

AWAY FROM CAPITAL PUNISHMENT TOWARDS RESPECT FOR LIFE

PACSA FACTSHEET NO. 39

OCTOBER 1994

The scribes and Pharisees brought a woman along who had been caught committing adultery; and making her stand there in full view of everybody, they said to Jesus, "Master, this woman was caught in the very act of committing adultery, and Moses has ordered us in the Law to condemn women like this to death by stoning. What have you to say?" They asked him this as a test, looking for something to use against him. But Jesus bent down and started writing on the ground with his finger. As they persisted with their question, he looked up and said, "If there is one of you who has not sinned, let him be the first to throw a stone at her." Then he bent down and wrote on the ground again. When they heard this, they went away one by one . . .

JOHN 8:3-9

One is in a very real sense causing someone to be killed.

Justice Leon on the death sentence

Introduction

People of our country have experienced excruciating pain and death at the hands of other people.

Anger, frustration, abuse, division, bloodshed, injuries, and death are still a part of the daily reality of life in this country; we live in a culture of violence. Legal apartheid and state repression which tried to maintain domination over black people with degrading laws and guns, extrajudicial executions, violence among black communities for whom the rule of law lost credibility, self-defence units, 'hit-squads', assassinations, and people armed with weapons of all kinds, apathy and self-preservation all set the context in which we now live.

Since a general increase in violent crime and the killing of just under 200 police officers in South Africa in 1994, some politicians, police, churches and members of the public have renewed calls for the use of the death penalty.

While killing must be condemned and proper justice meted out, in our new order, we need to find just, humane, creative, credible and effective means to deal with crime. This includes finding better ways to care for victims and victims' families.

However, if execution - state killing - is legal, how can people hear a new message that "Killing is wrong?" If the state does not have to uphold the right to life, how can other rights be respected? If we are to re-establish a

respect for life culture in South Africa, the right to life written into our interim Bill of Rights must be upheld and capital punishment abolished.

What is Capital Punishment?

Capital punishment is the penalty of death given as a sentence by a judge, as prescribed by law or the court, for specific crimes which are seen as particularly heinous by the state. Different countries have different practices: public execution by firing squad (Nigeria, Iran, Mauritania), beheading by sword (Saudi Arabia, Yemen Arab Republic), stoning (Iran); or, closed executions by electric chair (USA), lethal injection or gassing (USA), and hanging by the neck until dead (Egypt, Lebanon, South Africa).

Calls for capital punishment come after a crime is committed that is appalling to a particular sector of society.

Behaviour deemed deserving of death is discretionary. Depending on the country, people are executed for a range of crimes, including: adultery, heresy, political dissent, prostitution, running a brothel and showing pornographic films, taking bribes, embezzlement, economic corruption, drug trafficking, kidnapping, robbery, terrorism, rape and murder.



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Capital Punishment in South Africa

In South Africa we have executed more than 120 people a year, from 1980 to 1990, on average. Next to Iran, South Africa has had the highest rate of state executions.

Since the moratorium on executions in South Africa declared in February 1990, when former president FW deKlerk gave his opening speech to parliament, there have been repeated calls to reinstate execution as a means of punishment.

There are presently 509 people under sentence of death in South Africa. The death penalty continues to be imposed regularly by the courts, in spite of the moratorium.

In South African law until July 1991, the death penalty was mandatory for murder where a court found that there were no extenuating circumstances. It was discretionary - a judge decided whether it would be used rather than an alternative form of punishment - for the following: treason, kidnapping, childstealing, rape, robbery (or attempted robbery) with aggravating circumstances, housebreaking (or attempted housebreaking) with intent to commit an offence, with aggravating circumstances, and terrorism. Now, the Criminal Law Amendment Act of 27 July 1991 provides that the death sentence may only be imposed after the consideration by the court of the existence or absence of aggravating and mitigating circumstances (SAJHR, 1991).

Racial bias

It is practically impossible to divorce the racial factor from the practice of the death penalty in South Africa. The majority of people sentenced to death are black - 97% of the 1 070 people hanged between 1980 and 1988. Research conducted by the late Professor Barend van Niekerk in the late 1960s revealed that black South Africans were more likely to be sentenced to death than white people, especially if the victim is white.

Legal Representation

In South Africa, most people charged with capital crimes are not able to afford legal representation. They are defended by court appointed counsel, called 'pro deo' advocates. Counsel who are available to do 'pro deo' cases are usually the most junior and inexperienced lawyers. They are paid at a substantially lower rate than counsel hired by the accused, they do not have the customary assistance of an attorney, and therefore have to do all the preparations for trial on their own. With less finances, they do not have the resources to do much investigation or discussion with witnesses.

Language bias

Most defendants do not speak English or Afrikaans, the languages used in courts. They rely on interpreters. However, no matter how good the interpreter is, important nuances of language can be lost, which may result in error.

Judgement

Former Supreme Court Judge RN Leon has said

Some judges convict more easily than others... I know from my own experience that some judges find extenuating circumstances more easily than others. I know judges who impose the death sentence not infrequently, and I know one judge who has been on the Bench for some years who has never passed the death sentence. Should a man's life depend upon the chance of the judge before whom he appears?



Life on Death Row

Prisoners sentenced to death may normally wait up to 14 months on death row before their date of execution. Those on death row now wait indefinitely for abolishment, demerency, indemnity or the lifting of the moratorium, and death. Waiting under the shadow of death, ironically, the lights are never switched off. This is torture. They live in silence in a single cell, receive meals 3 times a day, with supper served at 3pm. 7 days before their date of execution, they are moved to a separate area called the 'pot'. Prisoners on death row can hear singing from 'the pot' for 7 days and nights. Death row is eerily quiet after the executions. "It's always quiet because now the question arises: Who is to follow? After this one who is to follow?"

An execution, like torture, constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

Execution

A few days before the execution, prison officials measure the thickness of the neck, height, and weight and calculate the length of drop necessary to kill the person.

Dr. Chris Barnard describes the execution.

The man's spinal cord will rupture at the point where it enters the skull, electro-chemical discharges will send his limbs flailing in a grotesque dance, eyes and tongue will start from the facial apertures under the assault of the rope and his bowels and bladder may simultaneously void themselves to soil the legs and drip onto the floor...

Describing hanging as "slow, dirty, horrible, brutal, uncivilised and unspeakably barbaric", Barnard said:

It may be quick. We do not know as none have survived to vouch for it. We make the assumption that the dance macabre is but a reflection of a disconnected nervous system, that the protruding eyeballs and tongue and the contorted features are mere reactions to pressure on the carotid artery and that the massive trauma of the neck tissues and spinal column does not register in that area of the human psyche where horror dwells.

When the doctor certifies that the body is dead it is pulled up, and put in a coffin.

Executions in South Africa including the 'homelands'

Execution centres are situated at Pretoria Central, Rooigrond (Bophuthatswana), Middelrift (Ciskei), Wellington (Transkei), and Venda Central.

RSA Year	African	'Coloured'	Asian	White	Total	Homelands				Total
						T	B	V	C	
1980	85	43	1	1	130	1	0	1	?	132
1981	58	36		2	96	1	4	0	0	101
1982	62	37		1	100	1	5	1	0	107
1983	65	23		2	90	2	0	1	3	96
1984	88	24	1	2	115	10	0	2	2	129
1985	97	35		5	137	25	0	1	0	163
1986	89	25	1	6	121	5	1	2	5	134
1987	102	53		9	164	6	5	1	0	181
1988	76	38		3	117	0	4	0	1	122
1989	42	9		2	53	0	7	0	0	60
1990		Moratorium			0	NA	1	0	0	1
1991		Moratorium			0				2	2
1992		Moratorium			0					
1993		Moratorium			0					
1994		Moratorium			0					0

From a Killing Culture to a Respect for Life Culture

It is accepted today that a poor social and economic environment is a key factor contributing to crime. Squalor, poor housing, broken or unstable families, lack of strong parental guidance, lack of recreational opportunities, lack of social and economic security, lack of job opportunities, and poverty in the midst of wealth, all create the perfect environment to breed crime. Tragically, in South Africa, legislated apartheid compounded the conditions which cause crime and violence. Violence has become a way of life and an acceptable way to solve problems.

We live in a society which has been very sick for a long time. We know this and are beginning to recognize the depth of the sickness, and we want to heal and grow. Crime that has escalated over the years is a symptom of the sickness. While our society seeks protection from crime, we should look for solutions to the problems that underly crime. And as Christians, execution - legalised killing - is not an option. We have to speak against love of death.

The death penalty reinforces a 'killing culture' by legally condoning the taking of life. It is a slow form of torture culminating in murder - the premeditated, meticulously legal killing of a human being by another hu-

Theories of Punishment

One of the most common justifications given for executing prisoners is that the death penalty is an effective **deterrent** against crime. This assumes that all those who commit such a serious crime as murder do so after rationally calculating the consequences. In reality, 80% of murders are 'crimes of passion'. A UN survey of research findings on the relation between the death penalty and homicide rates has concluded that "this research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming." The death penalty is not a deterrent against violent crime.

Second, the death penalty **prevents** a person from committing other crimes. There is no need, however, to take a person's life for the purpose of prevention: dangerous offenders can be kept from the public without resorting to execution. And mistakes which result from fallible judicial systems can be corrected. Execution, however, is irrevocable.

Third, and most commonly, execution is demanded as **retribution** - repayment for an evil deed. The reasoning that "the perpetrators of senseless violence must be punished" (NG.Kerk - Die Kerkbode 1994) is given to justify the death penalty. Society shows its condemnation of the crime and the person by using the criminal justice system as an instrument of vengeance.

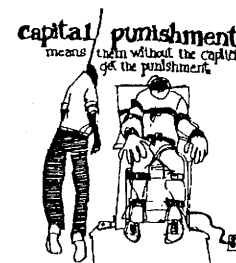
A fourth theory of punishment relates to **rehabilitation**. Here, while criminal actions are condemned, all people are considered redeemable. Imprisonment or alternatives allow for the possibility of change and contribution.

Contrary to what its supporters claim, capital punishment - as many studies have shown - does not deter people from committing violent crime. Rather, it is used by the powerful to maintain the illusion that violent crime is under control and being disposed of. In reality, capital punishment "disposes of" the poor, primarily the black poor. Rich people who commit murder can hire lawyers to get them off death row. [John Dear S.J.]

man being - and by the entire society. It creates the illusion that the roots of crime are being dealt with, but diverts attention from the more urgent and complex social conditions underlying our violent society. At best, it purports to deal with the symptom. Really, it makes the sickness - our culture of violence - worse.

In the socio-political realm, a major breakthrough towards the eventual establishment of a 'respect for life' culture in South Africa can be made by the state. By abolishing capital punishment, the state is saying 'We will not kill. Killing is wrong.'

The world's nations started to do this when they came together to draft the Universal Declaration of Human Rights. They reflected, in horror and shame, on the evil human beings inflicted upon one another during the two world wars, especially the atrocities of the concentration camps and genocide against Jewish people. The declaration was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948. It is a pledge among nations to promote these rights. These are not privileges that may be granted by governments for good behav-



Conclusion

our, and they may not be withdrawn for bad behaviour.

Article 3 proclaims that

"Everyone has the right to life."

Article 5 declares that

"No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment."

Among others, these rights are considered fundamental and essential for a society which respects the dignity of human kind.

Our South African Interim Bill of Rights says in section 9, that everyone has **the right to life.**

The Government of National Unity, the Reconstruction and Development Programme, the proposed Truth and Reconciliation Commission, educational reform, housing and employment programmes and other activities, are testimony to the wishes of South Africans to heal and grow.

Recognising that the causes of crime are complicated, to try to root out the problem, we need to deal with the range of issues that created the breeding environment for crime. This includes unemployment, lack of housing, broken family life, poverty and desperation.

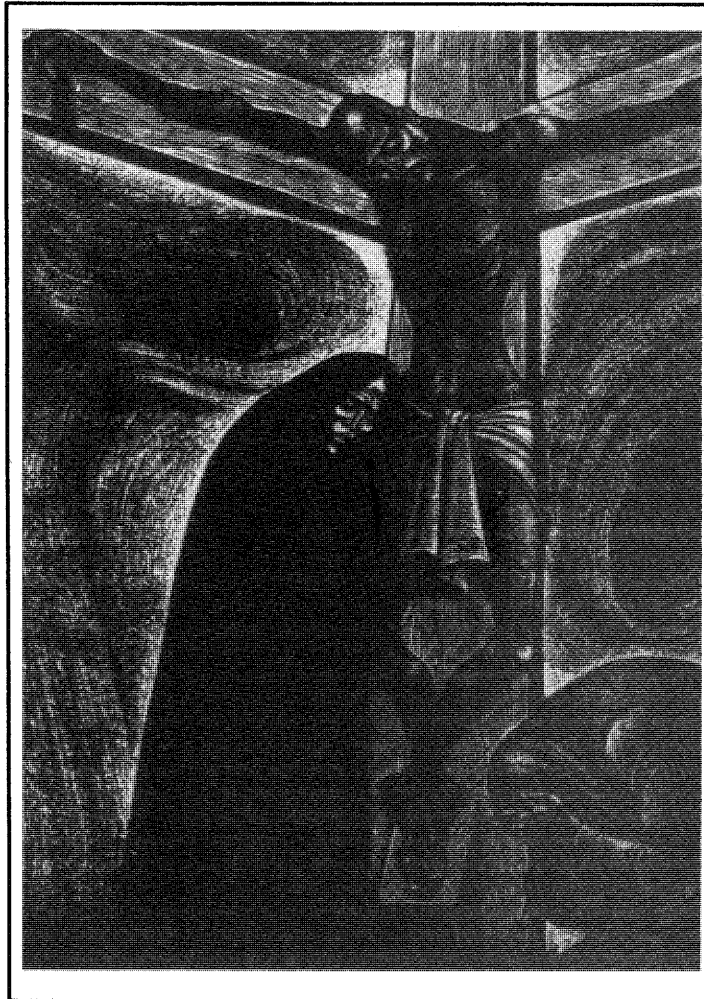
We need legitimate and effective policing and justice systems which truly represent and serve the community. People should not need to take the law into their own hands; vulnerable people should not be victimised by the system; the system should have credibility in investigation and prosecution of offences.

As legitimacy grows, so will the felt need for arms decrease. We need an active disarmament initiative, hand in hand with community cooperation in exposing and bringing to book organised crime.

In addition to the above, the transition from a killing culture to a respect for life culture will happen when, in reality, the needs for work, education, health care, homes, emotional security, spiritual nourishment, and other concerns of life are being seriously addressed by the state, institutions, communities and each member of society.

The death penalty presupposes that society is not partially responsible for the actions of the offender. Can society so dissociate itself from the criminal and claim that it has no real responsibility, no real or inner solution, or help for the offender as a person, but only the

outward one of destroying the person's life? The death penalty says that this person is incurably evil and that punishment cannot have any positive or meaningful sense to him or her. From a Scriptural point of view, Jesus' response to capital punishment speaks to our common sinfulness. "Let the one without sin . . ." challenges those of us who think we have clean hands. From God's perspective, we are all guilty. Yet we are all children of God and are considered redeemable. The only redemptive option for an offender and society is rehabilitation - allowing for improvement, education, restoration and conversion. Many murderers have been able to change - a repentance some have been able to come to just because they have not been executed.



SEPTEMBER AUGUST 1994

Some suggested practical actions of the Church

1. Church leaders should awaken the conscience of Christians to the issue of capital punishment, the inequalities and politics underlying its use, its lack of effectiveness, and the deeper environmental and socio-political injustice which provides the context of much criminal behaviour.
2. Christians should say "NO" to capital punishment. The church can campaign strongly against it, and support all organisations working for the abolition of the death penalty, both by their prayers and by involvement in the work of such organisations. (PACSA, Lawyers for Human Rights, the Society for the Abolition of the Death Penalty, Amnesty International).
3. Petition the Minister of Justice to uphold the Bill of Rights and for the law to be changed.
4. We should know and pray for those condemned to death.
5. Christians need to be helped to appreciate the corporate nature of sin, whereby each is involved in, and has a share of responsibility for, the sins of others. This applies inversely too, to the well-being of the individual and community. The community has the duty of helping to rehabilitate the offender, and of bearing the cost of providing adequate alternative punishment.
6. The church should demand a profound renewal of the penal system to enable inmates to build a new life.
7. Those who reject capital punishment must be committed to alternatives.
8. Link in with, or start a prison visitation programme so that people can be with those in prison, as well as begin to experience and understand prison conditions ourselves.
9. Support the Gun-free South Africa campaign.

PACSA has more detailed information on the death penalty in its resource centre.