

## **What justice and mercy demand: A plea to Indonesia for the lives of two Australians**

**Hon. Ken Crispin Q.C.**

Most Australians would deeply regret any offence that may have been caused to the Indonesian people by comments made by any of our elected representatives or others pleading for the lives of Andrew Chan and Myuran Sukumaran.

This was obviously unintended and I hope that most Indonesians will be willing to overlook any apparent insensitivity and consider our pleas in the spirit of generosity and friendship that should characterise relations between our nations.

Ordinary Australians have long enjoyed relationships of respect and friendship with our Indonesian neighbours. Nearly a million of us visit Indonesia each year.

While our countries are quite different in some respects, there is much that we have in common, including democratic governments and declared commitments to human rights. Both countries have a strong concern for the welfare of their citizens and strenuously campaign for leniency whenever the death penalty is imposed upon them by other nations.

The pleas for the lives of these two young men, now building to a crescendo in Australia, should be seen in this context. Australians are neither challenging Indonesian sovereignty nor making demands; we are merely asking a valued and powerful friend not to kill two of our citizens.

The impending execution of these young men has evoked strong emotions within Australia. There has been a groundswell of sympathy as evidence has emerged of the extent of their rehabilitation and the compassion they have shown over the last few years in attempting to help other prisoners.

Few, if any, Australians condone the offence they committed ten years ago, but there is a widespread and deeply held feeling that it would be wrong to execute them now when they have demonstrated such remarkable reformation of character.

Both Islam and Christianity stress the importance of repentance and forgiveness, and even many who have no religion have responded warmly to the manner in which these young

men have so obviously renounced their past misdeeds and devoted their lives in prison to helping others. We recognise the evil of drug trafficking, but we also believe that those who have demonstrated a change of heart and sustained good character should be given a second chance.

The case is also exceptional because the drugs Andrew, Myuran and the other members of the "Bali 9" possessed were intended for distribution in Australia, not in Indonesia. While these young men committed an offence against Indonesian laws by their possession of the drugs in Bali and only the Indonesian president can grant them clemency, Australians are surely entitled to ask that our wishes be taken into account, given that the plan was formed in Australia, foiled by information provided by Australian Authorities and, if carried out, would have affected Australian, not Indonesian, drug users.

The execution of these young men might also create some problems for law enforcement authorities in Australia. There has already been trenchant criticism of the Australian Federal Police for informing their Indonesian counterparts of the plot when there was a risk that the death penalty might be imposed upon the offenders. The actual executions could produce pressure for the Australian government to refuse further cooperation in such cases.

The Australian police responded to a tip-off from the father of one of the co-offenders and there was understandable consternation that if the death penalty initially imposed upon his son had been carried out it would have ensured that no parent provided similar information in the future. It is surely in the interests of both countries to avoid an action that might seriously undermine their joint efforts to restrict the flow of drugs to vulnerable users.

Of course, some will be tempted to resist our pleas. I can well understand the feelings of those who support the death penalty. As a former lawyer, Director of Public Prosecutions and Supreme Court judge, I have seen the consequences of murder and the more insidious but nonetheless deadly scourge of drugs revealed with excruciating clarity. Only the most heartless could fail to be moved by the grief of people who spend years struggling to find some means of breaking the almost demonic hold that drugs like heroin have on their children or, worse, find themselves staring at their coffins and asking themselves how they failed.

Drugs ruin many lives. While not every "recreational" user becomes an addict, many are reduced to physical, emotional and moral bankruptcy. Some ultimately recover, but others die, leaving distraught families and friends to weep over them. It is not surprising that some cry out for justice and feel that only the deaths of the offenders will be sufficient.

Yet, the death penalty itself may exact a terrible toll and, despite what many people obviously believe, there is no real basis for the suggested justification that executing these young men will in some way help to address Indonesia's drug problem. As Ivan Simonovic, the UN Assistant Secretary-General for Human Rights, said recently:

"Several countries continue to use the death penalty for drug-related crimes, with the argument that this harsh punishment is needed for deterrence purposes. However, there is no evidence that the death penalty deters any crime."

The experience of other countries supports this conclusion. In fact, when the Canadians abolished the death penalty for murder in 1976, the homicide rate actually fell slightly. Similar results were noted in Australia as the state governments progressively abolished capital punishment. Even in America, the states that do not have the death penalty have consistently had lower rates of homicide than those that do.

If the drug problem in Indonesia or anywhere else is to be effectively addressed, there will need to be a multifaceted approach with an emphasis on public health and education policies as well as heavy prison sentences. It will not be resolved by killing people.

There are also some serious moral issues to be considered. While I do not doubt the guilt of either Andrew or Myuran, any legal system that routinely applies the death penalty will eventually lead to the deaths of innocent people. No system of justice is perfect; mistakes are made in every country. Hence, the execution of the innocent is not merely a risk to be borne in mind if injustice is to be avoided; it is a price that is inevitably paid for a regime of capital punishment.

Those who defend such a practice are driven to argue that the judicially sanctioned killing of a few innocent people is somehow acceptable because they are only a minority of those executed. This was starkly illustrated in 2003 by a legal challenge to American death penalty legislation. The judge expressly acknowledged that more than 100 wrongly convicted people had already been exonerated and that innocent people were still being

sentenced to death and executed. But he suggested that the crucial question was "how large a fraction of the executed must be innocent to offend contemporary standards of decency?"

I defended one convicted murderer in a case that led to her exoneration. Another who had already been exonerated lived near my home. Both had children. What if their innocent parents had been executed? Could you have looked into the eyes of the children and explained that their mother or their father were merely part of an insufficient fraction?

Sadly, even those wrongly executed are not the only innocent victims of the death penalty. The brutal deaths of even those who are guilty have a cruel impact on others who have done no wrong. Parents and other family members are devastated and children suffer severe, perhaps permanent, psychological damage. Many suffer life-long pain. Proponents of the death penalty tend to gloss over the plight of these innocent families because there can be no justification for their undeserved suffering.

The damaging ripple effect may extend even to police or customs officers involved in the arrest of the offenders, lawyers who prosecuted or defended them, prison officers who came to know them and, of course, those required to carry out the executions. Soldiers who have enlisted to fight for their country should not be forced to take bound and helpless people and kill them in cold blood. It is not always easy for people to rationalise their part in causing the death of others, even if they have committed serious crimes.

I personally oppose the death penalty because of my fundamental belief that it is morally wrong to kill another human being, save when compelled to do so in self-defence or the defence of others. Legalised execution cannot be justified on that basis. We have the option of imposing life imprisonment. Crimes such as murder and drug trafficking demand heavy penalties, but neither righteous anger nor the fear of further crime can justify taking other human lives, especially when there is an ineradicable risk that some may prove to have been innocent.

Our system of justice should affirm the sanctity of human life, not embrace the standards of those whom we rightly condemn. Our laws should reflect the values we claim to cherish and the kind of people we claim to be.

Considerations of this kind have led to a growing movement to stop executing offenders. No death sentence has been carried out in any of the 47 member States of the European Union for more than 16 years, and it has now been abolished or effectively abandoned in about 160 countries. In the last six months alone three more countries - Chad, Fiji and Madagascar - have joined the list of those who have abolished it.

It is incongruous that Indonesia should remain one of the countries that stands against this tide, while at the same time regularly pleading that the lives of their own citizens should not be taken from them by similar policies overseas. This stance can only weaken the force of such pleas and further jeopardise the lives of any Indonesians languishing on death row in foreign prisons.

Of course, even those who support the death penalty are usually willing to look beyond the mere commission of a particular offence to consider all of the relevant circumstances and ask whether, in their opinion, the offenders really deserve to die. As the prison authorities have confirmed, Andrew and Myuran are both deeply remorseful and they have spent almost ten years rehabilitating themselves and attempting to help other prisoners. In a very real sense, they are no longer the same people as those arrested in 2005.

Even if the decency and compassion they have shown in recent years is not accepted as wholly atoning for their crimes, it should surely move the Indonesian government to spare their lives. And there is still more that they could do. For example, people in their position could be effectively used in education programs about the dangers of drug abuse, in counselling and in encouraging users to seek rehabilitation.

A decision to commute their death penalties to sentences of imprisonment would serve the demands of justice and mercy, and it would further strengthen the bonds between our countries.

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