



# And then there were six Life on death row

Tim Lindsey

**T**HE Bali Nine are not getting much sympathy in Indonesia, and why should they?

They were convicted on overwhelming evidence that included confessing to trying to smuggle more than 8kg of heroin out of Bali in packages strapped to their bodies.

Three of the Bali Nine accepted the long jail sentences they received on appeal.

Six were sentenced to death and three of those six are now fighting to have their death sentences overturned.

Myram Sukumaran, Andrew Chan and Scott Rush are represented by a highly regarded Indonesian human rights advocate.

Dr Todung Mulya Lubis is challenging the death penalty in Indonesia's Constitutional Court.

It is a courageous stand. Dr Lubis is under attack from many quarters, including elements of the Indone-

sian Government and a largely hostile public.

Indonesia has a drugs crisis. Anti-drugs campaigners protested throughout the trials of Schapelle Corby and Michelle Leslie and the Bali Nine, because injecting-user rates are soaring. Arrests are mounting as the police crack down on the drug trade.

Banners warning of the evils of drugs flutter in the streets. The airports display huge red placards warning of severe penalties, including death, for narcotics offences.

Yet drugs are a fixture of the party scene in Jakarta, as in most major cities throughout the world.

But Dr Lubis is fighting for his clients in the hope of achieving a human rights victory for all who face the death penalty in Indonesia.

If he can win a reprieve for the three Australians, the Indonesians on death row he is representing in the same case will also avoid execution.

The Constitutional Court would declare the death penalty to be in breach of the right to life enshrined in Article 28(a) of the Indonesian Constitution.

This would mean the death penalty would then become unconstitutional in Indonesia.

There is no appeal from the Constitutional Court, and the Government in Jakarta has already declared it will respect any such finding.

This would be an overwhelming victory for human rights in this emerging democracy.

Such a decision would also bring Indonesia into line with the strong international movement against capital punishment.

Ironically, Australia's major trading partners, the

United States and China, are enthusiastic judicial killers and our neighbours, Singapore and Malaysia, also apply the death penalty.

But there are problems even if the court decides against execution, including a grim possibility that a triumph for human rights might come too late for anyone already facing execution.

THIS is because Constitutional Court judgments cannot be applied retrospectively; so, in theory, existing death sentences would stand.

Therefore, the six of the Bali Nine on death row might still face a firing squad, though executing them in the case of a favourable decision would be very problematic.

It is hard to imagine a democratic government that would have the nerve to carry out a technically legal execution when the Constitutional Court had declared the death penalty contrary to the Constitution.

It might be that the Indonesian Government would unilaterally agree to suspend all executions.

If it did not, lawyers for all six of the Bali Nine on death row would probably attempt to use a favourable Constitutional Court decision as new grounds for a final appeal to the Supreme Court.

This would be an internal review by a new panel of judges in the court that imposed the sentence. They would argue that the Supreme Court should use its discretion to replace death with imprisonment.

Against this is the statement by Chief Justice Prof Bagir Manan that he would not accept a Constitutional Court decision as grounds for an appeal.



If he were supported by other judges, the last chance for the six condemned Bali prisoners would be a plea for clemency to President Bambang Susilo Yudhoyono.

President Yudhoyono has said on many occasions that he would not use his powers of clemency to assist convicted drug offenders.

But a Constitutional Court decision outlawing future executions would

offer him a way out.

It could argue that to defy the Constitutional Court would be ethically unacceptable, and apply a favourable decision to all death row prisoners.

This would also be seen as resisting pressure from Australia, because it would reprimand Indonesians as well.

The reality is that Dr Lubis and his team represent not just their clients.

They represent the constitutional rights of 240 million residents of Indonesia, whatever their nationality.

Can they win?

It will probably be some months before we know. The Constitutional Court will not be rushed in its deliberations. It is a capable and professional court and has shown integrity in its decisions, regardless of any wishes of Government.

The constitutional judges take their duties very seriously and are paying great attention to the arguments put before them in this case.

Like Dr Lubis, they know their decision will be one of the most important they will make, for Indonesians and foreigners alike.

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**Surge for freedom:** Andrew Chan and Myram Sukumaran are two of the Bali Nine prisoners appealing against their death sentences