



## Human Rights Watch

### Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Australia's Advocacy for the Abolition of the Death Penalty October 2015

This submission proposes steps the Australian government should take to promote abolition of the death penalty worldwide. Australia has led or cosponsored important resolutions at the United Nations Human Rights Council on abolition of the death penalty. Australia has also raised death penalty issues through the Universal Periodic Review process for relevant countries. Continued pressure through various UN mechanisms is helpful and necessary.

Australia's efforts would be more effective if senior Australian officials and politicians spoke out publicly as well as privately against capital punishment in their dealings with other governments. Such public statements have been quite rare, except where those facing execution are Australian citizens. In addition to "quiet" diplomacy, the government needs a principled, consistent, and more vocal opposition to the death penalty, whether or not the lives at stake are Australian.

China reportedly continues to execute people in alarming numbers. Indonesia, India, and Pakistan all recently resumed executions, so it seems the death penalty is making a resurgence in Australia's neighborhood.

Human Rights Watch, which opposes the death penalty in all circumstances, urges Australia to be a leader in a global effort to reject the death penalty, especially across the Asia-Pacific region. Australia could assist in educating the region's populations on how the death penalty has [failed](#) to deter crime and been unjustly applied, and help gradually build pressure against the practice.

These are universal values, not Australian values. The UN General Assembly has passed resolutions year after year calling on countries to suspend use of the death penalty with a view toward its abolition. UN Secretary-General Ban Ki-moon has [said](#), "The death penalty has no place in the 21<sup>st</sup> century."

Australia should partner with the UN as well as abolitionist countries in the region including Cambodia, New Zealand, Philippines, and Timor Leste, targeting countries that continue to execute people – for instance, China, India, Indonesia, Malaysia, Pakistan, and Vietnam – as well as countries such as Papua New Guinea and Brunei that have had moratoriums in place, but which are taking steps to reintroduce the death penalty. Australia should also not shy away from raising

these issues with countries that frequently carry out executions, notably the United States, Iran, and Saudi Arabia.

For Australia's voice to carry more weight against judicial executions, it is important that Australia publicly registers its opposition to death sentences wherever and whenever possible. People across Asia also need to be mobilized. Reaching out to and building support among Asians and Pacific Islanders could help to end this cruel and inhumane punishment once and for all.

In expanding its policy on the death penalty abroad, the government should consider the British government's strategy, which entails a comprehensive public agenda for it to push for its abolition.<sup>1</sup> The strategy paper includes clear benchmarks and goals to guide British embassies in advocating against the death penalty in countries in which executions continue. In addition to public and private pressure on individual cases, the strategy also includes support for civil society groups to raise awareness, and for lawyers to bring legal challenges. Britain credits successes in Barbados, Uganda, and Kenya, which have each taken steps to reduce the use of executions, as examples of its impact.

Below is a list of recommendations for consideration.

**The Department of Foreign Affairs and Trade (DFAT) should:**

1. Issue a public strategy document on the death penalty with clear and specific goals per country retaining the death penalty, and advise Australian diplomats and embassy staff on making death penalty issues a priority. DFAT should report publicly on progress in an annual report on countries retaining the death penalty. The US government issues annual human rights country reports, yet due to its own continued use of capital punishment, its reporting on its use is inadequate. Such a public report would be a valuable contribution to the worldwide movement against the death penalty.
2. Publicly as well as privately urge governments that retain the death penalty to work toward a full ban. Direct ambassadors to find opportunities to advocate regularly and publicly against the death penalty so that Australia's position is well-known rather than waiting until Australian lives are at stake.
3. Work with the UN and like-minded countries to issue statements of concern where executions are handed down or carried out.

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<sup>1</sup> Foreign & Commonwealth Office, "Chapter V: Criminal Justice and the Rule of Law," in *Human Rights and Democracy Report 2014*, March 12, 2015, <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2014/human-rights-and-democracy-report-2014#chapter-v-criminal-justice-and-the-rule-of-law> (accessed October 1, 2015).

4. Work toward absolute abolition, but in countries where that is an unrealistic short-term goal, try to reduce use of the death penalty through other means, including by calling for a reduction of crimes punishable by death – namely the most serious and violent crimes.

For instance, in countries such as Saudi Arabia, Iran, and Pakistan, many non-violent crimes are punishable by death. In Iran, “insulting the Prophet,” apostasy, same-sex relations, adultery, and drug-related offenses can carry the death penalty. Pakistan’s penal code makes the death penalty mandatory for blasphemy, and 17 people convicted of blasphemy are currently on death row.

Consensual same-sex relations may be punishable by death in Iran, Nigeria, Saudi Arabia, Somalia, Sudan, and Yemen.<sup>2</sup> In Iran, Mauritania, Saudi Arabia, Sudan, and Yemen, and in parts of Nigeria and Somalia, the death penalty may be applied in cases of consensual homosexual conduct.

According to Saudi Interior Ministry statements, Saudi Arabia executed 135 persons between January and September 2015, and 58 of those executed were convicted for non-violent drug crimes.

Both Vietnam and China have recently reduced the number of crimes punishable by death, though in both cases some crimes remain that are non-violent. India’s Law Commission recommended the government keep the death penalty only for terrorism-related crimes. The Malaysian government is reviewing the mandatory imposition of its death penalty for drug offenses. Moving away from mandatory application of the death penalty for drug offences is an area where Australia could help build some momentum.

5. Press countries, such as Egypt, Saudi Arabia, China, and Vietnam, to remove the death penalty from national security crimes like “terrorism” that are ill-defined or that could include peaceful acts of criticism against the state. Egypt’s legal definition of “terrorism” is so broadly worded as to encompass civil disobedience. In Iran, people have been sentenced to death on account of alleged ties to armed opposition groups. According to a study by Justice Project Pakistan, of the 6,872 prisoners on death row in Pakistan in 2012 (now over 8,000), 818 were tried on terrorism-related charges. Pakistan’s definition of terrorism is so vague that many crimes can fall under this definition.
6. Give priority to advocacy in countries where there are concerns about fair trials and due process, especially in countries that use torture to extract confessions. Australia should

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<sup>2</sup> “Iran: Discrimination and Violence Against Sexual Minorities,” Human Rights Watch news release, December 15, 2010, <https://www.hrw.org/news/2010/12/15/iran-discrimination-and-violence-against-sexual-minorities>.

monitor such trials and speak out publicly against abuses of due process, such as in China, Egypt, India, Iran, and Vietnam. In China, death penalty sentences have been handed down to alleged “terrorists” blamed for violent attacks. But there is gross disregard of the most basic aspects of a fair trial, including access to counsel and freedom from ill-treatment in detention, highlighted by China’s checkered record of torture in police interrogation.<sup>3</sup>

In Egypt, mass trials have resulted in death penalties handed down to hundreds of suspects for politically motivated reasons and based almost entirely on the unsubstantiated testimony of security officials.

In Pakistan, the anti-terrorism courts that have sentenced people to death on terrorism charges raise serious due process concerns by holding trials *in absentia* or often using statements obtained through torture as evidence.

Bangladesh continues to use the death penalty, including in war crimes tribunals for those charged with serious crimes during the war for independence, in proceedings that fall far short of international fair trial standards.

7. Give priority to countries where children can be sentenced to death. In Egypt, Iran, Maldives, Nigeria, Pakistan, Saudi Arabia, Sri Lanka, and Yemen, child offenders remain on death row.<sup>4</sup>
8. Advocate against civilians being tried in military courts empowered to hand down the death penalty, as in Egypt, Indonesia, Pakistan, and the United States.
9. React immediately and forcefully when countries move to lift official or unofficial death penalty moratoriums. For instance, Pakistan lifted a moratorium on executions on December 17, 2014, following an attack on a public school in Peshawar, and many executions rapidly followed.
10. Urge governments to publicize statistics regarding use of the death penalty. At present, in countries such as China and Vietnam, such information is secret. Without such

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<sup>3</sup> “UN Human Rights Council: Egypt’s Human Rights Situation; Repression in China; and Arrests in Bahrain,” Human Rights Watch statement, September 17, 2014, <https://www.hrw.org/news/2014/09/17/un-human-rights-council-egypts-human-rights-situation-repression-china-and-arrests>.

<sup>4</sup> Michael Garcia Bochenek, “Executions Down, But Not For Juvenile Offenders,” Human Rights Watch dispatch, April 1, 2015, <http://www.hrw.org/news/2015/04/01/dispatches-executions-down-not-juvenile-offenders>.

information, it is impossible to evaluate claims of progress regarding reductions in use of the death penalty.

11. Work with governments in Asia-Pacific countries whose citizens are on death row abroad, such as Indonesia, and help these countries to advocate for the lives of their citizens, especially where they lack representation.
12. Where Australia is providing development assistance for criminal justice reform, benchmark that assistance against developments in reducing application of capital punishment and ensure that assistance is geared toward enhancing defense and due process rather than simply aiding prosecutions.
13. Support independent studies on the effectiveness of the death penalty in the Asia-Pacific region as a deterrent to crime, and examine arbitrary and discriminatory applications of the death penalty.
14. Enhance local efforts to end or reduce the death penalty by supporting civil society initiatives, lawyers groups, and others working to end the death penalty.
15. Support legal groups representing individuals on death row and working to bring legal and constitutional challenges against the death penalty.
16. Advocate on behalf of journalists, lawyers, and activists harassed, sanctioned, or imprisoned for raising death penalty cases. In some countries, such as China, activists may be punished for raising death penalty concerns.
17. Provide support, including the sharing of best practices, to help prisoners on death row get adequate mental health care.
18. Include death penalty issues in briefings on human rights for trade delegations and other groups traveling abroad for official visits.
19. Promote the repeal of the death penalty abroad at the applicable state or provincial level as well as with the national government. This includes raising concerns with visiting officials, such as from US states that retain the death penalty.
20. Consider measures to ensure no Australian products are used in administering the death penalty abroad. For instance, Australia could adopt the European Union approach by restricting exports of drugs for use in lethal injections.