

## 2015/08: The Bali duo: should Indonesia execute foreign nationals convicted of drug smuggling?

### What they said...

*'Jokowi is seen as pursuing populism to strengthen his position with the legislature'*

Barry Jones, Professorial Fellow at University of Melbourne

*'There's no forgiveness for drug dealers'*

President Joko Widodo

### The issue at a glance

On April 25, 2015, Andrew Chan and Myuran Sukumaran, two Australians convicted of drug trafficking in Indonesia, were told that they could be executed within 72 hours.

The two were part of a group, generally known as the Bali Nine, who arrested on 17 April 2005 in Denpasar, Bali, Indonesia, for planning to smuggle 8.3 kg of heroin valued at around A\$4 million (3.1 million from Indonesia to Australia). In February 2006 Chan and Sukumaran, as the group ringleaders, were sentenced to death by firing squad. Despite appeals against their sentences and an appeal to the Indonesian president, Joko Widodo, for clemency, the executions appear likely to go ahead.

There have been representations made on behalf of the two men from the Australian Prime Minister, Tony Abbott, the Australian foreign minister, Julie Bishop, and many others to have the men be granted clemency. Each man is acknowledged to have made remarkable changes in his life while in prison, with one now an artist and the other a pastor. The men's impending deaths have raised major questions about the value of the death penalty and the limits of diplomacy. It has also provoked debate about the fate of foreign nationals at the hands of criminal justice systems overseas.

### Background

The Bali Nine is the name given to a group of nine Australians arrested on 17 April 2005 in Denpasar, Bali, Indonesia, for planning to smuggle 8.3 kg (18 lb) of heroin valued at around A\$4 million (3.1 million US dollars) from Indonesia to Australia. Andrew Chan, Si Yi Chen, Michael Czugaj, Renae Lawrence, Tan Duc Thanh Nguyen, Matthew Norman, Scott Rush, Martin Stephens and Myuran Sukumaran, faced the death penalty or life in prison if convicted.

On 13 February 2006, Lawrence and Rush, the first of the nine to face sentencing, were sentenced to life imprisonment. The next day, Czugaj and Stephens were sentenced to life imprisonment, and the group ringleaders, Chan and Sukumaran, were sentenced to death by firing squad, the first ever death sentences imposed by the Denpasar District Court. The other three, Norman, Chen and Nguyen were all sentenced to life imprisonment on 15 February 2006. On 26 April 2006, Lawrence, Nguyen, Chen, and Norman appealed and had their sentences reduced to 20 years, while the life sentences for Czugaj and Stephens were upheld. Prosecutors launched appeals against the changes in their sentences. On 6 September 2006, it was revealed that as a result of appeals brought by prosecutors and heard by the Supreme Court, Chen had the death penalty reimposed after his reduced sentence of life imprisonment was overturned. Rush, Nguyen and Norman also had their appeal verdicts overturned and the death penalty imposed. The new death sentences were unexpected. Prosecutors, in their appeals against the 20-year terms faced by most of the nine, had only called for them to be upgraded to life imprisonment. Czugaj's life sentence, after being reduced to 20 years on appeal, was reinstated. Stephens' life sentence was upheld on appeal as were Sukumaran's and Chan's death sentences. Lawrence had not lodged a further appeal to her 20-year sentence, so her sentence was not rejudged.

On 6 March 2008, it was revealed that three of the four Bali 9 (Norman, Chen and Nguyen) who were issued death sentences on appeal had their sentences reduced to life imprisonment. The reduction has not been officially announced but court sources have confirmed that the judges have decided to spare their lives. In August 2010, Rush launched his final appeal to overturn the death penalty, and was granted a judicial review, which commenced on 18 August 2010. On 10 May 2011, Rush's appeal was successful as his sentence was reduced to life imprisonment. On 21 September 2010, the leaders of the drug smuggling ring, Chan and Sukumaran appealed against their pending death-row sentence and to reduce their jail time to 20 years, instead of the previous life sentence. On 17 June 2011, it was announced that Chan's final judicial appeal was rejected on 10 May. On 7 July 2011 it was announced that Sukumaran's final judicial appeal was dismissed. On 10 December 2014, the President of Indonesia Joko Widodo stated in a speech that he will not approve any clemencies for drug offences. On 30 December, Sukumaran's plea for clemency was rejected; and Chan's plea for clemency was rejected on 22 January 2015. Both Sukumaran and Chan are currently in Kerobokan Prison awaiting the completion of their sentence via execution, having exhausted all appeal opportunities.

In January 2015 Australia's prime minister, Tony Abbott, together with Australia's minister for foreign affairs, Julie Bishop, made representations to Jokowi and Indonesia's foreign minister, Retno Marsudi, for clemency in the commutation of Sukumaran and Chan's sentences.

Sukumaran and Chan were expected to be executed on the Indonesian penal island of Nusa Kambangan by the end of March 2015. Together with consular officials from France, Brazil, Nigeria and the Philippines, representatives from the Australian embassy attended a foreign affairs ministry briefing on procedural matters concerning the executions.

### Internet information

On March 11, 2015, The Conversation published a comment from Barry Jones, Professorial Fellow at University of Melbourne, titled 'Barry Jones: The deep bilateral hypocrisy on the death penalty'

The opinion piece criticises the populist and prejudiced attitudes adopted toward capital punishment in both Australia and Indonesia.

The full text can be accessed at <http://theconversation.com/barry-jones-the-deep-bilateral-hypocrisy-on-the-death-penalty-38650>

On March 3, 2015, The Diplomat published an opinion piece by Nithin Coca titled 'Indonesia's Death Penalty Hypocrisy' The article criticises the differential manner in which the Indonesian government views and applies the death penalty.

The full text can be accessed at <http://thediplomat.com/2015/03/indonesias-death-penalty-hypocrisy/>

On February 26, 2015, The Conversation published an opinion piece by Bharat Malkani, Lecturer, Birmingham Law School at University of Birmingham, titled 'Indonesia is wrong: the death penalty is everyone's business'

The full text of this article can be accessed at <http://theconversation.com/indonesia-is-wrong-the-death-penalty-is-everyones-business-37992>

On February 18, 2015, New Matilda published an opinion piece by Muhammad Zulfikar Rakhmat and Mediaa Wahyudi Askar titled 'An Indonesian Perspective: Australia Must Respect Our Penalty For Drug Trafficking'

The full text can be accessed at <https://newmatilda.com/2015/02/18/indonesian-perspective-australia-must-respect-our-penalty-drug-trafficking>

On February 18, 2015, The Age published an analysis and opinion piece titled 'Indonesia's imposition of the death penalty for drug crimes breaches its international obligations'

The article argues that imposing the death penalty on drug smugglers puts Indonesia in violation of international law.

The full text can be accessed at <http://www.theage.com.au/comment/indonesias-imposition-of-the-death-penalty-for-drug-crimes-breaches-its-international-obligations-20150217-13gqo5.html>

On February 16, 2015, The Conversation published an opinion piece by Asmin Fransiska, Lecturer in Human Rights at Atma Jaya Catholic University of Indonesia, titled 'Jokowi should halt executions under Indonesia's corrupt judicial system,

The full text of this article can be accessed at <http://theconversation.com/jokowi-should-halt-executions-under-indonesias-corrupt-judicial-system-37463>

On February 6, 2015, Perth Now published two comments titled 'Death row duo: what should we do? Tom Percy and Joe Spagnolo give both sides of the Bali Nine debate'

The full text of these comments can be accessed at <http://www.perthnow.com.au/news/opinion/death-row-duo-what-should-we-do-tom-percy-and-joe-spagnolo-give-both-sides-of-the-bali-nine-debate/story-fnhocuug-1227209575010>

On February 5, 2015, The Conversation published an opinion piece by Claudia Stoicescu, PhD Candidate in Social Intervention at University of Oxford, titled 'Indonesia uses faulty stats on "drug crisis" to justify death penalty'

The full text of this article can be accessed at <http://theconversation.com/indonesia-uses-faulty-stats-on-drug-crisis-to-justify-death-penalty-36512>

On January 31, 2015, The Northern Territory News published a comment by Maria Billias titled 'Do Myuran Sukumaran and Andrew Chan deserve to die, asks Maria Billias'

The full text of this article can be accessed at <http://www.ntnews.com.au/news/opinion/do-myuran-sukumaran-and-andrew-chan-deserve-to-die-asks-maria-billias/story-fnk0b216-1227203113411>

On January 28, 2015, The Daily Mail published a report titled 'No mercy: Derryn Hinch says Bali Nine drug smugglers SHOULD be executed and slams celebrities who star in video calling for them to be spared the firing squad as "hypocrites"

The full text can be accessed at <http://www.dailymail.co.uk/news/article-2928336/Derryn-Hinch-slams-celebrities-appear-video-calling-Bali-Nine-pair-spared-execution.html>

On January 24, 2015, The Sydney Morning Herald published an article titled 'Does the death penalty deter drug smugglers?'

The report gives a detailed overview of the history of the case and gives background from Australia and Indonesia.

The full text can be accessed at <http://www.smh.com.au/world/does-the-death-penalty-deter-drug-smugglers-20150123-12wby2.html>

On January 18, 2015, The Courier Mail published a comment by Caroline Marcus titled 'The Bali Nine ringleaders traded

in death by smuggling heroin and now must face the consequences'

The full text of this comment can be accessed at <http://www.couriermail.com.au/news/opinion/opinion-the-bali-nine-ringleaders-traded-in-death-by-smuggling-heroin-and-now-must-face-the-consequences/story-fnihsr9v-1227188153470>

### **Arguments in favour of the execution of foreign nationals convicted of drug smuggling in Indonesia**

1. The Indonesian government, justice system and the Indonesian populace support the death penalty for drug smugglers

Indonesian government officials have expressed their faith in capital punishment as a deterrent for drug smuggling.

The Indonesian Attorney-General, H.M. Prasetyo, has claimed that capital punishment is needed to 'save the nation'. Mr Prasetyo has stated, 'We need to wage war and of course we can't compromise. There is no forgiveness for narcotics criminals. [Implementation of the death penalty] provides a deterrent effect.'

Claims that Indonesia is in violation of international law by using the death penalty against drug smugglers have been disputed. According to the International Covenant on Civil and Political Rights, execution can be applied in cases involving serious crimes. However, an opinion piece by Muhammad Zulfikar Rakhmat and Mediaa Wahyudi Askar, published in New Matilda on February 18, 2015, states, 'There seems to be no exact definition of what "serious crimes" are. The majority of western countries believe that trafficking drugs is not something that falls into that category.

On the other hand - for countries such as Singapore, China, Vietnam, and Indonesia - drug smuggling is considered an horrendous crime. Indeed, Singapore has the strictest death penalty against those in the drug trade.'

Muhammad Zulfikar Rakhmat and Mediaa Wahyudi Askar argue that different jurisdictions have different attitudes to combating the drug problem and to the circumstances under which capital punishment should be applied. The two authors maintain, '[T]he majority of drug users in Indonesia are students, with numbers reaching 75 per cent of total drug users. This reality should be enough to be a catalyst for the Indonesian government to implement the death penalty as one of the ways to reduce drug trafficking in Indonesia.'

According to this argument, the Indonesian government has been moved to take the strongest action against drug smugglers in order to protect the nation's youth.

It has also been noted that Indonesian public opinion supports the death penalty. In an article published in the Jakarta Post on January 23, 2015, it was noted, 'Public opinion in Indonesia is still overwhelmingly in favour of retaining capital punishment, certainly for the most heinous crimes, including drug trafficking, which is rampant in this country and has such deadly effects.'

2. Indonesia faces a growing drug problem

In Indonesia the issue of drugs is a growing problem. The United Nations' Office on Drugs and Crime's Country Manager, Troel Vesters, recently declared Indonesia as one of the pathways in the global drug trafficking trade. Vesters noted that Indonesia is being used as a major hub for drug trafficking by transnational organised crime groups in an effort to meet the current or possible demand of a large, young population and a correspondingly large market for drugs.

Vesters stated, 'It is estimated that there were 3.7 million to 4.7 million drug users in Indonesia in 2011. About 1.2 million of them used crystalline methamphetamine and 950,000 consumed ecstasy. By comparison, there were an estimated 2.8 million cannabis users and roughly 110,000 heroin addicts.'

Indonesia's National Narcotics Board (BNN) estimates there are currently 5.6 million drug users in the country and it is further estimated that every day an average of 50 people die from drugs.

An article published in 2014 in the Journal of Economics and Sustainable Development stated, 'Indonesia is one of the seven largest drugs consumers in the world [and] is known as a [sic] number one producer of ecstasy in the world.'

In an article published in The Jakarta Post on February 29, 2012, it was noted that a report published by the International Narcotics Control Board (an independent monitoring group linked with the United Nations) suggested that Indonesia could become the major producer of ecstasy in East and Southeast Asia.

Troel Vesters has also noted the increasing manufacture of methamphetamines in Indonesia. Vesters has stated, 'ATS (Amphetamine-type stimulants) is the most trafficked drug in Indonesia. A decade ago, most of the crystalline methamphetamine seized in Indonesia originated from China (including Hong Kong), the Philippines and Thailand. At present, however, most ATS is supplied by domestic manufacturers, with remaining quantities continuing to be trafficked into Indonesia by transnational criminal networks.'

3. Indonesia objects to interference in questions of national sovereignty

Indonesia tends to regard attempts to challenge its application of the death penalty as an infringement of its national sovereignty.

The central argument it offers is that crimes committed in Indonesia, irrespective of the nationality of the perpetrator, must receive the penalty that Indonesian law dictates. Any attempt to circumvent this process is seen as a challenge to Indonesian law and by extension an attack on national sovereignty.

Indonesian President Joko Widodo has stated that '[T]here shouldn't be any intervention towards the death penalty because it is our sovereign right to exercise our law.'

In an article published in the Jakarta Globe on January 23, 2015, Astari Anjani and Dimas Muhamad stated, 'Other countries whose citizens are convicted can raise their objection, but the final verdict rests with the country where the prosecution takes place. Indonesia is fighting tooth and nail to protect its citizens abroad, but we do so in conformity with local laws. And when a verdict is handed down, we respect this decision even if we disagree. After all: when in Rome, do

as the Romans do.'

Anjani and Muhamad concluded, '[W]hen all is said and done, every country has the sovereign right to prosecute criminals in accordance with its national laws...'

An opinion piece by Muhammad Zulfikar Rakhmat and Mediaa Wahyudi Askar, published in New Matilda on February 18, 2015, argues similarly, 'Australia should respect the Indonesian government's decision to implement the death penalty over drug cases. Canberra must not ignore the philosophical and sociological differences between the two countries.'

#### 4. Indonesia sees foreign objections to the death penalty as hypocritical

Indonesian officials and social commentators have argued that Australia's position on the death penalty is hypocritical. This claim is made primarily with regard to the execution of terrorists involved in the Bali bombings, whose deaths Australian authorities appeared to support.

An opinion piece by Muhammad Zulfikar Rakhmat and Mediaa Wahyudi Askar, published in New Matilda on February 18, 2015 stated, 'Australia's stance on the Bali Nine death row appears to be very problematic given that previously the government insisted Indonesia implement the death penalty over convicted Bali bombing terrorists.'

The same claim has been made by commentators within Australia. In an opinion piece published in The Conversation on March 11, 2015, Barry Jones, Professorial Fellow at University of Melbourne, stated, 'Australia has been monumentally hypocritical on the death penalty abroad...'

In the case of the execution of three of the "Bali bombers" ... Kevin Rudd and John Howard both gave explicit support for it to happen, and Stephen Smith a more nuanced version. Simon Crean, as Labor leader, was equivocal, but Mark Latham was more supportive.'

Professor Tim Lindsey from Melbourne University's Centre for Indonesian Law, Islam, and Society has highlighted the effect of this apparent double standard.

In an interview given on the ABC's Late Night Live on February 23, 2015, Lindsey stated, 'Both John Howard and Kevin Rudd at different times indicated support for the execution of the Bali bombers, and I think John Howard in fact called it appropriate at one stage.'

Indonesian officials quite early on in efforts to spare Andrew Chan and Myuran Sukumaran's execution threw this back in the face of Australians.

This is a theme running through the whole of this debate: we have double standards.

We don't mind Indonesia executing the Bali bombers, but we object to it for our citizens...'

#### 5. Foreign nationals are aware of the penalty they face for drug smuggling

A number of commentators have argued that any foreign national who goes to Indonesia knows that the country imposes serious penalties on drug smugglers and dealers. The implication to be drawn from this is that if smugglers and dealers knowingly risk execution, they cannot expect clemency if caught.

In an article published in Perth Now on February 6, 2015, Joe Spagnolo, The Sunday Times political editor, stated, 'When you arrive in Bali you are under no illusions that if you intend to bring drugs into the popular tourist spot or plan to smuggle drugs out, you will be in serious, serious trouble.'

Spagnolo explained further, 'It's not like we, in Australia, are ignorant of the fact that in Bali you either rot in jail for drug crimes or end up before a firing squad.'

Spagnolo argues that Australians who knowingly break the laws of another country should be prepared to accept the consequences of their actions. He states, 'As a nation we are quick to demand that anyone coming to Australia abide by the rules and laws of this country. Yet we seem quick to criticise another country's rules when they appear too tough. Should we not abide by the rules of Bali when we slap on our sun screen and put on our boardies on our annual visits to this popular tourist destination? And should we not be prepared to wear the consequences of our actions?'

Media personality, Derryn Hinch, has similarly argued that those who smuggle drugs in or out of Indonesia should be aware of the penalties those actions bring with them. Mr Hinch has stated, 'It's the same in China, in Malaysia, in Thailand, in Vietnam; that's the risk you run.'

Northern Territory News commentator Maria Billias has stated that Chan and Sukumaran knowingly took the risk involved in smuggling heroin out of Indonesia. Billias has stated, '10 years ago...they thought it a good decision, along with seven others, to strap on 8.3kg of heroin and try to smuggle it into Australia...'

They were also arrogant enough to think they wouldn't get caught.'

Billias went on to note, 'Ultimately Sukumaran and Chan knew they were dicing with their lives. These countries are not subtle in their messaging, particularly when you disembark a plane and are met with confronting messaging of the death penalty at every turn of the terminal.'

### **Arguments against the execution of foreign nationals convicted of drug smuggling in Indonesia**

#### 1. The extent of the Indonesian drug problem has been exaggerated

It has been claimed that Indonesia has overstated the extent of its drugs crisis in its justification of imposing the death penalty on drug traffickers.

In an opinion piece published in The Conversation on February 5, 2015, Claudia Stoicescu, PhD Candidate in Social Intervention at the University of Oxford, stated, 'Indonesian President Joko Widodo's claim of a national drug "emergency" that necessitates the death penalty for drug crimes is based on questionable statistics.'

Stoicescu went on to claim, 'The figures quoted by the president and parroted by national officials and media outlets are

based on studies with questionable methods and vague measures.

Government advisers cherry-picked the figures to lend credibility to a "national emergency" and ultimately justify an ineffective but politically convenient policy.'

Stoicescu has examined the key claims made in relation to Indonesia's drug emergency and finds them questionable. She states, 'The 40 to 50 young people said to be dying each day because of drug use is ... problematic. These figures come from [a] seven-year-old study by the Centre for Health Research and BNN...

To determine the rate of drug deaths in the general population, the researchers surveyed 2,143 people selected from population groups such as students, workers and general households. They asked how many of their friends use drugs, and among these, how many of their friends died "because of drugs" in the last year before the survey...

Since Indonesia does not collect reliable statistics on drug overdose, it is not clear what "dying because of drugs" means in the context of this survey.'

Scepticism about the quality of the data Indonesian authorities are using to claim that a drug crisis exists has been expressed within Indonesia itself.

Mr Haris Azhar, coordinator for human rights group Kontras, has stated, 'Talk about a drugs emergency is cheap - can we see actual proof of this? The authorities need to justify data they keep repeating.'

## 2. Capital punishment is not an effective deterrent

Opponents of capital punishment generally argue that it does not act as an effective deterrent to bring about the prevention of crime as most criminals either act spontaneously or do not believe they will be caught and punished.

John Ryan, the chief executive officer of the drug research and advocacy organisation The Pennington Institute has stated, 'The scale of people who get caught drug trafficking and the scale of the drug market proves most people think they will get away with it and are prepared to play Russian roulette.'

Jeffrey Fagan, Professor of Law and Public Health at Columbia University, has argued that drug offenders are prone to 'hyperdiscounting'. Professor Fagan has stated, 'Their reasoning in the face of threats of harsh punishment is skewed.' A study of the experience of Singapore, Malaysia and Indonesia between 1999 and 2005, a time when Singapore and Malaysia were executing heavily and Indonesia was not, shows that drugs were significantly cheaper in Singapore and Malaysia, indicating that despite the death penalty drugs were in ready supply. Further, drug use remained more prevalent in Singapore than Indonesia.

Professor Fagan has stated, 'During this era [1999 to 2005], 73 persons were executed in Singapore [including more than half who were drug offenders], compared to two in Indonesia. Yet drug trafficking was increasing and drug prices were lower in Singapore.'

It has also been claimed that capital punishment will not act as an effective deterrent because it is not being applied to the key figures in the drug trade.

Dave McRae, a senior research fellow at the University of Melbourne, has suggested that the focus of a counter-narcotics strategy should be on high-level members of drug syndicates.

McRae has claimed of those facing death in Indonesia, 'On face value they look like couriers or lower-level players. It is difficult to imagine high-level members of drug syndicates would be in direct possession of narcotics.'

## 3. The Indonesian criminal justice system is corrupt

It has been argued that the Indonesian criminal justice system is corrupt and therefore not an appropriate agency to determine whether individuals live or die.

Numerous instances have been cited of individuals charged and convicted of capital offences whose cases were distorted by official corruption.

In an opinion piece published in *The Conversation* on February 16, 2015, Asmin Fransiska

Lecturer in Human Rights at Atma Jaya Catholic University of Indonesia refers to another of such instances.

For example, in 2013, a European national was arrested for drug offences. During police investigations, he was assisted by at least three different lawyers, all of whom only had interest in his money. The lawyers extorted money from him.

From the investigations up to the court hearings, the defendant was not assisted with a proper legal defence. The court sentenced him to death without him having meaningful legal assistance.

Asmin Fransiska concludes, '[T]hat these cases exist and human lives are at stake in the face of corruption and unfair trials means that a closer examination of all death penalty cases in Indonesia is a must.'

Corruption has been alleged in the cases of Andrew Chan and Myuran Sukumaran. A former lawyer of Andrew Chan and Myuran Sukumaran has outlined explosive allegations of corruption by the judges that sentenced the Bali nine duo to death, saying they asked for more than \$130,000 to give them a prison term of less than 20 years.

Bali-based attorney Muhammad Rifan has claimed that a deal fell through after the judges later told him they had been ordered by senior legal and government members in Jakarta to impose a death penalty.

The judges, it is alleged, then asked for an even greater sum for a lighter sentence, money Mr Rifan did not have.

Australia's Foreign Affairs Minister, Julie Bishop, has stated that such allegations 'call into doubt the integrity of the process.'

## 4. Indonesia's position on capital punishment is inconsistent

It has been argued that Indonesia's position on capital punishment is inconsistent.

The Indonesian government campaigns vigorously to have the sentences of its citizens facing execution overseas commuted.

On February 23, 2015, Matt O'Neill of the ABC's Late Night Live explained, 'This is partly because many of those condemned to death row in countries such as Saudi Arabia and Malaysia are housemaids who have been charged with murdering their abusive employers. Such cases have attracted considerable interest and sympathy back home.; O'Neill further noted that the Indonesian government also defends its citizens charged with offences similar to those of which Andrew Chan and Myuran Sukumaran have been convicted.

O'Neill stated, 'However, there are also Indonesian drug smugglers facing capital punishment overseas, and Indonesia's recently elected president Joko Widodo has been working hard to save them from execution as well.'

There are those who have suggested that Joko Widodo is seeking political advantage in both situations.

In an opinion piece published in *The Conversation* on March 11, 2015, Barry Jones, Professorial Fellow at University of Melbourne, stated, 'Jokowi is seen as pursuing populism to strengthen his position with the legislature: It is popular to save Indonesians from execution in foreign jurisdictions; It is popular to execute foreigners in Indonesia.'

It is claimed that the inconsistencies in the Indonesian position indicate that neither the positions taken in support of capital punishment or against are taken as a matter of principle. Rather, it is claimed, these positions have been adopted by the President because he believes they will give him a political advantage.

#### 5. Indonesia is in breach of international law

It has been repeatedly argued that Indonesia's imposition of the death penalty for drug trafficking is at odds with its obligations under international law.

In an opinion piece published in *The Age* on February 18, 2015, Donald Rothwell stated, 'Irrespective of what Indonesian law may say on the matter, and irrespective of the imposition of the death penalty in some countries for the most serious categories of murder, the imposition of capital punishment for drug crimes is not permissible under international law to which Indonesia is subject.'

The 1966 International Covenant on Civil and Political Rights, which Indonesia joined in 2006, is the most significant treaty. Article 6 (2) states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime."

Indonesian authorities argue that each jurisdiction is entitled to determine what it regards as the 'most serious crimes'; however, various authorities contend that there is no freedom for wide interpretation.

In 1982 the United Nations Human Rights Committee emphasised that the right to life is not to be interpreted narrowly. With particular reference to the death penalty, the committee emphasised once more that states 'are obliged to limit its use and, in particular, to abolish it for other than the most serious crimes'. The expression 'most serious crimes' was 'restrictively to mean that the death penalty should be a quite exceptional measure'.

It has been vigorously disputed as to whether drug trafficking can be regarded as a 'most serious crime' under these terms.

It has also been noted that the cavalier manner in which appeals for clemency have been rejected is also contrary to Indonesia's international obligations.

In an opinion piece published in *The Conversation* on February 16, 2015, Asmin Fransiska, Lecturer in Human Rights at Atma Jaya Catholic University of Indonesia stated, 'Jokowi's blanket rejection is a blatant violation of Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a state party. It states that "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence".' On December 9, 2015, President Joko Widodo said he would not give clemency to 64 narcotics convicts on death row. The President had stated, 'There's no forgiveness for drug dealers.' Critics have claimed that Andrew Chan and Myuran Sukumaran's clemency appeals were never given due consideration.

#### Further implications

If Australia is to affect the use of capital punishment against its nationals convicted in other countries then a consistent opposition is required. Both Indonesia and Australia have taken an inconsistent stance on the issue. The difference, however, is that Australia does not sanction the death penalty in any of its territories. It is therefore appropriate that it should not endorse its use anywhere.

It is concerning, as numerous commentators have noted, that two Australian prime ministers supported the execution of some of the leaders of the Bali bombing terrorist attack. This can be read as Australia wanting those who kill its citizens put to death while its citizens should not be executed.

The debate cannot be conducted in such jingoistic terms. This is the claim that has been made in relation to Indonesia - that it attempts to protect its citizens convicted of crimes committed overseas yet executes the citizens of other countries for crimes committed within its jurisdiction.

Australia should not attempt to threaten Indonesia into pardoning Australian citizens. It should not make trade agreements or foreign aid dependent on this issue. All such actions do is divert attention from the question of capital punishment itself and entrench opposition based on nationalistic divisions.

Australia should take a lead in opposing capital punishment around the world, including in the United States and China. It should be careful not to endorse anti-terrorist actions that include the use of torture and summary execution.

Regarding the particular case of Australian drug traffickers threatened with execution in Indonesia, Australia needs to continue its collaborative actions with Indonesia to combat the drug traffic by other means.

On this point, it is also concerning that the Australian Federal Police (AFP) notified the Indonesian authorities of the Bali Nine as suspected drug carriers. The AFP ensured that the group would be apprehended rather than taking them into custody in Australia. Given that Australia does not extradite people charged with capital offences to countries where the



death penalty is in place the actions of the AFP seem in direct contradiction to Australia's general stance.

### **Newspaper items used in the compilation of this issue outline**

AGE, January 30, 2015, page 17, comment (photo of last man hanged in Australia, Ronald Ryan) by Brian Morley, 'How Ronald Ryan's hanging changed me forever'.

<http://www.theage.com.au/comment/how-ronald-ryans-hanging-changed-me-forever-20150129-130sw4.html>

AGE, January 27, 2015, page 15, comment by Colin McDonald, 'Death penalty not in Indonesia's best interests'.

<http://www.smh.com.au/comment/death-penalty-at-home-is-not-in-indonesias-best-interests-overseas-20150126-12y4vs.html>

AGE, January 25, 2015, page 28, editorial, 'Executing reformed prisoners is absurd'.

<http://www.theage.com.au/comment/the-age-editorial/executing-reformed-prisoners-is-absurd-20150124-12xk0w.html>

AGE, February 14, 2015, page 35, comment by Martin Flanagan, 'Capital Punishment's horrible power'.

<http://www.theage.com.au/comment/the-horrible-power-of-capital-punishment-20150213-13co1f.html>

AUST, February 13, 2015, page 14, comment by Julie Bishop, 'Myuran, Andrew deserve to live'.

<http://www.theaustralian.com.au/opinion/myuran-andrew-deserve-to-live/story-e6frg6zo-1227217773543>

AUST, February 12, 2015, page 13, editorial, 'Death penalty is at odds with moral basis of law'.

<http://www.theaustralian.com.au/opinion/editorials/death-penalty-is-at-odds-with-moral-basis-of-law/story-e6frg71x-1227216585103>

AGE, February 21, 2015, page 36, background (photos - ref to history of death penalty in Australia, incl hanging of Ronald Ryan) by John Silvester, 'Politics, power and the death penalty'.

<http://www.theage.com.au/victoria/dancing-with-death--politics-power-and-the-death-penalty-vie-with-hypocrisy-20150220-13iziy.html>

AGE, February 20, 2015, page 18, comment by Waleed Aly, 'Fuse lit with rhetorical bomb about Indonesia'.

<http://www.smh.com.au/comment/fuse-lit-with-rhetorical-bomb-about-indonesia-20150219-13irvx.html>

AGE, February 18, 2015, page 45, comment by Donald Rothwell, 'Death penalty for drug trafficking breaches treaty'.

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