EXTERNAL **AI Index: AFR 15/01/95**

UA 199/95 **Fear of imminent execution** **15 August 1995**

BOTSWANA **David Keleletswe**
David Gobatsu
Tekoetsile Tsiane

David Keleletswe, David Gobatsu and Tekoetsile Tsiane are facing execution after their appeal for clemency was turned down by President Ketumile Masire. Amnesty International fears that the rejection of their appeals may signal a resumption of executions in Botswana. As far as the organization is aware, there have been no executions there since 1987.

David Keleletswe, David Gobatsu and Tekoetsile Tsiane, all aged in their early 30s, were sentenced to death after a lengthy trial which ended in February 1995. They were arrested in November 1991 in Motokwe, 200 kilometres west of the capital, Gaborone, shortly after a man was shot dead. In mid-1994, they were convicted of murder, which automatically carries the death penalty under Section 202 of the Botswana Penal Code, and robbery. Their sentences were upheld by the Botswana Court of Appeal in February 1995, and their appeal for a presidential pardon was turned down on 10 July 1995. No date for their executions has yet been set, but Amnesty International fears that they could be carried out at any time.

Amnesty International opposes the death penalty in all cases and without reservation as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in Article 5 of the Universal Declaration of Human Rights.

BACKGROUND INFORMATION

The death penalty has been used in Botswana since pre-colonial times when, under Tswana law and custom, chiefs could impose the death penalty. When Botswana became the British Protectorate of Bechuanaland in 1891 the power to impose the death penalty was transferred to the government. Following independence in 1966, Botswana adopted a Constitution which contains a justiciable bill of rights. Section 4 (1) of Chapter II states: "No person shall be deprived of his life intentionally save in execution of a court in respect of an offence under the law in force in Botswana of which he has been convicted".

The Botswana Penal Code provides for the imposition of the death penalty in respect of three offences: treason; piracy with intent to murder; and murder. Anyone convicted of one of these offences must be sentenced to death unless there are extenuating circumstances, when the court may impose any other sentence.

All cases involving the death penalty are tried by the High Court. Those convicted have the right of appeal to the Appeal Court on points of both fact and law. Those whose death sentences are confirmed by the Appeal Court have 30 days to appeal for presidential clemency. Two other prisoners are currently awaiting a decision on their appeal for clemency.

Since 1976 a total of 23 death sentences have been passed in Botswana, 16 of which have been carried out. All death sentences passed so far have been for murder. Execution is by hanging.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:
- stating Amnesty International's unconditional opposition to the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in Article 5 of the Universal Declaration of Human Rights;
- urging President Ketumile Masire to reconsider his recent decision not to grant clemency to David Keleletswe, David Gobatsu and Tekoetsile Tsiane, and to commute their death sentences;
- urging President Masire to commute all other death sentences that come before him.

APPEALS TO:

Sir Ketumile Masire
President of Botswana
Office of the President
Private Bag 001
Gaborone, Botswana
Faxes: Faxes: +267 313 366 (via Foreign Affairs)
Telegrams: President Masire, Gaborone, Botswana
Salutation: Dear President

COPIES TO:

Minister of Foreign Affairs
Hon.Lt.Col. Mompate Merafhe
Ministry of Foreign Affairs
Private Bag 001
Gaborone, Botswana
Faxes: +267 313 366

Chief Justice
Moleleki Mokama
Private Bag X01
Gaborone, Botswana

President of the Appeal Court
A.N.E. Anmissah
Court of Appeal
Gaborone, Botswana

and to diplomatic representatives of Botswana accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 3 October 1995