

AMNESTY INTERNATIONAL PRESS RELEASE

3 April 2001

AI Index AFR 15/002/2001 - News Service Nr. 66

Botswana: Amnesty International appalled by secret execution

Amnesty International today expressed shock at the secret and rushed execution last Saturday 31 March in Botswana of Marriette Bosch, who had been sentenced to death for murder, and of the secretive circumstances in which the killing took place.

"Those who had authorised her execution failed to inform her family or lawyers of the execution date. The prison authorities refused access to her on the last day of her life. These acts of deception underline the inherent cruelty of this irrevocable punishment," Amnesty International said.

Her lawyer had reportedly given notice of intention to petition for presidential clemency, following the rejection of her appeal to the Court of Appeal two months previously.

Amnesty International's Deputy Secretary General, in a letter* handed over to the President of Botswana, Mr Festus Mogae, in London on 28 March 2001, had appealed to the President to grant clemency to Marriette Bosch. The organization took no position on the merits of her claims to innocence, but is opposed to the death penalty on the grounds that it constitutes a violation of the right to life as guaranteed in international human rights standards. The organization also noted that scientific studies have consistently failed to find evidence that the death penalty deters crime more efficiently than other, less drastic punishments.

Since February Amnesty International's membership throughout the world had been sending appeals to the Botswanan authorities to grant clemency to Marriette Bosch, a South African citizen, and urged President Festus Mogae to introduce a moratorium against executions.

In February 2001 Amnesty International had also appealed to the South African Government to reconsider its reported decision not to intervene in the matter of the death sentence imposed on Marriette Bosch.

The decision to view the case as a matter only of Botswanan national law and sovereignty seemed, in Amnesty International's view, to be inconsistent with South Africa's support at the United Nations Commission on Human Rights for resolutions promoting an international moratorium on executions. It also seemed to be contrary to the strong stance the government has taken, despite public pressures, against restoring the death penalty in South Africa itself.

There have been reports in the last two days that President Thabo Mbeki may have made a direct appeal to the President of Botswana in this case.

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*"The full texts of Amnesty International's letters are attached".

His Excellency President Festus Mogae
President of Botswana

(BY HAND)

28 March 2001

Your Excellency,

May I take the opportunity of your visit to London to approach you concerning capital punishment in Botswana. I am aware that in the past you have personally expressed your support for the death penalty as a means to combat ever rising crime, yet I appeal to you to accept the materials here enclosed and to review the issues with an open mind.

Amnesty International opposes the death penalty on grounds of principle, namely, that it constitutes a violation of the right to life as guaranteed in international human rights standards and a cruel and inhuman form of punishment amounting to torture. The organization's opposition is based also on the fact that, in the event that a prisoner is wrongly convicted, the death penalty is an irrevocable punishment which permits of no reversal or redress. On these grounds, this organization and its members and supporters worldwide have campaigned tirelessly for decades against the death penalty. Nevertheless, well over 1000 prisoners continue to be executed around the world each year - some convicted of committing violent and cruel murders, others for non-violent offences such as "economic" crimes. We have appealed to the Botswana authorities in the past not to carry out executions. We appeal once more, to Your Excellency in person, not to preside over further executions in your country.

Despite the view, widely held, that the death penalty is an especially effective means to prevent and punish violent crime, scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. It is incorrect to assume that people who commit such serious crimes as murder do so after rationally calculating the consequences. Often murders are committed in moments when emotion overcomes reason. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996, concluded: "...research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming."

As Your Excellency is well aware, even when all judicial appeals have been exhausted a death sentence may still be set aside through the exercise of clemency. This gives Your Excellency, as Head of State, an alternative to the signing of a death warrant and provides an opportunity for the State to show mercy while still upholding the need to punish wrong-doing.

Amnesty International has been pleased to note that there is a growing trend towards abolition of the death penalty in various parts of the world. A number of Southern African countries - Angola, Mozambique, Mauritius, Namibia and South Africa - have already abolished the death penalty, and as

you will be aware, President Muluzi of Malawi has said publicly that as long as he is president, he will sign no death warrants. In December 1998, in an appeal publicized at the World Council of Churches Eighth Assembly in Harare, President Muluzi wrote: "In the cause of truth and justice, I invite all Heads of State in Southern Africa, our common home, to abolish the death sentence, to work for the removal of violence among our peoples and so to prepare a better future for our children." He also said "I have promised Amnesty International that I will never sign the Death Sentence for a fellow human being. I would like to reaffirm this commitment. Life is sacred, I believe a person can reform. I believe that forgiveness makes all of us better persons." We therefore urge you to respond positively to the sentiments expressed by Malawi's president and consider imposing a moratorium on executions in your country as a first step towards abolition.

I am enclosing herewith a number of documents for your information, in the hope that they might prompt you to consider anew whether the death penalty cannot be replaced by other effective but more humane forms of punishment. These papers are not new - but then, nor is the issue a new one. Enclosed are the following:

- *When the State Kills: the death penalty v. human rights* (Amnesty International 1989)
- International standards on the death penalty (AI Index: ACT 50/10/98)
- The place of public opinion in the effort to abolish the death penalty (AI Index: ACT 50/12/96)
- *AFRICA: A New Future without the Death Penalty* (AI Index: AFR 01/03/97)
- Sixth Quinquennial Report to the UN Commission on Crime Prevention and Criminal Justice: Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty; UN Ref: E/2000/3, dated 31 March 2000
- *The death penalty - A world-wide perspective*: Roger Hood (1996); Chapter 6, "The Question of Deterrence"

In closing, we appeal to you to grant clemency to all prisoners whose cases may be placed before you for consideration, including the South African prisoner Marriette Sonjaleen Bosch who is currently facing the death penalty in Botswana.

Yours sincerely,

Vincent Del Buono
Deputy Secretary General

cc: Office of the President, Gaborone, Botswana - Per Fax 00 267 357 800 (cover letter only)

Ref.: TG: AFR/53/01.01

Dr N.C. Dlamini-Zuma
Minister of Foreign Affairs
Ministry of Foreign Affairs
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Per fax: 00 27 12 351 0253
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16 February 2001

Dear Minister,

We understand from the reported comments of the Director General of Foreign Affairs, Mr Siphon Pityana, that South Africa has decided not to intervene in the matter of the death sentence recently upheld by the Court of Appeal of Botswana on the South African national, Marriette Bosch. This decision appears to have been taken notwithstanding appeals made by the South African Human Rights Commission as well as members of the Bosch family. It appears to have been taken on the basis of wishing to respect the outcome of the judicial proceedings of another country. We urge you to reconsider this decision.

The decision to view the imposition and confirmation of a death sentence as a matter of national law and sovereignty, and not a matter of human rights, seems inconsistent with the stance taken by South Africa at the United Nations Commission on Human Rights. In its recent sessions South Africa has co-sponsored and voted in favour of Resolutions 1998/8 and 1999/61 which call on all States that still maintain the death penalty to establish a moratorium on executions, with a view to completely abolishing the death penalty. The decision also seems inconsistent with the steps taken by South Africa towards ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, which has as a founding premise the desire of States parties to “*undertake hereby an international commitment to abolish the death penalty*”. In May 2000 we were informed by the Ministry for Justice and Constitutional Development that there is an intention to ratify this Protocol and that draft enabling legislation was being prepared for this purpose.

South Africa's example in abolishing the death penalty has been a vital contribution to the advancement of international human rights. The Constitutional Court in its landmark ruling in 1995 found that the death penalty was unconstitutional, in so far as it violated the right not to be subjected to “cruel, inhuman or degrading treatment or punishment” and, in addition, violated the rights to life, dignity and equality. As the Judge President, Arthur Chaskalson, stated “*in the context of our Constitution the death penalty is indeed a cruel, inhuman and degrading punishment... the carrying out of the death sentence destroys life, which is protected without reservation under section 9 of our Constitution, it annihilates human dignity which is protected under section 10, elements of arbitrariness are*

present in its enforcement, and it is irremediable".¹ Despite considerable pressure for the restoration of the death penalty from members of the public in reaction to high levels of violent crime, the South African Government has remained admirably resolute in its opposition to restoring this ultimate penalty.

Amnesty International urges your Ministry to continue the leadership which South Africa has shown on this issue in the past by appealing on humanitarian and human rights grounds to the government of Botswana for clemency for Marriette Bosch. The organization takes no position on the merits of her claims to innocence with respect to the crime for which she was convicted, but makes its appeal to you on the basis of our longstanding opposition to the death penalty as a violation of the right to life and a cruel, inhuman and irrevocable punishment.

Yours sincerely,

Vincent Del Buono
Deputy Secretary General

cc. Mr P.M. Maduna, Minister of Justice and Constitutional Development
cc. Mr Siphon Pityana, Director-General, Department of Foreign Affairs
cc. Dr Barney Pityana, Chairperson, South African Human Rights Commission

¹ In *The State v T Makwanyane and M Mchunu*, 6 June 1995, para.95