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Submission to the Joint Standing Committee on  
Foreign Affairs, Defence and Trade - Human Rights  
Sub-committee

# Australian advocacy for abolition of the death penalty



UnitingJustice Australia is a  
unit of the Uniting Church in  
Australia Assembly

## Introduction

UnitingJustice Australia is the justice advocacy and policy unit of the Uniting Church in Australia pursuing matters of social and economic justice, human rights, peace and the environment. The Uniting Church in Australia is committed to involvement in the making of just public policy that prioritises the needs of the most vulnerable and disadvantaged in our society.

The Uniting Church considers capital punishment to be a human rights issue, in line with the Universal Declaration of Human Rights' assertion that each person is entitled to the right to life, and to freedom from "cruel, inhuman or degrading treatment or punishment".<sup>1</sup>

This concern for human rights is based in a strong theological belief that human beings are made in the image of God, and that as such each human being is inherently precious and must be treated with dignity. The 2006 Uniting Church in Australia Statement *Dignity in Humanity: Recognising Christ in Every Person*<sup>2</sup> offers an opposition to capital punishment grounded in a strong concern for human rights, in line with the broad human rights focus of the broader statement.

**We believe that Christians are called to love their neighbour as they love themselves and to extend that love even to enemies. It is the love of God in Christ Jesus which motivates us to live out this calling by working for peace with justice in our church, our communities and the world. The recognition of human rights is an affirmation of the dignity of all people and essential for achieving peace with justice.**

Capital punishment is an act that denies the love that Christians are called to show for each other and for every member of the human race. There is a strong theological case against the death penalty based on the UCA position on the worth of all people, in the following words:

**We declare our opposition to capital punishment and commit ourselves to stand against the death penalty wherever it exists, regarding it as a cruel and inhuman punishment which denies the ability of an offender to reform.**

We further note that *Dignity in Humanity* states that:

**It is the duty of all states, regardless of the cultural, economic or political systems, to promote and protect human rights and "eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights".**

It is worth noting that this approach follows a long Christian tradition of opposition to the death penalty based on the notion of the sanctity of life. This concern is shared widely both within Australia and internationally. In 1990, the World Council of Churches' Central Committee declared its unconditional opposition to the death penalty in line with the Christian belief in the sanctity of life, and called upon member Churches to advocate against capital

<sup>1</sup> Articles 3 and 5 of Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

<sup>2</sup> 'Dignity in Humanity: Recognising Christ in Every Person', 11th National Assembly, Uniting Church in Australia, July 2006, 06.20.01, <http://unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

punishment.<sup>3</sup> In 1998 the World Council of Churches expanded on this position in its statement *Together on the Way*, which notes that opposition to the death penalty is an issue of international human rights and social justice:

*The WCC has long stood against the use of the death penalty, but recourse to this ultimate form of punishment is often sought by victims in societies ridden by crime and violence. The churches have a responsibility to inform society at large of the alternatives to such harsh and irreversible penalties, such as rehabilitation of offenders, and of the need for strict adherence to the international rule of law and international human-rights standards related to the treatment of offenders.*<sup>4</sup>

The Second Optional Protocol to the ICCPR, which requires all states parties to abolish the death penalty within their borders, states in its preamble that “the abolition of the death penalty contributes to the enhancement of human dignity and progressive development of human rights”, and that “all measure of abolition of the death penalty should be considered as progress in the enjoyment of the right to life”.<sup>5</sup> The Universal Declaration of Human Rights states that:

*No one shall be subjected to torture, cruel, inhumane or degrading treatment or punishment.*<sup>6</sup>

UnitingJustice Australia commends the Minister for calling for this inquiry and welcomes the opportunity to contribute.

## General Comments

There are a number of human rights concerns related to continuation of the death penalty in jurisdictions outside Australia. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) indicates that “every human being has the inherent right to life”. The death penalty denies that fundamental right to life.

In addition, the manner in which executions take place and the way prisoners on death row are treated have been found to amount to cruel and inhuman treatment and to be counter to the spirit of the ICCPR. Prisoners on death row suffer isolation for long and indeterminate periods of time, are subject to excessive use of handcuffing and/or other physical restraints, and may have no access to meaningful activity such as work or education programs. The UN Human Rights Council has expressed concern about the poor living conditions that death row inmates face including restrictions on visits and correspondence, extreme temperatures, lack of ventilation, and cells infested with insects.<sup>7</sup>

<sup>3</sup> 'Statement on the Death Penalty', World Council of Churches Central Committee, March 1990.

<sup>4</sup> 'Together on the Way', World Council of Churches, 1998

<sup>5</sup> The Second Optional Protocol to the ICCPR, adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>6</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 5 available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 September 2015]

<sup>7</sup> UN Human Rights Council, 7th Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, para 39 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf>

This treatment and these conditions amount to cruel, inhuman and degrading treatment or punishment, which is prohibited under Article 7 of the ICCPR.<sup>8</sup> Execution itself is also considered to constitute cruel, inhuman and degrading punishment, particularly when carried out by brutal methods such as stoning.

The right to a fair trial is another liberty set out in Article 14 of the ICCPR that is threatened by the death penalty. Because criminal justice systems are not perfect, proceedings leading to the imposition of capital punishment must meet the highest possible standards of accountability, competence, objectivity and impartiality. A statement by Death Penalty Worldwide indicates the failure of many jurisdictions to adequately provide legal representation to prisoners on death row. Specific problems include a shortage of legal aid lawyers, lack of experience and training, and denial of right of appeal.<sup>9</sup>

The risk of executing an innocent person makes capital punishment an even more unjust and undesirable punishment when the imperfect nature of the justice system is taken into account. For example, since 1973 in the United States, 143 prisoners who were sent to death row were later exonerated.<sup>10</sup> This suggests that even in a highly advanced criminal justice system with numerous safeguards in place, innocent people continue to be executed. A study looking at the false conviction of criminal defendants who are sentenced to death in the USA estimated that 4.1% of all death sentences imposed from 1973 to 2004 resulted in exoneration.<sup>11</sup>

There is also no empirical data to suggest that the death penalty deters criminal behaviour. A significant survey of criminologists indicates that the consensus is that the empirical research supports the idea that the death penalty does not deter serious crime above that of long-term imprisonment.<sup>12</sup> Data indicates that most crimes occur on the spur of the moment during times of great stress or under the influence of drugs and alcohol, where a full consideration of the range of penalties was not made before the act was committed. In addition and particularly, terrorists appear to act under the assumption that they themselves will be killed, so are not deterred by threat of death penalty. Further evidence suggests that jurisdictions without the death penalty have a lower murder rate than those that retain capital punishment.<sup>13</sup>

In addition, there is considerable concern for the rights of and impact on children of parents facing the death penalty. Children of parents on death row are affected from point of arrest to years after execution. They experience

emotional, behavioural and mental health problems as a result of being a child of someone on death row.<sup>14</sup> The stigma and shame that children face when visiting a parent on death row, as well as the remote location of some death row

<sup>8</sup> The Second Optional Protocol to the ICCPR, op cit.

<sup>9</sup> 'Legal representation: The right to Effective Legal Representation', Death Penalty Worldwide, accessed 16th September 2015, <http://www.deathpenaltyworldwide.org/legal-representation.cfm>

<sup>10</sup> S Gross, B O'Brien, C Hu, & E Kennedy, 'Rate of false conviction of criminal defendants who are sentenced to death', *Proceedings of the National Academy of Sciences*, Vol 111, May 20, 2014, <http://bit.ly/1NxpNSY>

<sup>11</sup> Ibid

<sup>12</sup> M Radelet and T Lacock, 'Recent developments: Do executions lower homicide rates?: The views of leading criminologists', *The Journal of Criminal Law and Criminology*, Vol 99 No 2, 2009, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7323&context=jclc>

<sup>13</sup> 'Death penalty information pack', Penal Reform International, 2014, p46, <http://bit.ly/1WQzbeo>

<sup>14</sup> Ibid, p54

prisons and the additional restrictions on visiting hours and physical contact, might result in fewer visits which impact upon the right of a child to have contact with their parent.<sup>15</sup>

## How Australia currently engages internationally to promote abolition of the death penalty

Since formally becoming an abolitionist country in 1973 when the Australian Parliament voted in favour of the Death Penalty Abolition Act 1973 (Cth), Australia has acted internationally to promote abolition of the death penalty. The Australian Government agreed to be bound by the International Covenant on Civil and Political Rights (ICCPR) on 13 August 1980, having signed the Covenant in 1972. In 1990, Australia ratified the 2nd Optional Protocol to the ICCPR, which relates to the abolition of the death penalty. This protocol entered into force in 1991.<sup>16</sup>

Australia sponsored and voted in favour of the landmark 2007 United Nations General Assembly resolution which called for an immediate moratorium on executions as a first step towards the universal abolition of the death penalty. The United Nations General Assembly has put forward additional resolutions on a moratorium against the death penalty in 2008, 2010, 2012, 2013 and 2014, and Australia has voted in favour each time.<sup>17</sup>

At the United Nations Human Rights Council, through the Universal Periodic Review process, the Australian Government has also urged countries like Iran, Egypt, Malaysia and Singapore to cease executions. Australia also made statements supporting universal abolition of the death penalty and had bilateral discussions with relevant governments.<sup>18</sup>

The Australian Government also made strong appeals for mercy for the two Australians, Andrew Chan and Myuran Sukumaran, who faced the death penalty in Indonesia earlier this year. The Foreign Minister made numerous passionate appeals, as did others including the Shadow Foreign Affairs Minister and former Prime Ministers John Howard, Kevin Rudd, Julia Gillard and Bob Hawke.<sup>19</sup>

However, it is concerning that the Australian Government has demonstrated a somewhat selective approach when responding to some international actions regarding the death penalty. It did not speak out on behalf of prisoners facing execution for terrorism-related offences in Bali.<sup>20</sup> A few years later, Alexander Downer, then Foreign Minister described the execution of Saddam Hussein as “a

<sup>15</sup> O Robinson and R Brett, ‘Lightening the load of the Parental Death Penalty on Children’, *Quaker United Nations Office*, Geneva, June 2013, <http://bit.ly/1GzhZ3m>

<sup>16</sup> ‘Death Penalty Background’, Law Council of Australia, viewed 21st September 2015, <http://bit.ly/1Mhi7GE>

<sup>17</sup> N Sheriff, ‘United Nations vote on death penalty moratorium puts US in awkward spot’, *Al Jazeera*, 17 December 2014, <http://america.aljazeera.com/articles/2014/12/17/death-penalty-unitednations.html>

<sup>18</sup> ‘Australian Government and the Death Penalty: A way forward’, NSW Council for Civil Liberties et al, May 2015, [http://www.nswccl.org.au/death\\_penalty\\_joint\\_mediarelease](http://www.nswccl.org.au/death_penalty_joint_mediarelease)

<sup>19</sup> S Kimmorley, ‘Australian politicians and celebrities have united in pleas for clemency for the Bali Nine duo’, *Business Insider Australia*, 5th March 2015, <http://www.businessinsider.com.au/australian-politicians-and-celebrities-have-united-in-pleas-for-clemency-for-the-bali-nine-duo-heres-what-they-said-2015-3>

<sup>20</sup> A Kirk, ‘Howard and Crean support Amrosi death sentence’, *ABC’s PM*, 8 August 2003, <http://ab.co/1Nrbk32>. Compare the Uniting Church’s call for the rejection of the death penalty for the so-called ‘Bali Bombers’, <http://bit.ly/1LkT9cV>

significant moment in Iraq's history" and suggested that we "respect the right of sovereign states relating to crimes committed against their people, within their jurisdictions".<sup>21</sup> The killing of Osama Bin Laden in Pakistan by United States' military forces was described by then Foreign Minister Kevin Rudd as "effective and professional".<sup>22</sup> This type of inconsistent response should be discouraged, as some analysts suggest that it creates hesitation in advancing effective Australian objections in individual death penalty cases.<sup>23</sup> UnitingJustice is also concerned that such statements from political leaders have the potential to erode general community support for an abolitionist stance.

In addition, human rights groups such as Human Rights Watch have indicated that Australia's soft diplomacy approach is no longer adequate. As neighbouring country Papua New Guinea ends a moratorium on the death penalty and Indonesia shows no signs of ending executions, UnitingJustice supports Human Rights Watch's position that Australia's voice opposing the death penalty should be heard much louder and clearer in the region.<sup>24</sup>

## Further steps Australia could take to advocate for worldwide abolition

As a signatory to the proposal, *The Australian Government and the Death Penalty: A Way Forward*,<sup>25</sup> UnitingJustice believes that Australia should be more strategic in how it advocates for worldwide abolition of the death penalty.

As mentioned above, the Australian Government should be more consistent and clear in public comments about international death penalty cases. There should be no discrimination based on nationality or the crime committed. In addition to ad hoc bilateral discussions with other governments and sporadic advocacy on behalf of Australians facing the death penalty overseas, Australia could play a leadership role in encouraging Asia-Pacific countries to abolish the death penalty. A well-developed advocacy strategy should also include engagement with and actions against the pharmaceutical companies that supply drugs for executions, support of civil society advocacy for abolition, and legislation to change the powers of Australian Federal Police in relation to sharing of information.

### Engagement with international institutions and like-minded countries

Australia should be at the forefront of Asia-Pacific action against the death penalty. The Australian Government could form a regional coalition of

<sup>21</sup> Alexander Downer, Minister for Foreign Affairs, 'Execution of Saddam Hussein' Media release, 30 December 2006, [http://foreignminister.gov.au/releases/2006/fa145\\_06.html](http://foreignminister.gov.au/releases/2006/fa145_06.html)

<sup>22</sup> Minister for Foreign Affairs, 'Transcript of remarks after meeting with US Secretary of State Hillary Clinton', Washington, 2 May 2011, <http://bit.ly/1P1GVZt>

<sup>23</sup> G Carne, 'Abolitionist or relativist?: Australia's legislative and international responses to its international human rights death penalty abolition obligations', *University of Western Sydney Law Review*, Volume 15, (2011)

<sup>24</sup> E Pearson, 'Australia should lead in abolishing the death penalty in the Asia-Pacific', *The Age*, 22 February 2015, <http://www.theage.com.au/comment/australia-should-lead-in-abolishing-the-death-penalty-in-the-asiapacific-20150222-13lyjw.html>

<sup>25</sup> 'The Australian Government and the Death Penalty: A way forward', op cit

abolitionist states involving New Zealand and some Pacific Island nations. Such a coalition could focus on encouraging de facto abolitionist states in the region to full abolition, working to reduce the types of crimes punishable by death or abolishing mandatory death sentences for certain crimes, and encouraging all countries in the region to release comprehensive official statistics about their use of the death penalty and the conditions under which they limit use of the death penalty.

Australia could also strengthen its work at the United Nations level to seek increased support for resolutions on a moratorium on the death penalty. Australia could also make recommendations to particular countries as part of the Human Rights Council's Universal Periodic Review process. There might also be opportunities for a cross-party Parliamentary group opposed to the death penalty to collaborate with politicians worldwide to push for abolition.

### **Cooperating with non-governmental organisations**

There is much that can be done by the Australian Government in conjunction with non-governmental organisations both in Australia and elsewhere. Where human rights organisations such as Human Rights Watch and Amnesty International are conducting research and advocacy internationally, the Australian Government could lend its voice to strengthen those campaigns. Australia could also collaborate with child rights organisations to highlight the detrimental impact on children of having a parent facing the death penalty.

Without taking resources away from valuable community development projects, the Australian Government should provide additional funds to support civil society organisations and lawyers in retentionist countries that campaign for abolition. In any process of social change it is members of civil society who are powerful influencers of the state. The European Union has funded civil society advocacy against the death penalty through a small grants program administered by Penal Reform International (PRI) and Foundation for Human Rights Initiative (FHRI).<sup>26</sup> Australia could establish a similar initiative.

### **Bilateral engagements and other diplomatic activities**

The Australian Government should develop an advocacy strategy which would set out specific bilateral lobbying programs and ongoing dialogues that could be undertaken at a diplomatic level. Setting benchmarks and goals for Australian embassies would support such advocacy. The *HMG Strategy for Abolition of the Death Penalty 2010 - 2015*<sup>27</sup> would be a good model for an Australian strategy. An Australian strategy for abolition of the death penalty should adopt an assertive approach towards partners and allies who retain the death penalty, such as the United States, China, and Japan. UnitingJustice believes that the mere existence of such a strategy would help to separate the Government's advocacy from trade relationships and military ties and alleviate any perceived influence these relationships might have on our commitment to see an end to the death penalty.

A strategic approach would recognise the risk that Australia's actions in one area of international law may increase the likelihood of the death penalty being applied in other countries. For example, increases in drug law enforcement and counter-

<sup>26</sup> 'Progressive abolition of the death penalty and alternative sanctions', World Coalition Against the Death Penalty, 15th February 2013, <http://bit.ly/1Op5H3W>

<sup>27</sup> 'HMG Strategy for Abolition of the Death Penalty 2010 - 2015', Human rights and democracy department, Foreign and Commonwealth Office, October 2011, <https://www.gov.uk/government/publications/strategy-for-abolition-of-the-death-penalty-2010-2015>

narcotics campaigns have been shown to increase the numbers of people facing the death penalty. A report entitled *European aid for executions* has found a statistical correlation between levels of European counter-narcotic aid and the frequency of death sentences handed down in Iran and Pakistan. The report also found that counter-narcotic programmes disproportionately harm the innocent and vulnerable while actively sustaining forces of criminality and corruption.<sup>28</sup> We recommend that the Australian Government set clear conditions on any funding or advocacy support provided to anti-narcotics agencies or campaigns in countries where the death penalty is practised.<sup>29</sup>

UnitingJustice is also concerned by the potential for the Australian Federal Police (AFP) to share information that might lead to executions in other jurisdictions. This concern was sadly highlighted when, in accordance with their powers under Australian law, the AFP passed on information to Indonesian authorities that led to the arrest, sentencing and eventual execution of two Australians Andrew Chan and Myuran Sukumaran. Amnesty International has raised this issue and expressed concern about the perceived hypocrisy of Australia advocating against the death penalty while at the same time acting to enable the death penalty to take place.<sup>30</sup> UnitingJustice recommends that Australian law must specifically prohibit the AFP from sharing information with other countries that would potentially result in suspected perpetrators facing the death penalty.<sup>31</sup>

### Other appropriate means

UnitingJustice is also concerned that international pharmaceutical companies are supplying drugs to retentionist countries that will be used to administer lethal injections. Australian Government advocacy in this area could have a significant impact, potentially leading to major pharmaceutical companies banning the use of their products for executions, thereby slowing down the rate of executions. In 2006, the European Union introduced laws to prohibit and restrict the trade in drugs and equipment that could be used for capital punishment or torture. These controls have made it more difficult for countries like the United States and Vietnam to access drugs for executions.<sup>32</sup> UnitingJustice recommends that the Australia Government encourage pharmaceutical companies that supply drugs that can be used for lethal injection to issue public statements condemning the use of their drugs for execution, and to stop supplying such drugs, as long as they are not needed for routine medical procedures.<sup>33</sup>

<sup>28</sup> 'European Aid for Executions: How European counternarcotics aid enables sentences and executions in Iran and Pakistan', Reprieve, November 2014, <http://www.reprieve.org.uk/wp-content/uploads/2014/12/European-Aid-for-Executions-A-Report-by-Reprieve.pdf>

<sup>29</sup> R Lines, D Barrett, & P Gallahue 'Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement', International Harm Reduction Association, 2010, [http://www.ihra.net/files/2010/06/20/IHRA\\_ComplicityorAbolition.pdf](http://www.ihra.net/files/2010/06/20/IHRA_ComplicityorAbolition.pdf)

<sup>30</sup> 'Bali 9 death sentences: Australia's deadly double standard?' Amnesty International, 16 February 2006, <http://www.amnesty.org.au/news/comments/235/>

<sup>31</sup> 'Australia should lead abolishing death penalty in Asia Pacific', Human Rights Watch, 23 February 2015 <https://www.hrw.org/news/2015/02/23/australia-should-lead-abolishing-death-penalty-asia-pacific>

<sup>32</sup> Death penalty Information pack, op cit

<sup>33</sup> 'Drug companies and their role in aiding executions', The National Coalition to Abolish the Death Penalty, 2002, <http://www.prisonpolicy.org/scans/drugcompanies-dp.pdf>

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