

Australian government responsible for “Bali Nine” death sentences

Mike Head
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Two young Australians face execution by firing squad and seven others life in prison as a direct result of the policies of the Howard government and the directives it gave to the Australian Federal Police (AFP). Despite feigning sympathy for the young people and their families, Howard and his ministers authorised a police operation that led inevitably to the sentences handed down last week by a court in Bali, Indonesia.

Andrew Chan, 22, and Myuran Sukumaran, 24, were sentenced to death by the judges of the Denpasar District Court as the supposed organisers of a planned heroin shipment from Bali to Australia. Those sentenced to life imprisonment—Matthew Norman, the youngest at just 19, Scott Rush, 20, Michael Czugaj, 20, Si Yi Chen, 20, Tach Duc Thanh Nguyen, 23, Martin Stephens, 29, and the sole female, Renae Lawrence, 27—were alleged “drug mules” who had agreed to carry the heroin strapped to their bodies on a flight to Sydney.

These impressionable young people—some involved in such activities for the first time and mostly from poor working class backgrounds—were exploited by drug syndicates in return for payments of as little as \$5,000. Had the priority of the government and the AFP been, as they claim, to combat the multi-million dollar drug trade, they would have organised for the group—dubbed the Bali Nine—to be followed until the drugs were picked up or delivered to dealers in Australia.

Representatives of their families justifiably accused the AFP of having “blood on their hands” because the police delivered the nine into the hands of the Indonesian authorities, knowing that the death penalty was likely to be imposed, instead of arresting them upon their return to Australia, where capital punishment was abolished in the 1970s.

Prime Minister John Howard’s claim to “feel for” the families is a contemptible fraud. It is clear that the arrests and sentences serve two political agendas. One is closer collaboration with the Indonesian government of President Susilo Bambang Yudhoyono, a former Suharto-era general, and the other is to undermine the strong public opposition that exists in Australia to the death penalty.

Howard vehemently defended the AFP operation. “The police are there to protect us from the ravages of drugs and I just hope that every young Australian who might in their wildest imagination think that they can get away with this will take a lesson from this,” he declared. Likewise, AFP Commissioner Mick Keelty refused to apologise for the fate of the Bali Nine and

emphasised that the police had acted in line with government policy. “We’d do the same thing again and we’re doing it each and every day,” he declared.

The government is doing everything it can to blackguard the Bali Nine as purveyors of “the ravages of drugs” in order to prevent a resurgence of the revulsion and anger expressed by millions of ordinary Australians over its failure to stop the execution of Van Nguyen, who was hanged by the Singapore government on drugs charges last December.

The Murdoch media immediately threw its weight behind these efforts. The banner headline in the February 15 *Sydney Daily Telegraph* thundered “NO SYMPATHY—their drug operation would have destroyed thousands of lives—now they’ll pay with theirs.”

While promising to seek clemency for Chan and Sukumaran, Howard said he did not expect that his friendship with Yudhoyono would necessarily save the pair. “When it comes to the crunch his (Yudhoyono’s) obligation to his own people and to the strength of the domestic campaign against drugs is far greater and more important than his closeness to and friendship with me. And so it ought to be,” Howard told Southern Cross Radio.

Yudhoyono has taken up a so-called anti-drugs crusade as part of efforts to find scapegoats to divert social unrest from the economic restructuring and cost-cutting program that he is implementing under pressure from the IMF and major powers. Like Howard, Yudhoyono has also seized upon the “war on terror” as a means of bolstering the police and military to suppress domestic dissent.

Howard’s backing for Yudhoyono was underscored by the recent announcement of negotiations for a new military treaty between the two countries and this month’s resumption of training exercises between Australia’s SAS and Indonesia’s notorious Kopassus unit, restoring relations that were broken off in 1999 when the Howard government intervened in East Timor.

As soon as Australia had secured its strategic and economic interests in East Timor, the political and military establishment was anxious to repair relations with the Indonesian military, which successive governments in Canberra have regarded as vital to ensuring political stability, and thus the interests of Australian capitalism, across the Indonesian archipelago.

Howard’s duplicity on the Bali Nine has not gone unnoticed in Jakarta, where the government has already rejected several requests from Australian Foreign Minister Alexander Downer and other ministers to stop the Indonesian prosecutors from

recommending death sentences. The February 16 edition of the *Jakarta Post* noted that after the sentences were handed down, Howard warned young Australians not to take “stupid” risks, while Downer declared that he had little sympathy for “people who want to bring heroin into our country”.

Details from a legal action that the families of Rush, Lawrence, Czugaj and Stephens took in the Federal Court in Darwin last year to challenge the AFP’s actions shed further light on how far the police went, acting within the Howard government’s policy guidelines, to ensure that the Bali Nine were arrested in Indonesia.

Rush’s father, Lee, and his friend, lawyer Bob Myers, testified that they had alerted the AFP to Rush’s planned trip to Bali. Fearing that his son, who was already on bail on minor charges, was being trapped into drug trafficking, Lee Rush requested that the police intervene to either prevent his son from leaving the country or warn him that he was under surveillance.

Lee Rush and Myers, who contacted the police on his behalf, were given assurances that a “PACE” passport alert had been activated to prevent his son leaving Australia. Only because of that, Lee Rush abandoned plans to fly immediately to Bali to stop his son committing any offence. But behind the family’s back, an AFP decision was taken not to speak to Scott Rush, on the grounds that it would compromise the AFP investigation.

In court, the families argued that the AFP had breached a duty of care to Scott Rush and also overridden their “legitimate expectation” that police would not act in a way to expose him to the death penalty. They further charged the AFP with acting unlawfully by handing over information to the Indonesian police in defiance of Australian law.

Because of the Death Penalty Abolition Act 1973, which bans capital punishment under federal law, the Mutual Assistance in Criminal Matters Act 1987 prohibits the federal government and its agencies from assisting a foreign country in prosecuting anyone charged with an offence punishable by death. The Mutual Assistance Treaty between Australia and Indonesia specifically forbids cooperation once charges are laid that could involve the death penalty.

Despite these provisions, Justice Paul Finn ruled in favour of the AFP on every count. In his findings, handed down last month, he went further, declaring that it would have been perfectly legal for the police to knowingly mislead Lee Rush in order to proceed with the Bali operation. “Whatever the moral wrong to a caring parent ... it could not have authored a duty of care,” he ruled. This amounts to a chilling judicial imprimatur for police deception and entrapment of young people.

The judge rubberstamped the means by which the government and the AFP had either short-circuited or exploited loopholes in the anti-capital punishment provisions. Close cooperation had been established with the Indonesian authorities without any formal government-to-government request from Jakarta, thus sidestepping the Mutual Assistance in Criminal Matters Act. The Mutual Assistance Treaty had been evaded by collaborating with the Indonesian police and prosecution up until charges were actually laid, about six months after the arrests last April.

Justice Minister Chris Ellison issued written directions to the AFP in August 2004 “to be active in pursuing opportunities for

cooperation and strategic alliances with international partners in law enforcement”. An AFP Death Penalty Charge Guide explicitly instructed the police to “provide such assistance as requested” by overseas agencies, “irrespective of whether the investigation may later result in charges being laid which may attract the death penalty”.

The AFP operation in Bali was further authorised by a secret “Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Australia on Combatting Transnational Crime and Developing Police Cooperation”. AFP Commissioner Keelty refused to produce this document in court on grounds of “public interest privilege”.

Family members expressed outrage at the outcome. Interviewed by the ABC television “Australian Story” program, Rush’s mother, Christine, said: “Australian lives, our son’s included, were put at risk of the death penalty. It is totally unacceptable.... It was stated in the Indonesian court, by the police, that Scott and the others would not have been arrested but for the information provided to the Indonesian Police by our Australian Federal Police.”

Later, Christine Rush said their “family tragedy” proved Australian citizens could not rely on their government. “Australia has always held as a value and a philosophy opposition to the death penalty. However, our laws are such that our children are exposed to the death penalty,” she said. “This must not happen to any Australians again.”

The Labor opposition, however, solidarised itself completely with the Howard government and the AFP. Labor leader Kim Beazley said: “All Australians have got to understand ... our security now is very heavily bound up in the relationships that the federal police have established with police forces around the region.”

The message was unmistakeable. When it comes to sacrificing the lives of young Australians to further the strategic, financial and diplomatic interests of the corporate elite, there is bipartisan unity within the political establishment.



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