

02 MAY 2018

**Extended Pre-Trial Detention, Police Brutality On Disadvantaged Communities, Judicial Crisis And Poor Service Delivery In Mining Affected Communities Have Become Major Contributors Of Human Rights Violations In Lesotho**

Transformation Resource Centre participation at the NGOs Forum and the 62<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights – Nouakchott, Islamic Republic of Mauritania 21-27 April 2018

The Transformation Resource Centre (TRC) as a national vanguard of human rights promotion and protection in Lesotho participated in the Forum on the participation of Non-governmental Organisations in the Ordinary Sessions of the African Commission on Human and Peoples' Rights (African Commission), also known as the NGOs Forum. The forum is a platform coordinated by the African Centre for Democracy and Human Rights Studies to promote advocacy, lobbying and networking among Human Rights NGOs, for the promotion and protection of human rights in Africa. Participants at the Forum were representatives from African civil society organisations/NGOs, international NGOs from Africa and beyond working on democracy, human rights and the rule of law issues.

During the forum, TRC participated in 2 main thematic areas namely; 1. Status of Human Rights and Democracy in Africa (update from sub-regional Focal Points on the general situation of human rights in Africa). 2. Special Interest Groups Discussions; TRC focused on prevention of torture in Africa and Economic, Social and Cultural rights in Africa. TRC further participated in side events on "the role of the African Commission in the promotion and protection of the independence and accountability of judges and lawyers in Africa". The side event was organised by the Africa Judges and Jurists Forum (AJJF) and the International Commission of Jurists (ICJ).

The TRC was granted an observer status; which is a separate standing granted by the African Commission on Human and Peoples' Rights to non-governmental organisations working in the field of human and peoples' rights, therefore TRC participated in the 62<sup>nd</sup> Ordinary Session of the African Commission where state delegates from all African countries and representatives of National Human Rights Institutions met.

TRC submitted a report before the African Commission centred on Civil and Political Rights and Socio-Economic and Cultural Rights;

**UNDER CIVIL AND POLITICAL RIGHTS FIVE (5) ISSUES WERE RAISED;**

**1. SADC Commission of Inquiry Recommendations:**

TRC commended steps taken by the government of Lesotho on the implementation of the SADC Recommendations; TRC noted that criminal investigations on the death of General Mahao have commenced and the suspects who are members of the Lesotho Defence Force (LDF) remain in custody awaiting trial. TRC further noted that some suspects in the killings of civilians during a period of 2014 to 2016 also remain in custody awaiting trial.

While TRC highly welcomes these developments, **TRC raised a concern to the African Commission over a prolonged pre-trial detention of the suspects and called upon the government of Lesotho to speed-up prosecution processes against accused.**

TRC welcomed the decision of the Court Martial on the 18<sup>th</sup> December 2017 of dismissing mutiny charges against some members of the LDF who were victims of political and security crisis in 2015. TRC further welcomed the repatriation of the members of the LDF who went into exile in South Africa. The decision of the government of Lesotho to reintegrate former mutiny accused soldiers and those from exile back into the LDF was also welcomed by TRC. However, **TRC appealed to the government to fast-track counselling sessions for the victims and to speedily facilitate redress for the victims.**

**2. Police torture and unlawful killings:**

The TRC submitted before the African Commission, disturbing trends of human rights violations by the police in Lesotho. These violations happen despite the fact that Lesotho has legal frameworks prohibiting torture and inhuman practices. TRC submitted that in most cases of human rights violations by police, perpetrators are known but have not been held accountable for their actions. TRC learnt that in some cases, police officers involved in violation of rights were transferred from one police station to the other. TRC put before the African Commission that this behaviour portrayed by police authorities and government of Lesotho deepen a culture of impunity in Lesotho. **TRC urged the African Commission to call upon the government of Lesotho to end impunity by ensuring that police officers involved in tortures and killings of civilians are suspended pending investigations into their conduct and prosecuted.**

**3. Media freedom:**

TRC noted that while generally there is a freedom of expression in Lesotho, there are incidents where freedom of speech and right to receive information and freedom of expression continue to be threatened by the government. While TRC acknowledged the vital role played by the media in Lesotho, **TRC raised a concern over polarisation of the media in Lesotho.** TRC was worried that the media has a potential to plunge the country into political crisis. **TRC therefore called upon the government of Lesotho to enact laws which shall protect and regulate media in line with best international practices.**

**4. State of Judiciary:**

TRC strongly believes that an effective judicial system in a country is central to the protection of human rights and freedoms. That courts of law play a major role in ensuring that victims and potential victims of human rights violations obtain effective remedies and protection, that perpetrators of human rights violations are brought to justice and that anyone suspected of a criminal offence receives a fair trial according to international standards. That the judicial system is an essential check and balance on the other branches of government, ensuring that laws of the legislative and the acts of the executive comply with international human rights and the rule of law.

TRC submitted to the African Commission that the judiciary in Lesotho continues to face severe challenges despite the entrenched sections of the Constitution protecting and



safeguarding its independence and enjoining the government to uphold it. Executive powers over the appointment of the most senior judges remains an area of concern. TRC referred the African Commission to the impeachment of former President of the Appeal Court Justice Ramodibedi and subsequent appointment of Justice Mosito. The most recent being the removal of Justice Nugent and re-appointment of Justice Mosito. All these appointments were marred with political and legal challenges on the validity of the appointments and impeachments.

TRC submitted to the African Commission that as a result of these symptoms of an impending judiciary crisis, the Appel Court was not functioning. TRC maintained that the current situation in Lesotho's judiciary compromises the effectiveness of the administration of justice. It is denying the affected litigants the opportunity to be heard in court and have their disputes resolved without undue delay. TRC submitted that the stalemate amongst the Chief Justice, some judges, senior lawyers and the President of the Appeal Court compromises public confidence in the judiciary. The occurrence over which of them is the head of the judiciary between the then Chief Justice and the then President of the Appeal Court coupled with currently prevailing situation in the judiciary gives a perception to the public that judiciary is failing to avert the crisis on its own. Lastly, the ongoing crisis in the judiciary resulted in the threats to the independence of the judiciary and violation of human rights.

TRC urged the African Commission to call upon the government of Lesotho to ensure existence of independent judiciary that guarantees human rights in full conformity with international human rights law. TRC further called upon the government of Lesotho to ensure that the Constitution, laws and policies of Lesotho ensure that the Judiciary is truly independent from other branches of the state.

**TRC recommended that the government facilitates a dialogue on the judiciary where the government, Chief Justice, President of the Court of Appeal, puisne judges, senior lawyers, law society and other stakeholders shall have a session to deliberate on challenges facing the judiciary and how best the situation can be remedied.**

## **5. Human Rights institutions:**

TRC raised concerns over human rights protection mechanisms in Lesotho; Ombudsman, Police Complaints Authority, Directorate on Corruption and Economic Offences (DCEO). TRC submitted that such institutions fail to adequately address human rights violations. Amongst challenges faced by human rights and democracy supporting institutions is lack of independence, autonomy, jurisdiction, lack of binding decisions and pluralism. **TRC called upon the government of Lesotho to include human rights and democracy supporting institutions in the reforms agenda.**

TRC commended the government of Lesotho for enacting the Human Rights Commission Act of 2016 establishing a Human Rights Commission (HRC) in Lesotho. **TRC raised concerns during the 57<sup>th</sup>, 58<sup>th</sup>, 59<sup>th</sup> and 60<sup>th</sup> ordinary sessions of the African Commission that the Act establishing Human Rights Commission in Lesotho does not comply with the Paris Principles as it gives too much discretionary powers to the executive to appoint and dismiss the commissioners. The Act further gives Minister Powers to interfere with operations of the**

HRC thus compromising its autonomy. At the 62<sup>nd</sup> Session, TRC raised the same problem regarding the Act. TRC called upon the government of Lesotho to ensure the amendment of the Act in line with the best international standards to ensure independence of the HRC.

**Under Socio-Economic and Cultural Rights:**

1. Issues on extractive industry:

- **Right to access clean drinking water:**

Access to clean water in Kao is a challenge because there are no protected natural springs in the area especially those that are still available not affected by the mining activities. There are two springs adjacent to the road which are affected by dust propelled by heavy vehicles destined to the mining areas as they pass on the gravel road.

Storm Mountain Diamonds mine has covered some water sources with waste basalt stones generated by the drilling, blasting and excavation of the kimberlite. The major source of this is the lack of compliance to environmental laws, adherence to its own environmental management plan.

The community is supplied with water from the mine through public stand pipes and tanks. These water supply turns to have quality limitations because at times its turbidity is affected by the cleaning products, it has unpleasant odour, and it has some taste. These are attributable to the absence of testing of water quality produced to the mine and the adjacent community.

- **The right to clean environment:**

Dust propelled by commercial vehicle from medium to heavy trailer trucks passing through the village to and from different mines in Kao, Liqhobong and Motete is inhaled by the communities living in these areas day in and day out. It affects houses, clothes, plants and all other properties they own.

Blasting of the mining pits in Kao and Lets'eng/Pae-la-ithlatsoa (Lets'eng Diamonds) generates dust and affects the environment and is inhaled by all people who are in the wind direction of the dust and smoke.

- **Access to health facility:**

All communities living adjacent to the mines have to travel long distances to access health services whether it is emergency or routine medical treatment or assessment despite the fact that there are basic services provided in the mining compound.

- **Access to sanitation:**

In Kao there are families which do not have toilets and the government in 2012 was convinced by Storm Mountain Diamonds to drop the plan to construct toilets for the community as it will do through its corporate social responsibility but it has not delivered to date.

- **Access to energy (electricity) supply:**

All mining affected areas do not have access to electricity though the power is present in the mines and poles are erected on the communities' property; fields and communal grazing land.

- **Poor roads infrastructure development:**

All mining affected communities of Kao, Kolo, Lihobong, Motete, Pae-laithlatsoa have difficulty of movement due to poor roads and expensive public transport to their respective areas. This affect their movement to social services such as health, education and many more.

**TRC urged the African Commission to call upon government of Lesotho to ensure that the mines in Lesotho are abiding by the laws and policies governing the sector. The government must ensure that the affected communities' needs are addressed promptly.**

**END**