

REPORT TO THE BLACK SASH REGIONAL CONFERENCE. MARCH 4, 1989

EMBARGOED TILL MARCH 10 ?????

PROFILE OF A DEATH ROW PRISONER -- excerpts from a report on
----- capital punishment by the
Black Sash, Transvaal Region.

SOUTH AFRICA is a world leader in hanging. In 1987 164 people were executed here, 32 times more than China with a population of two-billion, according to the Centre for Applied Legal Studies at the University of the Witwatersrand.

Last year 117 people were killed on Pretoria's gallows, which can hang seven at one time. Brian Currin, the national director of Lawyers for Human Rights, says this was the highest number of judicial executions in the world. The figures do not include the "independent homelands" which each have their own gallows.

South Africa's bloody record has not troubled the country's voting public. And -- in a country with so many wrongs to right -- the execution of criminals has not been a priority for political and human rights groups.

There were exceptions to the rule: The Society for the Abolition of the Death Penalty in South Africa, headed by the late law professor Barend van Niekerk, campaigned vigorously against the death penalty in the early 70s, but it became moribund after 1974. Political groups launched isolated campaigns to save African National Congress guerrillas from the gallows. The Black Sash and several churches took a strong stand against capital punishment.

On the whole, though, the decade from the mid-70s to the mid-80s saw no widespread opposition to the death penalty.

This apathy ended when a new category of condemned prisoner appeared on death row in 1987: The people sentenced to death for murders committed during nationwide political unrest from 1984 to 1986.

In 1987 the now-banned South African Youth Congress headed an alliance of "progressive organisations" which launched the "Save the 32 Patriots" campaign. It called for clemency for those sentenced to death for politically-related crimes. By the end of the year the number of "patriots" on death row had swelled to 44. Last year Justice Minister Kobie Coetsee said 83 people were on

death row for unrest-related crimes. Today about 80 of the estimated 290 people on death row are "political".

The Save the Patriots campaign got off to a slow start. There was only a measure of local and international opposition when Wellington Mielies and Moses Jantjies became the first patriots to go to the gallows, in September 1987.

But the campaign reached undreamt of heights with the "Sharpeville Six", who were sentenced to death for having common purpose with the unknown killers of a Sharpeville councillor on September 3 1984. At least one European country was poised to withdraw its ambassador in protest if the Six hanged, and the leaders of Britain and the United States personally pleaded with President PW Botha to grant the Six clemency. After nearly a year of protest, last November Botha commuted the sentences of the Six to lengthy prison terms. At the same time he commuted the sentences of four policemen who were convicted of murdering suspects.

At first, then, the spotlight was focused only on political prisoners. But its range has gradually been increased to enclose all on death row. Today the rigid distinction between "political" and "ordinary" death row prisoners is being questioned.

The vast majority of death row prisoners are black -- 97% of the 1 070 people hanged between 1980 and 1988, according to the Pietermaritzburg Agency for Christian Social Awareness.

And in many cases "ordinary criminals" on death row can also be seen as victims of apartheid:

In the first place, there is a general acceptance that crime has strong roots in poverty and conditions of social deprivation. Many black South Africans grow up in overcrowded, under-serviced segregated black townships; receive an inferior education to white South Africans and experience job segregation.

The second sense in which most death row prisoners are victims of apartheid is that they have been processed by a legal system which many -- rightly or wrongly -- regard as being slanted against blacks. To give just one example, there is not a single black judge in South Africa.

Our report focuses on all death row inmates -- both "political" and "ordinary" prisoners. We used a wide-ranging questionnaire to interview the relatives, friends and lawyers of 26 people on death row in 1988. The Sash in Grahamstown concentrated on those convicted in political trials. In the Transvaal most of the interviews were conducted in Pretoria at weekends, when relatives came to visit prisoners. Our aim was to personalise the bald statistics of who is on death row.

In the second place, we scoured records of the trials in which 40 people were sentenced to death. In most Supreme Courts an official of the Department of Justice deals solely with "hanging cases". This official can provide you with the case numbers of the trials. You can then read the court record in the archives department. Our aim here was to assess the type of legal process most prisoners experienced.

Our study found that the average person on Pretoria's death row comes from a disadvantaged background.

In summary, 85% of the prisoners in the sample grew up in families which struggled financially. Only 42% were raised by both parents. A total of 92% did not complete school. After leaving school 62% had no further education or training. And 85% worked as unskilled or semi-skilled labourers.

In addition, 42% of the sample had previous convictions -- and of those with previous convictions, 47% had been prosecuted for the first time when they were juveniles.

It is less easy to paint a picture of the legal process the average death row-prisoner encountered, but several factors are cause for concern:

- * A total of 32% of the sample relied on pro deo counsel. These are usually the most junior and inexperienced advocates who do not have an attorney to assist them in preparing the defence.

- * Only 43% of the sample was granted bail.

- * In 33% of the cases the trials lasted less than one week -- and in eight percent of the cases the entire proceedings lasted one day.

- * Of the sample, 10% were convicted on the evidence of a single witness; five percent were convicted on circumstantial evidence, and five percent were convicted solely on confessions made to magistrates and pointings out to police -- in most cases trialists claimed these were done under duress.

- * The controversial doctrine of common purpose was cited in the conviction of 50% of prisoners in the sample.

- * The trial court refused leave to appeal to 55% of trialists.

- * And of those who petitioned the Chief Justice for leave to appeal, and have received replies, 17% were granted leave to appeal. 35% had their applications turned down.

It is hoped that these findings will aid the Sash's campaign against the death penalty, as well as the campaigns of the Society for the Abolition of the Death Penalty -- which was relaunched last November -- and other groups, including the newly formed Family and Friends of People on Death Row. The Sash, the Society and other groups have called for a commission of inquiry into the death penalty, and a moratorium on all executions pending the commission's report.

In the meantime, several groups have set out to tackle the system as it exists. Perhaps the most important offensive has been launched by Lawyers for Human Rights (LHR) in Pretoria.

Lawyers for Human Rights have managed to work around the Department of Justice's refusal to give prior warning of executions. LHR obtain the names of those scheduled to hang from an employee who visits death row prisoners. Lawyers then determine whether the condemned person has exhausted all the legal avenues. For example, whether he or she has petitioned for leave to appeal, or -- if that was refused or the appeal did not succeed -- whether he or she petitioned the State President for

clemency. If all avenues have not been exhausted, a stay of execution application is launched.

Brian Currin said of the 55 people scheduled to hang during the months of September to December last year, 10 were granted a stay of execution after applications launched by Lawyers for Human Rights. Currin said he hoped to establish the principle that if a condemned man had not petitioned the Chief Justice he was entitled to a stay of execution.

In addition, after the Supreme Court turned down applications for a stay of execution, lawyers in several cases successfully appealed directly to the Minister of Justice to halt the execution.

It is still too early to judge the effects of the recent campaigns against the death penalty, and efforts to stay executions.

However, the 117 people executed in 1988 was a significantly lower total than the 164 hanged the previous year. An average of 119 people were executed every year in Pretoria between 1980 and 1988 (Pacsa factsheet on capital punishment, 1988). Thus the number of executions in 1988 falls slightly below this average.

Reprieves, on the other hand, rose from 18 in 1987 to 49 in 1988. (The Citizen January 11 1989). And the number of reprieves last year was significantly higher than the yearly average of 29 for the previous four years. (Justice Minister Kobie Coetsee said the State President had commuted 115 death sentences between 1983 and 1987 -- The Star June 23 1988).

While it is too early to attribute these trends to the growing opposition to capital punishment, the number of executions did appear to drop at the height of the South African abolition movement in the 1970s:

Professor Ellison Kahn, president of the Society for the Abolition of the Death Penalty in South Africa, said that the number of hangings fell from 81 in 1970, to 76 in 1971, to 46 in 1972 and to 42 in 1973. When the society ceased to operate after 1974, the rate of executions rose again: 130 were hanged in 1980, 137 in 1985 and in 1987 164 people were executed, the highest number ever.

Finally, while groups like the Society for the Abolition of the Death Penalty in South Africa, and Family and Friends of People on Death Row have launched single issue campaigns, the question of the death penalty cannot be tackled as an isolated issue in South Africa.

Only a new political and economic system can hope to tackle conditions of economic and social deprivation which directly or indirectly propel black South Africans into the country's overflowing jails. The Second Carnegie Inquiry into Poverty and Development in Southern Africa found that nearly two-thirds of black people live below the minimum living level -- fixed in 1985 at R350 a month (The Star January 24, 1989).

And as long as black South Africans do not have the power to elect their own government, there will be many who see executions as one of the methods the state employs to silence its political opponents.