



LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

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CABLE ADDRESS: LAW CIV, WASHINGTON, D.C.

September 13, 1982

FROM: Gay J. McDougall

RE: Death Sentences in South Africa:
Mogoerane, Mosololi & Motaung

1. The incident at the Wonderboom police station.

In the December, 1981 incident on which the trial was based, five armed black men, alleged to have been members of Gebuza Machinery, a military unit of the African National Congress (ANC), attacked the South African police station at Wonderboom Mayville in Pretoria. One constable was killed and three others wounded.

2. Summary of trial.

The treason trial held in Pretoria during July and August, 1982 involved three young black men who left South Africa shortly after the 1976 Soweto riots and joined the external liberation movement. The state alleged that the defendants had acted as co-conspirators with the common purpose of overthrowing the South African government by violent means. The main charge against all defendants was high treason under the Terrorism Act deriving from their alleged involvement in a series of attacks on a railway line, an electrical center, and several police stations.

All three defendants pleaded not guilty to the charges.

Mogoerane and Mosololi made claims in court that they had been tortured during interrogation by security police and forced to sign confession statements. Motaung had been shot in the hip by security police when he was arrested and alleged in court that he had been denied adequate medical treatment. However, Supreme Court Judge D.J. Curlewis ruled that their statements had been made freely and could be submitted as evidence by the state.

All three defendants were convicted of high treason and 20 alternative charges involving the attacks on the three police stations.

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3. The sentences.

On August 6, 1982, all three men were sentenced to death by Judge Curlewis. It took the judge 20 minutes to decide to impose the death penalty. After the sentencing, the three men raised clenched fists. Outside the courtroom, friends and relatives of the three men ignored police warnings by shouting slogans and singing freedom songs.

4. Current status.

Mogoerane, Mosololi, and Motaung have decided not to appeal their death sentences and instead are petitioning the state president for clemency. If the state president denies clemency, the executions will probably take place with a minimum of delay.

5. Major issues.

- The defendants in this trial should have been accorded prisoner of war status under the Geneva Conventions of 1949 and Protocol I thereto.

In June 1977, the provisions of the Geneva Convention of 1949 Relative to the Treatment of Prisoners of War formerly considered operative only between sovereign States parties to the 1949 Convention, were expressly extended to cover "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination...."

On November 28, 1980, the African National Congress of South Africa made official declaration of its intent to consider the terms of the Protocol binding upon its operations in South Africa.

Prisoners of war are immune from criminal prosecution and, hence, execution for those acts of combat which do not violate the laws of war, but which might otherwise be common crimes under municipal law.

Prisoner of war status for these and other detained opponents in South Africa would make proper recognition of the increasing reality of war in southern Africa.

- South Africa has previously had a tradition of clemency in political cases. Only one person-- Solomon Mahlangu--has been executed for a politically motivated offense since the 1960's. More recently in the case of Lubisi, Mashigo and Manana, the South African government commuted the death sentences

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of the three men in June, 1982 after all other appeals failed. In at least two other cases, one involving a South African sentenced to death for high treason (James Mange) and the other a Namibian sentenced to death under the Terrorism Act (Markus Kateka), the South African Appeal Court upheld their appeals against sentence but commuted their death sentences to prison terms.

6. Suggested action.

- Send cables calling for clemency for Simon Thelle Mogoerane, Jerry Semano Mosololi, and Marcus Thabo Motaung to:

His Excellency Marais Viljoen
State President
"Presidensia"
Bryntirion
Pretoria, South Africa

- Send mailgrams to President Reagan calling on him to intervene with the South African government to save the lives of Simon Thelle Mogoerane, Jerry Semano Mosololi, and Marcus Thabo Motaung.
- Send copies of all communications to:

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