



**Cornell Law School**  
Cornell Center on the  
Death Penalty Worldwide



## MEMORANDUM

To: Mr. Graeme Reid, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI)

From: The World Coalition Against the Death Penalty (WCADP), Hope Behind Bars Africa (HBBA), The Iranian Lesbian and Transgender Network (6rang), the Cornell Center on the Death Penalty Worldwide and The Advocates for Human Rights (TAHR).

Date: January 31, 2024

Re: Call for Inputs on the protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly.

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**The World Coalition Against the Death Penalty (WCADP)** was founded in Rome on May 13<sup>th</sup>, 2002. Is an alliance of over 160 NGO's, bar associations and local authorities strengthening the international dimension of the fight against the death penalty. Its objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition by supporting its member organizations, local, national and regional abolitionist forces and by coordinating the international advocacy towards worldwide abolition of the death penalty. The World Coalition gives a global dimension to the action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. The World Coalition Against the Death Penalty is committed to making visible gender and intersectional discrimination at work in capital punishment as well as to strengthen the protection of women and gender and sexual minorities facing the death penalty.

**Hope Behind Bars Africa (HBBA)** was founded in 2018 and formally registered in Nigeria in 2019. Hope Behind Bars Africa is a driving force for correctional reforms in Africa. Our vision is to co-create a criminal justice system rooted in human rights and dignity. With a mission to close the justice gap, we employ preventive actions, diversionary measures, legal support, evidence-based advocacy, and technology. As a member of the World Coalition Against the Death Penalty, we are actively working towards abolishing the death penalty. As a beacon of hope for the incarcerated, we leverage service delivery, technology, and education to bring about tangible change in the Criminal Justice system in Africa.

**The Iranian Lesbian and Transgender Network (6rang)** is a UK registered not-for-profit organization which was established following the first Iranian lesbian and transgender gathering held in 2010. Its network and contacts span across more than 500 LGBTI individuals, the majority of whom are

based in Iran. 6Rang's mission is to raise awareness on sexual rights, and eradicate homophobia, transphobia, and violence against lesbian and transgender people, as well as the LGBTI community in general. 6Rang highlights the fact that, due to the Islamic Republic's discriminatory gender-based laws and codes favoring heterosexual males above others, as well as the patriarchal power structure rooted in Iranian culture, lesbian and transgender citizens are the most marginalized within an already marginalized segment of Iran's population. 6Rang is a member of International Lesbian and Gay Association (ILGA) and has made submissions to UN bodies and published reports that, among other issues, have focused on documenting human rights abuses against lesbian, gay and transgender persons in healthcare settings in Iran.

**The Cornell Center on the Death Penalty Worldwide (CCDPW)** provides transparent data on death penalty laws and practices around the world, publishes reports and manuals on issues of practical relevance to lawyers, judges, and policymakers, trains lawyers in best practices, and engages in targeted advocacy and litigation. The Center has gained a reputation for providing comparative legal analysis of the application of the death penalty, as well as for its one-of-a-kind Makwanyane Institute for capital defenders. Our Alice Project, which is the first global project to focus on women facing capital punishment, examines the role of gender in death penalty cases. By representing women before national and international tribunals, organizing judicial trainings, and through data collection and analysis, we are exposing the connection between gender-based discrimination and capital sentencing. Center staff and associated faculty continue to defend persons facing the death penalty around the world, with a combined caseload of dozens of death row prisoners. Students play a major role in our advocacy efforts through Professor Babcock's International Human Rights Clinic. Generations of Cornell undergraduates and law students have contributed to our research, training, and individual case representation.

Founded in 1983, **The Advocates for Human Rights (TAHR)** is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States, including LGBTIQ+ individuals who have experienced discrimination and violence based on sexual orientation, gender identity and expression, and sex characteristics.

## EXECUTIVE SUMMARY

1. Worldwide, the death penalty is still utilized as a means of limiting the freedom of expression, of assembly, and of association of lesbian, gay, bisexual, transgender, queer, and other sexual and gender minorities (LGBTQ+)<sup>1</sup> based on actual or perceived sexual orientation. Criminalization of status, such as sexual orientation or identity, creates a context where LGBTQ+ communities are restricted from civic engagement in ways that would protect against the violation of their human rights.
2. The death penalty and sexual orientation intersect in numerous ways with severe, permanent harm to diverse communities such as human rights defenders and LGBTQ+ individuals, infringe upon core rights including freedom of expression, association, and assembly, the rights to privacy and dignity, along with the bundle of associated fair trial rights, the right to be free from torture, and the rights to equal protection of the law.

## INTRODUCTION

3. In countries that retain the death penalty for consensual same-sex sexual relations, the death penalty can be seen as a tool that implicitly restricts the rights to freedom of expression, assembly, and association of LGBTQ+ people based on actual or perceived sexual orientation, gender identity, and/or gender expression.
4. Although data and research on this subject are limited, it is understood that in countries where the death penalty is imposed for consensual same-sex sexual relations, LGBTQ+ people are forced to limit their rights to freedom of expression, assembly, and association, especially in connection with the defense of their gender and sexual identities, to reduce the risk of being sentenced to death. Publicly advocating for LGBTQ+ issues, participating in related events, or affiliating with LGBTQ+ organizations can constitute a risk of identification by the police. LGBTQ+ people can be sentenced to death for same-sex sexual relations without tangible evidence and on the sole basis of their stance on LGBTQ+ issues.
5. In twelve countries (Iran, Nigeria, Pakistan, Afghanistan, Yemen, Brunei, Mauritania, Qatar, United Arab Emirates, Somalia, Saudi Arabia and Uganda), consensual same-sex sexual activity between adults is subject to capital punishment.
6. In Afghanistan, Pakistan, Qatar, Somalia, states in Northern Nigeria, and the United Arab Emirates, capital punishment for consensual same-sex activity between adults is imposed by courts operating under Sharia law.<sup>2</sup> The criminalization, punishment, and judicially ordered executions of people for consensual same sex activity amongst adults, whether codified in the criminal code or imposed through gender-biased/hate-based interpretations of Sharia law, must be stopped.

### **Capital Punishment for Consensual Sexual Same-Sex Relations Amongst Adults and Violations of the Rights to Freedom of Expression, Association and Assembly**

7. Iran's legal system explicitly prohibits same sex conduct, which under the country's penal code is punishable by death<sup>3</sup>. Three offences related to same-sex sexual conduct exists. Lewat (sodomy) is defined as an offence under Article 233 of the Iran Penal Code and article 234 sets out the penalties. Article 235 of the Iran Penal Code defines the offence of Tafkhiz (intercrural

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<sup>1</sup> In this report, we use the acronym LGBTQ+ because the implicit limitation of the rights to freedom of expression, assembly and association via the death penalty concerns people perceived as having same-sex sexual relations. This includes lesbian, gay, bisexual, trans and queer people. As many countries identify people on the basis of their sex assigned at birth and by their gender, transgender people who have sexual relations with people of the opposite gender may be considered to be breaking the law.

<sup>2</sup> Ensemble Contre la Peine de Mort, *Love is not a crime*, available at: <https://www.ecpm.org/en/campaigns/love-is-not-a-crime/>

<sup>3</sup> United Nations, UN News, Iran: *UN experts demand stay of execution for two women LGBT rights activists*, (28 September 2022), available at : <https://www.ohchr.org/en/press-releases/2022/09/iran-un-experts-demand-stay-execution-two-women-including-lgbt-activist>

coitus). The third offence called Mosahegheh (sexual intercourse between women) is defined in article 238 of the Iran Penal Code

8. Moreover, the right to a fair trial is often not respected. Firstly, we can highlight the existence of abusive, torturous, and coerced confessions. Then, as per the Islamic Penal Code of Iran, when confessions or testimony by eyewitnesses are missing in a case, the judge can decide based on his exclusive opinion, without any reference to legal authority. This phenomenon is known as “knowledge of the judge”, or *elm-e qazi*.<sup>4</sup> The rather unchecked powers and biased opinion of a judge inserted under these circumstances also leads to arbitrary applications in capital cases where life is dangerously at stake.
9. Human rights activist Shadi Amin, executive director of Iranian LGBTQ+ advocacy group 6Rang, stated that “[r]ule of law and fair trials do not exist in the Iranian judicial system. Therefore, any ruling issued in this system cannot be considered credible and legitimate.”<sup>5</sup>
10. Thus, LGBTQ+ people are particularly exposed to discrimination in legal proceedings and arbitrary convictions, the risk of which is increased by public stances. Research conducted by 6rang reveals that during 2022-23 uprisings in Iran, security forces specifically (and brutally) targeted LGBTQ+ protesters based on their perceived sexual orientation or gender identity, subjecting them, maliciously, to capital cases.<sup>6</sup>
11. Between 2015 and 2020, Iran and Saudi Arabia, two of the world’s most active executioners, together executed 11 men convicted of same-sex sexual intercourse<sup>7</sup>. According to some human rights activists, many people have been executed for “homosexuality” in Iran since the 1979 Islamic revolution<sup>8</sup>.
12. Iran’s severe repression of dissent, targeting of human rights defenders, and treatment of women and girls as second-class citizens also intersect with the criminalization of LGBTQ+ people on capital cases. In addition, Iran routinely practices torture in a system that lacks transparency, accountability, or due process in arrests, detention, trials, or sentencing. In sum, the case of Iran highlights how the imposition of the death penalty for consensual same sex activity amongst adults, is also about political repression with severe, if not deadly, consequences for people who brave coming out and fighting for their rights.<sup>9</sup>
13. Criminalization of status or identity, pertaining to people and communities who are (or are perceived as) LGBTQ+ also bears colonial origins. In many countries, across the African continent, homophobia, along with criminalization of status, poverty, and expression was imported by colonizers.<sup>10</sup> Notably, in Uganda, the external influence from the extreme anti - LGBTQ+ conservatives of the United States, aligned broadly with anti-human rights movements, intensify the marginalization, risk, and executions facing LGBTQIA+ communities.<sup>11</sup>
14. In Uganda, the Anti-Homosexuality Act (hereinafter “AHA”) has retained the death as a maximum penalty in cases of “aggravated homosexuality” which includes same-sex sexual activity: (i) involving a minor; (ii) involving a person living with HIV; (iii) involving a parent

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<sup>4</sup> Ensemble Contre la peine de Mort, *Annual report on the Death Penalty in Iran*, (2019), available at: <https://www.ecpm.org/app/uploads/2022/08/Rapport-iran-2019-gb-070420-WEB.pdf>

<sup>5</sup> Joshua Zitser in Business Insider, *Iran executes 2 gay men accused of ‘forcible sodomy’, human rights group says*, (February 2022), available at: <https://www.businessinsider.com/iran-executes-2-gay-man-sodomy-charges-human-rights-group-2022-2?r=US&IR=T>

<sup>6</sup> 6Rang, *War on Bodies and Minds: Gender Persecution of LGBTQ+ Protestors in the Context of the 2022-23 Iran Uprising*, (2023), available at: <https://6rang.org/english/wp-content/uploads/2023/09/War-on-Bodies-and-Minds-EN-FINAL-.pdf>

<sup>7</sup> Sandra Babcock in Amicus Journal, *Fighting for Justice on Death Row (Issue 45), The Lethal Consequences of Gender Bias in the Application of the Death Penalty*, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4416558#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4416558#)

<sup>8</sup> Ensemble contre la Peine de Mort (ECPM), *Annual report on the death penalty in Iran 2019*, (March 2019), available at: <https://www.ecpm.org/app/uploads/2022/08/Rapport-iran-2019-gb-070420-WEB.pdf>

<sup>9</sup> Amnesty Int’l, *Amnesty International Report 2022/2023: The State of the World’s Human Rights*, Iran, (2023), available at: <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>

<sup>10</sup> Andrew Mambondiani, *The Colonial Legacy of Anti-LGBTQ + Laws in Africa*, Thomson Reuters Foundation News, November 13, 2023.

<sup>11</sup> Anna Mmola Chalmers, *The Arm of Imperialism: The Church’s Anti-Gender and Anti-SOGIE Rhetoric*, Washington Blade, August 23, 2023.

- or guardian of the person against whom the offense is committed; (iv) involving a person having authority or control over the person against whom the offense is committed; (v) with a person that has a disability; (vi) where the offender is a habitual offender; and (vii) involving the offender’s use of any drug or substance, with intent to stupefy or overpower the victim, in order to have unlawful carnal connection with the person of the same sex.<sup>12</sup> Consent is not a defense.<sup>13</sup>
15. Under the AHA, a “serial offender” who faces the death penalty includes anyone who has one or more “previous convictions for the offence of homosexuality or related offences,”<sup>14</sup> covering not only LGBTQ+ individuals who are sexually active in consensual relationships, but also those committing the “related offences” of witnessing or participating “in the preparation of a purported marriage between persons of the same sex”<sup>15</sup> or leasing “any house, building or establishment” used in the “undertaking [of] activities that encourage homosexuality.”<sup>16</sup>
  16. The AHA sanctions the death penalty for a person who leases property, not even for actual same-sex acts, but for “activities that encourage homosexuality”—which could be operating a human rights organization for LGBTI rights, providing health services for LGBTI individuals, or a wide range of other non-sexual conduct—if convicted more than once.<sup>17</sup>
  17. The AHA explicitly discriminates based on sexual orientation and threatens LGBTQ+ citizens with the death penalty for consensual sexual expression in the privacy of their own homes. Furthermore, the threat of execution chills politically progressive speech and results in increased fear, stigmatization, and violations of human rights. Criminalization of sexual orientation and/or identity, by death, also means that those who would otherwise be vocal in protecting the precious civic spaces for a broad and intersecting range of human rights, are otherwise silenced, penalized, or killed.
  18. In 2023, in conjunction with the work of the Cornell Center on the Death Penalty Worldwide, a group of internationally recognized experts, including former UN Special Rapporteur E. Tendayi Achiume, submitted an amicus brief to the Constitutional Court of Uganda on behalf of petitioners challenging the AHA. They profoundly noted that “[I]aws criminalizing consensual same-sex activity offend the fundamental rights and liberties of individuals and international human rights obligations. Such rights and obligations, as reflected and incorporated into Uganda’s Constitution, have been substantially articulated, not only by international human rights bodies, but also by courts in Africa, the Commonwealth, and beyond that have grappled with similar challenges and arguments and have repeatedly declared similar laws incompatible with fundamental constitutional rights and international human rights obligations.”<sup>18</sup>
  19. As experts have explained, “the AHA sanctions the death penalty for a person who leases property, not even for actual same-sex acts, but for “activities that encourage homosexuality”—which could be operating a human rights organization for LGBTI rights, providing health services for LGBTI individuals, or a wide range of other non-sexual conduct—if convicted more than once...The imposition of such disproportionate and arbitrary punishments violates Uganda’s international human rights obligations, including the right to equality and protection from sex discrimination.”<sup>19</sup>

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<sup>12</sup> Catherine Nicholls & Nimi Princewill, *Uganda lawmakers amend controversial anti-gay law but death penalty for HIV positive sex remains*, CNN, <https://www.cnn.com/2023/05/02/africa/uganda-passes-anti-homosexuality-bill-intl/index.html> ; The Anti-Homosexuality Bill of 2023, Bills Supplement to The Uganda Gazette No. 16, Volume CXVI (March 3, 2023).

Also available online at: <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>

<sup>13</sup> The Anti-Homosexuality Bill of 2023, Bills Supplement to The Uganda Gazette No. 16, Volume CXVI (March 3, 2023).

Also available online at: <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

<sup>14</sup> AHA, Paragraph 1

<sup>15</sup> *Id.*, §§10(1)(b)-(c)

<sup>16</sup> *Id.*, § 11(2)(d).

<sup>17</sup> AHA, § 11(2)

<sup>18</sup> Amicus for Petitioner at 7, *Hon. Fox Odoi-Oywelowo and Others vs. Attorney General*, Arising out of Constitutional Petition No. 014 of 2023 (2023).

<sup>19</sup> *Id.* at 40-41 citing AHA Section 11(2).

20. Human rights defenders have been warning about the risk of attacks on members of the LGBTQ+ community after Uganda adopted the Anti-Homosexuality Act, which is considered one of the harshest anti-LGBTQ+ laws in the world.<sup>20</sup>
21. In Nigeria, same-sex sexual activity is prohibited under the Criminal Code Act and the Same Sex Marriage (Prohibition) Act 2013 (SSMPA) which criminalize any acts of “carnal knowledge against the order of nature”, “gross indecency”, same-sex unions, and LGBTQ+ advocacy.
22. In the Northern region of Nigeria, governed by Sharia law, same-sex sexual intercourse is punishable by death.<sup>21</sup> Although there is no data on recent executions, the threat of the death penalty acts as a tool of repression, condemning LGBTQ+ people to live in hiding and fear limiting their freedom of expression, assembly, and association.

### **Unrelated Charges and Increased Violence**

23. In some countries, the death penalty is used as a means of limiting the rights to freedom of expression, assembly, and association of LGBTQ+ people based on the crime of “corruption on earth”. In Iran for example, authorities criminalize defending the rights of LGBTQ+ people as “spreading corruption on earth.”
24. Article 286 of the Islamic Penal Code defines “corruption on earth” as “a person who commits a crime on an extensive level against the physical integrity of others, the domestic or external security, spreads lies, disrupts the national economic system, undertakes arson and destruction, disseminates poisonous, microbiological and dangerous substances, establishes corruption and prostitution centres or assists in establishing them.”<sup>22</sup> The ambiguities in the text of this law, leave immense room and power for interpretation by a judiciary steeped in a system rampant with hatred, discrimination, and violence against LGBTQ+ people.<sup>23</sup>
25. According to 6Rang, the Islamic Regime of Iran deems distribution of online or offline materials and content perceived as promoting homosexuality as the crime of “spreading corruption on earth”, and punishable by death.
26. In October 2021 Iranian authorities arrested LGBTQ+ rights activist Zahra Sedighi- Hamadani, known as Sareh under accusations of “promoting homosexuality” and the capital offense of “spreading corruption on earth”. A few days later, in connection to this case, Elham Chubdar was also accused of “encouraging corruption and prostitution”.<sup>24</sup> These women were prosecuted based on their actual or perceived sexual orientation and/or gender identity, as well as their engagement in social media activities supporting LGBTQ+ communities.
27. The signatories of this submission also wish to highlight the increased risk of violence against LGBTQ+ people in countries that provide the death penalty for same-sex sexual activity, which emboldens hate movements and hinders (among other rights violations) their freedom of expression, assembly and association.
28. The African Commission on Human and Peoples’ Rights (ACHPR) noted that laws criminalizing homosexuality are likely to result in violence against individuals based on their actual or perceived sexual orientation and has encouraged states to enact and enforce appropriate laws prohibiting and punishing violence against individuals based on their perceived or actual sexual orientation or gender identity.<sup>25</sup>
29. Since the endorsement of the Anti-Homosexuality Act (AHA), 2023, a recent report by rights groups said that more than 300 human rights abuses have been recorded against LGBTQ+

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<sup>20</sup> *Ibid.*

<sup>21</sup> Equaldex, LGBT Rights in Nigeria. Available at: <https://www.equaldex.com/region/nigeria>

<sup>22</sup> Ensemble contre la Peine de Mort (ECPM), *Annual report on the death penalty in Iran 2019*, (2019), available at: <https://www.ecpm.org/app/uploads/2022/08/Rapport-iran-2019-gb-070420-WEB.pdf>

<sup>23</sup> *Id* at 18.

<sup>24</sup> Amnesty International, IRAN/ Imprisoned LGBTQIA+ activist threatened with the death penalty, available at : <https://www.amnesty.org/en/documents/mde13/5180/2022/en/>

<sup>25</sup> Meline, Szwarcberg, *Recontextualizing the threat of death penalty for homosexuality in Uganda*, World Coalition Against the Death Penalty, May 2, 2023, available at: <https://worldcoalition.org/2023/05/02/recontextualizing-the-threat-of-death-penalty-for-homosexuality-in-uganda/>

people in Uganda in the first eight months of 2023 – including beatings, torture, arrests and evictions from homes.<sup>26</sup> In addition, the process under the act itself is deplorable and torturous. For example, the Cornell Center on the Death Penalty Worldwide has verified cases of forced anal examinations in Uganda, in connection with and since the passage of the Anti-Homosexuality Act.

30. According to Amnesty International, on August 18, 2023, a twenty-year-old man alongside another individual, aged 41 were arrested on allegations of engaging in sexual activity with a person of the same sex.<sup>27</sup> They were charged with the offence of “aggravated homosexuality” which carries out the death penalty.

## CONCLUSION

31. The World Coalition Against the Death Penalty, Hope Behind Bars Africa, 6rang, the Cornell Center on the Death Penalty Worldwide and The Advocates for Human Rights are available to meet with you to discuss this further and urge your critical, lifesaving intervention.
32. The examples above are a fragment of the actual harm that criminal legal systems around the world inflict on members of LGBTQ+ communities. Your intervention in the dire global context of capital punishment against LGBTQ+ people, families, loved ones, and communities is urgently needed for the protection of the human rights of all people.
33. The right to choose, the right to marry, the right to love – while their violations are unjustifiable, imposition of the death penalty for actual or perceived sexual orientation or gender identity is unconscionable.

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<sup>26</sup> BBC News, *Uganda’s Anti-Homosexuality Act challenged in Constitutional Court*, December 18, 2023. Available at: <https://www.bbc.com/news/world-africa-67751179>

<sup>27</sup> Amnesty International, *Uganda: Authorities must drop charged in death penalty case under Anti-Homosexuality Act*, August 30, 2023. Available at: <https://www.amnesty.org/en/latest/news/2023/08/uganda-authorities-must-drop-charges-in-death-penalty-case-under-anti-homosexuality-act/>