

**BIANCA JAGGER KEYNOTE SPEECH TO THE 4TH ANNUAL
CONGRESS AGAINST THE DEATH PENALTY
DELIVERED GENEVA, 24TH FEBRUARY, 2010**

INTRODUCTION

Merci beaucoup de votre introduction M. Rochebin, Bonjour Mme. la présidente du Conseil national de la Confédération Helvétique, Ministres, délégués, chères amies, mesdames et messieurs. Cet honneur et un privilège de participer au 4^{me} Congrès Contre la Peine de Mort dans cette salle historique des droits d'homme, en-dessus de cette belle peinture de Barceló. It is encouraging to see so many participants gathered here from all corners of the world to demonstrate their commitment to the abolition of the death penalty.

EUROPE/ COUNCIL OF EUROPE'S ROLE

I am proud to be representing the Council of Europe. On 16 December 2003, I was appointed Council of Europe's Goodwill Ambassador "for the abolition of the death penalty."

Since it was founded in 1949 the Council of Europe has played a leading role as a guardian of our fundamental rights and freedoms, and since 2002 it has guaranteed that no European citizen, with the exception of those in Belarus, will have to face a death sentence.

The European Convention on Human Rights, which was adopted in 1950, states that "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally."¹ However, the Convention did allow the death penalty to be imposed when it was provided for by law.

In the early 1980s, the Council of Europe became a pioneer for the abolition of capital punishment, considering it a grave violation of human rights. The organisation's Parliamentary Assembly gradually persuaded governments to help Europe become the first region in the world to permanently outlaw the death penalty. In 1982, the Council of Europe adopted Protocol No. 6 to the European Convention on Human Rights, which became the first legally-binding instrument abolishing the death penalty in peacetime. With the exception of Belarus, Europe is today the only region in the world where the death penalty is no longer applied.

In 1989, abolition of the death penalty was made a prerequisite of accession for all new member states. Since then, all countries are committed to introducing an immediate moratorium on executions and ratifying Protocol

No. 6 when joining the organisation. A number of mechanisms have been set up to monitor the respect of those commitments while assisting governments with their implementation. As a result, no execution has taken place on the territory of the organisation's member states since 1997. To date the protocol has been ratified by 46 of the Council's 47 member states; the one exception – Russia – has committed itself to ratification, and in the meantime is adhering to a moratorium on the use of the death penalty.

In 2002, the Council adopted Protocol No. 13 to the European Convention on Human Rights which requires the complete abolition of capital punishment - even for acts committed in times of war. As a result, there has not been a single execution in any member state of the Council of Europe for 13 years.

The idea is now to spread these values to the rest of the world, starting with two countries that enjoy observer status to the Council of Europe: the United States and Japan. I also urge Belarus, the one European country that does retain capital punishment, to follow the European model, outlaw the death penalty and make abolition a universally accepted value.

I believe that abolishing capital punishment is a high-point among the Council of Europe's achievements. I am very proud to represent an organisation that has worked so hard at freeing its territory from state-sanctioned killings.

The UN moratorium on the death penalty is a step in the right direction. To have the largest assembly of nations in the world affirm and reaffirm its will to call for a general suspension on the use of capital punishment is a major step. However, the fact that it is a non-binding resolution means that there is still a long way to go until abolition or suspension of the use of capital punishment becomes a condition for membership of the UN as it is for the Council of Europe.

There should be no place for the death penalty in democratic societies. I am shocked and appalled at the unabated pursuit of the application of the death penalty in the US, China, Iran, North Korea, Saudi Arabia, Iraq, Vietnam, Afghanistan, Japan, Yemen and Somalia among others

The death penalty is a violation of our most inalienable right: the right to life, a cruel, inhuman and degrading punishment done in the name of justice.

MY COMMITMENT TO HUMAN RIGHTS

For nearly three decades I have campaigned for justice and human rights throughout the world. I have called for the abolition of the death penalty world wide because I believe that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”² in the name of justice as stipulated in Article Five of the Universal Declaration of Human Rights. The death penalty is the ultimate denial of human rights, a pre-meditated and cold blooded killing of a human being by the state. I have spoken on behalf of numerous prisoners on death row; many among them have already been executed. I witnessed the execution of an innocent man, who was a juvenile when he was sentenced to death in Texas, Gary Graham. I have witnessed the State machinery of death at work, selectively killing people because they are poor, a minority and cannot afford adequate legal counsel. The death penalty is unfair, arbitrary and capricious often based on jurisprudence fraught with racial discrimination and judicial bias. Clemency should have a proper role in correcting legal mistakes in an imperfect system. In a decision written by Chief Justice William H. Rehnquist in *Herrera v. Collins*, the Supreme Court said that clemency “is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.”³ The Court further stated that “it is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.” In essence, the people must and should have a last recourse through the executive branch when the courts have failed. Deplorably, in the United States there is a lack of meaningful appellate review in commutation proceedings. Defendants have poor access to executive clemency and too often the States fails to recognise the defendant’s capacity for change, rehabilitation and remorse. Those who are executed are rarely those who have committed the worst crimes; the death penalty is a Russian roulette.

WHERE WE STAND

THE USA

The number of prisoners executed since the reinstatement of the death penalty in 1976, is 1195. Last year 52 were executed, a rise from 37 in 2008.⁴ Thirty five states still have the death penalty. These state sanctioned murders have no place in 21st century society. Only when it gets its own house in order can America claim to stand for freedom and justice.

New Mexico recently called a halt to executions for financial reasons. Similarly, New Jersey abolished the death penalty in 2007, despite the fact that New Jersey residents opposed abolition 53 percent to 39 percent. According to the state corrections department estimates, that repeal could save the state as much as \$1.3 million per inmate over his lifetime, not including the millions spent by public defenders on appeals.⁵

BOTCHED EXECUTIONS

All 35 of these states use lethal injection as their primary method of execution. Proponents of capital punishment would like us to believe that lethal injection is a humane way to kill.

Of the more than 500 lethal injections administered in the U.S. since 1982, roughly 42 cases have gone conspicuously wrong. The Hippocratic oath bars doctors from administering lethal injection, and the task falls to prison employees— resulting in instances of incorrect dosages that have allowed inmates to awaken during their execution.⁶

On September 15th, 2009 the State of Ohio attempted to execute Romell Broom by lethal injection. Efforts to find a suitable vein and to carry out the execution were terminated after more than two hours when the executioners were unable to find a useable vein in his arms or legs. During the failed efforts, Mr. Broom winced and grimaced with pain. After the first hour's lack of success, on several occasions Broom tried to help the executioners find a good vein. "At one point, he covered his face with both hands and appeared to be sobbing, his stomach heaving."⁷ Finally, Ohio Governor Ted Strickland ordered the execution to stop, and announced plans to attempt the execution anew after a one-week delay so that physicians could be consulted for advice on how the man could be killed more efficiently.

Angel Nieves Diaz was executed on December 10th 2006. He took 34 minutes to die from the time the two executioners inserted the IV tubes into each arm. During that time his eyes widened. His head rolled. He appeared to speak. Neal Dupree, a lawyer for Diaz and witness to the execution, wrote in an affidavit " It was my observation that he was in pain," The faint signs of movement from the body strapped to the trolley continued for 24 minutes. "His face was contorted, and he grimaced on several occasions. His Adam's apple bobbed up and down continually, and his jaw was clenched."⁸

The combination of three chemicals that was meant to have sent him to oblivion within moments led to a painful, lingering death. A report from the medical examiner later found 12-inch-long chemical burns on Diaz's arms. The medical examiner also discovered that technicians missed the veins when they were inserting the intravenous tubes; it took a second injection to kill him.⁹ According to Human Rights Watch, one of the three chemicals in the mix of lethal injections has been banned for use on animals because of fears that it does not relieve pain. "Prisoners in the United States are executed by means that the American Veterinary Medical Association regards as too cruel to use on dogs and cats,"¹⁰ the report states.

When the state of Florida executed Bennie Demps by lethal injection on June 8th 2000, execution officials had a problem finding a vein. "He

complained about the procedure and said that he bled profusely," said George Schaefer, attorney for Bennie Demps. What witnesses saw was Demps strapped to the gurney and screaming. It took execution technicians 33 minutes to find suitable veins for the execution. "They butchered me back there," said Demps in his final statement. "I was in a lot of pain. They cut me in the groin; they cut me in the leg. I was bleeding profusely. This is not an execution, it is murder."¹¹

The Eighth Amendment to the US Constitution proscribes the State from inflicting "cruel and unusual punishment."¹² The United States proclaims itself a beacon of democracy and civil liberty. To my consternation, on April 16th 2008 the Supreme Court ruled that lethal injection, if properly administered, is a "humane" means of executing a condemned prisoner.¹³ I was stunned.

INNOCENCE

According to the Death Penalty Information Center, since the reinstatement of the death penalty in 1973, 139 people have been released from death row in 26 states with evidence of their innocence. From 1973-1999, there was an average of 3.1 exonerations per year. They were the fortunate ones that got away before it was too late, but no one knows how many innocents were executed. At least 39 executions are claimed to have been carried out in the U.S. in the face of evidence of innocence or serious doubt about guilt. Newly-available DNA evidence has allowed the exoneration and release of more than 15 death row inmates since 1992, but DNA evidence is available in only a fraction of capital cases. There is too much doubt, and too much potential for error for the State to justify the irrevocable, final step of taking a life.¹⁴

It is impossible to ensure that innocent people are not executed. During his first presidential campaign President George W. Bush said "I am confident that every person that has been put to death in Texas on my watch has been guilty of the crime charged and had full access to the courts."¹⁵ However it was during his tenure as Governor that I witnessed the execution of a man I believe to have been innocent. One of the most serious arguments against the death penalty is that our legal systems are not infallible. Miscarriages of justice occur far more often than most people realise. When the state executes an innocent person it is a sanctioned murder. These state sanctioned murders have no place in 21st century society. As long as the US continues to be a bastion of the death penalty, it cannot claim to be a beacon of democracy.

GARY GRAHAM

In June 2000, I witnessed the execution of Gary Graham, who asked that he be known as Shaka Sankofa. People throughout the world believed Gary Graham to be innocent. I am convinced that he was.

Gary Graham was 17, a minor when he was sentenced to death. He spent 19 years on Death Row for a crime he time and again denied that he committed. He was sentenced to death based on the strength of one eyewitness testimony. Evidence, subsequently uncovered, calls into question this witness identification. Six other witnesses signed affidavits stating that the killer was not Gary Graham. He could have been saved by The State Board of Pardons and Parole and yet they denied clemency. Gary Graham was executed on 22 June 2000.

I cannot put into words my feelings on that day. Gazing through a Plexiglas window, I could see Gary Graham tied to a hospital trolley and about to be killed. It reminded me of a modern-day cross. I was terrified at the thought of witnessing another human being killed.

His forehead was in held in restraint by a leather strap and he had to strain his head to look at us. His look was intense. Suddenly, he began to speak. He knew they would be his last words on earth: "I'm an innocent black man that is being murdered. What is happening here is an outrage for any civilised country." It was at that point that I broke down. We told him we loved him. I put my hands and face on the glass. I was just four feet away.

I was in Texas in the United States of America, a country that proclaims itself to be the world's most progressive force on human rights. But we were witnessing the execution of a man about whose alleged crime there were many disturbing doubts. His last words were a chilling reminder of the racial prejudice and bitter injustice that pervades the American judicial system. It is a place where life, liberty and happiness are all too often replaced by the pursuit of death, imprisonment and hatred.

We thought that they would begin the execution procedure when he stopped making his last statement, but they had been killing him as he was talking to us. He called me by name before he died.

REGGIE CLEMONS

I am currently supporting the campaign for clemency for Reggie Clemons, a 38 year-old African-American man sentenced to death in Missouri after an unfair trial biased in favour of execution. There are many significant and troubling questions about who committed the crime for which Reggie was sentenced to death. Reggie's case is filled with many injustices, including police brutality, gross prosecutorial misconduct and ineffective defence counsel. Reggie Clemons has been on Missouri's death row for over 16 years, sentenced as an accomplice in the death of two white women in 1991.

Clemons and two other black men were sentenced to death while a fourth person, a young white man was offered a plea deal and is out on parole.

The case is, like many capital cases I have worked on, fraught with racial bias. The original suspect, a white man and the cousin of the women, confessed to the crime after failing a lie detector test and changing his story several times. All three black defendants claimed that their confessions were coerced by police beatings and/or denial of constitutional rights.

- Reggie and others present on the night of the crime were brutalized by the police. The male cousin of the two victims initially confessed to the murders, but ultimately filed suit against the City of St. Louis for police brutality and received a \$150,000 settlement.

- Although Reggie asked for an attorney, he was denied one. Instead, Reggie says he was subjected to several hours of threats and police beatings. He was slapped, punched in the head, choked and beaten about the chest. As a result of these beatings, Reggie's face became visibly swollen. After five hours of violent interrogation, Reggie made a coerced statement. The arraignment judge sent Clemons to the hospital for obvious injuries he did not have before his 'interview' with police. Yet Reggie could not use his own experience of beatings at the hands of St. Louis police as a mitigating factor in his trial.

- The prosecutor behaved so egregiously that he was that he was held in criminal contempt and fined for his conduct. Prosecutor Nels Moss engaged in a pattern of prosecutorial misconduct, including witness intimidation, and tactics to exclude African American jurors, that deprived Reggie of his Constitutional rights. Two federal courts later found that Moss's actions in Reggie's case were "abusive and boorish." So severe was the prosecutorial misconduct in Reggie's case that the prosecutor was held in criminal contempt and fined for his conduct. The misconduct on the part of the prosecutor was not isolated: a recent study by the Center for Public Integrity found Moss to be one of the most criticized prosecutors in the country who repeatedly broke the rules.

- As so often happens in capital cases, Reggie's trial counsel was grossly ineffective. The husband and wife team were in the middle of a divorce and conducted themselves unprofessionally. They did not do a pre-trial investigation and had Reggie's mother, who has no legal background, draft questions for the witnesses. One of the lawyers then moved to California, virtually abandoning the case. Eventually, one of Reggie's lawyers would have his law license suspended after repeatedly being disciplined for neglecting his duties to his clients.

- African-Americans were improperly excluded from the jury -- only 2 of the 12 jurors were African-American even though (as the judge conceded on the record) in his experience St. Louis juries were usually half white/half black. This was deemed unconstitutional by two federal judges.

In July 2009, in a significant development in the Reggie Clemons case, the Missouri Supreme Court ordered the appointment of a special master to investigate claims that Reggie was wrongly convicted and sentenced to death. The Court acted in response to a petition for habeas corpus filed by Reggie's attorneys on June 12th.

Jackson County Circuit Judge Michael Manners was selected to evaluate Reggie's claims. According to the order, Judge Manners is appointed "with full power and authority to issue subpoenas" and to "compel production of books, papers and documents and the attendance of witnesses." The Missouri Supreme Court's order states that the special master will eventually "report the evidence taken, together with his findings of fact and conclusions of law," to the Missouri Supreme Court.

- There is no physical evidence linking Clemons to the offense. It came to light only recently that critical evidence was never provided to the defence or tested for DNA.¹⁶

ARBITRARINESS

Application of the death penalty is disturbingly arbitrary. Stays of execution and reprieve are granted erratically, according to Judge Boyce Martin, Jr. who described the current application of the death penalty in the US as: "[T]he dysfunctional patchwork of stays and executions going on in this country... In some instances stays are granted, while in others they are not and the defendants are executed, with no principled distinction to justify such a result." (Alley v. Little, No. 06-5650 (6th Cir. May 16, 2006) (Martin, J., dissenting from denial of a rehearing en banc)).

A just system should not have death sentences concentrated in only one region. However, studies in the USA show that whether a person receives the death penalty depends heavily on where the crime was committed.

A system of jurisprudence based on arbitrariness and whim cannot be deemed a justice system. The application of the death penalty is erratic, unwarranted and 'dysfunctional.' The US cannot continue to execute its citizens under such loose, bungling mechanisms.

DP AS DETERRENT

The death penalty is not a deterrent. FBI data shows that all 15 states without capital punishment in 2008 had homicide rates at or below the national rate.¹⁷ The fear of a state-sponsored execution does not stop crime. The 2008 FBI Uniform Crime Report (FBI UCR) showed that the Southern USA had the highest murder rate in the country; yet the South accounts for over 80% of executions. The Northeastern USA which accounts for less than 1% of all executions had the lowest murder rate. The FBI UCR proves this trend, year after year, reiterating again and again the hard fact that capital punishment is not a deterrent from serious crime.¹⁸

In Canada, a country which does not have the death penalty, the homicide rate was 1.82 per 100,000 between 1998 and 2004. West and Central Europe's homicide rate in 2004 was 1.5 per 100,000.

In the US, the homicide rate was 6.3 per 100,000 between 1998 and 2004. Since 1964, the U.S. crime rate has increased by as much as 350%. Crime has gone up since the reinstatement of the death penalty.¹⁹

COST

Enforcing the death penalty costs Florida \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida has carried out since 1976, that amounts to a cost of \$24 million for each execution.²⁰

All moral and human rights considerations aside, capital punishment is as wasteful and profligate use of resources as it is of human life. These resources could be put to effective use in badly needed areas. I urge governments to shift their focus away from execution and instead to work towards more law enforcement resources, and more treatment programs, the prevention and treatment of sexual, physical and emotional abuse of children in order to prevent them from succumbing to a life of crime. These are the factors which police do think reduce crime.

OTHER COUNTRIES WITH DP

Statistics show that the number of executions is in decline. Whilst it is a good sign, it also means that executions are still being carried out. If we are to win the war for abolition, we cannot afford to lose a single battle. It is a war that we must fight on two fronts if we are to be successful: changing attitudes amongst the general public, and changing state policy towards capital punishment.²¹

Here are a few examples:

CHINA

The People's Republic of China performs more executions annually than any other nation, although other countries (such as Singapore) have higher execution rates per capita. By the confirmed numbers, the rate of executions in China is higher than Iran and the United States, though Iran executes more prisoners per capita.

Amnesty International estimates, using all available data that 1718 executions took place in China during 2008, warning that the actual figure is likely to be much higher. The Dui Hua Foundation declares that the figures are between 5,000 and 6,000 people in 2007, down from 10,000 in 2005.

The exact numbers of people executed in China is classified as a state secret.²²

UGANDA

In Uganda, an anti-homosexuality bill is currently being debated. It proposes death sentences for certain cases of gay sex, namely if the accused is HIV positive, a serial offender, a person of authority over the other partner, or if the 'victim' is under 18. At a time when gay rights are being asserted all over the world, this is a horrifying step that has set alarm bells ringing throughout the world.²³

CLOSING

I have outlined many of the practical reasons for abolishing the death penalty; reasons of which you are all aware; that are compelling enough to inspire many people who otherwise believe in eye-for-an-eye justice, to oppose it.

As Ghandi said: "An eye for an eye for an eye for an eye ... makes the whole world blind."²⁴

But there's another, more philosophical reason, one that gets at the nature of human beings and the proper role of government. Camus said, "Capital punishment is the most premeditated of murders."²⁵ Is the death penalty ever just? Is a society operating at its highest moral level when its only remedy against violent crime is to kill? Are we not a bankrupt society when we do not allow the possibility for change, rehabilitation and redemption?

There is no excuse for any country in the world, in the twenty first century to continue to execute their citizens. Some nations have applied this barbaric practice for centuries at an unthinkable cost. That cost is both ethical

and financial, but most of all it is a horrendous cost of human life, and of innocent lives.

I call for the worldwide abolition of the death penalty. I urge President Obama to call a moratorium on the Federal Death penalty, as the first step towards abolition in the US. Now is the time for leaders to demonstrate political courage, a time for them to show their commitment to human rights. Let us not add to the ranks of those thousands of dead who have already been executed, victims of an unfair and brutal penal system.

The battle is not over yet; the death penalty has no place in democratic society. I believe that we will ultimately be victorious; we are progressing, perhaps slowly, but inevitably, towards abolition. I believe that we will see worldwide abolition during my lifetime.

ENDNOTES

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² <http://www.un.org/en/documents/udhr/>

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¹⁶ <http://www.justiceforreggie.com/>

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²¹ http://www.amnesty.org.uk/news_details.asp?NewsID=17724

²² http://www.amnesty.org.uk/news_details.asp?NewsID=17724

²³ <http://www.guardian.co.uk/world/2009/nov/29/uganda-death-sentence-gay-sex>

²⁴ *The Life of Mahatma Gandhi*, Louis Fischer, 1950

²⁵ *Reflections on the Guillotine, Resistance, Rebellion & Death*, Albert Camus, 1966