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JSCFADT Human Rights Subcommittee – Inquiry into Australia’s death penalty advocacy: DFAT appearance follow-up

Mr LAURIE FERGUSON: Does the department have any conclusions about the upsurge of executions in Saudi Arabia that you mentioned earlier? What motivation is behind this? What is driving it?

Dr Strahan: Josh, are you aware of the specifics about what is driving it?

Mr House: No.

Mr LAURIE FERGUSON: If it is noticeably statistically different—are you able to come back to us on that?

Dr Strahan: I can give you something in writing about that. I do not follow events there closely enough to offer you an informed comment. We did have a bit of information here in our brief about Saudi Arabia. I will see if it has anything specific. What I could say is that the death penalty is most commonly applied to murder or drug offences, which is common in other parts of the world, but it also can be applied in Saudi Arabia in cases of rape, armed robbery, terrorism related crimes, adultery—which includes homosexual acts—sorcery and turning against Islam. Some offences carry a mandatory death penalty, including drug trafficking and other non-lethal offences.

Mr LAURIE FERGUSON: Why don't you come back to us. I would say it could equally be driven by internal questions about the regime itself.

Dr Strahan: Stability and terrorism.

Mr LAURIE FERGUSON: So why don't you come back to us on that.

Dr Strahan: Sure.

Response:

Saudi Arabia carries out executions frequently. According to Amnesty International, Saudi authorities carried out at least 157 executions in 2015. This number represents a marked increase over the number of executions in 2014, which totalled around 90. (In addition, 47 executions were carried out on 2 January 2016).

The legal system in Saudi Arabia follows the Hanbali school of Sharia. The High Courts of Sharia Law (or Kubra) have jurisdiction over *hudud* (crimes prescribed in the Quran or Sunnah as crimes against Islam, for which there are fixed penalties, including death) and *qisas* (crimes of murder or bodily injury which allow for families of the victims to seek retaliation or revenge – including the execution of the perpetrator).

Usually, only one judge sits on each court, but three judges are required to oversee a case which could result in an execution. A defendant sentenced to death has the right of appeal to the Court of Cassation, on which a panel of five judges sits.

The death penalty is most commonly applied to murder or drugs offences, but can also be applied in cases of rape, armed robbery, terrorism-related crimes, adultery (which includes homosexual acts), sorcery and apostasy (apostates are usually granted 30 days to return

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to Islam). Executions are most commonly carried out by beheading with a sword, but sometimes by firing squad, since this method was made permissible under Saudi law in early 2013 as an alternative to beheading. Executions are sometimes public and can occur in public squares, or areas next to provincial court houses.

Some offences carry a mandatory death sentence, including drug trafficking and other non-lethal offences. A fatwa issued in 1981 delineates the death penalty as the mandatory sentence for drug smuggling. According to Amnesty International's report '*Killing in the Name of Justice: The Death Penalty in Saudi Arabia*' (August 2015), executions for drug-related offences rose to around 47 per cent of all executions in 2014 and 2015. This compares to 2010 and 2011, when less than 4 per cent of executions were for drug-related crimes. According to Amnesty:

It is difficult to single out any specific factor that might have caused the significant rise in drug-related executions. The Saudi Arabian authorities have repeatedly argued that the death penalty is the most effective means to eradicate the problem of illegal drugs.

It has been suggested that one factor behind the upswing in executions over the past 12 months may be the reduction in government-sponsored reconciliation efforts with victims' families who, under Sharia Law, can accept 'blood' money in exchange for clemency for the perpetrator. We note that this would normally only apply to civil murder cases, not drug or terrorism offences.

With respect to the executions carried out on 2 January 2016, the Saudi government has said – including in response to international criticism – that the administration of Saudi justice is an internal matter; that, where the death penalty is prescribed by religious law, the courts have no discretion but to impose it; and that that sentence is carried out once all avenues of appeal have been exhausted. Those executed on 2 January 2016 had been convicted of terrorist offences.

In using the death penalty in these cases, the Saudi government wanted to convey the message, both internally and externally, that it will respond firmly to terrorism, and that it will apply the full force of Saudi law regardless of outside pressure and international reactions. We would expect a response along these lines to our future representations on this subject.

CHAIR: I want to take you to a number of other issues. The Human Rights Law Centre and Reprieve raised issues about some of our drug strategies, including those in illicit trafficking and border management. When they raised those issues, they suggested that we might, by funding programs in those areas, inadvertently bring people to a situation where they may be subjected to a possible death penalty.

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Dr Strahan: That is by funding traditional law enforcement programs?

CHAIR: By funding programs that lead to apprehension and prosecution for drug offences. We are helping, through the UN Office on Drugs and Crime, with initiatives focusing on illicit trafficking and border management in Pakistan, for instance. The argument is that these programs are potentially going to lead to people being convicted of drug offences which may carry a death penalty. Do we take that into account when we are dealing with it? Do we ask that it be considered by the people who are being funded?

Dr Strahan: Those programs are implemented by other agencies.

CHAIR: I thought that might be the case. I am happy for you to take it on notice.

Dr Strahan: It is not something I would want to comment on without enough specific knowledge, because they are not matters which we—

CHAIR: These are points that were made with us—you heard the evidence—and what we are trying to do is to satisfy ourselves that we build safeguards into these arrangements where we can. That leads me to the fact that we had numerous witnesses to the inquiry that identified that the majority of death sentences applied in our region are for drug crimes. They are suggesting that we might look at criminal justice approaches to reduce the use of drugs that may or may not involve a death penalty.

Response:

The Department of Immigration and Border Protection (DIBP) has provided the following response:

The DIBP-funded UN Office of Drugs and Crime (UNODC) Human Trafficking and Migrant Smuggling project in Pakistan aims to develop the capacity of national law enforcement agencies in Pakistan through:

- . specialist training
- . the provision of technical equipment
- . a comprehensive analysis of the national legislative framework instrument to identify and address gaps in national legislation.

The project focuses on legislation related to human trafficking and migrant smuggling – not on drug trafficking. We also note that the UNODC opposes the death penalty in all circumstances. Therefore, DIBP is willing to partner with UNODC to implement projects on the ground in Pakistan.

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