

MEMORANDUM

TO HER MAJESTY'S GOVERNMENT

9th SEPTEMBER 1987

POLITICAL EXECUTIONS IN SOUTH AFRICA

**Anti-Apartheid Movement and
Southern Africa The Imprisoned Society
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Introduction

On Tuesday 1st September 1987 two young South Africans, Moses Jantjies, aged 21, and Mlamli Mielies, aged 22, were executed in South Africa despite widespread appeals for clemency both in South Africa and internationally. The two men had been sentenced to death in November 1986, having been convicted of the murder of a community councillor, Benjamin Kinikini of Uitenhage, whose death occurred two days after the police shot dead 20 mourners participating in a funeral procession on 21st March 1985.

The execution of Jantjies and Mielies has focussed renewed attention on the increasing use of the death penalty in cases relating to opposition to apartheid. At present there are a further 34 people under sentence of death in South Africa.

The purpose of this memorandum is to set out the case for British and wider international intervention over these cases and to outline proposals for such intervention.

The Case for Intervention by Her Majesty's Government.

The first political execution in recent South African history was in 1979 when a young member of the African National Congress's military wing, Umkhonto we Sizwe, was hanged in Pretoria Prison. This execution took place despite world-wide pleas for the sentence to be commuted, including direct intervention by Her Majesty's Government.

In a number of subsequent cases where the death penalty has been imposed, the British Government has intervened directly, sometimes with success, but sadly on other occasions unsuccessfully. Although the circumstances vary in each of these cases it has been generally recognised that the carrying out of such death sentences can only exacerbate the tense situation now prevailing in South Africa.

There are additional reasons, however why it is important and appropriate for Her Majesty's Government to intervene.

* Firstly, it is widely recognised that the primary cause of violence in South Africa is the apartheid system itself. Whatever the circumstances - and we cannot condone all the events which have taken place - it has to be recognised that where murders of violent acts have taken place against the South African police or other agents of the apartheid regime, such acts are in response to the reign of terror which has been unleashed by the apartheid regime against its opponents. Such acts, therefore, cannot be divorced from the context in which they have occurred, and the ensuing prosecutions are properly included in the category of political trials.

* Secondly, the judicial process under which these death sentences have been imposed is itself seriously flawed. Judges have accepted, for example, confessions which have been extracted under torture.

State witnesses have been held in custody prior to giving evidence. In general serious doubts exist in many cases as to whether those convicted were in fact directly involved in carrying out the offences for which they have been sentenced.

* Thirdly, there has been an alarming growth in the number of cases in which the death sentence has been imposed. It is worth recalling how, during the final period of the Smith regime in Southern Rhodesia, the death penalty was mandatory for a wide range of offences, including 'failing to report terrorists'. There exists a very real danger that the death sentence will be similarly used in South Africa in a mistaken belief that it will intimidate opponents of the apartheid system.

* Fourthly, the current restrictions on press and media coverage in South Africa, together with the press restrictions imposed by the courts, mean, in effect that people are being sentenced to death in secret. For example, in one case - that of Elili Webushe, the only information about his trial was an announcement at the 'Bureau for Information' daily press conference on 18th June 1986. The fact that such cases can be tried in secret must raise serious doubts as to whether a travesty of justice may have taken place.

In addition to the reasons outlined above, it is important that Her Majesty's Government is aware of the widespread concern within South Africa over these death sentences. The African National Congress has appealed to a number of Governments, including the United Kingdom, to intervene. Within South Africa, the South African Youth Congress has been mobilising opinion and has secured support from, amongst others, the United Democratic Front and the Congress of South African Trade Unions. These organisations, together with many prominent individuals

such as Archbishop Tutu have urged action by those Governments best placed to influence the South African authorities. Any intervention by the British Government would be regarded as a positive response to such appeals and, therefore, widely appreciated within South Africa.

Forms of Intervention

In view of the reasons set out above, we believe it is appropriate for Her Majesty's Government to intervene with the South African authorities, both in general on the matter of policy, as well as on the specific cases at present and as they may arise in the future. We are aware that Her Majesty's Government has intervened directly with the South African authorities in at least one case, namely the Sharpeville Six, and joined with our EEC partners in an appeal for clemency in the case of Mielies and Jantjies. However we believe that much more needs to be done.

Firstly, we recognise that the most powerful intervention will be those pursued collectively on an international level. We would hope, therefore, that the United Kingdom will be in the forefront of efforts to secure action by the United Nations Security Council and the United Nations Secretary-General; by the European Community and by the Commonwealth. We would therefore urge Her Majesty's Government to place this matter immediately on the agenda of all three of these intergovernmental organisations. The objective would be to secure intervention by the United Nations, the European Community and the Commonwealth, urging the South African authorities not to carry out political executions, and to mandate appropriate officials, such as the UN Secretary-General, to intervene over specific cases when the need arises, ie when an execution is imminent.

Whilst recognising that such intergovernmental intervention will have most influence on the South African authorities, we believe that Britain can and should be making a special contribution.

We would therefore like to make the following specific proposals:

1. The British Embassy in South Africa should be instructed to follow closely all political cases involving potential death penalties, especially so-called 'unrest-related' cases, by attending the trials; by liaising closely with defence lawyers; by attending Appeal Court proceedings and by any other appropriate methods.

2. Both the Foreign and Commonwealth Office and the British Embassy in South Africa should make representations immediately when any death sentence is imposed in a case relating to opposition to apartheid, to urge that the sentence be commuted, and that similar representations should be made immediately permission to appeal is refused or an appeal is unsuccessful.

3. Whenever permission to appeal is refused or an appeal is unsuccessful, appropriate Ministers should be informed so that consideration can be given to what Ministerial action can be taken, including public statements, etc.

4. That the British Embassy be instructed to establish contact with families and, where appropriate, the organisations of those under death sentence and if the death sentence is carried out, the British Government's condolences should be conveyed to the bereaved.

5. Her Majesty's Government should ensure that funds are available for the defence of those involved in such cases, both by establishing contact with their lawyers and with the International Defence and Aid Fund, and appropriate funding when necessary.

6. The Government should initiate discussion with South African organisations campaigning against the death penalty, including the ANC and the South African Youth Congress, in order to exchange views as to what further initiatives Her Majesty's Government should take.

There is a further matter on which we believe Her Majesty's Government should act. A number of those sentenced since 1977 in South Africa have been combatants of the liberation movement. In 1977 at the International Conference on Humanitarian Law, held in Geneva, Protocol 1 to the 1949 Geneva Convention was adopted which provided that '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, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and co-operation among States' shall be included within the definition of "armed conflicts" to which the 1949 Conventions apply.

According to the August 1987 issue of the Magazine of the International Red Cross, the United Kingdom is not listed as a State which is party to Protocol 1. We believe the British Government should express its consent to be bound by Protocol 1.

Moreover the United Kingdom should use its influence on the South African authorities to persuade them to consent to be bound by Protocol 1, and that pending such a decision that it should agree to treat all captured combatants of the liberation movements of South Africa and Namibia as prisoners of war.

In addition should any death sentences be imposed in Namibia we believe that Her Majesty's Government should take action along the same lines.

Conclusion

In our view, unless there is a major co-ordinated international intervention, in particular by Britain and other major Western countries, with the South African authorities immediately, there is every prospect that the world will witness in South Africa a similar situation to that which prevailed in Southern Rhodesia in the late 1970's, when political executions became so frequent that it was impossible even to monitor them. The humanitarian and moral case for British intervention is unanswerable. Especially since there can be no confidence that those facing execution are even guilty of the offences which it is alleged they committed.

However there is a wider dimension to this issue. There can be no doubt at all that such executions will not only exacerbate the situation but also further undermine the prospect of genuine negotiations to reach political settlement in South Africa. Since HMG is committed to such a policy, it must surely act to remove all obstacles in the way of such negotiations, of which the use of the death sentence against opponents of apartheid is surely one of the most serious.