

**The Death Penalty:  
A violation of basic human rights and an ineffective crime deterrent**  
Matthew Burnett, 2005

The Namibian public is rightfully outraged in response to the sexual assault and murder of two young girls in Windhoek and Swakopmund. In response, a number of people have called for the re-introduction of the death penalty in Namibia.

I respectfully submit that the call to consider the legalization of capital punishment is misguided. Not only is the death penalty explicitly outlawed by the Namibian Constitution, it also contravenes Namibia's regional and international human rights obligations. Moreover, the death penalty has not been shown to deter criminal behaviour or reduce crime rates in other countries, and there is no proven method to ensure that innocent people will not be put to death at the hands of the State.

Article 6 of the Namibian Constitution states that "the right to life shall be respected and protected." It then goes on to explicitly state that "no Court or Tribunal shall have the power to impose a sentence of death on any person," and that "no executions shall take place in Namibia." Further, Article 131 provides that the repeal or amendment of the fundamental rights and freedoms enshrined in the Constitution that would diminish or detract from them is impermissible. Because the right to life is a fundamental right, the only way that Article 6 or portions thereof could be changed is to throw out the Constitution and begin the process anew. Taking such a drastic measure in order to legalize the death penalty, which is currently condemned by the majority of countries in the world, is without merit.

Current figures reveal that 118 countries in the world have abolished the death penalty, either in law or in practice. Since 1985 only four countries that had previously abolished the death penalty have reinstated it (Nepal, the Philippines, Gambia, and Papua New Guinea). However, Nepal has now abolished it again, the Philippines have suspended executions, and there have been no executions in Gambia and Papua New Guinea. Thus, if Namibia were to reintroduce the death penalty and carry out an execution, it would stand alone in the world. It is clear that countries that have abolished the death penalty far exceed the number of countries which both retain and use the death penalty (78). In fact, in 2003, 84 percent of all executions were carried out in only four countries (China, the United States, Iran, and Viet Nam).

Internationally, there are four treaties through which various countries have explicitly agreed not to use the death penalty, or to only do so during wartime. Further, the cornerstone of international human rights, the Universal Declaration of Human Rights, enshrines the protection of the right to life and prohibits cruel, inhuman, and degrading treatment (Articles 3 and 5).

Namibia has signed and ratified a number of international treaties that similarly enshrine the protection of the right to life as well as prohibit cruel, inhuman, or degrading treatment. They include the International Covenant on Civil and Political Rights (Articles 6 and 7), the Convention on the Rights of the Child (Article 37), and the Convention Against Torture and Other forms of Cruel, Inhuman or Degrading Treatment or Punishment (Articles 1 and 16). Moreover, Namibia has obligations to

two regional treaties that enshrine the right to life and prohibit cruel, inhuman, and degrading treatment; namely the African Charter on Human and People's Rights (Articles 4 and 5) and the African Charter on the Rights and Welfare of the Child (Article 5). By reintroducing the death penalty, Namibia would arguably contravene each of these international and regional agreements.

Even if it were acceptable to Namibians to throw out the Constitution and ignore all of these international and regional human rights obligations – which it should clearly not be – research shows that the death penalty is simply not effective in combating crime. Indeed, a recent report that considers the relationship between the death penalty and homicide rates conducted for the United Nations concluded that “it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.” This same report, in comparing the relationship between changes in the use of the death penalty and crime rates, stated that “the fact that the statistics ... continue to point in the same direction is persuasive evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty.”

In Canada, for example, the homicide rate peaked the year *before* the death penalty was abolished for the crime of murder, and has fallen by 40 percent since. In the United States, the State of Texas has become the nation's leader in the use of the death penalty since 1982, yet in the years between 1982 and 1991 the rate of violent crime grew by 46 percent and the general crime rate grew by 24 percent.

The facts also show that the death penalty can lead to state sponsored killing of innocent people. For example, in the United States, 117 individuals have been released from death row since 1973 after evidence of their innocence was revealed. Indeed, in 2000 the governor of one U.S. state (Illinois) declared a moratorium on the death penalty after thirteen death row inmates were found to have been wrongfully convicted since 1977. One of the men exonerated, Madison Hobley, made a false confession after police wrapped a plastic bag over his head, beat him, and choked him in order to force a confession. Based on this coerced confession, he was convicted and spent 13 years on Illinois' death row before being exonerated. In countries that permit the use of the death penalty, the risk of innocent people being killed at the hands of the state is simply unavoidable. It can and does happen.

While it is natural that we want to protect ourselves and our children from crime, the death penalty is simply not a wise or effective way to accomplish that objective. This does not mean, however, that a national debate on crime reduction and prevention does not need to take place in Namibia. It is the responsibility of every Namibian to consider ways in which to make Namibian society a safer place for everyone, but the death penalty is not the answer.

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