

Capital Punishment Update

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produced by the [NSW Council for Civil Liberties](#)
for the federal parliamentary cross-party working group against the death penalty

- As one Australian, Schapelle Corby, learned that she would not face the death penalty, **another Australian, Nguyen Van Chinh, was sentenced to death in Vietnam.**
- Nine other Australians, arrested in Bali, will soon learn whether they are to be charged with capital offences or not.

In Vietnam

Sydney man sentenced to death

23 April 2005: Australian citizen, Nguyen Van Chinh, was sentenced to death for buying 1 kilogram of heroin in Vietnam in 2002. Mr Nguyen's trial lasted one day. He has 15 days to appeal. His three female Vietnamese co-accused received substantial custodial sentences.

In April 2000, a Canadian citizen, Nguyen Thi Hiep, became the first and only Westerner since 1975 to be executed in Vietnam. In 2003, Australian Le My Linh had her death sentence commuted by the Vietnamese President.

source: 'Australian man given death penalty in Vietnam for drug trafficking',
AFP (23 April 2005)

In Australia

The Bali Nine, the AFP & the death penalty

25 April 2005: The AFP has defended its cooperation with Indonesian authorities leading to the arrest of nine Australians in Bali. Some of the nine are expected to be charged with capital offences.

The AFP has announced that it will hand to Indonesian authorities any information it has about the Bali Nine. AFP Commissioner Mick Keelty, prejudging the guilt of the Nine, told the *Sydney Morning Herald*:

"[AFP] policy is that we will not give evidence that will, or information that will, directly cause or result in somebody receiving the death penalty, ...[but] the reality is in this case, it would appear, on the allegation, that these people have been caught red-handed with heroin in Indonesia."

source: Lindsay Murdoch, 'Australia to hand over Bali nine evidence',
Sydney Morning Herald (25 April 2005)

Media coverage has been extensive in Australia. On the one hand the AFP has defended its assistance to Indonesian authorities, while civil libertarians have questioned the 'exporting' or 'outsourcing' of the death penalty.

Mutual Assistance in Criminal Matters: Indonesia & Australia

In 1996 Indonesia and Australia signed a [treaty](#) of mutual assistance in criminal matters. That treaty was given legal force in 1999.¹ The Treaty makes it clear that:

Assistance may be refused for offences in which the death penalty may be imposed or carried out.

Section 8(1A) of the [Mutual Assistance in Criminal Matters Act 1987](#) (Cth) ('the Act') prohibits the provision of assistance in criminal matters once a person has been **charged or convicted** of a capital offence, unless the Attorney-General (or Minister for Justice), "having regard to the special circumstances of the case", is of the opinion that assistance should be granted.

The Act does not provide for the refusal of assistance in capital cases at the **investigatory** stage. This leaves the AFP free to provide information to foreign authorities that will result in Australians (and conceivably foreigners as well) facing capital punishment.

Overseas

In Bali: Schapelle Corby unlikely to face death penalty

22 April 2005: Indonesian prosecutors asked for life imprisonment and not the death sentence for Schapelle Corby, accused of importing cannabis into Bali. **It is still open to the court to impose the death penalty**, but unlikely given the submissions of prosecutors. The verdict and sentence of the court is expected at the end of May.

source: Matthew Moore, 'My life is over, says Corby', *The Age* (22 April 2005) 1.

source: Peter Lloyd, 'Judge warns Corby could still face death', *ABC Radio* (21 April 2005).

In Bali: Nine Australians arrested for smuggling heroin

20 April 2005: Nine Australians arrested in Indonesia for trafficking heroin may not all face the death penalty. The four Australians arrested at a Bali hotel are likely to be charged with ordinary drug offences. However, the other five Australians arrested at the airport could face capital charges. Indonesian police are yet to charge any of the nine.

source: Matthew Moore, 'Lawyer pins hopes on jail terms for suspects', *Sydney Morning Herald* (20 April 2005) 4.

¹ The Treaty is given effect in Australian law through the operation of the [Mutual Assistance in Criminal Matters Act 1987](#) (Cth) s 7 and the [Mutual Assistance in Criminal Matters \(Republic of Indonesia\) Regulations 1999](#) (Cth) cl 4.

United Nations: Secretary-General's 2005 Death Penalty Report released

3 March 2005: The UN reports that the trend towards abolition continues, including the complete abolition of the death penalty in Samoa in 2004. However, many retentionist nations continue to ignore the UN safeguards protecting the rights of people on death row.

source: UN Secretary General, "Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty" (9 March 2005), [UN Doc E/2005/3](http://documents-dds-ny.un.org/doc/UNDOC/GEN/V05/819/20/pdf/V0581920.pdf?OpenElement) <<http://documents-dds-ny.un.org/doc/UNDOC/GEN/V05/819/20/pdf/V0581920.pdf?OpenElement>>.

In the US: lethal injection not so painless afterall?

15 April 2005: A report published this week in the British medical journal *The Lancet* states that some US prisoners executed by lethal injection might be inadequately sedated and may suffer agonising deaths. The report will prove invaluable if the US Supreme Court is asked to rule on whether lethal injection is cruel and unusual punishment (and therefore unconstitutional).

source: 'Lethal Injections Called Flawed; Inmates May Feel Pain, Study Finds', *WashingtonPost.com* (15 April 2005), <<http://www.washingtonpost.com/wp-dyn/articles/A54799-2005Apr14.html>>.

In South Korea: National Assembly moves to abolish death penalty

7 April 2005: The *Korea Times* English-language newspaper reports that a majority of members of the National Assembly (both government & opposition members) are poised to pass a Bill abolishing the death penalty in South Korea. The Bill commutes death sentences to life imprisonment without parole.

source: 'Presidential Body Calls for Abolition of Death Sentence', *Korea Times* <<http://times.hankooki.com/lpage/nation/200504/kt2005040617013211980.htm>>

In Singapore: Amnesty International banned from speaking at forum

17 April 2005: The Singaporean government banned an Amnesty International representative from addressing a forum in the city-state. The Home Affairs Ministry says that Singapore does not need foreigners to tell it how to run its criminal justice system.

source: Gillian Wong, 'Singapore government defends judicial system, says foreign criticism unnecessary', *AP* (17 April 2005)

In PNG: death penalty report due out soon

6 January 2005: *Pacific Magazine* reports that a draft expert report on the death penalty has been sent to the Ministers for Justice, Internal Security and Correctional Service for comment. It will then be sent to the national Executive Council before being made public.

source: 'PNG: Death Penalty Draft Report Completed', *Pacific Magazine* <<http://www.pacificislands.cc/pina/pinadefault2.php?urlpinaid=13953>>