

## **Further information for the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Australia's Advocacy for the Abolition of the Death Penalty**

### **Dr Bharat Malkani**

Following my oral testimony to the Inquiry on 27<sup>th</sup> November 2015, I am providing further information as requested during the hearing.

I was asked to furnish more information relating to (a) the role of consular assistance in death penalty cases; (b) studies relating to the deterrent effect of capital punishment; and (c) studies that detail the high costs of capital punishment.

#### **A. Consular assistance**

Consular assistance does not just provide practical help in individual cases. It also serves a powerful symbolic purpose, in that an executing state is less likely to vigorously pursue a death sentence if it is fighting the government of another country.

During the hearing, I mentioned that Mexico provides an example of good practice in this area. In 2000, the Ministry of Foreign Affairs of Mexico established a legal support programme, known as the Mexican Capital Legal Assistance Programme (MCLAP), for Mexicans facing the death penalty in the United States. Between 2000 and February 2014, the programme intervened in 1,001 cases of first-degree murder, and the interventions led to the prevention or reversal of the death penalty in 878 cases.

Put another way, in the US, a Mexican facing a capital charge has just a 0.7% chance of being sentenced to death because of MCLAP, whereas a US citizen facing a capital charge in America has an 8-14% chance of having a death sentence handed down. Similarly, the [Philippines has legislated](#) to ensure that its migrant workers abroad receive good legal assistance in capital and non-capital cases alike.

For more information on the duties of states to provide consular assistance, please see the Report of the UN Special Rapporteur for extrajudicial, summary, or arbitrary executions, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/304](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/304) In particular, see paragraphs 108-111.

For information about Mexico's programme, I recommend that you contact the Director of MCLAP, Mr Erasmo A. Lara Cabrera, on [elara@sre.gob.mx](mailto:elara@sre.gob.mx) / +52 (55) 3686 5626. He will be able to more accurately document how his team intervene in cases.

#### **B. Studies on the deterrent effect of capital punishment**

One of the longest-standing rationales for the death penalty is that it deters people from committing offences. Anecdotally, though, we know that states that use the death penalty suffer from high rates of crime, indicating that the death penalty does very little, if anything, to deter potential offenders.

In my view, the most comprehensive academic work on deterrence and the death penalty in the USA was published in 2009 by Michael Radelet and Traci Lacock. It can be read here: <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf> This article includes an analysis of those studies that have purported to find a deterrent effect of capital punishment.

### **C. The costs of capital punishment in the USA**

A relatively new argument in favour of abolishing capital punishment is that it is not financially viable. The costs associated with the heightened appeals process, with housing death row inmates and remunerating death row guards, all lead to exorbitant public spending. This money would be better spent on crime prevention.

Pennsylvania currently has a moratorium, and the costs of the death penalty have recently been revealed in that state: <http://www.readingeagle.com/news/article/capital-punishment-in-pennsylvania-when-death-means-life#.VJGbYsBhQ>

For more reports on the high costs of the death penalty, see <http://www.deathpenaltyinfo.org/costs-death-penalty> . This website contains links to official studies that have been carried out in numerous states.

Thank you again for holding this inquiry. Although not all states respond well to international pressure, it is nonetheless vital that abolitionist states continue to push this agenda at the international level. If there is any further information that you would like from me, please do not hesitate to contact me. I have also attached my article to this, which formed the basis of my original submission.

Yours faithfully,

Dr Bharat Malkani