

Don't shoot the messengers

By Alexia Hall*

Andrew Chan, Scott Rush and Myrun Sukumaran are all Australians, in their 20s. They are sons, nephews, brothers, friends...they all mean something to somebody.

And they are all convicted drug smugglers sentenced to die by execution in Bali, Indonesia, sometime this year.

The three are convicted heroin traffickers, awaiting the processing of their judicial reviews being conducted on "humanitarian grounds". The reviews are the last chance for a judicial change to their death sentences. If unsuccessful, the very last option is petitioning Indonesia's President Susilo Bambang Yudhoyono – who has never granted a pardon for narcotic-related crimes.

Six years ago, on 17 April 2005, the "Bali Nine" case was born. The Australian Federal Police (AFP) alerted their Indonesian counterparts, the Indonesian National Police (INP), to a suspected heroin smuggling operation. In two letters, on 8 and 12 April, the AFP's liaison officer in Bali, Paul Hunniford, outlined full details of proposed smuggling. He named the alleged ringleader, Andrew Chan, and the 8 April letter said "If you suspect Chan and/or the couriers are carrying drugs at the time of their departure, please take whatever action you deem necessary."

Five were arrested at Bali's Ngurah Rai International Airport. Scott Rush, Renae Lawrence, Martin Stevens and Michael Czugaj were apprehended by customs officials as they tried to leave the airport with 8.3kg of heroin strapped to their bodies underneath baggy clothing. Chan was removed from an Australian Airlines flight bound for Australia, and arrested. He had no drugs on him, but surveillance in Australia and Indonesia had identified him as a ringleader of what would become the 'Bali Nine'.

The remaining four members of the Bali Nine were arrested at Melasti Beach Bungalows, in the Kuta Beach area of Bali, just north of the airport. They were Myuran Sukumaran, Tan Duc Thanh, Si Yi Chen and Matthew Norman. The four young men were due to follow the other five to Sydney with heroin strapped to their bodies, the Bali court was told. There was 350gm of heroin at the Melasti Beach Bungalows, and strapping equipment.

It's now rising six years since the nine young Australians were apprehended in Bali. They are all in Kerobokan Prison on the outskirts of Kuta and have had varying sentences, ranging from 20 years to death, which have fluctuated in length and severity based on varying appeals. Their faces have become known in our living rooms on the TV news.

The term the "Bali Nine" immediately draws a visual image of one or more of Scott Rush, Renae Lawrence, Andrew Chan, Martin Stevens, Michael Czugaj, Myuran Sukumaran, Tan Duc Thanh, Si Yi Chen or Matthew Norman being dragged into a Balinese Court room by correctional officers and the frenzy of media surrounding their trials.

Three of the nine are going to be shot dead.

Jailers will take them from their cell in Death Row Tower in the prison in the middle of the night. Driven to a remote forest, they will be tied to a tree, have a hood placed over their head and an apron draped over their body. On the apron, right where the heart is, there will be a big white cross...so that an Indonesian firing squad has a precise target to violently end their lives.

In the presence of a doctor, government officials and the ten-strong execution squad, in the dead of the night each young Australian's will die a lonely, brutal death.

Some may argue that the death penalty is a well-known potential consequence of any crime involving narcotics in Indonesia, and therefore these three young Australians deserve what they get. Some would ask how it is possible that nine people could be so stupid, particularly when Schapelle Corby, a young Australian woman faced with charges of importing 4.2kg of marijuana to Bali, was herself facing a possible death sentence. I don't defend the stupidity or condone the use of illicit drugs.

What I do defend is the human rights of these three young Australians, and their right to life. They are citizens of a country, a community and a culture which does not endorse or support the death penalty (Australia – that is, the State of Victoria – executed the last convicted criminal, Ronald Ryan, in 1967).

The three are citizens of a country which abolished capital punishment federally with the Death Penalty Abolition Act 1973, and in March 2010 passed more legislation to ensure the death penalty cannot be reintroduced in any state. We are also committed to promoting the abolition of the death penalty internationally: Australia on 2 October 1990 ratified The *Second Optional Protocol to the*

International Covenant on Civil and Political Rights, aiming at the (worldwide) abolition of the death penalty, adopted by the UN General Assembly in 1989.

As Scott Rush, Myuran Sukumaran and Andrew Chan wait for the final and last verdict at the 11th hour, there is a clear platform for Australia and Indonesia to initiate an open dialogue about the abolition of the death penalty. We have a once in a century opportunity to show strong leadership, to be uncompromising and unapologetic about the value Australia places on the right to life of every single one of our citizens: this is our culture, which Indonesia needs to understand, appreciate and acknowledge, just as Indonesia expects us to acknowledge their culture.

The negative and very emotive circumstance of three Australians on death row can act as a catalyst for Australia to make a solid attempt to introduce a uniform human rights standard across the Asia-Pacific region, starting with our close neighbour and friend Indonesia.

Australia is a co-sponsor of A Human Rights Resolution of the United Nations High Commissioner of Human Rights – *The Question Of The Death Penalty* – which promotes the immediate global abolition of the death penalty. *The Question Of The Death Penalty* (UN Doc E/CN.4/RES/2005/59) expresses concern at the continuing use of the death penalty by countries within their domestic penal systems. It invites all nations to abolish the death penalty as an urgent and immediate action and expresses the need for abolition to protect the right to life as outlined in the Universal Declaration of Human Rights.

As a co-sponsor of this resolution, and having voted in favour of the UN General Assembly's resolution calling for a global moratorium on the death penalty on 18 December 2007, Australia has made an international commitment to condemn the use of the death penalty, and promote immediate abolition. The framework for Indonesia's abolishing the death penalty is already there: it need only support the UN's campaigns.

There is no better opportunity for Australia to exert influence than when three of our own fellow citizens are facing a brutal and untimely end to their young lives. The situation allows Australia to engage with Indonesia in discussing alternatives to capital punishment, and stressing the shared values inherent in our founding documents and culture.

The 1945 Constitution of the Republic of Indonesia Article 28A states:

“Every person shall have the right to live and to defend his life and existence.”

In combination with Article 28 I, 1 and 5, it gives human rights guarantees:

1. The rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance.

5. To uphold and protect human rights in accordance with the principles of a democratic and law-based state, the implementation of fundamental human rights is to be guaranteed, regulated, and laid down in laws and regulations.¹

This recognition and guarantee of human rights is consistent with the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948, in particular Article 3 and Article 5 which state:

3. Everyone has the right to life, liberty and security of person.

5. No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.

The history of Australians executed for crimes on foreign soil is a lesson in lost opportunities:

- The last Australian executed was 25-year-old Van Tuong Nguyen, hanged in Singapore on 2 December 2005 for importing heroin.
- In 1993 Michael McAuliffe was hanged in Malaysia after spending eight years in jail, also for importing heroin.
- 1986 saw the then Prime Minister Bob Hawke describe the hanging of convicted heroin smugglers Kevin Barlow and Brian Chambers in Malaysia as “barbaric”.

The men were all criminals, and deserved punishment...but they also deserved and had a right to life. Australia missed these opportunities to begin negotiations and debates with Malaysia and Singapore about the use of the death penalty. We missed the chance show leadership within our region with conviction about human rights, and to stress the value of each life, of every single one of our citizens...and of theirs.

I believe that now, in relation to the three condemned men of the Bali Nine, is a very important time for Australia to start to secure a stable and consistent policy within the Asia-Pacific region in relation to the death penalty. Our government must make it understood in no uncertain terms that we condemn the death penalty for any crime: but we should equally strongly request our neighbours to abolish the death penalty effective immediately.

¹ http://www.humanrights.asia/countries/indonesia/laws/uud1945_en
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As a nation, it is our right to ask that the Indonesian Government commute Scott Rush, Andrew Chan and Myuran Sukumaran's death sentences to life in prison, and to request that the Indonesian Government ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, ultimately abolishing the death penalty from the Indonesian penal system, and binding them under international law not to reintroduce it.

The termination of an unborn baby is illegal in Indonesia, which demonstrates that nation's determination to preserve human life. Australia should help Indonesia to show the same commitment to the right to life for anyone, at any age.

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** Alexia Hall is a dedicated campaigner against the death penalty, working to persuade the Australian Government to campaign actively for its abolition firstly in the Pacific, then throughout Asia also.*



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