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Theme: *The Death Sentence in states with minority governments*

" The white man makes all the laws, he drags us before his courts and accuses us and he sits in judgement over us.... I have grave fears that this system of justice may enable the guilty to drag the innocent before the courts. It enables the unjust to prosecute and demand vengeance against the just."

Nelson Mandela October 1962.

The debate for and against capital punishment that has ranged in most countries and continents in this century acquires a peculiar dimension in South Africa, a dimension that does not merely introduce a new aspect, but one that totally eclipses all others. The morality of taking life, the human right of one individual versus the protection of society, the possibility of re-education and the prospect of re-integration into society, deterrence or vengeance - are all subjects that feature and rightly so, in most discussion of the use or necessity for the death penalty. But in considering the subject in South African society today, our attention must focus not on these, but on the racism ~~which capital punishment is imposed~~ which underlies the use of capital punishment and the use of the death penalty by the regime as an instrument for terrorising the people.

The apartheid regime <sup>world</sup> enjoys the dubious distinction of occupying first place in a United Nations survey on the rate of capital punishment, and Pretoria's executioners are responsible for nearly one half of those reported as executed throughout the world. Unlike most societies in which the number of offences for which capital punishment is imposed has progressively decreased, South Africa has increased the scope of the death penalty. Sixty seven years ago, there were only three capital offences - treason, murder and rape. ~~Progress~~

### Civilisation

under apartheid and the ~~tribalisation~~ progress brought by the Pretoria regime has led to the introduction of a further eight so called capital crimes. ~~Amorphousness~~

- # Sabotage - ~~which~~ was widely defined and became a 'capital crime' under the General Law Amendment Act 1962. The following year under an amendment to the Suppression of Communism Act the death penalty was imposed in cases where a resident or former resident of South Africa underwent training or obtained information which could further ~~the subject~~ an object of 'communism'. It was for the accused to prove beyond reasonable doubt, that there was no such purpose. The same statute ~~which~~ introduced the death penalty in cases where a resident or former resident of South Africa advocated abroad, economic or social change in South Africa by violent means with the aid of a foreign government. In 1967 the Terrorism Act made participation in "terrorist activities" (again widely defined) a capital 'crime'.

Even as we meet here, 11 men and one woman are standing trial in Pretoria for 79 separate charges under this Terrorism Act. They face a possible death penalty.

A few weeks ago, ~~the~~ apartheid Minister Krüger began to lay the foundation for a further extension when he called for mandatory death sentences for those engaged in the armed struggle for liberation, flying in the face of international opinion and the Geneva protocols.

Thus ~~in South Africa~~ is naked aggression against the African people cloaked in judicial garb. Capital punishment in South Africa is one more weapon in the machinery of repression, and is used and threatened in an attempt to intimidate those who try to resist and overthrow the apartheid system. Racism prevails also in ~~the definition~~ relation to non-political acts, and manifested in the numbers charged in those convicted and as we shall show in the sentences pronounced and enforced.

The Universal Declaration of Human rights provides that all ~~persons~~ persons are equal before the law and are entitled, without any discrimination, to equal protection of the law. Though the Pretoria regime has maintained that this provision of the Declaration/applied in ~~South Africa~~ the country and the South African judicial system is often praised in the western media, there is in fact no equality before the law. As Nelson Mandela explained to the

court in 1962:

"In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed, a constitution which guarantees democratic rights to all sections of the population, the right to approach the court for protection or relief in the case of the violation of rights guaranteed in the constitution, and the right to take part in the administration of justice as judges, magistrates, attorneys-general, law advisers, and similar positions.

"In the absence of these safeguards the phrase 'equality before the law', in so far as it is intended to apply to us, is meaningless and misleading. All the rights and privileges to which I have referred are monopolized by Whites, and we enjoy none of them.

"The white man makes all the laws, he drags us before his courts and accuses us, and he sits in judgement over us."

The apartheid system excludes the black majority from any such participation, and exclusion written into the constitution. Black feature in the constitutional and legal systems as its victims. The laws of South Africa are made by a Parliament in which there is no direct or indirect representation for the Black people. All members are white and elected by an all white electorate. No Black sits on the bench in the courts that are supposed to mete out justice ~~xxxxx~~ according to apartheid South Africa.

The death penalty is used extensively in the belief that it signals the strength and determination of our oppressors and somehow teaches the African to submit and acquiesce in his subjugation. The falsity of these assumptions is revealed in the history of our country, and by a glance at any newspaper today, where there appears daily testimony to the sacrifice of our people in their determination to be free. These assumptions are however, long standing, They have flourished in the bloody history of colonial conquest and settlement in South Africa over more than 300 years, and have roots deep in colonial history.

~~Transition~~ In Southern Africa there was no single traditional mode of law enforcement among African societies. Generally, where there was land enough for all, the tendency was for law enforcement to be based on penalties in cattle rather than directed at the person of offenders. The emphasis was on the social responsibility of crime rather than focussing solely on the individual offender.

In times of stress and upheaval, such as those in the early part of the nineteenth century, when tribal structures were revolutionised and powerful centralised military states were being established, capital punishment was

used extensively. Otherwise the death penalty was rarely used. Usually it was confined to cases of suspected witchcraft, and was normally spontaneously carried out after accusation by the diviners, and then reported to the chief. Some of the great chiefs of ~~the~~ nineteenth century southern Africa ~~such~~ as Hintsa, Moshweshwe and Montshiwa strongly opposed capital punishment in all circumstances, not excluding witchcraft.

In the colonisation of South Africa capital punishment was always associated with terrorising the indigenous people and imported slaves. Though the death penalty applied to Black and whites the manner of its execution differed for freemen and slaves - and the slaves were Black. Freeman sentences to death were usually hanged, shot or strangled, whereas slaves were subjected to the more lingering forms of death, such as being stretched on the rack or broken by iron clubs while crucified. The records abound with ~~excruciating~~ descriptions of excruciating executions. One of the harshest death sentences possible was: being tied to the wheel, having the flesh pinched and being broken alive by eight blows of the club without mercy of the stroke. One slave was bound naked to a cross, had ten pieces of flesh ripped from him by red hot pincers at length y intervals, his ~~right~~ hand hacked and thrown into his face, his body quartered and dragged in portions through the town, and his head secured to a pole as prey to the birds.

Executions were carried out in public, and far from diminishing in severity and scale as white settlement progressed, were effected by more executioners using better equipment and attended by greater ceremony. Improvement of techniques unaccompanied by any softening of objectives resulted in cruel executions occupying a larger rather than a smaller place ~~in~~ in colonial society.

Racism pervaded relations between the whites and all blacks - slave and free, and the laws and courts fulfilled a crucial role in extending and maintaining white and colonial control. A marked feature of the nineteenth century was that greater dispossession of the African people led to harsher white attitudes towards them and more severe use of the courts as instruments for their control. As long as the indigenous peoples of southern Africa had possessed their own armies they were accorded a certain measure of respect. Treaties were entered into with them, ~~alliances~~ alliances created. ~~and~~ Africans



responsible for killing white soldiers or missionaries outside the colonial borders were handed over to their chiefs for justice, and it was not unusual for early officials and travellers to describe such chiefs in admiring terms. A century of wars for land cattle and water changed relationships, and led to a deterioration of white attitudes. Differences between white and Black were deliberately ~~wrought~~ exaggerated and used to legitimise violence and confiscation and to ~~warrant~~ justify permanent subjection. For those Africans who continued to resist retribution was harsh.

According to a leading South African lawyer

"The frontier wars themselves produced waves of anti-African sentiment, but they were not the sole causes of hostility. The annexation of tribal land, the confiscation of tribal cattle and the destruction of tribal independence tended to feed rather than appease the tendency on the part of white colonists to regard Africans in a generalised way as unreliable but pliable ~~instinctive~~ elements needing to be treated with a firm hand. Now the great fear was of rebellion rather than invasion, and of a concerted rising of the tribes that would lead to a general servants' revolt. In order to forestall the contemplated barbarities of the rebels, the forces of civilisation were deemed entitled, both in law and morality, to commit almost any atrocity themselves. Thus the punishment of rebels went far beyond and military or legal exigencies."

Thus the Cape Attorney General condoned the shooting in cold blood of defenceless men and women prisoners. A judge advocated the necessity of impressing "upon the savage mind by striking illustrations the duty of submission to civilised superiors". So in the last armed uprising of the Zulu people in 1906, as against 24 whites killed, some 3-4000 Africans were shot dead including many unarmed men lying on the ground and fugitives hiding in trees. A further 700 Africans had their backs "lashed to ribbons" while a total of 4,700 sentences including lashings were inflicted. ~~before the~~ Africans were also publicly shot after brief courts martial, and several were hanged for murder. Mahatma Gandhi who witnessed the atrocities as an ambulanceman wrote "This was no war but a manhunt..."

In an earlier period extermination as a deliberate end had been pursued against some of the indigenous people, and groups such as the San have been almost entirely exterminated. But the white settlers found they had need for African labour. So the extensive shooting of "rebels" was no longer intended to reduce the numbers but rather to act as punishment. Its objective was disciplinary rather than exterminatory, and related to the process whereby independent African farmers were ~~removed~~ to be converted into subservient African

labourers. ~~It~~

This same process required the harsh treatment of all offenders. The contention that all harsh laws and attitudes proceeding from white to Black in South Africa had their origins in slave society, the Boer Republics, and the Afrikaner is not borne out by an examination of African experience in the period of British rule of the Cape and Natal. The laws, the courts and the judiciary were an important agency for maintaining the domination and protecting the property of the white settler community, as indeed they still are in South Africa to this day.

While the statutes that created the various capital crimes do not differentiate on grounds of colour, racial attitudes pervade all those given the responsibility for applying them. The values of the policeman, and his determination to uphold apartheid system determine who is arrested, and who is charged with what. The judges are part of the white apartheid supporting establishment and these values have affected the sentences given, including imposition of the death penalty. A university lecturer who wrote an article in the South African Law Journal, in which he reported on the basis of a survey that a substantial number of advocates believed that judges consciously discriminated on racial grounds when imposing capital punishment, was prosecuted on the initiative of the Transvaal Judge President. He was found not guilty of contempt of court, but this example has inhibited South African lawyers and writers from admitting the pattern of discriminatory punishment revealed in any serious examination of the statistical evidence.

In the case of rape across the colour line for example, in absolute terms more white men have been prosecuted than Black men. Between 1961-1966 four times as many whites were so charged. Yet between 1911-1968, only two out of 132 men executed for rape were white, and both of these were found guilty of raping young white girls. The great majority of the others were African or coloured men convicted of raping white women.

Examination of the figures for murder across the colour line present a similar picture of leniency towards whites and severity towards Blacks. In the 5½ years ended June 1966, 189 whites were sent for trial for murdering Black ~~white~~ people, whereas only 130 Black persons were sent for trial for murdering whites. In proportion to the total populations of the different racial

groups, this represented white leadership in the ratio of six to one. Yet in the total period of 1911-1968, only some 85 out of approximately 2000 persons executed for murder were white, and of these 85 only 6 had murdered people who were not also white. Similarly though a considerable number of whites are prosecuted each year for housebreaking or robbery with aggravating circumstances (a capital crime in South Africa), it would seem that none of the 57 persons hanged for these offences between 1958-68 were white, while only one person out of seven hanged for sabotage was white.

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Again, the treatment of those judged guilty of acts against the 'security of the state', the disparities are stark. In general white "rebels" have been treated with great leniency. The Reformers found guilty of treason after distributing guns and seizing Johannesburg at the time of the Jameson Raid in 1895 were all released within months of their conviction; four were formally sentenced to death, but the Judge knew that the Executive had already agreed to commute the sentences. The 'rebels' in the Cape and Natal who joined the invading Boer commandos at the time of the Anglo-Boer War were all either amnestied, sentenced to short terms of imprisonment or else released shortly after the war's end. After the 1914 Afrikaner 'rebellion', during which hundreds of ~~South African~~ <sup>Boer</sup> ~~Prætorius~~ <sup>Boer</sup> troops were killed and generals led whole battalions over to the Germans, one officer was court martialled and shot, but all others involved were released within eighteen months. After the 1922 Rand revolt of white artisans, in which more than 100 troops and police and non-combatant civilians were killed, 4 strikers were hanged, but all the others were released within two years. All persons convicted during World War II of crimes against the State, including persons found guilty of treason, murder, sabotage, spying and broadcasting for the enemy, were released within three years of the war's end.

This treatment of white 'rebels' stands in sharp contrast to the treatment of the Zulu people at the beginning of this century referred to above, and to that meted out to Blacks engaged in the liberation struggle today. In the first few years of the 1960s more Africans were executed for offences with a political background than were whites executed for treason in all the major "rebellions" referred to above. An estimated 50 persons were executed and hundreds of Africans have been sentenced to terms of imprisonment from 10 years to life. In July 5 Africans alleged to be members of the African National Congress were sentenced to life imprisonment. In many of the trials now going on and in some of those

"reals and  
harsh  
sentences  
continue"

projected men and women, and even children are facing the possibility of death sentences.

The question of capital punishment in South Africa cannot be seen as separate from and outside the wider struggle for a free and just society. The Freedom Charter which embodies the aspirations of our people and stands as the programme of the African National Congress makes clear that the aim of law enforcement should not be to brutalise and destroy. We support the progressive trend towards the elimination of physical punishments and emphasis on re-education and re-integration into the community. Capital punishment is not appropriate for murder, rape, offences against public or private property. It is easy to attempt to solve social domestic and personal problems by executing individuals responsible for misdeeds. Yet this solves nothing, but cheapens respect for human life and personality. We cannot support the use of execution as a means of terminating political debate or in place of discussion. The eventual complete abolition of capital punishment and even imprisonment is a goal to which we must aspire.

However, in the South African present, our people are engaged in a struggle for liberation, and in its midst we cannot take an absolute stand on this question. For us, capital punishment cannot be separated from the wider question of state power and personal responsibility ~~in its exercise~~ in its exercise. At the moment in our country capital punishment is used to bolster white supremacy and to physically eliminate freedom fighters. We demand that Pretoria be compelled to adhere to the Geneva protocols, in terms of which captured guerillas must be treated as prisoners of war. To kill them is murder.

In the future we will have to take into account the grave crimes that have been committed against the people. Theft of our land, our country, our nationhood; wholesale removal of communities and destruction of families; massacres of innocent people of which Sharpsville and Soweto are the most ~~recent~~ publicised; dozens murdered in prisons, hundreds tortured. We are concerned not with vengeance for its own sake but for the reconstruction of South Africa and establishment of new norms of social practice. The total repudiation and denunciation of the racist inspired massacres, tortures and other atrocities requires drastic public condemnation and punishment of those with prime responsibility.



THE AFRICAN NATIONAL CONGRESS CANNOT RULE OUT THE USE OF CAPITAL PUNISHMENT AGAINST THOSE RESPONSIBLE FOR THE WORST CRIMES OF APARTHEID.

Capital punishment should be a rare and solemn punishment, reserved only for the most serious offences where the whole community has been jeopardised in a real and substantial way. We believe that many of ~~those~~ <sup>today</sup> those who exercise power in Pretoria ~~today~~ have brought themselves within that category. ~~Just~~ Most of the world supported the execution of Nazi war criminals, and in a similar manner the African National Congress would expect and is confident of receiving support for the punishment of those racists guilty of the grave crimes of apartheid.

~~Moreover~~ Thereafter, we will continue to work for the creation of a just non racial democratic South Africa, in which law enforcement will be guided by the principle of re-integrating criminals into the community rather than eliminating them from it.