



FOCUS

amnesty
international

The death penalty in South Africa

South Africa has one of the highest rates of judicial execution in the world. From 1978 until the end of 1987, the courts sentenced 1,593 people to death (including at least 98 people in the nominally independent "homelands").

During the same period the upward trend in the annual number of hangings has been almost unbroken, with the annual total of executions in South Africa and the nominally independent "homelands" exceeding 100 each year except for 1983.

In 1987, 164 people were executed at Pretoria Central Prison, the highest annual figure since South Africa's independence from Britain in 1910. This total does not include at least eight people who were executed in the four "homelands", Transkei, Ciskei, Bophuthatswana and Venda, whose executions are never included in official statistics. Nine of those executed were white. In one week in December 1987, 21 people were executed in groups of seven on three different days. Shortly after the Transkei was declared "independent", the "homeland" authorities changed the law to make it a capital offence for anyone to disseminate or propagate the view that Transkei was part of another country.

In February 1988, 267 people were awaiting execution, not including an unknown number in the "homelands". By early Sep-

tember at least 85 people had been executed.

Most South Africans sentenced to death have been convicted of murder. A smaller number have been sentenced to death for rape, robbery or housebreaking or kidnapping with aggravating circumstances, high treason, or "terrorism" as broadly defined under the 1982 Internal Security Act (ISA).

In murder cases where the court concludes that there are no extenuating circumstances, the death penalty is mandatory. The death sentence may not be imposed on a woman convicted of murdering her newly-born child or on a person who is under 18 at the time of the offence, or carried out on a woman who is pregnant.

Defendants in capital cases are tried in the Supreme Court before a judge with two assessors. Assessors, who are usually trained lawyers, participate in deciding questions of fact, such as whether there are aggravating or extenuating circumstances. The judge alone decides questions of law, and also has sole discretion over sentencing.

The judge selects the assessors,



Mamike Moloise, supported by two relatives, walks to Pretoria Central Prison on 18 October 1985, the day her son Benjamin was hanged. Benjamin Moloise, a poet, was convicted of killing a police officer. He denied the charge and claimed the confession he had made was extracted under torture.

© IDAF

and certain assessors are repeatedly selected by the same judge. This raises questions about the independence of assessors especially, as is often the case, when they are retired lawyers dependent

on the position for income.

Those sentenced to death do not have an automatic right of appeal and must apply to the trial judge for leave to appeal against conviction or sentence. In ruling on such



Relatives of Simon Mogoerane, Marcus Motaung and Jerry Mosololi, three alleged ANC members executed for treason in June 1983. They were the first South Africans to be executed for treason since 1914. All three claimed they had been forced to confess in police custody.

© IDAF

applications, the judge must consider whether there is a reasonable prospect that the appeal court might reach a different conclusion to his.

If the judge denies leave to appeal, the convicted person may petition the Chief Justice for leave to appeal against the conviction and sentence. The Chief Justice can consider the petition himself or refer it to an appeal court judge. In either case, the decision is final. Except in the nominally independent "homelands" of Ciskei, Transkei and Bophuthatswana, which have their own final courts of appeal, the Appellate Division of the Supreme Court in Bloemfontein is the final court of appeal.

A defendant whose appeal has failed can petition the State President for clemency. The State President is empowered to extend mercy and to commute a sentence of death to another punishment. He also can require the original trial court to examine new evidence which might affect the conviction or sentence.

The proportion of death sentences imposed by courts and later commuted under executive prerogative rose from just under

10 per cent in 1978 to 45 per cent in 1983. Since then the rate has fallen steadily, with only 12 per cent of those sentenced to death being reprieved in 1987.

The increasing number of executions, particularly for offences arising out of political protests, appears to have given renewed impetus to opposition to the death penalty. During the past year, religious, trade union and anti-apartheid organizations, human rights groups and members of the legal profession have spoken out against the death penalty. Some have expressed total opposition to the death penalty; others oppose its use for politically motivated crimes.

In July 1987 the now-banned South African Youth Congress (SAYCO), with trade union and other political organizations, launched a campaign aimed at winning clemency and ultimately prisoner-of-war status for those under sentence of death for political reasons.

Speaking in support of the campaign, the General Secretary of the South African Council of Churches (SACC), the Reverend Frank Chikane, said: "We oppose

the death penalty in general, but particularly in the case of political trials, because we question the very legitimacy of the apartheid regime." The Southern African Conference of Catholic Bishops expressed the hope that, were the State President to grant clemency in these political cases, it would "terminate the spiral of violence in which both the state and its opponents have become enmeshed".

In July 1988 the SACC issued a statement expressing total opposition to the use of the death penalty and urging the State President to declare a moratorium on executions and appoint an independent commission to consider the abolition of the death penalty in South Africa. The parliamentary opposition Progressive Federal Party has also called for a commission of inquiry and for a moratorium on all pending executions. In response, the Minister of Justice said that such a commission would not be warranted, but added that the government might seek the views of the judiciary on the issue of not making the death penalty mandatory in cases where the court concludes there are no extenuating circumstances.

At a gathering of human rights organizations to discuss the death penalty in May 1988, lawyers emphasized the injustices inherent in this form of punishment in South Africa: the lack of proper guidelines defining extenuating circumstances and the mandatory nature of the death penalty when there are no extenuating circumstances, the inadequacies of the legal aid system and other procedural issues which prejudice the position of the poor, mainly black defendants, the lack of automatic right of appeal against death sentences, as well as subjective factors such as racial prejudice on the part of some members of the judiciary.

Judges' voices have also been heard in calls for an end to the death penalty. In August 1988 Mr Justice Booysse, at a meeting of law students in Durban, said that passing the death sentence was "the most chilling experience" of his life. He added that he had had to impose the death sentence twice in the past two years. "If I had the choice," he said, "I would amend the Act so that I would never have to do it again; as long as it is part of the law I am obliged to." A number of senior barristers have refused positions on the bench because of their opposition to the death penalty.

The Society for the Abolition of the Death Penalty in South Africa, operative in the early 1970s, was revived in 1988 by members of human rights organizations and the legal profession. □

"... Death row is a separate walled-in building on a knoll above the main prison. A catwalk runs over the whole place, making it a sort of echo chamber, where you can hear everything that goes on. The condemned person is visited by the hangman, an unidentified white contractor paid for each execution carried out, a week before his execution.

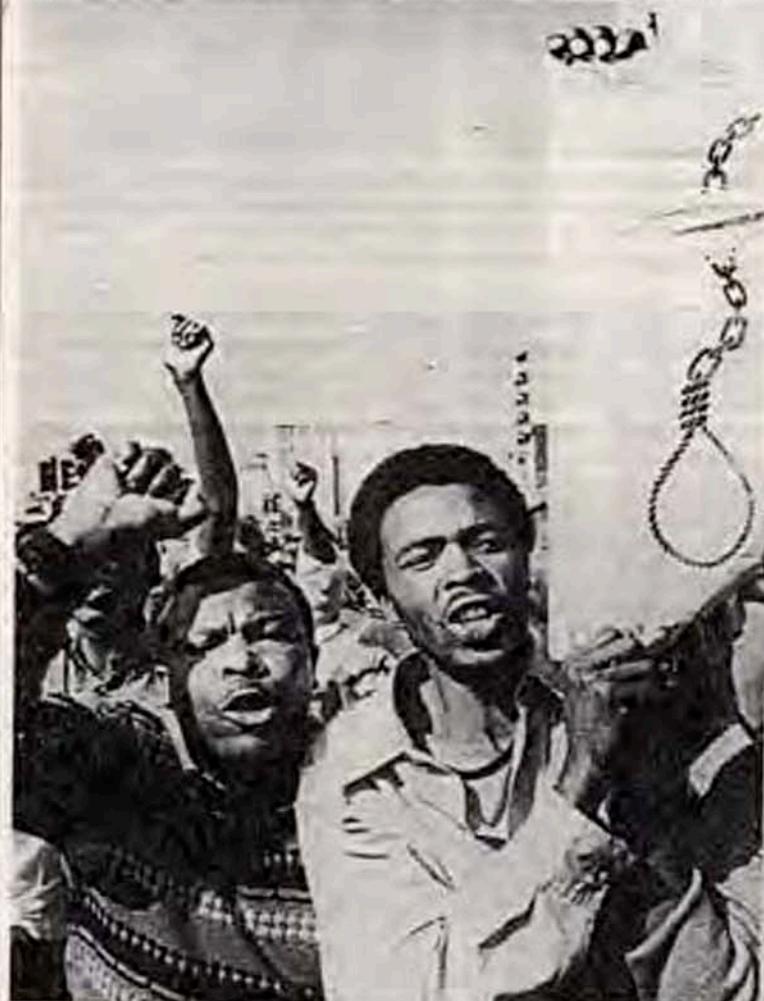
"At that stage those who are to die together are put into one cell, they call it the pot, where the lights are never turned off and where guards watch them constantly. From this stage the singing and praying goes on night and day to support the condemned person up to his execution.

"The ritual of execution begins well before dawn with the arrival of the prison governor, a chaplain, a doctor, and a number of warders. The cells are opened and the people to be hanged are put in handcuffs and leg chains. At the last moment there is often quite a lot of brutality. Some prisoners resist very hard.

"They are taken down a long, barred corridor, through a series of gates, with a lot of clanking and unlocking. A low murmuring song of the other prisoners will accompany them and often those who are to be executed also sing rhythmically as they take their last walk . . .

"The whole prison is silent at the end. You cannot really hear it, it is more of a shudder. Then, strangely enough, life continues."

Extract from an interview with Breyten Breytenbach who was released in 1982 after seven years' imprisonment for treason, two of which were spent near the cells of the condemned in Pretoria Central maximum security prison.



Members of the Post Office and Telecommunications Workers Association demonstrate against the hanging of Moses Jantjies and Wellington Mielis. They were sentenced to death in November 1986 for the murder of a Uitenhage township councillor and members of his family. Theirs was one of the first executions related to the protests in the black urban townships.



Relatives of Wellington Mielles and Moses Jantjies are informed by a prison official that their sons were hanged early that morning.

Racial discrimination

One of the most notable aspects of the use of the death penalty in South Africa is its disproportionate imposition on the black population (including people officially described as "Coloureds") by an almost entirely white judiciary.

With one exception—a black judge in the Bophuthatswana "homeland"—all South African judges are white. And assessors, who are appointed by the judge to sit with him on capital cases, with

few exceptions have been white.

Research carried out in the late 1960s by Professor Barend van Niekerk of Natal University into the judiciary and racial bias in sentencing, and more recent

research, strongly suggests that black defendants are more likely to receive the death penalty, especially when the victim is white.

Barend van Niekerk's 1969 survey of practising barristers in South Africa revealed that nearly half of the 158 who replied believed that a "non-European" was more likely to be sentenced to death than a "European", either on all or on certain capital charges. Furthermore, 41 per cent of those who took this view were also of the opinion that such differentiation was "conscious and deliberate".

Barend van Niekerk was tried but acquitted in 1970 of a charge of contempt of court for having published the results of his research. During his trial he referred to the fact that, between 1947 and 1966, 288 whites were convicted of rape of blacks and 844 blacks were convicted of rape of whites. None of the whites were sentenced to death but the 844 convictions of blacks resulted in 121 death sentences.

Statistics in murder trials are similarly revealing. Between June 1982 and June 1983, for instance, 81 blacks were convicted of murdering whites and 38 were hanged; of 52 whites who were convicted of murdering whites one was hanged. None of the 21 whites convicted of murdering blacks was hanged, while 55 of the 2,208 blacks convicted of murdering blacks were hanged.

The 1987 executions of two white men, Johannes Wessels and George Scheepers, for the rape and murder of two black women attracted attention primarily because very few whites had been executed for murdering black people and none for raping black

... Into the silence and darkness outside our windows there was a sudden whimpering and crying, deep sobs of crying moving across the yard. A woman, a young woman it sounded like, gulping deep whoops of weeping. I thought at first I was asleep, dreaming the nightmare cries... then cold with horror I realized where I was and what it was, and I followed the cries past my window in the yard down below and round the corner, disappearing inside. And I lay, cold still, imagining how she walked up the iron stairs and along the passage, and then through the two heavy doors leading to the gallows.

"They had to bring her through, said the [prison warden] later, strapped up in a strait-jacket. She was an African who had smothered her child. She had hysterics when they hanged her, he said. She didn't go well."

This account was written by Hugh Lewin, who spent seven years as a political prisoner in Pretoria Central Prison, South Africa, where the majority of the country's executions are carried out.

**STOP
EXECUTION**
THE SHARPEVILLE SIX
**THERESA
RAMASHMOLO
& SHARPEVILLE**



Four-year-old Lindwe Diniso with her brother Tembili, aged 10, at a meeting in protest at the death sentences passed on the "Sharpeville Six". Oupa Diniso, their father, is one of the six.

Unfair trial

Because of poverty, most black defendants appear before courts unrepresented. In practice the court will appoint defence lawyers for defendants in capital cases, although this is not required in law.

Court-appointed barristers are usually the most junior members of the bar and are paid at a substantially lower rate than barristers hired by the accused. The fees court-appointed barristers receive allow only a minimum amount of time for consultation with the accused before a trial begins and do not permit the appointment of a solicitor who, in the South African legal system, is crucial for the proper preparation of the defendant's case.

In murder trials the onus is on the accused to show that extenuating circumstances exist. Again, inexperienced court-appointed lawyers may be less competent to prepare this often crucial aspect of the accused's defence. The inability of a large number of black people to pay for their own defence lawyers jeopardizes their cases.

Trials are conducted in either of the two official languages, English or Afrikaans, which are not the mother tongues of most black people. Having to rely on interpreters can often put black defendants at a serious disadvantage.

During the last 10 years an increasing number of defendants have been sentenced to death after political trials or trials for politically motivated killings during the nationwide protests in the urban black townships.

Several members of the military wing of the banned African National Congress (ANC) have been convicted of treason and other offences as a result of their guerrilla activities, and some have been executed. In other political cases, which did not result in the loss of life, those convicted have had their sentences commuted by the State President.

Defendants in these cases are often held incommunicado for long periods before their trials, under section 29 of the Internal Security Act (ISA). Some have been physically tortured. Before the Criminal Procedure Act was amended in 1977, the prosecution was required to show that a confession was freely and voluntarily made before it could be admitted as evidence. Now any defendants who claim that their confessions were made under duress have to prove their allegations.

Prosecution witnesses themselves may have been detained under section 31 of the ISA, which allows the Attorney General to order their detention incommunicado until they have testified

in court. Convictions in political trials have often hinged on the evidence of state witnesses who have undergone prolonged detention. Under interrogation detainees have been deprived of sleep, drink, food and toilet facilities, forced to stand for long periods, given electric shocks, beaten, whipped and threatened.

Despite this, and the fact that detainees who refuse to testify as state witnesses face up to five years' imprisonment, the courts continue to place reliance on the evidence of witnesses held in detention, including in cases where the death penalty may, and has been, imposed. Confessions extracted from defendants in custody, which they allege were obtained under torture, have also been accepted as evidence in death penalty cases.

The nationwide political protests which began in the urban black townships in 1984 brought a new category of condemned political prisoners to the death cells in Pretoria Central prison: those caught up in political or unrest-related murders of police officers, black township councillors and suspected police informers or other murders apparently connected with political conflict. At least 51 such prisoners were awaiting execution at the beginning of 1988.



Prakash Dhar, lawyer for the "Sharpeville Six", addresses a meeting of the "Stop the Hangings" campaign at Witwatersrand University. The campaign for the abolition of the death penalty is gathering momentum in South Africa.

Among these 51 people were six known as the "Sharpeville Six" who were convicted of involvement in the killing in September 1984 of the Deputy Mayor of Sharpeville, Khuzwayo Dhlamini. Their trial for murder in 1985 highlighted many of the unfair aspects of political trials: pre-trial incommunicado detention, the acceptance by the court



London demonstration against the death sentences on the "Sharpeville Six". International protests erupted in March 1988 when State President Botha denied clemency to the six.

of confessions allegedly extracted under duress, and the reliance on prosecution witnesses who were themselves detained by the police before and during the trial.

During the trial some of the defendants alleged that they had been assaulted and tortured by the

doctrine of 'common purpose'. The Court acknowledged that "it has not been proved in the case of any of the six accused convicted of murder that their conduct had contributed causally to the death of the deceased", but the Court saw it as at least "implicit in the findings of the trial court, but in any event quite clear on the evidence, that each of these accused shared a common purpose—to kill the deceased—with the mob as a whole, the members of which were intent upon killing the deceased."

The Appeal Court's interpretation of the doctrine of common purpose spreads the net of criminal liability very widely, and raises the prospect of many death sentences being imposed in future trials arising out of political conflict.

A lengthy legal battle followed the State President's denial of clemency to the "Sharpeville Six" in March 1988 as the defence lawyers attempted to have the trial reopened. They sought a retrial primarily on the grounds that at least one key prosecution witness, Joseph Manete, may have committed perjury and implicated two of the accused, because of police coercion.

In the event of the failure of all legal remedies, the "Sharpeville Six" would have to appeal again to the State President for clemency. □

police during incommunicado detention. However, the court rejected these allegations and six of the defendants were convicted and sentenced to death. The Appeal Court upheld the convictions and sentences in 1987.

In a controversial decision, the Appeal Court confirmed the appropriateness of convicting the six for murder on the basis of the doc-

Kairos Collection

PUBLISHER:

Publisher:- Historical Papers, The Library, University of the Witwatersrand

Location:- Johannesburg

©2010

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

DOCUMENT DETAILS:

Document ID:- AG2918-2-3-9-1-2

Document Title:- The death penalty, Focus, 2 copies November 1988

Author:- Amnesty International

Document Date:- Nov-88