

Titus Ani

Titus' Story

Titus Ani is a young Nigerian national who on the 14th of January 2004 was arrested at Denpasar Airport with narcotics hidden on his person. He has since been sentenced to death and awaits execution by firing squad in Kerobokan prison in Indonesia. The circumstances that have put him in this position are nothing short of tragic. Titus was a victim of desperation in the first instance and betrayal in the second.

Titus was born on the 28th August 1978 in Ebonyi State in Eastern Nigeria where he was one of a family of nine children. During his childhood he had five years of formal education before it became necessary for him to get a job selling clothes in order to help support his family. The loss of his father in 2002 was a personal loss that added to the feeling of responsibility he had for his family. Out of necessity Titus became very conscious of how he could help to support his large family. After leaving school he worked for 8 years selling shirts and clothing for a measly sum of money. During the 8 years he spent selling these shirts Titus made a grand total of 100,000 Naira. Though it may sound like a lot in truth it is an amount that is less than US \$700. This measly income comprised the majority of Titus' financial resources. Titus felt a great responsibility for the welfare of his family and was always looking for ways he could better help his family financially. He was a young man who felt keenly the need of his mother and his siblings.

A meeting with another young Nigerian boy during his short time at school plays a crucial role in Titus' story. The boy's name was Donatus Obassi. Donatus and Titus were friends during their time in school and Donatus was also a Nigerian from the same area as Titus. Donatus eventually left Nigeria in search of better financial and life prospects. He moved to Pakistan to find a better job and while he was there he contacted Titus. He told Titus about the great job opportunities available in Pakistan and the possibility of making more money to help support his family. This was the opportunity that Titus had been waiting for. There was opportunity to get work in a hotel or laundry in Pakistan that would provide him with a better wage to aid his family. So believing his friend and hoping to support his family Titus made the decision to move to Pakistan.

On December 30th of 2002 Titus left Nigeria on a plane bound for Islamabad, Pakistan to hopefully gain better employment. This was not to be the case. Titus entered Pakistan on his own passport and found that Pakistan was not all Donatus had told him it would be. He discovered that work opportunities in Pakistan were limited and that Donatus was now his only "friend" in a foreign country. Donatus offered to look after Titus' passport for safekeeping. Promising to keep it safely locked in a hotel safe. Believing that Donatus had his best interests at heart Titus let him take his passport. Titus never saw his passport again. He was now stuck in a foreign country without a passport and with no work to speak of. Titus spent a year in Pakistan during which time he made a number of friends, mostly through the church that he visited every week for prayer and fellowship. His friends included a Nigerian priest and his assistant as well as the president of Nigerian Community in Pakistan. Though life was hard for Titus in Pakistan he took it upon himself to care for a baby. The baby was a child of Donatus' and when Donatus left Pakistan and his baby behind Titus assumed the role of provider for the infant. He carried the baby everywhere he went. Titus didn't have much to give the infant as he had little to give himself but he provided for it as best he could with the help of friends he had made in the country. The baby was young enough that it could only drink milk but members of the community helped Titus by giving him food for the baby. This deed illustrates again how Titus Ani had a strong protective instinct, an instinct that led him to leave his home to try and provide for his family.

Without his passport Titus had no means by which to leave Pakistan and return home to his family. Instead Titus tried to apply for refugee status. With a lot of spare time on his hands Titus often played soccer behind the offices of the Society for Human Rights and Prisoners Aid (SHARP). This was the

organisation that anyone who was applying for status as a refugee must first have an interview with. Titus tried to organise an interview for himself and eventually after waiting over a month he had one in February 2003. During the interview Titus provided SHARP with four photographs of himself. These photographs are now evidence aiding in proving Titus' real identity. Titus' next move in his plan to return home was to apply for refugee status with the United Nations High Commission for Refugees. He visited the High Commission at least four times between March and December 2003 to renew his application for refugee status. He visited on the 24th March, 23rd June, 22nd September and 3rd November. By December when Titus had still not heard anything about his refugee status application he became desperate to return to Nigeria. He had been in Pakistan for nearly a year and had no way to leave the country. He had no money or other resources to send to help his family in Nigeria or to use to help himself. The job opportunities that Pakistan was supposed to offer did not exist and Donatus had returned and taken the baby from him. Titus was in an unconscionable situation that seemed to have no end.

It was at this point that Donatus approached Titus about making some money by couriering drugs to Hong Kong promising that if he did his passport would be returned and he could use the money he was paid to return to Nigeria. Titus hated the thought of being involved with drugs he had no experience with them to date and wanted nothing to do with them in the future. So initially he refused the offer. The desperate nature of his situation however began putting pressure on him. When he considered his position Titus realised that he was in a bad situation. He could remain in Pakistan with no money, no job opportunities and with little possibility of travel or returning home to his family. On the other hand he could do this for Donatus in order to return to his family, whom he hadn't seen in a number of months, with money to help support them. Before deciding to work for Donatus Titus tried to talk him into letting him take the drugs to Nigeria. Nigeria was a much safer option where he could use the money he would make to avoid a serious sentence and return to his family. His fear was that he would be caught and charged if he took the drugs to Hong Kong. However by January 2004 his desperation lead him to agree to the arrangement on Donatus' terms.

After agreeing to courier drugs for Donatus his situation only got worse. On January 10th 2004 Titus was taken to a secret house where he saw heroin for the first time in his life. There he was expected to ingest 1 kg of heroin however after spending the whole day trying to ingest small packets of the drug he found that he could not do it. He spent the entire day of January 10th trying to ingest small packages of the drug but in the end he could only do 350grams. Donatus now had complete control of Titus' actions. Titus was escorted to the airport where he was given a false passport that belonged to a man named Emmanuel O Ihejirika, some old plane tickets previously used by other couriers, a return ticket to Hong Kong and some business cards in Emmanuel O Ihejirika's name. Titus noticed that there was no Visa included in the documents and when he asked he was told that he could obtain one on arrival in Hong Kong. Titus' sole intention upon leaving Pakistan was to transport the drugs to Hong Kong he never intended to courier the drugs to Indonesia.

Donatus so far had accompanied him on his trip to the airport. He now also escorted him to the departure gate and proceeded to watch him board the plane. Donatus had complete control of Titus' actions and Titus had no opportunity to change his mind or back out so he boarded the plane with 350grams of heroin in his stomach.

It turned out that it would not be so easy for Titus to enter Hong Kong. Upon arrival in Hong Kong he was detained by authorities for six hours and refused a visa for temporary entry into the country. He called Donatus and was instructed to fly back to Kuala Lumpur, which was the stop over for him in his trip between Pakistan and Hong Kong. When he arrived back in Kuala Lumpur he slept on the floor of the airport for two days speaking with Donatus a number of times about what would happen next. It became obvious at this point that Donatus' intention was for Titus to take the drugs to Indonesia and not Hong Kong. During one of their conversations Donatus told Titus to look through the old plane tickets he had given him; one of those tickets was actually a return ticket from Kuala Lumpur to Bali. He was told that he should deliver the drugs to Bali and whilst there collect some personal belongings Donatus had left at the Hotel Rose. It was at this point that Titus realised he had been betrayed by Donatus who had always intended for him to take the drugs to Bali. He was told that if he returned to Pakistan without going to Bali Donatus would lose all of the money from the transaction. Donatus then threatened to have him

killed if he returned to Pakistan still carrying the drugs. Again Titus found himself in a desperate situation. He currently carried a deadly cargo in his person that could explode at anytime killing him. He was in a foreign country with no freedom to travel. His only options for moving forward were to take the drugs to Bali where the penalties for drug smuggling are very harsh or return to Pakistan where Donatus would have him killed. Inevitably his survival instinct kicked in. Rather than waiting in Kuala Lumpur and dying of an overdose or returning to Pakistan and almost certain death Titus chose to take the gamble and proceed to Bali with the drugs. He had no other choice.

When he arrived in Bali Titus was very nervous and scared and it showed. He was anxious and sweaty; acting fearfully enough to flag the Indonesian authority's attention. He was caught with the drugs and the Indonesian authorities recovered 350 to 390 grams of heroin from his person. He was charged with importation of heroin, pleaded guilty and was sentenced to death as Emmanuel O Ihejirika. Titus never told the Indonesian police about his true identity because even after arrest Donatus was still able to control his actions. When Titus called Donatus after being arrested Donatus warned him not to reveal his true identity or the circumstances behind the drug transporting operation. He threatened to have members of Titus' family killed if he did reveal any of the information. For a man who felt so keenly his familial responsibility this was no idle threat. These threats took on an even more serious tone when later that year in about December 2004 Titus received the news that his sister Blessing had been killed in mysterious circumstances. It was for his family that Titus had done everything that lead him to this point and it was for his family that he remained silent on these crucial facts.

The Indonesian courts believed that the crimes committed by Titus were very serious for reasons that are factually incorrect. By being charged and convicted as Emmanuel O Ihejirika the Indonesian courts believed Titus to be an experienced drug smuggler. The passport he entered the country on had numerous entries for Indonesia, Thailand, Singapore and Nairobi. In reality Titus is a man who had no experience with drugs, was forced by circumstances and desperation to make a risky choice and smuggle drugs to a foreign country in the hope of returning home to his family who he hadn't seen in over a year. The courts in Indonesia have taken the circumstances of the wrong man into account when sentencing Titus. It was not until Titus heard that Donatus' was in prison in Hong Kong with a sentence of 60 years for trafficking 2 kg of heroin that he became less apprehensive about his family's safety and felt able to reveal the truth of his story. Now after languishing on death row in Kerobokan prison since 2004 Titus feels free for the first time to tell his true story.

Legal arguments

When Titus Ani was arrested by Balinese police the only form of identification he held was the passport of Emmanuel O Ihejirika and business cards in the same name. He was arrested and charged under the false passport of a frequent drug courier and this led to the harsh sentence that he has been given. If the court had been aware of the actual circumstances of the prisoner it would be obvious that the sentence was considerably disproportionate to the crime he committed. This can also be demonstrated by examples of other prisoners who have received considerably lighter sentences for crimes similar to Titus'. Believing Titus to be Emmanuel O Ihejirika has led the courts to be ignorant of a number of pertinent mitigating circumstances that existed in Titus' situation.

The Indonesian Constitution in Article 28 (1) provides to all people the right to life, this right does not however prohibit the imposition of the death penalty. Instead the Constitutional Court of the Republic of Indonesia has stated that capital punishment will be a special and alternative punishment only and not a principal punishment. It is a punishment that should only be applied to the 'most serious' of crimes. There is new evidence that illuminates the true nature of Titus' crimes and though serious they do not warrant the maximum penalty available under the law of Indonesia. There is no good reason to impose the maximum criminal penalty on Titus when the court considers the true and mitigating circumstances of his case. The problem is that the Indonesian legal system has arrested, charged and convicted Titus Ani under another man's passport and this has led to grievous errors being made in their judgment. The new evidence presented proves that Titus Ani is not Emmanuel O Ihejirika and is not, as believed by the courts, a regular drug trafficker. The sentence that Titus received takes into account the circumstances of

Emmanuel O Ihejirika's life and not those of Titus Ani and is significantly more severe than the actual circumstances of the crime warrant.

The New Facts

- 1 Novum – There are new facts and circumstances, which have not been considered by the court which mean that earlier judgments contain serious mistakes. These facts are:
 - (a) The petitioners true identity is Titus Ani and he is from Nigeria
 - (b) The petitioner is not a regular drug trafficker.
 - (c) There are applicable mitigating circumstances
- 2 In light of the new facts and circumstances the sentence is both excessive and disproportionate or in conflict with other sentences of the courts.

The identity that the Indonesian courts have attributed to Titus Ani has led to grievous errors being made in their judgment of his case. The first problem is that they did not have the true identity of the petitioner and by sentencing him under the name of a man who was a regular drug trafficker he has received a considerably more severe sentence than was deserved. Secondly the court has not taken into account all mitigating circumstances because they were unaware of the true nature of the prisoner. Lastly, had they been aware of the actual circumstances of the crime the court would have handed down a considerably lighter sentence.

The most important fact that has been discovered is that Titus Ani is the true identity of the man the Indonesian courts have sentenced as Emmanuel O Ihejirika. Evidence has been collected from a number of sources that demonstrate this fact. A DNA test was carried out on Ani Chinedu Solomon who is brother to Titus Ani that proves that the man sentenced as Emmanuel O Ihejirika is his brother. A number of sworn affidavits, statements and other official documents have been provided from Nigeria that confirms the true identity of Titus. Added to this is a sworn statement by Titus that this is the truth of the circumstances that lead to his arrest and conviction in Indonesia.

As the Indonesian courts believed Titus to be Emmanuel O Ihejirika the records in his passport have been used to make assumptions about his criminal history. The passport that Titus entered on had records of frequent trips to Asia in it. It is from these records that the Indonesian courts make the assumption that he was a frequent drug trafficker with the intention of importing illegal drugs into Bali. This was not the case and evidence has been collected that proves that Titus was in Pakistan at the time that these trips were recorded. The truth is that when Titus left Pakistan he had no intention of going to Bali instead he was tricked into taking the drugs to Bali by Donatus. The Denpasar District Court Judgment dated the 9th August 2004 at page 18, says that '*the defendant had been to Bali for two weeks on April 11, 2003, and for 12 days in May 2003, and for two days in December 2003,*' this is incorrect and contradicted by new evidence that has been collected. Likewise at paragraph 6 on page 22 the Court incorrectly found that '*the defendant... had been to Bali four times, namely on April 14, 2003 for two weeks, in May for 12 days, and in December 2003 for 2 days.*' New evidence provided by people Titus knew in Pakistan and the United Nations High Commission for Refugees supports the claim that Titus was in Pakistan from 1st January 2003 until 10th January 2004 and could not have been visiting Bali, as the Court believed he did. In truth Titus had no means by which to leave Pakistan until Donatus gave him the false passport of Emmanuel O Ihejirika. From the incorrect understanding of Titus' identity and incorrect assumption made as to the nature and seriousness of the crimes committed mistakes have been made. The absence of these crucial facts has led to Titus being sentenced severely under a false assumption that he had been involved in a number of trips to Bali on prior occasions presumably to deliver drugs.

Disproportionate Sentencing

The incorrect belief that Titus was Emmanuel O Ihejirika has led to an assumption that he is an experience drug courier who has couriered drugs to Bali before. The new evidence proves Titus' actual identity and illustrates a number of reasons that the sentence he has received is considerably disproportionate to the crimes he actually committed. The new evidence demonstrates that Titus is a young man who was a first time offender who was only a courier and not an organiser of the drug syndicate who did not have free will in his actions. Titus was not an organiser of the drug smuggling operation and should only be responsible for his act as a courier and should not be found equally culpable with the people that control the entire operation. The sentence he was given is far more severe than his actions deserve.

It is an accepted rule in international law that all people are owed a right to life and it is formalised in the Indonesian Constitution. However, this right can lawfully be set-aside in cases that are considered a most serious crime. Whether drug offences fit within the category of the most serious crimes is a contentious issue. The Human Rights Committee has stated that drug offences are not of this category unless they in some way impact on people's lives. In general this has been understood to mean that there must be an intention to kill with potentially lethal consequences. What is obvious is that with a complete and accurate understanding of Titus' crimes they could not be categorised as being of the category of 'most serious' crimes.

New Mitigating Circumstances

An understanding of the actual nature of Titus Ani's crimes reveals a number of applicable mitigating circumstances that should have been considered by the courts in his sentencing. Due to the fact that he is not Emmanuel O Ihejirika but Titus Ani and that he is an inexperienced one-time drug courier not a frequent drug trafficker. The sentence that Titus Ani was given was made without a consideration of all of the mitigating facts involved and is disproportionate to his crime as well as being in conflict with other orders the courts have made in similar cases.

There are a number of mitigating circumstances that are being held out to apply in Titus Ani's case. The court should have considered that Titus is a young man who is deeply remorseful for what he has done and that he has apologised to the people of Indonesia and in particular the youth of the nation for his crimes. A number of good character references have been provided as evidence of Titus' good nature a fact that can also be supported by his care for his family and a baby that was not his. Throughout his time in Indonesia Titus has co-operated with authorities and since incarceration has been a model prisoner. Some circumstances surrounding his choice to transport the drugs should also be considered mitigating circumstances. Primarily that Titus never intended to take the drugs to Indonesia he was tricked, trapped and threatened by the drug syndicate firstly to take the drugs at all but secondly to take the drugs to Indonesia. His choice to do so was motivated by a genuine intention to help his family and his choice to go to Bali was made out of extreme desperation. All of these facts should be considered mitigating circumstances and the failure to consider them previously has led to Titus receiving a much more severe sentence than his crime actually deserved.

Mental Illness

Titus Ani has been living in the harsh conditions of death row in Kerobokan prison since 2004. He has suffered considerable mental and physical health deterioration and now suffers from the Death Row Phenomenon. The Death Row Phenomenon is an occurrence that is firmly rooted and recognised in

international jurisprudence¹. By allowing Titus to languish on death row, in cruel, inhuman and degrading circumstances the Indonesian courts are essentially punishing him twice. He is serving a life sentence with the added bonus of court-mandated execution at its end. Protracted periods of time detained on death row can under international law amount to torture and thus be in contravention of the International Convention on Civil and Political Rights (ICCPR) as long as there is an exacerbating element such as mental illness.² Indonesia as a signatory to this convention is bound by the protections within it as well as its own constitution. The conventions provisions were adopted into Indonesian domestic law in Article 28G(2) of the Indonesian Constitution. The Death Row Phenomenon is an internationally accepted term for the conditions of living on death row and it is a breach of the protection in the ICCPR and the Indonesian Constitution to execute anyone who is mentally ill.

The Death Row Phenomenon

The Death Row Phenomenon is a term used to describe the experience of living in the harsh conditions of death row for an extended period of time with the certainty of death looming. This label encapsulates a consideration of the extended length of time most prisoners spend on death row, the harsh conditions experienced while on death row and the mental effect of being constantly aware of impending state sanctioned death.³ All of these elements come together to cause mental illness in prisoners on death row, such as Titus Ani, and it is this phenomenon that has been considered a breach of the protection against torture in Article 7 of the *International Convention on Civil and Political Rights* (ICCPR) by a number of international forums.⁴ A protection that has been enacted in the domestic Legislation of Indonesia. The Phenomenon should not be confused with the related term Death Row Syndrome that is used to describe the collection of psychological effects a prisoner may experience as a result of their experiences with the Death Row Phenomenon.⁵

The Death Row Phenomenon is generally taken to have three elements; the temporal, the physical and the experiential.⁶ The temporal element of the Death Row Phenomenon focuses on the length of time that is spent on death row. It is only in the 20th century that the delay between sentencing and execution has become protracted. For example it now takes an average 10 years for a prisoner on death row to be executed in the United States.⁷ This is a result of a number of factors. There are now a plethora of new appeal avenues available to prisoners both domestically and internationally that endeavour to protect the prisoner's rights but also tends to extend the time waiting for execution. There has also been a notable waning in support for the death penalty as a form of punishment and as the public becomes more critical of the punishment politicians and public officials become more careful in application of it. The last factor is that prisoners are becoming more willing to accept a delay as a result of the basic survival instinct in all of us making them fine with dragging out the process for as long as possible.⁸

The physical element of the Phenomenon relates to the harsh living conditions for people on death row. Death row has often been described as an institutionalised hell.⁹ In general time spent in prison is not a walk in the park but death row is especially harsh. The strict conditions death row prisoners are kept in

¹ Hudson, P, 2000, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?* EJIL Vol. 11, No. 4, p. 833

² Ingle, J, *Death Row Phenomenon Research*, p .8

³ Smith Amy, *Not "waiving" but drowning: The anatomy of death row syndrome and volunteering for execution*, Public Interest Law Journal, Vol. 10, No. 6, p. 248-251

⁴ See addendum: *International Law and the Death Row Phenomenon* for discussion of international case law

⁵ Ibid p. 237

⁶ Ibid p. 240

⁷ Hudson, P, 2000, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?* EJIL Vol. 11, No. 4, p. 835

⁸ Ibid

⁹ Ibid

are largely justified on security grounds.¹⁰ There is the fear that they will be the ones most likely to do something drastic as a result of the hopelessness of their situation. They are often kept in cramped cells, for up to 23 hours a day, with little chance to go outside. These conditions can cause mental and physical deterioration in prisoners and it is from these bleak confinement conditions that the Death Row Phenomenon has arisen.

The last element is experiential and acknowledges that people living on death row are constantly aware of an impending death awaiting them at some point and that this has a profound effect on them mentally. This constant awareness of the certainty of death exacerbates the mental and physical deterioration that the protracted length of time on death row and severe conditions of confinement has previously fostered.

During his time in Kerobokan prison Titus Ani has suffered greatly. His physical and mental health has deteriorated as a result of the harsh conditions he is kept in and his condition is an example of the Death Row Phenomenon in action. Titus was visited by Dr Lely Setyawati Kurniawan and a report was prepared regarding Titus' current mental and physical condition.

Dr Lely's report explains how Titus' physical health has deteriorated. The list of ailments that Titus now suffers from is considerable and the seriousness of the issues is confronting. Titus has suffered for months with a continuous stomach ache and has been poisoned at least once. He has trouble sleeping and is sometimes unable to get to sleep until the morning. He's had a decreased appetite and rarely feels hungry. Titus has found blood in his vomit and now takes ulcer medication to try and help this problem. Not only has the conditions of death row had an effect on Titus' physical health but also his mental. Dr Lely noted that Titus' thought processes are illogical, unrealistic and full of suspicious ideas. Titus believes that he can read the minds of the people around him. He continually feels threatened because he believes that there are a lot of people that want to harm or kill him. The mental toll that being on death row has had on Titus also manifests itself in his speech. He now moves and speaks with hesitance and it appears that his thoughts no longer flow and are sometimes blocked. The conclusion of the forensic psychiatry specialists who visited Titus is that he suffers a heavy mental disorder leaning towards schizophrenia and that he is now a victim of Permanent Delusional Disorder. Keeping Titus in the conditions that caused his deterioration is a breach of the protection against inhuman and degrading treatment and as such it would be illegal to execute him.

Indonesians on death row

Though Indonesia is within its rights to apply the death penalty to cases of the most serious crimes it is not legal for them to execute anyone who is mentally ill as this breaches the protection in Article 28G (2) of the Indonesian Constitution which gives life to the provisions in Article 7 of the ICCPR. However, there are also pragmatic reasons that the Indonesian government might try to avoid using this form of punishment. There is an obvious tension between Indonesia's blanket policy of advocating for its citizens facing the death penalty overseas while continuing to use the death penalty domestically.¹¹ There are currently hundreds of Indonesian people, mostly migrant workers, languishing on death row in countries like Malaysia and Saudi Arabia; the current count being over 280.¹² Many of these Indonesians chose to leave their home nation in search of work and like Titus Ani have found themselves placed in perilous situations. The issue of Indonesians on death row became a highly publicised issue in Indonesia after the execution of Ruyati Binti Sapubi in Saudi Arabia. She was convicted for the stabbing murder of her employer. Ruyati was executed without notice to the Indonesian government and as a result of this the relationship between Indonesia and Saudi Arabia has become strained. It is often the case that women

¹⁰ Sadoff, D, 2008, *International Law and the mortal precipice: A legal policy critique of the 'death row phenomenon'*, p. 28

¹¹ McCrae, D, 2012, *A Key Domino? Indonesia's Death Penalty Politics*, Lowy Institute for International Policy Report, March 2012, pp. 12

¹² Sijabat, R, *Hundreds of Indonesians on death row in Malaysia, Middle East*, Tribune Business News [Washington], 8 July 2011

are forced into criminal action while fending off rape attempts and Ruyati's case touched a raw nerve with the Indonesian public as the murders often result from maltreatment by employers.¹³ Like Titus they have little choice as they are presented with a life and death choice. The Indonesian government has taken a keen interest in the plight of their people being held on death row in foreign countries. President Yudhyono created the Migrant Workers Protection Task Force in 2011 and this task force had by June 2012 come to the aid of 67 Indonesian migrant workers on death row internationally.¹⁴ If the Indonesian government were to eschew the death penalty as a punishment they would be leading by example. This might lead other states that are currently housing Indonesians on death row to follow their lead and grant the prisoners clemency. Though Indonesia legally has the right to use the death penalty as a punishment for the most serious category of crimes it might be a prudent political choice to minimise its use. Showing mercy to foreign nationals domestically may aid the Indonesian government in the pursuit of clemency for its people abroad.

If the Indonesian government made the move to commute the sentences of prisoners such as Titus Ani it could see positive results for Indonesia itself. These are people who have been forced by circumstance, people who have been essentially trapped and tricked in taking actions that they would otherwise never have done. Indonesia might find that by treating these prisoners with more compassion other nations that currently hold their own citizens might pay them back by following their lead. A commutation of sentence for Titus Ani may be beneficial for the Indonesian government in their pursuit of clemency for their citizens overseas. It seems illogical that a country that continues to hand down the death penalty domestically would actively engage in undermining the punishment internationally on behalf of its own citizens.

Result of a win

The best outcome in Titus' case is to have his sentenced commuted to no more than 10 years in jail. If it is successfully argued that executing a man who is mentally ill is illegal under the protection against cruel, inhuman and degrading treatment in the Indonesian Constitution it would set a precedent through which many other inmates might find relief from the effects of the Death Row Phenomenon. If it were decided that it would be illegal to execute Titus Ani as he is mentally ill it would open the door to an acceptance of the Death Row Phenomenon as a breach of Indonesia's international human rights obligations enacted under Article 7 of the ICCPR. It would be a great step in the right direction for the protection of prisoner's rights to health in the Indonesian prison system. Not only would it effect Indonesia's reputation as a member of international society but it may also produce benefits for the Indonesians who are currently being held on death row overseas. The Indonesian government is actively working to protect its citizens internationally from the death penalty but if it were to treat foreign nationals that it holds on death row with more compassion it might foster an international tendency to only apply the death penalty in the most severe cases. Indonesians and foreign nationals alike who have been given no option but to commit criminal acts do not deserve to suffer horribly on death row. If Indonesia begins to show more compassion domestically then it may find that other nations follow its lead.

The result of a decision that it is illegal under the Indonesian Constitution to execute anyone who is mentally ill would be to set a landmark precedent within the courts of Indonesia that would offer hope for other prisoners suffering as Titus Ani currently does. It might also play a role in aiding Indonesian nationals who are currently held on death row in other countries. Such a decision might be easily distinguished or narrowly construed so as to only apply in certain cases it would still be a positive result for all prisoners suffering in the prisons of Indonesia.

¹³ McCrae, D, 2012, *A Key Domino? Indonesia's Death Penalty Politics*, Lowy Institute for International Policy Report, March 2012, pp. 12

¹⁴ Marszalek, J, *Indonesia's Death-Row Double Standard*, www.news.com.au, 6 May 2013

