database and/or to make a tax-deductible donation to our work.

This report is a must-read for human rights activists, governments, and academics engaged in research regarding the discriminatory application of the death penalty. Eleos Justice has exposed the shocking extent to which sexual minorities continue to face life-threatening persecution around the world at the hands of state actors. With this rigorous study, the international community will be better equipped to hold human rights violators accountable and to protect those whose lives are threatened on the grounds of their sexual orientation.

Sandra Babcock
Clinical Professor of Law
Cornell Law School, US

From governments that retain the so-called 'gay panic' defence, to those that punish consensual same-sex sexual activity with death, this ground-breaking report by Eleos Justice makes clear that States of every description have blood on their hands -- the blood of same-sex attracted people.

Contemporary debates about the politicisation of gay rights in international relations ring a little hollow when we are confronted with the fact of same-sex-attracted people's death at the hands of State law, or with the complicity of State law. Mai Sato and Christopher Alexander have painstakingly documented the overt and covert ways in which State-sanctioned death is inflicted on folks guilty only of not suppressing their same-sex desire. The first report of Eleos Justice makes for sobering reading indeed.

Aleardo Zanghellini
Professor of Law and Social Theory
Expert on law, gender and sexuality
School of Law
The University of Reading, UK

The extent to which states feel free to interfere in the private sex lives of their adult citizens is troubling enough. States wielding the power to kill individuals engaging in consensual same-sex intimacy are more common than one would expect.

This report is a scathing indictment of the overreach of the substantive criminal law, and the inconsistencies and contradictions of its application in most extreme form to sexual minorities. Not only does it reveal the extreme abuse of power by agents of the state directly, but it exposes various mechanisms by which states facilitate and condone extrajudicial killing by private actors. The document represents a significant contribution to comparative criminology, public policy and jurisprudence. It deserves the attention of public officials and concerned citizens more generally.

Peter Grabosky
Emeritus Professor
School of Regulation and Global Governance
The Australian National University



Gregory, Uganda