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SOUTH AFRICA

Establishing a culture of accountability for human rights violations

CASE STUDY: The "disappearance" and death of Zweli Kenneth Ndlozi, September 1998

12 May 1999

Action Ref: SAN 3/99

AI INDEX: AFR 53/06/99

DISTR: SC/CO/GR

Introduction

Despite constitutional and legislative reforms strengthening the protection of human rights since 1994, South Africa has not yet eradicated from within the ranks of the security forces a reliance upon the methods of crime investigation associated with past patterns of systematic torture and ill-treatment of detainees. The current high levels of violent crime in the country have encouraged public support for harsh measures against suspected or convicted criminals. At the same time the difficulties experienced by the government in reforming and increasing the effectiveness of the criminal justice system have made it vulnerable to pressures from members of the public and elsewhere to give the police a free hand in the fight against crime.

Statutory and non-governmental human rights monitoring organizations in South Africa continue to receive and investigate reports of torture, ill-treatment and suspected unlawful killings by members of the security forces. In March 1998 the Minister of Safety and Security, Mr F S Mufamadi, stated that more than 5,300 complaints of assault during 1997 had been lodged against the police. During the first 10 months of 1998 the statutory Independent Complaints Directorate (ICD) received more than 600 reports of deaths in police custody or as a result of police action, for instance, during the course of arrest or while investigating crime. The majority of the incidents took place in Gauteng and KwaZulu Natal provinces. At least half of the deaths in custody were classified initially by the ICD as having occurred as a result of injuries received prior to custody or during custody or through negligence, and a quarter as a result of suicide. The ICD, which is obliged to investigate all deaths in custody or resulting from police action, is still investigating the majority of these 1998 cases.

Amnesty International has also received corroborated information about violations committed by members of specialized police squads such as the Murder and Robbery, Firearms,

and Dogs Units and members of the South African National Defence Force (SANDF) stationed in Gauteng and KwaZulu Natal provinces. The alleged abuses include the use of lethal force against individuals who had surrendered or were not posing a threat to life, beatings during raids on homes or after arrest, the infliction of cigarette burns, electric shocks and suffocation torture on detained suspects, and the indiscriminate use of police dogs to inflict serious injuries on arrested or fleeing suspects. In some cases the security force members involved withheld information on the whereabouts of the arrested person, apparently to hinder family, medical and legal access to the detainee.

These practices reflect a survival of past habits, a reliance upon coercive methods in crime investigation which can only contribute to failures in the prosecution of crime through the courts.

Case Study: The "disappearance" and death of Zweli Kenneth Ndlozi, September 1998

Zweli Kenneth Ndlozi died in September 1998 less than two days after he was assaulted and arrested at his home in Meadowlands, Soweto, by members of the Military Police of the SANDF. On 7 September, according to the South African Police Service (SAPS), he was found hanging in a cell at Germiston police station. By early April 1999 no-one had been charged in connection with his death nor had an inquest been held into the surrounding circumstances and cause of his death. However, in mid-April the ICD took over responsibility for the investigation from the Germiston police.

On the night of 5-6 September Military Police officers came to the home of Zweli Kenneth Ndlozi and assaulted him severely in the presence of eye-witnesses. They accused him of involvement in the theft of firearms. They searched the house and also dug up the yard, apparently looking for weapons, but found nothing. They then left, taking Zweli Kenneth Ndlozi with them. His family went to police stations and prisons looking for him, but never saw him alive again. On 8 September his family received a call from a member of the SAPS who told them that Zweli Kenneth Ndlozi had been found dead in a cell at Germiston police station, hanging by a nylon cord around his neck.

Prior to his death 22-year-old Zweli Kenneth Ndlozi had been a member of the SANDF from Dunnotar military base, Benoni, in the East Rand area east of Johannesburg. The Military Police officers who arrested him on 5-6 September 1998 were also from Dunnotar base, from a unit called Group 16.

The Ndlozi family were contacted by the Germiston police on 8 September and informed that he was dead, and were asked to go to the station to identify the body. At that stage the family realized that a post-mortem examination had already been conducted. They refused to take the body for burial until an independent examination was done, as they were troubled by the circumstances of Zweli Kenneth Ndlozi's "disappearance" and death and the fact that the post-mortem had been conducted without the family first being informed.

Prompted by a request from Amnesty International and with the family's permission, the Independent Medico-Legal Unit (IMLU) based in Durban arranged for an independent forensic pathologist to conduct a second post-mortem. This examination took place on 16 September. The resulting report documented numerous abrasions on Zweli Kenneth Ndlozi's legs, feet, ankles, arms, hands, shoulders, back, chest and head, as well as lesions due to thermal

injury, probably caused by cigarette burns. Forensic tests indicated that these injuries were recent and possibly inflicted close to the time of death. The report also noted a deep bruise on the front of the scalp accompanied by haemorrhaging of the brain tissue, though the skull was not fractured. The forensic pathologist found the cause of death to be “Consistent with hanging - torture not excluded.” Although the first post-mortem report noted that a red and white nylon cord was around the neck of the deceased, this cord was not with the body when the second post-mortem was performed.

There are indications that the Military Police may have handed over Zweli Kenneth Ndlozi to a specialist SAPS unit, the East Rand Firearms Unit. It appears to be members of this unit who eventually took him to Germiston police station. There are no indications that when he was booked in at Germiston police station any record was made of his physical or mental condition, or that he was medically examined. Under the police regulations then in force, this responsibility lay at the discretion of the officer in charge at the time when the prisoner was booked in to the police station.

According to a press report, Zweli Kenneth Ndlozi was taken to Germiston magistrate’s court on Monday 7 September. Amnesty International has no information about any charges which may have been laid against him in court before he was returned to his cell. According to the information provided to the pathologists by the police, he was found hanging in his cell at 16h49 on 7 September 1998.

Until early April 1999, the detective branch of Germiston police station were in charge of the inquiry into the prisoner’s death. Amnesty International welcomes the decision subsequently by the ICD to take over full responsibility for the investigation. Amnesty International was concerned that detectives based at the police station could not in fact or perception be sufficiently impartial to conduct a proper investigation. Although the organization has no information suggesting that the police at Germiston were responsible for the injuries evidently inflicted prior to the prisoner’s death, the SAPS members on duty at the station from the time he was booked in until his death do have a case to answer in a number of respects. These include their apparent failure to keep adequate records from the time he was booked into the station, their apparent failure to arrange for a medical examination of a prisoner who very likely looked visibly injured and frightened when he was handed over by the Firearms Unit and their apparent failure to prevent the prisoner from having access to an item with which he could attempt suicide.

Amnesty International is calling for a thorough and impartial investigation into all aspects of the circumstances leading to the death of Zweli Kenneth Ndlozi, as well as into the role of all military and police units involved in his arrest. In Amnesty International’s view, all such cases of death in custody require full and independent investigation by the ICD and the government should ensure that the ICD has sufficient resources and personnel capacity to carry out its statutory obligations in this regard. However, while the ICD has full authority to investigate all aspects of police conduct, it does not technically have the authority to investigate complaints against the military. There is no effective independent structure currently in place to handle civilian complaints against the military. The ICD should therefore closely monitor any separate investigation into the conduct of those from the military who were responsible for arresting Zweli Kenneth Ndlozi. The government should ensure that in the ongoing process of revising the Military Disciplinary Code, the

Defence Act and other laws and institutions in relation to the military, proper and independent means are established for addressing civilian complaints against the military. Any police or military officers found to have acted unlawfully in the arrest and treatment of Zweli Kenneth Ndlozi should be suspended from duty pending the outcome of the investigation and of legal and/or disciplinary proceedings against them.

WHAT YOU CAN DO

Please send appeals in English or your own language to the South African authorities:

- expressing concern that Zweli Kenneth Ndlozi, a 22-year-old SANDF officer from Dunnotar military base, East Rand, died on 7 September 1998 in a cell at Germiston police station after being assaulted and arrested at his home by Military Police officers the previous day and held in the custody of the East Rand Firearms Unit;
- noting that a post-mortem examination carried out by an independent pathologist on behalf of the Ndlozi family found evidence of injuries unrelated to Zweli Kenneth Ndlozi's apparent death by hanging, including a severe blow to the head and lesions probably caused by cigarette burns;
- noting that in April 1999 the ICD took over from the Germiston police the investigation into the circumstances of Zweli Kenneth Ndlozi's death;
- calling for the suspension from duty of any military or police officers implicated in the arbitrary arrest, torture or death of Zweli Kenneth Ndlozi, pending the outcome of legal and/or disciplinary proceedings against them;
- urging the government to ensure that the ICD has sufficient resources and personnel capacity to carry out its statutory obligations to fully investigate all deaths in police custody, and to ensure that proper and independent means are established for addressing civilian complaints against the military.

Please send your appeals by fax or airmail letter to:

- Mr T M Mbeki, Executive Deputy President, Private Bag X955, Pretoria 0001, South Africa Fax: +27 12 323 2502/3
- Mr S P Mashitile, MEC for Safety and Security, Gauteng Provincial Legislature, PO Box 62440, Marshalltown 2107, South Africa Fax: +27 11 355 1850
- Mr A Cachalia, Director, Secretariat for Safety and Security, Private Bag X922, Pretoria 0001, South Africa Fax: +27 12 339 2536
- Lt-Gen D S Maharaj, Provincial Commissioner - Gauteng, South African Police Service, Private Bag X57, Braamfontein 2017, South Africa Fax: +27 11 407 0436
- General S Nyandu, Chief of the South African National Defence Force, Private Bag X414, Pretoria 0001, South Africa Fax: +27 12 355 6016
- Mr R Kasrils, Deputy Minister of Defence, Private Bag X427, Pretoria 0001, South Africa Fax: +27 12 347 0118

After the 2 June 1999 elections, please contact your local AI representative for an update on any changes to the above government and security force officials.

KEYWORDS: DEATH IN CUSTODY1 / DISAPPEARANCES1 / MILITARY POLICE / COMMON CRIMINALS /
