



Australian Government

Department of Foreign Affairs and Trade



Australia's Advocacy for the Abolition of the Death Penalty

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

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Overview

The Australian Government has a longstanding, bipartisan policy commitment to the abolition of the death penalty. We have been an active voice over many years in support of abolition through multilateral processes and targeted bilateral advocacy. There has been strong positive movement over the past two decades, with 43 countries abolishing the death penalty in that time. A total of 101 countries have fully abolished the death penalty.

Despite efforts by us and likeminded countries, 56 countries retain the death penalty for ordinary crimes, and a further 33 countries are abolitionist in practice (but not in law). Taiwan and the Palestinian Territories also retain the death penalty. This submission sets out a comprehensive stocktake of DFAT's advocacy from January 2014 to September 2015. To enhance our advocacy, the Foreign Minister has directed that DFAT:

- › develop a public, whole-of-government strategy with country-sensitive approaches to guide bilateral advocacy;
- › work collaboratively with likeminded countries and international organisations to strengthen our abolition advocacy; and
- › provide modest financial support to regional civil society organisations and national human rights institutions to end the death penalty or limit its use.

In this submission, we use the following terminology to describe the status of the death penalty in particular country contexts:

- › retentionist: countries/jurisdictions that retain the death penalty for ordinary crimes (those defined in criminal codes or by the common law, such as aggravated murder or rape, as opposed to crimes occurring under extraordinary circumstances, such as treason, war crimes or crimes against humanity);
- › abolitionist: countries whose laws do not provide for the death penalty for any crime;
- › abolitionist for ordinary crimes only; and
- › abolitionist in practice: countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last ten years and are believed to have a policy or established practice of not carrying out executions.

The death penalty: International context

The key international legal instrument on the abolition of the death penalty is the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the United Nations (UN) General Assembly in 1989 with the objective of eliminating the death penalty. The Second Optional Protocol requires states parties to take all necessary measures to abolish the death penalty within their jurisdiction. Australia acceded to the Second Optional Protocol in 1990. As of 1 October 2015, 81 countries were states parties to the Second Optional Protocol and three were signatories. Some countries have also signed or ratified the Second Optional Protocol but have not yet removed remaining references to the death penalty from legislation.

The ICCPR refers to the inherent right to life and prohibition against arbitrary deprivation of life. The ICCPR provides that the death penalty can only be used for the “most serious” of crimes – which is undefined under international law but is generally understood as excluding economic, property, political and minor violent crimes and offences not involving the use of force. The ICCPR also obliges states parties to not impose the death sentence for crimes committed by persons below 18 years of age and to not execute pregnant women. As of 1 October 2015, the ICCPR had 168 states parties and seven signatories.

In addition to the Second Optional Protocol, there are three regional instruments on death penalty abolition: the Protocol to the American Convention on Human Rights on the abolition of the death penalty, and protocols six and 13 to the European Convention on Human Rights.

According to Amnesty International, 140 countries have abolished the death penalty in law or practice, comprising:

- › 101 countries that have abolished the death penalty for all crimes;
- › six countries that are abolitionist for ordinary crimes only, but still maintain it for crimes such as treason in wartime; and
- › 33 countries that are abolitionist in practice, which includes countries that retain the death penalty for ordinary crimes but have not carried out executions in the past ten years.

There has been a strong movement over the past 20 years towards abolition, with 43 countries abolishing the death penalty during this period. Fiji, Madagascar and Suriname abolished the death penalty in 2015. The UN Secretary-General's 2015 report on the death penalty found that there was a very marked trend towards abolition. Countries that retain the death penalty are, with rare exceptions, significantly reducing the numbers of persons executed and the offences that can attract the death penalty.¹

¹ E/2015/49 (2015), Report of the Secretary-General, “Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty”.

Fifty-six countries, along with Taiwan and the Palestinian Territories, retain the death penalty for ordinary crimes. Of the 20 countries where executions occurred in 2014, six were in East Asia (China, Japan, Malaysia, the Democratic People's Republic of Korea (DPRK), Singapore, and Vietnam). In addition to these six countries, a further two (the Republic of Korea and Thailand) imposed death sentences. Taiwan also carried out executions and imposed death sentences in 2014.

Further detail is at Appendix I of this submission.

Australia's current engagement

The Australian Government has a longstanding, bipartisan policy commitment to the abolition of the death penalty. We have been an active voice on the international stage in support of abolition, with our engagement to date occurring primarily through multilateral processes and targeted bilateral advocacy. Australia's opposition to the death penalty is based on the view that the death penalty is an inhumane form of punishment that violates the inherent human right to life. Since the 1990s, our advocacy has primarily been to promote the introductions of moratoria on the use of the death penalty, with a view to countries ratifying the Second Optional Protocol as the key to achieving universal abolition. Our overseas missions also make targeted representations on behalf of individuals sentenced to death.

Multilateral efforts

Multilateral frameworks have been a primary means for Australia to promote death penalty abolition. UN processes and mechanisms provide valuable opportunities to mobilise broad, cross-regional support for abolition. While UN General Assembly and Human Rights Council (HRC) resolutions are non-binding, they can contribute to customary international law and are a powerful signal to all states of the international community's general view on a particular issue. There is a complementary benefit of multilateral action in terms of norm creation and socialisation to guide states' behaviour.

Australia has a long history of playing an important role in promoting death penalty abolition through the UN. Australia co-sponsors anti-death penalty resolutions at the HRC and did so at the former UN Commission on Human Rights. Australia is also a co-sponsor of the death penalty moratorium resolution in the General Assembly. This resolution was first adopted in 2007 and has been adopted on a biennial basis since 2010. Australia's advocacy during negotiations on this resolution has been important in helping ensure strong, robust language is adopted each time. During negotiations on last year's resolution text, Australian negotiators were active in ensuring the inclusion of new language that called on states to:

- › comply with their obligations under the 1963 Vienna Convention on Consular Relations, particularly the rights of states to receive information about their nationals within the context of a legal procedure; and
- › not impose the death penalty for offences committed by persons below 18 years of age, pregnant women or persons with mental or intellectual disabilities.

The resolution has enjoyed gradually increased support each time it has been adopted by the General Assembly. In 2007 the resolution attracted 104 votes in support, 54 against and 29 abstentions. When it was most recently adopted in 2014 it enjoyed a record 117 votes in support, 37 against and 34 abstentions. The 2014 resolution also enjoyed a record 95 co-sponsoring states. We complement our negotiating and lobbying work at the General Assembly with bilateral representations by our

overseas missions in selected countries to reinforce the importance we place on the resolution. We are currently exploring joining the core group for the corresponding HRC resolution on the death penalty.

Australia also raises the death penalty in relevant statements to the HRC. The UN Secretary-General and the UN High Commissioner for Human Rights produce reports and other publications regularly on the international status of the death penalty. Australia speaks to the recommendations of these reports through 'interactive dialogues' in the HRC. There is also a biennial high-level panel discussion on the death penalty in which Australia is an active participant. The 2015 panel focussed on regional challenges to death penalty abolition. The next panel is in March 2017, with a focus on the use of the death penalty and torture. We also regularly raise the application of the death penalty in HRC statements on individual country situations. For example, in 2015 we have done so in relation to Iran and Belarus.

Australia is a candidate for membership of the HRC for the term 2018-2020 – the first time we have sought a seat on the HRC. If elected, death penalty abolition advocacy will be a priority for our term on the HRC.

A further multilateral avenue for our anti-death penalty advocacy is the Universal Periodic Review (UPR), a unique process where UN Member States review each other's human rights performance every four years through a hearing at the HRC. Australia underwent a review in 2011 as part of the UPR's first cycle and will undergo its second cycle review in November 2015. During the UPR process, states may pose recommendations to the state under review through a short statement. States often develop recommendations in consultation with civil society and national human rights institutions.

Australia makes recommendations to every state under review. Australia has made recommendations on the death penalty consistently since 2013, except in rare instances where it has been judged that there are more immediate human rights priorities. Details are provided in Appendix II.

Australia has also used our annual appearance at the Commission on Narcotic Drugs (CND) to underscore our opposition to the death penalty. During the CND's 58th session in March 2015, the Assistant Minister for Health made a strong statement outlining Australia's opposition to the use of the death penalty in all circumstances, including in relation to offences of a drug-related nature. The Assistant Minister for Health also called on the UN Office on Drugs and Crime to continue its efforts in advocating for death penalty abolition as it relates to drug offences. Australia, working with likeminded countries, has also sought to include death penalty abolition language in international texts (such as UN resolutions) on transnational organised crime and drugs. However, these efforts have been unsuccessful to date due to strong opposition from a majority of states engaged in these forums.

Bilateral approaches

To inform this submission, DFAT has undertaken a comprehensive stocktake of Australia's recent advocacy on death penalty abolition. This stocktake is summarised at Appendix II.

DFAT requested Australia's overseas missions resident in, or accredited to, countries that retain the death penalty to report on bilateral representations made through diplomatic channels to host governments in the period January 2014 to September 2015. We also included our representative offices in Ramallah and Taipei in this tasking. We included representations to countries that are

considered abolitionist in practice. We have also included representations made by ministers to their counterparts at the political level.

Representations included any presentation of Australia's position on the death penalty to a host government official. This could cover:

- › general representations on the death penalty;
- › a formal demarche in response to a particular event or case;
- › outreach in support of a multilateral initiative; and/or
- › advocacy for an Australian consular case involving the death penalty.

An analysis of these representations shows that while Australia has a strong track record on death penalty abolition bilaterally and in multilateral processes, some gaps exist in our bilateral approaches.

Some of these gaps are resource-driven, reflecting Australia's small diplomatic footprint in particular regions. DFAT has resident posts in only 23 of the 56 retentionist countries and ten posts in the 33 countries considered abolitionist in practice. The death penalty is also retained in Taiwan and the Palestinian Territories, where we have representative offices. Other gaps reflect the practice whereby posts have only undertaken advocacy when asked to do so by Canberra, generally in response to a particular case attracting civil society and/or media attention. Our representations have also been limited to diplomatic channels. Except for providing support to a civil society-organised conference in Kuala Lumpur, we have not in recent years supported the work of parliamentarians, civil society and national human rights institutions to engage in broader advocacy on death penalty abolition.

Beyond calls to end the use of the death penalty, either through moratoria or ratification of the Second Optional Protocol to the ICCPR (depending on the circumstance), there have been only a few exceptions where we have taken a more targeted, nuanced approach. There are only a few instances where we have focussed our efforts on encouraging increased minimum standards for the death penalty's use and/or advocated for a reduction in the number of crimes that attract the death penalty.

In some cases, sensitivities or competing interests have precluded some posts from making representations. These include where it has been considered that:

- › representations would be counterproductive, for instance it was considered that such representations could provoke a backlash; or
- › there have been more immediate human rights concerns for posts to focus on.

Our advocacy has also been less active with abolitionist-in-practice countries. In 2014 our posts made representations in only four of the 33 countries that retain the death penalty but did not carry out executions or sentence anyone to death in that year. We did not undertake bilateral advocacy to any country with a moratorium where we do not have resident accreditation. In such circumstances, we have limited contact with host government officials and other, more pressing bilateral interests for posts to pursue. Conflict and instability also precluded some posts from having contact with relevant authorities during the review period.

While there has been a strong trend towards abolition over the past two decades, drug-related offences and terrorism have been particular drivers for the death penalty's use in recent years in

Asia, the Middle East, and Africa. DFAT has judged that advocacy of a general nature conducted through diplomatic channels would be of limited effectiveness in many of these instances.

DFAT has been active in making representations to those countries that carry out executions, with representations made to 12 of the 20 countries that carried out executions in 2014.

On a regional basis, DFAT has been most active in the Indo-Pacific reflecting our strong engagement in the region. Overall, in the Indo-Pacific we made representations to 17 of the 24 countries that retain the death penalty (including those that have moratoria in place). In East Asia, DFAT posts made representations in six of the eight countries that carried out executions in 2014, and in Taiwan. We also undertook representations in ten of the 16 Asian retentionist countries where the death penalty was not carried out in 2014. In South and West Asia, we made representations to six of the seven retentionist countries.

Our overseas missions in the Middle East and North Africa have also been active. We made representations to four of the seven countries in the Middle East and North Africa that executed people in 2014.

Our modest diplomatic profile in Africa (with only five missions across Sub-Saharan Africa) means we have less capacity to actively make representations across the continent. These countries are also predominantly abolitionist in practice, with only three undertaking executions in 2014. Of these three, we made representations to only one (Sudan). A further 28 African countries maintain the death penalty in legislation and we made representations to two host governments.

In the Americas and Caribbean, we did not make representations to any host governments. In the United States, our post has not undertaken any bilateral representations to the federal government in the review period. However, our Ambassador wrote to two state governors on behalf of individuals in two specific cases on human rights grounds. There have been no federal executions in the United States since 2003, but the United States as a whole ranked fifth in 2014 in terms of executions carried out. Some progress has occurred at the state level, with Nebraska becoming the 19th state to abolish the death penalty in May 2015. A further six states have moratoria in place. Overall, the death penalty presently remains available in 31 states.

Other mechanisms for advocacy

Australian officials convey our opposition to the death penalty through a range of other bilateral mechanisms. We raise the death penalty at our bilateral Human Rights Dialogues with China, Laos and Vietnam. The Human Rights Technical Cooperation Programs that supplement the bilateral China and Vietnam Human Rights Dialogues include legal drafting capacity-building, which has included a focus on reducing the number of crimes that the death penalty attracts. We have used bilateral Senior Officials' Talks to raise our opposition to the death penalty with a range of countries.

DFAT has also from time to time undertaken global representations to all retentionist countries. The last such round was undertaken in 2010. These representations were of a general nature that set out Australia's universal opposition to the death penalty and called on retentionist countries to introduce moratoria with a view to ratifying the Second Optional Protocol to the ICCPR. Targeted, country-sensitive approaches were used for eight countries. Representations were either conducted in person or through Third Person Notes to countries of non-resident accreditation. As there was limited use of country-sensitive approaches, these global representations have had limited practical benefit.

Ministers have made joint declarations with their counterparts in calling for abolition. Most recently, the Foreign Minister, the Hon Julie Bishop MP, joined a Swiss-led declaration to mark World Day Against the Death Penalty in 2014.

Further steps DFAT could take

There is scope for Australia to undertake further steps to advocate for the abolition of the death penalty. In recognition of this, the Foreign Minister has directed that DFAT:

- › develop a public, whole-of-government strategy with country-sensitive approaches to guide bilateral advocacy;
- › work more intensively with likeminded countries and increase our diplomatic engagement for events such as World Day Against the Death Penalty; and
- › provide modest financial support to regional civil society organisations and national human rights institutions to end the death penalty or limit its use.

Our whole-of-government strategy will guide our advocacy efforts on the death penalty. The remainder of this submission analyses our possible approaches and sets out options for additional engagement. When developing the strategy, we will take into account the recommendations of this inquiry and submissions made to it. We will also need to take into account existing legislation and policy on extradition requests, mutual legal assistance and law enforcement cooperation where the death penalty may be an outcome. The government will make final decisions on any new approaches for our advocacy efforts.

To increase the effectiveness of our efforts, we have set the following parameters to guide our advocacy, namely that it:

- › have a real prospect of being effective;
- › not duplicate our current efforts;
- › not provoke a backlash from particular retentionist countries, thereby undercutting our objectives, and
- › not require significant additional resources given our relatively small diplomatic footprint (particularly in death penalty retentionist countries).

A whole-of-government strategy

The efforts of some countries, including the United Kingdom and Norway, are based on explicit strategies. The UK strategy, for example, provides structured guidance for UK diplomatic missions on how to take forward abolitionist work, including criteria for identifying target countries. We see merit in such an approach.

Any further advocacy DFAT undertakes should be global in nature, in particular with retentionist countries where there is little engagement on the issue but where we judge there is scope to do more. This would work to demonstrate Australia's in-principle opposition to the death penalty in all contexts, helping to ensure that our advocacy is more holistic and effective.

The whole-of-government strategy will be based on information gathered by our diplomatic posts and Canberra-based agencies. The strategy will set out the tools at our disposal to pursue our objectives. It will act as an implementation guide for the government, in particular our overseas missions, as to how to best pursue abolition depending on the operating context in particular countries.

Our strategy will be informed by our ongoing engagement with civil society organisations in Australia and overseas, including those with deep expertise and strong track records on death penalty abolition (see below). The Australian Human Rights Commission will be an important partner.

We recognise that there will be a wide range of tools to promote abolition, and that the selection of tools in each case will depend on the circumstances in the country concerned as well as the judgements about which tool, or combination of tools, is likely to have the greatest impact.

We will provide public updates, such as through DFAT's Human Rights NGO Forums, on our anti-death penalty strategy. We are mindful that private and low profile advocacy will be the most effective approach in some countries.

Subject to the government's agreement, the overarching objective of our strategy will be to encourage countries to move towards the abolition of the death penalty, recognising that a staged, sequenced approach will be necessary depending on particular country circumstances. Our work will be measured and targeted to maximise effectiveness, with the following graduated approach taken to advocacy depending on a country's circumstances:

- › first, to increase transparency and safeguards governing the application of the death penalty, including excluding its use on pregnant women, children, and people with mental or intellectual disabilities;
- › second, to reduce the number of crimes that attract the death penalty and its mandatory application by encouraging alternative criminal justice penalties;
- › third, to introduce a formal moratorium on the death penalty's use; and
- › finally, to accede to the ICCPR Second Optional Protocol, aiming at the abolition of the death penalty and ensuring countries that have signed or ratified the Protocol remove all references to the death penalty from their legislation.

For retentionist countries where we assess that there is little chance of a moratorium being introduced in the near to medium term, we could instead focus our efforts on seeking a reduction in the number of crimes that the death penalty attracts, including all drug-related offences and economic crimes (for instance, large-scale corruption), which we consider do not meet the threshold for "most serious crimes" under the ICCPR. To ensure consistency between our multilateral and bilateral approaches, we will also target our UPR recommendations to individual country situations based on the above approach. We can commit to following up on these UPR recommendations bilaterally to provide a regular opportunity for engagement with all countries that we make death penalty recommendations on.

We will look to address the common arguments that drive retention of the death penalty, including its perceived deterrent value, its public popularity and the belief that there are sufficient safeguards to ensure there is no miscarriage of justice. These arguments are deeply embedded at a political level in retentionist countries and overcoming them will be difficult. We will need to adopt a measured and factual approach, avoid emotive arguments and calibrate our efforts according to different national circumstances. We will also need to be sensitive to other motivations behind retention, such

as nationalism or religious belief. We will consider how and why countries that recently abolished the death penalty did so. Identifying how the barriers to abolition were overcome will be useful to inform our advocacy with other comparable countries.

We will also collaborate with likeminded countries. In doing so, it will be important to avoid duplication of effort and collaborating solely with other developed Western countries. We would need, for instance, to consider partnerships with countries that are active, influential players in their respective regions. Coordinating our approaches will bolster the effectiveness of our advocacy. Sometimes we will conclude that bilateral representations are preferable, especially where joint representations might have a negative impact, including by creating the impression that a group of countries is 'ganging up' against another. Annual events such as World Day Against the Death Penalty (10 October) could form the backdrop for targeted advocacy in conjunction with other likeminded governments and abolitionist organisations. In the multilateral system, side-events held in the margins of formal meetings, such as HRC sessions, offer valuable opportunities to mobilise support and apply pressure. We will look to provide support to death penalty-related side-events in line with our broader objectives.

Strengthened engagement with civil society, national human rights institutions and international organisations

DFAT also sees merit in strengthening our institutional relationships with civil society organisations, national human rights institutions, UN agencies and other international organisations to collaborate on abolition advocacy. Such bodies have a broader range of networks than our overseas missions, particularly in countries where we do not have resident accreditation, and in some situations are able to pursue targeted advocacy work that may not be beneficial, or indeed that may be counterproductive, if undertaken by government officials. The Office of the High Commissioner for Human Rights, which undertakes technical assistance and capacity building work with countries at a global level, is doing a range of work on death penalty abolition and we would use the development of the strategy to identify areas of collaboration. Civil society organisations in particular can engage in long-term campaign work through ongoing grassroots advocacy.

An avenue for stepping up our advocacy efforts could be the provision of modest financial support to a small group of civil society organisations that complement DFAT's death penalty abolition work. This is under consideration. DFAT does not have existing resources to support this stream of work.

In July 2015 the Foreign Minister agreed to one-off funding in the 2015-16 financial year for the following organisations:

- › Together Against the Death Penalty (Ensemble contre la peine de mort, ECPM). In June 2015, DFAT supported the ECPM-organised Second Asian Regional Congress in Kuala Lumpur. The Congress brought together legislative, legal and executive officials from abolitionist and retentionist countries, regional and international organisations, media, and relevant academic networks. Around 300 people participated. We provided ECPM with \$100,000 in 2015-16 in support of further activities, including the Sixth World Congress (Oslo, June 2016).
- › The Asia-Pacific Forum on National Human Rights Institutions (APF). The APF brings together national human rights institutions (NHRIs) in the Middle East, Asia and the Pacific and is a longstanding partner of DFAT. NHRIs have the capacity to progress human rights issues while remaining independent of government. The APF has a record of working with its members to

support abolition work. DFAT financial support of \$150,000 will reinvigorate the APF's engagement on the issue.

- › Parliamentarians for Global Action (PGA). PGA has established a Global Parliamentary Platform on the death penalty to encourage meaningful action and to exchange information by political decision-makers. The Platform is the only international grouping or network of parliamentarians devoted to abolition of the death penalty. DFAT financial assistance of \$100,000 is supporting PGA's death penalty work in the Asia-Pacific region.

Appendix I: Status of the death penalty

Information in this appendix is drawn from Amnesty International's 2014 *Death Sentences and Executions* report. We have included Fiji, Madagascar and Suriname as abolitionist countries. These three countries formally abolished the death penalty in 2015.

Reported executions in 2014 – at least 607

Iran 289+, Saudi Arabia 90+, Iraq 61+, USA 35, Sudan 23+, Yemen 22+, Egypt 15+, Somalia 14+, Jordan 11, Equatorial Guinea 9, Pakistan 7, Afghanistan 6, Belarus 3+, Vietnam 3+, Japan 3, Malaysia 2+, Singapore 2, United Arab Emirates 1, China *unknown*, Democratic People's Republic of Korea *unknown*.

Executions were also carried out in Taiwan (5) and in the Palestinian Territories (2+).

Reported imposition of death sentences in 2014 – at least 2,466

Nigeria 659, Egypt 509+, Pakistan 231, Bangladesh 142+, Tanzania 91, Iran 81+, USA 72+, Vietnam 72+, India 64+, Sri Lanka 61+, Thailand 55+, Somalia 52+, Saudi Arabia 44+, Iraq 38+, Malaysia 38+, Kenya 26+, Yemen 26+, United Arab Emirates 25, Algeria 16+, Democratic Republic of the Congo 14+, Sudan 14+, Zambia 13+, Afghanistan 12+, Lebanon 11+, Zimbabwe 10, Ghana 9, Morocco/Western, Sahara 9, Kuwait 7, Mali 6+, Indonesia 6, Bahrain 5, Jordan 5, Congo (Republic of) 3+, Mauritania 3, Sierra Leone 3, Singapore 3, Qatar 2+, Trinidad and Tobago 2+, Tunisia 2+, Barbados 2, Japan 2, Maldives 2, Gambia 1+, Lesotho 1+, Libya 1+, Myanmar 1+, Botswana 1, Guyana 1, South Korea 1, Uganda 1, China *unknown*, Democratic People's Republic of Korea *unknown*, South Sudan *unknown*.

Death sentences were also imposed in Taiwan (1) and in the Palestinian Territories (4+)

Abolitionist and retentionist countries in 2014

More than two-thirds of the countries in the world have now abolished the death penalty in law or practice. As at 1 October 2015, the numbers are as follows:

- › Abolitionist for all crimes: 101
- › Abolitionist for ordinary crimes only: 6
- › Abolitionist in practice: 33
- › Total abolitionist in law or practice: 140
- › Retentionist: 56 (plus the Palestinian Territories and Taiwan)

The following are lists of countries in the four categories: abolitionist for all crimes, abolitionist for ordinary crimes only, abolitionist in practice and retentionist.

Abolitionist for all crimes (101)

Countries whose laws do not provide for the death penalty for any crime:

Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cabo Verde, Colombia, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, Ukraine, UK, Uruguay, Uzbekistan, Vanuatu, Venezuela.

Abolitionist for ordinary crimes only (6)

Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances:

Brazil, Chile, El Salvador, Israel, Kazakhstan, Peru.

Abolitionist in practice (33)

Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last ten years and are believed to have a policy or established practice of not carrying out executions:

Algeria, Benin, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Republic of Congo, Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Republic of Korea, Russian Federation, Sierra Leone, Sri Lanka, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia.

Retentionist (56)

Countries/jurisdictions that retain the death penalty for ordinary crimes:

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Democratic People's Republic of Korea, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, Oman, Pakistan, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent

and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, USA, Vietnam, Yemen, Zimbabwe.

The death penalty is also retained in Taiwan and the Palestinian Territories.

Appendix II: Summary of DFAT's advocacy on death penalty abolition

Bold indicates where we have a resident Australian mission.

Country/ Government	Executions 2014	Death Sentences 2014	Bilateral Representations*	Universal Periodic Review (Second Cycle)	Notes
Indo-Pacific					
Afghanistan	Yes	Yes	Yes	Yes	
Bangladesh	No	Yes	Yes	Yes	
Brunei Darussalam	No	No	Yes	Yes	
China	Yes	Yes	Yes	Yes	
Democratic People's Republic of Korea	Yes	Yes	No	Yes	Post has not visited DPRK during the review period, which has precluded bilateral representations.
India	No	Yes	Yes	No (2012)	
Indonesia	No	Yes	Yes	N/A	
Japan	Yes	Yes	No	Yes	
Laos	No	No	Yes	Yes	
Malaysia	Yes	Yes	Yes	Yes	
Maldives	No	Yes	Yes	Yes	

Country/ Government	Executions 2014	Death Sentences 2014	Bilateral Representations*	Universal Periodic Review (Second Cycle)	Notes
Mongolia	No	No	No	Yes	Mongolia has ratified the Second Optional Protocol to the ICCPR but death penalty remains in the Mongolian Criminal Code. An updated Criminal Code is expected to pass Parliament in 2015.
Myanmar	No	Yes	Yes	N/A	
Nauru	No	No	No	N/A	
Pakistan	Yes	Yes	Yes	Yes	
Papua New Guinea	No	No	Yes	N/A	
Republic of Korea	No	Yes	Yes	Yes	
Singapore	Yes	Yes	No	N/A	
Sri Lanka	No	Yes	Yes	No (2012)	
Taiwan	Yes	Yes	Yes	N/A	
Tajikistan	No	No	No	N/A	
Thailand	No	Yes	Yes	N/A	
Tonga	No	No	No	Yes	
Vietnam	Yes	Yes	Yes	Yes	
Europe					
Belarus	Yes	No	Yes	Yes	
Russia	No	No	No	No (2013)	
Sub-Saharan Africa					
Benin	No	No	No	Yes	Ratified Second Optional Protocol to the ICCPR, yet to incorporate into domestic legislation.
Botswana	No	Yes	No	Yes	
Burkina Faso	No	No	No	Yes	
Cameroon	No	No	No	Yes	
Central African Republic	No	No	No	Yes	Conflict has precluded representations.
Chad	No	No	No	Yes	
Comoros	No	No	No	Yes	

Country/ Government	Executions 2014	Death Sentences 2014	Bilateral Representations*	Universal Periodic Review (Second Cycle)	Notes
Democratic Republic of Congo	No	Yes	No	Yes	
Equatorial Guinea	Yes	No	No	Yes	
Eritrea	No	No	No	No (2014)	
Ethiopia	No	No	No	No (2014)	
Ghana	No	Yes	No	Yes	
Guinea	No	No	No	Yes	
Kenya	No	Yes	No	Yes	
Lesotho	No	Yes	Yes	Yes	
Liberia	No	No	No	Yes	
Malawi	No	No	No	Yes	
Mali	No	Yes	No	No (2013)	
Mauritania	No	Yes	No	N/A	
Niger	No	No	No	N/A	
Nigeria	No	Yes	No	Yes	
Republic of Congo	No	Yes	No	Yes	
Sierra Leone	No	Yes	No	N/A	
Somalia	Yes	Yes	No	N/A	
South Sudan	No	Yes	No	N/A	Conflict has precluded representations.
Sudan	Yes	Yes	Yes	N/A	
Swaziland	No	No	No	N/A	
Tanzania	No	Yes	No	N/A	
The Gambia	No	Yes	No	Yes	
Uganda	No	Yes	No	N/A	
Zambia	No	Yes	No	Yes	
Zimbabwe	No	Yes	Yes	N/A	
Middle East and North Africa					
Algeria	No	Yes	No	No (2012)	

Country/ Government	Executions 2014	Death Sentences 2014	Bilateral Representations*	Universal Periodic Review (Second Cycle)	Notes
Bahrain	No	Yes	No	Yes	
Egypt	Yes	Yes	Yes	Yes	
Iran	Yes	Yes	Yes	Yes	
Iraq	Yes	Yes	Yes	Yes	
Jordan	Yes	Yes	No	Yes	
Kuwait	No	Yes	No	Yes	
Lebanon	No	Yes	No	N/A	
Libya	No	Yes	No	Yes	Conflict has precluded representations.
Morocco	No	Yes	No	No (2012)	
Oman	No	No	No	N/A	
Palestinian Territories	Yes (Gaza)	Yes (Gaza)	No	N/A	No-contact policy with Hamas precludes representations in Gaza.
Qatar	No	Yes	No	Yes	
Saudi Arabia	Yes	Yes	Yes	Yes	
Syria	No	No	No	N/A	Conflict has precluded representations.
Tunisia	No	Yes	No	No (2012)	
United Arab Emirates	Yes	Yes	No	Yes	
Yemen	Yes	Yes	No	Yes	
Caribbean and the Americas					
Antigua and Barbuda	No	No	No	N/A	
Bahamas	No	No	No	Yes	
Barbados	No	Yes	No	Yes	
Belize	No	No	No	Yes	
Cuba	No	No	No	Yes	
Dominica	No	No	No	Yes	
Grenada	No	No	No	Yes	
Guatemala	No	No	No	Yes	
Guyana	No	Yes	No	Yes	
Jamaica	No	No	No	Yes	

Country/ Government	Executions 2014	Death Sentences 2014	Bilateral Representations*	Universal Periodic Review (Second Cycle)	Notes
St Kitts and Nevis	No	No	No	N/A	
St Lucia	No	No	No	N/A	
St Vincent and the Grenadines	No	No	No	N/A	
Trinidad and Tobago	No	Yes	No	N/A	
United States	Yes	Yes	No	Yes	Representations made to two state governors (April 2014 and September 2015).

* Bilateral representations covering the period January 2014 to September 2015.

** Second cycle Universal Periodic Reviews commenced in 2012 and will conclude in 2016. There are still four sessions to be undertaken in the second cycle covering 43 States.

We have excluded countries that have abolished the death penalty for ordinary crimes, but maintain it in legislation for exceptional crimes such as treason during wartime. These countries include Brazil, Chile, El Salvador, Israel, Kazakhstan, and Peru. We have also excluded countries that have abolished the death penalty in 2015 including Fiji, Suriname, and Madagascar.