“Bali Nine” alleged drug traffickers set up for execution by Australian police

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Prosecution evidence put forward at trials of the “Bali Nine” currently underway in Bali, Indonesia, establishes that the Australian Federal Police (AFP) engaged in a calculated operation to set up the young Australians for execution by firing squad. The police provided Indonesian authorities with detailed information about the alleged drug smugglers’ activities, and encouraged their arrest in Indonesia, despite knowing that this would almost certainly lead to the subsequent imposition of the death penalty.

The AFP has faced mounting scrutiny over its role in the Bali Nine affair. The agency’s cooperation with the Indonesian police has directly contravened the spirit of the mutual assistance treaty enacted by Canberra and Jakarta in 1999, which was widely believed to prevent Australian authorities from facilitating the execution of its own citizens. Capital punishment is illegal within Australia, and under the 1988 Extradition Act, the attorney-general cannot authorise the extradition of an Australian national if the death penalty may be imposed.

The accused were all arrested on April 17, 2005. Four of the group (Renae Lawrence, Martin Stephens, Michael Czugaj, and Scott Rush) were caught at Bali’s Denpasar airport acting as couriers, or “mules”. A total of more than eight kilograms of heroin was found strapped to their bodies. Four others (Tach Duc Thanh Nguyen, Myuran Sukumaran, Si Yi Chen, and Matthew Norman) allegedly connected to the operation were arrested at a Kuta hotel. The alleged organiser, Andrew Chan, was arrested without drugs after boarding a plane bound for Sydney. The accused are aged between 18 and 29.

According to a senior Indonesian prosecutor, Australian police made informal contact with their Indonesian counterparts in late March, almost a month before the nine arrests. On April 8, Paul Hunniford, the AFP’s liaison officer in Bali wrote a three-page letter to the Indonesian police, headed, “Heroin couriers from Bali to Australia, currently in Bali”. Another note was sent on April 12. The letters provided an extraordinary level of detail of the alleged drug traffickers’ movements and plans. The AFP also provided the Indonesian authorities with the passport numbers and photographs of eight of the accused.

“They will be carrying body packs (with white powder) back to Australia, with packs on both legs and also with back supports,” one section of the initial letter read. “They have already been given the back supports. The packs will be strapped to their bodies. They will be given money to exchange for local currency to purchase oversized loose shirts and sandals.” The AFP officer even knew that the alleged couriers would avoid wearing clothes with any metal attachments so as to avoid tripping airport metal detectors, and that they had been advised to quit smoking two weeks prior to the operation in order not to appear anxious after disembarking from their plane in Australia.

Rather than waiting for the suspects to enter Australia where they could be arrested and tried by Australian authorities, the AFP encouraged their arrest in Indonesia. “If you suspect [Andrew] Chan and/or the couriers are carrying drugs at the time of their departure, please take whatever action you deem necessary,” Hunniford wrote to the Indonesian police. He also suggested that the Indonesians take surveillance photographs of the alleged drug smugglers to later assist the prosecution. The AFP officer subsequently observed the Australians’ arrest at Denpasar airport.

Even before the release of the correspondence between the Australian and Indonesian police, the AFP was facing legal action over its role in the Bali Nine affair. The families of two of the accused—Scott Rush and Renae Lawrence—have alleged “denial of procedural fairness”, on the grounds that the father of one of the alleged mules, 19 year-old Rush, tipped off the AFP as to his son’s activities on April 7, two days before he left Australia for Bali. The Australian police did nothing except pass the information on to the Indonesians.

The Howard government failed in its application before the Federal Court to have the families’ claim dismissed, and the hearing is due to begin on November 9. More details of the AFP’s collaboration with the Indonesian police may well emerge in the course of the case.

The families’ application was spurred by their outrage over the role of Australian authorities in the prosecution of their children. Bob Lawrence, father of Renae, expressed his anger against AFP Commissioner Mick Keelty on October 8: “As far as I’m concerned and excuse the expression, he is an [expletive deleted].... They should have been either arrested at the airport here or followed to get the big guys. I don’t know how [the Australian police] sleep at night ... even if [the Bali Nine] were guilty of doing it willingly, it still doesn’t deserve the death penalty.”

The AFP’s involvement in the Bali Nine case raises fundamental questions about the role of Australian authorities in aiding death penalty prosecutions in South-East Asia. Official AFP policy, which has been endorsed by the Howard government, completely ignores the issue of capital punishment with regard to international police collaboration. As the Australian agency explained in a statement: “Under the formal agreements and guidelines in place, the AFP can provide assistance to foreign countries on a police to police basis where no charges have been laid, regardless of whether the foreign country may investigate offences that attract the death penalty.”

This policy exploits what amounts to an extraordinary loophole in the mutual assistance treaty between Australia and Indonesia, which only blocks cooperation between authorities at the point where charges are laid relating to crimes that could involve the death penalty. As Australian Law Council president John North explained: “In Australia, both arrest and charge are close to simultaneous, whereas the practice of Indonesian authorities is not to charge until long after arrest and just prior to trial.” This juridical difference allowed the AFP to provide assistance to the Indonesian police and prosecution for six months after the Bali Nine’s arrest.

Attorney-General Philip Ruddock’s formal withdrawal of Australian cooperation following the laying of charges against the nine will make no difference to the Indonesian prosecution’s case. “No problem,” Bali drug squad chief Colonel Bambang Sugiarto assured the media. “[AFP] statements are not important according to the law.”

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The Howard government has consistently defended the AFP's role in the arrest of the Bali Nine, and has ruled out any review of the mutual assistance treaty. "We have no intention of reviewing police to police assistance in relation to the Australian Federal Police and overseas law enforcement," Justice Minister Chris Ellison declared on October 11. "If anything, we want to see that cooperation increased. We are certainly very satisfied with the high level of cooperation.... You've seen the runs on the boards in relation to counter-terrorism and transnational crime, and we want that to continue. Police to police assistance will not change."

Labor leader Kim Beazley was asked on October 26 if the AFP had done the "right thing" in the case. "That issue as to whether or not they absolutely got it right this time, as I understand it, is going to be tested in the courts and we will find out once it's appropriately tested in the courts.... Australians do need to understand this—it is utterly critical for this nation that there is intimate collaboration between the AFP and the police forces of this region."

Labor shares the government's utter contempt for the fate of the nine Australians threatened with state murder. The overriding imperative for the entire political establishment is maintaining good relations with Jakarta. The same concern, in relation to Singapore, is evident in the Howard government's abandonment of 25-year-old Australian Nguyen Van Tuong, who is due to be hanged within weeks. In the Bali Nine case, the government is particularly concerned not to jeopardise the rebuilding of Australia's connections with the Indonesian security forces, following strained relations between the two countries over East Timor in 1999-2000.

Both the Howard government and the AFP have sought to justify the Bali Nine investigation in terms of the so-called war on drugs. Mick Keelty has claimed that more than 2,000 heroin overdoses in Australia have been prevented by international police cooperation of the kind that led to the arrests of the Bali Nine. "Australia is the only country to have experienced a reduction in the supply of heroin in the last three to four years," the police chief told ABC Radio.

Right-wing columnist Miranda Devine spelled out the logic of this argument in the *Sydney Morning Herald*. "The war on drugs in Australia is working," she wrote April 21. "The Bali Nine are just part of the price."

In reality, the "war on drugs" has nothing to do with protecting ordinary people from the dangers of drug addiction. The Howard government has no more concern for the welfare of citizens addicted to narcotics than it does for the fate of the Bali Nine.

If the nine young people are guilty of acting as drug mules, then they made a serious and tragic mistake, which may well cost their lives. But whatever the outcome, it will make absolutely no difference to the international heroin trade. None of the major heroin suppliers connected to the Bali Nine case has been arrested, and initial AFP claims that the investigation could result in the break-up of international drug syndicates have been quietly dropped.

Even with the AFP's specific intelligence, Indonesian police failed to monitor Andrew Chan when he allegedly purchased the heroin in Bali. This was despite the fact that all nine suspects were under constant surveillance. The transaction was clearly the most important part of the police operation, and could have led to the prosecution of international heroin dealers. But the Indonesian police claim they lost Chan on the streets of Kuta, after he disguised himself by wearing different caps.

Paul Toohey in the *Bulletin* offered a more plausible explanation: "It would probably be too indelicate for the AFP to inquire of their Indonesian colleagues how come they were so stupid as to miss the most important part of their surveillance job: the buy.... It is a particularly hard question for the AFP to ask because it raises the possibility that the Indonesian police did follow Chan, observed the deal, and decided to help themselves to the heroin cash."

Cherry Likit Bannakorn, a Thai prostitute who allegedly sold the drugs to Chan, has disappeared. On April 27, Man Singh Ghale, an alleged international heroin "kingpin" who, according to some reports, supplied the heroin to Chan via Bannakorn, was shot dead in a Jakarta police raid. "Witnesses reportedly saw Ghale, a Nepalese, being led away by police with a bullet wound to the leg," Toohey reported. "He somehow took another fatal shot while in police custody.... Ghale no longer has anything to say for himself but it begins to look as though he was a patsy."

The Indonesian autopsy report has never been released, despite requests from at least one foreign embassy. According to an August 1 report in the *Age*: "Doctors who carried out the autopsy are too frightened to say how many times he was shot or where the bullets entered his body, and Senior Superintendent Indradi Tanos, of the narcotics division at police headquarters, refused to disclose the contents of the report."

Toohey's suggestion that Ghale was used as a patsy is just one possible explanation of his death. It could also be the case that the trafficker was killed in accordance with the mafia principle that dead men tell no tales. Had Ghale been put on trial, he could have revealed details of connections he may have had with senior security, political and business figures in Indonesia and internationally.

The Nepalese national had previously been arrested by Indonesian police in October last year. International police agencies, including the US Drug Enforcement Agency, suspected that he was directing major trafficking operations in America and Europe. Despite this, Ghale somehow escaped from custody two days after his arrest.

"Even more unusual is the fact that several weeks after he fled custody, he returned to Bekasi, where police say a local man agreed to rent a house on his behalf," the *Age* reported. "Why a fugitive would go straight back to the area he had been living in when arrested remains unanswered. Then there is the fact that 10 days after the nine Australians were arrested in Bali, Ghale had still made no effort to flee his house, and carried on living as normal [despite being under AFP surveillance]."

No-one in the Howard government or the AFP has ever addressed the question as to whether senior Indonesian police and security officials—not to speak of politicians and businesspeople throughout the region, including Australia—are involved in the heroin trade. Such is the real face of the "war on drugs". The major players with powerful connections go unmolested, while those arrested and executed are almost always young people, caught up in the lowest rungs of the drug trafficking ladder.

The effective abandonment by the Howard government of any pretence of opposition to the death penalty is indicative of its wholesale repudiation of fundamental civil liberties. Moreover, the bipartisan defence of the AFP's setup of the Bali Nine is a stark indicator of just how far the political establishment as a whole has gone in abandoning basic legal and democratic rights, including opposition to capital punishment.

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