

AMNESTY INTERNATIONAL ZIMBABWE
SEMINAR ON THE DEATH PENALTY

**THE DEATH PENALTY IS A VIOLATION
OF HUMAN RIGHTS**

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Ladies and gentlemen Good evening

My most sincere thanks go to Amnesty International Zimbabwe Harare Youth Group. Firstly for inviting me here as panelist and secondly for allowing me the opportunity to lead a discussion on a matter that is absolutely vital in the current discourse of Human Rights.

I count this honour a national duty and I hope our investment in the next hour or so will go beyond the ritual of speech making but that we will be proud of the time we would have spent.

I am a great believer in the respect and preservation of life and therefore a campaigner for the abolition of the death penalty. With your indulgence, I will start off this evening by making a few preliminary remarks about the Launch of the Death Penalty Campaign. The occasion we are celebrating today. The human rights fraternity is encouraged and sustained by the work of Amnesty International Zimbabwe Harare Youth Group who have organized this important seminar.

I am persuaded and strongly believe that the launching of the Death Penalty Campaign by the Amnesty International Zimbabwe youth group is an important landmark in the protection and promotion of Human Rights. I believe the majority of Amnesty International Zimbabwe Harare Youth Group are students from various tertiary institutions and having time to campaign for human rights is indeed an extension of human passion given that their energy is directed towards their studies.

The views that I am articulating in this paper are strictly my personal views although they may concur with that of Amnesty International Zimbabwe which views oppose the death penalty unconditionally believing it to be the ultimate cruel, inhuman and degrading punishment and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights and other International Human Rights instruments.

I want to record my appreciation for the work of Amnesty International which has campaigned for the abolition of the death penalty throughout the world and appealed for clemency in all cases where executions are feared to be imminent regardless of the nature of crime of which the prisoner has been convicted.

ABSTRACT

- 1.0 I want to respectfully submit that the condemned prisoner is tortured, mentally physically and psychologically from the moment the capital punishment is pronounced, thus the period the condemned prisoner serves until his death day is a long march to human misery.

- 1.1 Mr. Chairman , in the same era that humanity reaches into space, countless people are being shot, gassed and hanged by their own governments, judicial killing lingers on as a state-sanctioned practice, violating the most fundamental human rights.

In the past decade many thousand prisoners have been executed in scores of countries around the world, men, women and even children have been hanged, shot dead, electrocuted ,gassed, poisoned, beheaded or stoned to death in fulfillment of judicial orders.

Many of the executed were convicted of brutal crimes. Others died for non-violent offences including “economic corruption” and adultery .Many went to their deaths for purely political reasons or after blatantly unfair trials. Some were prisoners of conscience. Nobody knows the exact number of innocent victims of execution. Cruel ,arbitrary and irrevocable, the death penalty is imposed disproportionately on the poor and powerless. It is indeed a violation of Human Rights.

It is high time the death penalty is abolished worldwide. The case for abolition becomes more compelling with each passing year. Everywhere experience shows that executions brutalize those involved in the process. Nowhere has it been shown that death penalty has any special power to reduce crime or political violence. In different countries, it is used disproportionately against the poor or against racial or ethnic minorities. It is often used as a tool of political repression.

Over the past decade an average of at least one country a year has abolished the death penalty affirming respect for human life and dignity, yet too many governments still believe that they can solve urgent social or political problems by executing a few or even hundreds of the prisoners. Too many citizens in too many countries are still unaware that death penalty offers society not further protection but further brutalization.

The death penalty carried out in the name of a nation's entire population, involves everyone. Everyone should be aware of what the death penalty is , how it is used, how it affects them, how it violates fundamental rights.

DEFINITION : The death penalty is the premeditated and cold-blooded killing of a human being by the state. The state can exercise no greater power over a person than that of deliberately depriving him / her of life. At the heart of the case of abolition, therefore, is the question of whether it(the State) has the right to do so.

INTRODUCTION

- 2.0 Mr. Chairman, when the world's nations came together five decades ago to found the United Nations (UN) few reminders were needed of what could happen when the state believed that there was no limit to what it might do to a human being. The staggering extent of state brutality and terror during World War II and the consequences for people throughout the world were still unfolding in December 1948, when the United Nation General Assembly adopted without dissent the Universal Declaration of Human Rights (UDHR) The Universal Declaration of Human Rights is a pledge among nations to promote fundamental rights as the foundation of freedom, justice and peace. The rights it proclaims are inherent in every human being. They are not privileges that may be granted by governments for good behaviour and they may not be withdrawn either for bad behaviour.

Fundamental human rights limit what a state may do to a man, woman or child. No matter what reason a government gives for executing prisoners and what method of execution is used, the death penalty cannot be separated from the issue of human rights. The Universal Declaration of Human Rights recognizes each person's right to life and categorically states further that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Admittedly , self defence may be held to justify in some cases, the taking of life by state officials; for example when a country is locked in warfare (international or civil) or when law-enforcement officials must act immediately to save their own lives or those of others. Even in such situations the use of lethal force is surrounded by internationally accepted legal safeguards to inhibit abuse. This use of force is aimed at countering the immediate damage resulting from force used by others.

The death penalty however is not an act of self defence against an immediate threat to life. It is the premeditated killing of a prisoner who could be dealt with equally, well by less harsh means.

I want to humbly submit that there can never be a justification for torture or for cruel, inhuman or degrading treatment or punishment. The cruelty of the death penalty is evident, like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

If hanging a woman by the arms until she experiences excruciating pain, is rightly condemned as torture, how does one describe hanging her by the neck until she is dead, if administering 100 volts of electricity to the most sensitive parts of a man's body evokes disgust, what is the appropriate reaction to the administering of 2000 volts to his body in order to kill him.

If a pistol held to the head or chemical substance injected to cause protracted suffering are clearly instruments of torture, how should they be identified when

used to kill by shooting or lethal injection? Does the interpolation of legal process in these cruelties make their inhumanity justifiable?

It is undisputed that the physical pain caused by the action of killing a human being cannot be quantified. Nor can the psychological suffering caused by foreknowledge of death at the hands of the state whether death sentence is carried out six minutes after summary trial, six weeks after a mass trial or sixteen years after lengthy legal proceedings, the person executed is subjected to uniquely cruel, inhuman and degrading treatment and punishment.

3.0 **METHODS OF EXECUTION**

An execution, like physical forms of torture involves a deliberate assault on a prisoner. There are seven principal methods of execution namely hanging, shooting, electrocution, lethal injection, gassing, beheading and stoning.

3.1 **HANGING**

The prisoner is made to hang from a rope tied around the neck and is killed by the force of the rope exerted against the body pulled down by the force of gravity. Unconsciousness and death are brought about by damage of the spinal cord ,or if that is insufficient – by asphyxiation due to constriction of the trachea.

3.2 **SHOOTING**

Execution is carried out either by a single executioner or by a firing squad. The prisoner is killed by one or a combination of effects; damage to vital organs such as heart, damage to the central nervous system or hemorrhage .

3.3 **ELECTROCUTION**

Electrocution was introduced in the United States of America in 1988 on the grounds that it would be more humane than hanging (sic). The procedure is as follows ; after securing the prisoner to a specially built chair, the executioners attach moistened copper electrodes to the prisoner's head and leg which have been shaved to ensure effective contact between the electrodes and the skin. Power surges of electric current are applied for brief periods. Death is caused by the cardiac arrest and respiratory paralysis.

3.4 **LETHAL INJECTION**

Execution by lethal injection involves the continuous intravenous injection of a lethal quantity of a short- acting barbiturate in combination with a chemical paralytic agent. The procedure is similar to that used in a hospital to administer a general anesthetics but the drugs are injected in fatal quantities.

Three drugs are used together ; sodium thiopental , pancuronium bromide and potassium chloride. The first of these is a barbiturate which makes the prisoner unconscious , the second is a muscle relaxant which paralyses the diaphragm and thus arrests the motion of the lungs, and the third causes cardiac arrest.

3.5 GASSING

Here the prisoner is secured to a chair in an airtight chamber ; a stethoscope strapped to his or her chest is connected to ear pieces in the adjacent witness room, so that a doctor can monitor the progress of the execution. Cyanide gas is released in the chamber, poisoning the prisoner when he or she inhales. Death is caused by asphyxiation due to inhibition by the cyanide gas of the respiratory enzymes which transfer oxygen from blood to the body cells.

3.6 BEHEADING

Under the method used in Saudi Arabia and Qatar and prescribed by law in Yemen , Arab republic and the United Arab Emirates, the head is severed from the body with a sword. Although it is intended that the weapon's sharp blade will cut quickly through the spinal cord, causing unconsciousness from spinal shock, several blows may be needed to do this because the sword is a relatively light tool and the speed of execution depends on the strength and accuracy of the executioner.

3.7 STONING

Execution by stoning is usually carried out after the prisoner has been buried to the neck or otherwise restrained. Death may be caused by damage to the brain, asphyxiation, or a combination of injuries. Because a person may sustain severe blows without losing consciousness, stoning cause a protracted death. In Iran , one of the six countries where stoning is prescribed by law, the procedure is designed to ensure that death does not come from a single blow. Article 119 of the Islamic Penal code of Iran (Hodend and Qisas) states .

“In the punishment of stoning to death, the stones should not be too large so that the person dies of being hit by one or two of them; they should not be so small either that they could not be defined as stones.”

4.0 THE ZIMBABWEAN SCENARIO

By way of background, the death penalty which is upheld by Zimbabwe has a long and sad history. Our most celebrated hero and heroine of the first Chimurenga Sekuru Kaguvi and Mbuya Nehanda respectively were the first casualties in 1890 and despite the foregoing which reminds us of the bitter past, Zimbabwe still upholds the capital punishment; section 12 of the Zimbabwe constitution stipulates that “It shall be lawful for a person to be killed following a death sentence imposed on him/her by court”.

At independence in 1980, the government of Zimbabwe made a commitment in several pronouncements by the then Prime Minister Cde Robert Mugabe and

later his Cabinet colleague, the then Minister of Justice, Legal and Parliamentary Affairs Dr. Edison Zvobgo that they would abolish the death penalty.

But, twenty- four years down the line, Zimbabwe remains a retentionist a sad reflection that has cast a dark shadow over our human rights record. The executions of Edmund Edgar Masendeke and Stephen Chidhumo being the latest are cases in point.

According to the Zimbabwe Prison Service, seventy-six (76) African male prisoners were executed between April 1980 and December 2001. This figure represents 31.1% of the 244 cases of prisoner reported as having been sentenced to death by the High Court of Zimbabwe for the same period.

On the other hand the remaining 68.9% comprise cases of prisoners who were initially sentenced to death by the High Court but later the sentences were quashed by the Supreme Court or commuted to life or others less sentences by the State President on the recommendation of the Cabinet.

It is important to note that during the historic referendum of 1999 voices opposed to the death penalty were prominent from both the Constitutional Review Commission and the National Constitution Assembly. The National Constitutional Assembly draft constitution did not include the death penalty.

We must all accept that in the pre- independence era, the death penalty was used as a political tool by the settler regimes to suppress the majority blacks. In Zimbabwe offenders over the age of seventy and below eighteen years and pregnant women are spared execution. Before 1980, the death penalty was imposed on crimes like aggravated robbery, attempted murder, and conspiracy to murder and incitement to murder, rape and attempted rape. In addition the death penalty could also be imposed for contravening the Law and Order Maintenance Act (LOMA).

This position however changed in 1983 following recommendation made by a six- member Advisory Committee on Law Reforms set up by government and chaired by the then Chief Justice, Mr. Justice Fieldsend.

One of the recommendations of the committee was that the other pre 1983 charges that attracted the death penalty were to be scratched off. Thus capital punishment offences were to be imposed on treason, murder and conspiracy to murder.

It is worth mentioning that the Advisory Committee on Law Reform also observed that judicial officers in Zimbabwe often imposed the death sentence in a cursory and preemptory fashion, that is without carefully investigating the personal circumstances of offenders.

5.0 **FORCES OPPOSED TO THE DEATH PENALTY**

There are a number of prominent voices which are vehemently opposed to the death penalty. The Zimbabwe Catholic Bishops Conference is one such organization.

In its submission to the Constitutional Review Commission in 1999, the ZCBC said, “The first human right that the constitution should protect is the right to life. The right to life is God given and hence human life should be allowed to take its course from birth to natural death”.*[The Daily News 11/04/00]*

The Zimbabwe Council of Churches (ZCC) too, is on record as saying that government should consider other methods of punishing offenders instead of the death penalty.

In July 2000 the ZCC Secretary General Mr. Densen Mafinyane was quoted by Ziana as having said it was tragic that the death penalty was still being used in Zimbabwe when other countries in the region had abolished the practice.

The two former Chief Justice –

Former Chief Justice of Zimbabwe, Justice Antony Gubbay was quoted in the press as having said that what may not have been regarded as inhuman or degrading a few decades ago “may be revolting to new sensitivities which emerge as civilization advances” *[The Herald 10 Jan 99]*.

Also the late former Chief Justice Enock Dumbutshena was on record of being opposed to the death penalty. “I believe that many people we sentence to death for killing somebody should not be sentenced to death but given a life imprisonment term”. *[The Herald 7 Dec 1987]*

A renowned Zimbabwean poet Chenjerai Hove also added his voice against the death penalty.” If the human race is to claim to be more civilized than other species,

it is time our civilization were based not on how sophisticatedly we can kill our neighbours but rather on how efficiently we are able to ennoble human and other life around us, the death penalty is abominable as abominable as crime itself. Our state must be based on love, not hatred and victimization. Our penal code must be based on rehabilitation rather than annihilation “.

6.0 WHY THE DEATH PENALTY SHOULD BE ABOLISHED:

- 6.1 The death penalty is undesirable because it robs society. With proper rehabilitation the convicted person might become a useful resource and tool in the development of society. It's not every convicted murderer who
- 6.2 is irredeemable. Majority of the convicted murderers commit their crimes during moments of passion, hence the possibility of rehabilitation would benefit society.
- 6.3 The death penalty is inhuman and is fraught with retribution which contradicts the spirit of rehabilitating offenders. For the crime murder, it has been argued

that the death penalty is the only way to compensate for the suffering caused by demonstration that justice has been done. But an execution can not restore life or lessen the loss to the victims families.

- 6.4 The condemned prisoner is executed after a period of three years in custody. In that scenario the death penalty is exercised more than a million times upon a single person. Since every time there is a knock on the condemned prisoner's cell, he/she thinks someone may have been sent to take him to the gallows. Imagine the amount of torture the condemned prisoner goes through.
- 6.5 The death penalty is morally abominable because it has made men to assume the role of the ultimate decider of life and death which is the preserve of God alone. From the bible, we are reminded that God had harsh words with Cain for killing his brother Abel. Despite having the powers to do so, the Lord did not condemn Cain to death thus demonstrating that the death penalty is not the most appropriate penalty.
- 6.6 While acknowledging the general feelings of society is that punishment should be given relative to the crime. Capital punishment is wrong because two wrongs do not make a right. Murdering the murderer is another act of murder. If punishment is all about reformation, then the death penalty should be discarded to allow the person/murderer opportunity to show remorse and regret for his action. Executing murderers only creates a vicious murder circle. Remember Mahtmar Gandi's "an eye for any eye , leaves the world blind."
- 6.7 Both the experience of being under sentence of death, and the execution itself, may cause intense suffering. Several executed prisoners in the USA did not die instantly and prolonged suffering was manifestly inflicted. This has occurred both in executions by electrocution or gas and in those lethal injections.

Allow me to cite the following cases to underscore the foregoing; The story of Willie Francis, a seventeen year old black youth, who in 1946 survived an attempted execution by electrocution in Louisiana, is a sad example.

After the electric charge failed to kill him, he was removed from the chair and returned to his cell. He is reported to have stated afterwards that; "My mouth tasted like cold peanut butter. I felt a burning in my head and my left leg and I jumped against the straps, I saw little blue and pink and green speckles".

The cruelty of execution is further illustrated by another case. John Louis Evans was executed by electrocution in Alabama in April 1983 after having been convicted of murder in 1977. According to eyewitness accounts, it required three separate charges of 1,900 volts over 14 minutes before he was officially pronounced dead.

During the first electrical charge, the electrode on his leg burned through and fell off; prison guards repaired it after doctors had said he was not dead. During the second charge, smoke and flame erupted from his left temple and leg. The

third jolt was given after doctors had put a stethoscope to his chest and said they were still not certain, he was dead. Honestly the prolonged suffering was manifestly inflicted in this case.

- 6.8 In the USA, prisoners under sentence of death remain confined for prolonged periods to small poorly equipped cells, with no opportunities for work, educational or rehabilitation programs and little association with other inmates. The prolonged isolation and lack of occupational facilities in such cases add to the inherent cruelty suffered by being under sentence of death.
- 6.9 Considerable research in the USA has provided no evidence that the death penalty deters crime more effectively than other punishment. These findings are consistent with what is known of the relationship between crime rates and the presence or absence of the death penalty in other countries. In some US states, the homicide rate has actually increased after the resumption of executions and despite public executions in countries like China and Islamic States, crimes' leading to death penalty has not declined, in other words, the penalty is not a deterrent.
- 6.10 The death penalty does not lessen the loss to the family and friends of murder victims. Far from relieving their pain, the lengthy procedures and uncertain outcome of capital cases may prolong the anguish and suffering caused to victims' families. Indeed executions often draw attention away from the victims and focus it on the prisoners being killed by the state, thereby increasing the feelings of rejection that relatives of victims often experience
- 6.11 The death penalty is irrevocable and can be inflicted on an innocent person despite the most stringent judicial standards. The human error can not be ruled out in some cases where people have been sentenced to death, when the persons had not committed the offence, since the death penalty is final and irreversible, it should not be used where possibilities of error exists.

A recent study collected information on over 300 cases in the USA where innocent people were wrongly convicted of offences punishable by death. In many of the cases, information leading to acquittals, pardons or commutation of sentences came to light years after the original conviction. Suffice to say, there are many cases today that are a miscarriage of justice leading to unwarranted executions.

Again , the story of Sakae Menda of Japan helps to underscore the forging point. Sakae Menda was sentenced to death in March 1950 for a murder committed in 1948. Thirty years after that sentence in 1983 , he was found not guilty and released.

For over three decades he had lived with the prospect of execution. He had applied unsuccessfully for a retrial five times before his sixth request was granted in 1979 after the Japanese Supreme court in 1975 eased the standards

for granting retrials. He had originally confessed to the crime, but later retracted his confession and said that he was innocent.

- 6.12 In most US states, opponents of the death penalty are systematically excluded from serving as jurors in the capital trials (partly because their presence may prevent the return of unanimous sentencing decisions). There is concern that this practice may produce juries not only more disposed to impose death sentence but also less impartial on the question of guilt or innocence than those selected under the normal procedures for criminal trials.

In Zimbabwe, this prejudice is well manifested. According to Zimbabwe Human Rights Association (ZIMRIGHTS), many offenders facing murder charges in Zimbabwe are represented by pro-deo lawyers. This situation is worrisome because pro-deo representation does not always guarantee a fair trial adding that "in most cases law firms are not keen to take up these cases and when they do they assign the most junior practitioners in the firm. Thus setting dangerous prejudice. Suffice to say the death penalty is a punishment for the poor who can not hire the best lawyers to get them off the hook. Those who can afford to hire the best lawyers always get away with it even if their crimes are heinous.

- 6.13 Executions of prisoners is the highest manifestation of violence by the state. A public execution of prisoners carried out in Punjab, Pakistan in February 1988 was attended by thousand people and hundreds of riot police.

The Dawn Newspaper commented 12 March ;

"We can be sure of the dehumanizing effects of such spectacles on the minds of ordinary people. At the same time, it is extremely doubtful if such executions can serve the purpose of deterrence .It is surprising that the administration should not be mindful of the long term social consequences of outing cruelty on public display. Such punishment will project the image of the state as a perpetrator of violence".

- 6.13 The death penalty has been used in some instances to suppress political dissent and consolidated power especially after coups and counter coups. Members of opposition political groups have been eliminated as a matter of political expediency.

In Libya for example, forming a political party in 1969 was viewed as being involved in political parties or groups opposed to the principles of the al-Fatah Revolution of September 1969.

In some cases the death penalty has been directed at prominent individual political opponents. Zulfikar Ali Bhutto founder of Pakistan Peoples Party (PPP) and Prime Minister of Pakistan since 1973 was overthrown in a military coup by General Ziaul-Hag in July 1977, arrested in September 1977 and charged with complicity in the murder of a political opponent in 1974. In March 1978 Zulfikar Ali Bhutto was convicted and sentenced to death. His appeal to the Supreme Court was rejected by the supreme court in February 1979 by a vote of four to three. Bhutto was executed in the early hours of 4 April in 1979. His execution was announced nine hours after he had been buried.

- 6.14 One reason sometimes given for retaining the death penalty and put forward even by officials who say that they personally oppose the punishment- is that public opinion demands it. They cite polls apparently showing strong support for the death penalty, they argue that the time is not ripe for abolition, and even that it would be undemocratic in the face of such support for the punishment.

The first response to this argument is that respect for human rights must never be dependent on public opinion. Torture would, never be permissible even if there were public support for its use in certain cases. Second, public opinion on the death penalty is often based on an incomplete understanding of the relevant facts , and the results of polls can vary according to the way questions are asked. It is incumbent on officials responsible for policy on this matter not only to listen to the public but also ensure that the public is fully informed.

- 6.15 Unlike the arguments of deterrence and incapacitation, the retribution argument maintains that certain offenders must be killed not to prevent crime but because of the demands of justice. Execution is deemed to be a repayment for an evil deed; by killing the offenders society shows its condemnation of the latter's crime.

The persuasiveness of the argument that certain offenders deserve to die is rooted in the deep aversion felt by law-abiding citizens to terrible crimes . But close examination of how the death penalty actually works shows that the retribution argument is fundamentally flawed .

7.0 **CONCLUSION**

The death penalty denies the right to life. It is a cruel and inhuman punishment, brutalizing to all who are involved in the process. Indeed the death penalty brutalizes and dehumanizes the convicted person, the executioner and society at large.

It serves no useful penal purpose and denies the widely accepted principle of rehabilitating the offender. It serves neither to protect society nor to alleviate the suffering caused to the victims of crime. It is irreversible and, even with the most stringent judicial safeguards may be inflicted on an innocent person.

No means of limiting the death penalty can prevent its being imposed arbitrary or unfairly. This is borne out by the experience in the USA, where the introduction of elaborate judicial safeguards has failed to ensure that the death penalty is fairly and consistently applied.

I want to humbly appeal to all here present to lobby our parliament and the powers that be to abolish the death penalty and commute the death sentences of all those currently on the death row and that no further sentence be imposed.

Let me end on this note, When the Lord cursed Cain, for killing Abel his brother he told him that he was to be a fugitive and wanderer on earth. Cain said to the Lord “My punishment is greater that I can bear. Behold, thou hast driven me this day away from the ground, and from thy face I shall be hidden, and I shall be a fugitive and a wanderer on earth, and whoever finds me will slay me”. But the Lord said to him, “Not so, If anyone slays Cain, vengeance shall be taken on him seven folds”. And the Lord put a mark on Cain, lest any who came upon should kill him. Here we are Ladies and gentlemen, we are reminded that revenge is for the Lord not man.

Jesus on the cross prayed “Father (Lord) forgive them for they know not what they do “[Luke .23:34] “Forgive them, Father ! They don’t know what they are doing”.

It is my infectious wish and that of the Human Rights fraternity to see Zimbabwe abolish the death penalty and joining other civilized nations who have done away with the practice, the worst form of torture, assault and degrading punishment.

I thank you for your attention.

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