

Joint statement on the death penalty and same-sex conduct

10 October 2024

We, upon the World Day Against the Death Penalty, united in our commitment to upholding human rights, equality, and non-discrimination for all, wish to address a matter of utmost concern: the imposition of the death penalty based on the criminalization of same-sex conduct.

The arbitrary implementation of the death penalty is a violation of the right to life protected under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). The right to life is fundamental, serving as the foundation for all human rights. No derogation is permitted to the prohibition on the arbitrary deprivation of life, even in situations of public emergency threatening the life of the nation. The methods of putting people to death and the treatment sustained while on death row regularly breach the human right to live free from torture and other cruel, inhuman or degrading treatment or punishment. It is virtually impossible to impose the death penalty without violating dignity. Persons executed and awaiting execution are often deprived of their humanity.

Article 6, para. 2 of the ICCPR prescribes that, “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant”. Yet, in some instances, the death penalty is applied to conduct that should never be criminalized in the first place. Consensual same-sex relations should never be criminalized under national legislation, regardless of the leniency or severity of the punishment. Criminalizing consensual same-sex conduct violates the rights to dignity and privacy, and the right to non-discrimination. Even when such criminal laws are not implemented, they can contribute to a climate of social hostility, discrimination and even violence. The death penalty has also been leveraged against human rights defenders, including those working on protection of human rights from discrimination based on sexual orientation and gender identity, to silence and silence those carrying out their legitimate work in the protection and defense of human rights.

The death penalty is irreversible. In some instances, executed prisoners or those on death row have been later exonerated for their alleged crimes. Oftentimes the death penalty is applied in legal regimes that lack basic standards of justice. The death penalty is often applied in a discriminatory way, evident in racial disparities amongst prisoners sentenced to death in some jurisdictions. And in some circumstances the death penalty is used as a political tool, to punish political opponents.

Several international and regional human rights instruments provide for the complete abolition of the death penalty, including: the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty; the Convention on the Rights of the Child (Article 37a), prohibiting the death penalty for offences committed by persons under the age of 18 years; Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances; and the Protocol to the American Convention on Human Rights to Abolish the

Death Penalty. We urge all States that have not ratified these instruments to do so, including within their regional legal frameworks.

There is a growing international view that the death penalty is against universal values. More than half of the United Nations Member States – 109 countries – have completely abolished the death penalty, with another 8 abolishing it for ordinary crimes, and 23 abolishing it in practice. Yet, of the 53 retentionist States, 12 countries still have jurisdictions that retain provision for the death penalty for consensual same-sex conduct. The death penalty is implemented in at least six of these countries. In others it remains a legal possibility but is not applied in practice, including two countries that retain legislative provisions imposing the death penalty for consensual same-sex conduct, yet have adopted a *de facto* moratorium on executions.

Criminalizing consensual same-sex conduct has no place in human rights-respecting societies, and its punishment by the death penalty is contrary to international law. The dozen jurisdictions that retain the death penalty for consensual same-sex conduct should immediately decriminalize consensual same-sex conduct and abolish the death penalty.

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