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CHECK AGAINST DELIVERY

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Transvaal Northern Technikon, Shoshanguve, South Africa

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Dear friends,

We are visiting South Africa at a time when South Africans are deeply pre-occupied with fears for their personal safety: the safety of their homes, their family, themselves.

We hear about "rising crime" and the need for a "war against crime". We see in the newspapers horrific accounts of violent crimes, and the outrage of the survivors and the public at large at the apparent impotence of the police and authorities to protect them, to track down the criminals or to punish them effectively.

We see that in their desperation ordinary citizens have resorted to taking the law into their own hands. In different parts of the country, anti-crime committees and vigilante groups have sprung up. Reflecting the lack of faith and trust in the police and criminal justice system overall, these groups have taken it upon themselves to investigate crimes, to catch suspects, and, in some cases, to brutally dispense justice.

We have heard evidence of a new epidemic of torture in South Africa, involving the specialised police units which are in the frontline of fighting crime. This time the victims -- suspects in their investigations -- do not have the moral support of the community. Rather, the police feel licenced by the calls for a "war against crime" to use brutal methods -- "rubber tubing", electric shocks, severe beatings -- in the process of "solving" crimes.

We hear renewed calls for the return of hanging, and of the plan to gather a "million signatures" in support of the death penalty. We have learnt that the draft final constitution entertains the possibility of judicial executions as an exception to the right to life. The inclusion of this "option" reflects the lack of consensus amongst MP's and the anxieties of the wider society.

We are here tonight to appeal to South Africans not to abandon the enormous gains for human rights made through the constitution, in force since April 1994. We are here to appeal to them to

back the ruling of the Constitutional Court last June establishing that the death penalty is contrary to the fundamental principles of the new Constitution.

Despite the understandable concerns of many people about their safety and security, we do not believe that the solution lies in a return to the use of torture against yet another "acceptable enemy", nor to state executions.

Long lasting solutions must lie in the urgent need to rebuild the credibility of the criminal justice system, among other things. Human rights organizations in this country have identified the need to:-

- * strengthen the capacity, resources and investigation skills of the police to allow them to prevent crime, track down criminals and bring them to justice;
 - * train the police in human rights standards;
 - * ensure that Community Police Forums are established on a sound basis and can therefore provide a context for rebuilding trust between the police and all members of the community;
 - * provide effective protection for witnesses co-operating with investigations;
 - * ensure that police, prosecutors and magistrates reach decisions on bail which balance the rights of the accused with the safety of witnesses and the community at large;
- and
- * undertake other necessary reforms relating to the conduct of the courts and correctional services.

Many of these measures will take time to accomplish results. However, if we can judge from the already measurable effects of those well-established Community Police Forums, greater success in the investigation of crimes as a consequence of witness co-operation -- it is clear that they can offer some solutions.

Other solutions obviously lie in addressing socio-economic conditions such as poverty and unemployment, the stabilisation of communities and reducing the circulation of firearms.

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I would like to focus, at this point, in more detail on the issue of the death penalty.

South Africa, for so long notorious for its system of apartheid, is now acquiring a different kind of fame, through its efforts to re-establish society on a basis on constitutionalism, the rule of law and respect for human rights. The Constitutional Courts enlightened judgment last June has been highly praised internationally.

That is a real advance in the cause of humanity and I applaud this nation for its courage and its vision in taking this step.

The fact that South Africa has chosen to reconstruct society on a different basis than the barbaric model (whether democratic or not) which relies on state killing as its final social solution, is enormously important.

Because it is a powerful answer to all those, East, West, North and South who argue for the death penalty as a means of protecting society.

As I have already stated, everyone inside and outside South Africa knows full well that is a nation caught in the grip of a crime wave. However, the simple fact is that although many countries today face serious crime problems, the death penalty cannot solve them.

There has never been any convincing scientific evidence that the death penalty deters crime more effectively than other punishments.

A study conducted for the United Nations in 1988 concluded that existing research on the relation between the death penalty and homicide rates had "failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment."

The report continued: "Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis."

There have been no findings since then to alter this conclusion.

In its landmark judgment on the death penalty, delivered on 6 June, the Constitutional Court of South Africa stated that it would be facile to attribute the increase in violent crime between 1990 and 1994 to the moratorium on executions which was in effect during those years.

"We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime," the ruling stated.

"There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction."

The ruling added: "The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished."

Hence the urgent need to address the defects of the police and criminal justice system.

It is sometimes claimed that the use of the death penalty has caused crime to drop, but these claims have never been backed by convincing evidence.

In Saudi Arabia, officials have repeatedly claimed that executions have caused crime to drop, yet already in 1995 Saudi Arabia has executed 192 people: more prisoners than ever before. When asked to explain the increase in executions, Saudi officials have said it was due to an increase in crime -- contradicting earlier statements that executions were lowering the crime rate.

In South Africa, the crime statistics that we have seen for 1994/1995 indicate a decrease in the number of murders - not withstanding the moratorium on executions.

The death penalty is a harsh punishment, but it is not harsh on crime.

So, if the death penalty does not actually work, why is it used?

And why are some people so passionately in favour of it?

Why is it that in the United Kingdom, despite numerous parliamentary debates about the death penalty, public opinion polls still seem to show a majority of the population in favour of hanging people?

Why is it that in the United States mobs gather outside prisons to bay for the blood of prisoners about to be executed?

Why is it that the United Nations headquarters now stands in a city that has re-introduced the death penalty?

Why is it that when thousands of women and human rights activists arrived in Beijing in August for the Fourth UN Women's Conference, we were greeted with the appalling news that a series of executions had taken place in preparation for the conference?

If the death penalty does not prevent crime why is it then that it is advocated by some politicians and media alike?

"An eye for an eye" is usually the answer. "Live by the sword, die by the sword".

It reminds me of a story told by Doris Lessing about a highly respected and prosperous farmer in her native Southern Rhodesia, now Zimbabwe. It was just after the Second World War. The farmer had imported by plane a very special bull. The beast was a massive impressive animal, mild as a lamb, it was claimed.

A special home was made for the bull and he had his own keeper, a black boy of about twelve. All went well until suddenly and quite inexplicably the bull killed his keeper, the young black boy.

Something like a court of justice was held, the boys' relatives demanded and got compensation. But that was not the end of the story -- the farmer decided that the bull must die -- He said "the bull has killed, the bull is a murderer and he must be punished. An eye for an eye. A tooth for a tooth." The bull was executed by firing squad and buried.

Now wouldn't you agree with me that this is barbaric behaviour.

Applied to humankind, many people think that the cruelty of the death penalty is justified by the cruelty of the crime which a condemned prisoner has committed, and that more blood should be poured over blood.

And then how do you punish the rapist? By raping him? And the arsonist? By burning his home?

Human rights, and the fundamental right to life, apply to the worst of us as well as the best, which is why they protect us all.

And it precisely because of this human rights dimension that we can see that the issue of the death penalty is about a set of values far greater than simply the punishment of the guilty.

The fundamental principles upon which civil society must be constructed are involved in the whole question of the death penalty

Contrary to elementary notions of justice, the death penalty is often used disproportionately against the poor and underprivileged who cannot afford a good lawyer.

As stated in the South African Constitutional Court decision, " Most accused facing a possible death sentence are unable to afford legal assistance".

In such cases, says the judgment,

"[t]he defending counsel is more often than not young and inexperienced, frequently of a different race to his or her client, and if this is the case, usually has to consult through an interpreter. Pro deo counsel are paid only a nominal fee for the defence, and generally lack the financial resources and the infrastructural support to undertake the necessary investigations and research, to employ expert witnesses to give advice, including advice on matters relevant to sentence, to assemble witnesses, to bargain with the prosecution, and generally to conduct an effective defence. Accused persons who have the money to do so, are able to retain experienced attorneys and counsel, who are paid to undertake the necessary investigations and research, and as a result they are less likely to be sentenced to death than persons similarly placed who are unable to pay for such services."

Thus, says the court's judgment in words that deserve to be heard around the world, that it is irrefutable that poverty, race and chance play a role in the outcome of capital cases and in the final decision as to who should live and who should die. In short, the death penalty violates the right to equality.

There are other ways in which the death penalty corrupts society:

It can become an instrument of repression against opposition, racial, ethnic and religious groups as South Africa knows so well in the way the death penalty was used in the 1970's and in the 1980's.

- The use of the death penalty is brutalizing to all who are involved in the process.
- Execution is an act of violence, and violence tends to provoke more violence. An execution cannot be used to condemn killing; it is killing. Such an act by the state mirrors the criminal's willingness to use violence against a victim.
- All criminal justice systems are vulnerable to error. As long as the death penalty is retained, there will be a risk of its being inflicted on the innocent. Execution is irrevocable: the execution of an innocent person is an error that can never be undone.

And finally, as stated in the South African Constitutional Court judgment,

"Unjust imprisonment is a great wrong, but if it is discovered, the prisoner can be released and compensated; but the killing of an innocent person is irremediable."

Slowly, friends, painfully slowly, the message is getting through.

I am convinced that we are winning the argument.

The death penalty is being abolished faster than ever before in history.

- As of October this year, 100 countries and territories had abolished the death penalty in law or practice. That is more than half the countries in the world.

- In addition to South Africa, where it has been declared unconstitutional, countries that have abolished the death penalty for common crimes or for all crimes since 1989 include Namibia, Mozambique, Guinea-Bissau, Cambodia, Hungary, Greece, Italy and Switzerland.

- In Europe, 23 countries have joined in a treaty which formally commits them to abolish the death penalty in peacetime. More are expected to follow soon.

Six other countries in Africa and the Americas have joined in similar treaties.

- Abolition of the death penalty has not led to increases in crime. In Canada, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980. In 1993, 17 years after abolition, the homicide rate was 2.19 per 100,000 population, 27 per cent lower than in 1975.

I would like to think that that same pattern will evolve in South Africa: a diminishing crime rate, a diminishing murder rate -- a major social evolution without the shame, injustice and futility of state executions.