



AUSTRALIAN GOVERNMENT AND THE DEATH PENALTY: A WAY FORWARD

May 2015

RECOMMENDATIONS

Amnesty International, Human Rights Watch, the Human Rights Law Centre, Reprieve Australia, Australians Detained Abroad, Civil Liberties Australia, the NSW Council Civil Liberties and UnitingJustice Australia call on Australia to make the death penalty a relic of the past, by:

1. Developing a new Department of Foreign Affairs and Trade public strategy document aimed at ending the death penalty, everywhere;
2. Using the aid program to support civil society organisations campaigning for abolition in retentionist countries;
3. Joining forces with other nations - through the United Nations and other multilateral and regional bodies - to push for universal adoption of a global moratorium on the death penalty;
4. Putting in place stronger legislation so the Australian Federal Police is required by law and in operational procedures not to share information with other law enforcement agencies that would potentially result in suspected perpetrators facing the death penalty.

BACKGROUND

A need for action

As hundreds of thousands of Australians mourn the deaths of Andrew Chan, Myuran Sukumaran and 6 other prisoners – Zainal Abidin, Rodrigo Gularte, Sylvester Obekwe Nwolise, Raheem Agbaje Salami, Okwudili Oyatanze and Martin Anderson – killed by firing squad in Indonesia on 29 April 2015, our organisations urge the Australian Government to lead a campaign for global abolition of the death penalty.

We welcomed the strong appeals for clemency made by Australian leaders from across the political spectrum in recent months. To ensure Australian public policy properly reflects our status as an abolitionist country, we argue there is need to reassess how Australia approaches the death penalty, encompassing both domestic and foreign policy.

Trends around the world

As an abolitionist country, Australia is part of a worldwide movement opposing the death penalty. In 1977 only 16 countries had abolished capital punishment. Now 140 countries have done so in law or practice – in recognition the death penalty is a cruel and inhuman punishment. Despite this, in 2014 Amnesty International recorded over 607 executions worldwide and almost 20,000 people sitting on death row.ⁱ

A disappointing trend is the **United States'** consistent ranking in the top five executors in the world since Amnesty started publishing its annual death penalty statistics in 2007. However, there have recently been positive moves in individual states. The Governors of recent abolitionist states - New Mexico, Illinois and Connecticut - all recognised the United States' growing isolation on the death penalty in their accompanying statements when signing abolitionist bills. In February 2015, Pennsylvania became the most recent state to introduce a moratorium on executions.

The flaws in the US death penalty system were highlighted in April 2015 with the exoneration of the 153rd death row prisoner since 1973.

Asia and the Pacific

While the Pacific was the only region in the world which was execution-free in 2014, in Asia the death penalty remains prevalent, with lives hanging in the balance right now.

Recent events in **Indonesia** illustrate the dangers of complacency. After a four year hiatus in executions between 2009 and 2012, Indonesia executed 5 people in 2013. While no executions were carried out in 2014, in January 2015 the Indonesian Attorney-General announced that around 60 prisoners were facing execution. So far this year Indonesia has executed 14 people and at least 125 people are on death row.

China is the world's top executioner with over 1,000 executions in 2014 – that is three per day – which is more than the rest of the world combined. The actual number of executions is a state secret.

In 2014, **Malaysia** executed at least two prisoners and sentenced at least 38 people to death.

Pakistan lifted its moratorium on executions in December 2014, following the Peshawar school massacre and since then over 100 people have been executed. Over 8,000 people are currently on death row in Pakistan.

Singapore executed two prisoners in 2014, ending a moratorium in place since 2012. In 2015 there has been one execution.

Thailand's last execution was in 2009. However, Thai death row grew by at least 55 people in 2014

A 2004 decree in **Vietnam** classifies death penalty statistics a state secret, making it difficult to estimate the number of executions each year.

Executions in **North Korea** are also secret.

While **India** scheduled several executions in 2014, none went ahead and several commutations were handed down. However, in the same year, an additional 64 people were sentenced to death.

In 2014 **Japan** released, pending a retrial, a death row prisoner of 45 years -- the world's longest serving death row prisoner. In the same year, two people were executed and 128 people remained on death row at the close of 2014.

Vigilance is needed in our region

The Pacific was the only execution-free region in 2014, and there have been some recent positive signs – in February 2015, **Fiji** became the 99th country to become death penalty-free.ⁱⁱ

But there have also been troubling developments. While **Papua New Guinea** has not executed anyone since 1954, in 2013 the Criminal Code was amended to expand the scope of the death penalty.

In 2014, a PNG government delegation visited Malaysia, Singapore, Thailand and USA to study how to implement the death penalty. Lethal injection was to be the chosen method of execution by PNG and an announcement was made in April 2014 to build the death chamber. Fourteen people are currently on death row in PNG.

PNG's Attorney General announced the government will start implementing the death penalty in 2015. However, the international outcry against recent executions in Indonesia has caused the PNG Government to rethink this approach, and in February the Prime Minister announced his government was reviewing its death penalty policy.

This shows just how important vocal and consistent opposition to the death penalty is in promoting its abolition.

There have also been moves to reintroduce the death penalty in **Brunei Darussalam**, which previously had an effective moratorium in place since 1957. In 2014, Brunei introduced a new penal code which stipulates the death penalty for numerous offences, including robbery, consensual sex between unmarried adults or adults of the same gender. It also applies to those under 18 when crimes were committed.ⁱⁱⁱ

AUSTRALIA'S ROLE

In the lead-up to the latest executions in Indonesia, Australia voiced its strong opposition to the death penalty. Australian leaders from all parties made passionate pleas for mercy, right up to the eleventh hour. The Australian public responded by attending vigils and making thousands of pleas to the Indonesian Government. Tragically, the executions were carried out in spite of these efforts.

The events have reinforced Australia's status as an abolitionist country – with opposition to the death penalty shared across all political parties, and the community at large.

As a country with low crimes rates, a transparent criminal justice system, and no executions since 1967, Australia is primed to play a leadership role in encouraging Asia-Pacific countries to abolish the death penalty. This builds on Australia's longer term efforts supporting a global moratorium on the death penalty at the United Nations and its efforts to end executions.

At the United Nations Human Rights Council, through the Universal Periodic Review process, Australia has urged countries including Iran, Egypt, China, Malaysia and Singapore to stop executing people.

Australia has also made statements supporting “the universal abolition of the death penalty, [as] an inhumane form of punishment which violates the most fundamental human right – the right to life.” We understand the Australian Government has raised concerns privately in bilaterals with relevant governments.

To ensure Australian public policy properly reflects the country's abolitionist stance, we are asking for change across many arms of Australian Government – through diplomacy, the aid program, and federal law enforcement agencies.

The recent executions are a wake-up call that ongoing vigilance is required. Australia needs a more consistent, principled and proactive strategy to end the death penalty in our region and on the global platform.

This is not simply about responding to the latest executions, and it is not enough to react to the injustice of capital punishment when it impacts Australians. State-sanctioned killing is abhorrent - no matter where or when it occurs, no matter who is executed and irrespective of their crime. It is never justified.

RECOMMENDATIONS

1. Developing a detailed foreign policy strategy document aimed at ending the death penalty

Australia currently does not have a public policy and strategy document to guide its efforts to promote abolition of the death penalty. Nor does Australia have a dedicated team within the Department of Foreign Affairs and Trade to develop and implement a proactive diplomatic strategy around capital punishment.

Such a strategy would guide Australia's engagement on the death penalty in multilateral and regional fora, as well as inform Australia's diplomatic relations with countries that still retain the death penalty in law, including through annual DFAT human rights dialogues with China and Vietnam.

In developing a strategy, the Government should consult widely, including with civil society groups in countries still practicing the death penalty. Australia should also consult with the UK Government to benefit from its experience in implementing a death penalty strategy.

In 2010, the UK adopted its Strategy Against the Death Penalty.^{iv} In particular, the UK Strategy commits its posts to lobbying priority nations – including those with which the UK has a strong relationship, such as the United States, and those with a particular regional importance, such as Belarus (as the single European country which still executes).

The UK Strategy also directs UK posts to advocate for abolition through not only bilateral relationships, but through the UN and EU.

The UK Strategy provides a strong starting point, and could be adapted for the Australian context. For example, as part of any Australian strategy an assertive approach towards our allies and partners who retain the death penalty – such as the United States, China and Japan – should be adopted.

The UK Strategy includes clear benchmarks and goals to guide British embassies in advocating against the death penalty in countries where executions continue. In addition to public and private pressure in individual cases, the Strategy also includes support for civil society groups to raise awareness, and for lawyers to bring legal challenges.

The UK credits successes in Barbados, Uganda and Kenya, which have each taken steps to reduce the use of executions, as examples of its impacts. The UK acknowledges that in Southeast Asia, its progress has been mixed. The UK government supports an All Party Parliamentary Group (APPG) on the Abolition of the Death Penalty, which collaborates with parliamentarians worldwide to push for abolition.

Australia should also speak out publicly against the death penalty in all

cases, including for prisoners facing execution for terrorism-related offences. This has not been a consistent practice in Australia in the past.

These measures, if they were a central part of an Australian strategy aimed at ending the death penalty, would help build our legitimacy as a strong abolitionist voice and human rights leader.

2. Using the aid program to support civil society organisations and lawyers campaigning for abolition in retentionist countries

There are many organisations and lawyers campaigning for the death penalty's abolition within retentionist countries. Supporting and resourcing these groups is absolutely vital to transitioning retentionist countries to abolition – particularly given national civil society is a powerful influencer of the state.

With the prevalence of the death penalty in our region, which is also the focus of our aid program, Australia is well placed to make a strategic investment.

Australia should also take steps to ensure aid funding provided to counter-narcotics agencies is conditional on recipient countries taking steps to end the death penalty.

3. Joining with other nations – through the United Nations and other multilateral and regional fora – to push for universal adoption of a global moratorium on the death penalty.

Australia should redouble its efforts to work in coalition with other abolitionist countries.

Australia should form a regional coalition of abolitionist states, involving New Zealand and Pacific Island nations.

A coalition could focus on practical achievable goals. For example:

- I. moving de facto abolitionist states to full abolition;
- II. reducing the crimes punishable by death or abolishing mandatory death sentences for certain crimes; or
- III. releasing comprehensive official statistics about their use of the death penalty and limitations on use of the death penalty – for example, enacting exemptions for children and people with cognitive disabilities.

The specific goals should be publicly set out in a document for each country.

Australia should also continue to co-sponsor, and lead recruitment for more co-sponsors and 'yes' votes for the 2016 United Nations General Assembly resolution on a moratorium against the death penalty.

In 2014, 114 states voted in favour, 36 voted against and 34 abstained compared to 111 votes in favour, 41 against and 34 abstentions in December 2012. The draft

resolution was co-sponsored by 94 UN Member States from all regions of the world, the highest number yet.^v

Australia should aim to be a key player to build on this number when the moratorium is next voted on by the United Nations General Assembly. Australia should particularly target opposing states for bilateral diplomatic outreach. Recent votes demonstrate momentum is building towards abolition.

4. Amending legislation so the Australian Federal Police is required not to share information with other international agencies that would potentially result in suspected perpetrators facing the death penalty.

The responsibility to take a principled stance against the death penalty is not simply about Australia lobbying countries which retain capital punishment. Following the arrests of the so-called 'Bali 9' in 2005, there has been debate about the role played by the Australian Federal Police.

In 2006, Amnesty International made representations to Parliament and issued a public statement about the double standard seemingly applying in this case.^{vi}

In particular, this concern focused around the confirmation that the Australian Federal Police (AFP) passed on detailed information about the alleged plan to smuggle heroin from Bali, without seeking any guarantee that the information would not be used by the authorities to eventually seek the death penalty against a perpetrator.

As the AFP made clear at their media conference on 4 May 2015, there are no Australian laws that prohibit a similar instance happening again.

Firstly, if the Australian Government is to be consistent in its opposition to the death penalty, it should ensure the AFP only provides information to international authorities when it has a guarantee that the information will not be used to pursue capital charges. In effect, this would mean the AFP is limited by a provision similar to one applying in the *Extradition Act 1988*, in which the Attorney-General is required to seek a guarantee before extradition.

The current AFP guidelines only require AFP management to take into account the degree of risk that the sharing of information could lead to the death penalty when providing assistance before arrest, charge or conviction. Ministerial oversight, however, is only triggered once a person is arrested or charged. As the AFP guidelines currently stand, there is no requirement for Ministerial approval in a Bali 9-type situation.

In essence, we are calling for two significant changes to the policy framework within which the AFP operates. Firstly, legislative reform to ensure a guarantee is sought against a possible death penalty should be a priority. Secondly, the AFP guidelines should be strengthened to ensure that at some point before arrest, Ministerial guidance is sought in cases carrying a death penalty risk.

We acknowledge governments have an obligation to protect the security of their citizens. However, our suggestions ensure Australia's unequivocal opposition to the death penalty – in all instances – is reflected in our law enforcement policy.

ⁱ Unless otherwise referenced, all relevant death row and execution statistics are taken from Amnesty International's 2014 Annual Review on Death Sentences and Executions, accessed at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

ⁱⁱ See: <https://www.amnesty.org/en/articles/blogs/2015/03/one-hundred-death-penalty-free-countries-within-reach-after-fiji-becomes-number-99-1/>

ⁱⁱⁱ See: <http://www.un.org/apps/news/story.asp?NewsID=47552#.VVqU6vmqgko>

^{iv} Full UK Strategy Against the Death Penalty can be accessed at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35448/death-penalty-strategy-oct-11-15.pdf

^v The full 2014 UN General Assembly resolution is at

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/186

^{vi} Amnesty International's 2006 statement: <http://www.amnesty.org.au/news/comments/235/>