

Ticking down to a possible date with executioners

Written by The Conversation

Tick tick tick. Ticking down. Inexorably. To a designated time when I will be blindfolded in a white shirt with a reflective tag over my heart. I will be given [three minutes to “calm down”](#), and have a choice to lie, sit or stand. A few metres away a firing squad will be ordered to “do it”, to fire at our hearts. If necessary, the commander will finish the job by firing a shot into my brain from very close range. And all this is legally sanctioned, indeed legally required. Tick tick ... The guns will fire. And after that ...

Just after midnight Indonesian time on January 18, [six people convicted of drug offences were executed](#) by firing squad in Indonesia. Five of the six were foreign nationals. The executions have a chilling resonance for the two ringleaders of the Bali 9: Myuran Sukumaran and Andrew Chan have been on death row for nearly a decade and time could now be running out. On December 30, Sukumaran’s plea for executive clemency was [rejected](#) by new Indonesian President Joko Widodo. Chan is yet to receive news of his bid for clemency, but [Widodo has signalled](#) that he is unlikely to grant clemency for drug crimes.

The [Australian government](#) is and will be pleading for the lives of the two men. Indeed, [Indonesia itself](#) has pleaded with other countries for clemency for its nationals on death row.

However, it probably wasn’t helpful for Prime Minister Tony Abbott to state that the matter will not [jeopardise”](#) relations with Indonesia. In the wake of Saturday’s executions, [Brazil and the Netherlands](#) recalled their ambassadors from Indonesia, as two of the six executed were, respectively, their citizens. It is premature for Abbott to signal that Australia will not do the same.

Throughout their incarceration in Kerobokan prison in Bali, it appears clear that Sukumaran and Chan have been rehabilitated. Sukumaran is, for example, a talented painter who has taken lessons from, and formed a friendship with, famed Australian painter [Ben Quilty](#). He has helped set up rehabilitation programmes for other prisoners, such as a computer room and art classes. Chan also organises courses in prison and leads its English-language church services. The [governor](#)

[of Kerobokan](#)

pleaded for clemency for Chan in an earlier judicial proceeding. As Sukumaran has said, [what good does it do to kill them now](#)?

Human rights law and the death penalty

Under international human rights law, the death penalty is permitted in the narrowest of circumstances. [Article 6 of the International Covenant on Civil and Political Rights \(“ICCPR”\)](#) guarantees the right to life, but paragraph 2 outlines an exemption for the death penalty. This is unsurprising as the ICCPR was adopted in 1966, a time when most countries, including Australia, still used the death penalty. In practice, only about a quarter of the world's countries [retain](#) the death penalty today.

Under article 6(2), the death penalty is permitted only for “the most serious crimes”. That phrase has been interpreted by authoritative bodies as being limited only to intentional killing, that is murder. Drug trafficking, while serious, is not a “most” serious crime. So Indonesia, which acceded to the Covenant in 2006, [breached the ICCPR](#) with the executions of Saturday night, and will do so again if it executes Chan and Sukumaran.

The duo has spent nearly ten years on death row. The [“death row phenomenon”](#) refers to the consequences of an extended period of time on death row, where stress inevitably builds up over one's ever-approaching date with an executioner. Some domestic and international courts have found that the “death row phenomenon” constitutes cruel and inhuman treatment in breach of human rights standards.

[The Privy Council](#)

has, for example, found that no one should spend more than five years on death row: sentences must be commuted after that time. The

[UN Human Rights Committee](#)

(the body which supervises and monitors the ICCPR), however, does not condemn the death row phenomenon as it does not wish to encourage States to execute people faster. In its view, “life on death row, harsh as it may be, is preferable to death”.

However, there does seem to be unseemly confusion in Indonesia over the processes available for appealing a death penalty. It took over a week for Widodo's rejection of Sukumaran's plea to be properly communicated. Sukumaran's Indonesian lawyer has just announced plans to seek [further judicial review](#)

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of the sentence. It is at present unclear whether such an avenue is available. Such uncertainty is unnecessarily cruel to a person facing a State-sanctioned order of termination.

Australia's involvement in the capture of the Bali 9

The [Australian Federal Police](#) ("AFP") tipped off the Indonesian authorities about the Bali 9. It is arguable that this action has breached Australia's own obligations under the ICCPR.

Australia has abolished the death penalty. As Article 6(2) applies only to those States that have *not* abolished the death penalty, the death penalty exception in article 6(2) has no application to Australia. Further, Australia is a party to the [Second Optional Protocol](#) to the ICCPR, which prohibits the death penalty in all circumstances.

Australia therefore has an obligation not to execute people, [nor to expose them to a real risk of capital punishment in another country](#) by, for example, extraditing them without assurances against execution. Indeed, Australia has recently stated that [it will not extradite](#) a convicted murderer to Malaysia without Malaysian guarantees that the man will not be executed.

The same obligation [may mean](#) that Australia must not alert foreign authorities to the commission of a capital crime, particularly if the alleged perpetrators can easily be apprehended in Australia. The argument is probably strongest with regard to Chan, who was on a plane alongside four "drug mules" intending to carry heroin from Bali to Australia, when apprehended by Indonesian police. Those five people could easily have been arrested upon arrival in Australia. Such a strategy would have ensured the non-exposure of the five, including Chan, to capital punishment.

The clock

Of course, there are many other arguments one could raise about the situation. For example, Wododo has justified the executions on the basis that Indonesia faces a ["drug emergency"](#), implying that capital punishment somehow helps to reduce that crisis. Yet the death penalty

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does not in fact seem to
[work as a deterrent](#)

But I leave readers where I began. And that is the grisly reality that human beings within the apparatus of government are setting dates with death for designated individuals. Other human beings are compelled to carry out that task. In the 21st century, I cannot fathom that that is conceivably within the appropriate bounds of the role of the modern State.

And for six men and women last Saturday:

Tick tick tick time out.

Sarah Joseph does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.

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