

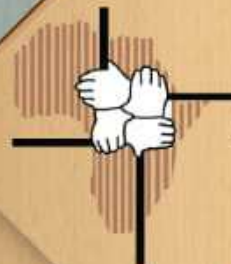
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Constitutional Reforms for Better Protection of Human Rights



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**TRANSFORMATION
RESOURCE CENTRE**

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Manthabiseng Convention Centre
31st May 2018 Maseru, Lesotho



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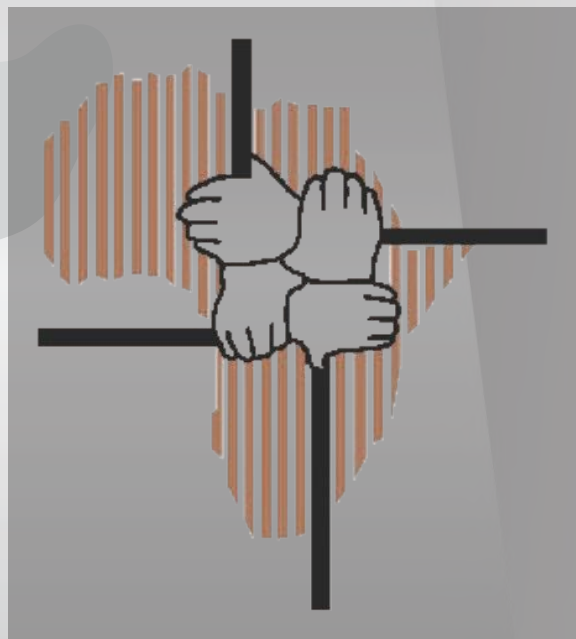
Introduction **PDF Compressor Free Version**

On 31st May 2018, Transformation Resource Centre (TRC) held a one day National Dialogue on security sector reform agenda. The conference attracted diverse opinion from the length and breadth of the security establishment of Lesotho, it comprised government officials, Senior officers of the Lesotho Defence Force (LDF), Lesotho Mounted Police Service (LMPS), Lesotho Correctional Service (LCS) and National Security Service (NSS) as well as Southern African Development Community (SADC) representatives on security issues, European Union Delegation in Lesotho, United Nations Development Programme (UNDP), Non-Governmental Organizations (NGOs) and an eminent senior citizens.

This gathering was informed by the need to create conducive and open platform for senior officers of security institutions namely; LCS, LMPS, LDF and NSS, to identify areas of concerns in their respective institutions which constrain their mandate in protection of human rights, and most importantly to solicit their “thinking” towards the constitutional and security sector reforms.

In furtherance of the said umbrella objective, this discussion was informed by the realization that members of the aforementioned institutions are strictly regulated by disciplined forces code of conduct and as such there is likelihood that their participation in national reforms may be restricted. Consequently, this session was envisaged to give these key stakeholders a rare opportunity of freely having an in depth conversation on the respective mandates of their institutions, as well as road map of reforms on security sector of the country.

This report is a collation of the proceedings wherein indispensable points deliberated by speaker after speaker have been sifted. It concludes with a TRC-sponsored 21-point Security Sector Reform 'Magna Carta'.





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Mr. Tsikoane Peshoane

2. Compendium of the Proceedings

2.1 Opening Remarks by Transformation Resource Centre Director, Mr Tsikoane Peshoane

Transformation Resource Centre (TRC) Director Mr Tsikoane Peshoane welcomed participants by noting that the gathering is among a number of initiatives they are undertaking to respond to the clarion call of SADC-sponsored security, constitutional, public service, parliamentary, media and judiciary reforms. He noted that TRC's focal areas have been democracy, human rights and good governance. While it is an obligation of the state to respect, promote, fulfil and protect human rights, however, the state had been constantly violating human rights through its security agencies. Against this backdrop, TRC found it befitting to hold the session to give the security agencies a platform to introspect, as well as to share their thoughts towards the much touted security sector reforms, and most importantly for these institutions to see themselves through the eyes of the civilians.

Mr Peshoane remarked that the post-mortem of characteristic failure of these security institutions to avoid perpetuating human rights violations rested squarely on structural impediments. These organisational challenges emanate from the constitutional mandates that these institutions derive their roles from; mandates that run short of guiding these agencies towards upholding respect of human rights. The restructuring process of these institutions should include redefining their mandate to mainly; promote and protect human rights. He stressed that this gathering should be regarded as opportune moment to have a frank and in-depth discussion on the nexus between human rights and security. He applauded the presence of all the states security agencies, specifically the Lesotho Defence Force (LDF), and Lesotho Mounted Police Service (LMPS) mentioning that it was very unusual of both agencies to breathe the same air, especially under the auspices of Non-state actor.

Mr Peshoane, noted that as TRC they wanted to take this as a significant turning point regarding commitment of the management of these agencies towards peace and security. He also acknowledged and thanked the European Union delegation, American Embassy for their unwavering technical and financial support. He concluded his welcoming remarks by extending a warm hand of appreciation to all participants present.



H.E. Christian Manahl

In his address H.E. Christian Manahl mentioned that he had participated in various peace processes in Africa which usually follow a certain sequence. First step is the cease fire, followed by political negotiations and later the security sector reforms which are usually the most difficult process to engage in. He mentioned that with Lesotho the difference is that there is no armed conflict which necessitates cease fire. H.E Manahl noted that it was almost a year since the Prime Minister Thomas Thabane's government took power following the June 3, 2017 elections “and we are still waiting for the multi-stakeholder conference which was mentioned as a national priority in the pre-electoral commitment.” H.E Manahl observed that there are series of serious steps which were undertaken by the security agencies in laying the ground work for security sector reforms.

These included change of command structure, return and integration of exiled soldiers, gestures of reconciliation between the Lesotho Defense Force and the Lesotho Mounted Police Services of which is particularly important because security can only be guaranteed if security institutions work together in a harmonious way. H.E. Manahl thanked SADC Preventive Mission in Lesotho (SAPMIL) for the support to the security institutions and towards security sector reforms. H.E Manahl commended TRC for bringing together security institutions in a forum of this kind and further expressed that their determination to engage in the reforms which must inspire and encourage the politicians to overcome their hesitations to join in a comprehensive, transparent, inclusive and a participatory reform process.

H.E Manahl drove the message home by saying “I want to make a special appeal to the opposition on this occasion to say, bring all the issues that are your concerns into the negotiations, bring them to the table, but don't make them preconditions. Join the process.” Lastly he indicated that any participant in a dialogue of this kind is at liberty to bring any issues and concerns to the table.





2.3 Remarks by Head of the SADC Preventive Mission in Lesotho (SAPMIL)



His Excellency Dr Matias Matondo - SAPMIL

In his address His Excellency Dr Matias Matondo expressed appreciation to TRC for the invite and participation in the forum. He mentioned that TRC initiative and contribution will make its mark to the success of the reform process given the sensitivity and significance of the security sector in the Kingdom of Lesotho. H.E Matondo indicated that the SADC double Troika Summit convened in April 24th, 2018 in Angola where it pronounced itself on the reform process in the Kingdom of Lesotho and amongst noted the following:

- (i) Expressed concern at the slow implementation of the reforms and the national dialogue; noted and endorsed the roadmap for the reforms and national dialogue and urged government of Lesotho to prioritize the constitutional and security sector reforms which should be completed by May 2019. And directed that a progress report be presented to the summit in August 2018.
- (ii) Urged all political parties in Lesotho and their leaders to take the national dialogue and the reforms process seriously and participate in both processes so as to find lasting solutions to the political and security challenges of Lesotho. The Heads of governments urged the Lesotho government and all relevant stakeholders to hold the national dialogue by June 2018 and report progress during the next SADC ordinary summit.
- (iii) They approved the recommendations of the SADC expanded oversight committee and urged of the government of Lesotho to implement the recommendations.

He indicated that some of the key recommendations by the SADC oversight committee pertain to the need to improve efficiency, accountability and coordination among the security sector institutions. As such, H.E Matondo mentioned



that this security sector dialogue is aligned with their mandate, objective and expectations. H.E Matondo went on to say that they value the efforts done by the government and all other stakeholders towards creating a conducive environment towards holding of this forum. He added that SADC stands ready to continue lending its assistance towards the successful implementation of the process. Furthermore he indicated that SADC was encouraged by the spirit and commitment portrayed by leaders of the security sector institutions to redress the malpractices of the past and in laying a solid foundation for a stable and prosperous Kingdom of Lesotho.

H.E Matias Matondo summed up his presentation by noting that the relevance and impact of the security build up dialogue cannot be underestimated as part of the overall reforms process. He urged all participants to openly engage and exchange views on the constructive approaches to reform their respective institutions taking into account the best practice and lessons learned from other democracies within the region and beyond.

2.4 Expert Opinion on Lesotho's Security Sector Reform



Dr. Tlohang Letsie of the National University of Lesotho

Dr. Tlohang Letsie of the National University of Lesotho in the faculty of Political Science and Administrative Studies presented a paper he prepared on the issues of security faced by Lesotho, titled “Security Sector Reforms Process in Lesotho; Issues to be Considered.” He started by laying down what security sector reform implied. He said “This concept was introduced in 1997 by Clare Short who was Britain's Secretary of State for International Development.” He proceeded by indicating that security sector reform called for various tasks of national security to be assigned to specific accountable security sector bodies with each component of the security funded accordingly. He highlighted that there are three kinds of securities;



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- (i) National Security: This is concerned with external aggressions, as well as defense of a country's borders. This is mainly the responsibility militaries or armies.
 - (ii) Public security: which is concerned with internal day to day law and order issues, which is mostly the responsibility of police and intelligence services.
 - (iii) Citizen Security: which involves the exercise of human rights and mostly the responsibility of law and policy makers

Dr Letsie indicated that the above securities cannot be divorced as they are highly related and complement each other and went on to show in his presentation that security sector reform emphasized a number of considerations for it to be complete. There are four of these;

1. It emphasizes an expansion of the definition of security sector to include a number of government bodies including Police, intelligence and others rather than just the military. This goes to show that the definition of security sector goes beyond just the military but involves other sectors.
2. It implies a more clearly defined relationship between this sectors, this is to say how they relate with one another.
3. It implies a more clearly defined relationship between the security sector and various government institutions of democratic state such as the parliament, judiciary, civil society and others.
4. A more clearly defined relationship between national security objectives and budget allocations. This is to say each component of the security sector has to be funded according to their allocated tasks and necessity.

Dr. Letsie mentioned that security sector reforms have to be an inclusive process with specific deadlines that are adhered to. Furthermore, he highlighted that there has been academic debates about security sector reforms with some saying that for security reform to be successful they have to be home owned, with locals on a steering wheel leading the process whilst the external role players provide advice. He noted that the concept of security sector reform in Lesotho is not necessarily a totally new concept. He highlighted that because of its dominance the army will feature more than any other sectors.

Dr. Letsie went on to narrate that following the 1994 political instabilities, the then government of Lesotho invited SADC mediation, which noted that “the army should be restructured, retrained and reduced in size.....and a small land locked country like Lesotho does not require a large army.” This was followed by the Khoarai Commission which recommended that;

- (i) The LDF be involved in civil works and this role be emphasized more than the defense role.
- (ii) LDF has to recruit technical and professional personnel.
- (iii) The quality of military leadership be improved by retraining and creating separate training programs for officers different from that of other ranks.

Dr. Letsie noted that the Steyn Commission tasked with investigating the 2009 State House attacks noted that the army had inadequate training. In 2015 subsequent to the killing of the army commander, the Judge Mphaphi Phumaphi Commission among others noted that some of the security challenges in Lesotho emanated from the overlaps in the



functions of the army and the police within the scope of the LDF Act of 1996 mandating the army to deal with internal disorder, maintenance of law and order as well as prevention of crime which are commonly known to within the scope of the police.

Dr. Letsie mentioned that there were some reform initiatives taken by the country. Firstly, in 1994 there was a formation of the ministry of defense, whose aim was to preserve maximum operational independence of LDF while ensuring democratic accountability and the need for ultimate political strategic control of the Army. This meant that the armed forces should refrain from involvement in politics other than through the constitutionally appointed powers, and the civilians should refrain from attempting to inform operational matters of the military discipline, the solution being crucially on civilian respect for military professionalism and military acceptance of civilian supremacy. Another initiative he says was one that as undertaken in 1996 which is in relation to the appointments of the heads of the security sectors where through the LDF 1996 Act, the powers to appoint heads of security sectors was now vested on the recurrent prime minister while initially this used to be the responsibility of the Defence Commission. This he observed, gave the Prime Minister too much power which became problematic in the long run.

The Defence Commission as envisioned in Sec 145 of the Constitution consisted of the Prime Minister as the chairman, the commander of the Defence force, the Police Commissioner, the Director of the National Security Services, the assistant commissioner of police, deputy director of the National Security Service; and the deputy Commander of the Defence Force. He observed that whenever there was conflict of interest on either of these aforementioned persons, such a person would be recused from the decision-making process, the appointment was a collective decision. However, the Defence Commission was abolished and its powers vested upon the Prime Minister alone. Subsequent to the 1998 political unrest, another security reform was undertaken by the Indian army which sought to professionalize the LDF.

Dr. Letsie went further to examine the environment under which the current reforms are to take place. He said they are likely to take place in a setting which is politically unstable wherein the security sector agencies have intruded in civilian politics. He further observed that there are real testimonies and perceptions that security agencies are highly politicized, that is, in some cases there is actual evidence pointing to the fact that the security sector has been politicized, while in sometimes the politicization is just a perception. He maintained that even those mere perceptions do matter. He further lamented that state security agencies are not efficient but often barbaric and brutal when dealing with public security. He went on to appeal that security sector reform should be based on rigorous multi-stakeholder consultations that are driven by facts not polarization and emotions. He suggested that the country must get its priorities and objectives right, both for short term and long term.

In trying to identify the national objectives, Dr. Letsie contended that immediate targets should be identified; and if the country can do without security agencies? Or would it be ideal to have pruned institutions? Dr. Letsie went on to note that some of the functions of the security institutions are misplaced, citing instances of car accidents which are often treated by police not paramedics as it ought to be. He mentioned that security sector reform should also get rid of the overlaps that exist amongst the security agencies, noting that it is ideal for the army to be exclusively involved in



serious cases of aggression and violence. The security sector reform process should be an opportune moment to restore trust and confidence by depoliticizing these agencies. He further charged that it may be advisable to resuscitate the Defence Commission, and wrapped up by noting that it is important to look into the issues of funding and resourcing of these agencies versus their mandate.

Observations and Discussions

The session's moderator professor Kopano Makoa commended Dr. Letsie for his boldness in tackling the issues of security in Lesotho. Prof. Makoa noted that some of the tautologies include people blaming politics, others talking about political interference, independence of these institutions, and accountability of the security agencies. Political activist and current government spokesperson Mr Nthakeng Selinyane opined that Lesotho has been in a vicious cycle of political instability yet there have been clear national covenants aimed at remedying this state of affairs. He echoed Dr. Letsie sentiments that there are clear regulations and guidelines that should be guiding the security agencies and yet those in charge have walked away from these principles-a charge to which Mr Selinyane contends that the citizens should not be ashamed to hold those responsible accountable for.

He contended that Lesotho is a signatory of Transformation of Security Forces: An African Handbook wherein it affirmed that security forces shall be placed under elected representatives and subject to oversight of expertise, elected representatives and organized civil society, and yet, sadly for more than a decade those harnessing the army for their own nefarious reasons claimed that the territory of security was holy and not meant for civilians. Deputy Commissioner of Corrections Mr Mosheoane Tšolo lamented that scholarly works on security as well as Dr. Letsie run short of noticing correctional services as part of security establishment. Major General Matobakele offered apologies on behalf of the Lesotho Defence Force (LDF) for the previous transgressions and pain inflicted to the nation. He contended that it is very important to reach to the crux of the problem, which in his view is political interference. He lamented how previously politicians gave the army free license to do as it pleases while harnessing it for their selfish deeds. He stressed that they know that they are servants of the nation and as such they are subject to civilian control. H.E. Christian Manahl opined that while there is nothing wrong with discussing questions posed by Dr. Letsie, perhaps a good starting point would be to start with **national security strategy** which will inform which institutions are needed to tackle the threats.

Dr. Letsie responded to professor Makoa's questions by noting that the reforms have to be led by the current government and advised the government to be strategic while trying to have an inclusive and participatory process, and beware of being held ransom by people who do not want reforms to be carried out. He went to echo Mr selinyane sentiments that the army should be under civilian control and should at all times be seen to be upholding this cardinal principle. He noted that Lesotho Correctional Services (LCS) is indeed part of the security forces and should be afforded the same platform as the sister institutions in the reform agenda. He went on to commend Major General Matobakele for offering heartfelt apologies and noted that army seems to be on right path of redress and getting rid of certain elements that tainted its image.

Mr Malefetsane Masole a retired Deputy Commissioner of the Corrections, contended that politicians are always eager to woo or to capture anyone who can help them to strengthen their grip on power, and asked why is it that security



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agencies allow them to be used by civilians. Next was Senior Superintendent Mokhethi Raphuthing of the Lesotho Correctional Services (LCS) mentioned that by default civilians and security should have close interaction while at the same time the same civilians are highly polarized by politics thus this precipitating into polarized security agencies. Brigadier Stemmere of the Lesotho Defence Force (LDF) remarked that security sector reforms are not entirely a new phenomenon in Lesotho. He noted that there have been so many initiatives and efforts to restructure the army but from time to time they faced resistance from within the army and some among the political arena.

Brigadier Stemmere canvassed for holding national debate on security and subsequent adoption of **national security strategy** in which the parliament will play a major role in setting up defence and security commission with extensive powers to carry out investigations and monitor security agencies, and lastly a total overhaul of security architecture. He stressed on the need to have a mechanism of democratic control over the security agencies. Martha Mosoang Lesotho Trade Union Congress from labour point of view noted that workers should not be threatened, contended that security agencies personnel should be allowed to have rights like all other workers, and concluded by noting that security agencies play a pivotal role towards ensuring stability of the country which in turn would promote investors' confidence.

Dr. Letsie replied by saying that it is extremely important that the leadership of the security agencies appreciated that they have to insulate themselves from political interference or abuse. He went on to note that security agencies cannot reform themselves, but instead civilians should map a way forward and drive the seemingly uneasy process. He appealed to those present to be focused on the process and take bold decisions to ensure that security sector reforms are carried out.





2.5 Stakeholder Opinion, Lesotho Police Staff Association (LEPOSA)



(LEPOSA) Secretary General Inspector Moraleli Motloli

On behalf of the Lesotho Police Staff Association (LEPOSA) Secretary General Inspector Moraleli Motloli began his presentation by noting that he wishes to adopt the African Union (AU) definition of security reform, wherein, security sector reform is conceptualised as the process by which countries **formulate or reorient policies, structures and capacities of institutions engaged in the security sector** for them to be effective and efficient and responsive to the democratic control and the security and justice needs of the populace. As such, security sector reform is intended to ensure security sector offers protection from internal and external threats without itself becoming a threat resulting into a safe environment free from instability thus encouraging economic growth. He noted that in essence, security sector reform seeks to come up with institutions that uphold rule of law and preserve human rights. He went on to mention that security sector reform needs serious commitment from all the stakeholders as well as political backing and will.

He noted that security sector reform needs a well tilted political environment upon which all the stakeholders are involved and contributing to the process. Inspector Motloli mentioned that security sector reform is a tough exercise which is intrinsic of differing opinions thus a need to prioritize. He mentioned that often areas of prioritization are depoliticization, militarization, restructuring management structures, subjecting police to oversight, and introducing the process of checks and balances. He went on to mention that they are aware that the current coalition government envisages a security sector reform which will professionalize security institutions, make them to be non-partisan, subject them to civilian control and insulate them against executive [political] abuse. He reminded the participants that the Lesotho Mounted Police Service (LMPS) was the first combat force of the country, and later gave birth to other security agencies. He remarked that in 1970s the police force was used to suppress opposition, and later in 1990s the then government of Basotho Congress Party (BCP) reformed the LMPS through among others the White Paper of 1997.



Inspector Motloli noted that the establishment of the LMPS is provided in Sec 147 of the Constitution of Lesotho, wherein the maintenance of law and order is vested in the hands of the police and other duties of the police are entrenched in the Police Act No 7 of 1998. He went on to say that section 145 of the Constitution mandated the Lesotho Defence Force (LDF) to deal with internal security thus creating overlaps and ambiguity. He mentioned that LMPS reform prioritized demilitarization, depoliticization and restructuring of rank structure. The rank structure was envisaged to be flat and linked to civilian police, while the promotions would be based on published policies based on merit and objective not seniority. Southern African Development Community (SADC) attempted to carry out another reform cycle in 2003, but this initiative did not take place. To date, LMPS reform programme has only dealt with minor issues such as changing the rank structure to civilian ranks. He attributed the failure of this initiative to a number of reasons which include no one charged with implementation, monitoring and evaluation of the programme, and left to police to reform itself.

Inspector Motloli noted the following as the challenges:

- Lesotho Mounted Police Service (LMPS) is infested with politicization wherein members of the police service take part in political secret meetings.
- He further said there is terrible ambiguity on the criteria used in the selection of the senior officers,
- He lamented that the Prime Minister has sweeping powers over appointments of senior staff, and he contended that these powers need checks and balances.
- Oversight bodies such as Police Complaints Authority (PCA) are weak.

He concluded noting that;

- Training is very central towards changing the orientation of the police in order to affect the attitudes of the incoming generation and as such it is important to have all the stakeholders on board to ensure ownership of the process of reform.
- He argued that this can be achieved through proper sensitization, mobilization and advocacy.
- He went to mention that LMPS reforms should ensure resuscitation of Training Advisory Board which will overhaul the curriculum and align it to the national priorities.
- He recommended that there must be a reform body made up of sub committees which will oversee various aspects of reform agenda (security sector reform, public service reform, media reforms, parliamentary and constitutional reforms, judiciary reforms).
- In terms of the democratic control and running of the institution, it is important to have overall direction vested to the police authority but limited to policy matters for efficiency and effectiveness of the police in accordance with the law, while the command and control will be vested in the commissioner of the police.

He summed up his presentation by lamenting that Police Complaints Authority (PCA) is currently a toothless bulldog with only powers to recommend and such recommendations are often implemented or disregarded, as such post-reform era should have a strengthened PCA.



3. Presentations by Security sector Institutions

3.1 Lesotho Correctional Services (LCS)

The Deputy Commissioner Mosheoane Tšolo explained the function of the correctional service is to provide safe and humane custody of inmates as well as to ensure that they are rehabilitated and integrated back to the community. He showed that integration to community could be in three cases, firstly when the inmate has served his full sentence, then through amnesty when they are pardoned by His Majesty the King and lastly by parole. This is conditional on the process of rehabilitation done by psychologist and counsellors, and it is with consideration with the victim of the crime committed in case it's against the persons.



LCS Deputy Commissioner - Mosheoane Tšolo

Challenges faced by LCS

Commissioner Tšolo lamented that globally, regionally and locally Corrections are not regarded as part of the security agencies. He went on to mention that as a result, government does not prioritise them in terms of resourcing and funding. He went on to note that the other challenge is poor infrastructure; they are working in dilapidated buildings and dehumanising place yet they are housing convicts who have committed serious crimes and must be rehabilitated. He added that there are no clearly stipulated guidelines on appointment and promotions of all staff including senior management.

Recommendations

Commissioner Tšolo suggested that the first step is for them to get recognised as part national security establishment, and be given proper training and resources. He showed that they need to have necessary resources to help them combat crime within the corrections. He added that regulations and guidelines should be in place to inform the process of appointments within their institution.



3.2 Lesotho Defence Force (LDF) PDF Compressor Free Version

Colonel Naha Kolisang of the Lesotho Defence Force (LDF) noted that over and above their constitutional mandate, Section 5 of the LDF Act affords secondary responsibilities of ensuring internal law and order. He mentioned that LDF has been engaged in rigorous reforms which resulted in structural changes. He stated that in between 1994 and 2012 the army attained an acceptable level of functionality, despite the fact that some sections of the army allowed themselves to be captured by politicians.



Colonel Naha Kolisang - Lesotho Defence Force

Challenges

Colonel Kolisang lamented the fact that there is no clear funding policy, and asked why the LDF is funded and resourced than the LMPS. He questioned whether people entrusted with administering the army have enough and relevant skills and capacity to manage the institution. He echoed previous sentiments that the army is highly politicised and contended that senior officers should stand firm against political interference and pleaded with politicians to cease with political wooing of army officers.

Recommendations

Colonel Kolisang advised it would be ideal to have LMPS and LDF working together to cut costs. He went on to mention that the envisaged reforms should also address the overlapping mandates of both the army and LMPS. He tackled the contentious question of whether Lesotho needs the army, by noting that any country needs some form of military deterrence and that Lesotho has regional and international obligations to meet through the army.



3.3 Lesotho Mounted Police Service (LMPS)

Lesotho Mounted Police Service (LMPS) Deputy Commissioner – Criminal Investigative Division, Paseka Mokete hesitatingly and briefly took to the podium. He acknowledged that there is a need for reforms and more especially security sector reforms. He went on to mention that there is a mischief in relation to the provisions that deal with the appointment of the commissioner. This, he argued creates a fertile ground for political meddling, thus he recommended that reforms should address this conundrum. He further mentioned that there should be insulation mechanisms that will prevent politicians from abusing their oversight role as it has been the case in the previous years.



Deputy Commissioner Paseka Mokete - Lesotho Mounted Police Service

Deputy Commissioner Mokete further noted that LMPS should be reformed towards a culture of observing human rights while carrying out its duties. He also argued that the overlapping mandates that currently exist amongst the security sector agencies should be dealt with. He also stressed that reform programme should also cover depoliticization. Finally, he submitted that reforms should usher in a **clear communication strategy** that will be used by security agencies to one another and other stakeholders.



3.4 National Security Service (NSS) Version



Director of National Security Service (NSS) - Mr. Itumeleng Letsepe

The Director of National Security Service (NSS) Mr Itumeleng Letsepe noted that they welcome security sector reforms. He urged all national security agencies to take advantage of these reforms to fix the challenges they face as individual agencies and those that they seemed to be facing while working together with their sister agencies. He mentioned that the reforms are not a new phenomenon to the NSS, they started as a department under LMPS but through reforms they are independent and now have their own principal secretary. On the issue of politicisation he stated that politicians should understand that the national security sector has its own laws and regulations and should stop imposing their political interests and flouting the laws. He noted that their mandate is to give intelligence briefing by detecting serious matters of security which may have devastating effects on the country and yet they are only allowed to play an advisory role to the government which sometimes ignore them.

He went on to mention that intelligence equipment is very expensive and called on government to appreciate that National Security Service (NSS) needs adequate funding in order to efficiently carry out its duties.

3.5 Deliberations on the Presentations made by Security agencies

Presentations by the four security agencies (LDF, LMPS, NSS and LCS) were followed by discussions facilitated by Professor Kopano Makoa.

Professor Makoa led the discussion by noting that whilst he respectfully noted remarks from some of the institutions that one of the key perennial problem faced by these institutions is 'political interference' he was of the view that there has been conflation between political interference and flouting of the laws by those in power. He submitted that there



has to be political in order to ensure civilian control and oversight. He further noted that **depoliticization should be understood in the context of having strict laws, regulations and frameworks that will prevent politicians from abusing their political mandate within government.**

On Human Rights violations often perpetrated by security agencies, Prof Makoa opined that promotion of human rights begins with upholding of the law, and whenever there is culture of impunity, human rights violations escalate. As result he suggested that security agencies should know their frontiers and avoid being accused of human rights violations. First from the floor was former Lesotho Defence Force (LDF) Commander Lt. Gen. Makhula Mosakeng, who opined that 'reforms need serious government commitment'. He noted that it is worrisome to note some of the leading figures in public sphere are not fulfilling their mandate and duties efficiently. In essence he submitted that institutions are led and made by people, who if they do not observe laws that guide their mandate, then reforms will be an all-time process.



 Mr. Nthakeng Selinyane

Government Spokesperson Mr Nthakeng Selinyane noted that it is imperative to sufficiently comprehend the distinction between political interference and political oversight. He cited that Lesotho Defence Force (LDF and all other security agencies) must subject itself to civilian control only when such is done on the goodwill of the nation. He invoked military discourse which builds on the notion that military personnel have to recognise civilian control. He further noted that it is important to find out the traditions which our security agencies are drawn from, and such which will serve as yardstick to these institutions. He further argued there are existing frameworks and clearly defined regulations which allow citizens to intervene in matters concerning security agencies, and such regulations should be made known and understood by every citizen who wishes to participate in matters relating to security.



 Mr. Pelele Letsoela

Mr Pelele Letsoela of Basotho National Democratic Party (BNDP) lamented the fact that in the previous years the security agencies and government attempted to carry out reforms which were not inclusive of other key stakeholders such as opposition parties. However, he welcomed the fact that the presentations from these institutions firmly canvassed a need for all-encompassing and participatory security sector reforms. He went on to remark that he was not aware of the challenges faced by Lesotho Correctional Service (LCS) and recommended that all security agencies be treated equally and fairly in terms of resourcing and recognition. He went on to critique the thinking around bringing back *Defence Commission*, by noting that it was abolished because it was heavily compromised and dominated by one politician-the Prime Minister. He cut short his remarks by commending the session that it unveiled the thinking of security

agencies as the country approaches reforms.



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Mr. Percy Mangoela

Long serving and retired diplomat His Excellency Mr Percy Mangoela remarked that it is vital to understand that the much touted reforms came as result of sad state of affairs which Lesotho has been trapped into since 1970. He painted a nostalgic depiction of the heydays of the first post-colonial government (1966-1970) of the late Dr Lebausa Jonathan which saw democracy, rule of law and human rights thriving. He noted that it is important to make a through exercise of introspection of what has rendered Lesotho to where it is today .He passionately emphasised that it is imperative to focus on the SADC-sponsored Reforms which will defeat the cycle of

political instability which Lesotho is currently entrapped into, while not dismissing the fact that there are other areas of governance which may need transformation in the long run.

H.E. Mangoela further remarked that Lesotho Correctional Service (LCS) has been mistakenly referred to as a 'disciplined force', whereas in practical terms it is a correctional institution which primarily deals with shepherding offenders back to non-deviant behaviour. He winded up his submission by noting that by nature political is oversight needed, but when such oversight goes beyond the boundaries of rule of law and limits in place, then such become inappropriate political intervention which must not be tolerated.



Mr. Mojalefa Thulo

Former Lesotho Correctional Services (LCS) Commissioner Mr Mojalefa Thulo contended that some scholarly works and post-colonial constitutional provisions of the land regard correctional institutions as part of the security sector or disciplined forces. He went on to say that over the years correctional service has been sidelined, and as the country approaches reforms it is important to take into consideration the existing regional, continental and international conventions such the Kampala on Prison Conditions in Africa, Arusha Declaration on Prison Practice, Ouagadougou Declaration on Acceleration Penal and Prison Reform in Africa to inform security sector reform.

Civic activist and journalist Mr Lawrence Keketso remarked that the session was a breakthrough by demystifying the 'question of security sector reforms' which has always been treated as sacrosanct by mostly those within the security establishment. He went on to echo Commissioner Thulo' sentiments, that it is essential for Lesotho to embrace international standards in order to have functional and effective state security organs. Furthermore, these security organs should at all times be accountable to the citizens not politicians. He said that security sector reforms depend on revamping or total overhaul of some laws, as such constitutional or legal reforms and security sector reforms are greatly interrelated and interdependent.



Retired Assistant Commissioner of the Lesotho Correctional Service (LCS) Mr Mopeli Letsie lamented the fact that people are not aware of the grave state of affairs of the correctional services; **these institutions have become a breeding ground and manifestations of criminal activities.** He appealed to government to urgently provide assistance to correctional institutions to arrest this sad state of affairs. He went on to note that the social integration program is flawed because it is based on closed system where offenders are locked up, wherein as consequence they continue to be recidivists. He echoed Colonel Kolisang remarks that the army is well trained; the only challenge is the implementation of what is expected of those in charge of the institution. He passionately called for reinstatement of the Defence Commission, which among others will insulate security organs personnel against political exploitation and interference.

Mr Lemohang Molibeli of Development for Peace Education (DPE) commended the security organs for opening up and sharing the platform with the non-state actors in putting into perspective the 'thinking' around security sector reforms. Mr Seabata Motsamai of Lesotho Council of Non-Governmental Organizations (LCN) echoed Mr Molibeli remarks by appealing to the participants to embrace a culture of dialogue and have successive discourses on security sector reforms.



Mr. Lemohang Molibeli



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Mr Mafole Sematlane

Next to take to the podium was Mr Mafole Sematlane who said that as speaker after speaker lamented the polarised environment we are in as a country, perhaps the first step was to embark on reconciliation and holistic social healing process. He argued that constitutional or legal reforms would be fruitless if they are carried out without dressing the wounds of the past. Mr Sematlane further called on those driving the reform process to have holistic coordination in order to attain the desired outcome. He empathised on the need for us as the nation to engage on a serious introspection and social healing process.

Mr Seabata Motsamai took to the podium to inform the gathering on the state of NGO-led multi-stakeholder steering committee which was formed post national dialogue organised by Lesotho Council of Non-Governmental Organizations (LCN). The steering committee is meant to be a reference group during the reform process and ensure the process is transparent, inclusive and participatory. Mr Motsamai noted that almost all stakeholders welcomed and recognised the role of steering committee, and international partners have provided funding to sustain this initiative. Mr Tsikoane Peshoane added to Mr Motsamai remarks by noting that steering committee seeks to strike a balance amongst all other stakeholders to be on equal footing and prevent political players from claiming mileage out of the reforms whereas it is a national project.

On behalf of government led steering committee, Cabinet Administrator Adv. Makhetha Motsoari, remarked on the then planned national reforms prayer. He went on to narrate the government roadmap towards reforms which include holding of national leaders' forum, followed by multi stakeholder dialogue in two forms (Plenary One and Plenary Two). He mentioned that the government has envisaged short term reforms which will take twelve to thirty six months which cover security sector, judiciary, public service, constitution and parliament , and will be followed by a long duration reforms.



On behalf of the government, retired Colonel Tanki Mothae and Principal Secretary of Ministry of Law, Constitutional affairs and Human Rights commended Transformation Resource Centre for organizing this session and praised the non-state actors for playing a magnificent role towards ensuring that reform process starts. He noted that government is committed to reform agenda and welcomes non-state actor's intervention towards reform process and appealed on all stakeholders to join hands towards making the reform agenda successful.



Col. Tanki Mothae - PS Ministry of Law, Constitutional Affairs & Human Rights



4.1 Transformation Resource Centre (TRC)-sponsored Security Sector Reform Magna Carta

1. The session marked a historic turn of events, wherein security sector institutions, which previously did not see eye to eye, sat under one roofing and warmly engaged in deep and frank conversations about their work and issues of security stratum.
2. His Excellency Christian Manahl Head of the European Delegation in Lesotho raised concern that it is now almost a year without the much touted National Multi-Stakeholder Dialogue yet it was a pre-election commitment by all political leaders. He emphasized that the good starting point of security reforms should be formulation of **national security strategy** which will inform, which institutions are needed to tackle particular threats.
3. Notable steps have been taken towards answering the clarion call of reforms, especially in security wherein command structure has been changed, exiled soldiers have been integrated back in the army and members linked with serious crimes have been arrested and appeared before the courts of the law.
4. All stakeholders have been urged to participate in the reform process and bring all the issues of concern to the discussion rather than suspending their participation by laying out preconditions.
5. Head of SADC Preventive Mission in Lesotho (SAPMIL) Dr Matias Matondo reiterated the importance of observing the just-concluded SADC Double Troika Summit resolutions which tasked Lesotho with holding National Multi-stakeholder by June 2018, carrying out Constitutional and security reforms by May 2019.
6. SADC remains committed towards helping Lesotho to carry out reforms and returning to the path of stability and normalcy.
7. Expert on Military Relations and Political Scientist Dr Tlohang Letsie's presentation on security sector reform in Lesotho noted the importance of thorough conceptualisation of the making of security sector reform.
8. Lesotho has previously engaged in security sector reforms, in one way or the other, with the army being the institution that has frequently carried out reforms.
9. Defence Commission as envisaged in Sec 145 of the Constitution of Lesotho was a 'good mechanism' however it was abolished and its powers vested upon the Prime Minister.
10. Prime Minister has too much and unchecked power over security agencies, and in turn this has made these institutions to be vulnerable to political abuse.
11. Reforms are taking place in unstable political climate, and security agencies are bearing the brunt of these chaos.
12. Security agencies are under resourced, politicised and often violate human rights, as such security sector reform should be an inclusive and wide-ranging consultative process which give birth to depoliticised, efficient and well-resourced security agencies.
13. One of the key stakeholders, Lesotho Police Staff Association (LEPOSA) submitted that security sector reforms should come up with institutions that uphold rule of law and preserve human rights.
14. Security sector reform can only thrive wherein all stakeholders are committed to the process and most essentially, under well tilted political environment.
15. Security sector reform should aim at professionalizing security institutions, making them to be non-partisan,



subjecting them to civilian control and prosecuting them against executive [political] abuse.

16. Lesotho Defence Force (LDF), Lesotho Mounted Police Service (LMPS), National Security Service (NSS) and Lesotho Correctional Service (LCS) are politically polarised, under-resourced, crippled with political interference/abuse as well as poor/ambiguous guidelines and legal provisions.
17. Lesotho Defence Force (LDF) and Lesotho Mounted Police Service (LMPS) have inherent overlapping mandates which need to iron out swiftly.
18. There are no clear frameworks and guidelines in the process of appointment of senior officers of the four security agencies. Reforms should ensure that there are well articulated rules and guidelines that are based on merit and excellence.
19. All security agencies should be subject to civilian control or political oversight.
20. Security Sector Reform and the Reform Agenda in its entirety can only thrive when those involved have reconciled and socially healed from wounds of the past.
21. Non-Governmental Organizations led steering committee comprising all stakeholders with equal bargaining power is committed to ensuring that Reform Agenda in its all areas is carried out in order to have a prosperous and stable Lesotho. Professor Kopano Makoa submitted depoliticization should be understood in the context of having strict laws, regulations and frameworks that will prevent politicians from abusing their political mandate within government.
22. Retired Assistant Commissioner of the Lesotho Correctional Service (LCS) Mr Mopeli Letsie lamented correctional services institutions have become a breeding ground and manifestations of criminal activities as they are under resourced.
23. Former Lesotho Correctional Services (LCS) Commissioner Mr Mojalefa Thulo contended that over the years correctional service has been sidelined, and as the country approaches reforms it is important to take into consideration the existing regional, continental and international conventions such the Kampala on Prison Conditions in Africa, Arusha Declaration on Prison Practice, Ouagadougou Declaration on Acceleration Penal and Prison Reform in Africa to inform security sector reform.
24. Commissioner Tšolo lamented that globally, regionally and locally Corrections are not regarded as part of the security agencies, and he suggested that as the first step LCS should be recognised as part national security establishment, and be given proper training and resources.
25. His Excellency Mr Percy Mangoaela remarked that Lesotho Correctional Service (LCS) has been mistakenly referred to as a 'disciplined force', whereas in practical terms it is a correctional institution which primarily deals with shepherding offenders back to non-deviant behaviour



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CONCEPT NOTE FOR INTER-INSTITUTIONAL SECURITY CONSULTATIVE SESSION and SECURITY SECTOR BUILD – UP DIALOGUE FOR NATIONAL REFORMS

Constitutional Reforms for Better Protection of Human Rights

Introduction:

One of the centerpiece of constitutional reforms must be protection of human rights, strengthening good governance and advancement of social development. From human rights based approach whatever undertaking initiated must ensure that human and people's rights are protected. The Transformation Resource Centre (TRC) subscribes to school of thought where national reforms endeavours must be channeled towards bringing to an end all forms of human rights violations in the country. The Centre is of the view that this particular mission requires both commitment of everybody and direct engagement of security institutions, of which are usually perceived as perpetrators of human rights violations.

For instance SADC Commission of Inquiry to the Kingdom of Lesotho made recommendations that “... *criminal investigations on the death of General (sic) Mahao be pursued vigorously and the LMPS is empowered and resourced accordingly*”. The recommendations further included that “... *all LDF officers implicated in cases of murder, attempted murder and treason be suspended while investigations in their cases proceed in line with international best practice*”. The Commission recommended further that “*the deficiencies and overlaps in the constitution and mandates of security institutions need to be looked into urgently with a comprehensive strategy to reform*”. It is on the above basis that the Transformation Resource Centre seeks to facilitate Inter-Institutional Security Consultative Session which is a pre-dialogue and subsequently a Security Sector Build – Up Dialogue for Turning National Security Establishments into Human Rights Protection Vanguard.

The purpose of the dialogue is to provide a platform for senior officers of security institutions namely; Lesotho Correctional Services (LCS), Lesotho Mounted Police Service (LMPS), Lesotho Defence Force (LDF) and National Security Service (NSS), to identify areas of concerns in their respective institutions which constrain their mandate in protection of human rights. The concerns so identified during pre-dialogue shall be a basis and agenda for a broader dialogue comprising different stakeholders. With regard to the dialogue, it is expected that issues raised at pre-dialogue will be deliberated upon and possible solutions and propositions that will be taken in to broader national reform project. The final product of the dialogue shall be produced into a report, and form agenda for a multi-stakeholders national reforms on the security sector.

Problem:

While notable steps are taken by the government of Lesotho to implement SADC Recommendations, there is still a lot to be done. Members of the above-mentioned security institutions are all disciplined forces in terms of the Constitution of Lesotho. This means that there is a possibility that their participation of the comprehensive national reforms can be



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restricted. As a result they are prone to miss an opportunity to provide crucial information about triggers of human rights violations, ailments of security institutions and appropriate remedies and strategies to reform. Therefore this activity is needed to provide members of the disciplined forces an opportunity to dialogue on issues affecting them in an enabling environment.

SADC Commission identified amongst others issues emanating from the national laws which need to be addressed such as overlapping of LDF and LMPS mandate. Notwithstanding that there are overlaps among institutions of security, in their work the protection of human rights is always compromised. This is sometimes attributable to deficits in leadership of these institutions. The issue of appointment and dismissal of the heads of these security institutions apparently remains one area of concern. The proposed pre-dialogue and subsequent dialogue shall delve deeper into some of these issues and provide how best, in their view, security sector in Lesotho can be reformed.

Overall Aim:

To create platforms preferably meant to assist members of disciplined forces to articulate their consolidated contributions on national reforms project with specific focus on the constitutional reform of security establishments.

Outcome:

To provide crucial information on human rights violation committed by security institutions and appropriate remedies and strategies to constitutional reforms.

Planned activity:

6.2.6. Facilitate sessions for National Conferences.

Indicator:

Hold on-going facilitation of National Reforms with government and other stakeholders.

Objectives:

- To discuss constitutional proposals that can be adopted to improve efficiency, accountability and competency of security sector as well as adherence to human rights standards.
- To discuss important factors that could assist de-politicization of security sector.
- To review issues of priority in terms of resources allocation and constitutional reform of the security sector.

Methodology:

TRC shall facilitate Inter-Institutional Security Consultative Session (pre-dialogue) with senior officers (or senior management) in the security sector. The purpose of the session shall be pin-



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point issues affecting security sector which must be deliberated upon during a dialogue. This session shall be held on the 21st May 2018 at Mpilo Hotel.

The session shall be followed by a two-day dialogue which shall be 31st May and 1st June 2018.

Day one shall be focused on presentations by respective security sectors. This shall be followed by 4 break-away sessions each working on one institution. Report backs shall be submitted by groups' rapporteurs. **Day two** shall be more of analysis and presentations by the experts in the security sector. This shall also provide way forward on identified issues.

Target Audience:

The pre-dialogue session is expected to attract senior management of LDF, LMPS, LCS and NSS as well as SADC representative on security issues, European Union Head of Delegation and United Nations Resident Coordinator. The main activity Security Build – Up Dialogue for National Reforms targets specifically the government, parliament (security cluster and law and safety cluster), LDF, LMPS, NSS, LCS, SADC, UNDP and Steering Committee comprising representatives of NGOs, Business sector, government, opposition parties in parliament and opposition parties outside parliament.

Dates and Venue:

Pre-dialogue: will be held on the 21st May 2018, at the place Mpilo Hotel.

Dialogue: Shall be held at Manthabiseng Senatsi Convention Centre (National Convention Centre) on the 31st May and 1st June 2018.

Budget:

TRC with assistance of development partners under good governance and human rights programmes will be bear responsibility.

Approved by

Programs Manager:

M&E Coordinator:

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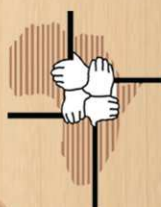


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