

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **A Human Rights Agenda for the New Lesotho Government**

National elections in Lesotho took place on 3 June 2017. The Independent Electoral Commission released the results, indicating a coalition government led by Thomas Thabane's All Basotho Convention (ABC) party.<sup>1</sup> This comes after former Lesotho Prime Minister Pakalitha Mosisili lost a vote of no confidence in the Lesotho Parliament on 1 March 2017. On 7 March King Letsie announced the dissolution of the Lesotho Parliament.

This is in a context where more than half the population live below the poverty line, and persistent droughts have led to low agricultural productivity in recent years, with a worsening food deficit.<sup>2</sup>

Amnesty International calls on the new Lesotho government to ensure human rights are the foundation upon which policy is formed.

At their core, human rights are about respecting the dignity of all people. The new government should make human rights central to its agenda, and ensure that these rights are expressed and not restricted.

Lesotho has for years been characterized by a political and security crisis, that resulted in a spike of patterns of human rights violations. Amnesty International has been documenting and highlighting a disturbing pattern of human rights violations committed with absolute impunity especially in the first year since Prime Minister Pakalitha Mosisili's inauguration.<sup>3</sup> This pattern of impunity for human rights violations continued in 2016.

The new Lesotho government must demonstrate a clear break from the past and urgently initiate a programme of human rights reform. Amnesty International's 'Human Rights Agenda for the New Lesotho government' reflects the long standing calls made by the organization.

#### **1. End the practice of arbitrary arrests and politically motivated prosecution**

In the past three years, especially following the ousting of former Prime Minister Thomas Thabane, Amnesty International has documented a pattern of arbitrary arrests and detentions of opposition party members, journalists and members of the Lesotho Defence Force (LDF). Between July 2016 and February 2017, at least four opposition party leaders were arrested and released shortly thereafter. In June 2016, Basildon Peta, owner and publisher of the Lesotho Times newspaper was arrested and charged with criminal defamation, and released

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<sup>1</sup> Lesotho Independent Electoral Commission website: <http://www.iec.org.ls/> accessed on 9 June 2017

<sup>2</sup> Amnesty International Annual Report 2015/16 Lesotho p.230 available at: <https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516/>

<sup>3</sup> Ibid.

on bail later that day. 23 members of the LDF were also arrested between May and June 2015 for suspected mutiny and detained at Maseru Maximum Security Prison.

The Lesotho High Court declared the continued detention of the 23 LDF members unlawful and ordered their release on “open arrest” in October 2015. On 8 February 2016, the Southern Africa Development Community (SADC) commission of enquiry report tabled in the Lesotho Parliament also found the mutiny charges against the group of 23 members of the LDF to be ‘suspect’.<sup>4</sup> Despite these developments, the 23 members of the LDF remained imprisoned for at least 20 months<sup>5</sup>, until the final seven soldiers were released on “open arrest” on 1 March 2017. The mutiny charges against all 23 soldiers have not yet been dropped.

**Amnesty International is calling on the new Lesotho Government to end the practice of arbitrary arrests and politically motivated prosecution including by taking the following measures:**

- Drop all charges against individuals arbitrarily arrested and prosecuted including the mutiny charges against all 23 members of the LDF;
- Investigate all allegations of arbitrary arrests, detentions and politically motivated prosecutions and bring to justice anyone suspected to be responsible for these violations;
- Publicly declare a clear commitment to end arbitrary arrests, detentions and politically motivated prosecutions and to ensure accountability for any such violations;
- Ensure the right to an effective remedy including adequate compensation and rehabilitation to all those who have been subjected to arbitrary arrests and detention.

**2. Take effective measures to end the practice of Torture and other Ill-treatment:**

Amnesty International has documented allegations of torture and other ill-treatment, including to extract confessions of people arbitrarily arrested.

For instance, members of the LDF were held in inhumane conditions, some have raised serious allegations they were tortured, and some were denied sufficient medical treatment.<sup>6</sup>

A medical doctor Makoae Taoana, who examined the members of the LDF who alleged torture while in detention, died in an unexplained accident in July 2016. Police announced they were investigating the circumstances of his death.<sup>7</sup> The investigations are yet to be completed.

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<sup>4</sup> See: Lesotho: Call for immediate release of detained soldiers following the report of SADC Commission of Inquiry on Lesotho (AFR 33/3444/2016) available at:

<https://www.amnesty.org/download/Documents/AFR3334442016ENGLISH.pdf>

<sup>5</sup> Amnesty International Press Release. Lesotho: Army chief cannot continue to disobey a court’s order. 20 January 2016. Available at: <https://www.amnesty.org/en/latest/news/2016/01/lesotho-army-chief-cannot-continue-to-disobey-a-court-order/>

<sup>6</sup> Amnesty International Press Statement. Lesotho. Lesotho: Quash ‘mutiny’ charges against freed soldiers. 1 March 2017. Available at: <https://www.amnesty.org/en/press-releases/2017/03/lesotho-quash-mutiny-charges-against-freed-soldiers/?body=>

<sup>7</sup> Amnesty International Annual Report on the State of the World’s Human Rights. 2016/17. Index Number POL 10/4800/2017 p. 232

Lesotho does not have a specific law that criminalizes torture. As the government of Lesotho has ratified the United Nations Convention Against Torture (CAT), it is duty bound to take effective legislative, administrative, judicial or other measures to prevent acts of torture and other ill-treatment.<sup>8</sup> This means that Lesotho is obliged by CAT to ensure that all acts of torture and other ill-treatment are offences under its criminal law.<sup>9</sup> Furthermore, where there is reasonable ground to believe that an act of torture and other ill-treatment has been committed, the Lesotho authorities are obliged to ensure a prompt and impartial investigation.<sup>10</sup>

### **Amnesty International is calling on the new Lesotho Government to end the practice of torture and other ill-treatment including by**

- Making a clear public commitment to end the practice of torture and other ill-treatment and to bring suspected perpetrators to justice;
- Passing specific legislation to criminalize torture and other ill-treatment;
- Carrying out a thorough, independent and impartial investigation into all allegations of torture and other ill-treatment, including allegations of torture made by the LDF members, and ensuring suspected perpetrators are brought to justice in fair trials and without recourse to the death penalty;
- Ensuring the right to remedy for victims of torture and other ill-treatment, including adequate compensation and rehabilitation. Also important is access to medical care and ongoing access to psychological support to those suffering from trauma;
- Expediting investigations into the death of Dr. Taoana and, if criminal acts proved, ensure that the suspected perpetrators are brought to justice;
- Establishing effective, independent oversight bodies with powers to review and investigate complaints of torture and other ill-treatment during detention and to monitor conditions in all prisons and detention facilities.

### **3. Ensure Accountability and Justice for Victims of Human Rights Violations**

Amnesty International is concerned about a culture of impunity for human rights violations prevalent in the country<sup>11</sup>, including as demonstrated in the lack of prompt, effective and independent investigations into the deaths of Lieutenant-General Maaparankoe Mahao and Dr Makoae Toana.

Lieutenant-General Maaparankoe Mahao was killed on 25 June 2015, allegedly by members of LDF who claimed that he had resisted arrest. He was alleged to have led a mutiny plot, which also led to the arrest of 23 members of the LDF. The report of the SADC's commission of enquiry<sup>12</sup> found no evidence that Mahao had planned a mutiny and concluded that his

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<sup>8</sup> Article 2.1 Convention Against Torture

<sup>9</sup> Article 4.1 Convention Against Torture

<sup>10</sup> Article 12 Convention Against Torture

<sup>11</sup> Amnesty International press release. Mosisili: one year on still missing the mark on human rights. 16 March 2016. Available at: <https://www.amnesty.org/en/latest/news/2016/03/lesotho-one-year-on-mosisili-still-missing-the-mark-on-human-rights/#>

<sup>12</sup> The Southern African Development Community Inquiry into the Circumstances surrounding the death of Brigadier Maaparankoe Mahao final report is available at: [http://www.gov.ls/gov\\_webportal/important%20documents/sadc%20commision%20of%20inquiry%20to%20the%20kingdom%20of%20lesotho/phumaphi%20report\\_201602081514.pdf](http://www.gov.ls/gov_webportal/important%20documents/sadc%20commision%20of%20inquiry%20to%20the%20kingdom%20of%20lesotho/phumaphi%20report_201602081514.pdf)

killing was unjustified.<sup>13</sup> It recommended criminal investigations into the killing and the dismissal of then LDF head Tlali Kamoli.

While some steps have been taken, including the announced retirement of Tlali Kamoli and the creation of a joint task force, comprising members of the police and army, to investigate the circumstances of the killing, concerns remain regarding the impartiality and delay of the investigation process.<sup>14</sup> Almost two years since his killing, Mahao's family are still waiting for justice while the suspected perpetrators are enjoying impunity,

In November 2016, an Amnesty Bill was introduced, which grants amnesty for a broad list of crimes including murder and kidnapping committed between 1 January 2007 and 31 December 2015. Amnesty International believes that the fundamental principles underpinning this proposed law are inconsistent and incompatible with Lesotho's international and regional human rights obligations and commitments to among others ensure access to justice for victims of human rights violations. Amnesty International is concerned that this draft bill may potentially result in granting amnesty to suspected perpetrators of serious human rights violations, thereby entrenching a culture of impunity.

**Amnesty International is calling on the new Lesotho government to end the culture of impunity and ensure Justice for victims of human rights violations including by:**

- Ensuring and expediting effective, independent and impartial criminal investigations into the killing of Lieutenant-General Maaparankoe Mahao and bringing suspected perpetrators to justice in fair trials without recourse to the death penalty;
- Establishing an independent Human Rights Commission to investigate allegations of human rights violations and abuses;
- Withdraw the draft Amnesty Bill, as it is inconsistent with Lesotho's international and regional human rights obligations and commitments to ensure access to justice for victims of human rights violations.

#### **4. End attacks on Freedom of Expression**

The right to freedom of expression is under serious threat in Lesotho.

The editor of the *Lesotho Times* Lloyd Mutungamiri was left in a critical condition in hospital after being attacked by unknown gunmen on 9 July 2016.<sup>15</sup>

This followed the newspaper's publication of an article that alleged that then LDF head Tlali Kamoli was to receive an exit package of R50 million on 23 June 2016. The next day,

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<sup>13</sup> According to the report of the SADC Commission of Inquiry into the circumstances surrounding the death of Brigadier Maaparankoe Mahao, he "died from bullet wounds caused by three shots in his body from an AK47 rifle at point blank range."p.57

<sup>14</sup> Amnesty International Annual Report on the State of the World's Human Rights. 2016/17. Index Number POL 10/4800/2017 p.231-232"

<sup>15</sup> Amnesty International media quote, Shooting of Newspaper Editor is a Chilling Attack on Freedom of Expression, 11 July 2016. Available at: <https://www.amnesty.org/en/latest/news/2016/07/lesotho-shooting-of-newspaper-editor-is-a-chilling-attack-on-freedom-of-expression/>

Lesotho Times reporter Keiso Mohloboli was arrested and interrogated along with the newspaper's editor, Lloyd Mutungamiri. On 5 July 2016, Lloyd Mutungamiri and Lesotho Times publisher Basildon Peta were interrogated. Basildon Peta was charged with criminal defamation and has subsequently challenged the constitutionality of the charges at the Constitutional Court.

More recently, two radio stations, People's Choice FM and Tsenolo FM were shut down on 9 February 2017. This followed the radio stations broadcast of a press conference held by the family of opposition youth leader in light of intimidation and surveillance. The radio stations went back on air on 13 February.

**Amnesty International is calling on the new Lesotho government to end attacks on freedom of expression including by:**

- Publicly reaffirming its commitment to respect, protect, promote and fulfil the right to freedom of expression, which includes the right to seek, receive and impart information;
- Undertake a prompt, independent and impartial investigation into the attack of the editor of the *Lesotho Times* Lloyd Mutungamiri and ensuring that suspected perpetrators are brought to justice in fair trials and without recourse to the death penalty;
- Dropping all criminal defamation and *crimen injuria* charges against Basildon Peta, Lesotho Times owner and publisher.

**5. Compliance with Lesotho's International and Regional Human Rights Obligations**

The government of Lesotho is yet to ratify key regional and international treaties such as the Optional Protocol to the United Nations Convention Against Torture or other cruel, inhuman or degrading treatment (OP-CAT) and the Second Optional Protocol to the International Covenant on Civil and Political Rights.

In addition, Lesotho must take steps to fully comply with its treaty obligations in terms of reporting and access to relevant human rights monitoring mechanisms. For instance, Lesotho has not yet submitted its first state party report to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was due on 30 June 1994. The government is also yet to submit the first state party report on the Convention Against Torture (due on 11 December 2002), and its second report on the International Covenant on Civil and Political Rights (ICCPR) due on 30 April 2002. Similarly, Lesotho has eight overdue reports under the African Charter on Human and Peoples' Rights (African Charter). In essence, the government of Lesotho has not followed up its initial report submitted in August 2000 with periodic reports as required under Article 62 of the African Charter.

**Amnesty International urges the new Lesotho government to fully comply with international and regional human rights obligations and commitments including by:**

- Ensuring that all international human rights obligations are fully incorporated in Lesotho's national legislation;
- Taking all the necessary steps to ensure the prompt ratification, without reservations of outstanding core international human rights treaties, in particular the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

- Ratify the Optional Protocol to the United Nations Convention Against Torture or other cruel, inhuman or degrading treatment (OPCAT);
- Ensure that Lesotho complies with its reporting obligations under international and regional human rights treaties, by presenting all overdue reports to the relevant treaty monitoring bodies;
- Make a declaration pursuant to Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, allowing direct access for individuals and NGOs to the Court. Lesotho, as a state party to the Protocol, should make this declaration at the earliest opportunity.<sup>16</sup>

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<sup>16</sup> Amnesty International. Malabo Protocol: Legal and Institutional Implications of the Merged and Expanded African Court. 22 January 2016. Index: AFR 01/3063/2016 available at: <https://www.amnesty.org/en/documents/afr01/3063/2016/en/> p. 36.