

## **ASIAN REGIONAL CONGRESS ON THE DEATH PENALTY**

Address by Australian Deputy High Commissioner, Angela Macdonald

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It is an honour for Australia to support the second Regional Congress on the Death Penalty.

Thank you for the opportunity to speak. And thank you to Ensemble Contre la Peine de Mort (Together Against the Death Penalty), Anti-Death Penalty Asia Network, the Human Rights Commission of Malaysia and the Bar Council of Malaysia for organising this important Congress.

This is the first time that the Regional Congress has been held in Asia.

Of the 20 countries where executions occurred in 2014, nearly half were in Asia.

So this Congress represents a significant opportunity for all of us in this part of the world. It provides a forum to discuss, in a regional context, how best to work towards abolition of the death penalty.

And for participants over the next two days to consider, develop and refine specific regional strategies to advance the cause of abolition of the death penalty.

We acknowledge and pay tribute to civil society organisations and advocates, who play an absolutely critical role in campaigning against the death penalty. You work tirelessly at both the grassroots and with the highest levels of government to drive support for this change through action, advocacy and education.

By our presence here, we also acknowledge the critical role of governments and international organisations in continuing to make the case - sometimes quietly, sometimes discreetly, often in public fora such as this - for abolition of the death penalty.

Australia has long actively advanced human rights on the international stage.

We have built a reputation for practical, sensible and pro-active action across a wide range of human rights issues, and this includes being a strong and consistent voice against the use of the death penalty in all circumstances.

We consider the death penalty to be an inhumane form of punishment.

Any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable. There are too many cases - because Australia believes even one is too many - of those who were given the death penalty, but subsequently

found to be innocent. And no state, no institution, no judiciary is so perfect that we can guarantee there will never be such failures.

And Australia believes there is no conclusive evidence as to the so-called deterrent value of the death penalty. In fact, there is an extensive body of international research that disproves any suggestion that the death penalty has a deterrent effect on crime.

We of course recognise that those who commit serious crimes need to pay for their crimes. Society does - and rightly should - demand that those convicted pay a legitimate price for their crimes. But they should not need to pay with their lives. They should pay with appropriately lengthy jail sentences.

Because Australia believes in not only the possibility of rehabilitation of people who have committed crimes, but the positive transformative effect such rehabilitation can have on other individuals, families and communities. Rehabilitation is key.

Often, there is wisdom and insight that comes from having made mistakes and then learning from them. And those people are messengers for others who may stray into making mistakes, or committing crimes.

Others have mentioned the 29 April executions in Indonesia. Two Australian citizens, Andrew Chan and Myuran Sukumaran, were among those who were killed by firing squad.

In seeking a stay of execution, the Australian Government of course acknowledged the serious drug smuggling crimes for which Andrew and Myuran were convicted, and the gravity of the nature of these crimes.

But both men were deeply and sincerely remorseful for their actions; for shocking mistakes they had made. Both men made extraordinary efforts to rehabilitate themselves during their time in prison.

Successive Governors of Kerobokan Prison in Bali - the prison that gave Andrew and Myuran the time and opportunity to reflect on their actions - testified to their remarkable transformation.

A decade on from their crimes, Andrew and Myuran were changed men, committed to a new path.

As Australian Foreign Minister Julie Bishop said, they became the model of what penal systems the world over long to achieve.

By the time they died, so many across our nation were mourning their loss, a remarkable testament to the power of rehabilitation and change, and recognition of the wisdom that can be gained through failure and growth.

For all these reasons - that the punishment is inhumane; that there is always the risk an innocent person will be condemned; that there is no deterrent value in the death penalty; that we must acknowledge the possibility of rehabilitation and the chance for

a person to become a better person and model a better life - Australia supports the universal abolition of the death penalty.

Australia confirmed its opposition to the death penalty by ratifying, in 1990, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

And there are heartening examples of jurisdictions which have recently abolished the death penalty.

Nebraska in the United States is set to become the 19<sup>th</sup> state to ban capital punishment and the first conservative state to do so in more than 40 years. In the past six years, New Mexico, Connecticut, Illinois and Maryland have all abolished the death penalty.

And in our region, Fiji abolished the death penalty in February this year.

The punishment had been removed for ordinary crimes in 1979, but the last remaining vestige – to retain it for military crimes – was removed by a strong majority vote by the Fijian parliament in an historic day for the island nation.

Fiji's repeal of the death penalty will hopefully trigger moves towards abolition elsewhere in the Pacific region.

The path to abolition may not always be politically or legislatively easy. We recognise that for some, the most effective way to progress this issue is through a staged approach over time.

Australia has long urged countries that maintain capital punishment as part of their law to cease executions and establish a moratorium on the use of the death penalty.

At the United Nations, Australia is a lead sponsor of the biennial General Assembly resolution which calls for an immediate moratorium on executions as a first step towards the universal abolition of the death penalty.

UNGA resolutions don't always make the easiest reading, but let me pick out some key features of this resolution. Nations agreed they were "convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights".

Nations welcomed the steps taken by states to reduce the number of offences for which the death penalty may be imposed; welcomed steps taken to limit its application and welcomed the decisions made by an increasing number of states to apply a moratorium on executions, followed in many cases by abolition of the death penalty.

While not binding, this resolution sends a powerful message that the majority of the world's nations are not only committed to the abolition of the death penalty within their own jurisdictions, but are also committed to the abolition of the death penalty beyond their borders.

Two previous attempts at a General Assembly resolution of this kind had failed but this time, despite concerted lobbying by certain countries which retain the death penalty, more than half the General Assembly was prepared to vote in favour. In December last year, the resolution was passed with a record 117 votes in favour.

Implementing moratoria on use of the death penalty is an important step on the path to eventual abolition.

We can also continue working, with our partners, towards ending the mandatory application of the death penalty, which runs contrary to a fundamental principle of the rule of law – that of judicial independence.

It should be at the discretion of judges as to the most appropriate penalty, taking into account the personal circumstances of each litigant individually, and the specific circumstances of each alleged crime.

While there has been significant progress toward abolition in recent decades, we cannot let this progress blind us to the serious challenges that remain, particularly in our region. Implementing moratoria against the use of the death penalty and removing its mandatory application can be steps towards universal abolition.

We look forward to hearing the discussion over the next two days.

We look forward to learning from your diverse views and experiences as to how we might best enhance our collective efforts into the future.

Our resolve must be strong and constant. We must be factual and logical in our arguments.

And we must be prepared to stand up for principle, even in uncomfortable situations – for to oppose the death penalty in principle and practice means we must oppose its use in all circumstances, full stop, no matter what the crime.

Australia stands ready to work with you, and to continuing to advocate the case for change through every available avenue.

I wish you a very productive Congress.