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The Hon Philip Ruddock MP
Chair
Joint Standing Committee on Foreign Affairs, Defence and Trade
Sub-Committee on Human Rights
PO Box 6021 Parliament House
CANBERRA ACT 2600

11 December 2015

Dear Mr Ruddock,

Follow up to presentation at the Inquiry into Australia's Advocacy for the Abolition of the Death Penalty, 9 December 2015, Sydney

I am writing to follow up on my appearance at the hearing of the Sub-committee on Human Rights at its hearing earlier this week (9 December 2015) in Sydney. I undertook to see if we could provide further information on two matters:

- (a) In response to your own question: whether there was any material on the public record evidencing Indonesian criticism of the apparent inconsistency of Australia political leaders' responses to the death penalty in the Bali bombers case and the Bali 9 case; and
- (b) In response to a question by Senator Singh: whether there are any statistics available which give an overall picture of the number of migrant workers facing the death penalty in individual countries and the crimes with which they have been charged or of which they have been convicted.

(a) In relation to the first question, I attach a selection of extracts from Indonesian media reports which reflect criticism of Australia and its political leaders on the basis that Australian criticism of the Bali 9 executions involved a double standard in relation to the death penalty (Annex A). The extracts include a statement by a member and former Deputy Chair of the Indonesian Parliament's Commission I (which deals with foreign affairs and defence), the leader of one of Indonesia's largest Muslim organisations, the views of an influential professor of public international law at the University of Indonesia, and media commentary. I would like to acknowledge the assistance of Mr Bhatara Ibnu Reza in helping to locate these materials and in translating them.

I assume that Australia's missions in Indonesia would have been closely monitoring commentary by the press and public figures on Australia's stance on the issue, and that DFAT may be able to provide additional material if needed.

(b) In relation to the second question, we have not been able to locate any comprehensive, reliable data broken down in the manner requested. However, in case it is of assistance I enclose some material which gives some indication of the numbers of persons involved in capital proceedings, the major source and destination countries, and the offences. The apparent dearth of comprehensive data underlines the point of suggestions that further research in this area needs to be undertaken.

I hope that this material is of assistance to the Sub-Committee in its deliberations.

Yours sincerely

Andrew Byrnes
Professor of Law, UNSW &
Member, DTP Board

ANNEX A

SOME EXAMPLES OF PUBLIC DISCUSSION IN INDONESIA OF INCONSISTENCY IN AUSTRALIAN POSITIONS RE DEATH PENALTY IN BALI BOMBERS CASE AND BALI 9 CASE¹

A. **‘Cara Australia Sikapi Warga yang Terancam Dieksekusi RI’ [‘Australian response to pending execution of Australian citizens in Indonesia’], *Viva News*, 30 January 2015 (extract)**

‘PM Australia John Howard saat itu, mengatakan tidak akan meminta pemerintah Indonesia mempertimbangkan kembali eksekusi mati, karena menghormati proses hukum di Indonesia. Howard juga menyebut hukuman mati pantas bagi para teroris.

"Faktanya adalah Amrozi melakukan kejahatan di wilayah Indonesia dan dia diadili di bawah sistem peradilan Indonesia. Saya tidak akan mempertanyakan keputusan mereka," kata Simon Crean, pemimpin oposisi Australia.

Chan dan Sukumaran juga melakukan kejahatan di Indonesia, dengan menyelundupkan narkoba. Mereka diadili menurut hukum yang berlaku di Indonesia. Tidak ada alasan bagi Australia untuk bersikap berbeda antara kasus Bali Nine dan Bom Bali.’

Rough translation

‘Australian Prime Minister at the time John Howard said that he never asked the Indonesian government to reconsider the executions [of the Bali bombers] because he respected the legal process in Indonesia. Howard also said that the death penalty was appropriate in the case of terrorists.

‘The fact is that Amrozi had committed the crimes in Indonesian territory and was tried under Indonesian criminal justice system. I never questioned those decisions’, said Simon Crean, the Australian opposition leader at the time.

Chan and Sukumaran also committed crimes in in Indonesia by smuggling narcotics. They were tried according to Indonesian law. There is no reason for Australia to have different stance on the Bali 9 compared to the Bali bombers.

‘Cara Australia Sikapi Warga yang Terancam Dieksekusi RI’ [‘Australian response to pending execution of Australian citizens in Indonesia’], *Viva News*, 30 January 2015, <http://fokus.news.viva.co.id/news/read/583536-cara-australia-sikapi-warga-yang-terancam-dieksekusi-ri> (*Viva News*, owned by the leader of the Golkar party, is one of the major online news outlets in Indonesia)

¹ These references have been provided to the Diplomacy Training Program by Bhatara Ibnu Reza, currently a PhD student in the Australian Human Rights Centre, Faculty of Law, University of New South Wales, and a researcher and advocate on death penalty issues in Indonesia with *Imparsial: The Indonesian Human Rights Monitor*. The rough translations of the Indonesian originals have been prepared by Bhatara Ibnu Reza in conjunction with Professor Andrew Byrnes.

B. Comments by member of the Parliamentary Commission I on Foreign Affairs and Defence (Youtube news report)

TB Hassanuddin, member of Parliament for PDI-P (the current governing party) and current member and former deputy chair of Commission I (the Indonesian Parliamentary Commission responsible for foreign affairs and defence), criticising Australia for applying double standards to the death penalty in the Bali Bombers and Bali 9 cases.

‘Saat Bom Bali Tegas Mendukung Hukuman Mati, Sementara kasus BALI NINE Australia Keras menolak?’ [‘When Indonesia executed the Bali bombers Australia supported the death penalty, but in the Bali 9 case strongly rejected it’],

<https://www.youtube.com/watch?v=FrODg-hkDCs>

C. Comments by Said Aqil Siradz, chair of Pengurus Besar Nahdlatul Ulama (PBNU)

Extract from article in *Metrobali*, reporting comments by Said Aqil Siradz, chair of Pengurus Besar Nahdlatul Ulama (PBNU), the largest and extremely influential mass Islamic organisation (formerly chaired by President Abdulrahman Wahid prior to his being elected President):

‘Bahkan, Said Aqil mengkritik sikap pemerintah Australia yang dinilainya ambivalen atau mendua dalam menyikapi hukuman mati.

Dalam kasus Bom Bali yang menewaskan banyak warga negara Australia, pemerintah Australia cenderung diam ketika Pemerintah Indonesia menjatuhkan hukuman mati dan mengeksekusi pelaku, yakni Amrozi, Imam Samudra, dan Ali Ghufron. Bahkan banyak warga negara Australia yang setuju hukuman mati tersebut dilaksanakan, terutama keluarga korban.’

Rough translation

‘Even though Said Aqil criticised the Australian government attitude which according to him shows ambivalence or double standards on the death penalty.

In the Bali bombers case, where many Australian citizens were victims, the Australian government tended to be silent when the Indonesian government executed the offenders, Amrozi, Imam Samudra, dan Ali Ghufron. Moreover, many Australian citizens, especially the victims’ families, supported the execution of the death sentences.’

‘PBNU Dukung Pemerintah Teruskan Eksekusi Terpidana Mati’ [‘PBNU supports executions of those on death row’], *Metrobali*, 21 January 2015,

<http://metrobali.com/2015/02/21/pbnu-dukung-pemerintah-teruskan-eksekusi-terpidana-mati/> (extract)

D. Comments by leading Professor of International Law at the University of Indonesia, Professor Hikmahanto Juwana

Article quoting the leading and influential Professor of International Law at the University of Indonesia, Professor Hikmahanto Juwana:

‘Ketika kepentingan Australia menganggap bahwa Amrozi cs dihukum mati karena banyak warga negaranya yang meninggal, dia setuju. Tapi sekarang ketika kepentingannya mengatakan bahwa “nanti saya tidak dipilih warga saya kalau tidak berbuat apa-apa”, lalu kepentingannya sekarang mengatakan jangan dihukum mati. Ini standar ganda yang harus jadi cerminan," ujarnya.

Rough translation

‘When Australia’s interests were in issue in the case of Amrozi and his associates because of the large number of Australian victims, Australia did not object to the execution. But now when their political interests [are to avoid a situation in which] “nobody votes for me because I did nothing”, then their interests leads to opposing the death penalty. This is a double standard and we need to be aware of that’, he [Hikmahanto] said.’

‘Dulu Dukung Amrozi Dieksekusi, Australia Terapkan Standar Ganda’ [‘Previously supportive of Amrozi’s execution, Australia now applies double standards’], *Republika*, 16 January 2015,

<http://internasional.republika.co.id/berita/internasional/global/15/02/16/njvet4-dulu-dukung-amrozi-dieksekusi-australia-terapkan-standar-ganda>

ANNEX B

SELECTED MATERIAL ON MIGRANT WORKERS FROM THE ASIA PACIFIC REGION FACING THE DEATH PENALTY ABROAD

- A. **United Nations, *Question of the death penalty, Report of the Secretary-General, UN Doc A/HRC/27/23, para 55 (30 June 2014)*(citing Amnesty International figures²)**

‘55. Reportedly, non-citizens, including migrant workers, remained disproportionately affected by the death penalty in the Asian and Middle Eastern regions. For instance, at least 149 people, including many non-citizens, convicted of drug-related offences are reportedly on death row in Indonesia; 247 Indonesians are on death row in other countries. In Malaysia, death sentences have been issued against at least 37 foreign nationals, mostly for drug offences. Saudi Arabia executed at least 37 non-citizens. The death penalty was disproportionately used against migrant workers from Asia and Africa. Some 125 Filipino migrant workers are on death row abroad. In the United Arab Emirates, about half of the death sentences pronounced during the reporting period were imposed on non-citizens, who make up over 80 per cent of the population. Sixty Mexicans are on death row in the United States.’

B. Indonesian migrant workers facing the death penalty abroad

According to Indonesian NGO Migrant Care, as of 10 October 2015, 59 Indonesian migrant workers had been sentenced to death abroad, while another 219 had been charged with or were being tried for offences for which capital punishment might be imposed. Most of the workers were in Malaysia (212), followed by Saudi Arabia (36) and China (28).

‘281 Indonesian migrant workers face death penalty abroad’, *The Jakarta Post*, 10 October 2015, <http://www.thejakartapost.com/news/2015/10/10/281-indonesian-migrant-workers-face-death-penalty-abroad.html>

C. Filipino citizens on death row abroad

As of 6 May 2015, there were 92 Filipino citizens on death row, mainly for murder and drug offences, <http://www.rappler.com/nation/92275-filipinos-death-row-abroad-statistics>

D. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, UN Doc A/70/304 (7 August 20125)

‘76. Data suggest that foreign nationals, including migrant workers, especially from Asia and Africa, remain disproportionately affected by the death penalty in several

² Amnesty International, “Death Sentences and Executions 2013” (AI Index: ACT 50/001/2014)

States. In Malaysia, death sentences have recently been issued against at least 37 foreign nationals, mostly for drug offences, and at least 250 Malaysians are under sentence of death abroad for drug offences. In Saudi Arabia, at least 33 foreign nationals were executed in the first half of 2015 alone.

77. In Indonesia, many foreign nationals are among the at least 149 persons convicted of drug-related offences who are reportedly on death row. Moreover, 247 Indonesians are on death row in other countries. In the United Arab Emirates, foreign nationals accounted for the largest number of people receiving death sentences in 2014, including nationals of Afghanistan, Bangladesh, Egypt, India, Kuwait, Pakistan and Saudi Arabia. In the Islamic Republic of Iran, a large number of foreign nationals are on death row for drug crimes, including at least 1,200 Afghans. In the United States of America, a total of 139 individuals, representing 36 nationalities, are under sentences of death. Some 125 Filipino migrant workers are also on death row abroad. Seventy-five British nationals are facing execution abroad for offences including murder, drugs, terrorism and blasphemy. Nearly 120 Nigerians are facing the death penalty in China, more than 170 in Indonesia, Thailand, Malaysia and Viet Nam and 5 in Qatar, the United Arab Emirates and Saudi Arabia.' (footnotes omitted)