



Australian Government
Attorney-General's Department
**Criminal Justice Policy
and Programmes Division**

16/4194

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The Hon Stuart Robert MP, Chair
Joint Standing Committee on Treaties
Parliament House
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Dear Chair

Thank you for the opportunity to appear before the Committee on Thursday, 24 November 2016, as part of the Committee's consideration of the *Treaty on Extradition between Australia and the People's Republic of China*. I undertook to respond to three questions on notice. I have set out additional information in response to each of those questions below to the extent possible in the time available.

Mr Josh Wilson MP: What other countries have extradition treaties with China?

The Australian Government understands that China has bilateral extradition treaties with a number of countries *including* Spain, Italy, France, Brazil, Portugal, Romania, Cambodia, Mexico, South Africa, Pakistan, Philippines, Indonesia, Peru, Lithuania, Russia and Laos.

Mr Josh Wilson MP: Are there any countries with which Australia has bilateral extradition treaties for which the number of death sentences imposed and the number of executions carried out in any given year is unclear?

Australia has bilateral extradition treaties with a number of countries that retain the death penalty, namely: Indonesia, India, Malaysia, the United Arab Emirates, the United States of America, Vietnam, Brazil, Chile, Israel and the Republic of Korea. For a number of these countries definitive data on death penalty sentences and executions is not available.

Amnesty International's Global Report on Death Sentences and Executions in 2015 notes that the number of executions carried out by, and death sentences imposed in, Vietnam and Malaysia was unclear. The Report also notes that while the number of executions carried out by India and Indonesia was clear, the number of death sentences imposed was unclear.

As noted in my evidence to the Committee, both the Treaty and the *Extradition Act 1988* contain a mandatory ground for refusal of surrender where a person sought for extradition will face the death penalty. Death penalty undertakings are a recognised feature of extradition practice. It is the Australian Government's longstanding experience that undertakings in relation to the death penalty in extradition cases are honoured.

Senator McAllister: Can the Department confirm why the term 'unjust and oppressive' is not used in the Treaty?

Bilateral treaty negotiations are entered into on a confidential basis and as such any records are confidential between both parties. Treaty negotiation inherently involves bilateral discourse and agreement; as a result, no two treaties will be exactly the same.

The Australian Government's position is that the discretionary grounds in the Treaty and the Act, either alone or in combination, permit consideration as to whether surrender would be unjust or oppressive in a specific case.

I trust these responses will assist the Committee with its consideration of the Treaty.

Yours sincerely

Anna Harmer
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