

EXTERNAL (for general distribution)

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UA 232/91 Death Penalty

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ZAMBIA: Peter Lloyd MWAPE, former soldier

Peter Lloyd MWAPE, arrested in 1980 and sentenced to death three years ago, is currently appealing for mercy. On 16 July 1988, the Supreme Court of Zambia overturned an earlier sentence of 15 years' imprisonment for aggravated robbery, passed on Peter Lloyd Mwape by the High Court, and substituted it with a sentence of death. Since then Peter Lloyd Mwape has been on death row at Kabwe Maximum Prison. In May 1991 he appealed for clemency to the Committee on the Prerogative of Mercy which advises Kenneth Kaunda, the President of Zambia, on whether the death sentence should be carried out. His appeal to this Committee has apparently not yet been considered. Amnesty International opposes the death penalty in all cases and is appealing to the Committee on the Prerogative of Mercy, and the President of Zambia to commute the death sentence imposed on Peter Lloyd Mwape to a term of imprisonment.

BACKGROUND INFORMATION

The death penalty is mandatory in Zambia for aggravated robbery (robbery using a firearm) and treason. The Zambian Penal Code was amended in June 1990, to give the courts discretion in the imposition of the death penalty for murder if the courts found there to be extenuating circumstances. Previously murder carried a mandatory sentence of death. There have been no executions since 1989, but it is thought that over 200 people are under sentence of death in Kabwe Maximum Security Prison.

Peter Lloyd Mwape was arrested on 15 June 1980, and charged with aggravated robbery. He appeared in court on 29 November 1980, and the judge referred him to a psychiatric hospital on the grounds that he was mentally ill. He was kept in the psychiatric hospital for a period of four years. When he left the hospital he was re-arrested on the same charge and on 27 February 1987 was sentenced to 15 years imprisonment, the sentence to take effect from 15 June 1980, when he was first arrested. On 6 April 1988 the Director of Public Prosecutions (DPP) appealed to the Supreme Court to re-open the case on the grounds that the judge who had sentenced Peter Lloyd Mwape in February 1987, had erred in not sentencing him to death since a firearm had been found in his possession at the time of his arrest. In Zambia if a firearm is proved to be used in aggravated robbery (even if it is not actually fired), the death penalty is usually imposed. The DPP argued that, although the weapon had been found to be incapable of firing, a factor which had been taken into account when he was sentenced to 15 years imprisonment, Peter Lloyd Mwape as a soldier would have known how to assemble and mend a firearm. On 16 July 1988, the DPP won his appeal and the death penalty was substituted on the grounds that although the firearm was faulty and incapable of firing, it still qualified as a firearm under Zambian law.

Amnesty International opposes the death penalty in all circumstances, believing it to be the ultimate cruel, inhuman and degrading punishment and a violation to the right of life. Amnesty International is urging that mitigating factors be considered by the Committee on the prerogative of mercy and the President in deciding whether the death sentence should be

carried out in Peter Lloyd Mwape's case. The mitigating factors in this case are that Peter Lloyd Mwape was sentenced to 15 years imprisonment in February 1987, after having already served almost seven years of his sentence for the offence; he was considered by the judge to be mentally ill when he first appeared in court to answer the charge against him, and, in the course of the robbery of which he was accused, no persons were killed.

RECOMMENDED ACTION: Telegrams/telexes and airmail letters:

- explaining Amnesty International's unconditional opposition to the death penalty in all instances and referring both to the commutation of numerous death sentences in neighbouring countries recently, and to the abolition of the death penalty in both Mozambique and Namibia last year;
- urging that both the Committee on the Prerogative of Mercy, and the President of Zambia consider the mitigating factors in Peter Lloyd Mwape's case and, that the death sentence imposed on Peter Lloyd Mwape be commuted to a term of imprisonment;
- mentioning in particular: that the gun he was accused of using was found to be incapable of firing; that he may have been mentally ill at the time and was subsequently referred to a psychiatric hospital for four years; that he had already served almost seven years of his sentence when he was charged with the same offence in February 1987, and he has now spent 11 years in prison.

APPEALS TO:

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President of the Republic of
Zambia
State House
Lusaka, Zambia

**Telegrams: President Kaunda,
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Telexes: 41460 STATE ZA

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and to diplomatic representatives of Zambia in your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat,
or your section office, if sending appeals after 21 August 1991.