



**why
do we
kill people
who kill people
to show
that killing
is wrong?**

*The phrase
'capital punishment' is far
too respectable and clinical
to describe the medieval ritual that
regularly plays itself out in
South Africa's places of execution.
Anne Colvin, Jenny de Tolly and
Sheena Duncan take us
beyond the euphemisms.*

In February, when the Black Sash began planning its National Conference focus on capital punishment, 14 people had already been executed in South Africa in the first seven weeks of 1988. By May, when we were working on this National Conference issue of SASH, 50 people had reportedly gone to the gallows and 274 were waiting their turn on death row. By the time the magazine went to press in June, 71 people had been hung in circumstances that a former Minister of Justice considered 'too gruesome' to reveal in an answer to a Parliamentary question. Last year, 164 people were executed. In the past ten years 1 100 people have gone to the gallows.

The fact that South African courts impose the death sentence more than in any other country that lays claim to a 'Western' judicial system has long been of grave concern to the Black Sash. The issue has been on the agenda of National Conferences before. But never has it stimulated the concern or follow-up it did this year. Perhaps this was partially due to the fact that there is a greater public concern about the death penalty than ever before. Individuals and organisations that have not paid much attention to the issue of capital punishment in the past are doing so now, mainly because 53 people on death row at the end of 1987 had been sentenced for actions arising directly out of the political conflict in this country.

This has given added impetus to the Black Sash's long-standing opposition to capital punishment. It has been more important than ever for us to raise our voices in this debate, not least to make the point that our opposition to the death penalty applies in all circumstances, not only to sentences arising out of 'politically motivated' crimes.

The Black Sash opposes the death sentence because we believe that the deliberate, planned killing of any human being is indefensible. It has a brutalising effect upon society as a whole; it debases those who carry out the execution, those who must witness it and all those who are members of societies which authorise it; there is no satisfactory evidence that it is effective as a deterrent, and there is always the possibility, however small, of judicial error which in the case of the death sentence is irreversible. In this year of our human rights campaign it is particularly appropriate to reassert that the right to life is the ultimate human right, a right that no other person should be legally empowered to remove. Experience has shown that society can effectively protect itself from recurrent violent crimes by methods that do not include killing the criminal.

Our focus on capital punishment has a practical and achievable goal: it aims to build up public pressure on the government to appoint a judicial commission of inquiry into the death penalty and declare a moratorium on all hangings until the commission has released its findings.

To do this we have to ensure that the issue of capital punishment becomes a priority in South Africa's political debate - not as a point of party

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political conflict but to encourage people across the spectrum to consider the issues at stake. We may find powerful allies on this issue within the National Party, and who knows, maybe even to their Right. We need to involve everyone in turning the spotlight on one of the darkest and most hidden facets of our society.

Very few people know anything about what capital punishment means in practice, which is probably the major reason why so many people still defend and condone it. Years of intellectual debate and moral argument have done little to shake the prevailing view that the death penalty has its place in a society's legal system as the ultimate penalty for those who calculatedly and deliberately take the lives of others.

Even the fact that the death penalty is imposed for a far wider range of crimes in South Africa has made little impact. Hangings in our society have become so commonplace that they rarely impinge on public consciousness. The process is so remote that few feel a sense of joint responsibility for what is done in their name.

People begin to think differently only when they know what the death penalty means in practice. It is therefore central to our campaign to take ourselves and others beyond the analytical debate. We need to break through the clinical neatness of the term 'capital punishment' and face what it means to go through the process, from the moment the judge informs a convicted criminal that he will hang by the neck until he is dead.

This is what we know to date:

- after people are condemned to death they are put into cells on death row where they will wait for weeks, months and sometimes years

Our campaign for the abolition of capital punishment aims to mobilise support for the appointment of a Judicial Commission of Inquiry into the death sentence and a moratorium on all hangings until the commission's findings are released.

As a potential first step in this direction, we welcome the recent statement by the Minister of Justice, Mr Kobie Coetzee, that he is prepared to take advice from judges as to whether the mandatory death sentence for certain convictions should be removed, and discretion restored to the judiciary.

While we recognise the need to put the issue of capital punishment on the agenda of public debate, we are aware of the fact that in countries where the death penalty has been abolished, the weight of public opinion has actually been in favour of retention. Where abolition has occurred, the scales have been tipped by influential opinion formers and political representatives. Our campaign will primarily aim to reach such people. This is what we

until the day of their execution.

- Once all appeals for clemency have failed and a date for execution set, the condemned are given seven days notice and taken to the 'waiting cells'.
- Some people on death row receive no visits whatsoever and they do not know whether any appeal has been made or if there has been any plea for clemency. They seem to know nothing more from the time they are sentenced to the day they get the notice that they are to be hanged. This ignorance may sometimes be due to the fact that many condemned prisoners have pro-deo counsel whose interest in the case is decidedly limited.
- One of the cases that came to our attention early in June was that of a 60-year-old man who was sentenced to death in 1986 for a crime committed in 1985. He had no idea that anything could be done on his behalf. At the last moment a new lawyer was briefed to take over the case and an 11th hour application was lodged in the Supreme Court for a stay of execution. The application succeeded – a day before the man was due to hang.
- A condemned prisoner usually receives notice of his execution date seven days in advance. There is no greater terror that can be inflicted on a person than knowing in advance the exact moment of one's death.
- A chilling detail that emerged from the case of the 'Sharpeville Six' was that two days before their due date of execution, they were taken to be weighed and measured. They

are doing about it:

1. Working groups have been established in the Transvaal, Western Cape, Natal Coastal region and the Eastern Cape in order to make the campaign for the abolition of capital punishment a central theme in our human rights focus this year.
2. The Transvaal region will be hosting a film festival, screening several commercial films on the lives and circumstances of people sentenced to death. Each screening will be preceded by a talk on the issue, and there will be time for discussions and questions afterwards.
3. We have asked David Dalling, M.P. to ask the same question in the House of Assembly that he asked in 1981 - and subsequently withdrew after the Minister of Justice made earnest personal representations to him, saying the answers would be 'too gruesome'. Mr Dalling wanted to know the average waiting time for condemned people from the time of arrival at the gallows to the

The Campaign Outlined

(a person) hits the end of the rope with a terrible crack.

understood that they were being measured for their coffins but, as we recall from English literature, hanging necessitates the executioner knowing the height and weight of a person in order to fix the noose properly. On the same day their clothes were given to their relatives.

- The authorities notify prisoners' families of the execution date and for those who live away from the execution centre, a third-class rail ticket is enclosed with the official notice. Gallows are situated at Pretoria Central, Rooigrond (Bophuthatswana) Middledrift (Ciskei), Wellington (Transkei) and Venda Central.
- For many prisoners, the final visits are the first time they will have seen their relatives since sentencing. No contact visits are permitted, not even for families - a pane of glass and bars separate relatives and death row prisoners during the last meetings, which are monitored by a warden.
- In South Africa, seven persons can be hanged simultaneously. Few other details are known of the actual hanging, although some details have leaked out. In 1981 it was reported in the press that four men had resisted when warders entered the death cell to escort them to the gallows and that teargas had to be used to 'calm down the prisoners'.
- The names of those who are to die are not available officially until after the execution has taken place when the list is posted up in the magistrate's court in Pretoria. The only way one can know is if relatives or friends

hanging; whether they were given sedation; whether they were accompanied by a doctor, minister or anyone else; how many people could be executed at a time; whether each man had his own executioner in multiple hangings; what procedure was followed and how many times physical force or teargas were used to get the men from their cells to the gallows.

4. We will be attempting at every opportunity to stimulate public debate around the death sentence. We will consider choosing this topic when we are invited to speak publicly. We will make maximum use of the media to raise the issue, writing articles and replying to every letter that appears in the press on the issue, either to support or criticise the views expressed.
5. We have requested the Progressive Federal Party to use one of their two private members' motions in the next Parliamentary session to call for a Judicial Commission of Inquiry into Capital

come to the church or others for help or if the lawyers make it known. We were horrified that during all the relief about the stay of execution for the Sharpeville Six, we had not known that a seventh man was hanged alone, and that no one knew until it was published the next day.

There are still many unanswered questions: how long do condemned people wait from the time they arrive at the gallows until they are hanged? Are they sedated? Is each condemned person accompanied by someone like a doctor or minister or do they go to their deaths alone?

We know from medical evidence that death by hanging is not always instantaneous or painless. As a medical witness to a hanging in Iowa State Penitentiary described it: 'I learnt... that a man hits the end of a rope with a terrible crack; that he doesn't just dangle but is likely to writhe for some time; and that the heart stops reluctantly. As I listened for an interminable 13 minutes to the dying heart of a victim, there was time for me to ask a host of troublesome questions.'

It is precisely these sorts of 'troublesome questions' that we are committed to ask, encouraging more and more people to ask them too as we take forward our campaign against capital punishment.

We need to ensure that no Minister of Justice can ever use the argument a former incumbent used in 1969 to dismiss Helen Suzman's call for a Judicial Commission of Inquiry into the desirability or otherwise of abolishing capital punishment: that there was negligible public demand for abolition. It is part of our role to help create that demand. □

Punishment. They cannot do so this year as they have used both their opportunities. We will use the intervening period to raise public awareness of the issue.

6. We are planning to ask lawyers throughout the country through the law societies to notify the relatives of those condemned to death that the churches can help to get them to Pretoria for visits if they cannot afford the expense of the journey.
7. We have received material from Amnesty International and are considering ways of using it innovatively in promoting our campaign.
8. We intend asking the Human Awareness Programme whether they will be able to produce one of their comprehensive dossiers on the subject and if not, to seek their help in doing it ourselves. □



Rand Daily Mail

a tribute to Barend van Niekerk

As we take up our campaign against capital punishment, we look to the example of the late Barend van Niekerk, legal academic and tireless campaigner against the death penalty.

In 1982 Jill Wentzel prepared a National Conference paper on capital punishment, in which she said: 'What Barend van Niekerk did was to inject blind energy into the task. Determinedly he used his intellect and his considerable ability to write and talk persuasively over a concentrated period in the late 1960s and his achievement was

a marked drop in the execution rate in the early 1970s. Between 1968 and 1971 the annual number of executions had climbed to 80 and over. In the years 1971 to 1976 executions dropped to between 43 and 60 per annum. As the interest he had aroused began to fade, the execution rate began to climb again, with 71 executions in 1976/77 and over 100 every year since then.'

It is more important than ever to take up the campaign where he left off. Barend van Niekerk remains an inspiration to us. □

What Others Have Said about Capital Punishment.

Albert Camus described capital punishment as: 'The most pre-meditated of murders to which no criminal's deed, however calculated, can be compared. For there to be an equivalence the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not found in private life.'

Arthur Koestler: 'Innocent men have been hanged in the past and will be hanged in the future unless the death penalty is abolished worldwide or the fallibility of human judgement is abolished and judges become supermen.'

Albert Pierrepoint (the last executioner in Britain) on his retirement: 'The fruit of my experience has this bitter aftertaste: that I do not now believe that any one of the hundreds of executions I carried out has in any way acted as a deterrent against future murder. Capital punishment, in my view, achieves nothing except revenge.'

Sue Cook (co-presenter of BBC's *Crimewatch*): 'All the work I have ever done has shown that the law can be wrong; people can be convicted for crimes they did not commit. The machinery of the law means a lot of evidence comes to light after a court case and in a system where that can happen, and where there is the slightest element of doubt, you simply cannot have capital punishment.'

Hugh Lewin, a former political prisoner in Pretoria Central: 'I think that any person, in any society, should know what it is like to live in a hanging jail.'

Should Hangings be Carried Out in Public?

No doubt, you blanch at the very question. You may be recoiling from this article as a whole, questioning our sense of judgement in running it. If so, we will have made the point. South Africans - and people the world over - are sheltered from the reality of judicial killing, which is why so many still defend and condone it.

If hangings were carried out in public, people would at least know the dreadful things that are

done in their name. The citizens would see that death is not always instantaneous. They would see that when people die in the extremity of fear, their bowels may turn to water and they may defecate or urinate involuntarily. They would see that there are sometimes emissions of blood. They would know what the cold and deliberate taking of life means. □

death by 'common purpose'

The doctrine of 'common purpose' is entrenched in our legal system. It is regularly cited in judgments, and people are convicted and sentenced on the strength of it. Its underlying rationale is that an accomplice or instigator may be as guilty as the perpetrator of a crime - and should therefore be equally sentenced. This thesis is rarely challenged. Indeed, it is often considered just. However, in the case of the Sharpeville Six - who were found by the court to have been part of a crowd whose 'common purpose' was to murder township councillor Dlamini on 3 September 1984 - the doctrine became extremely controversial. The Black Sash was one of many organisations world-wide that called for clemency for the Six. In doing so we were not only protesting the death penalty. We were challenging the application of the 'common purpose' doctrine in sentencing to death six individuals, who formed part of a much larger emotion-charged crowd in politically fraught circumstances. (There was no proof that any of the Six actually committed the murder).

The 'common purpose' doctrine has recently been applied again in a case that could prove even

more controversial. Twenty-five people from Uppington have been found guilty of a 'common purpose' murder in roughly similar circumstances as the Sharpeville Six. A number of the 25 insist they were not even part of the crowd that pursued and murdered a municipal policeman. (The person responsible for delivering the fatal blows was identified and apprehended). Some of those convicted for 'common purpose' have alleged they were mistakenly identified at an identification parade.

Lawyers who have been briefed in the matter after the conviction are now preparing at great length to argue the case for extenuation in the hope that some of the accused may be spared the death sentence.

There is a great deal about this case that cannot be published as the matter is sub judice. We can only recall Sue Cook's words, on the opposite page, which have potential relevance to this case: 'The machinery of the law means a lot of evidence comes to light after a court case and in a system where that can happen, and where there is the slightest element of doubt, you simply cannot have capital punishment.' □



29 Black Sash members hold a group picket outside Parliament on 17 March - the day before the Sharpeville Six were initially due to hang. The execution was postponed because of indications that state witnesses at the trial may have committed perjury. The Six are fighting a legal battle to have the trial re-opened.