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£SOUTH AFRICA

@Human rights violations and the security forces - a problem of accountability

CASE STUDY: THE DEATH IN CUSTODY OF MBUYISELO "NIXON" PHIRI

"I heard Nixon screaming. I heard him being assaulted... The floors of the room were wooden. I could hear his body striking the floor. He also screamed "Yo nana, yo nana, hasenna" meaning "it's not me". At one point, I heard Nixon scream, in the same manner as I did when I was being 'shocked' [subjected to electric shocks]. Then everything went silent." (Thomas Tshabalala, detained with Nixon Phiri and shot dead by the police on 7 March 1991.)

Mbuyiselo "Nixon" Phiri was arrested by the South African Police on 16 January 1990, together with a number of other teenagers. He died in custody at Welverdiend police station, near the western Transvaal town of Carletonville, later that same day. The testimony of those arrested and held with him (two of whom were later shot dead by police in separate incidents) strongly indicates that Nixon Phiri died as a result of torture at the hands of the police. Moreover, a private post mortem examination carried out on 19 January 1990 indicated that Nixon Phiri died of a brain haemorrhage associated with external injuries. Months after his death, however, in October 1990, the deputy Attorney General of the Transvaal stated that the evidence available to him suggested that Nixon Phiri had died from an epileptic fit. An inquest into his death was finally held in late February 1991. Despite assurances made in June 1990 by State President F W De Klerk that Nixon Phiri's death would be properly investigated and justice would be done, the inquest was held in secret. The magistrate conducted an "informal" inquest which precluded any oral evidence and the state prosecutor failed to give sufficient notice of the hearing to Nixon Phiri's lawyers and family, effectively preventing them from attending. They were thus denied the opportunity to call witnesses and to bring relevant evidence before the court. The court ruled that the cause of death was unknown.

Nixon Phiri, a resident of Sonderwater squatter camp near Khutsong township, Carletonville, was 16 years old at the time of his arrest on 16 January 1990. In the two days prior to his arrest violent conflict had erupted in Khutsong between youths and a "vigilante" group believed locally to be working in collusion with the police. During this period, according to the police, extensive damage was inflicted on a number of homes including those of two policemen. Nixon Phiri and three others, all between 16 and 18 years of age, were arrested while visiting a friend in Khutsong. They were forced into a police van in which there were already two other prisoners with swollen faces. On the way to Khutsong police station, three kitskonstabels (special police constables) assaulted the youths with the butts of their guns, kicked, punched, slapped and swore at them, and tried to force them to sing "freedom songs". After being held for several hours at Khutsong police station they were transferred to the police station in the small town of Welverdiend some 15 kilometers from Carletonville.

The legal basis for the arrest of the four youths is not clear but appears to have been under the terms of section 50 of the Criminal Procedure Act. This legislation requires the police to release a person within 48 hours or bring him or her before a court to answer charges.

The three youths held in custody with Nixon Phiri told lawyers after their release that at Welverdiend

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police station they themselves had been beaten, kicked, punched, hit with rifle butts and ammunition belts, and given electric shocks, to force them to sign statements admitting they were guilty of arson. They were taken away into different rooms for interrogation but could hear each other screaming. One said that later that same day he saw Nixon Phiri taken out into another room. He never saw his friend again. Another said: "We all heard him screaming when he was taken into the room. I don't know for how long he was screaming but I think it was for approximately 10 hours." Two of the three youths were released on bail some days later after being charged with arson and other offences. The third was released uncharged. These and a number of other youths arrested at the same time identified the police officers responsible for the alleged assaults and torture.

In the immediate aftermath of Nixon Phiri's death, the police issued contradictory versions of the circumstances leading to his death. On 17 January 1990 the police made a statement to the press that Nixon Phiri had been arrested on suspicion of arson and had died during interrogation at Welverdiend police station. A member of the boy's family, who had been asked to identify the body, was told that "Nixon was sitting on a chair and was asked who burnt a police van, and while he was answering he just fell down and died". The police said that he had had an epileptic seizure, though according to his family he had never previously suffered from epilepsy. Another member of the family was told on the same day by a different police officer that Nixon Phiri had been found unconscious in the back of the police van after his arrest. Distressed and under pressure, several members of his family put their thumb prints to statements drafted by the police and apparently supporting their claims that Nixon Phiri may have died from an epileptic seizure.

On 21 February 1990, police officials in Pretoria told journalists that the death of Nixon Phiri was being investigated by the South African Police and that they were still awaiting the final post mortem report to ascertain the cause of death. On 13 July 1990 a second teenager, 15-year-old Eugene Mbulawa, died in custody at Welverdiend police station. On 20 July, following this further death, a western Transvaal police captain told journalists that the inquiry into Nixon Phiri's death had been completed and the matter referred to the Attorney General of the Transvaal. On 15 August 1990, however, a police representative from Pretoria police headquarters contradicted this statement and said that the findings on Nixon Phiri's death would only be submitted to the Attorney General in the following week. In mid-October 1990 the Deputy Attorney General for the Transvaal was reported as saying that the evidence before him suggested that Nixon Phiri had died from an epileptic fit.

Lawyers representing Nixon Phiri's family wrote repeatedly to the authorities requesting information about the status of the investigation into his death. On 26 March 1990 a police officer with the Criminal Investigation Department of the Oberholzer police station informed the lawyers that the state pathologist's report on Nixon Phiri's death had still not been received. On 19 June 1990 the State President responded to letters from the family's lawyers in February and March requesting a judicial commission of inquiry into the case. The State President confirmed that the South African Police in the western Transvaal were investigating the death of Nixon Phiri, and that upon completion of the investigation the inquest docket would be handed to the Attorney General for his decision. He concluded by stating that he was satisfied that Nixon Phiri's death would be investigated and dealt with in an unbiased manner and that justice would prevail. In his view, he said, a judicial commission of inquiry into the case was not justified.

On 21 November 1990 the Regional Commissioner of the South African Police in the western Transvaal informed the family's lawyers that the inquest docket had been forwarded to the Attorney General. The

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lawyers then requested regularly, and most recently on 14 February 1991, to be informed of the inquest date. On 1 March 1991 the lawyers received a letter from the Public Prosecutor dated 21 February 1991. The letter stated briefly that the inquest was scheduled to take place on 22 February 1991 and that "no formal inquest will be held". A formal inquest involves a full hearing and the calling of witnesses to give evidence. An "informal" inquest precludes the hearing of oral evidence. By holding an "informal" inquest and by failing to inform the lawyers and family in good time of the inquest date, the authorities effectively denied them the opportunity to bring forward witnesses, or at the very least submit written evidence, and so enable the inquest court to ascertain the truth of the circumstances of Nixon Phiri's death. The family's lawyers have requested the Attorney General to reopen the inquest to enable them to place their evidence before the court.

Three months after the secret inquest in February 1991, the authorities finally made available to the family and their legal representatives a copy of the court's findings. The inquest court concluded that the cause of Nixon Phiri's death is unknown, and that the court was not in a position to make a final finding as to the cause of death because it lacked sufficient evidence. The court declared the matter closed.

The evidence available about Nixon Phiri's death in custody strongly indicates that he died as a result of torture at the hands of the police. Amnesty International is therefore calling upon the South African Government to account publicly for the death of Nixon Phiri and to bring to justice those found responsible for his death by carrying out a full and impartial inquiry into the circumstances of his death. Such an inquiry should be conducted in accordance with internationally accepted standards: that is, it should be an investigation by an impartial judicial authority to establish the cause and circumstances of his death, to assess whether any aspect of his treatment in custody broke the law and, if so, to initiate the prosecution of those responsible for unlawful acts. If the inquiry finds that police officers were responsible for his death, they should be brought to justice and adequate compensation should be paid to Nixon Phiri's family. Police officers on duty at Welverdiend police station at the time of his death should be suspended or transferred to other duties pending completion of the inquiry.

On 5 February 1991 Amnesty International made an oral statement about its concerns in South Africa to the United Nations Commission on Human Rights in Geneva, Switzerland, in which the organization called on the South African Government to hold the security forces accountable for actions which have contributed to human rights abuses. Again, Amnesty International is urging the South African Government to investigate properly the allegations of human rights abuses committed by security force members against 16-year-old Nixon Phiri on 16 January 1990 at Welverdiend police station.