

PRESS STATEMENT BY THE FAMILY OF LT GENERAL MAAPARANKOE MAHAO ON SADC REPORT: 16 FEBRUARY 2016, MASERU, LESOTHO

Lt General Maaparankoe Mahao's family has had the opportunity to study Justice Mphaphi Phumaphi Commission of Inquiry Report. As all of us will remember, the Commission was established by SADC to investigate the circumstances surrounding the death of General Mahao and the alleged mutiny against the current leadership of the Lesotho Defence Force (LDF). The Report was endorsed by the SADC Double Troika at its Summit held in Gaborone, Botswana on 18th January, 2016 with an injunction on the Lesotho Government to publish it and implement it.

Lt General Mahao's family once again wishes to express its gratitude to SADC for its efforts in the search for lasting peace and stability in the Kingdom of Lesotho and, in particular, to SADC's unwavering commitment to get to the bottom of how and why Lt General Mahao was killed on 25th June, 2015. We further express our sincere appreciation of the thorough and professional work carried out by Justice Phumaphi's Commission of Inquiry in the discharge of its mandate. We are fully aware of the very difficult conditions under which the Commission operated; especially the obstructions it encountered from some with vested interest to have the truth forever buried.

Two principal objectives were at the heart of SADC's decision to establish the Commission of Inquiry. These were the death of Lt General Mahao and the alleged mutiny within the ranks of the LDF.

Around the death of Lt General Mahao, some significant progress was made in so far as the Commission ascertained certain facts which dispel and lay to rest the false claims made by the LDF with regards to why he was killed. However, we cannot conceal our frustration with the fact that the Commission failed in what was the most critical task. This concerns uncovering the names of all LDF personnel who participated in the operation that killed LT General Mahao on 25th June, 2015, as well as a complete ballistics portfolio of evidence necessary in a criminal case. On both counts the fault does not lie with the Commission but with the Government of Lesotho and the LDF.

From the very beginning of the Inquiry, Government and the LDF lawyers adopted a scotched-earth stratagem of defeating the objective of getting to the bottom of the facts. In its Report, the Commission laments the fact that the LDF withheld material evidence from the investigations. Evidence withheld includes the weapons used in the operation, the vehicle that carried Lt General Mahao's body from the scene of the crime, his firearm and mobile phones. It established further that the LDF personnel washed Lt General Mahao's body and the clothing he was wearing. LDF witnesses trenchantly refused to provide the Commission with the names of the personnel that carried out the operation. According to Lesotho's criminal law and international law, these sordid acts are a crime of defeating the ends of justice by tempering with the crime scene.

What is more significant, however, is that in clear abdication of its constitutional duty to ensure that criminality is investigated without hindrance and favour, the Government of Lesotho either backed to the hilt or looked the other way to these illegal LDF machinations. It did this, notwithstanding, its obligation and by extension, the obligation of its all organs, to cooperate fully with the Commission of Inquiry under (n) of the Commission of Inquiry's Terms of Reference.

Having invested more than R6 million into the Inquiry, we believe that SADC lacked the follow-through to intervene and demand full cooperation when these crude acts of subterfuge were underway. At that critical moment the Facilitator, Deputy President Cyril Ramaphosa, should have closely monitored the Inquiry to enable him to weigh in on the Lesotho Government to fully comply with its international obligations. We believe that an opportunity was missed.

It is a hard, if also a painful fact, that against the background of the missing pieces of critical evidence the Inquiry was unable to leverage, we must accept, the necessity of further investigations the Double Troika has directed. Our call to the Nation is to be patient and support this necessary process. Cognizant of the fact that the Lesotho Government does not have either the capacity or the will to carry out such investigations flawlessly as already illustrated by its attitude in recent months, we urge SADC to be closely involved in the investigations. Its involvement must include supplying the necessary investigative and legal expertise oversight.

We are satisfied with the Commission findings with regard to how and under what circumstances Lt General Mahao ignominiously met his death. In this regard the Commission of Inquiry established that there was no evidence that Lt General Mahao resisted arrest or that he pointed his firearm at his assailants. It found that even assuming that he had pointed his pistol at his assailants, three AK 47 salvos fired at him at close range amounted to use of excessive force. Significantly, the Commission also established that there had been previous attempts by the LDF on Lt General Mahao's life, including the infamous 30th August 2014 dawn attack on his homestead. Thus his murder on the fateful 25th June 2015 cannot be cast in isolation. All of this evidence puts paid to the black propaganda reeled without restraint in some quarters that his was an accidental death. It confirms what we have always maintained that his death was an orchestrated and well-rehearsed extra-judicial murder by rogue elements in the LDF and some politicians.

With these findings, the Government can no longer hide behind the claims of "operation gone wrong" but has to be seen to discharge its constitutional duty to facilitate criminal charges against, not only the junior operatives deployed to carry the heinous act, but also against those who ordered it. We urge Basotho and the international community to see to it that proper justice and not a cover-up is, to the full extent of the law, discharged.

The Commission of Inquiry established that Lt General Mahao was properly and constitutionally appointed Commander of the Lesotho Defence Force on 29th August, 2014. In the premise, we urge the Government to urgently facilitate payment of the arrears of his salary from the date of his appointment which the LDF withheld from him. In a law-based and constitutional state, it is only fair and proper to do so. We shall also be raising this matter with the Facilitator, as well as that of compensation for Lt General Mahao's property destroyed by the LDF during the attack on his home on 30th August 2014. Redress on these matters goes a long way towards re-establishing Lesotho as a state that respects the rule of law and not a state of the might of the gun.

Regrettably, we are unable to find common ground with the Commission's contradictory finding that Lt General Mahao's removal and demotion was "legal, but the manner in which it was done was flawed as the Prime Minister's "show cause" was ill advised" (p.58). In sharp contrast in p. 44 the Commission goes at

length to find that the whole exercise was legally flawed. It notes at paragraph 94: “As a corollary to the finding in relation to the appointment of Brigadier Mahao’s above, the Commission finds that the Prime Minister acted irregularly in asking Brigadier Mahao why he could not be terminated for accepting the appointment as LDF Commander when he knew that there was a Commander and that he was facing a court martial. When the fact of the matter was that the court martial was simultaneously dissolved with his appointment.” At paragraph 95 it goes further to say that “It was unprecedented in terms of military practice and for discipline purposes for someone who had been appointed commander of a Defence Force and subsequently demoted and continue to serve. The military practice is to retire one who has reached such appointment.”

We hold that this is the proper interpretation of the international military practice, of the LDF Act and practice established over the years in the LDF. Once the Commission had dismissed the existence of what in law are called jurisdictional facts that ground the termination of the commission, as it had done, the entire purported termination remained irregular and unlawful.

We urge the Government of Lesotho to restore to Lt General Mahao his commission as Commander of the LDF till his death on the 25 June, 2015 since its purported and politically motivated termination has been found irregular and flawed. If the Government has no moral courage to walk the path, we shall be left with no alternative but to instruct our lawyers to proceed with the case Lt General Mahao had instituted in the courts on this matter which we had put in abeyance to give the Commission of Inquiry space to pronounce on the matter.

The Commission of Inquiry could not establish that there was any mutiny within the ranks of the army as alleged by the LDF hierarchy and the Government. It established that captured soldiers were subjected to torture to make them confess to mutiny and to implicate other officers, and Lt General Mahao in particular. It further observes that LDF witnesses failed to provide evidence linking Lt General Mahao with the mutiny, except for Whatsapp extracts obtained after his death. The Commission concludes that “there is no evidence to prove” Lt General Mahao’s involvement in mutiny.

In our previous statements we have maintained that the mutiny charges against Lt General Mahao and other officers of the LDF did not make sense.

Developments in the past nine months have thrown into sharp relief that the mutiny claims were a hardly veiled conspiratorial ploy by rogue elements facing various serious criminal charges to seize control of the LDF and to use it as a protective shield against the law. The Commission of Inquiry has dug out and put in the public domain through the report a spate of serious cases which never saw light of day in the courts of law perpetrated by army officers. The standard modus operandi has been to protect law breakers by ensuring that the Lesotho Mounted Police Service (LMPS) had no access to them. The cases involved range from bombing of civilian private houses, attempted murder, murder and high treason. It is apparent that the mutiny charges were contrived in order to purge law-abiding soldiers from the LDF, seize this national institution, and transform it into a haven for criminals and a platform to torment the nation into submission. With this plan now inexorably unfolding, a descent into a lawless rogue-state is consolidating its grip on the national political and social order.

Lesotho deserves to be rescued from this grip which holds grave implications for itself, our immediate neighbourhood and the entire SADC region. Yes, we completely agree that all the recommendations of the Phumaphi Commission of Inquiry must be implemented and with a sense of urgency before a tipping point of no turning back is crossed. The events of the last few days; of the charges and incarceration of a lawyer representing the so-called mutineers and the violent attack on his home at night, as well as the mowing down of thirteen helpless opposition supporters a day later at Qeme, may well be a pointer that the tipping point has already been crossed.

The starting point must be the immediate suspension of all those implicated in the cases identified by the Commission because they are the reason why investigations into criminality will never see light of day nor would normal political processes ensue while they continue to bear arms. The Lesotho Government must be prevailed upon to come out with a transparent plan of implementation, including clear and stringent timelines agreed by all stakeholders. SADC must urgently deploy a much boosted Oversight Task Team with a much broadened mandate to enforce compliance. SADC has the second opportunity to fix the Machiavellian Lesotho politics.

That opportunity must not now be missed again.