

£ZIMBABWE

@Poaching and Unexplained Deaths: The Case of Captain Nleya

Amnesty International is concerned at the failure of the Zimbabwean authorities to conduct a thorough investigation into the death in January 1989 of Edwin Bhundani Nleya, a 35-year-old captain in the Zimbabwean National Army (ZNA). Captain Nleya's body was found on a hillside in Hwange, in the western province of Matabeleland North, two months after he disappeared in suspicious circumstances from the camp of the 1:2 Infantry Battalion in Hwange where he was based. A post-mortem examination and an army inquiry held in camera attributed the death to suicide, yet an inquest carried out later found that Captain Nleya had been murdered. It has been widely alleged that Captain Nleya was killed because of what he knew about the ZNA's involvement in poaching and smuggling activities in Mozambique, evidence of which he had uncovered while on military duty there in 1988.

Amnesty International is concerned about the death in custody in June 1991 of Lt. Shepard Chisango who is also reported to have witnessed the army's involvement in smuggling goods from Mozambique. Amnesty International is calling on the Zimbabwean authorities to investigate this death and to launch a full inquiry into a pattern of illegal killings which appears to be taking place of those involved in investigating poaching and of poachers themselves.

In December 1991, Patrick Chinamasa, the Attorney-General, stated that after the inquest was carried out in December 1989 into the death of Captain Nleya, a police docket had been opened in order to investigate certain aspects of the case. There were further reports in June 1991 that the Matabeleland North police had initiated an inquiry. To date, however, there has been no public announcement regarding possible conclusions of any such investigations. Captain Nleya's family and their lawyer have been unable to obtain a definite response from the authorities on the progress of inquiries. Amnesty International is concerned that the absence of any public report or conclusion of the investigation reportedly underway makes it difficult to assess whether such an investigation represents a genuine attempt to confront the issue of his murder.

Various aspects to the events preceding Captain Nleya's disappearance and subsequent death raise many questions which merit further investigation by the Zimbabwean authorities. Three months before Captain Nleya went missing from his army barracks at Hwange he had been on a military operation with the ZNA in Mozambique¹. During the operation, Nleya is

¹ Zimbabwean troops have been deployed in Mozambique in support of the Mozambican Government since 1982.

alleged to have argued with his commanding officer about the involvement of Zimbabwean troops in smuggling and poaching in Mozambique. A dispute is alleged to have taken place after Nleya refused to carry out a poaching mission under orders from his commanding officer. After asserting that he would expose the corruption racket to his army superiors, Nleya was reportedly threatened by his commanding officer and told that on his return to Zimbabwe he would be punished.

Captain Nleya disappeared from the army camp in Hwange in January 1989 amidst reports that he had been followed by members of the security forces since his return to Zimbabwe in September 1988. His family allege that on his first day back from Mozambique he complained that he was followed on the train from Mutare to Bulawayo, his home town, and that he overheard his pursuers discussing his murder. This was confirmed in June 1991 by an army officer who had accompanied Nleya on the trip back. Between September and December 1988 he was on leave of absence from the army and regularly complained to his family during this time that he was being followed by unknown individuals some of whom were driving government registered vehicles. He noted in his diary the registration numbers of three of the vehicles and confided to his family that he believed the Army Special Investigations Branch were following him and plotting to kill him.

Believing that his life was in danger, Nleya contacted the police, the army and a lawyer about the harassment he was receiving in December 1988 and told his family that he wanted to inform as many people as possible about what was happening. He reported for duty to Hwange Barracks in December 1988 but was told that his leave had been extended. He later claimed that while at the barracks he had overheard senior army and police officials discussing his impending arrest and plotting his murder. On 31 December 1988, five days after resuming duty at Hwange Barracks, an attempt was reportedly made to abduct him from his room. He fled to Hwange Police Station to seek police protection. On 2 January 1989 the last day that he was seen alive, Nleya phoned his wife, Mercy Nleya, saying: "Today, I'm not going to run away. I want to see what they're after".

Following Nleya's disappearance on 2 January 1989, the army gave contradictory statements to Nleya's wife, Mercy, regarding her husband's whereabouts. She was first told that he was ill and later that he had gone on leave without permission and that his whereabouts were unknown. However, a captain based at the camp is alleged to have told Nleya's family that he knew where Nleya was. Later, in official correspondence with the family's lawyer, the 1:2 Infantry Battalion stated that they had no information regarding his whereabouts. Over two months later, on 12 March 1989, Captain Nleya's badly decomposed body was found on a hillside in Hwange not far from the army barracks. A knotted rope hung from a branch of a tree above the body. A post-mortem examination carried out on 17 March 1989 found that he had been dead since January 1989 and that death was "probably due to asphyxia by hanging" and that there were no signs of external violence.

In response to correspondence from Nleya's family's lawyer, the army Special Investigations Branch claimed that Nleya had never been in their custody. They, together with the army's Directorate of Legal Services and the police, suggested that Nleya had been mentally disturbed at the time of death and that he gone on leave without permission. They stated that if found he would face charges of desertion. The suggestion of Nleya being mentally ill was repeatedly made by the army and police, yet no convincing reasons were given for this assumption apart from the fact that they considered Nleya's complaints about being constantly followed and of overhearing people plotting his murder to be complaints typical of somebody who may have been insane. The family vehemently denied all suggestions that Nleya had been mentally ill and urged that an inquiry be carried out. An army internal inquiry opened in September 1989 and found that the death was a suicide. His family refused to accept the verdict and called for the opening of an inquest. In December 1989 an inquest was finally carried out and found that Nleya had not committed suicide but had been murdered. Nleya's family testified during the inquest that Captain Nleya had told them that he had witnessed evidence of corruption among ZNA troops in Mozambique.

The result of the inquest has not led to the conclusion of any further investigation. The family are continuing to publicize the case and to press for an inquiry to be carried out in order that the truth about the death be established. When Mercy Nleya announced her intentions to sue the Zimbabwean Government over the death of her husband, she began to receive anonymous telephone calls telling her to go to the offices of the Central Investigations Organization (CIO). She has also claimed that she has been harassed by unknown individuals visiting the school where she works and making unusual inquiries about her. On the night before the discovery of her husband's body, CIO officials are alleged to have visited her house and harassed members of her family.

It has been alleged that Captain Nleya "knew too much" about the involvement of the army in poaching and smuggling and his threats to expose the corruption racket met with the disapproval of his army superiors. His family and an army colleague have stated that Nleya had been concerned about the role of the ZNA in poaching and smuggling as far back as 1986 and wanted to report what he knew about the corruption racket not only to the highest level of the army but also to the Zimbabwean Government.

Amnesty International considers that the following aspects to the events which took place between September 1988 and January 1989 in relation to Captain Nleya require further investigation: the reports that Nleya was threatened by his Commanding Officer while on military duty in Mozambique; the reports that he was tracked for months before his death by individuals some of whom were driving government registered vehicles; the failure of the police to investigate the complaints of harassment which he reported to them in December 1988; the contradiction between the results of the internal army inquiry and the inquest, and the harassment experienced by his family since his death.

Amnesty International is also concerned about the death in custody in June 1991 of Lt. Shepard Chisango whose case bears certain parallels to that of Captain Edwin Nleya. Lt. Chisango is reported to have witnessed the army's involvement in smuggling goods from Mozambique while stationed as a military customs official at Forbes Border post at Mutare on the Zimbabwe/Mozambique border. He was arrested after trying to obstruct an army lorry which was carrying what were believed to be smuggled goods from Mozambique. He was accused of threatening to shoot military personnel who were in charge of the lorry. He was later released but was taken three days later to an army barracks. In June 1991, he informed his family that he was being held in an army prison in Harare. His wife visited him on 9 June 1991 and observed that he was bruised and his arm was in a sling. He died later that day. A post-mortem examination revealed that he had chloroquine in his liver at the time of his death suggesting that he may have been either overdosed or injected with chloroquine before his death. A second post-mortem examination carried out by a senior government pathologist indicated that he had various bruises on his body and that death may have been caused by shock due to a fractured cheekbone.

Amnesty International is concerned about the suspicious circumstances in which Lt. Chisango died and at the apparent failure of the authorities to carry out a judicial or other independent inquiry to establish the exact circumstances of his death and to bring those responsible to justice. The results of the second post-mortem examination clearly indicated that Lt. Chisango may have died as a result of ill-treatment sustained in military custody, yet no inquest or other investigation was carried out by the authorities to establish the cause and circumstances of his death.

Over the past few years there have been widespread allegations made about the complicity of the Zimbabwean security forces in poaching and smuggling ivory and rhino horn. The Zimbabwean army stationed inside Mozambique and along strategic supply routes are reported to be involved in poaching and facilitating the movement of ivory and rhino horn as well as other goods between Mozambique, Zimbabwe and South Africa. Members of the Zimbabwe police force have been found guilty of poaching: on 10 June 1992, a retired Senior Assistant Police Commissioner and two police inspectors were each sentenced to four years imprisonment after being found guilty of poaching buffalo.

Since 1987 a number of individuals, some of whom were members of the security forces, have died while investigating illegal ivory poaching and trade. In September 1987, two National Park officials, Martin Sibanda and Martin Marimo, who were investigating the illegal movement of ivory, were shot dead in an ambush. At least five people, all of whom were involved in investigating poaching or smuggling, were killed in car accidents between 1988 and 1990. One of them, John Chitsa, deputy superintendent commanding officer for Matabeleland North, was a friend of Captain Nleya, and reportedly witnessed Nleya complaining about the corruption within the ZNA. He died in a car accident in September 1988.

The occurrence of illegal killings and suspicious deaths has not, however, been confined to those investigating illegal poaching; between 1984 and 1991 it is estimated that anti-poaching patrols killed 145 suspected poachers. Security force personnel and National Park game wardens are shielded from criminal prosecution for acts carried out in the course of anti-poaching activities since an indemnity law was introduced in May 1989. The Protection of Wildlife (Indemnity) Act was introduced after senior National Park officials had faced criminal charges in connection with the deaths of poachers. There were widespread allegations that the charges had been fabricated by police personnel who were themselves involved in elephant poaching and eventually the charges were dropped. It is understood that National Park officials insisted on the enactment of indemnity provisions. It appears that the Protection of Wildlife (Indemnity) Act has encouraged the use of lethal force against poachers, including possible extrajudicial executions. It is alleged in some quarters that the security forces operate a "shoot-to-kill" policy. In May 1992, for example, National Parks anti-poaching units killed five poachers in safari areas in the north of Zimbabwe. In one instance, a parks unit came upon two poachers; one was shot and the other escaped. The unit then came upon another one of the group and shot him dead. In a separate incident an ambush was laid for a group of poachers believed to be operating on the Zimbabwean side of Kariba Dam. When the boat carrying what were believed to be the poachers crossed the Kariba Dam in the moonlight they were shot by parks officials. At least one of them is believed to have died. In these instances, no attempts appear to have been made to arrest the offending poachers and the allegation that the anti-poaching units operate a "shoot to kill" policy appeared to be borne out.

Given the large number of individuals killed during anti-poaching activities over the past few years and the widespread concern about the alleged "shoot to kill" policy in operation by anti-poaching patrols, Amnesty International is calling on the Zimbabwean Government to make public the rules of engagement governing the use of firearms which are issued to anti-poaching patrols, in accordance with international guidelines governing the use of firearms, in particular the United Nations Code of Conduct for Law Enforcement Officials. Amnesty International is also recommending that the Protection of Wildlife (Indemnity) Act be repealed.

International human rights standards lay down that governments should ensure that impartial investigations are held into all violent deaths where there are reasonable grounds for suspecting an illegal killing. Amnesty International considers that investigations and inquiries play a vital role in the prevention of future violations of human rights. The cases of Captain Nleya and Lt. Chisango provide examples of the failure on the part of the Zimbabwean authorities to conduct investigations into the cases of individuals who die either in suspicious circumstances or amidst allegations of security force involvement. Amnesty International is currently investigating the cases of nine individuals who died in custody, allegedly as a result of torture or other ill-treatment during 1990 and 1991. Apart from one

case, there has been no inquest conducted into these deaths and no attempts have been made to identify those who may have been responsible. This failure to investigate human rights violations as they occur within the security forces raises the more general issue of whether the security forces are seen to be above the rule of law.

Amnesty International is seeking clarification from the Zimbabwe Government on whether or not an investigation has taken place into the death of Captain Nleya. Amnesty International is recommending that his death and that of Lt. Shepard Chisango receive a thorough investigation and that a public report is issued without delay on completion of inquiries. Any such investigation should be carried out in accordance with internationally accepted standards; that is, an investigation by an impartial judicial authority to establish the cause and circumstances of his death and should include compiling evidence of criminal responsibility and submitting this evidence to the courts. Steps should be taken to ensure the safety of any witnesses giving evidence to such an investigation. Amnesty International is calling on the Zimbabwean Government to strengthen existing independent and impartial investigative offices and procedures into violent deaths in order that investigations can be carried out effectively and with a minimum amount of delay.

Amnesty International is also urging that all deaths of prisoners held in custody which have not yet been the subject of an inquiry should be promptly investigated by an independent body in accordance with internationally accepted standards as outlined above.