

**STATEMENT OF NON-STATE ACTORS ON THE POSITION OF GOVERNMENT OF LESOTHO ON  
THE SADC COMMISSION OF INQUIRY IN RESPECT OF THE RELEASE OF THE REPORT**

**21<sup>st</sup> DECEMBER 2015, MASERU. LESOTHO.**

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**PREAMBLE**

Whereas the Deputy President of the Republic of South Africa Mr Cyril Ramaphosa visited Lesotho in his capacity and duty as the Southern African Development Community (SADC) Facilitator in the Kingdom of Lesotho and met His Majesty, the Prime Minister and Cabinet, Opposition parties, the Mahao Family and the Non-state cluster comprising of civil society organisations represented by Lesotho Council of NGOs, the Law Society, College of Chiefs and other institutions, there is a strong conviction among non-state actors that **Basotho should rise and act to resolve and protect their country from the apparent political void emanating from political decisions that do not prioritise the well-being of ordinary citizens.**

In their reflection meeting of the 21<sup>st</sup> December 2015, the Lesotho Council of NGOs, the Law Society of Lesotho, the College of Chiefs, the Lesotho Chamber of Commerce and Industry, the Maseru Regional Taxi Operators and its allies, the Labour movement and Academic Forum for Development of Lesotho reached consensus presented in the following way:

**CONTEXT**

The position of the government of Lesotho on the one hand that the report of SADC Commission of Inquiry into, amongst others, the circumstances surrounding the killing of former Commander of Lesotho Defence Force, should not be released before the case of Tefo Hashatsi is decided as that would undermine courts of law in Lesotho and be a miscarriage of justice, on the other hand threatening that if SADC insists on handing over the report the government shall not accept it is a source of great concern.

On several occasions, the Prime Minister of Lesotho has indicated that the Commission is a SADC creation and will report to the Sub-regional body. Putting the case of Tefo Hashatsi CIV/APN/ 15 as a condition for progress can easily and logically be read as a summersault from the government of Lesotho's original stance. Contrary to the significance that

government tries to attach to this case, its original reaction portrays telling apathy. The following key issues may be raised in relation to this case:

- (i) Although the Prime Minister and Attorney General appear in the list of respondents in the case of Hashatsi, they never filed answering affidavits;
- (ii) The legal counsel for Lieutenant Colonel Tefo Hashatsi against the Commission is the same counsel that represents government in the Commission proceedings;
- (iii) Although government emphasises the status of Tefo Hashatsi as an ordinary citizen, he is, in fact, Lieutenant Colonel, formerly Captain, in the Lesotho Defence Force before the assassination of former Commander of LDF;
- (iv) If Tefo Hashatsi felt that there was insinuation against him from the Chair of Commission which could be infringing his right to remain innocent until proven guilty by courts, the content of his prayers rather suggests an ulterior motive. He contends that the evidence he gave should be disregarded, the Thaba-Nchu evidence be annulled and that the Commission should report to the Prime Minister, all of which give an impression that his real intention is not to seek justice within the process but to abort it;
- (v) If there is no change of heart and if the government was to be convincing in its stance, it would have jealously guarded against the Commission at least by filing opposing papers in its defence. After all, the international customary law prevails over the national, particularly when they come in conflict. Deciding to go in a different direction from that of SADC on this matter, would not only compromise, the Prime Minister as the face of government but also the well-being of ordinary citizens. The regional and international pressure on the Kingdom would mount, with dire consequences politically and socio-economically, should the government insist on taking this divergent path.

**CONCERNED THAT:**

The government of Lesotho is determined to use a legal technicality to delay the release of the SADC Commission's report, and that there is a pattern emerging in Lesotho where military influence pervades the political and governance structures, the non-state actors find it duty bound to robustly engage government in defence of democracy. Unless

measures are taken to re-assert civilian authority over the military, democracy in Lesotho would be as good as non-existent. The recent decision of the USA government to suspend the Millennium Challenge Corporation to Lesotho that until the military linked human rights abuses are addressed and the SADC report is released, affirms our concerns. The public utterances of the Prime Minister in response to this decision are again gravely disturbing, and inconsistent with sections A5 & A11 of the coalition government agreement.

**CONVINCED THAT:**

Basotho should tackle their problems with the help of neighbours and organisations such as SADC, not the other way round, and that the government of Lesotho's development of a political will that rises above parochial legal technicalities and party politicking will only help take Lesotho out of the prevailing political quagmire.

**THEREFORE:**

We call upon

- (i) The government of Lesotho to remain in the SADC process and not allow such an important inquiry, with political and economic significance to the livelihoods of many ordinary citizens to be obstructed. Moreover, this process has implications for Lesotho's rating on the rule of law, respect for human rights, accountability and other principles of good governance, all embraced in the Coalition Agreement.
- (ii) SADC to apply its mind carefully on the stance of the government of Lesotho on this matter and to act firmly and promptly to ensure that the outcome of the SADC Inquiry into the circumstances surrounding the death of the former commander of Lesotho Defence Force is accepted by Lesotho government and a clearly defined course of action for implementation of the recommendations is developed forthwith;
- (iii) SADC and Lesotho Government to appreciate that the inquiry has a potential to make or destroy peace and unity of Basotho. Therefore, the court case should be

concluded not later than January 2016, considering that the report has already been tabled to SADC Troika;

(iv) SADC to implement expeditiously the Double Troika Decision of the 3<sup>rd</sup> July 2015 in Tšoane South Africa notably (a) Support Lesotho Government in ensuring that the environment is conducive for the safe home-return for the Opposition Leaders outside the country; and (b) Establishment of the Oversight Committee.

(v) The international community to add their voice to this call, firmly maintain pressure on the government and to take corrective punitive measures that are targeted. In line with our previous calls, we maintain that targeted sanctions be applied instead of imposing negative evaluation on the country that shall have potential detrimental implications on the citizenry. In relation to AGOA, for example, more than 46,000 jobs would be lost in the textile industry, with deleterious effects on business, transport and livelihoods in general, should the US government take an indiscriminate action.

(vi) Call upon SADC to formalise links with local structures and processes, as in the case of the 'Post-Masire Process', in order to maximise benefits of combined external and local processes and also facilitate ownership of the solution. This is not only in conformity with the UN Guidelines on Effective Mediation but also an approach tested in Lesotho with results.

For the government of Lesotho to sacrifice accountability, the rule of law, and respect of human rights at the altar of legal technicalities, which are neither seeking to advance the cause of justice nor in conformity with the original stance of Lesotho and Lesotho's obligations under SADC is an absurdity.

Khotso!

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