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THE DEATH PENALTY IN SOUTH AFRICA - UPDATE

In April 1989 Amnesty International issued an 11-page external document describing the general use of the death penalty in South Africa ("South Africa: The Death Penalty", AI Index: AFR 53/03/89). The present document contains information which is more specifically about the use of the death penalty during the first half of 1989.

Executions

Between 1 January and 30 June 1989 at least 34 people have been executed in South Africa. The figures for January and February, with two executions reported in January and none in February, suggested a move away from the high execution figures of 1988 which averaged over two per week. However, this encouraging trend did not continue, and there were seven executions in March, 10 in April, five in May, and 10 in the first 13 days of June.

Those executed include Sandra Smith, a 22-year-old mother of three children executed on 2 June 1989. She was the first woman to be executed for over two years. She was convicted for her alleged role in the murder of a 16-year-old girl. They also include two white men, Anton Koen and James Henry Cohen, executed on 24 May 1989. Anton Koen was sentenced to death in June 1988 in Port Elizabeth Supreme Court for the murder of an elderly woman. All avenues of appeal available to him had been exhausted. James Henry Cohen was convicted in Ladysmith in September 1988 on charges of murder and robbery. The trial court granted him leave to appeal but he is reported to have refused legal assistance and to have expressed the wish to be executed.

Also executed was Mxolisi Isaac Tshongoyi, who was convicted of murder and robbery in the Cape Town Supreme Court on 31 March 1988 and sentenced to death. His execution had previously been scheduled for 24 November 1988 but he was granted a last-minute stay of execution when it was learned that a petition on his behalf to the Chief Justice, for leave to appeal against conviction, had not been forwarded for consideration. This petition was subsequently turned down. He then petitioned the State President for clemency but this petition also failed and he was executed on 6 June 1989. His execution took place before written notification of the failure of his clemency petition reached his lawyers. His relatives had however been informed and

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received a rail ticket to enable them to make a final visit to him.

The Minister of Justice Mr H J Coetsee, speaking in Parliament, reported that on 24 April 1989 there were 275 prisoners under sentence of death in Pretoria. Of these, 256 were black (202 "African" men, one "African" woman, 51 "coloured" men, one "coloured" woman, and one "Indian"), and 19 were white (all men).

No details are currently available on whether death sentences have been carried out in South Africa's nominally independent "homelands" during the first half of 1989.

Commutations

In the first five months of the year 37 prisoners were reported to have had their death sentences commuted to terms of imprisonment.

On 1 March 1989 the death sentence imposed on Paul Setlaba in December 1986 was commuted to a period of 20 years' imprisonment. Paul Setlaba had been convicted of murder for his alleged role in the killing of Julia Dilato in October 1985. Twice during 1988 his execution had been scheduled, but twice he was granted last-minute stays of execution. The second stay of execution, in November 1988, was granted to permit the State President to examine a petition for his trial to be reopened. This petition was supported by a sworn affidavit in which it was claimed that the single witness at the trial on the basis of whose evidence Paul Setlaba had been convicted had admitted subsequently that he had lied to the court as a result of police coercion. Lawyers acting on behalf of Paul Setlaba are reported to have obtained an affidavit from the witness in question in which he retracted at least part of the evidence which implicated Paul Setlaba in the murder. In light of the long prison sentence imposed on Paul Setlaba following commutation of his death sentence, his lawyers are considering whether further steps should be taken to present this new evidence to the courts.

A number of trade unionists convicted in connection with murders which occurred during strikes and industrial disputes have also had their death sentences commuted. Stanford Ngubo, Johannes Buthelezi and Bethwell Sabelo, all members of the Transport and General Workers Union (TGWU), and William Khuzwayo, unemployed at the time of the offence, were sentenced to death in Durban Supreme Court in August 1988 for their alleged role in the murder of a bus driver, Retford Shezi, who continued to work during a strike in October and November 1986 in which over 200 drivers were suspended from work without pay for refusing to collect fares. The court decided that William Khuzwayo fired the fatal shots. The other three were convicted on the basis that they shared a common purpose with him; they were alleged to have hired him to kill Retford Shezi. There had been conflicting evidence about the defendants' presence at the scene of the crime. However, the four were not allowed to lodge an appeal, and their petition to the Chief Justice for leave to appeal was turned down in December 1988. On 25 May 1989 their death sentences were commuted. Stanford Ngubo, Johannes Buthelezi and Bethwell Sabelo received sentences of 18 years' imprisonment; William Khuzwayo received 20

years' imprisonment.

Another trade unionist, Mazazile William Mntombela, had his death sentence commuted on 18 May 1989 to 25 years' imprisonment. He was a dairy worker, a member of the Commercial, Catering and Allied Workers Union (CCAWUSA), and was shop steward during a strike in Johannesburg in 1986. He was convicted in connection with the murder of two people at the height of the strike.

However, other trade unionists involved in similar incidents remain under sentence of death. Dilizintaba 'Lucky' Nomnganga, a National Union of Mineworkers member, is under sentence of death for the murder of a mine engineer and a mine security guard in June 1987, during a riot which followed dismissals of miners. He was reportedly convicted on the basis of sharing a "common purpose" with the mob which committed the murder. There was apparently no evidence that he inflicted any of the fatal wounds, but he was alleged to have given a signal which started the attack on the two victims. Four railworkers, members of the South African Railway and Harbour Workers Union (SAHRWU), are also under sentence of death. They were convicted in May 1988 of killing four men during a strike.

Appeal hearings and controversy over sentencing

In a number of cases convicted prisoners have had death sentences overturned on appeal. On 30 March 1989 three men convicted of murder and arson in September 1987 had their convictions and sentences set aside by the Appeal Court. Another such case involved three members of the National Union of Mineworkers, Tjeluvuyo Mgedezi, Solomon Nongwati and Paulos Tsehlana. They were sentenced to death in Klerksdorp Regional Court in May 1987 for the murder of four "team leaders", supervisors of gangs of miners underground, at the Vaal Reefs gold mine in February 1986. Other defendants received terms of imprisonment. Tjeluvuyo Mgedezi, who was chairperson of the shaft stewards committee at the mine at the time of the murders, received the heaviest sentences - four separate death sentences for the four murders and 15 years imprisonment for attempted murder. In September 1988 the Appeal Court in Bloemfontein heard their appeals. Solomon Nongwati's appeal was successful; a conviction for public violence was substituted for murder, and his death sentence was reduced to 30 days imprisonment. He had already spent much longer than that in prison, and was released. Paulos Tsehlana's appeal was also successful; all his convictions were set aside and he was released. Tjeluvuyo Mgedezi was acquitted of two of his murder convictions, but the remaining three convictions and sentences were upheld. In January 1989 he petitioned the State President for clemency. On 18 May 1989 his death sentence was commuted to 20 years imprisonment.

The successful appeals of people sentenced to death has highlighted the discrepancies in sentencing which can occur even in cases where the defendant faces the maximum penalty of death, and also called into question current appeal procedures, which allow leave to appeal to be refused by trial judges.

The same judge whose sentencing of Tjeluvuyo Mgedezi, Solomon Nongwati and Paulos Tsehlana to death was overturned on appeal was

subsequently criticized in public for the leniency of sentences which he passed on two white farmers in November 1988 in the Louis Trichardt Circuit Court, in connection with the death of a farm worker. The farm worker, Eric Sambo, had allegedly driven a piece of farm machinery deliberately over a dog belonging to one of the farmers, killing the dog. The two men tied him to a tree and assaulted him over a period of two days, which resulted in his

death. One, Jacobus Vorster, was found guilty of culpable homicide and was sentenced to five years imprisonment, suspended for five years, a fine, and monthly payments of 130 Rands to the victim's family. The other, Petrus Leonard, was convicted of assault and fined 500 Rand. The Johannesburg Bar Council publicly criticised the judge's decision in this case. Mrs Helen Suzman, then Member of Parliament for the Progressive Federal Party, presented a petition to Parliament in January 1989 in an attempt to have the judge removed. Her petition was turned down, and a motion of censure subsequently brought before Parliament was rejected. However, the ensuing controversy served to highlight discrepancies in sentencing in this and other cases.

Public opposition to the death penalty

Campaigners against the death penalty within South Africa have continued to appeal for clemency to be granted to individuals under sentence of death, and for abolition of the death penalty.

In February 1989 the Black Sash published a report entitled "Inside South Africa's Death Factory", which examines many aspects of the use of the death penalty in South Africa. Organizations including Lawyers for Human Rights (LHR), Families of People on Death Row (FOPOD) and the Society for the Abolition of the Death Penalty in South Africa (SADPSA) have maintained a high level of campaigning on behalf of all prisoners under sentence of death. Regular visits have been made to prisoners under sentence of death, to monitor scheduled executions and ensure that all possible legal avenues of appeal have been explored. As a result of this monitoring program a significant number of prisoners have received last-minute temporary stays of execution to allow further legal avenues to be pursued.

There have been calls in Parliament from Democratic Party MPs for an inquiry into a number of aspects of capital punishment, including its mandatory nature where no extenuating circumstances are found, and the lack of an automatic right of appeal. Member of Parliament Mrs Helen Suzman called on the government to declare a moratorium on executions while an investigation is carried out. In May 1989 Archbishop Desmond Tutu renewed his calls for an end to hanging and a reprieve for all under sentence of death.

New death sentences

A number of cases in which the death sentence has been imposed have attracted considerable public attention and helped to keep discussion of the death penalty in public view. Further controversy has centred on the use of the doctrine of "common purpose" in a number of murder cases as a basis for the conviction of members of a crowd or mob. On 5 June 1989 16 people were convicted in Bisho, in the nominally independent "homeland" of Ciskei, of the "necklace" murder of five young men in February 1987. The 16 were found to have abducted six youths from Mdantsane, a township in the

"homeland" close to East London, at a time of disturbances in the township. One youth survived the attack. During disturbances in the mid-1980s a number of murders of this sort occurred: victims had petrol-soaked tyres placed over their heads and set alight. The 16 were convicted on the basis of sharing a "common purpose", as they were allegedly part of a mob that carried out the murders. Extenuating circumstances were found in relation to four of the defendants, and they received 20-year prison sentences. In the other 12 cases no extenuating circumstances were found and on 6 June 1989 all 12 were sentenced to death. They were granted leave to appeal and the appeal hearing scheduled for early August 1989.

Despite the commutation in November 1988 of death sentences imposed on the "Sharpeville Six" - six people convicted of involvement in the killing in September 1984 of the Deputy Mayor of Sharpeville - Amnesty International remains concerned that the legal precedents established by the case remain unchallenged. Those legal precedents are the broad interpretation of the doctrine of "common purpose" as a basis for bringing in convictions of murder in cases of killings occurring in the presence of a crowd of people, and the failure of the trial court to conclude that extenuating circumstances existed in such a case.

In a case which has attracted considerable international attention, 26 people from the Northern Cape town of Upington were found guilty in April 1988 of complicity in murder. The murder took place in November 1985 in Paballelo, a black township of about 10,000 people outside the white town of Upington. The murder occurred after the security forces had broken up with teargas a meeting of some 5,000 people in the township, protesting about living conditions and rent increases. A crowd of about 300 then attacked the home of a municipal police officer, unpopular because he and three other officers had allegedly shot and killed a pregnant woman three days before. The police officer, Lucas Tshenolo "Jetta" Sethwala, opened fire with a shotgun at the crowd stoning his house, wounding a small boy. He was chased from the house by the crowd, and an hour later was killed by two blows from his own firearm. His body was then set alight.

Only one defendant, who pleaded not guilty, was found to have delivered the blows which killed "Jetta" Sethwala. Three others were identified as "principal offenders" for their role in assaulting the body of the deceased after he was dead. However, 25 defendants in all were convicted of murder on the basis of "common purpose", because they had taken part in throwing stones at the dead man's house. The twenty-sixth defendant was convicted of attempted murder. Of the 25 convicted of murder, 14 were sentenced to death on 13 May 1989. The remaining 12 defendants were sentenced to terms of imprisonment, in some cases suspended and coupled with periods of community service. On 27 June 1989 the trial court refused the 14 leave to appeal against their death sentences. They were granted 21 days in which to lodge a petition against this decision.

Amnesty International is concerned at the imposition of death sentences on so many people convicted of murder under the "common purpose" doctrine, whereby, although many of the accused may not

have taken part in an actual killing, the fact that they were present at incidents which preceded the murder by as much as an hour has been held by the courts to be sufficient evidence of their complicity in murder. There is also concern

with regard to the personal circumstances of some of the individuals convicted. Those sentenced to death in Upington include an elderly couple aged in their sixties, who have 10 children, and a young man who was deemed sane to stand trial, but who was reportedly assaulted by the police in Cape Town while awaiting psychiatric observation. The judge found that there were no extenuating circumstances in the cases of any of the 14 sentenced to death, and their sentences were therefore mandatory under South African law. In the cases of the 11 convicted of murder but not sentenced to death, the judge appears to have accepted that youth or "limited intelligence" constituted extenuating circumstances. The prosecution conceded that there were extenuating circumstances in the case of the elderly male defendant, but this was overruled by the judge.

Amnesty International is concerned at the continuing use of the death penalty in South Africa in the first half of 1989. The organization is appealing to the South African authorities urgently to declare a moratorium on executions; and to set up a judicial commission of inquiry to examine the use of the death penalty. It has suggested that a commission should examine issues such as:

- the mandatory nature of the death penalty in murder cases where no extenuating circumstances are found;
- the lack of automatic right of appeal against a sentence of death;
- lengthy incommunicado pre-trial detention of defendants and witnesses, and the appropriateness of admitting statements which may have been given under duress, in trials which may end in the defendant being sentenced to death;
- the role of court-appointed lawyers in cases where the defendant may face the death penalty, and the particular importance of the appeal process in such cases;
- discrepancies in sentencing; and
- the role of the Department of Justice in processing petitions.

Amnesty International has urged that the proceedings of such a commission should be conducted openly and its findings made available to the public.

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BACKGROUND AND RECOMMENDED ACTIONS FOR APPEALS TO SOUTH AFRICA

DURING CAMPAIGN PHASE TWO (September-December 1989)

South Africa is being featured for appeals (Category A) during AI's 1989 campaign against the death penalty. Recommended actions and addresses were given in campaign circular no. 17D, AI Index: AFR 53/05/89.

This circular gives recommended actions for campaign phase two (September-December) in light of any developments in the country. It should be used together with the EXTERNAL part of the circular, which updates the information in campaign circular no. 16D, "The Death Penalty in South Africa", AI Index: AFR 53/03/89.

RESPONSE FROM THE COUNTRY TO AI'S CAMPAIGN

The release of AI's death penalty report was reported in the press, with reference to AI's concerns about use of the death penalty in South Africa. It is still too early to have seen direct responses to letter-writing. (Sections should ensure that any responses received are being copied to the Research Department (Southern Africa) for advice.) Some organizations within South Africa have requested AI materials on the death penalty for use in their own work.

PROGRESS TOWARDS CAMPAIGN OBJECTIVES

The Minister of Justice has been reported in the press as saying, during debate in Parliament in April 1989 on the justice budget vote, that the government were "sensitive" to the question of capital punishment and that he was "'open to suggestions" for revisions of the death penalty'. It may be that some consideration is being given to the possibility of introducing some reforms to the law, such as in relation to the mandatory nature of the death penalty and the lack of automatic right of appeal. However, no concrete, public steps have been taken so far.

^pg NEW MATERIALS AVAILABLE

UAs issued so far: AFR 53/13/89 (update to AFR 53/10/88 and AFR 53/35/88) - the "Addo Four" AFR 53/16/89 - Leonard Sheehana AFR 53/18/89 - the "Upington 26" AFR 53/23/89 - the "Bisho 12"

and UAs issued by telex only, on 7 March 1989; 15 March 1989; 24 April 1989; 22 May 1989; 1 June 1989; and 6 June 1989; and their updates. These telexed UAs were not printed for general circulation, and were telexed only to selected sections which were asked to appeal.

Please look out for further UAs as campaign continues.

NEW POINTS FOR APPEALS

Please continue appeals as outlined in AFR 53/05/89, using the additional material contained in this external update to support your arguments.

Where a maximum number of letters has been set for a category of addressees, you should not send further appeals. Where there is no maximum, however, you may send a second letter if you have not received a reply to your first letter, reiterating your concerns.

Information on the death penalty in the nominally independent "homelands" is not available at present, apart from the recent case of 12 people sentenced to death in Bisho, Ciskei (see external document).

The additional information given in this external update may be used in your letters to support your appeals. In particular you may include in your letters appeals for the "Upington 14" and the "Bisho 12".

OTHER RECOMMENDED ACTIONS

Appended to the external update is a list of the names of those reported to have been executed from January to June 1989. These names and dates of executions may be used to help in your campaigning.

You can give the update to journalists suggesting they do a story on the death penalty in South Africa. A good time for this may be the Week of Action Against Executions (20-27 September), during which AI sections around the world will be collecting signatures and sending appeals to the authorities of South Africa and several other countries to stop executions.

CORRECTIONS TO LIST OF ADDRESSES

A general election has been scheduled for 6 September 1989. State President P W Botha and five cabinet ministers have announced their retirement. There will therefore be major changes to the government authorities list, and sections will be sent a new list as soon as it is available.

Please note that Dr J C Heunis, Minister of Constitutional Development and Planning, and formerly Acting State President, has retired as from 1 July 1989.

A P P E N D I XEXECUTIONS REPORTED FROM 1 JANUARY TO 30 JUNE 1989

January (total = 2)	Bakiri Nelson	13/1/89
	Johannes Mangate	13/1/89
February (total = 0)		
March (total = 7)	Joseph Letsiri	9/3/89
	Benfisius Sekgothe	9/3/89
	David Themba Kekana	14/3/89
	Jacobus Konzi e	14/3/89
	Raymond Shozi	14/3/89
	Joseph Madonsela	17/3/89
	Jabulani Nkosi	17/3/89
April (total = 10)	M B Ngcobo	5/4/89
	Ndumiso Silo Siphenuka	20/4/89
	Makhezwana Menze	20/4/89
	Mlandeli Bobby Lesiti	25/4/89
	Mxolisi Barnse	25/4/89
	Leonard Adriaanse	25/4/89
	Paulus Dube	26/4/89
	Buthi Mokoena	26/4/89
	David Millar	26/4/89
	Raymond Ntshangase	26/4/89
May (total = 5)	Anton Koen	24/5/89
	James Henry Cohen	24/5/89
	Simon Mbatha	25/5/89
	Patrick Mosomi	25/5/89
	Abraham Mngomezulu	25/5/89
June (total = 10)	Jassim Harris	2/6/89
	Sandra Smith	2/6/89
	Michael Erasmus	2/6/89
	Jacob Ndaba	2/6/89
	Mxolisi Isaac Tshongoyi	6/6/89
	Keith Simmons	8/6/89
	Thomas Sibisi	8/6/89
	Solomon Mhlanga	8/6/89
	Michael Morris	13/6/89
	Uithaler	13/6/89

(This list represents only cases reported to Amnesty International. It may be incomplete.)

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COUNTRY: SOUTH AFRICA
SUBJECT TITLE: THE DEATH PENALTY - UPDATE

JULY 1989 SUMMARY AI INDEX:
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The present document contains information which is more specifically about the use of the death penalty in South Africa during the first half of 1989. Between 1 January and 30 June 1989 at least 34 people were executed in South Africa and death sentences have continued to be handed down by the courts. In May 14 people from Upington in the Northern Cape were sentenced to death for the murder of a police officer on the basis of having shared a "common purpose" to murder him. In June 12 people were sentenced to death in Bisho, in the nominally independent "homeland" of Ciskei, in a similar case. Thirty-seven prisoners are reported to have had their death sentences commuted to terms of imprisonment during this period. A number of organizations and individuals within South Africa have campaigned steadily against executions and for abolition of the death penalty, keeping the issue in public view.

This summarizes a 6-page document, South Africa: The Death Penalty - Update (AI Index: AFR 53/20/89) issued by Amnesty International in July 1989. Anyone wanting further details or to take action on this issue should consult the full document.

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