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Death Penalty

24 May 1993

SOUTH AFRICA (Venda): Frans Netshirombeni
 Wilson Nelukalo

Amnesty International is concerned that the authorities in the nominally independent "homeland" of Venda intend to resume executions on Thursday, 27 May 1993. Frans Netshirombeni and Wilson Nelukalo have been under sentence of death since 4 June 1990 after being convicted of murder. They received notices of execution on 18 May. Human rights lawyers managed to get the prisoners stays of execution at 03:00h on 24 May on the grounds that Venda's chief executive officer had issued contradictory statements about the status of these planned executions. The stays will expire on 27 May at 10:00h local time. In November 1992 the prisoners had their appeal dismissed, and their clemency petitions were dismissed in May 1993.

BACKGROUND INFORMATION

The last executions to occur in South Africa took place in Venda in February 1991. The moratorium on executions in South Africa announced by President F W de Klerk in February 1990 was renewed on 27 March 1992 when the Minister of Justice publicly undertook to suspend all executions pending the outcome of negotiations on an "interim Bill of Rights". Venda's military government is a party to those negotiations. On 29 January 1993, President de Klerk announced that the Pretoria authorities were considering resuming executions, citing as justification the high level of violence and crime in the country. The State President also placed before Parliament his government's proposals for a draft bill of rights which proposes retaining capital punishment. There will be a debate in the South African Parliament before the end of June on the question of ending the moratorium.

The legislation under which Frans Netshirombeni and Wilson Nelukalo were convicted is almost identical to South Africa's old Criminal Procedure Act, which made the death penalty mandatory for murder in cases where the court found that there were no "extenuating circumstances". These circumstances were very narrowly defined in the law. South Africa's current legislation does not allow for mandatory death sentences, and judges are given the discretion to impose the death sentence if they believe that it is "appropriate", based on whether or not "mitigating circumstances" exist. Under the amended law "mitigating circumstances" are widely defined. Venda's legislation has been amended to reflect similar changes. At the time of the original trial of these two prisoners, evidence concerning mitigating circumstances that may have stopped the court from imposing death sentences was not presented because the case was heard under the old law. The appeal was also heard under the terms of that old legislation, so that evidence which may have led to the overturning of the death sentences was not presented to the higher court.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters either in English or in your own language:

- expressing concern that Frans Netshirombeni and Wilson Nelukalo are in imminent danger of execution on 27 May 1993;
- appealing to the authorities urgently to grant clemency to them and to the

other eight prisoners awaiting execution in Venda;

- urging the authorities to maintain a moratorium on executions throughout South Africa, at the very least until agreement on a capital punishment has been reached by all parties to constitutional negotiations in the process of agreeing a future bill of rights for South Africa as a whole;

- stating that in Amnesty International's view the death penalty is not an effective deterrent to violent crime;

- stressing Amnesty International's opposition to the death penalty in all cases, as a violation of the right to life and the right not to be subjected to cruel and inhuman punishment, as proclaimed in the Universal Declaration of Human Rights.

APPEALS TO

1) State President

Mr F W De Klerk
State President's Office
Tuynhuys
Private Bag X1000
Cape Town
South Africa

Telegrams: State President de Klerk
Cape Town, South Africa

Telexes: 321695 SPLIB SA, 321890 PRES SA,
322158 PRES SA

Faxes: +27 21 462 2838

Telephone: +27 21 45 2225

Salutation: Dear State President

2) Chairman of the Council of National Unity

Brigadier Gabriel Ramushwana
Office of the Chairman of National Unity
Venda
South Africa

Telegrams: Brigadier Ramushwana, Venda, South Africa

Faxes: +27 159 22971

Telephone: +27 159 21443

Salutation: Dear Brigadier

3) Minister of Foreign Affairs

Mr R F Botha
Department of Foreign Affairs
Private Bag X152
Pretoria 0001
South Africa

Telegrams: Foreign Minister, Pretoria
South Africa

Telexes: 0959 350060 EXTERN TTX SA

Faxes: +27 12 323 1664

Salutation: Dear Minister

COPIES OF YOUR APPEALS TO

- Sowetan, POB 6663, Johannesburg 2000;
- City Press, POB 3413, Johannesburg 2000;
- Lawyers for Human Rights, 713 Van Erkom Building,
Pretorius St, Pretoria 0002;
- Society for the Abolition of the Death Penalty in South Africa, c/o
Centre for Applied Legal Studies, University of the Witwatersrand, PO
WITS 2050;

and to diplomatic representatives of South Africa accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat,
or your section office, if sending appeals after 21 June 1993.