

**TORTURE IN MILITARY DETENTION IN LESOTHO**  
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## **INTRODUCTION**

1. Sometime around **May 2015** military agents of **THE LESOTHO DEFENCE FORCE** commenced the process of arresting one junior member of the army on suspicion of complicity to the crime of mutiny. This arrest was followed by a trail of arrests a total of which amounted to no less than fifty. Their crime was that they had breached **THE LESOTHO DEFENCE FORCE ACT** by engaging in the military offence of mutiny. These arrests were conducted without following the internationally recognized pre-arrest measures and they were conducted by junior officers contrary to military laws and conventions.

2. These arrests were later followed by a militarily coordinated and institutionalized act of taking the relevant members of the army to a secluded military base located in the remote areas of the country. It needs to be mentioned that The Kingdom of Lesotho

has a peculiar topography and as such it comes across as one of the coldest areas of Africa. The arrested soldiers were arrested right at the heart of winter and they were subjected to the most gruesome and horrendous acts of torture by their arrestors where they were forced to strip naked and to enter a freezing cold lake disclosing the details of their alleged acts of insubordination to the command and mutiny. Some were subjected to the degrading treatment of having their genitals fondled with and openly being informed that their 'natural equipment' would no longer bear children.

3. What is even worse or concerting is the fact that there was a gross failure on the part of the arrestors to furnish remand warrants accompanied by signed reports which justified their continued detention in the maximum security facility right at the heart of the capital city. The next of kin of the relevant soldiers were never informed or advised about the arrests and this prompted a trail of *habeas corpus* applications.

4. A trail of applications were filed by the respective spouses of the arrested soldiers with a desired end of facilitating the release of the detained soldiers but all of them were frustrated either technically or through the endemic judicial omission because they would either take too long to be concluded and for a verdict to be issued or be dismissed on purely technical grounds. This glaringly affirmed the need in Lesotho's jurisdiction for the bench to be constituted with judges who are ready to venture into judicial activism and to avoid a conservative approach especially when it comes to the rights of detained persons irrespective of whether they are soldiers or civilians. I shall be loath to comment further on the judgements in issue because my observations could in essence reflect on the independence of the judiciary in Lesotho, a sacrosanct principle of law articulated and guaranteed in the constitution, and with it the preservation of the state powers and the rule of law. There could be a formidable array of contentions over this matter and I reserve it for an independent debate if invited by S.A.L.C. or any other organization in due course. This

brings me the important question of access to legal representation by detained soldiers.

5. Notwithstanding the then ostensibly wide-ranging and tangled skein of *habeas corpus* applications and instead of ordering release of the soldiers and also frowning upon the cruel and inhuman treatment the arrested soldiers were subjected to by the arresting team, the High Court of Lesotho side-stepped the issue of torture and its attendant effect on pre-trial prejudice but restricted the notion of torture to a civil claim of damages as is the jurisprudence in Lesotho's jurisdiction. To our dismay as legal representatives of the detained soldiers the High Court invariably issued orders exclusively allowing wives of the detained soldiers and close family members access to detained soldiers in Maximum Security prison during working hours between 1000hrs and 1500hrs. The visitors were accorded 30 minutes a day and their consultations with their arrested husbands were made within both earshot and eye shot of officers guarding the prison. This in itself was a strategically daunting

psychological way of defiling the dignity of the arrested soldiers because it effectively deprived them of privacy with their respective spouses.

**6.** It needs to be mentioned at this stage that the manner in which the soldiers had been arrested had attracted nation-wide attention because the relevant soldiers were hauled to court guarded by fully armed soldiers who were wearing balaclavas with an inevitable desired end of concealing their identities. They entered the court premises fully armed and with their faces concealed and with the relevant soldiers manacled and handcuffed. This was contrary to normal practise and convention for accused persons to sit in the docks and let alone to enter court premises and sit in a courtroom surrounded by a group of armed law enforcement offices. Invariably, all of the arrested soldiers were evidently huddling in agonizing pain which was perpetrated upon them in a military base in a gruelling cold whether accompanied by denial to medical facilities and access to legal representatives.

7. A total of six lawyers assumed the mantle of disdain – for want of a better word or phrase and assumed the professional duty of representing the embattled soldiers. I deliberately used the phrase assumption of the mantle of disdain because all these lawyers inclusive of myself conducted the court-martial trial of the soldiers on a purely *pro bono* basis after the government agencies had denied them of any state sponsored resources to provide for the fees. A period of two years passed until barely two weeks ago when our clients were released as a result of a trans-national body – S.A.D.C. – and its ardent efforts to normalize the politically volatile Kingdom of Lesotho. Within the course of detention, all the six lawyers were given strange if not prejudicial procedural directives by the authorities guarding the prison because the lawyers had to share allocated time of consultation with wives and family members because the prison facility only allowed one person at the time to talk to a detained soldier.

8. That to my mind, was not only prejudicial to detained soldiers' right to legal representation but was a serious inconvenience to the lawyers who would have to queue on the sunny day in order to note instructions. Initially the lawyers were given a private consulting room to consult but were later directed to consult in the open space in the full glare of the fully armed members of Special Forces who are also referred to in romantic language as the *commandoes*. They would be in a position to hear the discussions and engagements of the lawyer and the detained soldier and the proposed and or coordinated strategy to gain liberty of our clients. This evidently violated the holy principle of legal professional privilege and had a tainting effect on the notion of free and fair trial because there was no confidential arrangement made for the facilitation of consultation of the lawyers and their respective clients – detained soldiers.

9. At this point in time it is perhaps important for me to detail the nature of torture that was perpetrated on our clients whilst in detention: They were placed in

solitary confinement for a period of no less than 40 days and this was in utter violation of prison rules which guide the confinement of soldiers and which is a statutory imperative. There were frequent visitations by the administrators of the prison in which downright threats were communicated to the detained soldiers and in particular, there were numerous attempts by the army to have them turning into state witnesses against those in detention and this initiatives were prompted or initiated either by duress or undue influence. What is otherwise regrettable is the fact that none of those perpetrators have been taken for any disciplinary hearing and let alone prosecuted.

## **CONCLUSION**

**10.** Going forward, we have since lodged a case in The Court-Martial Appeals Court where we have made an informed decision to attack the institution of The Lesotho Defence Force for perpetrating torture and linking that act with the concept of *'pre-trial prejudice'*. The desired end is to have all the criminal charges staged against the soldiers permanently stayed on account of the brutal acts of torture and also cruel,

inhuman and degrading treatment that our clients were subjected to.

**11.** With all things being as they are, Lesotho is a signatory to The Convention Against Torture but even then, torture is recognised as an international crime. But that notwithstanding, the authorities in Lesotho's jurisdiction are not keen to harshly criticize law enforcement institutions which sanction it. It is clearly high time that the perpetrators of torture irrespective of whether they are law enforcement or not are taken to book for perpetrating torture. I also wish to pause at this stage and to pass my sincerest thanks to S.A.L.C. on my personal behalf for playing a part in funding the legal representation of the detained soldiers and also for being our strategic partner as an organization and also as legal representatives of the detained soldiers in the embattled Kingdom of Lesotho.

THANK YOU!