



THE PERMANENT MISSION OF THE KINGDOM OF LESOTHO

45-47, rue de Lausanne • 1201 Geneva
Tel.: 00 41 22 906 10 50 • Fax: 00 41 22 900 05 25

**NOTE No. 086/16
LG/UN/12**

The Permanent Mission of the Kingdom of Lesotho to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the United Nations High Commissioner for Human Rights, Special Procedures Branch and with reference to the Joint Communication from Special Procedures dated 29 July, 2016 Ref. AL LSO 2/2016, has the honour to cordially transmit herewith the Government of Lesotho's response to the Joint Communication.

The Permanent Mission of the Kingdom of Lesotho to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights, Special Procedures Branch the assurances of its highest consideration.

**GENEVA
22 SEPTEMBER, 2016**





LESOTHO

NOTE NO. 2

FR/UN/12

The Ministry of Foreign Affairs and International Relations of the Kingdom of Lesotho presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the Note Verbale dated 29 July 2016, reference: AL LSO 2/2016 addressed to the Government of the Kingdom of Lesotho. The Note Verbale relates to the alleged infringement of the right to freedom of expression of journalists in Lesotho and the shooting of Mr. Lloyd Mutungamiri, editor of the Lesotho Times newspaper.

The Ministry herewith transmits the Response of the Government of Lesotho in relation to the said Note Verbale.

The Ministry of Foreign Affairs and International Relations of the Kingdom of Lesotho avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

MASERU

20 SEPTEMBER, 2016

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RESPONSES TO SPECIAL PROCEDURES MANDATES HOLDERS OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Introduction

The Government of the Kingdom of Lesotho (the Government) acknowledges receipt of Communication of the Mandate Holders from the Office of the High Commissioner for Human Rights, namely the Special Rapporteur on extrajudicial or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, dated 29 July 2016.

Government concedes that, freedom of opinion and of expression constitutes the cornerstone of any democratic society and a solid and fundamental basis for development. Indeed, the right that guarantees freedom of expression is widely seen as underpinning all other human rights and democratic freedoms. We also take note that the right to freedom of expression and opinion also has a corollary, namely freedom of the press, which is normally perceived as the individual's right to freedom of expression extended to the media. However, like most rights and freedoms, it is not absolute, nor should it be. The Government therefore wishes to clarify and refute the allegations made against it and hereby responds as follows:

Allegations on unlawful interrogations

On the allegations of unlawful interrogations by the police to the journalists, we wish to clarify that it is a standard procedure, exercised by the police on every citizen when undertaking investigations. Section 19 of the 1993 Constitution provides for equality and equal protection of the law. Journalists are treated on the same footing with other citizens when it comes to issues relating to investigations, they are not above the law. This was also done in accordance with Section 24(1) of the Police Act of 1998, which states it is the duty of a police officer to detect offences, apprehend offenders and bring them to justice.

We confirm that Ms. [REDACTED] and Mr. Mutungamiri were called to Mabote Police Station on 23 and 24 June 2016, with a purpose of seeking clarification on the article of the satire column named 'Scrutator,' and the rationale behind the article titled, 'Exit Strategy for [REDACTED]'. The purpose was not to coerce the journalists to reveal their sources as they indicate.

With regard to the allegations that the journalists were being denied access to legal representation, our response is that, police officers are law enforcement personnel, who are well aware of the rights that are inherent to a suspect which is under interrogation and would not deny anybody such right. We therefore dismiss this allegation as flawed and only meant to put weight on the journalist vendetta to tarnish the Government's image. The true version is that the journalists were only mandated not to answer their phones during the interrogation as that would disturb the process of questioning. During the lunch break on Thursday, 28 June 2016, the legal representatives of the journalist arrived at the Police Station with the opposition Members of Parliament for All Basotho Convention (ABC) Party. The Police confirmed to the legal representatives that indeed the journalists were present at the police station for questioning and that they would be allowed to consult with their clients at a later stage. Similarly, the Government denies the allegation that the police confiscated Mr. Lloyd's passport. The Government could not confiscate his passport without any legal basis.

Allegations on charges of criminal defamation

We wish to report that, consequent to the article referred to in the Communication, 'Exit strategy for [REDACTED],' dated 23 to 29 June, Volume 9 issue 12, the Lesotho Defence Force (LDF) took a legal action against Mr. Lloyd Mutungamiri, Ms. [REDACTED] and Mr. [REDACTED] for defamation against the LDF Commander, Lieutenant General [REDACTED], for the slanderous and disparaging words used in the article, which have the effect of impairing the reputation of the Commander. On page two of the paper, one [REDACTED], citing what she terms authoritative sources wrote under the same heading that the Government was negotiating with the LDF Commander, offering him a diplomatic posting to Russia which he turned down instead made a counterproposal that he be paid fifty

five Million Maloti (M55, 000.00) and that forty Million (M40, 000.000) was being proposed. The paper further charged that another condition for his exit was that he wanted to be involved in the appointment of his successor. The Commander has no knowledge of such statements and activities made against him by the writer including the publisher and the editor. Actually, all such statements are utterly false and the paper did not even bother to verify them before publishing them.

Further, one of the Lesotho Times writers under the pseudo-name of Scrutator on the same issue in page 20 under the heading "Flicker of hope for my beloved Kingdom....." wrote about what she says have been stories doing the rounds in Maseru. The story is to effect that, Lieutenant General [REDACTED] during one of his moody days, pitched up at a Cabinet meeting unannounced and forced The Right Honourable The Prime Minister, Dr. [REDACTED] to halt proceedings and that the Prime Minister "dutifully" complied. According to the paper, the Commander did that to show that he was indeed the King of this country with whom real power resides.

The price of this biased journalism does not only insult and defame Lieutenant General [REDACTED] as a person but cuts across the entire Cabinet of the Government of the Kingdom of Lesotho. The article then goes to show that Lieutenant General [REDACTED] ordered female Cabinet Ministers to line up in front of their male counterparts and ordered them to lift their skirts to their waistlines.

It is against this background that the LDF Commander took a legal action against the Lesotho Times Newspaper. This was done within the confines of Lesotho's domestic laws, and supported by international human rights law which binds United Nations member States that have ratified the International Covenant on Civil and Political Rights of 1966.

The articles seem to insult, defame and peddle very disparaging remarks about the Commander of the LDF, the Prime Minister, Deputy Prime Minister and the entire Cabinet of the Government of Lesotho, and this amount to criminal defamation as proscribed by the Penal Code Act of 2010.

Further, the publication of the above-mentioned articles by Lesotho Times are also subversive in nature, contrary to Internal Security (General) Act of 1984 since the words published therein do not only insult the Ministers of the Government of Lesotho but are intended or calculated to bring into hatred or contempt or excite disaffection against Lieutenant General [REDACTED] as a public officer.

Additionally, the publication of this nature amounts to seditious publication contrary to the Penal Code Act of 2010.

The Lesotho Times is also undermining the authority of and being disrespectful to His Majesty The King of Lesotho by referring to the LDF Commander as "real King of Lesotho". This also invites the invocation of the provisions of the Penal Code Act of 2010.

The right to freedom of expression

The right to freedom of expression is safeguarded by the 1993 Constitution of Lesotho. Section 14(1) provides that 'every person shall be entitled to, and shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference.'

As earlier mentioned, the LDF also relied on the Printing and Publishing Act of 1967. The purpose of this Act is to protect an individual's reputation or feelings from unwarranted attacks from print media. It also aims to protect people against false statements of facts which cause damage to their reputation. The law lays the ground work for striking a proper balance between the protection of individuals' reputation and freedom of expression.

Lesotho respects the right of freedom of expression of every citizen, including journalists. This right is not only safeguarded in the Constitution as the supreme law of the land, but also in various international human rights treaties which bind the Government. These include the International Convention on Civil and Political Rights (ICCPR) in article 19, which guarantees freedom of expression in similar terms to the Universal Declaration on Human Rights in article 19. The Government as a duty bearer has over the years ensured

that journalists exercise their right to receive information and report to the public, information or news without undue influence or interference. Worthy of note is the fact that there are over ten independent newspapers which operate in a country with a population of 1.8 million people.

Limitations to freedom of expression

International law dictates that, the freedom of expression is not only important in its own right, but is also essential if other human rights are to be achieved. Whereas the freedom of expression of journalists is interrelated to the right of citizens to receive information, this right is not without limitations. This is also to preserve the reputation of those who are referred to in the articles, as well as their right to privacy, among other things.

The Lesotho Constitution declares that the right to freedom of expression is not absolute in terms of section 14(2) (a), (b) and (c). In support of this, international human rights law also declares in several treaties that for the right to freedom of expression to be exercised responsibly, it has to have restrictions. Article 19(3) of the ICCPR provide that limitations or restrictions to the right to freedom of expression exist and further states that the exercise of these rights carries special duties and responsibilities and may therefore be subject to certain restrictions when necessary for respect of the rights or reputation of others, the protection of national security or of public order and public health or morals.

We wish to report therefore that the grounds upon which Mr. Mutungamiri reported in an article entitled 'Exit strategy for [REDACTED]', falls within the ambit of section 14 (2)(b) which provides that freedom of expression may be limited for the purpose of protecting the reputation, rights and freedoms of other persons. The article has seriously impaired the reputation of the Commander of the LDF, and it has not only painted a false image of a renowned public figure but the image of the State as well, by instigating a propaganda that the Government was desirous of parting with M40 million of public funds to entice the legally appointed Commander to vacate his office. Whilst journalists have the duty to give information to the public, they should not give misleading information.

This was raised by the European Court on Human Rights in *Colombani and others v.*

*France*¹, whereupon the applicants, a newspaper director and a journalist, had been convicted of insulting a foreign head of state in an article. The Court said that the duties and responsibilities of journalists required them to act in good faith “in order to provide accurate and reliable information in accordance with the ethics of journalism”. The Court further underscored that, when contributing to public debate on matters of legitimate concern, “the press should normally be entitled... to rely on the content of official reports without having to undertake independent research”.

We also wish to rebut the claims that the Right Honourable, the Prime Minister has accused Mr. Lloyd of being too critical of his administration. There is no platform of any sort where the Prime Minister uttered such unfortunate statements. Further, there are no specifications on the occasion of these accusations, whether it be the place or time.

The restrictions or limitations upon which a legal action was exercised against Mr. Mutungamiri, Ms. [REDACTED] and Mr. [REDACTED] conform to the international law principles of necessity and proportionality as provided for in the General Comment No. 34 Under article 19: Freedom of Opinion and Expression 2011 which give the interpretative explanation to article 19 of the ICCPR². The General Comment provides that freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.

Allegations on the shooting of the editor

Lesotho is governed by the rule of law and continues to uphold the principles of democracy and good governance. The shooting of Mr. Mutungamiri is currently being investigated by the police and as soon as the investigations are complete, the perpetrators shall be brought to book. The Government condemned these acts and as such the Minister of Communications, Science and Technology, Mr. [REDACTED] as the spokesperson of Government spoke on national radio and television assuring the nation that the Government will leave no stone unturned until the perpetrators are brought before the courts of law.

¹ *Colombani and others v. France*, No. 51279/99, judgment of 25 June 2002, Reports 2002-V, pg65

² General Comment No. 34 Under article 19: Freedom of opinion and Expression 2011 (CCPR/C/GC/34) para3.

Conclusion

While Governments bear the primary duty of promoting and protecting all human rights, journalists also have the responsibility of reporting the state of affairs in Member States in a partial manner. Further, while the press has the duty to impart information and ideas on matters of public interest, it must not overstep certain limits which are provided by the domestic laws and international human rights law.

We are therefore of the view that the current reports furnished to the Office of the High Commissioner for Human Rights against Lesotho is just an appeal by the journalists to be absolved from the criminal charges they are facing. Good journalism will often be guaranteed through a whole set of self regulation practices, including ethical and professional standards, codes of ethics and media accountability mechanisms operated by the media themselves.

We would therefore like to reiterate Lesotho's commitment to working in cooperation with the Office of the High Commissioner for Human Rights and its special procedures towards attaining a world that is free of human rights violations, where the rule of law and democracy as spelled out by the various regional and international human rights instruments prevail.