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## WHO HAS THE RIGHT TO KILL?

In answering this question DITSHWANELO – The Botswana Centre for Human Rights would say that **No one has the right to kill – not even the State.**

The right to life is one of the basic rights enshrined in the United Nations Declaration on Human Rights, and DITSHWANELO fully supports this right. No one has the right to take the life of another human being.

This is one of the reasons why DITSHWANELO opposes capital punishment.

No one denies that murder is a heinous crime, and deserves the strictest punishment, but DITSHWANELO believes that such a punishment can be adequately ensured by the imposition of a lengthy custodial sentence.

## IS THE DEATH PENALTY A DETERRENT?

The proponents of the death penalty claim that its retention acts as a deterrent to the crime of murder. But this does not explain the rise in the rate of this crime – even in Botswana.

Some claim that the rise in crime in South Africa is due to the abolition of the death penalty. However, during the apartheid era there was no proper reporting of crimes that took place in the townships or high-density areas (where majority of the black population lived), no one has been able to show that crime in these areas has increased. Rather, it seems to be that these crimes are better reported than before.

The simple fact is that the imposition of the death penalty is mostly arbitrary and often discriminatory; disadvantaging the poor and illiterate. Those able to afford to retain expert counsel are more likely to escape the death penalty, than are those who have to rely on state provided counsel.

The arbitrariness of the sentencing in our Courts of Justice is one of the reasons for opposing the imposition of this penalty. The Penal Code exempts those who can prove extenuating circumstances and/or provocation from the death penalty, but there is a great deal of flexibility in interpreting these provisos.

## PUBLIC PERCEPTIONS

Another argument advanced is that it is retained because of popular demand. Certainly, the recent informal polling of opinion in visits to *dikgotla* by members of parliament has demonstrated overwhelming support for the death penalty. However, simply because something has popular support does not make it right. In recent human history there has been strong popular support for slavery, racism, even gender discrimination – but this has not made these things 'right'.

Another argument often used by politicians and those who want to appear to be 'tough on crime', is that putting condemned prisoners to death saves the state money, otherwise there would be the expenses incurred by long term imprisonment. But how can one put a price on the value of human life?

Once we go that road, we have the argument ready at hand to terminate the lives of less

productive members of society (the mentally or physically disabled) – because their deaths would save the state treasury money!

DITSHWANELO - The Botswana Centre for Human Rights believes that no monetary amount can be used to justify the taking of life under any circumstances.

## AN EYE FOR AN EYE...

Some claim that the judicial murder of those convicted of the crime of murder brings satisfaction to the relatives of the victim of the crime. This may be true, to an extent, but it must be remembered that nothing, and certainly not the death of the perpetrator of the crime, can restore the deceased to his or her family. The death penalty may satisfy a primitive longing for revenge, but it cannot restore things, or bring the dead back to life.

## WHAT ABOUT SAFEGUARDS?

The extremity of the death penalty is also a worrying feature. No one knows how many innocent people have been executed for crimes that they did not commit. There are numerous instances around the world, where innocent people have been mistakenly put to death. However, once the sentence of death has been carried out, there is no way to right any wrong or miscarriage of justice.

DITSHWANELO is concerned that in the trial of capital offences (i.e. crimes that are punishable by death) a judge sits alone. In the early days of Botswana's independence, judges used to sit with assessors, and DITSHWANELO - The Botswana Centre for Human Rights, would welcome the reintroduction of this practice for what are currently capital crimes

There needs to be a reassurance that Pro Deo Counsel (those appointed and paid by the State to represent the accused) are competent and experienced lawyers, especially well informed about the Penal Code statutes relating to the crime of murder.

The defending of a person's life cannot be left to inexperienced lawyers.

It is illogical for the State to prohibit the use of torture by the Police, yet to allow the death penalty to be carried out, as it is impossible to do this without torturing the condemned person. The act of execution constitutes an act of extreme physical and mental assault on the prisoner.

The carrying out of an execution is a complete denial of the possibility of human rehabilitation, as the death sentence does not allow for the reform or rehabilitation of the individual.

## IN CONCLUSION

DITSHWANELO - The Botswana Centre for Human Rights would like to see the Government of Botswana implement a moratorium on all executions, until such time as legislation is introduced to abolish the death sentence. The abolition of this sentence would bring us into line with some of our SADC neighbours – specifically, South Africa, Namibia and Angola. Malawi has imposed a moratorium on carrying out the death penalty.