



Unit 2, 2nd Floor, Chobe House, BBS Mall, P.B. 0056, Gaborone, Botswana, Tel: 267 3919 333, e-mail: sadclawyers@info,bw

REPORT OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY LAWYERS ASSOCIATION FACT FINDING MISSION TO LESOTHO.

1.0. BACKGROUND

On July 20th 2007 a delegation of civil society organisations from Lesotho paid a visit to the offices of the Southern African Development Community Lawyers Association. The delegation made the following presentation:

1.1. THE PRESENTATION BY CIVIL SOCIETY GROUPS OF LESOTHO AT SADC LA OFFICES, GABORONE, FRIDAY JULY 20TH 2007

1. In June 2007 a curfew was declared in Lesotho following incidents which occurred around the residencies of several politicians. Since then certain events have taken place which have impacted negatively on the Lesotho peoples' rights. Citizens have been harassed and subjected to violent and indecent searches. A number of physical assaults have also been recorded on the civilian population.
2. There has been a number of abductions, cases of torture and the denial of legal rights to citizens arrested under unclear circumstances. In one notorious case a court order directing the security forces to release five individuals was ignored.
3. The delegation from civil society in Lesotho wishes to publicise the violations of the rule of law in Lesotho throughout the SADC region. Further, part of the delegation consists of the interests of the Law Society of Lesotho, and this explains why amongst other hosts the delegation has visited SADC LA.

4. The Law Society of Lesotho has reacted against these violations by filing an application seeking to prevent the army from assaulting or harassing the population.
5. The Representations have met Sir Q. Masire in a courtesy call as well as the SADC Secretariat, Sir Q. Masire is the facilitator for the dialogue on Lesotho. A meeting has also been held with the Botswana Council of Non-Governmental Organisations (BOCONGO).
6. The media groups in Lesotho are also very concerned about the violations of the freedom of expression in Lesotho. Journalists are being subjected to harassment, e.g., the Chairperson of MISA in the region was recently detained and eventually charged with violating the Internal Secrets Act which was copied from apartheid era South Africa.
7. The ruling party is using the army to push its agenda of silencing independent and critical media houses. One radio station was recently informed that its content was “unacceptable” by a regulator who has no power to make such interventions. Worse the army has even taken to use the media to deliver threats against supposed opponents including the courts.

1.2. Introduction

Following the above representation the Law Society of Lesotho requested the Association to visit Lesotho on a fact-finding mission. Fact-finding missions are one way by which the Association gathers important information for the purpose of its advocacy work on the promotion of the rule of law and the respect for human rights in the SADC region.

The Law Society provided the Association with the relevant contact details of the Lesotho authorities. Further the Association’s President, Mr. Sternford Moyo wrote to the Prime Minister of Lesotho to introduce the fact-finding mission and its delegation and to inform him of the nature of the Association’s business.

1.3. TERMS OF REFERENCE

The Law Society of Lesotho wrote to the Association on the 6th of August and informed the Association of the terms of reference to guide the mission. The terms of reference were as follows:

1. To undertake a fact-finding mission relating to verification of allegations of violations of human rights, torture of members of the public and suspects of criminal offences and contempt of Court orders by the Lesotho Army.
2. To write a report regarding your findings and make appropriate recommendations.

1.3.1. Schedule of Meetings

To assist the SADC LA mission the Law Society of Lesotho made appointments with the Lesotho authorities, members of the public, political parties, the judiciary and other relevant stakeholders in Lesotho. On this basis appointments were made and a schedule of meetings was drafted for the mission by the Law Society.

The schedule was as follows

Day 1. Thursday 16th August 2007:

1. The Chief Justice of Lesotho
2. Judge M. Mahase
3. Alleged victims
4. The Prime Minister of Lesotho
5. The Attorney General of Lesotho

Day 2. Friday 17th August 2007:

1. The Commander of the Lesotho Defence Forces
2. The Commissioner of Police, Lesotho
3. The Christian Council of Lesotho
4. Opposition Political Parties

The mission managed to meet all the above parties with the exception of

- The Chief Justice; by copy of a letter addressed to the Law Society of Lesotho, the Chief Justice declined to meet with the mission on the basis that this would be inappropriate;
- The Commander of the Lesotho Defence Forces; by copy of a letter addressed to the Law Society of Lesotho, the army commander declined to meet the delegation on the basis that this would be inappropriate;
- The Commissioner of Police; the police authorities indicated that they were willing to meet the delegation, but had expected to meet the delegation a day earlier. Citing other pressing commitments the police commissioner informed the delegation that she would not be able to meet with them; and
- The Christian Council of Lesotho who declined to meet the delegation.

1.4. Reception

At all times the delegation was met with courtesy and respect by both the Lesotho State authorities and other stakeholders.

2.0. Interview with Judge Maseforo Mahase

Judge Mahase welcomed the SADC LA delegation into her chambers. Mr. Hara, the leader of the SADC LA delegation introduced the delegation and explained the purpose of the SADC LA mission to Lesotho. He explained that several press reports had been circulated in the region with respect to an allegation that Judge Mahase was subjected to harassment by the Lesotho security officials. He added that the issue had also been brought up by the Law Society of Lesotho which is a constituent member of SADC LA. Mr. Hara noted that SADC LA as a matter of principle and practice is concerned with the maintenance of the Rule of Law in the SADC region, and that the respect of the independence of the judiciary is central to the objectives of Association. In this respect SADC LA decided that it was important to engage Judge Mahase, and understand the issues surrounding the allegations of her harassment. Having established the facts, SADC LA would make appropriate recommendations to the Lesotho authorities for the purposes of ensuring respect for the independence of the judiciary.

2.1. Statement by Judge Mahase:

On the 15th of June 2007 the High Court went on vacation. During that period I served as the judge on duty. I was at the immigration office attending to personal business when I received a call from the registrar of the High Court informing me that the Chief Justice wanted to see me as a matter of urgency. I reported to the Chief Justice's office whereupon he informed me that the Commissioner of Police had visited his office and had asked him to allow the police to conduct a search at my official residence. I asked the Chief Justice why the police would wish to search my residence. The Chief Justice responded that there had been some political upheavals, and during this period some people had stolen guns from the security authorities. The Chief Justice added that my husband was suspected of having taken part in the theft of these guns, and these guns were suspected to be hidden at my official residence. My husband is heavily involved in politics. I informed the Chief Justice that I was not staying with my husband at my official residence, and that it had been four to five months since my husband left my official residence as we are in the process of a divorce. I further informed the Chief Justice that I had no contact with my husband and did not understand why the police would want to search my residence when even the Police Commissioner knew that I no longer lived with my husband. The Chief Justice did not appreciate this, because I knew I was innocent I told him to let the police go ahead and conduct the search. I requested the Chief Justice to give me the contact details of the Commissioner of Police. I spoke to the Police Commissioner and sought to understand from her why the police would want to search my residence on account of allegations against my husband whom she knew I no longer lived with. The Commissioner was quite understanding, but she repeated that there was nothing she could do because "this man" said that a search must be conducted at my residence. The Commissioner assured me that very high level police officers would conduct the search and the process would be very discreet.

When they came to my residence they arrived in three heavily loaded police vehicles on full flashing police lights at around 1700 hours. My sister whom I live with informed me

that she had personally counted seven police vehicles and close to seventeen police officers around my residence. Hence the police presence was far from discreet, it was quite a spectacle and as a result a sizeable crowd came to watch the event. They had no search warrant. I was not informed of what crime I was suspected of committing. All they said was that they had come to look for my husband and the guns. The police team was made up of only male officers, there were no ladies to conduct the search. The officers conducted their search, found nothing and left.

Questions from the delegation

Why do you think this happened to you?

I am the most junior judge in Lesotho. Unfortunately for me I was the judge on duty when political upheavals, abductions of persons, torture etc occurred. I made orders for the authorities to stop this. This did not please the security officials and I am being harassed for standing up to these abuses. I saw for myself what they had done to the victims. Those people were brought to my chambers and I saw their plight. One man was visibly traumatised, he had been abducted, brutalised, detained for over 48 hours- even Counsel for the Crown saw this for himself and could not even object to my order to release this man. I had made an order for this man to be brought to my chambers upon an application by his lawyers. His family had no idea where he was, and had heard rumours that he had been abducted by the army. However this order was ignored, the man was only brought to my chambers after the Registrar went to serve papers personally to the Commander of the army. I saw other victims who were eventually brought before me in my chambers, it was terrible. I have never seen anything like this before, and I hope to God that I will never see that again. I think what I did was correct in the circumstances. As for what will happen to me I don't know, the authorities are just silent on the issue, in the meantime people are afraid.

I consider myself a victim of the system, and I have to defend myself. My story must be heard. If the Chief Justice was interested in my case I would not have met you, now even he has refused to meet your delegation.

What support have you received from other judges?

My colleagues on the bench have asked to see the Chief Justice regarding the treatment I was subjected to. I have only heard rumours that a meeting took place between the Chief Justice and my colleagues.

There have been a number of supportive phone calls, but generally everyone is keeping away from me.

Do you have official security at your residence?

I wrote a report with respect to my displeasure at the whole episode and addressed it to the Chief Justice and copied it to the Commissioner of Police. In that report I informed

the Chief Justice about my anxieties with respect to my personal security after the police had searched my residence, I also requested the Chief Justice to give me assurances about my personal security. I have had no response from the Chief Justice. I am sure that I am being followed around by strange people, their faces peep over the barrier surrounding my residence. My family members are also being followed around by strange men.

With respect to security, none of the judges except the Chief Justice have official security at their residences. I am not sure if the judicial conditions stipulate that we are supposed to have security, we have however discussed the need for security but nothing has been done.

We have been informed court orders are being ignored, do you have any examples?

One of the court orders which were ignored by the authorities was mine. This was a habeas corpus application in respect of one man. He was sent to court on arrest for treason. The Chief Magistrate declined to place this man on remand, but did not release him, instead he sent the man back to police custody. An application was made for the release of this man together with others he had been arrested with. I ordered their release, even the Counsel for the Crown conceded that it was wrong for the magistrate to have sent the accused back into police custody. But this order was ignored by the security officials.

Questions by the delegation on other issues

How is the representation of women in the judiciary?

The female representation in the lower ranks of the judiciary is quite fair, most magistrates are female, however salaries are low. On the higher ranks we now have four lady judges, which is very encouraging for women in the country.

Do you interact with the rest of the judiciary in the SADC region?

There is no real interaction amongst the SADC judiciary. We need to interact more at the regional level.

2.2. Interview with Mr. Temeki Ntlatlapa

(An accountant working in Maseru, has four children)

On the 15th of June 2007 I was driving home from within Maseru at around 2200 hours. I had to make a right turn at the traffic lights adjacent to my village, on turning I saw a soldier with a gun. I looked at him as I drove past. I saw him raise the gun towards my direction. I heard a gun shot, and felt an impact behind my ear. I wanted to pull over and park my car, but I passed out before I could do that. I came to later and realised I was trapped in my car which had overturned. I heard someone shouting that I should get out through the top of the car. I managed to climb out of the car. I was bleeding from the head. There were not many people outside. A policeman came and asked for my driver's

licence. He took the licence away. The soldier who had shot at me came, looked at me and walked away. The policeman returned my licence and walked away. Eventually two gentlemen I know came by and asked me what had happened. They took me to the Queen Elizabeth Hospital. There I was treated and released on the same night. I was not happy with the attention I had received so in the morning I went to Maseru Private Hospital. But I was told the wound on my head needed at least two different specialists' attention and they referred me back to the public hospital (Queen Elizabeth). There I was only seen by one specialist who did not do much on my wound. When this specialist left other doctors admitted me. But no-one attended on my wound for the whole day. The next day I checked myself out of the hospital. I made private arrangements to go to South Africa, on arrival there I was admitted for two weeks at a hospital in Bloemfontein. The hospital confirmed I had suffered gunshot wounds. I had loss of balance and was in great pain. The doctor said my ear had been affected but I would be fine. However up to now my ear is blocked. My hearing has deteriorated. I am worried. I want to go back to Bloemfontein and get checked.

What surprised me is that the policeman who came to the scene of my shooting never asked me what had happened. He didn't ask how I had overturned. He didn't ask why I was bleeding. He didn't ask the soldier why I had been shot. He just asked for my driver's licence. I now know of another case where a car was shot at the same spot.

Questions from the delegation

How many soldiers were at the scene of the shooting?

The only soldier I saw was the one I saw as I was turning right.

Was there a roadblock?

I realised that there was something happening there only after I had been shot in the head. But there was no roadblock. The soldier was just standing by the pavement, and he raised his gun at me, fired, without warning. I have heard that there is a report at the police station which alleges that I was shot at because I failed to stop at a roadblock.

Have the police contacted you for a statement?

I have been interviewed by the CID. The police visited my home and took pictures of my car. I have also given them my medical report.

Are you a member of a political party?

Yes. I am a member of the All Basotho Convention, but I am not an active politician. ABC is a major opposition party in Lesotho. I am not active, even my friends have no idea which party I belong to. I am not in political leadership. I am only a close friend of the son of the leader of the ABC party. I have known the son since 1997 and we met during the course of employment. I don't know if there is a link between my being shot

by the soldier and my friendship with the son of an opposition political party's leader. I don't see any link at all.

Why were you shot?

I have no idea. Up to now I am confused about this. I know that it was the first day of the curfew which had been imposed between 1800hrs-0600hrs every day. But the roads were busy, they were not deserted. There were even other motorists moving about in the area where I was shot, and two colleagues of mine even showed up to help me where I was shot without being shot at.

How do you feel about the whole incident?

I don't know what to say. I don't exactly know. After being shot I was confused. I was worried about whether I was going to live having been shot in the head. I have just been worried about survival. As to why I was shot I don't know. All I know is that I am a victim of the government decisions.

I have mixed feelings. I try not to be angry as I know the danger of being angry. Even before this incident I have not liked this government, especially for its irresponsibility and mismanagement of public funds.

Have you been counselled with respect to your injuries?

I have not gone for counselling. And so far I have not yet managed to calculate the amount of money I have spent on treatment.

Have you taken any action for redress from the government?

I have not taken the government to court. I have visited the Law Society of Lesotho and told them my story. I intend to consult a lawyer on what I should do. But I don't want to rush into this as I am not in the best state of mind at this time.

Mr. Ntlatlapa asked the delegation the following questions:

How far can SADC LA go in assisting us and even the Law Society of Lesotho in addressing this problem?

As we indicated in the opening remarks, the Law Society of Lesotho is a member of SADC LA. Our mandate is to promote the rule of law in our member countries, this includes advocating for the respect of human rights in the region. Your statement will assist us to compile a report which will be approved by our association. This report will produce practical recommendations on how best we can assist where we are of the belief that there have been violations of the rule of law and human rights. This process helps us to assist our member law societies and the public in their countries to achieve the enforcement of human rights and respect for the rule of law. The reports have an influence on government's behaviour and exert pressure on authorities to respect human

rights. Governments know that when we ask questions we are watching their conduct for the purpose of enforcing the rule of law.

What advice can you give me?

For now we advise you to identify a lawyer who will advise you on how you can get redress.

2.3. INTERVIEW WITH MR. MOEKETSI SCOUT

(Former soldier, now a farmer)

On 17th June 2007 I was asleep when I heard a knock on my door at around 0400 hours. The person who was knocking identified himself as Thabo Rajose. I refused to open the door as I don't know this person and I told the person that I was not going to open my door. After sometime the person then said I should open the door because they were soldiers. I asked them what they wanted from me, and they said it was matters to do with their job. I said I would only open my door if they were with the police, and also if they showed me their identity cards. They warned me about the consequences of not opening the door. I still refused to do so. I stood by the window and saw two masked men in military uniform. The people outside started banging on my door. My sister called out to the guard who guards the premises next to my house. The guard is also the headman for my area. He came and persuaded me to open the door. I was confident that I had a witness in the headman and nothing terrible would be done to me. Five masked soldiers entered into my house. They refused to show me their identity cards. They refused to remove their masks. They said they had come to arrest me for attacking the houses of cabinet ministers. I denied any knowledge of this, but they still handcuffed me. It was very cold but they denied me permission to put on warm clothing. When I got outside the house I realised there were many soldiers. They had four military vehicles and I counted up to sixteen soldiers. They threw me in the back of a van, and with my hands cuffed behind my back they forced me to sit ontop of the cuffed hands. They drove away and made a u-turn after about five kilometres. They said they had got an order to return to my house and bring the stolen guns I was hiding in my house. I told them I had not stolen any guns and had no other weapons in the house except a family weapon which is certified. They left me outside and went into the house to conduct a search. They did not produce a search warrant. They found no other weapon except the family-owned gun which is licensed. They started to shout at my two sisters. A shot was fired from inside the house. It sounded like a shot from an MP5 sub-machine gun.

The soldiers came out of the house and threw me back into the van. They took me to the Ministry of Defence and left me with military intelligence officials. My hands were still cuffed behind my back. The handcuffs were tight and they were digging into my wrists. I asked the officials to loosen the handcuffs but they refused. I asked for drinking water but they refused. At about 1300hrs Sergeant Mahlala and a certain private came and told me I should give them what they wanted. They asked when I had last been to the Lakeside Hotel. I told them I had been there some three weeks before for a drink. They said I had gone there to meet with the All Basotho Convention (ABC) an opposition political party. They said I had been with the ABC people in a meeting which planned to attack the houses of government ministers. I denied this. After more questions they uncuffed my hands and demanded to see the licence to the family weapon which had been taken from my house earlier on. They took me back to my house and I showed them the gun licence. I also showed them a mark which I believe had been produced by the gun shot which was fired earlier on. I found the empty shell and also showed it to the intelligence officials. The officials demanded the empty shell, but I refused to hand it over because I thought this was an attempt to destroy evidence. They left.

I feel very aggrieved by the treatment I received from the military. I was in their custody from dawn up to 1400hrs. During that time my hands were tightly cuffed behind my back. My wrists were swollen. They denied me food and water during that period. They stopped me from calling my lawyer. They denied me access to my lawyer. My rights were abused. They put my family under fear, and shock, and further a gun was fired inside my house, this also put me under fear and shock as I had no idea what the soldiers were shooting at as I was outside, and my sisters were in the house. I am living under fear, I have had to change telephone numbers after I received death threats by telephone. I don't know what will happen to me. For two weeks I was living in different places as I feared for my life.

Questions from the delegation

Are you politically active?

Yes. I am a member of the ABC party. I am involved in the activities of the ABC youth wing. We campaign to bring young people into the ABC. There is no armed wing at ABC and we do not carry out any military activities.

Why do you think you were detained by the military?

I think it is because of my military background and my association with the ABC.

How did you leave the army?

I had several clashes with my superiors, I felt unfairly treated. I was subsequently dismissed on allegations of misconduct.

Have you taken any action with respect to your treatment by the military?

I have filed a case against the military for the violations of my rights and for putting my family under fear and shock.

2.4. INTERVIEW WITH MR. MAILI RAMAKHULA

(Works at a brewery as a process operator)

On the 18th of June 2007 I was coming from my night shift at the brewery in Mason. It was around 0100 hours. I was in the company of other night shift workers from the brewery and we were being transported by the brewery vehicle. As we approached the traffic lights near the Lakeside Hotel a soldier stepped onto the road and aimed a gun at the vehicle we were in. The driver stopped. The soldiers ordered us out of the vehicle. Our driver tried to show them the permit which allowed us to move during the curfew hours on account of our working situation. He told them we had a permit. They ignored him and ordered us to lie face down on the tarmac. There were many soldiers. They started beating us up. They were taking turns to kick us and hit us with riffle butts. They accused us of taking the situation in the country very lightly. I was hit on the head with the butt of a gun. They hit me on the side of my back and I ruptured a muscle. As they hit our heads our faces would hit the tarmac. As a result my face was swollen.

I am not sure for how long they kept assaulting us, it felt like a very long time. After some time a military vehicle arrived. The occupants asked if we had a permit to move during the curfew hours, the driver produced it. Thereafter they ordered us to go.

I was in hospital for one day. I still feel pain in my back and I am told my problem will last my entire life and I will not be able to lift heavy objects.

The soldiers were really enjoying themselves torturing us. I have brought my case to the Law Society of Lesotho to get advice and claim compensation from the government. We were travelling in a company vehicle, we had a permit, we were coming from work but we were still detained and beaten up by the military. I have no political affiliation, and I don't know if any of my workmates have any. The soldiers picked on us just to enjoy themselves.

2.5. INTERVIEW WITH MRS. MAMALEBANYE LEROTHOLI

(Works as a teacher, she is married to a former army officer, Mr. Lerotholi)

My husband is a former army officer who left the army in 2003 and went into construction. In 1998 he was suspected of influencing junior officers to rebel against the government. He was detained, appeared before a military court but was acquitted. But he was ordered to retire. My husband is friends with the leader of the ABC party.

On 22nd June 2007 someone came to my house to inform me that my husband had been abducted by masked men in army uniforms and taken to the military barracks. I went to the army headquarters to verify this information. The army denied holding my husband. I reported the matter to the police. When two days later my husband's whereabouts were still a mystery I went back to the police and made another report. The police told me that they had asked the army about the matter and the army denied holding my husband. On the 27th of June 2007, another man who said he had been abducted by the army as well spoke on radio from South Africa. He said everyone who was missing was at Makwanyane military barracks. I went there with a group of women who were also looking for their husbands. The soldiers denied us entry and shoved us away. In the confusion many of us collapsed and had to get first aid. I took my husband's case to the Law Society. The lawyers made an application for my husband to be brought to court. He was eventually brought to court on July 2nd 2007 and produced before the judge who ordered his release.

He was not feeling well. He was confused. He was disoriented. He looked traumatised. He had cuts on his wrists. He had bruises on one side of his face. He said his whole body was aching. He could not walk properly. We went home together. But the next day the police came and arrested him. We filed another application for his release. The judge gave us a court order for his release on July 7th 2007. We went to the police station to wait for my husband to be released. Whilst we were there many soldiers came and surrounded the police station. They took some prisoners from the police, my husband was not amongst those who were taken by the soldiers. As he was not released at that time I went home. Thereafter I read in the newspapers that my husband fled to South Africa. I have spoken to him over the phone. I don't know where in South Africa he is. He tells me he is in a very bad shape. He says he passes blood in his urine because he was tortured by soldiers who pulled his private parts whilst he was in their custody. He said he had been blindfolded all the time between June 22 to June 27th 2007. He was tortured during this whole period.

I am now the only breadwinner. My husband is unable to support the family. We have two children who are both still at university. I am living in fear. I don't sleep peacefully in my home anymore. My calls are being monitored.

2.6. MEETING WITH THE ACTING PRIME MINISTER OF LESOTHO

The delegation was welcomed by the Acting Prime Minister of Lesotho. The Prime Minister of Lesotho could not be present as he was attending the SADC Heads of State and Government Summit in Lusaka, Zambia at the same time. Mr. Hara introduced the SADC LA delegation and explained the purpose of the fact-finding mission which arose out of the events surrounding a curfew that had been declared in Lesotho. He summarised the issues which have been raised with SADC LA as follows:

1. There are allegations that members of the Lesotho defence force have been involved in the abduction, torture, illegal detention, and general harassment of the civilian population in Lesotho. In certain cases the army has allegedly targeted political activists who belong to the opposition and who are agitating for political change in Lesotho.
2. There are allegations that the government has compromised the independence and respect of the judiciary. The specific case is with respect to the circumstances surrounding the search of the official residence of Judge Mahase, which the judge, civil society, and the Law Society of Lesotho believe was unwarranted, violated the judge's rights, dignity and was calculated to harass her.
3. There have been complaints that the government has ignored several court orders stemming from a number of applications pertaining to the civilians who were abducted by the defence force and kept in their custody.
4. Naturally SADC LA is concerned that these allegations have been raised in Lesotho which is a member country of SADC LA and more importantly of SADC. SADC LA is on a mission to establish the veracity of these allegations as they have a bearing on the rule of law in the region and the respect for human rights which are issues central to the existence of the SADC Lawyers Association.

The Acting Prime Minister responded as follows:

Your association is a guest of the Law Society of Lesotho. The Law Society will have informed you of the actions they have taken on these matters. Hence you should have sought more information from the Law Society since they are a member of your association. You don't seem to have a proper background of the situation we have here in Lesotho. You need to be very well informed. Today the Prime Minister will be reporting to SADC in Lusaka, he has also reported to the Summit in Dar es Salaam, the former president of Botswana has also landed here with respect to the issues arising from our recent elections.

The issues you raise are now before the courts, your member has instituted action against the government, so this makes it difficult for me as Acting Head of government, the Chief Justice or the Attorney General to make comments on issues at court. The Law Society has sought orders against the defence force. How do we then discuss issues that are currently before the courts?

We can't discuss these issues in isolation. A curfew is a very serious matter, it cannot just be imposed without a background. The whole issue of government being accused of

harassing citizens is before the courts and it is very difficult to enter into a conversation in which government feels it is being investigated for doing wrong. These issues are caused by a small band of criminal minded individuals who are causing problems for us here, there is no movement for political change in Lesotho. The issues are all linked to previous upheavals and attempts at unseating the government even after it has been elected by the people. We are trying to grow our democracy, but at the heart of the problem are people who will never want to accept election results. This is our tragedy.

There is a court case about the legitimacy of our alliances. We have a combined first-past-the-post and proportional representation electoral system. As the ruling party we were aware of our waning influence and support. We did not get a single PR seat, we dropped to 54% of the national vote, so we went into alliances with other parties and agreed not to compete with each other in certain constituencies. This strategy gave us 61 first-past the post seats and 21 PR seats. Now the opposition is arguing that those seats must be reallocated because we have alliances and they claim these are not separate entities, and as a result we must be given 1 PR seat.

2.7. MEETING WITH MR. MAKHETHE THE ATTORNEY GENERAL OF LESOTHO

Mr. Hara introduced the SADC LA delegation and explained the purpose of the fact-finding mission which arose out of the events surrounding a curfew that had been declared in Lesotho. He summarised the issues which have been raised with SADC LA as follows:

1. There are allegations that members of the Lesotho defence force have been involved in the abduction, torture, illegal detention, and general harassment of the civilian population in Lesotho. In certain cases the army has allegedly targeted political activists who belong to the opposition and who are agitating for political change in Lesotho.
2. There are allegations that the government has compromised the independence and respect of the judiciary. The specific case is with respect to the circumstances surrounding the search of the official residence of Judge Mahase, which the judge, civil society, and the Law Society of Lesotho believe was unwarranted, violated the judge's rights, dignity and was calculated to harass her.
3. There have been complaints that the government has ignored several court orders stemming from a number of applications pertaining to the civilians who were abducted by the defence force and kept in their custody.
4. Naturally SADC LA is concerned that these allegations have been raised in Lesotho which is a member country of SADC LA and more importantly of SADC. SADC LA is on a mission to establish the veracity of these allegations as they have a bearing on the rule of law in the region and the respect for human rights which are issues central to the existence of the SADC Lawyers Association.

Mr. Makhetha responded as follows:

May I commend your association for the extremely good work your are doing in the region.

With respect to the issues you raise I am unfortunately a respondent in a matter filed by the Lesotho Law Society. I can only speak in general terms, the Law Society has sued the government and we have responded to the papers. Professionally I am not sure what the law society wants from me when the very matters are before the courts. The specific case has been set down for end of August. Whatever comments I make will get into the public domain and will get into court. We have issued a number of statements from this office in the past advising against making sub judice statements. My hands are tied professionally.

I have had no official briefing on the judge's case. Hence I cannot talk authoritatively on the matter. With respect to court orders, our instructions were that the orders were enforced. There was a contempt of court application, this was then withdrawn, hence we have a problem ascertaining the true facts. It is difficult to know what really happened. We would have found out the truth if the contempt application had gone ahead.

On the judges' personal security I know the judges have police body guards, but I am not sure if they have security at their residences.

2.8. MEETING WITH THE LEADERSHIP OF THE OPPOSITION POLITICAL PARTIES IN LESOTHO

The delegation met with the leadership of the opposition political parties in Lesotho. The leadership was represented as follows:

Mr. J.M. Lekhanya, Leader, Basotho National Party (BNP)
Mr. K.A. Maope, Leader, Alliance of Congress Parties (ACP)
Mr. A.C. Manyeli, Leader, National Independent Party (NIP)
Mr. T.M. Thabane, Leader, All Basotho Convention (ABC)
Mr. M. Soulo, Member/Chair, ABC
Dr.K.D. Raditapole, Deputy Leader (ACP)
Mr. S.M. Dlangamandla, Member ACP
Mr. V. Malebo, Leader, Marematlou Freedom Party (MFP)
Mr. M. Sejanamane, Member ABC
Mr. C. S. Machakela, Deputy Leader, ABC
Mr.K.M. Manyeli, Member, NIP
Mr. A.M. Moholi, Member, BNP

The political parties agreed to table specific issues and appointed lead speakers to articulate their views, they also gave the delegation a number of documents which contain various positions of the political parties with respect to the situation in Lesotho. These issues are captured below:

2.8.1. Verbal Submission: Mr. Thabane (ABC):

The situation in Lesotho emanates from the snap election we had recently. There was no time for preparations, and worse this affected the Electoral Commission. Registration of voters was difficult to conduct in the circumstances but the elections were described as free and fair. In the end we filed election petitions, but we have recently withdrawn these petitions as we now accept the results of the elections. Our quarrel is with the allocation of seats on the proportional representation system. This is the second time we have used the PR system. We protested about the unfair outcome of the recent PR seats allocation by staging a sit-in in parliament. The army came in and physically threw us out of the parliament building. Further to that we also organised a stay away and took the matter of the allocation of the PR seats to court. The SADC Secretariat was in Lesotho for a meeting, we approached them and we agreed that SADC should handle the matter. For this reason we suspended the stay away. The matter was discussed at the SADC Extra ordinary Meeting in Tanzania following which a SADC fact finding mission came to Lesotho with former Botswana president, Mr. Masire being appointed to lead the mediation exercise.

We wanted electoral experts to adjudicate on the allocation of the PR seats. Government argued that they would not participate in the adjudication while the court case was pending, and we withdrew the case and agreed on the adjudication. It was during this

period that we heard that some bodyguards of cabinet ministers had been robbed of their guns. Immediately after this my house was attacked, we recovered 33 shells of ammunition. The radio reported that homes of certain ministers had also been attacked. The Police Commissioner declared a curfew. These shootings occurred while Mr. Masire was in town. On his departure from Maseru a witch hunt started. Masked men abducted one of my body guards as he stood guard at my offices. We didn't know where he was for a whole week. Another of my bodyguards was similarly detained. We secured court orders for the release of these men. But the army surrounded the police station to prevent the release of the detainees. At the same time the army abducted their own serving officers from the police station, but the two civilians managed to escape to South Africa. The army officers eventually appeared in court, and were granted very high bail which they paid and they were released, only to be arrested again by the army. These officers are still in custody. Presently government is seeking the extradition of those who escaped to South Africa.

These issues show that the human rights of all of us are badly threatened. Civilians are still being picked up. A judge is being punished for making orders for the release of people abducted by the army.

2.8.2. Verbal submission: Mr. Manyeli (NIP):

There has been a breakdown of the rule of law in this country. The judiciary has been compromised. One case highlights these issues. It is with respect to the electoral process. There was controversy over the PR list for the NIP. The Independent Electoral Commission rejected the NIP list. Our appeal to the high court resulted in the IEC being overruled by the high court, through Judge Mahase. Under section 69 of the Constitution of Lesotho no decision of the High Court can be appealed. This was confirmed by the appeal court decision of 2003. The appeal court decision was ignored by the same Appeal Court when it overturned the decision of Judge Mahase in the High Court with respect to the PR list case. You have a situation where the Appeal Court has ignored its own ruling on a similar matter. Judge Mahase is now in trouble for overruling the IEC on the NIP PR list matter. I have visited the police commissioner and told her that the judge is being victimised for finding in NiP's favour.

I am now being dragged to court on contempt of court charges for criticising the Appeal Court with respect to its conduct in the PR list matter.

2.8.3. Other verbal submissions:

- We have members who escaped the harassment and went into hiding in South Africa, however they were picked up by the South African authorities. We assume that the South African government gave our members temporary asylum after considering their situation here. We are concerned about their situation and hope that SADC Lawyers Association can also do something for these people.

- Everybody who is arrested is told to produce guns. We haven't been told how many guns have been produced. People are being picked up, tortured and are being forced to sign prepared statements. One former soldier was picked up, went missing for a week, and his family was only told to come and identify his body at the mortuary. The family has not been allowed to witness the post mortem. But the wounds on his body show clear signs of torture.

- The focus has shifted from ex-army officers to former freedom fighters. These are being rounded up and detained. There are cells in the police building where people are being routinely tortured. We don't know who is in there. Please make the government account for these people. New cases of abduction and torture are coming up everyday. Government is instilling an element of fear in the supporters of the opposition. Even media people have been arrested and threatened, including one who has been in custody charged with high treason for merely reading a statement on radio.

- The telephones of opposition leaders are being monitored and tapped. The recorded calls are being transcribed at Parliament, one service provider, Econet has agreed to tap cellphone calls but they have officially denied doing this. We have seen these transcripts at Parliament. Parliament is being undermined by making ordinary workers there connive in the violation of the privacy of members of parliament through the transcription of private cellphone calls.

- Lawyers are also being harassed, their President, Mr. Mda has been under persecution for a long time.

- The Bill of Rights is being ignored but no state of emergency has been declared, hence individual rights have been arbitrarily suspended. The army is now at the forefront of law enforcement.

- The authorities have taken the law into their own hands, sometimes in pursuit of personal interests. One example stems from December 2004 when a suspected cattle thief was rescued by the police from a mob which was assaulting him. A cabinet minister was one of the people who had lost cattle through theft. The police were escorting the alleged thief to the police hospital when the minister took an army helicopter, and the alleged thief was shot dead from that helicopter. Nothing has been done about this.

2.8.4. JOINT WRITTEN SUBMISSION BY THE LEADERS OF THE OPPOSITION PARTIES

The Leaders of the following Political Parties: All Basotho Convention, Alliance of Congress Parties, Basotho National Party, Marematlou Freedom Party; and National Independent Party welcome the SADC Lawyers Association's fact finding visit to Lesotho to assess the current political climate. As leaders in this country, we are duty bound to inform the wider Southern African region and the world at large of the crisis which has been increasing in tempo in this country in the past two months. We are convinced that unless urgent measures are taken, the situation will bring about a catastrophe to this country and the region as a whole.

The Lesotho crisis has been simmering from February 2007 after the elections up to the present. Unfortunately, this crisis has been un/under reported in the regional press. This has conspired to fuel the erosion of civil liberties to the level where persecution and torture have become normal in this country. Hereunder we outline the main concerns and trends that need to be understood on the current political climate. Some of the indicators of the erosion of democratic rule and the descend to anarchy will be evident in our statement.

Erosion of democratic norms

Since February 2007, we have raised alarm at the way the proportional representation seats in parliament were allocated by the Independent Electoral Commission. The matter has not been resolved up to the present. Concerted attempts by all of us to have the matter resolved have not succeeded. The government steadfastly refuses to have any meaningful dialogue with us other than through State Media which is not accessible to any other voices. The SADC Troika Mission headed by Sir Ketumile Masire provided the only avenue for discussions on this matter. However it faced the same obstructions. The ruling party refuses to have genuine dialogue. Instead an excuse that the matters which were being discussed were already in the courts was used. The case which was being used as the reason for not involving the experts in the determination of whether the PR seats were allocated correctly has now been withdrawn from the High Court.

It is important to note that democratic rule involves dialogue amongst the different stakeholders. There are no talks of any nature that have taken place between the ruling party/Government and the opposition since February elections other than those that took place under the auspice of the Eminent Person. Other indicators of the erosion of democratic norms that we witnessed recently are the following:

- as part of the protest against the unfair allocation of the proportional representation seats in parliament, we decided to stay in the House until a resolution of the mater was reached. We were however evicted by armed soldiers who claimed they were acting on the instructions of the Speaker of the National Assembly. Needless to say that the Speaker did not make the said order in Council and to the Sergeant in Arms in the House who could then have called for reinforcements if need arose;
- the Lesotho Constitution provides for a position of the Leader of the Opposition with clearly defined roles in the overall political system. The Opposition Parties did write to the Speaker of the National Assembly on this issue, nominating Hon Motsoahae Thoams Thabane as Leader of the Opposition, but this matter has not been resolved. We see this as only one of the indicators of the crisis of governance which has befallen us in the past few months;
- The media in this country is seriously under siege. Over and above the fact that State Media has completely shut out all voices other than those of the Government and the ruling party, the emerging private media,

electronic and print, faces enormous challenges. There are regular threats to close down the media coming from sources close to the Government. Secondly the Government has issued instructions that two radio stations, Harvest Fm and PC Fm should not get any advertisements from any government department. In a similar manner Public Eye, a widely read weekly newspaper in this country has been a recipient of government sanctions because it has dared to report news through its own eyes rather than those of Government. In addition it is facing multi-million [sic] court claims. It is obvious that without a free press there cannot be any genuine democracy.

Descend to anarchy

It is often been argued that one of the most important bulwarks against tyranny is an independent judiciary. As will be clear later we are worried that the government is waging war against this ultimate protection of our rights. It is important to sketch developments which lead us to believe that we are now on the precipice. Briefly the following are the indicators of the anarchic state that we have descended to:

- recently, and coincidentally at the beginning of the mediation process by Sir Ketumile Masire, Maseru and all its neighbouring areas were slapped with a curfew beginning 1800-0600hrs. This became the launch pad for large scale beatings of the civilian population by the military. Ostensibly this was to facilitate the recovery of stolen military weapons which were allegedly seized from ministerial guards by unknown people;
- a number of people were kidnapped by hooded men and disappeared for long periods of time with all branches of the government security establishment denying knowledge of their whereabouts. Claims that some people were impersonating the military were made no less than by a Minister of Communications. It was only after the escape of one Thabo Mthimkhulu Thants'si that it became clear that the kidnapers were a unit of Military Intelligence. Similarly the court order that the body of Makotoko Lerotholi, who was abducted near Lakeside Hotel, be produced confirmed to all the identity of the kidnapers.
- From the accounts of both Thants'i and Lerotholi, the latter in court, the abductees were subjected to inhumane treatment and torture for the duration of their illegal detention. Both were at one stage or another hospitalised at Makoanyane Military Hospital as a result of their torture;
- Following the release of Mr. Lerotholi from the military he and four others were subsequently charged with High Treason. However the courts declined to read the charges and ordered that they be freed because they were in illegal detention and some of them were even brought to court by people who have no legal status to do so. However the three military personnel who were in that group were forcibly removed by the military from the police station. A few days later they were back in court charged with High Treason. After they got bail from

the High Court, the military once again picked them up at the Central Prison thus nullifying their bail. We view this as nothing short of contempt of court;

- Another indicator of the anarchy which we have descended to here is the humiliating search of the premises of one of the judges of the High Court. Incidentally this was the same judge who had made the decision to release those people who had been kidnapped. The judge's premises were ostensibly being searched for weapons. We however suspect that it was a way of intimidating her and other judges. We are not concerned about this action, but are worried that the Chief Justice has remained mum on this issue.
- As a consequence of these developments, we now have six people who have now sought and acquired temporary political asylum in South Africa.

2.8.5. Written submission by Mr. Manyeli¹

PR Seats in Parliament the cause of the problem

The Lesotho Court of Appeal took it upon itself to accommodate an appeal and decided contrary to the High Court order declaring the LCD-NIP combined PR list as irregular (despite constitutional provisions under section 69 and the stipulations of the electoral laws [section 7(4)] providing that High Court decisions on such matters are final). This emboldened the IEC to disregard section 49(f) NAE0 and to effectively change the Proportional Representation Model to a parallel model in allocating seats to Parliament. The IEC had not contested the NIP leader's petition that the High Court declare the combined NIP/LCD list as irregular, and took the same list (now declared irregular by the High Court) to Parliament. Despite the irregular NIP/LCD list taken to Parliament, the Prime Minister advised the King to appoint some persons on that same list as ministers. The King duly appointed the proposed ministers in compliance with the Constitution. Some opposition parties objected to the constitution of Parliament that incorporates persons on a list declared irregular by the competent authority. A civil campaign to address this anomaly aroused public awareness to this problem and exerted pressure on the Government to respond. It does appear that anything to suggest a movement towards a resolution of this problem in a way that would cost LCD members in Parliament on the NIP list their seats is considered an action designed or intended to overthrow the Government.

The issue of the unfortunate state-sponsored torture of political prisoners in Lesotho is closely linked with the issue of Parliamentary seat allocation. It is anchored on a deliberate departure from the rule of law where the country's constitution, other laws and the judiciary are sidelined in order to torment, intimidate and harass the population into acquiescing to an irregular constitution of their Parliament and Executive arms of

¹ Mr. Manyeli was also party to the joint submission by the opposition party. His written submission is reproduced in part to cover aspects that may not have been detailed in the joint submission. He also gave the delegation copies of the judgments relevant to the PR lists in question.

government following the 2007 general elections. I submit that efforts to deal with the torture of political prisoners should address all the issues pointing to a departure from the rule of law which precipitated and provided the context for these unfortunate events. Such efforts should not leave out the harassment of people- particularly the civil servants and members of the media. I submit further that the issue of the torture of political prisoners should not be entirely divorced from the issue of the allocation of PR seats. The said torture and harassment can only intensify if the issue of seat allocation is not resolved, and people's perception that those in power can and may apply state resources (including use of state institutions) to maintain themselves in power is corrected.

2.9. INTERVIEW WITH THE LAW SOCIETY OF LESOTHO

2.9.1. Mr. Hae Phoofolo (*member of the Law Society*)

There has been a breakdown of the rule of law since June 2007. I am handling several cases involving human rights violations. Generally the people concerned would have been abducted by the army, tortured in military custody and then released into the custody of the police. So far 7 individuals have been charged with treason, more are expected to be charged. One of the cases I have handled relates to a former soldier whose wife I understand has made a statement to the delegation [SADC LA]. His habeas corpus application was heard at night after the man had been missing for two weeks whilst in military custody. The victims I have seen were tortured by the military. In one case 3 soldiers are in military custody but were released on bail by the High Court. They are kept in a dark cell twenty four hours a day, they eat in the dark cold cells and are fed on unhealthy food. I have written to the defence forces to complain about this. The men are being held in terms of the Defence Forces Act, and they can be held for 40 days without trial; this period can be extended. However the men are being held on flimsy charges which are disciplinary in nature.

There are arrest warrants for about seven more people, mostly civilians. The people are not in the country. There has been an unprecedented increase of refugees into South Africa for the first time since the end of military rule in Lesotho.

The treatment of accused persons has been horrible. It includes the following deplorable issues:

- they were kidnapped by masked soldiers;
- assaulted and tortured through the use of electricity;
- they are given very little food;
- they are kept hooded for days and driven around the country to distant places whilst blinded by the hoods over their heads; and
- most have ended up in hospital in view of the injuries they have suffered.

The accused persons cannot really afford our legal fees.

There is the disturbing case of one Ranthimo. The civilian was shot dead by the army on 19th June 2007. His body was delivered to the police by the army. They claimed that they shot him in the course of him resisting arrest. I represent his family in his case. The family has been denied a copy of the post mortem carried out by the government pathologist on July 30th 2007. They have demanded to have a private pathologist perform a post-mortem and have hired a South African to come to Lesotho to conduct this post mortem. However the pathologist telephoned me to inform me that he had been chased out of Lesotho at gunpoint when he crossed into the country. The police deny this. This has happened despite the government having initially agreed to allow the pathologist to

come to conduct the post mortem. The family has now taken Ranthimo's body to South Africa to procure an independent post mortem.

With respect to the operating environment I have faced problems as an attorney. These problems have also been faced by other attorneys representing clients in connection with the recent political upheavals. The police have threatened me, I have even been warned by a police officer to watch my back as I move around the country. I have not been allowed to speak to my clients in confidence. The police hinder any attempt at holding confidential consultations with my clients. I don't have many issues with respect to the judiciary, but bail conditions which have been stipulated in the case of the three soldiers amount to a refusal of bail.

All these abuses are happening, but there has not been any declaration of a state of emergency. The Constitution is still in force. But the military is being allowed to detain civilians, man roadblocks without police presence and harass civilians in the process.

2.9.2. Mr. Mda (*President Law Society of Lesotho*)

The Law Society has made submissions in the course of the visit to Gaborone. Our main concern was to give the rest of the constituencies in Lesotho a chance to make statements to the SADC LA delegation. We hope that the delegation has had enough opportunities to talk with the affected people, or their lawyers. We can only restate some facts.

The abuses began when three ministerial bodyguards were allegedly disposed of their guns by unknown assailants. It is not even clear when and how many guns were stolen, how many have been recovered and from whom. The army has persistently attacked civilians in the past few weeks. The Government has not distanced itself from the illegal acts, and instead, the Prime Minister has actually commended the army for doing a goods job. The so-called professionalism of the military has come to nought.

It is the Law Society that initiated the reaction against these abuses. The cases we have filed with the courts are designed to stop these abuses. Our concern is that the arrests are taking place outside the scope of the Law of Lesotho. The rule of law is being undermined.

3.0. OBSERVATIONS BY THE SADC LA MISSION

3.1. Cases of abduction and torture by the military

Allegations were made that the military in Lesotho was involved in the abduction and torture of civilians and some members of the Lesotho defence forces. The mission was not able to get comments on this serious allegation from the defence officials as the Commander of the Lesotho defence forces declined to be interviewed. No comments on this issue were also forthcoming from the office of the Prime Minister and the Attorney-General as both authorities cited the pending legal cases as a reason not to make any substantial comments on the allegations. However from the information gathered from other sources, namely the individuals and institutions interviewed in section 2 of this report the Association has reasonable suspicion to believe that the Lesotho military has been involved in the detention and torture of both civilians and some members of the military. Some of the victims were brought to court and the court had an opportunity to confirm both the illegal detentions and the torture visited upon the victims.

At least one death of a civilian has been blamed on the military.

Apart from cases of abduction and torture there is information to indicate that the army has been involved in other actions which have violated the individual rights of civilians in Lesotho. Specific cases relate to the near-fatal shooting of a civilian interviewed in section 2 above, and the general harassment and beatings conducted on civilians during the period when the curfew was in force. Some of the victims had or have links with the opposition political parties in Lesotho. Others have no discernible political connections but were caught in the cross-fire. There are numerous references to the violent conduct of hooded men in military garb and the military taking over general law enforcement matters from the ambit of the police. On the basis of the findings of the Mission, it is the view of the Mission that the allegations of abduction and gruesome torture of citizens by the military are not without substance.

3.2. Independence of the judiciary

There was no official comment on the case of the allegations of harassment and victimisation of Judge Mahase. The only state official who made what may be described as a comment was the Attorney General whose submission was that he had not been officially briefed on the matter. The Chief Justice declined to meet the delegation. The other official who could have given the government side of the story was the Commissioner of Police who for the reasons stated elsewhere in this report did not meet the delegation.

We have no reason to doubt that a search was indeed conducted at the judge's official residence. The evidence with respect to the circumstances surrounding the search was provided by the judge herself, whilst we observe that the state authorities did not make any substantive comments on this issue we are left with no other findings except those

based on the judge's description of the search and its impact on her standing. The Association has no doubt that the government of Lesotho has all the powers to uphold the laws of Lesotho, and that no individual or official (including judges) is above the law in Lesotho. We observe that the government of Lesotho is fully entitled to investigate members of the judiciary for a variety of issues which are consistent with the full powers of the state. However in the case of Judge Mahase there are reasons to believe that the government of Lesotho could have handled the matter better if there were reasons to suspect the judge of any wrong doing. The official silence on the matter can only fuel suspicion that the judge is being harassed or victimised for taking a stance which is not popular with the authorities. The suspicion of harassment and victimisation have a negative impact on the independence of the judiciary in Lesotho. Although judge Mahase's case is the only one of its nature, the linkages which this case has with the general situation in Lesotho gives rise to the worry that the independence of the judiciary has been compromised.

The absence of any official reaction to the treatment of the judge, and also to her complaint is further cause for worry. In the opinion of the Mission based on its findings, considering the circumstances surrounding the search of the judge's residence, it is difficult to avoid the impression of intimidation and harassment of the judge for making judicial decisions that did not suit the Executive and/or the ruling party.

3.3. Independence of the legal profession and the rights of accused persons

Testimony from some of the lawyers who are directly involved with the cases pertaining to allegations of illegal conduct by the military has revealed that some lawyers are not happy with the conditions under which they are operating. The legal profession is not being given adequate opportunity to gain access to clients who are in detention. This compromises the ability of these clients to gain access to justice. Information gathered indicates that some lawyers even fear for their own personal security, thus further compromising their ability to deliver proper professional services to clients who are desperately in need.

The fact that a number of victims were held in military custody and none of their families or legal advisers knew where they were being kept indicates that violations of individual rights were committed. The victims were denied access to their lawyers for lengthy periods. However the leadership of the Law Society of Lesotho has made some very commendable interventions in the recent crisis in Lesotho. Evidently members of the public do look up to the Law Society of Lesotho for both leadership and protection. In this respect it is important that the legal profession in Lesotho and in the SADC region should show support to the Law Society of Lesotho's leadership. This solidarity will strengthen the Law Society of Lesotho's leadership and reduce the perception that certain individuals within the leadership are vulnerable to the general threats and challenges against the rule of law.

In the light of the findings of the Mission, it is the view of the Mission that the independence of the legal profession has been undermined by the State – lawyers have

been hindered in carrying out their professional duties, and clients have been denied their rights to consult with their lawyers confidentially.

3.4. Implications on the Rule of Law in Lesotho

The information that the security authorities in Lesotho are involved in violations of human rights has grave implications for the rule of law in Lesotho. There is a perception that the military is above the law and can conduct certain illegal activities without attracting any sanctions from within the Lesotho legal system. Although the Lesotho Government opted to avoid making substantive comments on the issue, there is reasonable suspicion that the security authorities have subverted the rule of law in Lesotho, and that this has been happening since June 2007.

The Government of Lesotho was at pains to highlight that the current problems in Lesotho are a result of the failure by the opposition political parties to accept the outcome of the elections held earlier in 2007. The opposition political parties also emphasised that the situation was directly linked to the election process but narrowed down to the particular issue of the allocation of the proportional representation seats. The opposition parties filed challenges on the outcome of the elections but later dropped the court petitions in order to focus on the dispute with respect to the proportional representation seats. The dispute can be settled by recourse to dialogue, and the interpretation of the legal instruments that are in place to govern the allocation of the seats in parliament. The Association is concerned that there exists a strong perception amongst the opposition political parties that one side to the dispute, the Government of Lesotho, is attempting to settle this dispute by utilising the resources of the state, namely the military, and hence to settle the issue by the use of force rather than the law.

On the findings of the Mission, it is the view of the Mission that, by international standards, the rule of law has been grossly violated by the State. Also the democratic values of contact and dialogue have not been respected. Perhaps it should also be mentioned that the State authorities, in their meetings with the Mission, left the Mission with a distinct impression that they had not been absolutely candid with the Mission.

4. RECOMMENDATIONS ON THE SITUATION IN LESOTHO

1. Cases of abduction and torture by the military.

The SADC Lawyers Association urges the Lesotho authorities to conduct thorough investigations to address the allegations that the military in Lesotho has been responsible for the abduction, illegal detention, torture and general harassment of the civilian population. Those responsible for these abuses should be brought before the courts of law and accordingly tried.

2. Independence of the judiciary.

The SADC Lawyers Association urges the Executive and the Judiciary of the Government of Lesotho to ensure that a thorough investigation of the circumstances surrounding the search of Justice Mahase' residence is conducted. The investigation should address the perception that the judge was targeted as a result of her stance with respect to cases involving the interests of the Executive and/or the ruling party in the Government of Lesotho.

Further the Association urges the Lesotho authorities to improve the personal security of the judiciary.

3. Independence of the Legal Profession and the Rights of Accused Persons.

The SADC Lawyers Association is very concerned at the numerous reports concerning the rights of lawyers in Lesotho to gain access to their clients especially where the clients were in the custody of the military. Further the Association is concerned that those citizens who were placed under such custody were denied the right to consult their legal advisers. We therefore urge the Lesotho authorities to take corrective measures to ensure that the lawyers are allowed to exercise their professional mandate without hindrance. We also urge the Lesotho authorities to respect the fundamental rights of accused persons with respect to their right to access legal advice in confidence.

4. The Rule of Law.

The above recommendations all influence the perception that there has been a breakdown of the Rule of Law in Lesotho. The Association therefore urges the Lesotho authorities to effectively address matters raised in this report in order to restore respect for the law and to improve the administration of justice in the aftermath of the curfew period. The Association urges the Lesotho authorities and the opposition political parties to conduct mutually beneficial dialogue so that the tension over electoral disputes is diffused.