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Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

### **Submission on the Inquiry into Australia's Advocacy for the Abolition of the Death Penalty**

Dear Joint Standing Committee on Foreign Affairs, Defence and Trade,

The Diplomacy Training Program (DTP) writes to you in respect of your inquiry into Australia's Advocacy for the Abolition of the Death Penalty. This submission will address DTP's view on further steps that could be taken by Australia, and particularly the Australian government, to effectively advocate for, and practically support efforts to achieve, worldwide abolition of the death penalty. The submission draws on DTP's experience and engagement working to promote universal human rights values in the Asia-Pacific region since 1990. This experience has been gained through the development and delivery of practical human rights capacity building programs with civil society advocates in the region.

DTP believes that the Australian government has the potential to play a significant role including through:

- Encouraging the establishment of links from Australia with the judiciary in retentionist countries to promote abolition and encouraging the incorporation of strategies for abolition in existing and planned judicial training/exchange programs, especially those financially supported by the Australian government;
- Supporting the Australian (and other abolitionist country) bar and lawyers associations to engage with counterparts in countries that retain the death penalty to promote abolition;
- Working on a regional, sub-regional and individual country level in tailored abolitionist strategies that include diplomatic channels and Australia's development program, and include efforts to build domestic support for abolition of the death penalty in retentionist countries;
- Focusing on strategies that seek clemency, including diplomatic representations and provision of support for legal representation, for migrant workers on death row, recognising them as a particularly vulnerable group, often denied equal access to justice in foreign court systems;
- Providing support to civil society opponents of the death penalty through human rights training programs for non-governmental and civil society organisations (NGOs and CSOs) in countries that still have the death penalty, including support to national and regional organisations that are building the capacity and networks of advocates for abolition;

The following submission provides some further explanation and argument in support of these approaches.

### The Diplomacy Training Program

DTP was founded by Jose Ramos-Horta and Professor Garth Nettheim in 1989 to build and share skills and knowledge in peaceful advocacy and 'people's diplomacy' with other human rights defenders.

DTP draws its inspiration from Jose Ramos-Horta's efforts to seek solidarity and international action on human rights violations in East Timor. The DTP believes that building skills in advocacy, diplomacy and communication, together with sound knowledge of internationally agreed human rights standards and inter-governmental systems, can be of practical value to human rights defenders seeking to peacefully achieve improved human rights outcomes. In its 25 years, the DTP has held over 100 training programs in Australia, Indonesia, Bangladesh, India, Sri Lanka, Nepal, Myanmar, Thailand, Cambodia, the Philippines, Malaysia, Timor Leste, Fiji, Tonga, Kuwait, Lebanon, UAE and Qatar. Through these programs it has trained over 2500 human rights defenders from over 50 countries. Some of these individuals and their organisations work for the abolition of the death penalty, either as a major focus of their work or as part of their broader human rights work.

In October 2015, DTP and its alumni received the Sir Ron Wilson Human Rights Award from the Australian Council for International Development.

DTP does not itself engage in advocacy for human rights, but rather aims to build the capacity of those working on the ground to be more effective in their own advocacy for human rights, developing strategies that respond to specific local and national contexts. In this way, DTP makes a very particular contribution to the promotion of human rights and the development of movements for human rights in this region. DTP recognises the death penalty as a violation of the fundamental human right to life enshrined in the Universal Declaration of Human Rights and actively promotes the International Bill of Human Rights (including the 2<sup>nd</sup> Optional Protocol to the ICCPR) as the foundation for the international human rights framework. DTP has not had programs specifically focused on the death penalty.

DTP's focus is on the Asia-Pacific region, which remains the only region within UN system without a regional architecture on human rights. This submission therefore has a focus on what can be done to promote abolition of the death penalty in the Asia-Pacific Region.

Consistent with DTP's own approach, DTP believes that finding ways to support and strengthen the voices and movements for human rights generally and for abolition of the death penalty specifically within countries is one important and strategic way to support abolition, and is consistent with the Australian government's commitment to effective but often quiet diplomacy. DTP notes that there is at least one Asia regional NGO/CSO network focussed on abolition of the death penalty.

DTP believes that the Australian government will be most effective if it is publicly committed to opposing the death penalty in all cases, is consistent in its advocacy and bases its advocacy in universal standards of human dignity.

DTP also takes this opportunity to suggest that the Australian government should develop a specific strategy focussed on the situation of migrant workers who are on death row in the countries where they have gone to work (countries of destination). Such a strategy would enable Australia to build cooperative approaches with countries of origin such as Indonesia, Sri Lanka, Nepal, India, Bangladesh and the Philippines whose nationals are most at risk and hence build support for abolition in those countries of origin that are still retentionist.

In recent years, DTP has had a thematic focus on the human rights of migrant workers, recognising the abuses experienced by migrant workers as one of the key human rights challenges of the region.

These abuses include discrimination, non-payment of wages, forced labour and rape. The death penalty has also emerged as a particular concern facing migrant workers.

The cruelty and injustice of the death penalty is perhaps most starkly visible in the sentencing to death of young women from Nepal, Sri Lanka, the Philippines and Indonesia. These girls and young women have left their loved ones and homelands with dreams of a better future, or to provide for their families, but end up waiting for execution on death row in Malaysia, Kuwait or Saudi Arabia following a trial process they may not have been able to follow in a language they may not even have been able to understand.

Popular outrage at these sentences has in some cases become part of the abolitionist movement in countries in the region, including the Philippines and Indonesia - and this movement merits support from Australia and such support may be one of the most effective strategies available to support abolition in some countries.

#### Training Members of the Judiciary in Countries that still have the Death Penalty

The judiciary is likely to play a key role in moves towards abolition in each country. Curriculum content on the inconsistency of the death penalty with international human rights norms should be introduced into existing and proposed judicial training programs supported by the Australia government. At present the Federal Court of Australia provides assistance to judiciaries in Asia and the South Pacific. In particular, the Court conducts the Pacific Judicial Development Program to train judges and magistrates in Pacific nations, and thereby strengthen the rule of law through enhanced access to justice and judicial officers that act independently and according to legal principles.

Further, Australia is currently involved in the Asia Pacific Judicial Reform Forum, which involves the senior courts of countries in the region, many of which still use the death penalty. Its aim is cooperation and technical assistance to support regional judicial reform by bringing together the senior judiciaries in Asia-Pacific countries and providing practical assistance in priority areas. Such priority areas include the expedition of cases, judicial education/development, judicial independence and access to justice. The DTP would encourage Australia to explore how it could best put issues surrounding the death penalty on the priority list at future forum meetings. In this way the death penalty can be discussed at senior judicial levels - and peer to peer exchanges can perhaps encourage more members of more judiciaries to be actively abolitionist. Australia could also explore how engagement with multilateral organisations and initiatives such as the Commonwealth Judicial Education Institute could more actively support abolition.

#### Supporting the Australian (and other abolitionist country) bar and lawyers associations to engage with counterparts in countries that retain the death penalty;

Law Councils, Bar Associations and other professional bodies are likely to be influential in supporting any effective abolition strategy at the national level including through peer pressure and the sense of stigma associated with the death penalty. These association often contain influential members of society, with the potential to put forward effective arguments in advocating for the abolition of the death penalty.

National and State Bar Associations and Law Councils in Australia, and other countries, should be supported and encouraged to engage with counterpart professional bodies in countries that retain the death penalty, including potentially through the funding of seminars, professional exchanges, support for pro bono initiatives etc.

One such Bar Association that is in active support of abolishing the Death Penalty is the Malaysian Bar Association. Since 2006, when it first came out in support of abolition, the rates of death penalty

executions in Malaysia have drastically dropped.<sup>1</sup> However, this low execution rate has paralleled a steady growth in death penalty convictions. The pressure exerted by the Bar Association has likely been a contributory factor in the Malaysian government floating the idea of a moratorium on a number of occasions. In 2011, the minister for legal and parliamentary affairs spoke out against the death penalty, but emphasised abolition would only happen with broader public support.

### Regional and Individual Country Strategies

As noted above, the path towards abolition will be different for every country that currently imposes the death penalty. In some countries, the strategy has focussed on gradually reducing the number of crimes punishable by death, in others pressing for a moratorium, and in others action on each individual case.

Consistency of principled opposition to the death penalty is important and can be expressed by Australia at the multilateral level through the UN, supporting and sponsoring resolutions, supporting the work of the Office of the High Commissioner for Human Rights and ensuring the abolition of the death penalty is always raised by Australia through the Universal Periodic Review process – as well as in individual representations.

The Australian government should also continue to consistently make bilateral representations in each death penalty case through its diplomatic posts. DTP understands that is a practice that was established through the efforts of the Amnesty International Parliamentary Group some years ago. In most cases these representations are made quietly. DTP is unaware of whether any assessment has been made of their efficacy overall or in relation to particular countries and cases. Such assessments could usefully engage with civil society groups in Australia and the region, recognising the value of collaboration between government and civil society. The bilateral human rights dialogues with China, Vietnam and Laos provide further opportunities for engagement.

In addition to these important case-by-case representations, and advocacy through the UN system, and bilateral human rights dialogues consideration could be given, if has not already been, to developing individual abolition strategies for specific retentionist countries.

In addition exploring ways to work with other abolitionist countries, may provide additional opportunities and be more effective. Some years ago the UK adopted an active global strategy to promote abolition, and the development of specific country strategies and Australia may be able to build on and develop this approach with time-bound targets for achieving moratoriums on executions, ratifications of the ICCPR and its 2<sup>nd</sup> Optional Protocol. The European Union and individual EU countries are strongly abolitionist and may be good allies in abolitionist strategies – including through their regional engagements with Asia and the Pacific. In this region, the Philippines, Nepal and Fiji could be among the potential allies in global and regional forums – and in representations on individual cases.

As part of such a longer term strategic approach, DTP would urge consideration of how sub-regional intergovernmental organisations could be engaged to promote abolition of the death penalty. The Asia-Pacific Forum (APF), through its Advisory Council of Jurists, did valuable work on the death penalty in Asia in 1999 and the APF may be influential in ensuring that abolition of death penalty is supported actively by its member institutions. There may now be scope to seek engagement with the ASEAN Intergovernmental Commission on Human Rights – the members of which include both abolitionist and retentionist countries. There is an ASEAN network of Parliamentarians for Human Rights that could also be engaged with, as Parliamentarians are a key constituency to reach in strategies for abolition.

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<sup>1</sup> One execution in 2008, two in 2009, another in 2010 none in 2011 and 2012, and two in 2013. This is in comparison to almost 440 people in the 50 years following 1960.

Australia could fund programs run by these and other regional and sub-regional organisations to encourage the development of regional approaches to the abolition of the death penalty, and to give greater voice to abolitionist countries within these forums.

### Migrant workers on death row

As part of its efforts to support global abolition of the death penalty, DTP would urge consideration of a special focus on the issue of migrant workers on death row – and on working with others to seek clemency for them. The case of Rizana Nafeek, a young Sri Lankan woman executed in Saudi Arabia and of Dolma Sherpa, a mother from Nepal who was spared from execution in Kuwait following a vigorous campaign are just two examples that have highlighted the vulnerability of women migrant workers from Asia.

According to an Indonesian government official quoted in the Jakarta Post the 19th of April 2015, as many as 279 Indonesia migrant workers overseas face the possibility of execution, 36 of whom are in Saudi Arabia<sup>2</sup>. Under increasing pressure from civil society, the Indonesian government actively seeks clemency for its nationals. Australia could offer to actively support these efforts through bilateral representations and other approaches. Through offering this support, new possibilities may open up for engaging the Indonesian government on its own application of the death penalty.

DTP also understands that Nepalese migrant workers are among those on death row in Malaysia, and it is likely migrant workers from other countries are also among those on death row in Malaysia. Through more active and collaborative engagement on these cases, Australia may be able to build new momentum for abolition and to deflect criticism that sometimes arises over its bilateral representations, on behalf of its own nationals

OHCHR and the Quaker UN Office convened a meeting in Geneva in June<sup>3</sup> to address the issue of foreign nationals, including migrant workers, facing the death penalty abroad. This recognised the vulnerability of migrant workers who are often marginalised in host countries and less likely to receive a fair trial because of lack of familiarity with the legal system, language barriers, inadequate legal representation and community attitudes.

Two countries, both significant countries of origin for migrant workers, were singled out at this meeting as having the most active and effective programs to prevent their nationals being executed abroad Mexico<sup>4</sup> and the Philippines. Other countries of origin may lack the financial or technical capacity, or influence to offer effective representation and support to their nationals in death penalty cases.

It is possible that the Australian government could make a significant and strategic contribution in this area. It could do so by making representations on individual cases, in support of the representations

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<sup>2</sup> <http://www.thejakartapost.com/news/2015/04/19/279-indonesian-migrant-workers-threatened-face-death-penalty.html#sthash.yZT5nbXm.dpuf>

<sup>3</sup> <http://www.ohchr.org/Documents/Issues/DeathPenalty/FlyerSideEvent17June2015.pdf>

<sup>4</sup> Mexican Capital Legal Assistance Program (MCLAP) providing comprehensive assistance to Mexicans facing the death penalty abroad. Mexico's 'Mexican Capital Legal Assistance Program' can be seen as a model for what nations with high outbound migrant workers can do to protect their citizens overseas and provide comprehensive assistance to those facing the death penalty. This program funds adequate legal representation for migrant workers facing the death penalty, and routinely refers defence counsel to competent experts and migration specialists, as well as file amicus briefs on issues of international law. The success of the program is evident in the fact that Oxford Human Rights Hub reports that in the USA a Mexican facing a capital charge has a 0.7% chance of being sentenced to death, compared to a US Citizen that has an 8-14% chance.

being made by the country of origin, through providing technical advice, support and resourcing in the establishment of similar schemes to that of Mexico for countries such as Nepal, Indonesia, Sri Lanka and Bangladesh.

Resources at the Embassy level could be allocated for supporting proper legal representation in these death penalty cases in major destination countries such as Saudi Arabia, UAE, Qatar and Malaysia. DFAT could also explore how work on the death penalty could be incorporated into its existing strategies supporting greater pro bono work by legal firms.

#### Human Rights Training Programs for NGOs and CSOs in Countries that still have the Death Penalty

DTP recognises the growing role of civil society as a driver of change, with the capacity to influence government policy and to hold governments accountable. While in some societies there is limited space for civil society advocacy, in virtually all countries in the region there are individuals and organisations working to promote adherence to universal standards of human dignity.

Recognising that the death penalty is inconsistent with the values of human rights, supporting human rights organisations to be more effective in their work will contribute moves toward abolition of the death penalty where it exists. Support for specific capacity building programs focussed on assisting NGOs/CSOs to develop their strategies, and advocacy skills, for abolition campaigns should also be considered. Such programs could usefully be organised on a country specific and regional basis and would support the development of the organisations and regional networks focussed on abolition of the death penalty.

DTP believes such approach must respect the knowledge, skills and perspectives of the individuals and organisations on the grounds who are working toward abolition. There is value in developing advocates' knowledge of the International Bill of Human Rights and relevant UN Resolutions, such as the UN General Assembly Resolutions 62/149, 63/168, 65/206 and 67/176 on the 'Moratorium on the Use of the Death Penalty, and to enabling the sharing of knowledge and experience from within the region on the most effective arguments and strategies for abolition. Developing the capacity of organisations to advocate effectively to their own governments, judiciary, media and public should also be a focus of such training programs.

This recognises that the path to abolition will be different for each country, based on specific historical, cultural, social and political contexts. However, international experience suggests that local civil society advocacy will have a vital and decisive role in pressing for abolition – just as Amnesty International, other NGOs, faith based organisations and individual advocates played a key role over many years in securing abolition in Australia. Sustainable change is dependent on abolition having a level of domestic support and national ownership.

By promoting training programs for NGOs/CSOs, and building their skills to effectively engage their governments, the judiciary and others about the death penalty, DTP believes Australia can help facilitate lasting change. Importantly, by supporting regional programs that bring together organisations and individuals working towards the same goal, Australia can help create links and foster networks between the civil societies of different countries and encourage a stronger grassroots regional push towards abolishing the death penalty. In its experience, DTP has seen the value that a shared pool of knowledge between individual organisations operating in different countries can have in facilitating a more cohesive and targeted response to a common problem affecting the region.

#### Conclusion:

In conclusion, DTP believes that Australia can play a significant role, alone and working with other governments and also with civil society in Australia and the region to speed the movement toward global abolition of the death penalty. Consistent opposition to the death penalty affirms the value of life and of human dignity that is at the heart of efforts to promote and protect human rights more broadly.