

4 February 2016

ICJ monitors mutiny trial in Lesotho

The ICJ is monitoring the ongoing trial under court martial of the 23 members of the Lesotho Defence Forces in the case The King –vs- Brigadier Mareka and 22 Others.

The Court Martial was convened through a government order issued and signed by the Minister of Defence and National Security Hon Tseliso Mokhosi on 13 August 2015. Under the convening order, Brigadier Mareka and 22 others were generally accused of charges related to planning and or involvement in mutiny and violence. The convening order also identified the names of the members of the court martial as well as the prosecuting authority at such court martial.

The court martial raises issues around observance of human rights, the rule of law and good governance in Lesotho. Its significance is reflected in the fact that the Southern African Development Community (SADC), an inter-governmental organization, is also seized with the matter as part of its mandate under the SADC Organ on Politics, Defence and Security Cooperation, and directed the convening of a SADC supported Commission of Inquiry into the issues related to the court martial. The subsequently-established Commission of Inquiry has completed its work and filed its report with the SADC Organ on Politics, Defence and Security Cooperation and the Prime Minister of Lesotho. The report is yet to be made public and is planned to be released on the 8th February 2016.

The ICJ will particularly monitor the consistency of the Court Martial trial with international fair trial standards, both in terms of the conduct of proceedings, and the independence and impartiality of the tribunal including in light of the manner of selection of the Court Martial members, in which a number of junior soldiers were promoted in rank in order to justify their presiding in a disciplinary case over their superiors. In particular the promotion of the President of the Court Martial Major General Letsoela seems to have been done to facilitate that he as a junior officer sits to determine a case involving Brigadier Mareka and another brigadier who ordinarily are his superiors in terms of rank.

The ICJ will also monitor whether the Court Martial and investigative authorities act in accordance with international standards in responding to the credible allegations of human rights violations committed against Brigadier Mareka and 22 others. The allegations include prolonged incommunicado detention, torture, inhuman and other degrading treatment while in custody, being inhibited from fully consulting with and briefing their legal representatives, and defiance of High Court orders by the Lesotho Defence Forces including that the soldiers should be detained in open prison and not a military detention facility and should not be kept in leg irons.

Background

The SADC-mandated "Lesotho Commission of Inquiry (Disturbances to National Peace and Stability)" was legally established through Lesotho Government Legal Notice No. 75 of 2015 as amended by Government Notice No. 88 of 2015 published

in the Lesotho government gazettes of Tuesday 28th July 2015 and Friday 21st August 2015. It had 9 members and chaired by Honourable Justice Mphaphi Phumaphi.

The terms of reference of the Commission of Inquiry included the “review [of] the investigations into the alleged mutiny plot. The review should also cover the alleged kidnapping of former members of the LDF and alleged killings of members of the opposition” and to generally investigate the circumstances that led to the extra-judicial killing of former army commander Brigadier Mahao.

The ICJ is also following developments in relation to the broader question of respect for the independence of the judiciary by the executive branch in Lesotho. Concerns were heightened when, in establishing the SADC supported Commission of Inquiry under Government Legal Notice no 75 Of 2015, the Prime Minister originally quietly introduced into the terms of reference a clause 3(1) (a) that mandated that the commission “shall inquire into various changes in the top leadership of the courts, such as the appointment of a new President of the Court of Appeal, on their legitimacy and ability to tackle the various criminal and civil issues that have or will come before them in relation to the issues before the Commission”. Opposition forced the Prime Minister to backtrack to amend the notice and remove such an extraneous mandate regarding the judiciary, by Government Legal Notice no 88 of 2015. The government subsequently arrested the President of the Court of Appeal Justice Mosito on allegations of tax offences and the trial is ongoing. An impeachment tribunal has also been established against him and the matter is contested. Pro-government lawyers had previously mounted an unsuccessful challenge through the courts on the legality of his appointment.

A range of international treaties to which Lesotho is party require it to guarantee and fully respect the right to fair trial, including the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal established by law. The other alleged abuses of the accused while in detention would also constitute clear violations of Lesotho's international obligations. Among the relevant treaties are the International Covenant on Civil and Political Rights (articles 7,9,10,14 and 15); the African Charter on Human and Peoples' Rights (articles 3,4,5,6,7 and 26); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention for the Protection of all Persons from Enforced Disappearance. Lesotho's obligations under these treaties are further elaborated in other standards such as the AU Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003; the UN Basic Principles on the Independence of the Judiciary, and various other UN standards on human rights in the administration of justice.

The case was heard between 1 and 4 February 2016 and has been adjourned to 2 May 2016 in Maseru, Lesotho. For more information contact Arnold Tsunga, Africa Director ICJ on +27716405926 arnold.tsunga@icj.org