



# Moseneke breaths life to reforms impasse



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## By DPE Communications

Lesotho has battled political and security instability in recent years without any durable solution insight. But hopes of Basotho have since the release of the Botswana retired judge, Justice Mpaphi Phumaphi led commission of inquiry report been pinned on national reforms to be the panacea to the country vicious circle of political unrest.

But, today, Justice Phumaphi's prescribed medicine is yet to ward off the country's worst ailment, albeit now under vigilant new guardian's eye, former South African Deputy Chief Justice Dikgang Moseneke.

Phumaphi's ten-member *Southern African Development Community (SADC) Commission of Inquiry into the circumstances surrounding the death of Lieutenant-General Maaparankoe Mahao* came to Lesotho during Prime Minister Mosisili rule. Its work was riddled with hurdles but finally it produced the report whose findings and recommendations reshaped the country political and security discourse by setting the way forward.

But since its release to the general public in February 2016, the country is still working tirelessly towards uplifting itself from the abyss into 'the Lesotho that we want' aspiration.



From the onset, when releasing the report in the National Assembly of Lesotho, former Prime Minister Mosisili after expunging some contents, boisterously said his administration would cherry-pick which of the various recommendations to implement. However, under much pressure from media, civil society, opposition,



SADC and international community, Mosisili found himself forced to implement one of the most pivotal and game changing recommendation which was the removal of a man characterised as most polarising figure in the country political and security instability Lieutenant General Tlali Kamoli from the command of the Lesotho Defence Force. Under the initiative called the *Lesotho I Want Development for Peace Education (DPE)* a civil society organisation promoting culture of peace through dialogue and public participation with the support of Open Society Initiative in Southern Africa (OSISA) and Denmark Lesotho (DLN) went to the 80 constituencies on reforms. Through the similar initiative 61 percent of Basotho called for unconditional implementation of SADC decisions while 65 percent said that DPE should be active in ensuring that.

Mosisili reign ended with an internal party squabble over government fleet tenders resulting in his Democratic Congress then Deputy leader forming Alliance of Democrats that ended cobbling its numbers to



those of opposition in parliament and successfully passing a vote of no confidence. This was followed by a snap election that resulted in Prime Minister Thomas Thabane returning to State House once again but now in a quartet alliance with Moleleki's AD, Basotho National Party and Reformed Congress of Lesotho.

Among other developments, just before the June 2017 snap elections civil society, the European Union (EU) and the Christian Council of Lesotho (CCL) brokered the signing of an all-party electoral pledge for implementation of the reforms under new government. Conspicuously DPE was at the core of the conceptualisation facilitating some of the political party initial meetings. Remarkable role of DPE was at facilitating the final meeting where all parties signed including the main parties in the then coalition.

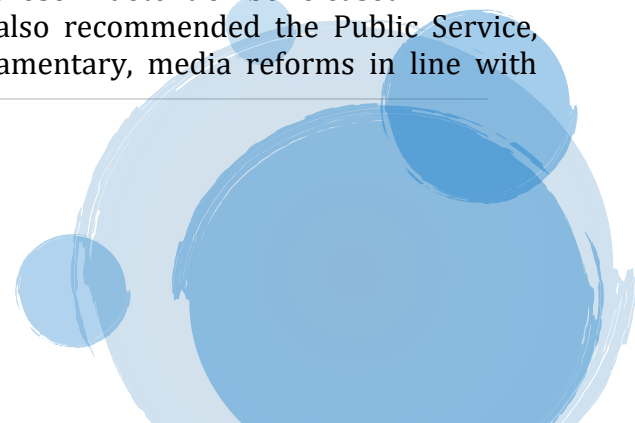
It is worth mentioning that the Mosisili seven party coalition governments had already submitted to SADC Summit the mandatory national reforms roadmap for implementation, just before it started unravelling.

Today, with the SADC Facilitation team now led by Justice Moseneke, the country is still working on making strides towards full implementation of SADC's resolutions for the country to regain long lasting political and security stability.

When prescribing how the country could ward off its political and security instability challenges Phumaphi commission had said in its report that the removal of Lt Gen Kamoli from the helm of the army would regain public confidence in the army. He also recommended the suspension, arrest and prosecution of soldiers implicated in various cases of attempted murder and murder. Phumaphi's commission had recommended explicitly that the Lesotho Mounted Police Service be empowered and resourced accordingly.

This, the Phumaphi commission said should be followed by investigations into the killing of Lt Gen Mahao by his juniors and all evidence be handed to police with suspects prosecution highly recommended. He further said the alleged mutineers whose case he had found to be highly suspect should be allowed to return home from self-exile in South Africa and those in detention be released.

The Phumaphi commission also recommended the Public Service, Constitutional, judicial, parliamentary, media reforms in line with





recommendations of the SOMILES report. The other highlighted issues by the recommendation were the overlaps and deficiencies in mandates of security agencies and the need for comprehensive strategy to reform them.

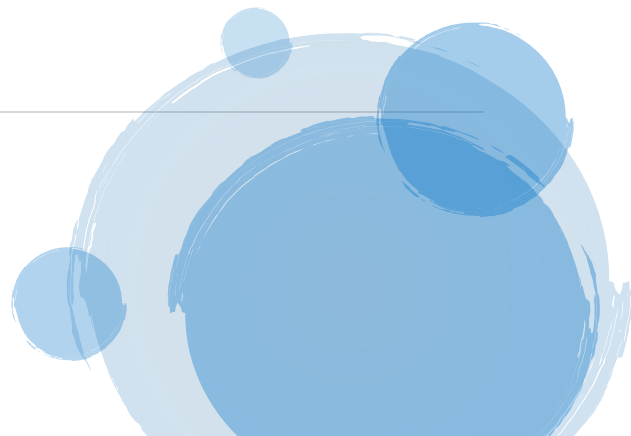
For a long time, the removal of Lt Gen Kamoli from office was the only recommendation by Phumaphi commission that Mosisili's administration implemented but under much international pressure. However a swift change came after Thabane came into office and many of the soldiers implicated in cases of attempted murder and murder were arraigned for their various crimes. However these arrests also came in the background of a bloody resistance that saw a second army commander — Lieutenant General Khoatle Motšomotšo — assassinated by senior officers Colonel Tefo Hashatsi and Major Sechele Bulane in resistance to the commander's orders that soldiers implicated in various crimes report themselves to the police.

According to the Principal Chief of Thaba- Bosiu Khoabane Theko who is also the Chairperson of the college of Chiefs commended the progress made towards attainment of the Phumaphi Commission recommendations.

Theko said the soldiers' arrests, including Lt Gen Kamoli, have taken place but raised concerns about their delayed prosecution. Theko argues the delays of prosecution of the soldiers' cases hinders delivery of justice to both the accused and the victims.

Having experienced incarceration without trial during the military rule, Theko said he does not wish to see anyone imprisoned for a prolonged period as Lt Gen Kamoli and the soldiers are without trial as he was made to suffer in the 1980s.

The progress made in the investigation of cases and arrest of soldiers implicated in crimes is according to the Christian Council of Lesotho's





Secretary General Khosi Makubakube a good signal towards the restoration of rule of law and justice.


Makubakube said “the restoration of rule of law, which is one of the pillars we have been calling for has seen much progress”.

He commended the progress seen under the Thabane administration, which was also propped up by the SADC decision to send a contingent of soldiers to guard against any uprising from soldiers who were being arrested for various crimes while also the alleged mutineers returned to the barracks now that the army had a new commander in Lt Gen Mojalefa Letsoela.

But Makubakube also points to the challenge of delayed prosecution of the cases which he argues is as a result of challenges faced by the country’s judiciary.

“...but the courts as a third pillar in a democracy currently have their own challenges also. It is a good beginning towards meeting the Phumaphi recommendations, but the criminal cases must be heard by jurists. But this has not happened,” he said.

Talking to the achievements, the Government Spokesperson, Nthakeng Pheello Selinyane said as a way of ensuring timeous process in the restoration of justice and rule of law by prosecuting crimes uncovered by the Phumaphi Commission, the cases should be



prosecuted under a bench composed of foreign jurists.

“This is done to avoid any public perception of biases and to foster impartiality, transparency and neutrality of the bench to hear the soldiers’ cases. Some of the judges have since been sworn in and cases are to proceed as soon as possible” Selinyane said allaying fears of delayed prosecution.

Weighing in on the need for promotion of rule of law Political Science Professor, Motlamente Kapa said Justice Phumaphi Commission was clear in its report.

He says it highlighted the need for accountability on crimes allegedly committed.

Furthermore, on other issues raised by Phumaphi, Makubakube notes that by November 2017 there was road map which had been a good indication towards national reforms.

Makubakube says the Thabane administration has at some point in time attempted to hijack the reforms with a January 2018 National Reforms Commission draft law introduced to parliament which was undermining the reforms roadmap.

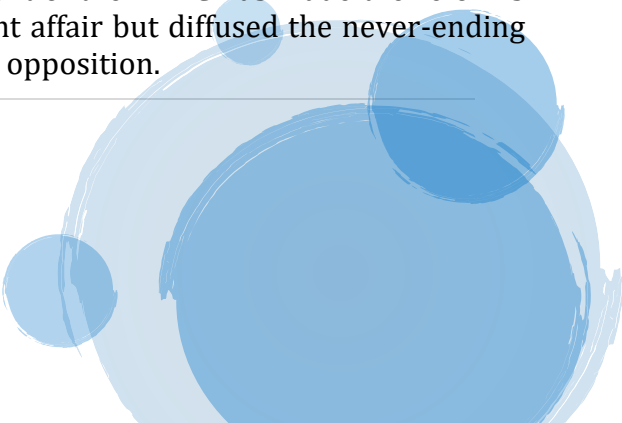
“Government is not leading the reforms but they seemed to be trying to take over the reforms process,” said Makubakube. He notes the role of government is to actually facilitate the reforms to be smoothly run and not to own the reforms.

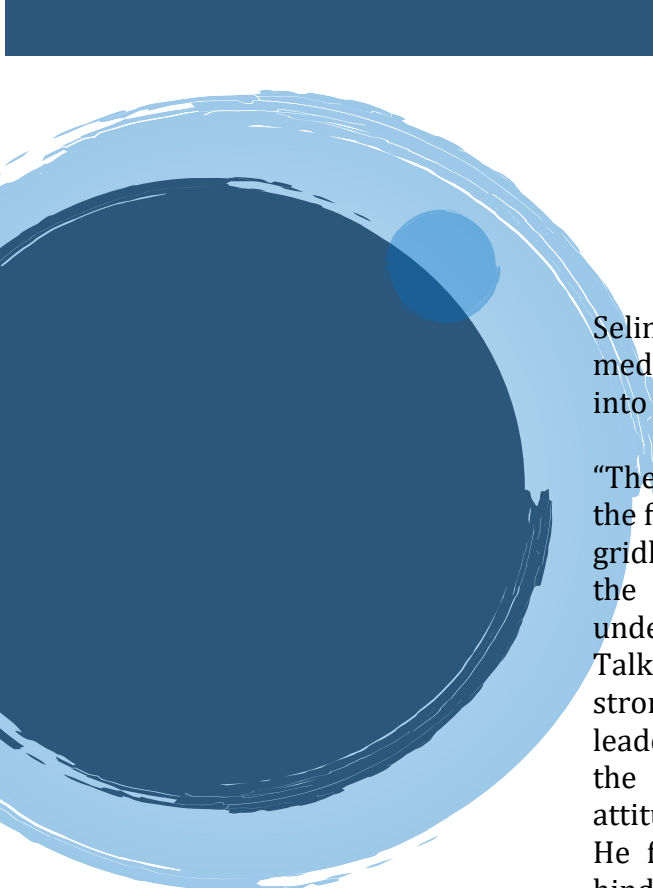
He however said when all is set and done “...our desired product of reforms is not yet clear, especially on how the constitution is to be approached in reforming it” but also says more hopes are pinned on the Multi Stakeholder National Dialogue.

Selinyane adds the Phumaphi recommended reforms have seen much progress with the roadmap and the National Leaders Forum some of the milestones to refer to. He says the National Leaders Forum led to the formation of the National Dialogue Planning Committee (NDPC).

The NDPC came into usher a wider participation in the preparations towards the Multi Stakeholder National Dialogue with SADC playing a pivotal role that has helped ease the tensions from time to time between the opposition and government when tempers flared.

For Selinyane, the establishment of the NPDC has made the reforms not to be seen as a government affair but diffused the never-ending tussle between the former and opposition.





Selinyane sees the NDPC also playing a conflict resolution and mediating platform role before calling in the SADC facilitation team into the country.

“These NDPC, co-chaired by opposition and government has unlocked the friction. The ownership of the reforms was one thing which was a gridlock in the reforms. The NDPC, a resolution for the gazettelement of the body’s terms of reference and granting it legal powers is underway,” says Selinyane.

Talking to some of the challenges and impediments, Theko holds a strong believe the country needs commitment from its political leaders than anything else as he argues SADC has done everything for the reforms to be a success. “...without our politicians changing attitudes we will not succeed,” he says.

He furthermore holds a strong view that opposition has always hindered progress through its endless ‘ridiculous demands’. But he agrees Justice Moseneke has moved things a little bit and the NDPC is working in earnest.

Talking of the government and opposition memorandum of understanding signed recently by Deputy Prime Minister Monyane Moleleki and Official Leader of Opposition Mathibeli Mokhothu, Theko contends there was no need to have the deal signed.

“Our government is wearing kids gloves when dealing with opposition unnecessarily. The agreement signed raises a lot of complaints and what becomes clear is that one individual is stalling the process unnecessarily and we should not be stalled like this. These reforms are owned by the people and the government should just be a facilitator and its actors participated like many of us and not owners as they hold themselves with opposition,” said Theko.

He said the agreement amounts to holding the reforms process hostage on the part of opposition and a sad development that derails progress made towards promotion and restoration of rule of law and justice.

Theko’s sentiments are also shared by professor Kapa who says when one sees government and opposition coming together to ink an agreement that promotes impunity and postpones justice and rule of law, he feels repulsed by the deal he described as outrageous.

“One cannot postpone justice, because justice delayed is justice



denied,” Kapa says.

Kapa argues having the facilitation team being part of the Memorandum of Understanding that has suspended the prosecution of criminal cases faced by former deputy Prime Minister Mothetjoa Metsing and similarly placed persons, it amounts to saying those who remain in custody should be released and their cases be postponed also.

“We cannot be talking impunity like these deals suggest, but instead we want fair hearings for the accused persons and the justice for the victims,” said Professor Kapa.

He also alludes to the continued re-training of soldiers and police officers as a normal and commendable development but argues army officials did not commit crimes due to lack of training.

“Do not get me wrong, Trainings I do appreciate, but surely they were not committing crimes because they lacked training. Submitting to civilian control is what should be emphasised in their contact with SADC SAPMIL team.

“Main issue is that they agreed to be aligned along political party lines and they were expecting political veil to cover their crimes.

“What is even shocking is that we now see the politicians coming up with deals to dodge their day in court and this to victims violates their right further as it denies them justice,” said Professor Kapa.

For Makubakube the Challenges seen by the faith leaders are that the reforms can survive the test on paper, but “we need the reforms to transform the leadership we have as a country”.

He argues the main problem of Lesotho is having beautiful aspirations on paper but failure to transform the leadership of the country.

He also refers to the Book of Luke 5:37: “we cannot put new wine in old wineskins. Old wineskins have lost their elasticity and they will burst. Old wineskins should be changed and it is then that the analogy of *the Lesotho we want* shall be achieved,” he said.

Selinyane: says the Thabane administration has lost thirteen months crucial for reforms.

“As government we have been slow on the blocks. We lost 13 months on start-up of reforms because we did not do what was required. We did not readily establish the National Reforms governance body, and that led to where reforms are seen as the government affair and we



find ourselves fighting with opposition that is not wanting to come to the reforms table and putting terms and conditions to government,” said Selinyane.

He further says another challenge is the stabilisation of the judicial challenges which he says government had a difficulty on.

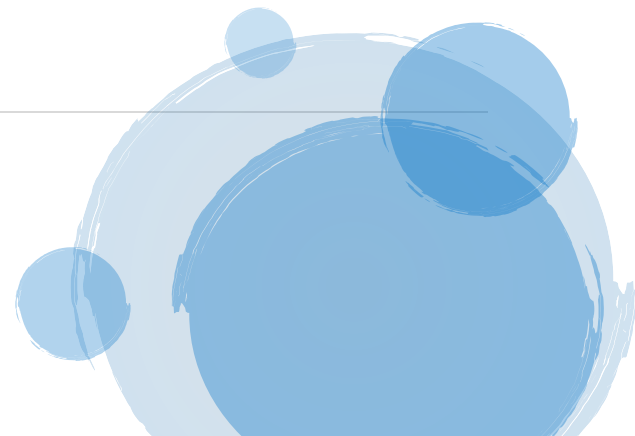
“On one hand the need to involve foreign jurists to hear cases and on the other people are complaining about their engagement arguing local judges can still do the job when its known they have also failed the country,” says Selinyane.

On future prospects for success, Theko emphasised the need for commitment from politicians. But Makubakube says lack of accountability and transparency shall be the downfall and failure of the road towards finding a lasting solution for the ailing country’s political system.

For Mokhothu, the NDPC should be given a chance to function without government encroachment into its functions so that the country gets to the multi-stakeholder national dialogues without any challenges.

Mokhothu further highlights the deal he signed with Moleleki is not about promoting impunity but about giving the national reforms a breathing chance and paving a way for all institutions to be independent and operating without political biases but serving their constitutional mandate.

He argues the opposition is fighting for a chance to participate in the reforms without having to look over their shoulders for their safety. With the road leading now to the multi-stakeholder national dialogue, much seems to be poised towards these much-anticipated forum that shall unlock what the reforms agenda should be and how they should be undertaken as much the ground work for the warring government and opposition tendencies now have been contained with the formation of the NDPC and a compromise deal amid protest that it promotes impunity.





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