

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacity as First Vice-Chair of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 26/7, 26/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrest, detention, torture and ill-treatment, and unfair trial of at least 23 members of the Lesotho Defence Force; the alleged killing of the former Commander of the Lesotho Defense Force, Brigadier Maaparankoe Mahao by members of the Lesotho Defence Force; as well as alleged on-going threats and attacks against the independence of the judiciary and lawyers by the Lesotho Defence Force and the executive branch.**

According to the information received:

The head of the Lesotho Defense Force (LDF), Brigadier Maaparankoe Mahao was dismissed from the army in May 2015. In May and June 2015, more than 50 members of the LDF were arrested on allegations of plotting a mutiny and of knowing of a mutiny plot and not reporting it. Most of the arrests were carried out by unidentified and heavily-armed masked men. No arrest warrants were produced and the charges were originally unclear. Because the soldiers' families could not obtain information as to their whereabouts, the reasons for their arrests, or their wellbeing, a series of habeas corpus applications were launched.

During the various habeas corpus proceedings, the detainees were brought to court hooded or blindfolded and shackled, and accompanied by heavily-armed masked men. Before the court, the detainees described the severe torture and ill-treatment to which they had allegedly been subjected. Some reported that after their arrest they were brought to Sedibeng in an area that is particularly cold. There they were reportedly forced to walk on ice, sprayed with cold water or thrown into a frozen and dirty stream. Furthermore, during the night and while they were wet, they were tied to a pole and hooded, during which time they were insulted and interrogated. Some also reported having been beaten and that gun shots were fired around them while they were tied to the pole. Some reported their feet and arms were chained or tied and that a rubber tube was placed over their face and mouth, suffocating them. Some also described practices similar to water-boarding.

When appearing before the court, some detainees presented apparent physical signs of abuse, including bleeding and swollen wrists, bleeding noses, and difficulty or incapacity to walk. Some soldiers appeared emaciated and underdressed and some started weeping in open court. Some soldiers are said to have become incontinent.

It is alleged that during these habeas corpus hearings, heavily-armed LDF guards, some of whom wore balaclavas to disguise their faces, largely present around and inside the court, and LDF legal representatives threatened the detainees' lawyers and their families and intimidated members of the judiciary. In some instances, they prevented lawyers from speaking with their clients. Furthermore, in at least one incident, when the judge presiding the hearing sought to consult with a detainee in chambers, the guards that had brought him to court forced their way into the judge's chambers armed with AK-47 rifles. Concerns about this reported pattern of intimidation against defense lawyers and judges were reported to the authorities without prompting a reaction from their part. A prominent lawyer representing some of the families has since fled the country, following threats to his life. The other lawyers have been confronted by members of the LDF and were told they are 'being watched' or that they 'are next'. A 'hit list' has also been circulated on social media and some of the lawyers' names are on that list. While the 'hit list' cannot be attributed to State authorities or the LDF, lawyers are very concerned as two persons whose names had appeared on a previous 'hit list' circulated on social media were killed soon after the circulation of the list. It remains unclear whether any investigations have been initiated into these alleged threats.

Over half the soldiers arrested were later released; some of them fled the country out of fear for their safety. However, 23 soldiers remained in captivity in the maximum security section of the Maseru Central Prison, under surveillance of the

military, who had allegedly taken over from members of correctional services and the police. They were charged with mutiny, an offence which carries the death penalty. It is reported that some of the released soldiers' testimonies, which were allegedly obtained under duress, may be used as evidence against the remaining detainees.

Following the habeas corpus proceedings, lawyers were able to see their clients at the detention center, although it is reported that in more recent instances, they have been prevented from communicating with their clients in private. Some lawyers did not go visit their clients out of fear for their security. Religious leaders and civil society representatives have reportedly stated that they have not been able to visit any of the detainees. Families were given access to the detainees following court orders but it is suspected that all conversations with the detainees are monitored by military intelligence.

On 25 June 2015, the former Commander of the LDF, Brigadier Mahao, was shot by the LDF in his home village of Mokema, reportedly in the course of an arrest arising from his alleged involvement in a mutiny plot. He was brought to a military hospital where he died later that night. The authorities have claimed that he resisted arrest. His family has denied these allegations, claiming that he was assassinated. There is no clear information on why Brigadier Mahao had not been asked to turn himself in to face charges of mutiny.

In early July, the Southern Africa Development Community (SADC) established a commission of inquiry to examine, inter alia, the killing of Brigadier Mahao and the allegations regarding the mutiny plot. On 3 July 2015, the SADC Double Troika decided that Lesotho had to put the court martial to try the arrested soldiers on hold to allow for the independent SADC commission of inquiry to carry out its mandate. This decision was interpreted by the LDF as providing legal justification for prolonging the detention of the arrested soldiers despite the fact that the Lesotho Defence Force Act 4 of 1996 (LDF Act) stipulates that no soldier can be held for more than 42 days without facing a court martial.

In this regard, on 10 July 2015, Major General Poopa, the Chief of Staff of the LDF, issued a Directive informing the detainees that despite the LDF Act, their detention would be prolonged as the investigations and the constitution of the court martial had been put on hold by the SADC decision to set up a commission of inquiry. It is reported that while the LDF Act does not allow detainees to be released on bail, it allows their release to serve 'open arrest', a form of military bail.

The Directive was challenged by some of the detainees before the High Court. In court papers regarding this challenge, the LDF reportedly stated that it would be

impractical to constitute the court martial because higher ranking officers who might be considered to compose a court martial are also implicated in the investigations relating to the alleged mutiny plot. It is reported that such a statement shows that there was a minimal prospect that a fair and independent court martial could be constituted. It is further reported that, under the LDF Act, if the Commander of the LDF is not able to convene a court martial, he may transfer the prosecutions to the Director of Public Prosecutions for consideration of trial before ordinary courts.

In September 2015, the LDF nevertheless announced they would convene a court martial despite the fact that the commission of inquiry had not finished its investigations. The 23 detainees were informed the court martial would commence on 14 September. In this context, an urgent application was brought before the High Court by the 23 soldiers charged with plotting a mutiny, challenging, inter alia, the decision of the army Commander and the Minister of Defence to convene the court martial to try them for the same issues that the commission of inquiry was examining, and their continued detention, preventing them from participating in the proceedings of the commission of inquiry. It is reported that prior to the launch of the urgent application, the lawyers of 22 of the applicants were repeatedly denied access to their clients. The LDF Commander also refused a formal request by the applicants' lawyer to bring them to court.

A first hearing before the High Court took place on 16 September. Three uniformed members of the LDF attended the hearing, openly carrying out guns into the courtroom.

On 5 October 2015, the High Court declared the 23 soldiers' continued detention unlawful and ordered their release under 'open arrest' (a form of bail). While two detainees have reportedly been released at some point during the autumn, the LDF failed to comply with the High Court order. To this date, 21 of these 23 soldiers remain in detention in the maximum security section of Maseru Central Prison. Since mid-October 2015, it is alleged that they have been held in solitary confinement. They are reportedly permitted consultations with their lawyers but only for 20 minutes at a time and not in private.

On the same day, the 23 soldiers appeared before a court martial but proceedings were suspended. The court martial is expected to resume its work on 2 December 2015, the same day the High Court will be hearing a case brought by the LDF challenging the legality of the SADC commission of inquiry.

The commission of inquiry concluded its work in November and has presented its report to SADC, which has yet to pronounce its views on the report. The commission of inquiry's work was allegedly marred by a lack of cooperation from

the LDF and parts of the Government. For example, the 23 detainees were prevented by the LDF from participating in the proceedings of the commission.

We express serious concern about the physical and psychological integrity of the 21 LDF soldiers that remain detained to date and under investigation for allegedly plotting a mutiny, in particular in light of the serious allegations of torture and other ill-treatment they were subjected to and the allegation that they were placed in solitary confinement in mid-October 2015. We express further serious concern that the detention of the 21 soldiers may be arbitrary, particularly in light of the High Court decision of 5 October that declared their detention unlawful. Grave concern is also expressed about the apparent threats and attacks against lawyers and the judiciary, especially as these threats and attacks seem to form a pattern of interference by both the executive branch and LDF into the independence of lawyers and judges. We are further concerned about the apparent lack of independence and impartiality of the court martial convened to try the 23 soldiers mentioned above. Finally, we express concern regarding the lack of independent investigation into the killing of Brigadier Mahao.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the soldiers mentioned above is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of International Covenant on Civil and Political Rights (ICCPR), to which Lesotho acceded on 9 September 1992, and articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

Concerning the alleged threats and attacks against the independence of lawyers and the judiciary, we would like to bring to the attention of your Excellency's Government the UN Basic Principles on the Role of Lawyers, according to which Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and shall adequately safeguard the security of lawyers where it is threatened; and the UN Basic Principles on the Independence of the Judiciary, according to which Governments must guarantee and respect the independence of the judiciary. The independence of the judiciary is also protected under article 14 of the ICCPR.

With regards to the constitution of the court martial, we would like to remind to your Excellency's Government that, as stated by the Human Rights Committee in its

General Comment No. 32, the provisions of article 14 apply to all courts and tribunals whether ordinary or specialized, civilian or military (see paragraph 22).

Regarding the serious allegations of torture and ill-treatment of the 23 soldiers, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Lesotho ratified on 21 November 2001.

We would like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

In this context, we would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

With regards to being placed in solitary confinement, we refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition against torture. We further recall paragraph 6 of General Comment No. 20 of the Human Rights Committee (adopted at the 44th session of the Human Rights Committee, 1992), which states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR. See also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) E/CN.15/2015/L.6/Rev.1, Rules 43-45.

Concerning the alleged killing of Brigadier Mahao, we would like to remind to your Excellency's Government that articles 3 of the UDHR, 6(1) of the ICCPR; and article 13 of the African Charter on Human and Peoples' Rights, ratified by Lesotho on 10 February 1992, guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. According to Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (ECOSOC Res/1989/65), there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal ground for the continued detention of the 21 soldiers mentioned above despite the High Court decision declaring their detention unlawful.
3. Please provide detailed information, and where available, the results of any investigation, judicial or other inquiries carried out in relation to the allegations that the 23 soldiers mentioned above were tortured and ill-treated during their detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the investigations confirm that the allegations of torture are correct, please provide detailed information of any accountability measure taken against any officer found to be responsible for the alleged violations.
5. Please provide detailed information on the constitution of the court martial to try the 23 soldiers; please explain in particular how the constitution of the court martial is in line with international human rights standards, in particular due process and fair trial guarantees, as enshrined, inter alia, in article 14 of the ICCPR.
6. Please provide information on the measures taken to protect the independence of judges and lawyers, in particular measures taken to ensure their personal security.

While awaiting a reply, **we urge the immediate release of the soldiers in compliance with the order of the High Court and that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence** and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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