

Oral statement by the Transformation Resource Centre (TRC) & the Southern Africa Litigation Centre (SALC) at the African Commission on Human and People's Rights

Under item 3 of Agenda: Human Rights Dialogue

Read at the 60th Ordinary Session of the African Commission on Human and People's Rights

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Chairperson of the African Commission on Human and People's Rights, honourable Commissioners, State delegates, representatives of National Human Rights Institutions, distinguished guests, ladies and gentlemen. The Southern Africa Litigation Centre (SALC) and the Transformation Resource Centre (TRC) welcome this opportunity to address you on the human rights situation in Lesotho. Our statement speaks to question of (i) continued failure of government of Lesotho to implement SADC Recommendations stemming from the SADC Commission of Inquiry into Circumstances Surrounding Lt. Gen Mahao's Death and the alleged mutiny Plot Report of 2015¹, (ii) torture and, (iii) violations of the right to freedom of expression and opinion as well as the building tension in the pre-elections in Lesotho.

Background

Since 2014, the Lesotho political environment has been unstable with systematic involvement of the military in political affairs. The country's security forces have played a major role in installing political leaders and facilitating their hold on power and control of government. In 2014, the then head of the Lesotho Defence Force, Lieutenant General Maaparankoe Mahao was assassinated by his own members. To this date, no one has been held accountable for his death. The Southern African Development Community Commission of Inquiry (SADC Commission) came up with clear recommendations for the government on how to address the challenges. However, the SADC recommendations have not been implemented.

There are threats against human rights in the country. These are characterised by attacks against the media, intimidation of opposition leaders and an unwillingness to implement the SADC Commission recommendations. The country is headed for snap elections in June yet there is little evidence that this will resolve its security crisis. **Failure to implement SADC Commission of inquiry recommendations**

In 2015, a group of LDF soldiers were arrested. Twenty-three (23) of them were detained following allegations that they were involved in the planning of a mutiny against senior authorities. Lt. Gen Mahao was killed by members of LDF during this period.²

Having analysed the factors surrounding the killing of Gen Mahao and the political context in the country, the SADC Commission of Inquiry came up with recommendation to address the challenges. Some of these

¹ Also known as Phumaphi Report of 2015 (the Commission was led by a Botswana judge, Justice Mphaphi Phumaphi)

² See Para 64 of the Report of the SADC Commission of Inquiry on the situation of Lesotho, also called Phumaphi Report.

included the need to implement constitutional reforms, release of the detained soldiers and implement measures to instil respect for the rule of law and democracy in the country, generally.

In addressing these recommendations the government of Lesotho has discharged from duties former army commander, Lt. Gen Tlali Kamoli, who is believed to be associated with operation that led to the killing of Gen Mahao. The government has also released all soldiers from the Maximum Prison and have placed them on open arrest. Despite these positive steps we are concerned that full implementation of the SADC Commission of Inquiry report is necessary for peace and stability in Lesotho. There is need for the government to investigate fully the contours of the killing of General Mahao and take steps to punish the perpetrators. Further, there is need for the government of Lesotho to implement constitutional reforms aimed at strengthening the rule of law, public service and security in line with the SADC report.

Torture

After their arrest on allegations of involvement in planning to commit mutiny, some of the members of the LDF were subjected to serious ill-treatment and torture. We raised this in our statement presented at the 57th, 58th and 59th Ordinary Sessions of the African Commission on Human and Peoples' Rights.

At that particular time, the representatives of the government of Lesotho refused these allegations claiming that they were based on unreliable media sources and that it had not received any complaint by the victims alleging that they were tortured. We then submitted that by refuting these allegations the government of Lesotho breached its obligation under the Robben Island Guidelines on Prohibition and Prevention of Torture in Africa which compel States to investigate the matter "whenever a persons who claimed to have been or who appears to have been tortured or ill-treated" makes such allegations.³ In line with the above, we continue to hold the view that the government was more than just aware about the allegations of torture as evidenced by the fact that there were media reports on the issue and information was shared through communications by civil society organisations such as TRC who raised concerned regarding torture against the LDF detainees on 21 May and 22 June 2015.⁴

Furthermore, in June 2016 the victims wrote a letter to Prime Minister asking for the establishment of a commission of inquiry into their arrest, torture and degrading treatment at the hands of the LDF. The Prime Minister rejected this call.

The report by the SADC Commission of Inquiry on the situation of Lesotho, explicitly mentions that some of the accused said that they were tortured by security forces and were forced to make statements implicating other soldiers. Moreover, in *Jobo and Others v Commander of Defence Force and Others*,⁵ the Lesotho Court of Appeal confirmed that the detainees had been subjected to torture and inhuman and degrading treatment; that they were brought to court in shackles, chains and handcuffs.

³ See rule No. 17 of the Robben Island Guidelines on Prohibition and Prevention of Torture in Africa.

⁴ This was also documented in a letter sent to the relevant African Commission special mechanism. For further details, see Annex 1.

⁵ Court of Appeal held that:

"Matlhokomelo's allegation that her husband had been tortured is amply supported by Dr NC Moji who examined Jobo on 27 May 2015 and compiled a report that appears at page 19 of the record of proceedings. From this report it cannot be doubted that Jobo had been subjected to substantial physical ill treatment or assault."

As we had raised in our statement in October 2016, it is our submission to this Commission that acts of torture by the LDF violate Article 5 of the African Charter known to all as a peremptory provision.

Intimidation and attacks against members of opposition parties'

We are concerned over the recent threats to and attacks perpetrated against opposition party members and media ahead of 3rd June 2017 snap elections. Between July 2016 and February 2017, the Basotho National Party (BNP) candidate, Mr. Machesetsa Mofomobe and President of Youth League Alliance of Democrats (AD), Mr. Thuso Litjobo were victims of systematic threats by state institutions, particularly police and the army. Mr. Mofomobe had been arrested and charged on the 23rd December 2016 with contravening Lesotho Defence Force Act of 1996. This is despite the fact that Mr. Mofomobe is a civilian. In early 2017, Mr Mofomobe was abducted by gunmen who he recognised as members of Lesotho police and the Lesotho Defence Force. It is believed that the abductions came as a result of Mr. Mofomobe and Litjobo's unwavering stance in opposing the government of Lesotho when it undermines democracy, good governance and human rights.

Attacks against freedom expression, freedom of opinion and the media

We are concerned by the attacks against the Editor of Lesotho Times Newspaper, Mr Lloyd Mutungamiri and intimidation of his fellow colleague, Ms Keiso Mohloboli, in 2016.⁶ The plight of these media professionals remains unresolved yet worrying developments remain in relation to freedom of opinion and the press in Lesotho. To this end, on 25 February 2017, Mr. Mohato Seleke was arrested on allegations that he was the administrator of a social media group which is known to expose government corruption. He has since been released after the High Court of Lesotho held that his arrest was unlawful and fall within the terms of what the court classified as abduction. The publisher of the Lesotho Times is facing criminal defamation charges following these attacks.

Moreover, the government shut down two local radio stations perceived as platform for opposing views. The stations affected were the Ts'enolo FM and the Peoples' Choice (PC) FM, respectively. The later was closed between 9 and 12 February 2017. The reason behind the closure of the radio station was the fact that PC FM had broadcasted a press conference of the Litjobo family which raised concerns fearing for the life of their son who was abducted several times. The government of Lesotho refused to address repeated appeals for opening the radio station until a Court order was sought. This year the Windhoek Declaration on Freedom of Media celebrates its 26th Anniversary. We find this as a great opportunity for the Commission to call upon State parties, and particularly, the Kingdom of Lesotho to respect the principles of a free, independent and pluralistic media, entrenched as part of the Windhoek Declaration.

Respect for democratic principles during election

⁶ See joint statement by SALC and Transformation Resource Centre on the verge of the 59th Ordinary Session of the African Commission on Human and Peoples' Right held in the Gambia in October 2016.

Elections in Lesotho are scheduled to take place on 3 June 2017. This follows a vote of no confidence in Parliament against Prime Minister Mosisili. There are serious concerns about the need to ensure the preparation is done in an orderly manner with respect for free and democratic principles governing elections as set out in the African Charter on Elections and Democracy in Africa. Our concerns include the need to ensure that the election process is widely participatory and inclusive of all stakeholders in the country and abroad, and that the government fulfils its obligation to respect democratic principles including respect of the right of freedom of choice of the people of Lesotho.

In conclusion, we respectfully ask the African Commission to call upon the government of Lesotho to:

- i. Dissolve the Court Martial and drop the mutiny charges against the 23 members of the LDF accused of planning a plot against senior army authorities as recommended by the SADC Commission of Inquiry (Phumaphi report);
- ii. Take action to address ongoing failure to investigate and hold the perpetrators of the killing of Gen Mohao accountable ;
- iii. Implement the necessary constitutional reforms aimed to strengthen the rule of law and public service and security in the country;
- iv. Take all the necessary measures to implement fully the recommendations of the SADC Commission of Inquiry;
- v. Investigate and punish all perpetrators involved in acts of torture and or ill-treatment of LDF soldiers;
- vi. Speed up the process to establish a Human Rights Commission in Lesotho that is fully compliant with the Paris Principles, and to amend the current Human Rights Commission Act no. 2 of 2016 so as to render the Commission more independent, autonomous and pluralistic in line with the minimum standards as set out in the Paris Principles.
- vii. Take all the necessary measures to create an environment conducive for free, fair and credible elections in the country. We also ask the Commission to call upon the government of Lesotho to protect the right to freedom of expression and punish perpetrators who violate this right

We further request the African Commission to carry out a visit to Lesotho with view to access the human rights situation in the country in light of persistent denial by Lesotho authorities about the factual information brought to his forum.