

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

Under item 3 of Agenda: Human Rights Dialogue

Read at the 59th 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, ladies and gentlemen. The Southern African Litigation Centre (SALC) and the Transformation Resource Centre (TRC) welcome this opportunity to address you on the human rights situation in Lesotho and our joint submissions speak to questions around (i) continued and lengthy detention of soldiers without trial, (ii) torture and, (iii) violations of the right to freedom of expression and opinion.

Background

In 1966, the mountain Kingdom of Lesotho gained independence from the British colonial administration. Since then the political environment has been unstable with systematic involvement of the military in political affairs. The country has seen contested elections and security forces have played a major role in ensuring power and control of government.

Divisions in the military has claimed the life of Lieutenant General Maaparankoe Mahao, and to date no persons have been held accountable for his death.

In the face of these factors human rights protection is threatened with continued violations occurring in the country.

Continued and lengthy detention of soldiers

In mid-2015, a large number of soldiers of the LDF were arrested, twenty three of which were detained following allegations that they were involved in plans to commit a plot against senior authorities. At the same time, Lt. Gen Mahao was brutally shot and killed by members of the Lesotho Defence Force (LDF).¹

Sixteen LDF members remain in custody and have been detained for more than a year. The situation is exacerbated by the fact that some of these officers have serious health problems.

We ask the African Commission to call upon the government of Lesotho to take action to address concerns relating to the ongoing detention without trial of the detainees and the ongoing failure to investigate and hold the perpetrators accountable for the death of Lt. Gen Mahao.

In addition, the LDF failed to make the soldiers accused of involvement in planning to commit mutiny available for examination by the SADC Commission of Inquiry on the situation of Lesotho. In the same vein, the country's police forces were denied access to the accused.

¹ See Para 64 of the Report of the SADC Commission of Inquiry on the situation of Lesotho, also called Phumaphi Report.

We call upon the African Commission to consider engaging the government of Lesotho over these issues and to instate the country to the exercise of accountability in the management of cases against the accused soldiers and other related cases. We further request the Commission to ask the government of Lesotho to take measures to stop the unlawful practice by the LDF of denying access to detainees for investigation by competent authorities such as the Police and other bodies aiming to help bring clarity to cases involving LDF officers. The government must ensure that all institutions (public/private) and individuals ascribe to the principle of respect of the supremacy of the law.

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 and 58th 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 submit that by refusing 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.² We 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 2015.³

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 relatively recent 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 who tried to obtain evidence and were forced to make statements implicating other soldiers. Moreover, in *Jobo and Others v Commander of Defence Force and Others*,⁴ 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.

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.

In light of these allegations we ask the Commission to urge the government of Lesotho to investigate and punish all perpetrators involved in ill-treating military detainees. We also request the Commission

² See rule No. 17 of the Robben Island Guidelines on Prohibition and Prevention of Torture in Africa.

³ This was also documented in a letter sent to the relevant African Commission special mechanism. For further details, see Annex 1.

⁴ 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."

to carry out a visit mission to the mountain Kingdom of Lesotho with view to interview the detainees and assert that their human rights are protected, fully.

Intimidation and attacks against human rights defenders and violation of the right to freedom of expression and opinion

We are concerned and condemn the government of Lesotho over the recent threats to and attacks perpetrated against human rights defenders and media.

In July 2016, the editor of the Lesotho Times newspaper Mr Lloyd Mutungamiri was shot and left with serious injuries. The shooting took place after Mr Mutungamiri allegedly published a story speaking to General Kamoli's exit strategy. About the same time, another journalist who wrote the article, namely Ms Keiso Mohloboli, was forced into exile. In 2012, the Commission passed Resolution 221 on attacks against the media and journalists in South Sudan. The resolution recognises the UNESCO Plan of Action on the Safety of Journalists, and describes its aim as being "to create a free and safe environment for journalists and media workers in both conflict and non-conflict situations, with a view to strengthening peace, democracy and development worldwide." We call on the Lesotho government to take steps to ensure that journalists are enabled to operate in a safe environment, and that those responsible for the attack on Mr Mutungamiri are brought to justice.

This year the Windhoek Declaration celebrates its 25th Anniversary as such we use this opportunity to emphasise its principles of a free, independent and pluralistic media, and the role the media plays in a democracy.

Further, we are concerned about a purported hit-list circulating on social media which contains names of opposition politicians, journalists, and lawyers to be killed. On 29 October 2015, a story containing a hit-list circulating on social media featured on the front page of the Lesotho Times newspaper. The names of former LDF Lt. Gen Maaparankoe Mahao and businessmen Thabiso Tsosane reportedly featured in the hit-list. These men were subsequently killed.

More recently, in August 2016, a hit-list including names of civil society actors was, again, released. Notwithstanding these developments, however, the government is silent about its obligation to investigate the allegations and there is no clue into whether it will take any steps to verify the facts, and, if confirmed, punish perpetrators.

Moreover, we observe with deep concern the use of the police to intimidate whistle-blowers who have exposed allegations of corruption in a controversial government fleet tender, forcing at least nine people to flee the country in fear for their lives in early October 2016. Evidence to support this is attached to our submission.

In light of the human rights abuses highlighted above, we respectfully ask the Commission to call upon the government of Lesotho to take all the necessary measures to create an environment conducive for human right defenders to operate 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.

In addition, we request the Commission to call upon the government of Lesotho to:

- i. Address all human rights violations highlighted in this submission and ensure that all crimes and human rights violations are investigated and prosecuted and put an end to impunity of criminal acts committed by members of the LDF;
- ii. Identify, arrest and prosecute the killers of Lt. Gen. Maaparankoe Mahao;
- iii. End the suffering of detained soldiers accused of involvement in plotting a mutiny and their respective families by implementing the recommendations stemming from the Phumaphi report, highlighted in this submission, including releasing the soldiers immediately under amnesty;
- iv. Initiating an inclusive and consultative process of national dialogue and adopt a strategy to implement prompt constitutional reforms to address gaps relating to the deficiency in overlap of constitutional mandate of security institutions; and
- v. 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, in line with the minimum standards as set out in the Paris Principles.