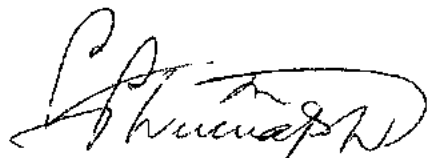




# **SADC COMMISSION OF INQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE DEATH OF BRIGADIER MAAPARANKOE MAHAO**

## **Final Report**



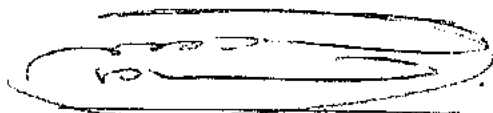
Mpaphi Passevil Phumaphi  
**Chairman of the Commission**



Davie S. Mtachi



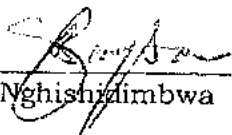
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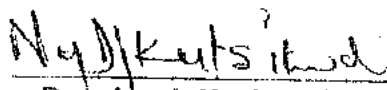
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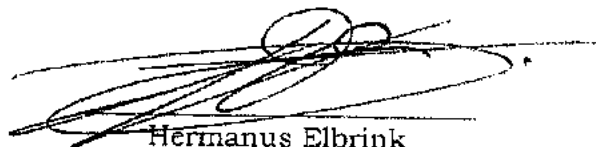
Douglas J. Nyakutsikwa



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Gopolang Mogotsi



Hermanus Elbrink

**Signed on the 05<sup>th</sup> Day of November 2015.**



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**ACRONYMS**

LDF:	Lesotho Defence Force
LMPS:	Lesotho Mounted Police Service
SADC:	Southern African Development Community
SOMILES:	SADC Observer Mission to the Kingdom of Lesotho
ToR:	Terms of Reference
NGOs:	Non-Governmental Organizations
ABC:	All Basotho Convention
RCL:	Reformed Congress of Lesotho
BNP:	Basotho National Party
PFD:	Popular Front for Democracy
NSS:	National Security Service
CCL:	Christian Council of Lesotho

## **A. EXECUTIVE SUMMARY**

On the 25<sup>th</sup> June 2015, Brigadier Maaparankoe Mahao was fatally shot by fellow members of LDF. The LDF claims that the intention was to arrest him for his alleged involvement in a mutiny plot within the army.

At the request of the Government of Lesotho, SADC constituted a ten member Commission of Inquiry into the circumstances surrounding the death of Brigadier Mahao.

The Commission's mandate was spelt out in the Terms of Reference (ToR) from the SADC Double Troika, and domesticated by the Government of Lesotho through Legal Notice No. 75 of 2015 as amended by Legal Notice No. 88 of 2015.

The Commission was deployed in Maseru, Lesotho from the 20<sup>th</sup> July 2015 on an initial sixty days mandate, which was later extended by another thirty days. Various witnesses who included Government officials, Non-Governmental Organisations (NGOs), Christian Council of Lesotho (CCL), Lesotho Defence Force (LDF), Lesotho Mounted Police Service (LMPS) and political opposition parties' representatives testified.

The Commission faced a number of challenges which amongst others included; time limitation, contemporaneous proceedings of the court martial and the Commission, which fact affected the availability of witnesses. A legal suit was instituted by a member of the LDF in his personal capacity against the Lesotho Government and the Commission, seeking to review and set aside the proceedings of the Commission. The matter is scheduled for hearing on the 02<sup>nd</sup> December 2015.

The former Prime Minister Dr. Thomas Thabane removed Lieutenant General Tladi Kamoli as Commander LDF and replaced him with Brigadier Mahao. The death of Brigadier Maaparankoe Mahao was therefore preceded by power struggles in the LDF.

The report addresses the alleged mutiny, alleged killings and kidnappings of the opposition members and former LDF members respectively, death of Brigadier Mahao, appointments and removals of both commanders and finally other matters relevant to the inquiry.

The Commission therefore made the following findings:

- A conclusive finding on whether there was mutiny could not be reached as the affected parties could not testify. Those who appeared before the Commission did not say much about the mutiny plot on the grounds that the matter is *sub judice* before a court martial.
- The Commission established that some suspects of the mutiny were tortured with the view to have them confess to mutiny and implicate others. It could therefore be concluded that the alleged mutiny might be a fabrication.
- The LDF failed to provide evidence on the basis of which they attempted to arrest of Brigadier Mahao. The Commission therefore concludes that the involvement of Brigadier Mahao in the alleged mutiny plot is doubtful bearing in mind that before he was shot and killed, there had been a number of threats to his life coming from LDF. The most significant being the attack at his residence in the early hours of 30<sup>th</sup> August 2014.



- On allegations of killings of members of the opposition, there was no single death that was described as politically motivated.
- The Minister of Defence sanctioned the investigation and arrests of alleged mutineers, however, the Minister was not aware that Brigadier Mahao was involved.

Although different accounts were given on the manner in which Brigadier Mahao was shot, the Commission found as follows:

- that on a balance of probabilities, the evidence shows that Brigadier Mahao did not resist arrest.
- the degree of force used on the deceased was not commensurate to the danger he posed with his pistol.
- that proper preservation of evidence was not done (washing of clothes and the body, vehicles and the fire arms).
- the allegations that Brigadier Mahao was walking when arriving at the hospital cannot be ruled out. However, the pathologist testified that it is improbable.

On issues of appointments and removals of Commanders of the LDF, the Commission established:

- the appointment of Brigadier Mahao as Commander of LDF on the 29<sup>th</sup> August 2014 was legal and that the removal of Lieutenant General Kamoli was also legal.

- the removal and demotion of Brigadier Mahao by the current Government was legal, but the manner in which it was done was flawed.
- that the reappointment of Lieutenant General Kamoli as Commander LDF was legal. However, the manner in which it was done was flawed.

On allegations that Lieutenant General Kamoli's reappointment brought political and security instability the Commission found that:

- the reappointment of Lieutenant General Kamoli perpetuated the divisions within the LDF as he vowed to deal with those who had celebrated his removal.
- the fleeing of opposition party leaders after Lieutenant General Kamoli's reappointment and subsequent parliamentary boycotts by the opposition is a manifestation of instability.

After making its findings, the Commission came up with the following recommendations for consideration:

- The Government of Lesotho should ensure that the criminal investigations on the death of Brigadier Mahao be pursued vigorously and that the LMPS is empowered and resourced accordingly. The investigation should be conducted expeditiously and comprehensively without any hindrances and that all physical evidence be surrendered.
- That Lieutenant General Kamoli be relieved of his duties as Commander LDF, and all LDF officers implicated in cases of murder, attempted murder

and treason be suspended immediately while investigations in their cases proceed in line with international best practice.<sup>1</sup>

- The Commission has observed that some of the political and security problems peculiar to the Kingdom of Lesotho emanate from the Constitution of Lesotho. The deficiencies and overlaps in the constitution with regard to mandates of security institutions need to be looked into urgently with a comprehensive strategy to reform them.

The Commission recommends an accelerated implementation of the reforms encapsulated in the SOMILES report. SADC should come up with a direct strategy on how to assist Lesotho in the implementation of these reforms, and that the Lesotho Oversight Committee, established by the 3rd July 2015 Double Troika is operationalised.

## **B. INTRODUCTION**

1. On the 25<sup>th</sup> June 2015, Brigadier Maaparankoe Mahao was fatally shot by fellow members of LDF on his way from his home village of Mokema *en route* to Maseru the capital of Lesotho. The LDF claims that the intention was to arrest Brigadier Mahao for his alleged involvement in a mutiny plot within the army.
2. Following the unfortunate demise of Brigadier Mahao, the Prime Minister of the Kingdom of Lesotho, Right Honourable Pakalitha Mosisili requested the then Chairperson of the SADC Organ on Politics, Defence and Security Cooperation, His Excellency J. G. Zuma, President of the Republic of South Africa, that SADC to send a team to investigate the circumstances surrounding the death of Brigadier Mahao.
3. The SADC Double Troika, on 03 July, 2015 in Pretoria, Republic of South Africa resolved to constitute a Commission of Inquiry into the circumstances surrounding the death of Brigadier Mahao (hereinafter referred to as "the Commission"). A ten member team comprising of experts from military, police, security, legal and forensics was constituted.
4. The Commissioners were: His Lordship Honourable Mr. Justice Mpaphi Passevil Phumaphi – Chairman of the Commission, Brigadier General Davie Sestino Mtachi, Brigadier General Charles Tarumbwa, Brigadier General Noel Ndhlovu, Brigadier Helena Ras, Deputy Commissioner of Police Silvanus Lineekela Nghishidimbwa, Senior Assistant Commissioner of Police Douglas Jabulani Nyakutsikwa, Assistant Commissioner Anthony Wally, Mr. Gopolang Mogotsi and Mr. Hermanus Elbrink.

5. The Commission was supported by a secretariat from SADC, Gaborone, Botswana and stenographers from the Republics of Botswana and South Africa.
6. The Commission's mandate was spelt out in the Terms of Reference (ToR) from the SADC Double Troika, of 03<sup>rd</sup> July, 2015 held in Pretoria and domesticated by the Government of Lesotho (*Annex 1*) as follows:
  - a. *Review the investigations into the alleged mutiny plot. The review should also cover the alleged kidnapping of former members of the LDF and alleged killings of members of the opposition;*
  - b. *Investigate the immediate circumstances that led to the shooting of Brigadier Mahao;*
  - c. *Investigate allegations that Brigadier Mahao resisted arrest in a manner that merited his fatal shooting;*
  - d. *Investigate whether the Security forces used excessive force when apprehending Brigadier Mahao;*
  - e. *Investigate the immediate circumstances that led to the death of Brigadier Mahao;*
  - f. *Investigate the circumstances surrounding Brigadier Mahao's admission to hospital;*
  - g. *Investigate the alleged mutiny plot and the alleged involvement of Brigadier Mahao;*
  - h. *In its investigations, incorporate the report of the pathologist;*

- i. Investigate the legality and the manner of the appointment of Lieutenant General Mahao in 2014 and his demotion and removal as head of LDF in 2015;*
  - j. Investigate the legality and the manner of the removal of Lieutenant General Kamoli as head of LDF in 2014, and his reappointment in 2015;*
  - k. Investigate the allegations by opposition Parties and Civil Society stakeholders that Lieutenant General Kamoli's reappointment has resulted in divisions in the LDF, and has led to political and security instability;*
  - l. Investigate the authorisation and execution of the LDF operations to arrest Brigadier Mahao;*
  - m. Investigate the termination of appointment as the LDF Commander and demotion of Brigadier Mahao;*
  - n. Assist in the identification of any perpetrators with a view to ensuring accountability for those responsible for the death of Brigadier Mahao;*
  - o. Investigate any other matters relevant to the Inquiry.*
7. The Commission was deployed in Maseru, Lesotho from the 20<sup>th</sup> July 2015 on an initial sixty days mandate and it was to submit its report to the Chairperson of the Organ on Politics, Defence and Security by the 18<sup>th</sup> September 2015. The Lesotho government facilitated all logistical and security requirements for the Commission. However, in domesticating the ToR of the Commission by Lesotho Legal Notice No. 75 of 2015, the Lesotho Government included other terms which did not originate from the Pretoria SADC Double Troika. The additional ToR had to await the

approval by the SADC Summit of 17-18 August 2015, Gaborone, Botswana.

8. The Commission's ToR were only gazetted on the 21<sup>st</sup> August 2015 by the Government of Lesotho through a Lesotho Legal Notice No. 88 of 2015. After the domestication of the ToR, the Commission started hearing testimonies from various witnesses who included government officials, Non-Governmental Organisations (NGOs), Transformation Resource Centre, Christian Council of Lesotho (CCL), Lesotho Defence Force (LDF), Lesotho Mounted Police Service (LMPS) and political opposition parties' representatives, with a total of over 70 oral testimonies heard.

### **C. CHALLENGES FACED BY THE COMMISSION**

9. The following challenges were experienced:
- a. The delayed gazetting of the ToR by Lesotho Government cost the Commission almost half the initial 60 day period it was allocated to finish its work. This resulted in extension by another 30 days.
  - b. There was a delay of almost a week in finding a suitable venue where the Commission could carry out its public hearings. The government of Lesotho finally provided a venue, whereupon the first public witness was heard on the 31<sup>st</sup> August 2015.
  - c. When the Commission was instituted by SADC, there was an undertaking on the part of the Lesotho Government that the court martial will await the report of the Commission, however, that was not to be. On the 13<sup>th</sup> August 2015 the Minister of Defence issued a court martial convening order which permitted the court martial to start even before the commission started its work. The SADC Summit of the 17-18<sup>th</sup> August 2015 held in Gaborone, Botswana, acquiesced to the position taken by the Lesotho government, hence the parallel running of the commission's inquiry and the court martial.
  - d. The LDF went ahead with its court martial of the alleged mutineers, with the result that the Commissions proceedings were running concurrently with the court martial. The LDF then refused to present the alleged mutineers on the grounds that they would be exposed to double jeopardy, which would be in contravention of the Lesotho Public Inquiry's Act No.1 of



1994. The Commission completed its work in Lesotho without hearing these critical witnesses in the alleged mutiny plot.

e. Towards the completion of its task, the Prime Minister of Lesotho, the Chairperson of the Commission, the Commission and the Attorney General were taken to court by an LDF member, Lieutenant Colonel Tefo E. Hashatsi, in his personal capacity. In this application the member wanted the Lesotho High Court, among other orders to declare that:

- i. *The report of the Commission should be sent to the Prime Minister of Lesotho and not to the SADC Organ Chair. Thus challenging the Commission's Gazette in that paragraph 4 of the Lesotho Legal Notice 75 of 2015 is ultra-virus the Lesotho Public Inquiries Act No. 1 1994.*
- ii. *The Commission should be bound strictly by the Public Inquiries Act of Lesotho of 1994.*
- iii. *The sitting and hearings of evidence by the Commission in Thaba-Nchu in the Republic of South Africa is to be declared ultra-virus Section 3 of the Public Inquiries Act 1 of 1994 and legal notice 75 of 2015 and Legal Notice 88 of 2015 that defines the nature and extent of the Commissions Mandate.*
- iv. *The proceedings of the Commission be reviewed and set aside.*

#### D. BACKGROUND

10. The death of Brigadier Maaparankoe Mahao is preceded by power struggles within the Lesotho Defence Force since 29<sup>th</sup> August 2014. According to Legal Notice No. 64 of 2014, the former Prime Minister Dr. Thomas Thabane promoted Brigadier Mahao to the rank of Lieutenant General and appointed him Commander of the LDF. The appointment of Lieutenant General Kamoli as Commander of LDF was repealed by the same legal notice.
11. On the early morning of 30<sup>th</sup> August 2014, just some hours after the publication of Legal Notice No. 64 of 2014, Maseru experienced security disturbances due to an operation by LDF, objectives of which are not clearly known by Basotho nation. On that fateful night, the former Prime Minister, Dr Thomas Thabane, fled Lesotho into neighbouring South Africa. Some other senior officials including Lieutenant General Mahao and Commissioner of Police Tsooana also fled shortly thereafter.
12. Dr. Thabane returned back to Lesotho under the escort of South African Police Service (SAPS) and immediately requested for SADC assistance to quell the seemingly worsening civil military relations. It is worth noting that this apparent disregard of civilian rule by the military in Lesotho has a long history. The military in Lesotho has over the years been dogged by controversy and has a history of seizing power as evidenced by the 1986 military coup, conflicts of 1994 and 1998 and the political and security unrest of 2007<sup>1</sup>.

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<sup>1</sup> A Historical Perspective of Lesotho's Political Crises;  
Southern Africa News, September 2014 by Joseph Ngwawi

13. A SADC Double Troika Summit convened on 15<sup>th</sup> September 2014 in Pretoria, South Africa, and recommended the immediate deployment to Lesotho of an Observer Team comprising Politics, Defence and Security components to monitor the political and security situation, known as SOMILES. The Deputy President of the Republic of South Africa, His Excellency Cyril Ramaphosa, was appointed SADC Facilitator to the process<sup>2</sup>.
14. In its intervention, SOMILES came up with what is known as Maseru Facilitation Declaration, which brought forward elections scheduled for 2017 to February 2015. In an effort to ease tension that was growing amongst security elements of Lesotho, and to create conducive environment for political negotiations, SOMILES came up with a Maseru Security Accord which saw three security chiefs, (Lieutenant General Kamoli, Lieutenant General Mahao, Commissioner of Police, Tsooana) going outside Lesotho on what was termed Leave of Absence.
15. After the brought forward elections, a new government led by the Right Honourable Pakalitha Mosisili was formed. The three security chiefs returned home, and Lieutenant General Kamoli was reappointed Commander of LDF retrospectively from 29<sup>th</sup> August 2014 through Legal Notice No. 61 of 22<sup>nd</sup> May 2015(*Annex 2*), while Lieutenant General Mahao's appointment as Commander LDF was terminated on the 22<sup>nd</sup> May 2015 through Legal Notice No. 60 of 2015 (*Annex 3*).

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<sup>2</sup> SADC Double Troika Communique 15 September 2014

## E. METHODOLOGY

16. The Commission obtained testimonies through public hearings and in camera proceedings. In the public hearings transparency and due process were observed, in particular leading of witnesses and cross examination was allowed. Witnesses' testimony was open to the media, public and other observers. More than 70 witnesses including experts testified and provided information of great value.
17. Public hearings were conducted at the Lesotho National Library and Archives Building in Maseru, where security was provided by the LMPS. The Ministry of Foreign Affairs, LMPS and the LDF provided Liaison Officers, who facilitated contact with their respective entities and witnesses. The proceedings covered all areas of the mandate and witnesses were sworn in or affirmed before testifying.
18. Witnesses who had reason to give evidence in camera were allowed to do so, provided the Commission was satisfied that they had valid reasons.
19. The Commission was not bound to strictly follow the rules of evidence as applicable in a court of law. This was done in order to get as much information as possible without the limitation of the rules of evidence.
20. An inspection *in-loco* was conducted where Brigadier Mahao was shot. Scene of Crime experts were able to document the scene as guided by witnesses and commissioners tested the veracity of the testimonies by those who guided the inspection.

21. The Commission considered the testimonies provided in public, camera hearings and publicly available documents. The reliability and credibility of each source was carefully assessed by the Commission. This assessment took into account, amongst other considerations the following as described in the United Nations Guidance and Practice of Commissions of Inquiry and Fact Finding Missions on International Human Rights and Humanitarian Law:

- a. The witnesses' political and personal interests, potential bias and past record of reliability, if known.
- b. The witnesses' apparent capacity to correctly recall events, considering his/her age and how far back the events occurred.
- c. Where and how the witnesses obtained information.
- d. The reasons for which the witness provides information.

## **F. ACKNOWLEDGEMENTS**

22. The Commission wishes to acknowledge the government of the Kingdom of Lesotho, for the support and co-operation given to the Commission during the period of its activities in Maseru. Similarly, the Government of the Republic of South Africa which provided security and interpreters during the proceedings held in Thaba-Nchu in the Free State province. The Governments of the Republic of Botswana and the Republic of South Africa, who assisted by affording the expertise of recorders/stenographers to the Commission. The commission also acknowledges all those who testified before it.

## G. APPLICABLE LAWS

23. The Commission was guided by the following:

- a. The SADC Treaty and its Protocols
- b. The Constitution of Lesotho
- c. Public Inquiries Act 1994 of Lesotho
- d. The Lesotho Defence Force Act, 1996
- e. Legal Notice No.75 Commission of Inquiry (Disturbances to National Peace and Stability ) Notice, 2015
- f. Legal Notice 88 of 2015 Commission of Inquiry(Disturbances to National Peace and Stability) (Amendment) Notice, 2015
- g. And any other applicable international law instruments and case law.

## H. SUMMARY AND ANALYSIS OF EVIDENCE

### Mutiny, Kidnappings and Alleged Killings

24. The Commission of Inquiry was tasked, in ToR 3(1) (a) and (g), to review the investigations into the alleged mutiny plot and that the review should also cover the alleged kidnapping of former members of the Lesotho Defence Force (LDF) and the alleged killings of members of the opposition. Further, to investigate the alleged involvement of Brigadier Mahao in the alleged mutiny.
25. Testimony received in camera from a serving LDF officer indicates that the witness received intelligence on the 12<sup>th</sup> May 2015, which suggested that there was a mutiny plot by a group of LDF officers and soldiers. The effect of this mutiny plot was to kill members of the LDF including Brigadier Mokaloba, Colonel Lekhooa, Major Sechele, Major Ntoi, 2<sup>nd</sup> Lieutenant Nyakane, Lieutenant Colonel Phaila, Captain Hashatsi, 2<sup>nd</sup> Lieutenant Hlehlisi, Corporal Mokhesuoe and Lance Corporal Moleleki. The preparations for this plot were to be finalized on the 16<sup>th</sup> May 2015.
26. According to the witness the matter was treated as urgent and was immediately reported to Major General Motsomotso who was then in charge of the LDF. The witness indicated that the intelligence he received did not implicate Brigadier Mahao.
27. In his testimony, the Minister of Defence, Mr. T. Mokhosi said he received a verbal intelligence brief from Major General Motsomotso on the alleged mutiny, and that Major General Motsomotso sought authority to investigate the matter.



28. Further testimonies from LDF officials say a team was constituted to investigate and arrest the alleged mutineers and the operation started on the the 13<sup>th</sup> May 2015 where a number of the alleged mutineers were arrested. Evidence led explained that some members of the arrest team used balaclavas as a measure for operational security to protect the arresters from community retribution.
29. Evidence further alleges that as the investigations on the mutiny plot proceeded, information linking Brigadier Mahao to the mutiny was established hence an operation to arrest him. The Commission was however not provided with the mutiny investigation report implicating Brigadier Mahao, but was presented with some *WhatsApp* extracts obtained from Brigadier Mahao's mobile phones after his death.
30. Another witness testified in camera that he was tasked to investigate a Conspiracy to commit murder case, as civilians had connived with army personnel to kill senior army officers and soldiers. A report was provided by the LDF to that effect, which include *WhatsApp* messages. He immediately informed them that the *WhatsApp* messages were inadmissible because there was no court order authorising extraction of these messages.
31. According to the witness, he interviewed five (5) accomplice witnesses from the LDF who had made confessions which also implicated the other alleged mutineers who are facing court martial. The accomplice explained to this witness that as a matter of fact he had confessed to his involvement in the mutiny only to save his skin because he was tortured. Further, the accomplice revealed that even the other four accomplice witnesses were tortured but he did not want this information relayed to them because that can land him in trouble.

32. Another witness, Lance Corporal Lefoka, who fled Lesotho, told the Commission that, he was taken from his house by Lieutenant Colonel .....<sup>1</sup> and Sergeant.....<sup>2</sup>. He was then taken to Military Intelligence Offices at Ratjomose Barracks, where he found Lieutenant Colonel.....<sup>3</sup> and Colonel Lekhooa. He was blind folded and taken to Setibing Military Base where he was consistently tortured for three (3) days and told to implicate Lieutenant Colonel Nkeli. The torture included being denied his chicken pox medication, dipping in dirty, cold and smelly water in the stream for 6 (six) hours, suffocation with a tube which resulted in him soiling himself and being blind folded consistently for three days. The witness submitted a medical report as evidence for torture (Annex 4).

#### Conclusions on Mutiny

33. The Commission was unable to reach a conclusive finding on whether there was mutiny as it could not get the affected parties in the alleged mutiny to testify. Those who appeared before the Commission did not say much about the mutiny plot on the grounds that the matter is before court martial. At the same time access to the detained suspects and accomplice witnesses was denied on account of the fact that the Commission and the court martial were running concurrently.

34. However, in light of the evidence to the effect that a witness was arrested and subjected to torture with the view to have him confess to a mutiny and implicate another person, it could be concluded that the alleged mutiny might be a fabrication just to punish those officers who celebrated the appointment of Brigadier Mahao as Commander LDF.

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35. As pointed out earlier, all LDF officials who testified before the Commission were in agreement that the initial intelligence did not in any way link Brigadier Mahao to the mutiny plot. The LDF failed to provide evidence that led them to the attempted arrest of Brigadier Mahao, except for the said *WhatsApp* extracts which were obtained after the death of Brigadier Mahao. To this effect, the Commission concludes that the involvement of Brigadier Mahao in the alleged mutiny plot is doubtful.

*Alleged kidnappings of former LDF members*

36. There is no evidence suggesting that former members of the LDF were kidnapped but there is evidence that some member of the LDF were abducted by their colleagues in balaclavas and subjected to torture at Setibing Military Base, where they were required to confess to mutiny and implicate others. Spouses to some of the abducted members of the LDF brought *habeas corpus* applications in the High Court of Lesotho.

*Alleged killings of members of the oppositions*

37. The Commission also looked into the alleged killings of members of the opposition. Generally, testimonies heard from different witnesses including Government, NGO's, Opposition members, the LMPS, LDF and the NSS do not indicate systematic killings of the opposition members. There was no single death that was described as a politically motivated killing, except for the killing of one renowned businessman Mr. Tshosane, who is said to be a member of ABC. The LMPS is investigating the death of Mr. Tshosane and has so far not established who the killers are and their motives.

38. These allegations about killing members of the opposition political parties are sometimes brought about by rumours. It could be that some people engage themselves in the habit of information peddling, causing unnecessary panic and fear amongst the communities, with hope of getting unmerited sympathy.
39. One example is where a newspaper carried an interview of Basotho National Party leader, Mr. T. Maseribane, who said a member of his party; Mr. Hloolane was killed by LDF. In contradiction to Mr. T. Maseribane's claims, the deputy leader of the same party, Mr. Joang Molapo on his testimony denied the death of Mr. Hloolane, confirming that he is alive, a fact that was corroborated by other witnesses.

*Circumstances leading to the fatal shooting of Brigadier Mahao*

40. Before Brigadier Mahao was shot and killed on the afternoon of the 25<sup>th</sup> June 2015, there had been a number of threats against his life coming from within LDF members. According to the testimony of a retired officer of the LDF, one Brigadier Mokaloba is alleged to have said that when Brigadier Mahao is seen in the military camp he should be shot on the chest. This evidence is corroborated by other witnesses, who testified that the threats on Brigadier Mahao by Brigadier Mokaloba were made even during military parades including saying that the unqualified Prime Minister would not replace Lieutenant General Kamoli with Brigadier Mahao, and that the latter would command a community structure in Mokema or insects underground.
41. According to the evidence of Mrs. Mahao, the late Brigadier's wife, there had been a number of warnings given to the family that Brigadier Mahao's life was in danger. This was at the time when the Brigadier's court martial was in

progress. According to her evidence, the family then deployed strategies to increase safety for the family which included sending children away to relatives. The witness further indicated that as the court martial was in progress, there were suspicious movements around their house. Some unknown people would come with vehicles and park them in front of their gate and some would park just next to the garage. The witness indicated that her husband had showed the family drills on what to do in case they were attacked.

42. The witness went further to indicate that in August 2014 her husband had informed her that some ammunition had been taken from the armoury and that the ammunition was to be used to attack him. The witness further testified that after receiving several tips that they will be attacked, Brigadier Mahao reported this to the Former Commissioner of Police, Tsooana who then promised to provide security at the Brigadier's residence. This account of events is corroborated by former Commissioner of Police Tsooana's testimony where he indicated that after receiving information that Brigadier Mahao might be attacked he provided security at his residence.
43. Furthermore, according to the evidence of a witness in camera, it was indicated to the Commission that he called Brigadier Mahao on the 18<sup>th</sup> June 2015 to warn him that he was to be killed and that he should leave the country.
44. Mrs. Mahao gave an account of the attacks that took place at her family residence at about 0400hrs on the 30<sup>th</sup> August 2014. In her testimony, she indicated that after hearing gunshots on that early morning, when she looked around, she noticed her husband was not in bed and that is when she began to follow on the drills her husband had taught them to perform when under

attack. In her evidence, the witness narrated that the gunshots went on for about thirty minutes and that she realized that Brigadier Mahao had gone outside the house. In her testimony she further indicated that one of their dogs was shot dead. After the gunshots had stopped and Brigadier Mahao returned to the house, the witness learnt that he had been hiding in the outside toilet and that the police who were patrolling around their house had been involved in the shootout with members of LDF. Her husband further informed her that he overheard that one member of the LDF had been injured. Hence the operation commander ordered for a quick withdrawal, in order to rush the injured person for medical attention. The witness informed the Commission that her husband had recognised the voice of Colonel Sechele.

45. The witness in her testimony further elaborated on the damages incurred on their property including their vehicles. These damages were witnessed by the Commission during its visit to the residence. Several "bullet holes" were visible on the walls, garage doors, outside toilet, and vehicles. One of the bullet holes on the half truck that the deceased was ultimately killed in; had an "old" bullet hole as per the evidence of a Scene of Incident Investigator from LMPS, who examined the vehicle after the shooting of the 25<sup>th</sup> June 2015, as well as the Ballistics Officer from South African Police Service Major Chris Mangena.
46. It is the evidence of Mrs. Mahao that on or about the 14<sup>th</sup> or 15<sup>th</sup> January 2014, her husband informed her that he was instructed by the army command, to proceed to Leribe to address water concerns. She further testified that Brigadier Mahao had indicated to her, that when he got to Leribe, he found out there was no water problem. According to the testimony of Colonel Matobakele, he became aware of a plan by LDF Special Forces to ambush and kill Brigadier Mahao on his way back from Leribe. Colonel

Matobakele informed Brigadier Mahao who indicated that he was already aware of the plot. The evidence of Private Ntai Mosaku who was the driver of Brigadier Mahao corroborates the evidence on the Leribe trip. The witness testified that they were able to arrive back at their base where upon arrival the Brigadier was served with a letter of suspension. It is the testimony of Private Mosaku that Brigadier Mahao during his trips to Mafeteng and Mphahle's Hoek he would insist they switch number plate of the vehicle they travelled with for safety reasons. It is also the testimony of Private Mosaku that in November 2014 when attending a soldiers meeting with about 170 other soldiers Lieutenant Colonel .....<sup>4</sup>, who presided over the meeting indicated that Colonel Matobakele and Brigadier Mahao will not enter the barracks and leave alive.

47. It is the evidence of Mrs. Mahao that despite all these threats on the life of Brigadier Mahao, on his return from his leave of absence his security was not provided for by the new government. Evidence led before the Commission indicates that after escaping the attacks of the 30<sup>th</sup> August 2014 to South Africa, on his return he was provided security by members of the SAPS and that he had to change residence and instead stayed at Lesotho Sun for security reasons. Evidence led indicates that even then, there were still security concerns hence he had to keep on changing his rooms at the hotel.

48. At the court martial of Brigadier Mahao, Captain.....<sup>5</sup> is said to have been insubordinate to Brigadier Mahao and the court martial had to be adjourned in order to deal with this insubordination. Captain.....<sup>6</sup> was later to be identified as being one of those present at the scene where Brigadier Mahao was shot. It is also Captain.....<sup>7</sup>'s testimony that Brigadier Mahao had no right to come all the way from Ratjomoese barracks to Makoanyane to give him instructions since he was not his direct commander. According to

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Mrs. Mahao, Captain.....<sup>8</sup> showed great anger at Brigadier Mahao that the Brigadier had not spoken kindly to him.

49. The consistent and persistent threat on Brigadier Mahao's life were worrisome.

Authorisation and Execution of operation to arrest Brigadier Mahao

50. There was an operation order issued by the command of LDF on the 13<sup>th</sup> May 2015 to arrest and interview officers and soldiers who were implicated in the alleged mutiny. The operation order has the signatures of both Colonel Sechele and Colonel.....<sup>9</sup>, who authenticated the order on the 13<sup>th</sup> May 2015. It is the evidence of Colonel Sechele that he was assigned to be operational commander. The operation order does not state who within the army command issued instructions, but it just refers to the army command.

51. According to the evidence obtained in camera, intelligence was received that there were some army officers and soldiers who were plotting mutiny and killing of soldiers. The matter was reported to the Acting Commander of LDF (Major General Motsomotso) who in turn reported to the Minister of Defence Tseliso Mokhosi on the 13<sup>th</sup> May 2015. Minister Mokhosi sanctioned the LDF to investigate the matter, and testified that after about three (3) days it was verbally reported to him by the LDF that some serving members of the LDF had been arrested.

52. According to the evidence of the Minister of Defence, he had not been informed that Brigadier Mahao was to be arrested and that he was never made aware that Brigadier Mahao was involved. In his evidence the Minister informed the Commission that he only learnt of Brigadier Mahao's alleged

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involvement when Lieutenant General Kamoli informed him that Brigadier Mahao had been shot and later confirming his death. During cross examination, the Minister stated that he was informed that Brigadier Mahao was the last person to be arrested, however, this statement by the Minister contradicts that of Colonel Sechele who indicated to the Commission that arrests are continuing and that they are still going to continue, even after the Commission had finished its work.

53. Major General Poopa, LDF Chief of Staff Operations was informed by Major General Motsomotso on the 14<sup>th</sup> May 2015 on his return from an African Union meeting at Victoria Falls, Zimbabwe. He was informed that two soldiers had already been arrested. Major General Poopa also testified that he received and reviewed the investigations on the 15<sup>th</sup> of May 2015, after which he sent those arrested to Maseru Maximum Prison on holding charges. He further testified that on the 25<sup>th</sup> of June 2015, Brigadier Mahao was shot when soldiers were trying to arrest him and the information he received was that he had posed imminent threat to those soldiers arresting him. In his evidence Major General Poopa indicated that he had the benefit of receiving a report from the operational commander which detailed how the incident went.

54. The Right Honourable Prime Minister P. Mosisili indicated to the Commission that he did not authorize the operation because according to him it was not within his powers to do so. He further went on to say it was purely a military operation and the Prime Minister's office had nothing to do with it. Basically it suggests that the civilian authority was not entirely involved or fully aware of what was happening on the ground.

Resisting arrest by Brigadier Mahao

55. To contextualise resisting arrest the following definition is adopted; resisting an arrest can be defined to be a willful act by a suspect to resist, obstruct or delay a peace officer from lawfully performing their duty. Its determination is largely based on circumstantial evidence. It follows that, the person being arrested would know or should have reasonable knowledge, that the person who is effecting the arrest is doing it lawfully<sup>3</sup>.
56. According to Colonel Sechele's evidence, Brigadier Mahao resisted arrest by drawing his weapon, cocking it, and then aiming it at the two soldiers who were in front of him. Besides Sechele's testimony on this account, there is no other evidence presented to the Commission that the Brigadier had resisted arrest. Colonel Sechele went further to indicate that the Brigadier upon falling head down first, he still had his pistol in his hand. This evidence is disputed by the testimony of the pathologist who indicated that the right hand was completely broken and that it would have been improbable to hold such an object. The evidence is also disputed by some eye witnesses who indicated that the Brigadier had his hands on the steering wheel during the short episode.
57. The sequence of shots as described by the ballistics expert and the nature of injuries as described by the pathologist are consistent. The suggestion that the Brigadier resisted arrest is improbable looking at the scientific evidence (Annex 5). The suggestion that he had aimed a gun is not supported by any evidence including that of eye witnesses.

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<sup>3</sup> How Reasonable is the Reasonable Man: Police and Excessive Force. Geodfrey P. Albert & William C. Smith: (1994) Journal of Criminal Law & Criminology Vol. 85 No.2 1994

58. According to Colonel Sechele's evidence, Brigadier Mahao knew the people who were to arrest him as they were his Colleagues within the LDF. Some were in plain clothes as per the evidence of eye witnesses and some were in uniform using white vehicles whose plate numbers could not be linked with LDF and one without plate numbers at all. Given the evidence led before the Commission that Brigadier Mahao was aware of arrests of the alleged mutineers and that his life was in danger, it would suggest that Brigadier Mahao knew at that time that the people who were surrounding him were members of LDF.
59. Evidence already traversed suggested that Brigadier Mahao had always insisted on travelling alone to minimize casualties in case he was attacked. The evidence of Colonel Sechele indicates that he chose to use the 9 mm pistol to aim at the soldiers who were in front of him whereas the evidence of the passengers was that he held on to the steering wheel.
60. The evidence of the Ballistics expert, Major Mangena and that of the Pathologist, Professor Wadee supports the latter version that the Brigadier did not have his arms raised in an aiming position when he was first shot. There is no other evidence to corroborate Colonel Sechele's assertion that Brigadier Mahao resisted arrest.

Use of excessive force by Security Forces

61. The ordinary definition of use of excessive force is that it is any force beyond what is necessary to arrest a suspect.

62. According to the operation commander Colonel Sechele three Double-Cab vehicles were used, one vehicle blocked him at the front, one at the rear and the other one on the right side. Each vehicle is believed to have had about four occupants including the driver. It is believed that between nine (9) to eleven (11) soldiers were at the scene of incident.
63. Above evidence has been confirmed by the eye witnesses; however they have indicated that there were no instructions given to the deceased what so ever. The rules of engagement annexed to the operation order (Annex 6) were not entirely followed as the challenging required in the rules of engagement was not done.
64. It came out clearly during the inspection *in loco* that the deceased was shot from a point blank range less than two meters with an AK 47 assault rifle.
65. Eye witnesses testified that the deceased, Brigadier Mahao was dragged by his legs with his face down by his assailants. This evidence contradicted that of Colonel Sechele who indicated that Brigadier Mahao was supported into the vehicle. The pathologist report indicate that the deceased had vertical lacerations on the forehead, which he could have sustained as he fell face down or from the alleged dragging.
66. A witness in camera testified that Brigadier Mahao was a well-trained soldier who was at one point a member of special forces and to attempt or try to do what has been alleged is inconceivable. Soldiers who blocked him were well known to him; therefore it would be quite irrational for an officer of such calibre to attempt what is suggested by the operational commander.

67. In most cases minimum force means no force at all. If there is another reasonable way of achieving the purpose without using force, such alternative must be used, like some of the senior LDF officers who were linked to the mutiny were called in to the office and subsequently arrested. In the case of Brigadier Mahao, the fact that a heavily armed team went after him could be a manifestation of an intention to kill him.

Conclusion on Resisting Arrest

68. If one was to accept that indeed the deceased was wielding a pistol in a threatening manner, one would come to same conclusion that excessive force was used particularly after the first shot which immobilised his right arm. The degree of force used towards the deceased was not commensurate to the danger he posed with a pistol.

Immediate circumstances leading to the death of Brigadier Mahao

69. It is the evidence of Colonel Sechele that the deceased got a maximum of three shots fired at him, with a possibility, of the second shot being accompanied by another in quick succession. Colonel Sechele further indicated that whilst the deceased was aiming at the soldiers who were in front of the vehicle who had just fired warning shots, he received the first shot into his right back. The witness further indicated that the deceased did not fire his pistol even after he received the first shot. He rather turned to the direction where the shot came from, which was the left passenger seat of the vehicle on the right.

70. The shooter was approximately 1.25 meters away from the deceased. According to Colonel Sechele's evidence, the deceased then received the second shot on his upper arm. This shot could have been accompanied by a third according to Colonel Sechele. The witness further said this second and third shot broke the deceased's arm and that despite this broken arm, the deceased continued holding the firearm in his hand until he crawled out of the passenger door head first and hitting his forehead against the tarmac, still with the pistol in his hand. The pistol was then taken away from Brigadier Mahao and was rushed to the hospital.
71. It is also the evidence of Colonel Sechele that the deceased was able to walk supported to the vehicle that was to transport him to Makoanyane Military Hospital. Whilst Colonel Sechele described in detail the scenario, painting a graphic picture of what actually happened, he could neither tell the Commission if he saw what happened or he was relating someone else's story on the ground that he did not want to incriminate himself as provided for in Section 16 (3) of the Public Inquiries Act, 1 of 1994.
72. The events of the shooting incident were also provided through testimonies of eye witnesses. The evidence heard is that the 1st shot was fired through the driver's window which was fully closed, and this shot shattered the glass. All the shots directed at Brigadier Mahao had come from the car on the right of the Brigadier's half truck. During the inspection in loco, placing the vehicles on the scene, the account of the Mahao family suggests a distance of 0.85 metres from the vehicle that fired the shots to the half truck whilst that of Colonel Sechele is 1.25 metres. Both versions indicate a very close proximity between the shooter and the deceased.

73. An eye witness corroborates Colonel Sechele's testimony that after the last shot was fired at Brigadier Mahao he slid to the left of the vehicle, crawled out and hit the tarmac with his forehead and a loud thud could be heard. Eye witnesses corroborate each other that when Brigadier Mahao's face was on the tarmac, his legs remained hanging in the half truck and were removed by the soldiers.

74. There is evidence that they could have been about 11 men in all, and that some of them were wearing black uniform. One of them was later identified by an eye witness to be Captain.....<sup>10</sup> and that he had overheard a telephone conversation where he reported that they had found Brigadier Mahao, had shot him and that he had left with Sergeant.....<sup>11</sup>.

75. The Forensic Pathologist, Professor Wadee conducted the *post mortem* on the Body of Brigadier Mahao on the 3<sup>rd</sup> July 2015 at Bloemfontein, Republic of South Africa. In his evidence the pathologist described in details the nature of the wounds sustained by the deceased and that working together with the ballistics expert they were able to determine the sequence of shots as reflected in Major Chris Mangena's testimony. It is also the pathologist's evidence that the deceased's clothing had been washed and that the body appeared to have been cleaned. The professor indicated that this was a departure from the norm as far as preservation of evidence is concerned. This view was supported a by medical expert who appeared before the Commission.

76. According to the pathologist, during the *post mortem*, he performed an X-ray on the deceased and determined that there were metal objects, presumably bullet fragments still embedded in the body of the deceased. These objects are reflected on page 7 of the Forensic Pathologist's report (Annex 7).

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Circumstances surrounding Brigadier Mahao's Admission to hospital

77. The evidence of eye witness, Colonel Sechele and the nurses at the hospital elaborated on the condition in which Mahao had left the scene of incident to the hospital. There are different accounts on the manner in which the deceased was transported, with some saying he was put in the bakkie and others saying he was put into the back seat of the Double Cab using the left passenger door. Evidence was led that the LDF did not release the vehicle used for forensic examination which could have clarified the matter.
78. A medical report made by Dr. Rishi Dwivedi, Makoanyane Military Hospital indicates that there were no signs of life on the body of Brigadier Mahao when he first examined him at 1540hrs, and that he subsequently certified him dead at 1615hrs. According to Private Sechele, a nurse at Makoanyane Military Hospital, the deceased arrived at the hospital at about 1530hrs, and was walking assisted by Colonel Ramoqopo.
79. The Forensic Pathologist's opinion is that it was improbable for the deceased to have been walking at that stage looking at the nature of the wounds the deceased he sustained. It is however, the evidence of the two nurses based at Makoanyane Hospital that efforts were made to assist the deceased but were not fruitful, he was declared dead at 1615Hrs.
80. It is the evidence of Major General Poopa that he was informed of the shooting of Brigadier Mahao and that he immediately called the hospital for them to prepare to receive the emergency. The Commission had an opportunity to assess the distance of the nearest hospital from the scene and compare it to the distance of Makoanyane Military Hospital. From the scene to



St Joseph's Hospital the distance was 14.5 Km and from the scene to Makoanyane Hospital the distance was 24 Km. The operational order, as explained by Colonel Sechele, had indicated that in cases of casualties, Makoanyane Military Hospital would be used.

81. The only evidence available on the condition of the deceased on arrival at the Hospital is that of the staff of the Hospital, whose evidence is suspect for the following reasons:

- i. They allege that on arrival the deceased was walking whereas evidence shows that when he left the scene, the deceased was loaded into a motor vehicle and he had stopped groaning. Further that according to the evidence he had no signs of life 10 minutes later. Therefore it was highly probable that when he arrived at the hospital he was already dead.
- ii. Also, the fact that the hospital staff washed the clothing of the deceased which made it difficult for the experts to assess how much blood he had lost. Thus making it difficult to estimate when the deceased could have died.

Legality and manner of Lieutenant General Mahao appointment, demotion

82. Mahao's Court Martial: Evidence led before the Commission suggested that Brigadier Mahao was on suspension and facing a court martial and therefore was not promotable. However, evidence was led to the effect that, the former Prime Minister, Dr. Thomas Thabane dissolved the court martial which automatically cancelled the suspension of Brigadier Mahao through a letter addressed to Maj. General Poopa dated 28<sup>th</sup> August 2014 (Annex 8).

The dissolution of the court martial was challenged by evidence from government and LDF officials to the effect that the former PM had no powers to dissolve the court martial that he did not convene.

83. A Lesotho Defence Force (Delegation of Powers) Legal Notice No.131 of 2000 which delegates the functions to convene a Court martial to the Commander of LDF was submitted as evidence proving the loss of powers for convening a Court martial by the Prime Minister, except for cases relating to mutiny.
84. Evidence further shows that the former Prime Minister had earlier dissolved the court martial through a letter dated 26<sup>th</sup> February 2014, but upon advice or "further reflection" he decided to withdraw the dissolution of the court martial and consequently wrote to Lieutenant General Kamoli on the 04<sup>th</sup> March 2014 informing him to proceed with the court martial to its finality. It could be said the latest dissolution was after another advice or reflection on the matter.
85. The LDF Act No. 4 of 1996 at Section 92(1) gives the Minister of Defence powers to convene and constitute a court martial and the powers to dissolve it is provided for at Section 100(1) of the same Act. These provisions, read with The Lesotho Defence Force (Delegation of Powers) Legal Notice No.131 of 2000 delegates the functions to convene a court martial to the Commander of LDF.
86. *Generally, the principle of delegation of powers implies that even where a function or power have been delegated to another to perform or use, that fact does not prevent the discharge of delegated powers by the person or body*

who delegated it<sup>4</sup>. Thus, the delegatee is an agent and his actions are on behalf of the repository of the powers so delegated. The delegator still has the responsibility to account for those delegated powers so much so even to stop any abuse or misuse of the powers he had delegated. All that is required is to inform the delegatee of the decision.

87. The Commission therefore, finds that the former Prime Minister Dr Thomas Thabane, acted *intra vires* the delegated powers as provided in Section 100 as read with 92 of the LDF Act, in dissolving the Court martial because he was the convener.

*The Appointment of Brigadier Mahao as Commander LDF*

88. Evidence in relation to this part of the ToR as obtained from the LDF officials and other government officials was divergent as some suggested that the Legal Notice appointing Mahao was illegal as the former Prime Minister Dr. Thomas Thabane had lost legitimacy to rule by then, while some say there was never a power vacuum, and that the Legal Notice was in accordance with the laws of Lesotho.
89. It was further submitted that the appointment was done in bad faith and un-procedurally as it did not follow the coalition agreement that formed the government. Different public announcements were made by the leaders of the coalition as when the Prime Minister Dr. Thomas Thabane announced the new Commander of LDF Lieutenant General Mahao, his deputy; Mr. M. Metsing announced on the other hand that Lieutenant General Kamoli

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<sup>4</sup> Australian Public Service Commission  
Publication on Authorisation and Delegation;  
Universal to the Common Wealth

remains Commander LDF. Further testimonies suggested that the former Prime Minister acted within his constitutional authority and needed not to consult anyone<sup>5</sup>.

Conclusions on the Appointment of Mahao

90. Brigadier Mahao was promoted to the rank of Lieutenant General and subsequently appointed Commander LDF through a Legal Notice No. 64 of the 29<sup>th</sup> August 2015. In advising His Majesty the King for the appointment of Brigadier Mahao, the Prime Minister Dr. Thomas Thabane acted within his legal authority and therefore the resultant Legal Notice is without flaws. The law is clear that he had no legal obligation to consult on the appointment.

The removal and demotion of Lieutenant General Mahao

91. According to the Prime Minister the reasons behind removing Lieutenant General Mahao as Commander LDF, was motivated by an understanding that on removing Lieutenant General Kamoli from office, the former Prime Minister did not follow the law as Lieutenant General Kamoli was not afforded the right to be heard; that at the time of his promotion the then Brigadier Mahao was facing court martial and on suspension and therefore not appointable, and that the Prime Minister did not have powers to dissolve the court martial.

92. Evidence led further indicates that Lieutenant General Mahao was given a chance to answer for himself why the Prime Minister Pakalitha Mosisili could not terminate his appointment and commission as Commander LDF. This was

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<sup>5</sup> Decided Case; AG Vs HMK and others,  
Court of Appeal (CIV) 13/2015

through a letter dated 20<sup>th</sup> April 2015, addressed to him to show cause why he should not be removed as Commander of the LDF.

93. Evidence shows that the Prime Minister Pakalitha Mosisili was not convinced by Lieutenant General Mahao's response and went ahead to advise His Majesty the King to terminate his commission as Commander LDF. A Legal Notice No. 60 of 21<sup>st</sup> May 2015 was published which terminated Lieutenant General Mahao's commission as Commander LDF effectively from 22<sup>nd</sup> May 2015. This was followed by a letter dated 22<sup>nd</sup> May 2015 to Lieutenant General Mahao informing him of his removal as Commander LDF and that he reverted back to his previous rank of Brigadier. Evidence further shows that Lieutenant General Mahao challenged his removal through the courts of Lesotho and the matter is still before the courts.

Conclusions on the removal and demotion of Mahao

94. As a corollary to the finding in relation to the appointment of Brigadier Mahao's above, the Commission finds that the Prime Minister acted irregularly in asking Brigadier Mahao why he could not be terminated for accepting the appointment as LDF Commander when he knew that there was a Commander and that he was facing a court martial. When the fact of the matter was that the court martial was simultaneously dissolved with his appointment.

95. It was unprecedented in terms of military practice and for discipline purposes for someone who had been appointed commander of a Defence Force and subsequently demoted and continue to serve. The military practice is to retire one who has reached such an appointment.

Legality and manner of the removal of Lieutenant General Kamoli as commander  
LDF and his re-appointment

96. Testimonies on the process towards the removal of Lieutenant General Kamoli were obtained mainly from the former coalition partners and senior government officials of the same government. Corroborative evidence shows that Lieutenant General Kamoli's respect for civilian authority and rule of law was doubtful as he was accused of blocking the course of justice by blocking investigations of some of his soldiers who were accused of having committed various criminal offences, including amongst others bombings in Maseru, killings of civilians and torture.
97. Evidence suggests that with so many accusations on the LDF and Lieutenant General Kamoli for harbouring criminals, the Prime Minister came under extreme pressure from his party, the general public and the international community to advise His Majesty the King to remove Lieutenant General Kamoli as Commander LDF.
98. It is alleged that on the 27<sup>th</sup> August 2014, former Prime Minister Thomas Thabane summoned Lieutenant General Kamoli to the State House, where he informed him of complete loss of trust and that their working relationship had irretrievably broken down. In the same meeting, the Prime Minister informed Lieutenant General Kamoli of his intention to advise His Majesty the King to *remove him as Commander LDF*.
99. On 29<sup>th</sup> August 2014, Lieutenant General Kamoli was dismissed as commander LDF according to a dismissal letter, dated 29<sup>th</sup> August 2014. It is

alleged that endeavours were made to serve Lieutenant General Kamoli with this dismissal letter but in vain as it is reported that he imposed a blockade on government mail to Ratjomose Barracks. It was further said the letter was finally faxed and emailed to Lieutenant General Kamoli.

100. Contradicting evidence was heard from government and the LDF where Lieutenant General Kamoli denied ever attending a meeting where his dismissal was discussed and that he was never told that he was being terminated as LDF Commander. Lieutenant General Kamoli further says he never received or saw a letter nor government gazette terminating his service.

101. The termination of Lieutenant General Kamoli was further described as illegal as he was not afforded hearing and that he was to be replaced by someone who was not promotable because he was on suspension and facing court martial. The former Prime Minister Thomas Thabane's actions were said to be ill advised done in bad faith when terminating Lieutenant General Kamoli's service, because there was no consultation as required by the coalition agreement of then.

Conclusions on the legality of Kamoli's removal

102. Evidence before the Commission on the removal of Lieutenant General Kamoli is that he was never removed as Commander LDF because he never saw any gazette terminating his service.

103. The former Prime Minister Thomas Thabane used his constitutional powers in removing Lieutenant General Kamoli from office and was not required to consult anyone in that action. A letter of termination addressed to

Lieutenant General Kamoli, dated 29<sup>th</sup> August 2014, is said to have been served unsuccessfully to Lieutenant General Kamoli but was later faxed and emailed to him.

104. There is no evidence of Legal Notice directly addressing the removal of Lieutenant General Kamoli, except for Legal Notice No. 64 of 29th August 2014 which appointed Lieutenant General Mahao and repealed Legal Notice No. 41 of 2012 which appointed Lieutenant General Kamoli.

105. Legally therefore, through the repeal of Legal Notice 41 of 2012 essentially revoked his appointment, which is in accordance to Section 25 of the LDF Act.

Conclusions on the legality of the reappointment of Kamoli

106. The issuance of Legal Notice No. 61 of 2015 which reappointed Lieutenant General Kamoli as Commander LDF was within the law and in accordance with the LDF Act of 1996.

107. However, the manner in which it was done, in particular the revisiting of another Prime Minister's term of office is inappropriate.

Political and security instability as a result of Lieutenant General Kamoli's reappointment

108. Allegations of Divisions within the LDF: Lieutenant General Kamoli was first appointed commander of the LDF in 2012. The commission heard various



testimonies to the effect that upon assuming command of the LDF, Lieutenant General Kamoli he developed the LDF unevenly, i.e. he was inclined in favour of the Special Forces and Military Intelligence. Recruits that completed their training were taken to Oxbow. This was an unusual development because recruits were allocated to different battalions upon completion of their basic training.

109. Witness Mr.Machesetsa Mofomobe testified in public that there is a division within the rank and file of the LDF, because wherever there are two sides it is already a sign of division. He further went on to testify that he was told that on the 14<sup>th</sup> October 2014 at a military parade Brigadier Mokaloba informed the parade that Brigadier Mahao wanted to infiltrate the army together with the witness and one Corporal Mofomobe a member of LDF Military Intelligence.

110. A witness in camera testified before the Commission that there has been and still was a division within the LDF. The signs of division were observed long before the removal of Lieutenant General Kamoli and appointment of Brigadier Mahao. The statement of Lieutenant Colonel.....<sup>12</sup> back in January 2014, where he said Lieutenant General Kamoli would be removed over his dead body presupposes that there were different views and alignments within the LDF. Lieutenant Colonel.....<sup>13</sup> also alluded to a syndicate of soldiers who were flirting with politicians, holding secret meetings and agitating for the removal of Lieutenant General Kamoli.

111. Evidence was led that Lieutenant General Kamoli was neither comfortable nor at ease with Brigadier Mahao, thus he regarded him as an enemy of the

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state. The division became even more evident after the removal and appointment of Lieutenant General Kamoli and Brigadier Mahao respectively.

112. Soldiers were then divided into two groups, majority of those joined the army in 1996 known as Intake 21 rallied behind Brigadier Mahao, while others rallied behind Lieutenant General Kamoli. One witness described those that supported Lieutenant General Kamoli as trouble seeking members and those on Mahao's side as those who were shaken by the turn of events within the LDF.

113. It is evidence before the Commission that most of the suspects in the alleged mutiny plot are Brigadier Mahao supporters while the investigating and arresting team are Lieutenant General Kamoli supporters. Both the Minister of Defence and the entire LDF command refuted the allegation of divisions.

114. Additional to testimonies above, there are various occurrences that point towards differences and divisions within the LDF. Some of these occurrences include a shoot-out between members of the LDF involving Lieutenant Colonel.....<sup>14</sup>, Major Mosakeng and Corporal Majara; and the fleeing of soldiers to South Africa.

115. Allegations of Political Instability: Evidence was led that described the political situation of the country from as far back as 2007 where the name of the then Lieutenant General Kamoli started featuring in good light with restoring order within society, as well as bad light by being linked to the infamous "Operation Pitika" where certain politicians especially of the opposition were made to roll on the ground as punishment. It is well-known and established fact that the

Kingdom of Lesotho has not enjoyed political stability for a number of years with the Kingdom's political instability having made itself a common feature of the SADC agenda.

116. Political situation before the re-appointment of Kamoli: The reappointment of Lieutenant General Kamoli was preceded by grave political and security instabilities that besieged the Kingdom of Lesotho during the reign of Dr. T. Thabane. The instabilities, reached a crescendo when the then Prime Minister removed Lieutenant General Kamoli and appointed Brigadier Mahao as LDF Commander. That spelt the collapse of former Prime Minister Thabane's coalition government and resulted in brought forward election negotiated through a SADC intervention.

117. An earlier agreement, brokered through the Maseru Security Accord, sent Lieutenant General Kamoli, Lieutenant General Mahao and Commissioner of Police Tsooana outside the Kingdom on what was termed 'Leave of Absence'. The brought forward elections gave birth to a new coalition government led by Mosisili. Upon the return of the three security chiefs, now under the new coalition government of Prime Minister Right Honourable Pakalitha Mosisili, Lieutenant General Kamoli was reappointed LDF Commander, while Mahao was demoted and Tsooana fired.

118. Political situation after the reappointment: Just after the reappointment of Lieutenant General Kamoli three opposition leaders fled to South Africa (former Prime Minister and current Leader of Opposition in parliament Dr. Thomas Thabane, BNP Leader Chief Maseribane and RCL leader Keketso Rantsho). They stated that they feared for their lives because they believed Lieutenant General Kamoli would be vengeful for his earlier dismissal. When confronted with

these allegations, he denied having problems with the former Prime Minister but he admitted having problems with some of the people in exile, who knew what evil they had done. On the other hand the current government is fully supportive of Lieutenant General Kamoli as confirmed by the Prime Minister, Deputy Prime Minister, Minister of Defence and Minister of Home Affairs in their testimonies.

119. With the above said, the Commission concludes that the Kingdom of Lesotho continues to experience political challenges that if not arrested might spiral out of control with the consequence that another election may be imminent. It is therefore apparent that the political situation is still not stable as the leaders of the opposition political parties remain in exile in fear of Lieutenant General Kamoli.

120. Allegations of Security Instability: The security sector in Lesotho is made up of various departments with political direction coming from various ministries. These include LMPS, the LDF, the NSS and the Department of Corruption and Economic Offences (DCEO). All these departments are coordinated by cabinet through the Security Committee which by practice is chaired by the Deputy Prime Minister. Evidence before the Commission is that this sub-committee has not convened since the new government was established and that even in the previous coalition government as soon as there were issues of corruption against the Deputy Prime Minister (DPM) raised at the anti-Corruption Sub-Committee chaired by Chief Maseribane, the structures suffered some seizures.

121. It is the evidence of Chief Maseribane led before the Commission that the Deputy Prime Minister frustrated the proceedings of the Security Sub-Committee as it is alleged that whenever Commissioner Tsooana raised issues against the conduct of Lieutenant General Kamoli the Deputy Prime Minister would ignore him.

122. The evidence of Colonel Sechele who is the legal advisor to the LDF indicated their practice is that if the police are investigating cases they do not need to meet and interview members of the army. His famous quote during the hearings was "*le seka la batla nyee ho rona*"...which simply means "don't investigate us".
123. Evidence before the Commission is that there is limited cooperation between the security forces. Where such an environment exists there is bound to be tension that develops within the sector. Testimony by the Acting Commissioner of Police is that there are some improvements as far as cooperation between the LMPS and the LDF is concerned. In his evidence he indicated that there are meetings being held between the two forces to normalise relations. This evidence was however disputed by one of the Deputy Commissioners who elaborated on cases affecting members of the LDF which have long been pending. This witness however cited instances where the LDF had cooperated.
124. In his evidence Colonel Sechele indicated that their reluctance to cooperate with LMPS was that the police kill suspects in their custody. This testimony was however disputed by other witnesses who indicated that there was one case where an LDF member had died but that those police officers involved were prosecuted and acquitted.
125. Evidence before the Commission is that there is a specific sector of the LDF which appears to be protected and that this sector belongs to the Special Forces and Military Intelligence.
126. Political meddling in security forces: It has been testified that the security sector is heavily politicised, with the LMPS being largely ABC supporters even going to an extent of campaigning for the party in the previous elections. Evidence

was also led that the leadership of LDF is also heavily active in politics going as far as holding meetings with politicians. It was indicated to the Commission that Lieutenant General Kamoli participated in party meetings in Roma at the current Prime Minister's residence and that he would be sneaked in at the Deputy Prime Ministers residence to attend such political meetings.

127. In conclusion; there is no doubt that with such an environment where political leaders are exploiting the unprofessionalism of the security sector there shall remain strains in the proper governance of the Kingdom of Lesotho. The politicians meddle in the security sectors for their own ends and not for the benefit of the nation.

*Identification of Perpetrators and Accountability to the Death of Mahao.*

128. There is no dispute about who is responsible for the death of Brigadier Mahao, who was shot dead on the 25<sup>th</sup> June 2015 between 1400hrs and 1500hrs at Ha Lekete village while on his way from his farm to Maseru. The LDF and the entire Lesotho Government admit that he was shot by members of the LDF on an authorized operation and that the shooting was justified.

129. Colonel Sechele testified that he was the operation commander. During his testimony he had informed the Commission about what happened at the scene of incident, however he had neither denied nor admitted his presence at the scene of incident claiming the right against self-incrimination sec 16 (3) of the Lesotho Public Inquiry Act, No. 1 of 1994 .

130. During the inspection *in loco* Colonel Sechele directed and guided the Commission to the scene of incident where Brigadier Mahao was shot. He

sketched and demonstrated what occurred that day as far as the operation was concerned, yet he maintained his position not to divulge the identity of the operatives.

131. One of eye witness identified two of the operatives as Colonel Sechele and Lieutenant Colonel.....<sup>15</sup> who were in the company of about nine (9) others who were not identified.

132. Lieutenant Colonel.....<sup>16</sup> appeared before the Commission and he, like Colonel Sechele, decided not to divulge anything concerning the operation which caused the death of Brigadier Mahao.

Other matters relevant to the Inquiry

133. Evidence was led to the Commission that a section within LDF is law unto itself having been involved in several criminal atrocities in the Kingdom of Lesotho and that several attempts by the LMPS to have access to the suspects were denied. When confronted with these allegations, the legal advisor of the LDF Colonel Sechele indicated that the LDF had since adopted a position that it would not release its officers to the Police. Evidence was placed before the Commission and supported by documentary evidence that several attempts were made by LMPS to have the suspects released for investigation but failed.

134. The list of cases in which members of the LDF are alleged to be involved, where LDF command is said to be blocking the cause of investigations, include Morija Police Station CIR 673/01/12 attempted murder, Mafeteng Police Station CIR 30/04/12 murder, Mahale Police Station CIR 03/04/12 attempted murder, Mokhotlong Police Station CIR 274/06/13 attempted murder, Leribe Police Station CIR 12/04/13, Thamae Police Station CIR 146/05/14 murder,

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<sup>15</sup>

<sup>16</sup>

Police Headquarters CIR/778/09/14 murder of police officer, Maseru Police Station  
CIR/2535/02/15 murder of a security guard and attempted murder of an LDF member.

135. In the Thamae Police Station, murder case CIR/146/05/14 where a 21 year old  
Lisebo Tang was shot and killed by soldiers guarding the residence of Lieutenant General  
Kamoli, the LDF failed to release the perpetrators and instead went into a civil contract to  
compensate the family and pay for burial costs.

136. Evidence before the Commission is that the LDF became a law unto itself, this is  
corroborated by warrants of arrest issued on the 17<sup>th</sup> April 2014 for High Treason against  
Brigadier.....<sup>17</sup> , Major.....<sup>18</sup> , Major.....<sup>19</sup> , Captain.....<sup>20</sup> , 2<sup>nd</sup>  
Lieutenant.....<sup>21</sup> , 2<sup>nd</sup> Lieutenant.....<sup>22</sup> , Corporal.....<sup>23</sup> , and Lance  
Corporal.....<sup>24</sup> and another warrant of arrest issued on the on the 29<sup>th</sup> September  
2014 for Treason against .....<sup>25</sup> , Captain.....<sup>26</sup> , Brigadier.....<sup>27</sup> ,  
Lieutenant Colonel.....<sup>28</sup> , 2<sup>nd</sup> Lieutenant.....<sup>29</sup> , 2<sup>nd</sup> Lieutenant.....<sup>30</sup> , 2<sup>nd</sup>  
Lieutenant.....<sup>31</sup> and Major .....<sup>32</sup>.

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## **I. MAIN FINDINGS**

137. From its proceedings and analysis of testimonies heard, the Commission has come up with the following findings:

- a. That some of the mutiny suspects were subjected to torture and forced to confess to a mutiny plot and to implicate other people. The involvement of Brigadier Mahao on the alleged mutiny plot remains doubtful as there was no evidence to prove his involvement.
- b. That there are no former members of the LDF who have been kidnapped, but the manner in which the mutiny suspects were arrested by the LDF was seen as kidnapping/abduction by some Basotho, hence cases of *habeas corpus* applications in the High Court of Lesotho.
- c. That there are no proven killings of opposition party members, nor was there evidence of any politically motivated killing led before the Commission.
- d. That there were consistent and persistent threats on Brigadier Mahao's life by some members of the LDF who would publicly, before military parades declare that Brigadier Mahao will be shot if he could set foot in military barracks. These utterances and previous attempts on his life manifest a desire to have him dead.
- e. That the operation to investigate and arrest alleged mutineers including the attempt to arrest Brigadier Mahao was duly authorized by the Honourable Minister of Defence Mr. T. Mokhosi, but lacked control mechanisms in that the Honourable Minister did not insist on being kept abreast as the

operation unfolded, neither did the LDF find it necessary to keep him informed.

- f. That on a balance of probabilities, the evidence shows that Brigadier Mahao did not resist arrest.
- g. That on a balance of probabilities, even if it is accepted that he pointed a pistol at one of the arrestors, excessive force was used, particularly after the first shot, which immobilised his right arm, thus, the additional two shots were unnecessary. Therefore, the degree of force used on the deceased was not commensurate to the danger he posed with the pistol.
- h. That Brigadier Mahao died from bullet wounds caused by three shots into his body from an AK47 rifle at point blank range.
- i. That the hospital staff washed the clothing and the body of the deceased, making it difficult for the pathologist to assess how much blood he had lost, in order to estimate when the deceased could have died; therefore the allegations that Brigadier Mahao was walking when arriving at the hospital cannot be ruled out. However, the pathologist testified that it is improbable.
- j. That the former Prime Minister Dr Thomas Thabane, in dissolving the court martial for Brigadier Mahao, acted within the law.
- k. That the appointment of Brigadier Mahao as Commander of LDF on the 29<sup>th</sup> August 2014 was legal. The law is clear that the appointing authority, then Prime Minister Thomas Thabane had no legal obligation to consult on the appointment.

- l. The former Prime Minister Dr. Thomas Thabane used his constitutional powers in removing Lieutenant General Kamoli from office and was not required to consult anyone in that action. Lieutenant General Kamoli was legally removed as Commander and should have approached the courts of law if he felt aggrieved.
- m. The Commission finds that the removal and demotion of Brigadier Mahao was legal, but the manner in which it was done was flawed as the Prime Minister Phakalitha Mosisili "show cause" letter was ill advised. The "show cause" for the termination premise on that Brigadier Mahao was facing court martial. When the fact of the matter is that the Court martial was simultaneously dissolved with his appointment on the 29<sup>th</sup> August 2014.
- n. The issuance of Legal Notice No. 61 of 2015 which reappointed Lieutenant General Kamoli as Commander LDF was within the law and in accordance with the LDF Act of 1996. However, the manner in which it was done, in particular the revisiting of another Prime Minister's term of office is improper. However, the legal notice itself was competent to dismiss Brigadier Mahao as it was issued by the His Majesty the King on advice of the Prime Minister.
- o. The re-appointment of Lieutenant General Kamoli perpetuated the divisions within the LDF as he vowed to deal with those who celebrated his removal, as evidenced by fleeing soldiers and that he caused some officers to resign.
- p. That the fleeing of opposition party leaders after Lieutenant General Kamoli's reappointment and parliamentary boycott by opposition amounts

to political instability. That these political challenges if not arrested might spiral out of control with the consequence of failing the current government.

- q. That there are several investigations by LMPS on LDF members which were hindered by the Lieutenant General Kamoli by refusing to hand over suspects to the police. This disregard for the Rule of Law by the LDF, is evidenced by existing warrants of arrests on some members of LDF including Lieutenant General Kamoli charged with High treason arising from the 30<sup>th</sup> August 2014 unrests.
- r. That the LDF Act Section 5 (b) (ii) and (c) mandate the LDF to issues of internal disorder and maintenance of law and order as well as prevention of crime, which are commonly known to be police duties.
- s. That the investigation on the death of Mahao has been stopped. The Commission is persuaded to believe that this move was calculated to hide the fact that the LDF hindered the investigations. The facts are that the LDF refused to surrender physical evidence (weapons and vehicles used and the deceased mobile phones).
- t. That there is deep rooted politicisation of the security sector especially the LDF and LMPS as it was witnessed that some members of the said institutions actively participated in politics.

## **J. RECOMMENDATIONS**

138. With the testimonies and analysis of matters relevant to the mandate of the Commission, and in the interest of finding peace for the Kingdom of Lesotho, and bringing closure to the killing of Brigadier Mahao, the Commission proffers here below, some recommendations for consideration:

- a. *The Government of Lesotho should ensure that the criminal investigations on the death of Brigadier Mahao be pursued vigorously and that the LMPS is empowered and resourced accordingly. The investigation should be conducted expeditiously and comprehensively without any hindrances and that all physical evidence be surrendered. The finality of the investigations should lead to a transparent course of justice.*
- b. *The general discontent of some Basotho with the Commander of LDF, Lieutenant General Kamoli and the conduct of the LDF under his command is disconcerting. In the interest of restoring trust and acceptance of the LDF to the Basotho nation, it is strongly recommended that Lieutenant General Kamoli be relieved of his duties as Commander LDF, and all LDF officers implicated in cases of murder, attempted murder and treason be suspended while investigations in their cases proceed in line with international best practice. See (Annex 9) for the list of cases.*
- c. *The Commission has observed that some of the political and security problems peculiar to the Kingdom of Lesotho emanate from the Constitution of the Lesotho. The deficiencies and overlaps in the*

constitution with regard to mandates of security institutions, need to be looked into urgently with a comprehensive strategy to reform them.

The Commission has noted that SOMILES report covers extensively the areas of reform (*constitution, security sector, public service and information and media*) pertaining to the Kingdom. To avoid repetition, the Commission therefore recommends an accelerated implementation of the reforms encapsulated in the SOMILES report. SADC should come up with a direct strategy on how to assist Lesotho in the implementation of these reforms, and that the Lesotho Oversight Committee, established by the 3<sup>rd</sup> July 2015 Double Troika is operationalised.

- d. Evidence before the Commission in respect of the mutiny, is that the alleged mutineers intended to kill 13 members of the LDF. Further, it shows that some of the complainants in the court martial, participated in the arrest of the suspects, which is a clear conflict situation, as they have personal interest in the cases. When this evidence is taken into consideration with that of the suspects subjected to torture, the object being to extract confessions from them, as well as the evidence that Lt General Kamoli himself, when he was reappointed as Commander of the LDF, stated that he would deal with those who celebrated this termination in 2014, it makes the whole case of mutiny highly suspect.

In these circumstances, we recommend a facilitation of an amnesty that will cover the detained mutiny suspects and ensure the safe return of all members of the LDF who have fled Lesotho in fear for their lives.

**K. ANNEXURE**

# Annexure 1:

Legal Notice No.88 of 2015



## LEGAL NOTICE NO. 88 OF 2015

**Commission of Inquiry (Disturbances to National Peace and Stability (Amendment) Notice, 2015**

Pursuant to section 3(1) of the Public Inquiries Act, 1994<sup>1</sup>, I,

**PAKALITHA BETHUEL MOSISILI,**

**PRIME MINISTER OF LESOTHO**, amend the Commission of Inquiry (Disturbances to National Peace and Stability) Notice, 2015 by deleting item 3(1) and substituting the following item:

**Terms of reference**

"3 (1) The Commission of Inquiry is appointed to -

- (a) review the investigations into the alleged mutiny plot. The review should also cover the alleged kidnapping of former members of the LDF and alleged killings of members of the opposition;
- (b) investigate the immediate circumstances that led to the shooting of Brigadier Mahao;
- (c) investigate allegations that Brigadier Mahao resisted arrest in a manner that merited his fatal shooting;
- (d) investigate whether the Security forces used excessive force when apprehending Brigadier Mahao;
- (e) investigate the immediate circumstances that led to death of Brigadier Mahao;
- (f) investigate the circumstances surrounding Brigadier Mahao's admission to hospital;
- (g) investigate the alleged mutiny plot and the alleged involvement of Brigadier Mahao;

- (h) in its investigations, incorporate the report of the pathologist;
- (i) investigate the legality and the manner of the appointment of Lt. General Mahao in 2014 and his demotion and removal as head of LDF in 2015;
- (j) investigate the legality and the manner of the removal of Lt. General Kamoli as head of LDF in 2014 and his reappointment in 2015;
- (k) investigate the allegations by opposition Parties and Civil Society stakeholders that Lt. General Kamoli's reappointment has resulted in divisions in the LDF and has led to political and security instability;
- (l) investigate the authorisation and execution of the LDF operations to arrest Brigadier Mahao;
- (m) investigate the termination of appointment as the LDF Commander and demotion of Brigadier Mahao;
- (n) assist in the identification of any perpetrators with a view to ensuring accountability for those responsible for the death of Brigadier Mahao; and
- (o) investigate any other matters relevant to the inquiry."

**DATED:**

**PAKALITHA BETHUEL MOSISILI  
PRIME MINISTER OF LESOTHO**

**NOTE**

1. Act No. 1 of 1994
2. L.N. No. 75 of 2015

# Annexure 2:

Legal Notice No.61 of 2015



# **LESOTHO**

# **Government Gazette**

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**Published by the Authority of His Majesty the King**  
**Price: M3.50**

**LEGAL NOTICE NO. 60 OF 2015****Lesotho Defence Force  
(Termination of Appointment of Commander) Notice, 2015**

**I, KING LETSIE III**, pursuant to section 21(b) and (e) of the Lesotho Defence Force Act, 1996<sup>1</sup>, and acting in accordance with the advice of the Prime Minister, terminate the appointment of -

**LIEUTENANT-GENERAL MAAPARANKOE MAHAO**

as Commander of the Lesotho Defence Force with effect from the 22nd May, 2015.

2. The Lesotho Defence Force (Appointment of Commander) Notice, 2014<sup>2</sup> is repealed.

**DATED: 21ST MAY, 2015**

**LETSIE III  
KING OF LESOTHO**

**NOTE**

1. Act No. 4 of 1996
2. L.N. No. 64 of 2014

# Annexure 3:

Legal Notice No.60 of 2015



**LESOTHO**  
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**Published by the Authority of His Majesty the King**  
Price: M3.50

## LEGAL NOTICE NO. 61 OF 2015

***Lesotho Defence Force  
(Appointment of Commander) Notice, 2015***

**I, KING LETSIE III**, pursuant to section 12(1)(a) of the Lesotho Defence Force Act, 1996<sup>1</sup>, and acting in accordance with the advice of the Prime Minister, appoint -

**LIEUTENANT-GENERAL KENEDDY TLALI KAMOLI**

as Commander of the Lesotho Defence Force with effect from the 29th August, 2014.

**DATED: 21ST MAY, 2015**

**LETSIE III  
KING OF LESOTHO**

**NOTE**

1. Act No. 4 of 1996



Annexure 4:

Medical Report

(L/Cpl Lefhoka)

STATION MCPS

CIR

Dear Doctor,

Kindly examine the under mentioned person and submit your report on the reverse side of this form

SURNAME LEFOKA

NAME SELLO

SEX MALE

DISTRICT MASERU

CHIEF K. THEKO

HEADMAN

STANDS MAKOANYANE

LOCATION MAKOANYANE

HEADMAN

WHO ALLEGED TO HAVE

BEEN ASSAULTED BY UNKNOWN PERSON

SHORT HISTORY OF THE CASE

REPORTED AS MENTIONED ABOVE

SIGNATURE OF THE REPORTING OFFICER

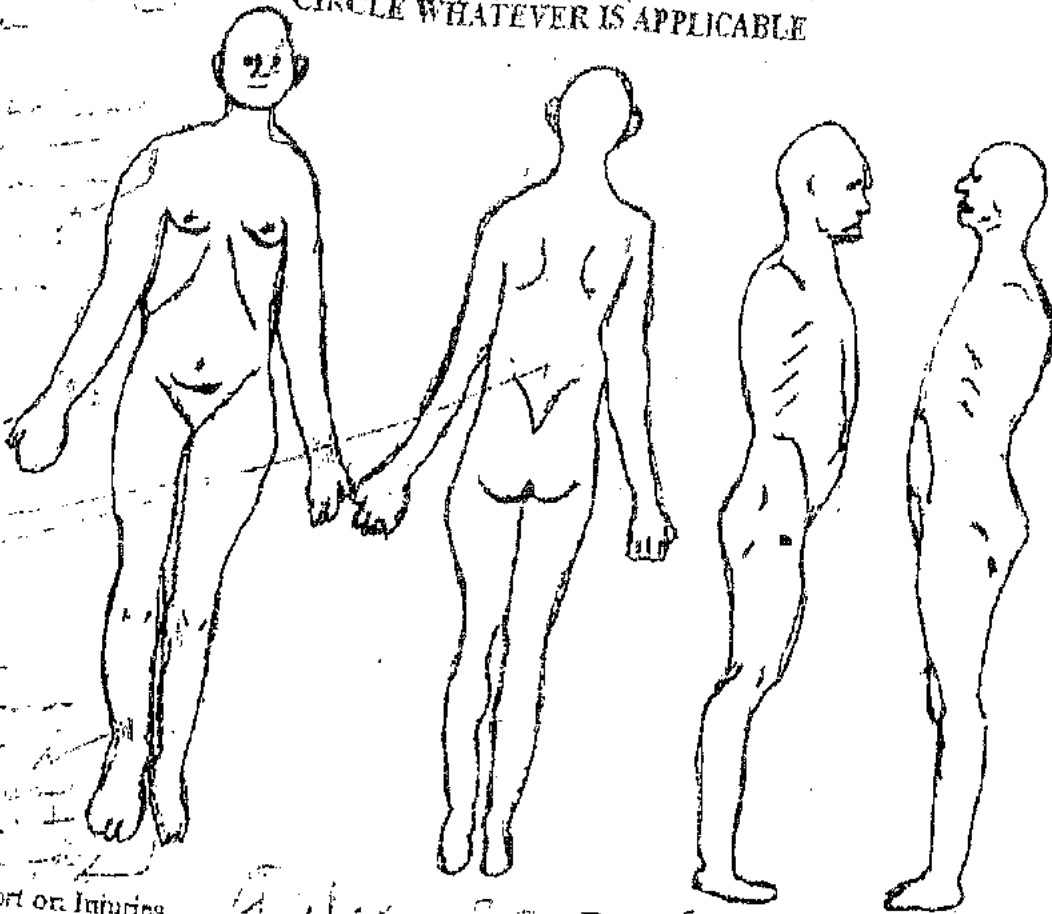
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2015-08-01

STAMP

SECTION IN CHARGE  
MASERU, BOTHO

PHYSICIAN REPORT  
CIRCLE WHATEVER IS APPLICABLE



Report on Injuries

Cause of injury

Degree of force inflicted:

Degree of injury to life:

Degree of Immediate Disability:

Degree of Long-term Disability:

Duration of Hospitalization: from

Treated as an out patient

Mild considerate / severe

Light / Moderate / Severe

None / light / Moderate / Severe

None / Partial / total

Yes or No

Signature of Examining Doctor

Name in Full

QUEEN ELIZABETH II DISTRICT HOSPITAL

TO THE EMPLOYER

This is to certify that SENIOR has

Been medically examined at COT

On (date) 02/05/15 He/She has been found unfit for work, and

He/she is recommended to be on sick leave from 02/05/15 to 14/05/15

Totalling 12 days/weeks/months.

MEDICAL OFFICER FULL NAME (print): Dr. A. MAYEMA

SIGNATURE

DATE STAMP (health facility)

DATE STAMP (DMO/MED.SUPT)

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Lab 5p

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# Annexure 5:

## Ballistic Report

**AFFIDAVIT IN TERMS OF SECTION 212 OF THE CRIMINAL PROCEDURE ACT,  
1977 (ACT 51 OF 1977)**

**CHRISTIAAN MANGENA** declares under oath and in terms of Section 212(4)(a) and 212(8)(a) of Act 51 of 1977 that:

1.

I number **0471799-6** am a **MAJOR** in the South African Police Service, and in service of the State. I am attached to the Ballistic Section of the Forensic Science Laboratory.

2.

I have been attached to the Ballistic Unit since 1995 as an examiner of Forensic Ballistic related cases. I have to date examined an excess of 5254 cases. I examine Ballistic related cases as part of my daily task and testify on a regular basis in the courts of South Africa. I have successfully completed a three (3) year in-service training course at the Ballistic Section in the theoretical and practical application of the Forensic Ballistic Science.

**2.1 I have received in-service training in the following aspects of Forensic Ballistic Science:**

**2.1.1** Identification of ammunition, fired bullets and fired cartridge cases.

**2.1.2** The use of microscopic equipment.

**2.1.3** Microscopic individualization of firearms, ammunition, fired bullets and cartridge cases.

**2.1.4** Microphotography.

**2.1.5** Identification of firearms.

**2.1.6** The examination of firearm mechanisms.

**2.1.7** The different manufacturing processes of firearms and firearm components.

**2.1.8** The examination of home-made devices.

**2.1.9** Techniques associated with the recovering and restoration processes of obliterated alpha-numeric figures on metals.

**2.1.10** The reloading of ammunition and the manufacturing processes of ammunition.

**2.1.11** Shot range determination.

**2.1.12** Crime scene investigation and examination techniques.



2.1.13 The taking of photographs and the documentation of the results during an investigation.

2.1.14 Microscopic individualization of tools and toolmarks.

2.1.15 Physical matching.

## 2.2 INTERNAL FORENSIC BALLISTICS

2.2.1 Functioning of firearm mechanisms during the firing process.

2.2.2 Burning rates of propellant powder and gas pressure.

2.2.3 The transfer of marks by the firearm to cartridges, fired cartridge cases and fired bullets.

## 2.3 INTERMEDIATE FORENSIC BALLISTICS:

2.3.1 The effect that hot gasses, propellant powder and partially burnt propellant powder has on an intermediate target, before and after the exit of a bullet from the muzzle.

2.3.2 The forming and effect of secondary missiles caused by intermediate targets.

## 2.4 EXTERNAL FORENSIC BALLISTICS:

2.4.1 The trajectory of the bullet from the muzzle of the firearm to the final point of impact.

## 2.5 TERMINAL FORENSIC BALLISTICS:

2.5.1 The wounding effect that the bullet has on tissue (Wound Ballistics).

2.5.2 The effect that the bullet has on the target.

2.5.3 The effect that the target has on the bullet.

2.6. I visited the following firearm and ammunition manufacturers to ascertain for myself which processes are used in the manufacturing of firearms and ammunition:

### Local

2.6.1 Lyttelton Engineering Works (LEW).

2.6.2 Truvello.

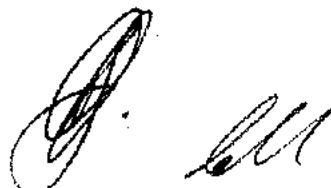
2.6.3 New Generation ammunition (NGA)

2.6.4 Somchem.

2.6.5 Swartklip.

### Foreign Country

2.6.6 Norinco in China





- 2.7 During August - September 2002 I attended a course presented by the Federal Bureau of Investigation (FBI) of the United States of America which comprised of the following:
- 2.7.1 **Bullet Trajectory Reconstruction.**
  - 2.7.2 **Techniques in Firearms Identification.**
  - 2.7.3 **Gunpowder and Gunshot Residue.**
- 2.8 During November 2010 I attended a course presented by the Ross M Gardner of Bevel, Gardner & Associates from the United States of America which comprised of the following:
- 2.8.1 **Bloodstain Pattern Analysis Level I**
  - 2.8.2 **Bloodstain Pattern Analysis Level II**
  - 2.8.3 **Crime Scene Reconstruction Level I**
- 2.9 I obtained a National Diploma in Policing with The University of South Africa.

3.

On Friday the 03<sup>rd</sup> of July 2015 during the performance of our official duties Lieutenant Modisane and I attended a post mortem at Bloemfontein mortuary. The post mortem was attended on request of the SADC ..... Post mortem was conducted on the body of an African male with body number **BDR 480/2015**. The post mortem was conducted by Professor Wadee, Professor Vellema and Professor Saayman.

4.

The intention and scope of this Forensic examination comprise the following:

- 4.1 Crime scene reconstruction.
- 4.2 Bullet trajectory determination.

5.

Prior to the post mortem the following clothing of the deceased were examined:

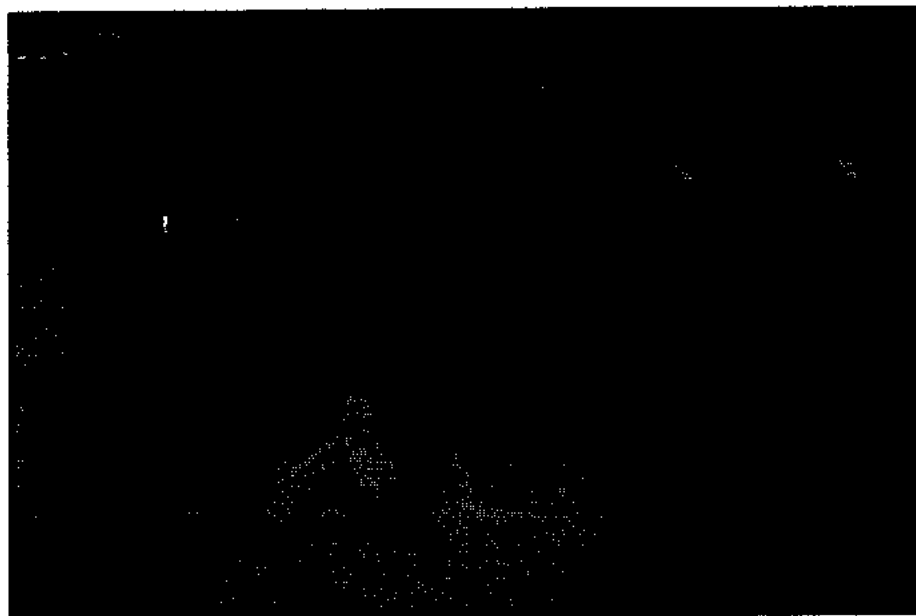
- 5.1 Grey round neck T shirt. **See photo 1 and 2.**
- 5.2 Grey and white stripe short sleeve shirt. **See photo 3 and 4.**
- 5.3 Green and khaki long sleeve jacket. **See photo 5 and 6.**
- 5.4 Green, black and khaki sleeveless pull-over. **See photo 7 and 8.**



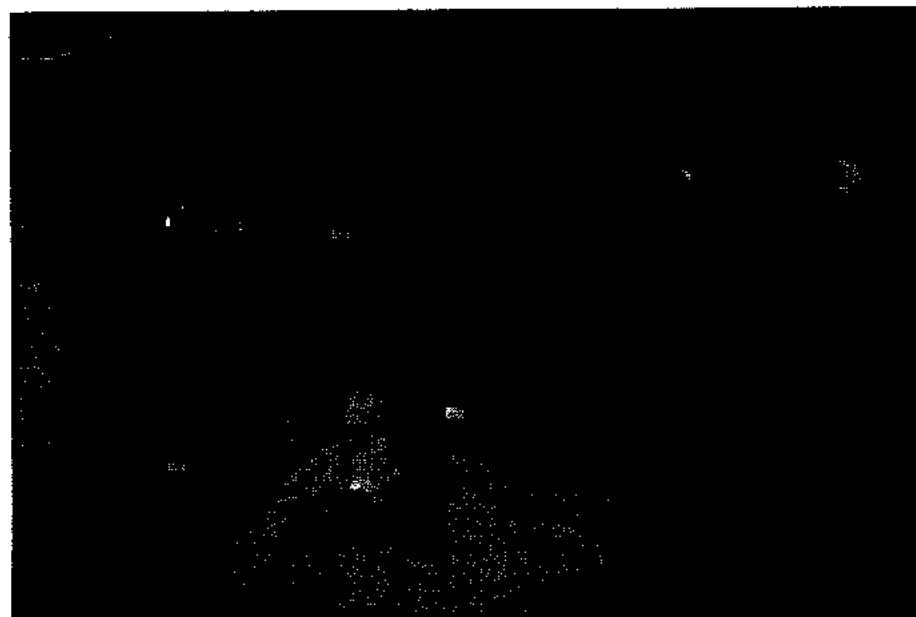
6.

All four clothing items mentioned in paragraph 5, were cut and washed. There was no blood on all clothing items. There were corresponding bullet holes on the same positions of the items. The three items mentioned in 5.1 to 5.3 have holes at the shoulder part of the sleeve (**marked D1**), at the bottom of the sleeve (**marked D3**) and on the right chest below the armpit (**marked D2**). The item mentioned in 5.4 had only one hole on the right chest and is **marked D2**. The holes at the shoulder part of the sleeve (**marked D1**) had smaller holes encompassing the main hole.

**Photo 1** Showing the grey round neck t-shirt examined.



**Photo 2** Showing positions of four bullet holes marked D1, D2, D3 and D4.

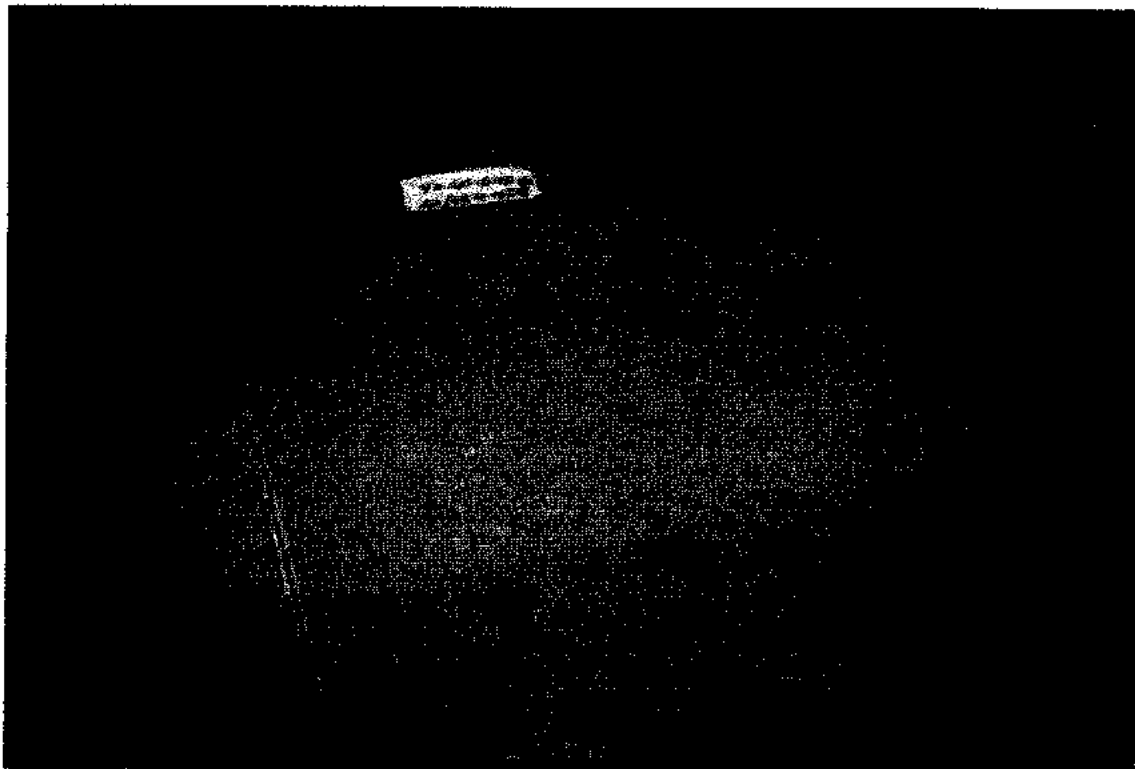


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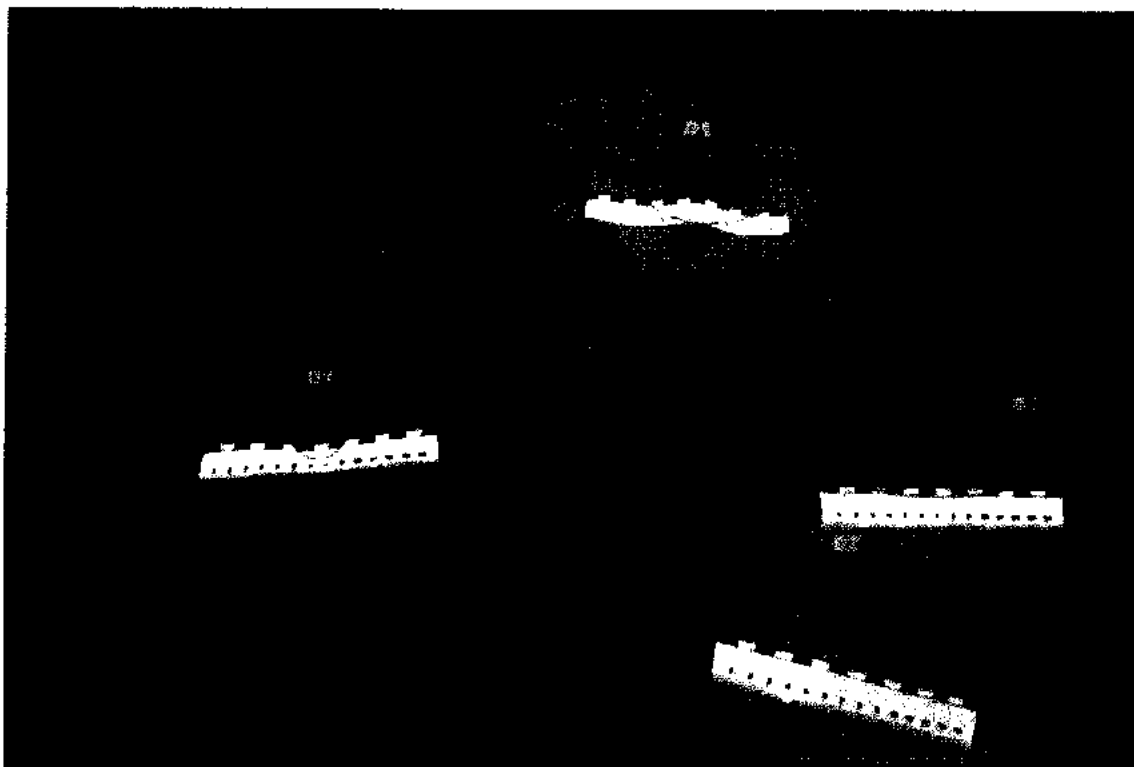
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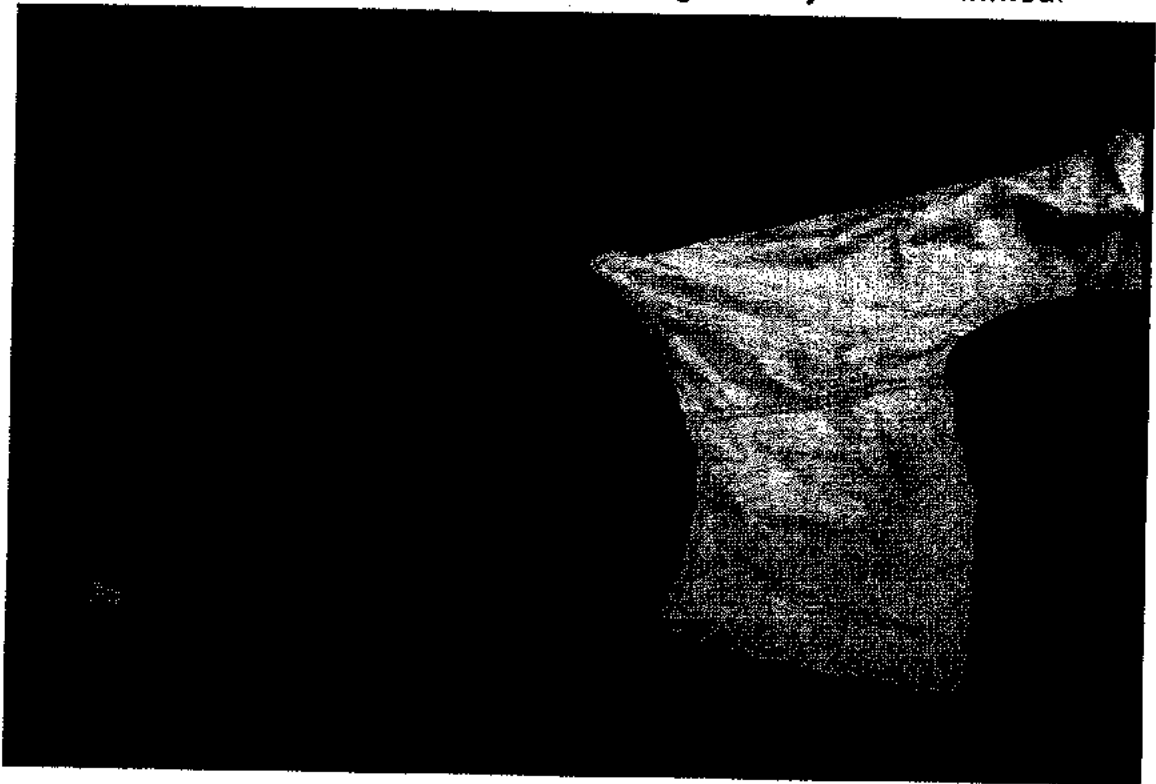
**Photo 3** Showing the grey and white stripe short sleeve shirt examined.



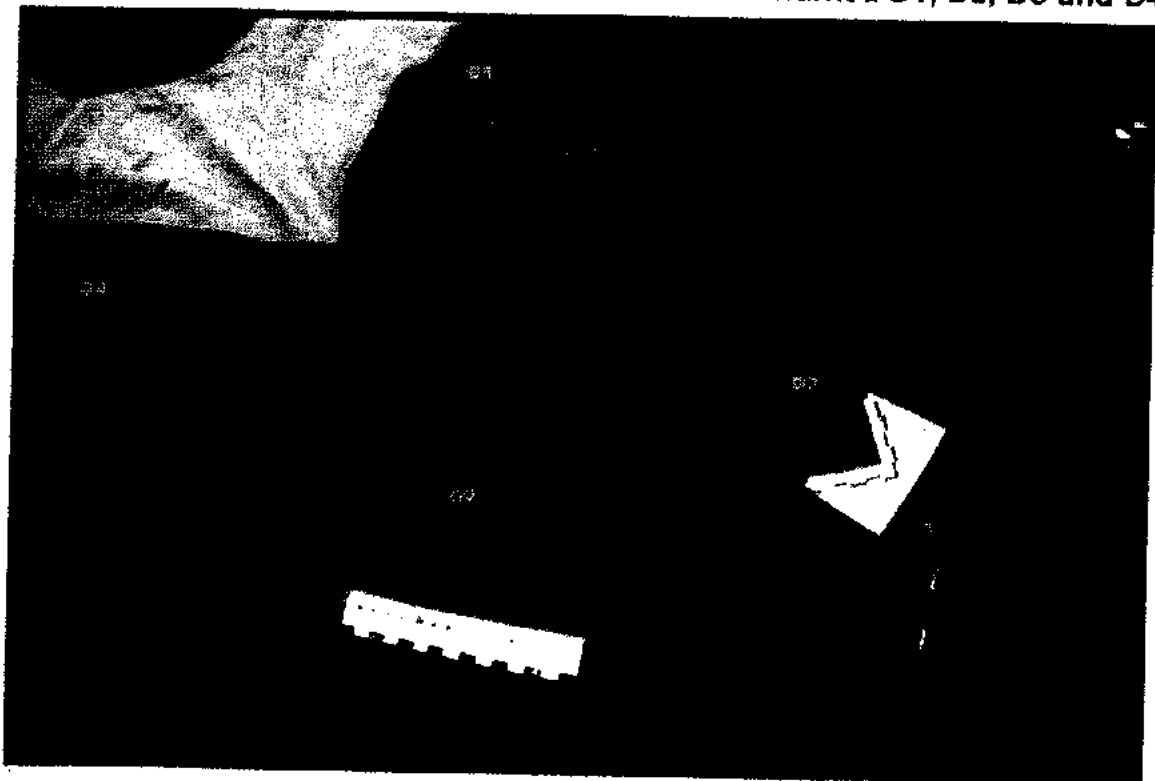
**Photo 4** Showing positions of four bullet holes marked D1, D2, D3 and D4.



**Photo 5** Showing the green and khaki long sleeve jacket examined.

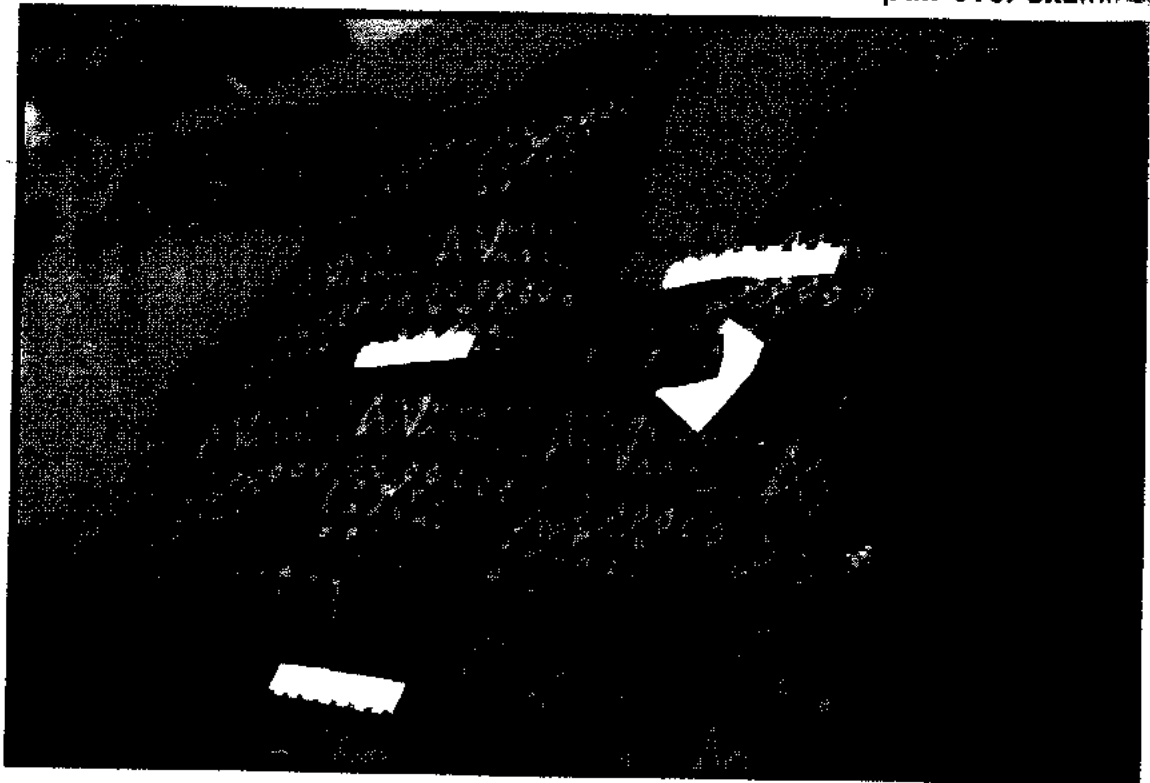


**Photo 6** Showing positions of four bullet holes marked D1, D2, D3 and D4.

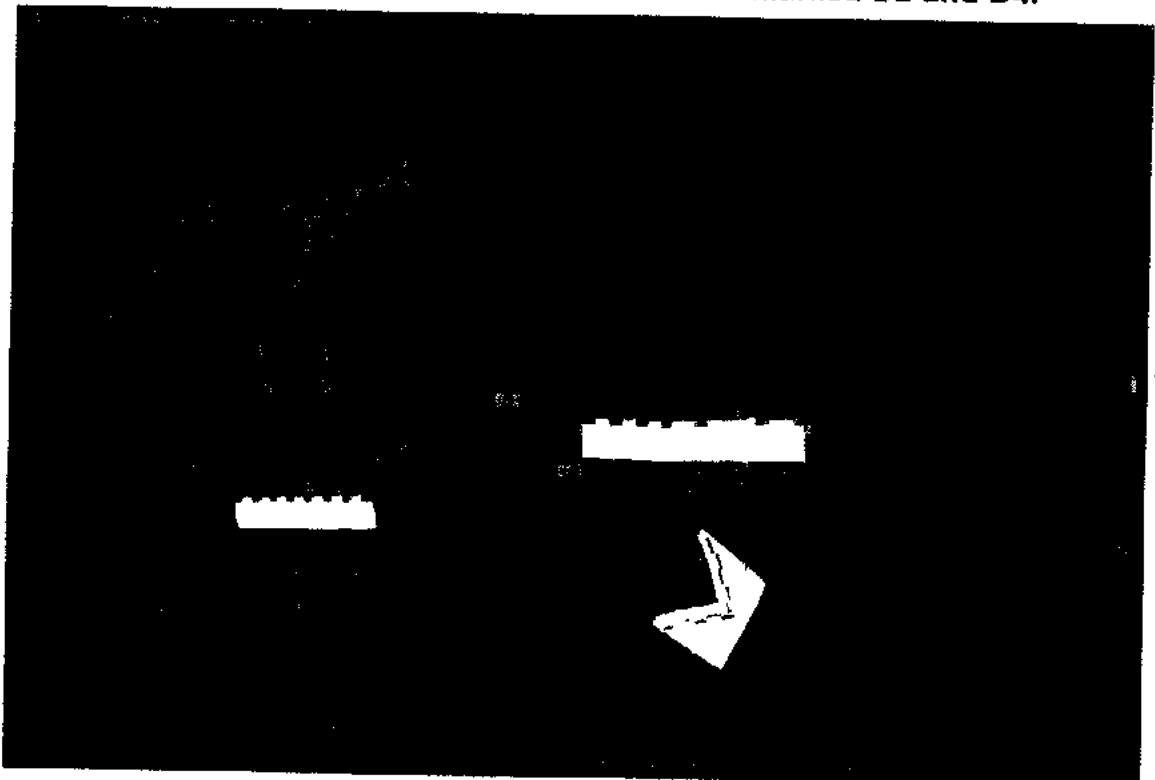


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**Photo 7** Showing the green, black and khaki sleeveless pull-over examined.



**Photo 8** Showing the positions of bullet holes marked D2 and D4.



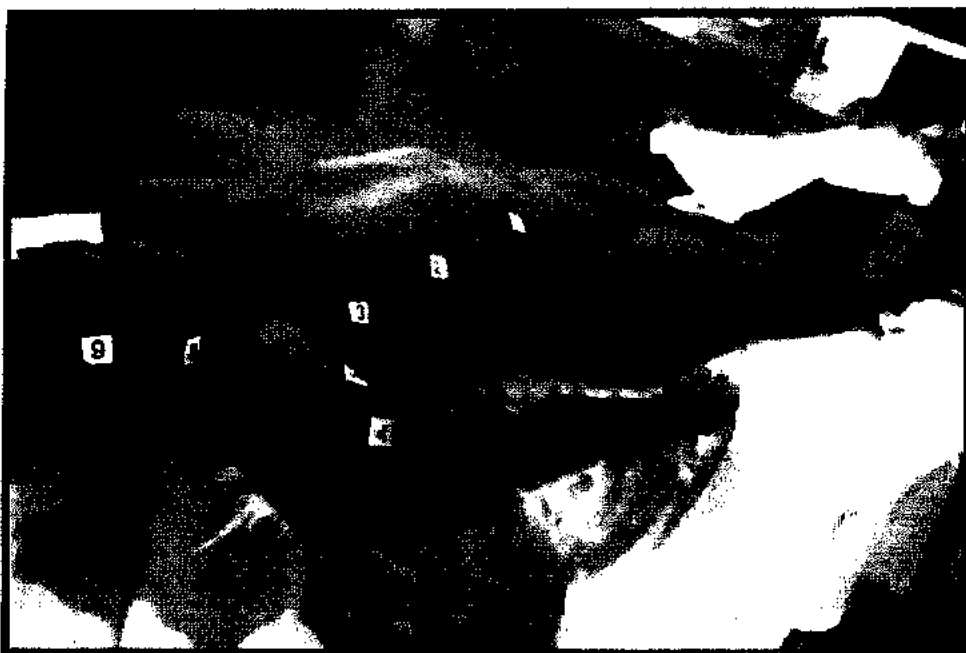
*[Handwritten signature]* 111

7

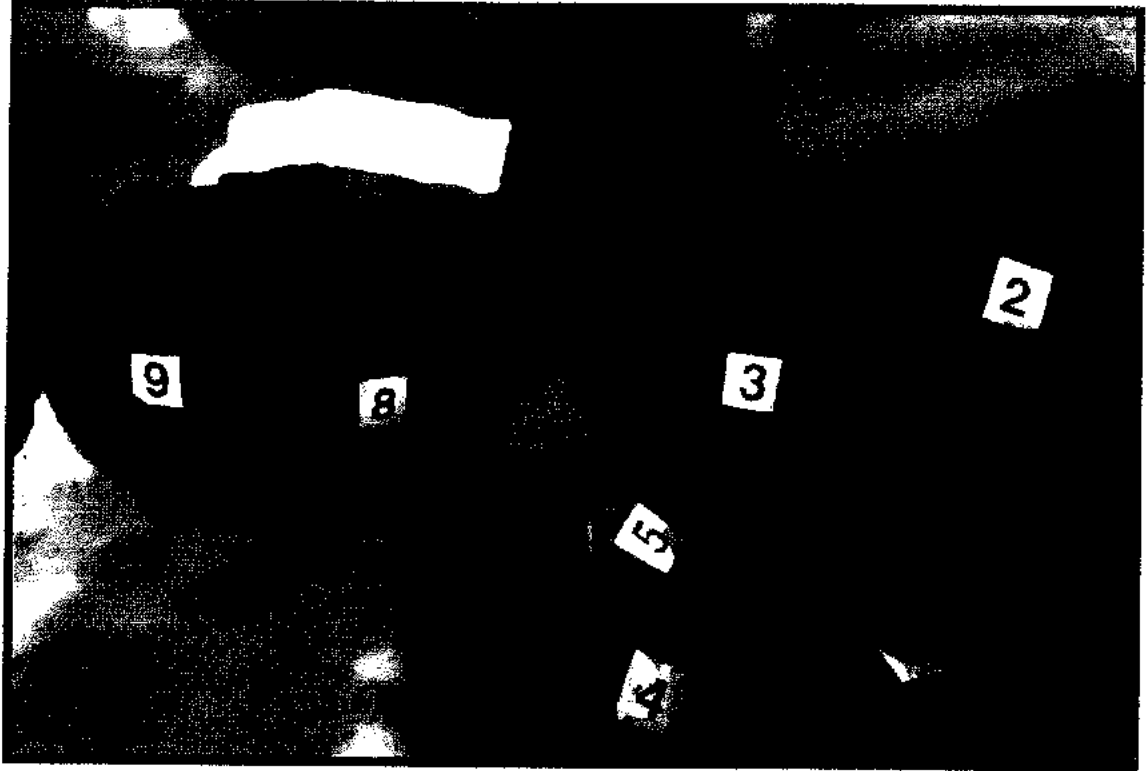
During post mortem the following wounds were observed:

- 7.1 Bullet entry wound on the right upper arm next to the shoulder. **Wound marked 4 on photos 9, 10 and 12.**
- 7.2 Bullet trench wound on the inner part of the right upper arm just above the elbow. **Wound marked 6 on photos 10 and 13.**
- 7.3 Bullet exit wound on the inner part of the right upper arm just below the armpit. **Wound marked 5 on photos 10 and 14.**
- 7.4 Bullet entry wound on the right chest just below the armpit. **Wound marked 3 on photos 9, 10 and 14.**
- 7.5 Bullet perforating wounds on lower arm just below the elbow. **Wound marked 7 photo 13.**
- 7.6 Bullet entry wound on the right chest. **Wound marked 2 on photos 9, 10 and 15.**
- 7.7 Bruise on the abdomen and is **marked 1 on photos 9 and 16.**
- 7.8 There was a possible bullet exit wound on the right back. **Wound visible on photos 17, 18 and 19.**
- 7.9 There were bullet fragments in the body which were identified by means of X-ray machine. **X-ray shown on photos 20 and 21.**
- 7.10 A bullet jacket and a steel bullet core were recovered in the body of the deceased. **Items shown on photos 22 and 23.**

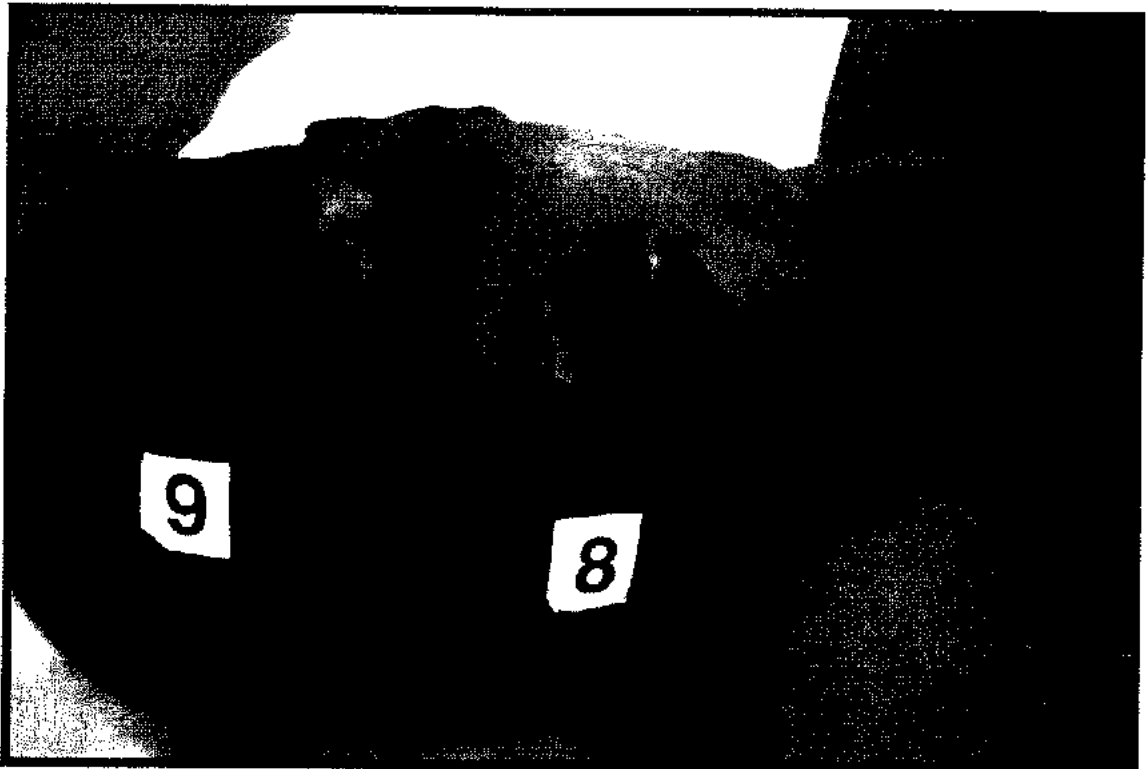
**Photo 9 Showing the deceased and positions of wounds sustained.**



**Photo 10** Showing the face of the deceased and the wounds sustained.



**Photo 11** Showing the face of the deceased



*[Handwritten signature]*

Photo 12 Showing the wound marked 4, sustained on the upper arm.

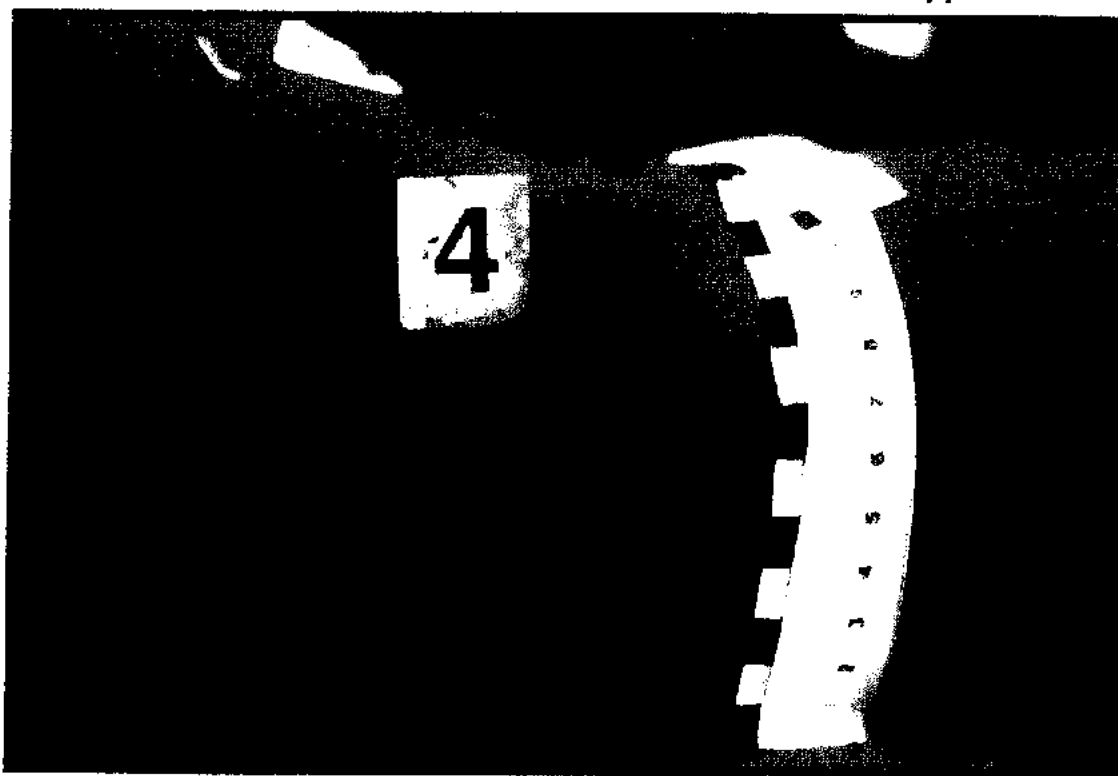


Photo 13 Showing the wound marked 6 and 7 sustained on the arm.

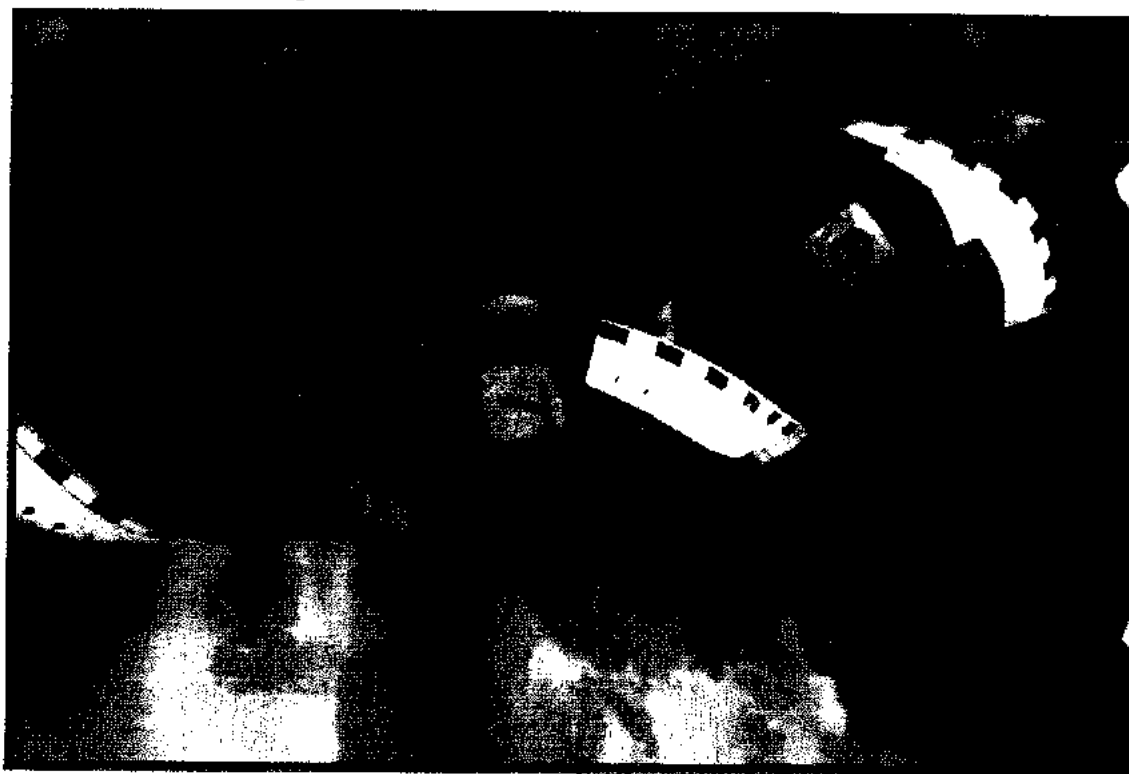




Photo 14 Showing wounds marked 3 and 5 around the armpit.

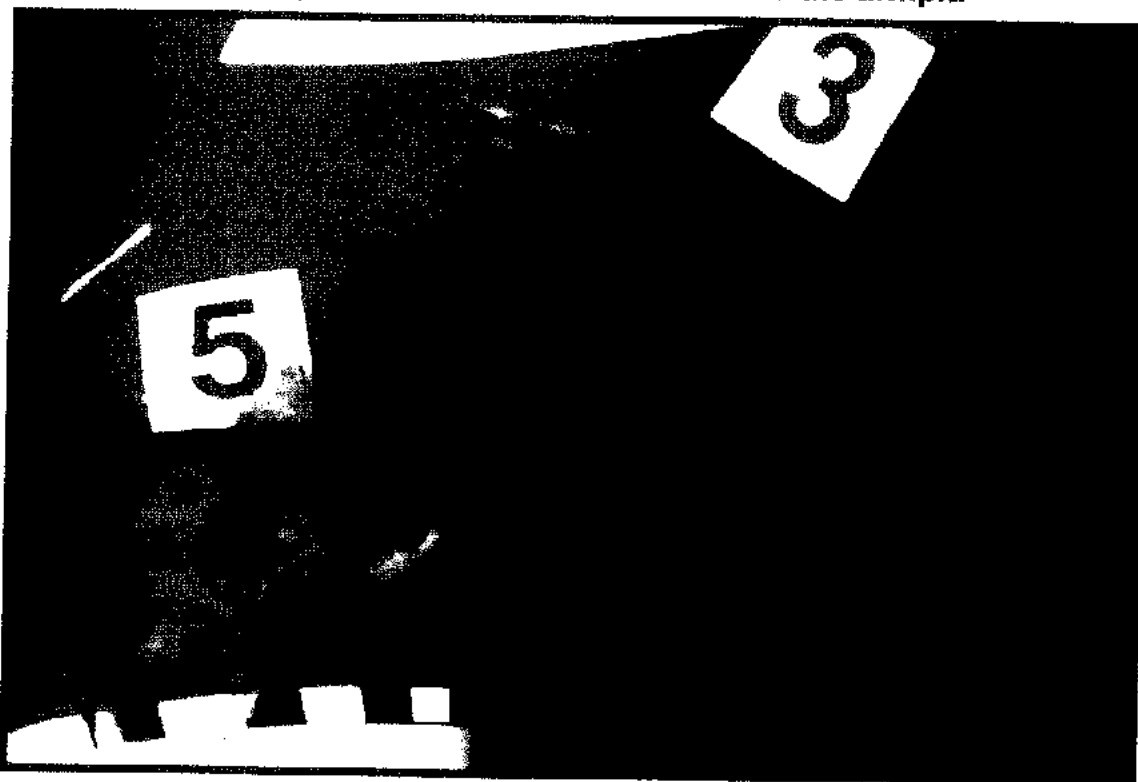
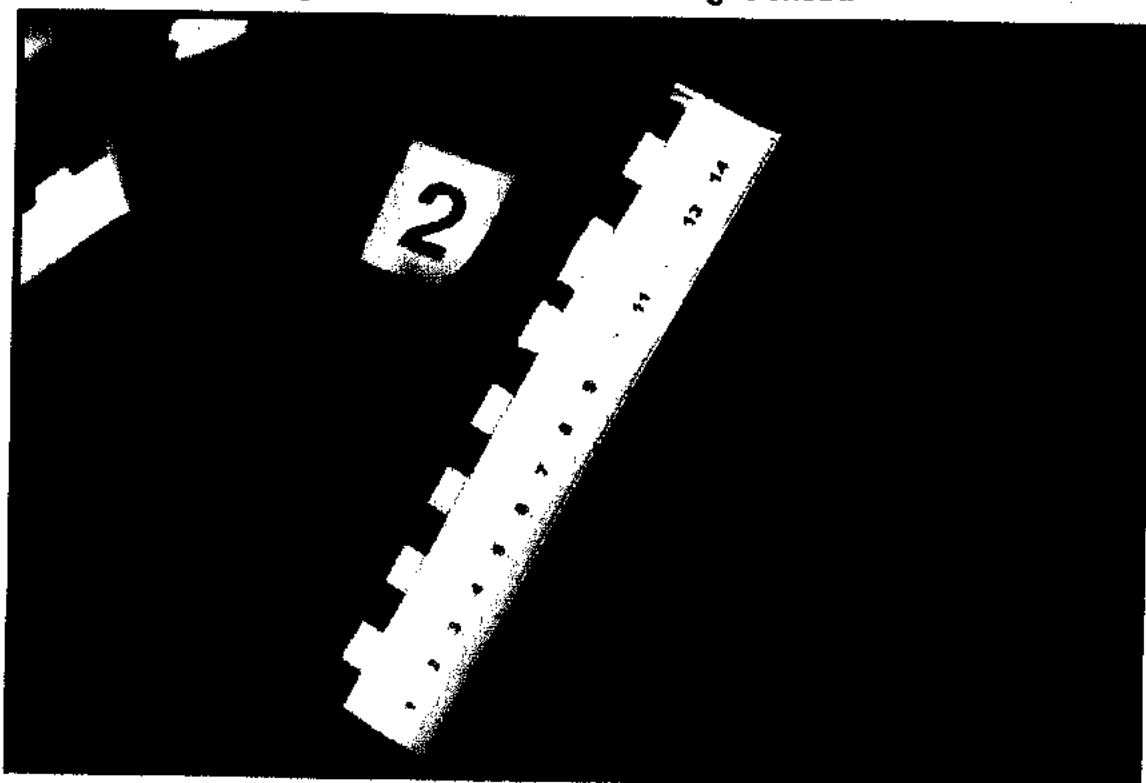


Photo 15 Showing wound marked 2 on the right chest.



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**Photo 16** Showing the bruise marked 1 on the abdomen.

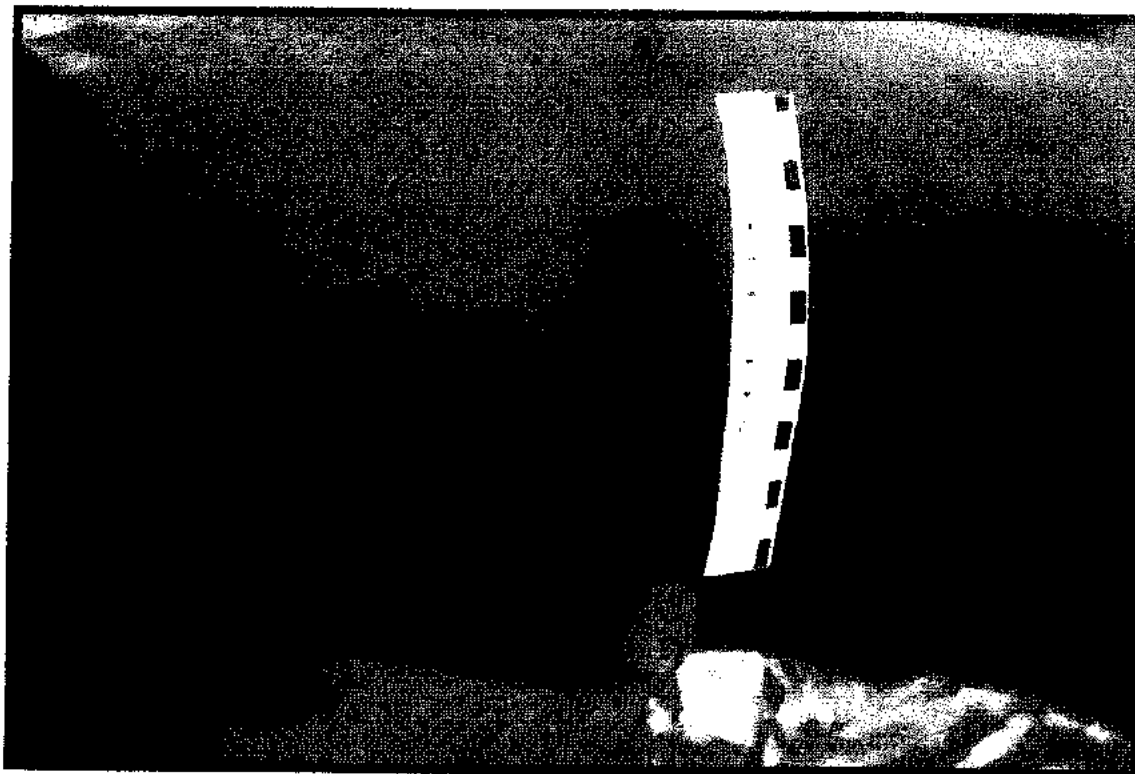


**Photo 17** Showing the position of a bullet exit wound at the back.

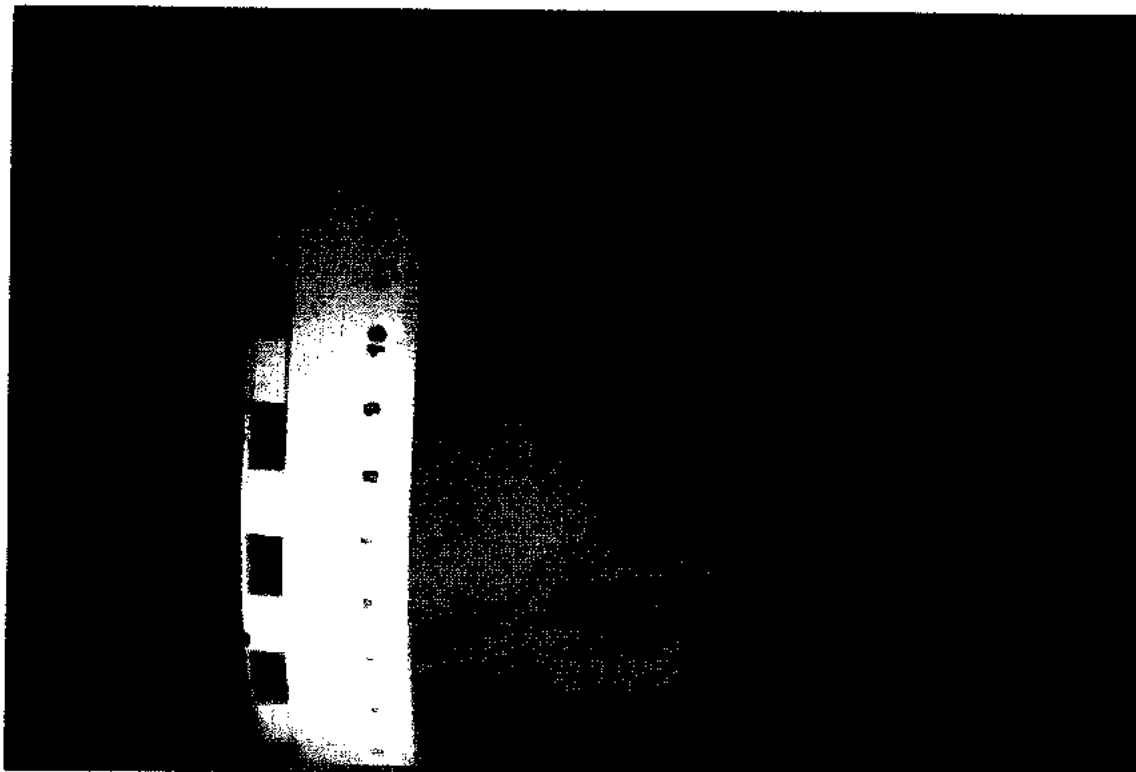


*[Handwritten signature]*

**Photo 18** Showing the bullet exit wound at the back.



**Photo 19** Close-up photo of bullet exit wound at the back.

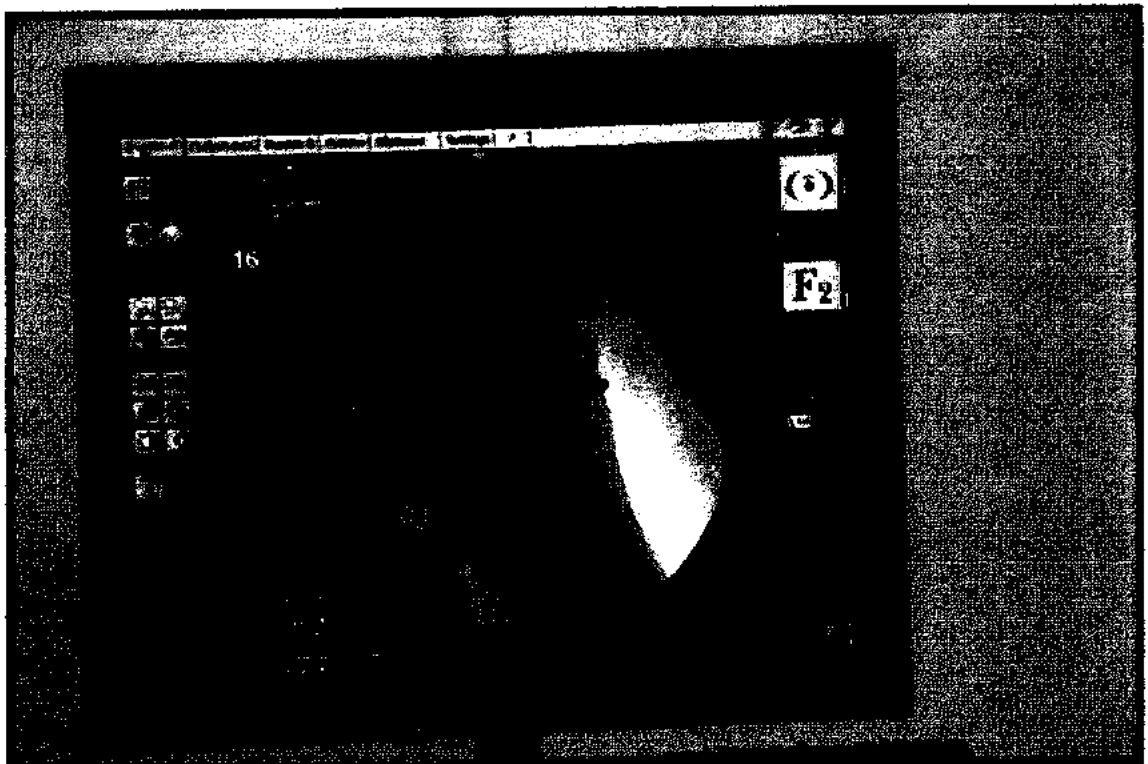


*[Handwritten signatures]*

**Photo 20** Showing the position of fragments on the x-ray.

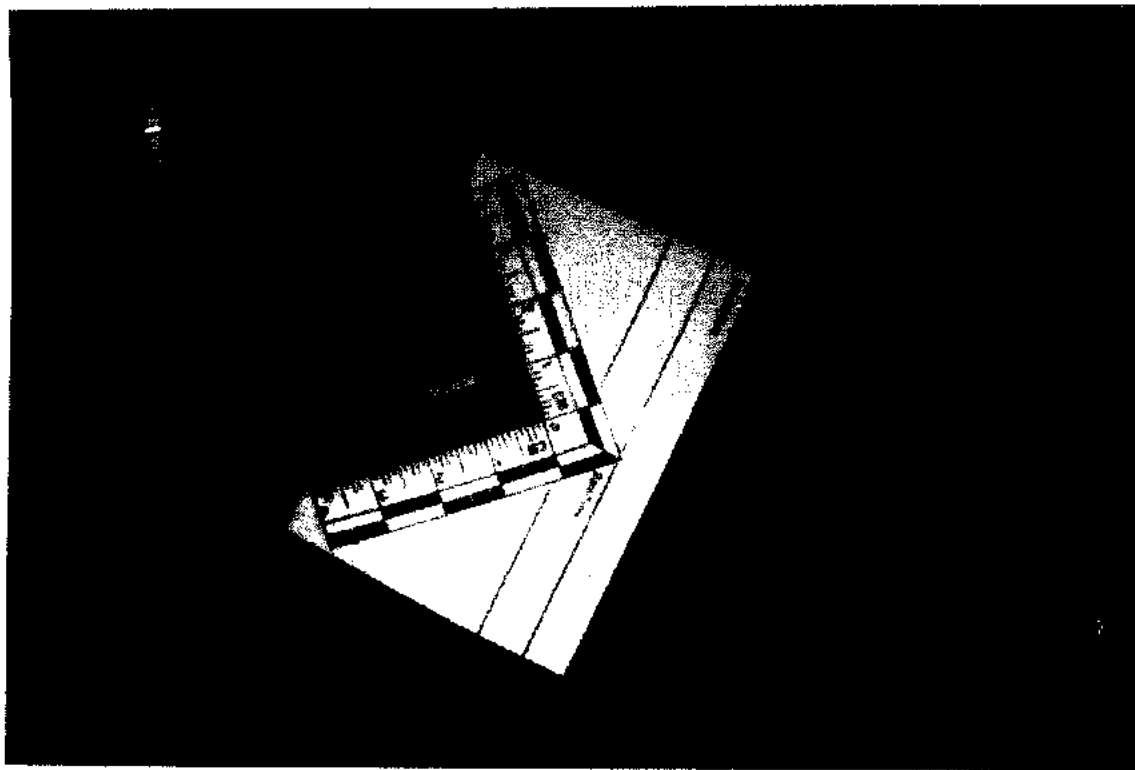


**Photo 21** Showing the position of bullet core on the x-ray.

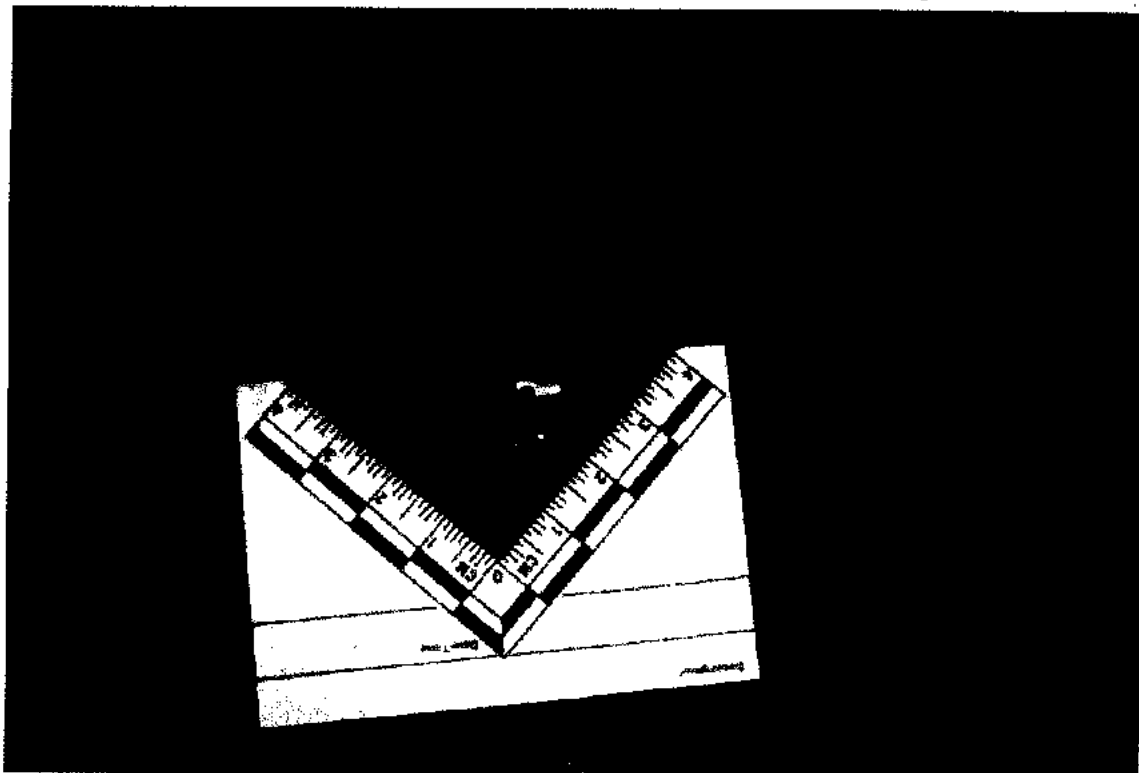


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**Photo 22** Showing the bullet core recovered from the body of deceased.



**Photo 23** Showing the bullet jacket recovered from the body of deceased.



8

On Wednesday the 08<sup>th</sup> of July 2015 together with Lieutenant Modisane and Warrant Officer Moloto both from my office examined a vehicle at Qoatsaneng in Maseru. The vehicle was at the residence of Professor Mohao. This vehicle was pointed out to us by the investigating team and was a white Nissan LDV unknown model with registration number **A 7428**.

9

During examination of the vehicle the following were noticed.

- 9.1 The window of the right side door (driver's door) was broken. **This window is visible on photo 27 and 28.**
- 9.2 There was a possible bullet-fragment hole on the back rest of the middle seat. **This hole visible and circled on photos 33 and 34.**
- 9.3 There was a bullet hole at the back of the dome penetrating into the vehicle through the right side of the middle seat and the left side of the driver's seat to right door. This bullet did not perforate the door. It caused damage to the door panel. **All damages visible on photos 29 to 32 and 35 to 38.**
- 9.4 There was a bullet dent on the left post next to the left door. Bullet had characteristics of low velocity and unstableness. This gives impression that this bullet perforated an intermediate target prior to the post. **The bullet dent is visible on photos 39 and 40.**
- 9.5 There was glass particles embedded in the rubber frame of the window. **The particles are visible on photos 41 and 42.**

**Photo 24 Showing the front of the vehicle examined.**



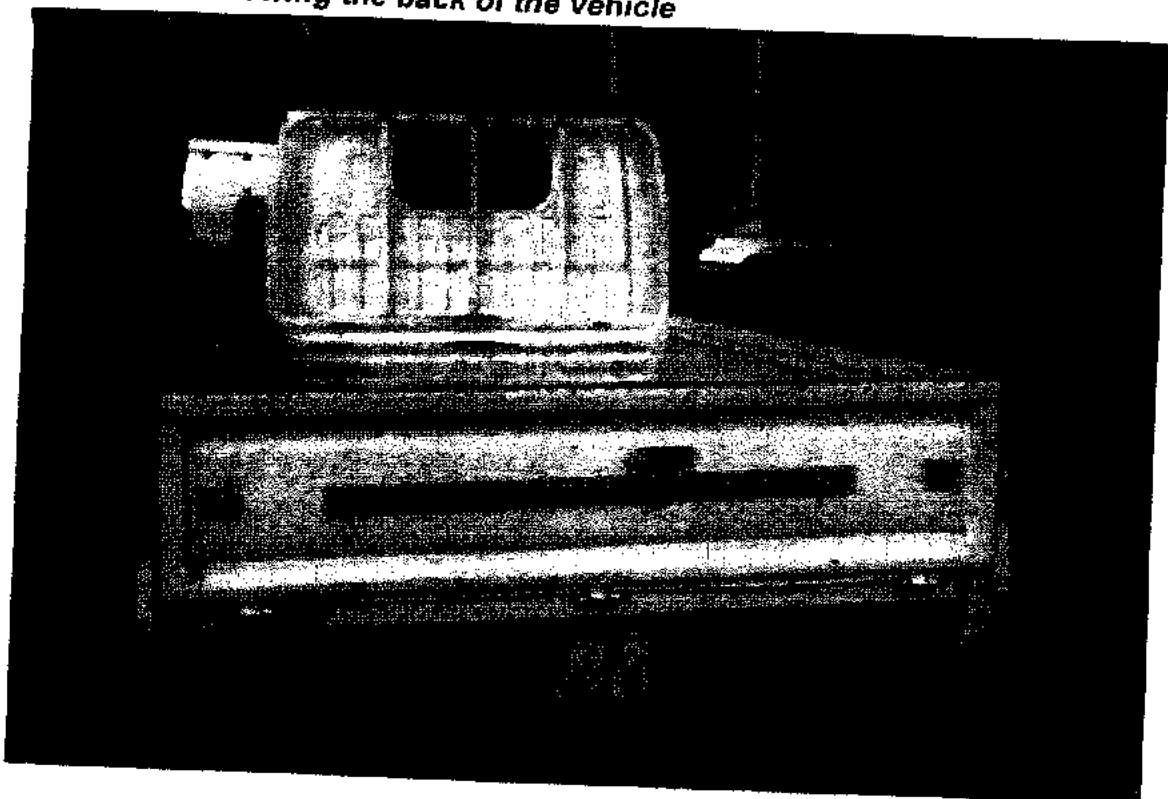
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MOFOKA RCI 26/06/2015

Photo 25 Showing the left side of the vehicle.



Photo 26 Showing the back of the vehicle



*[Handwritten signatures]*

Photo 27 Showing the right side of the vehicle as found.

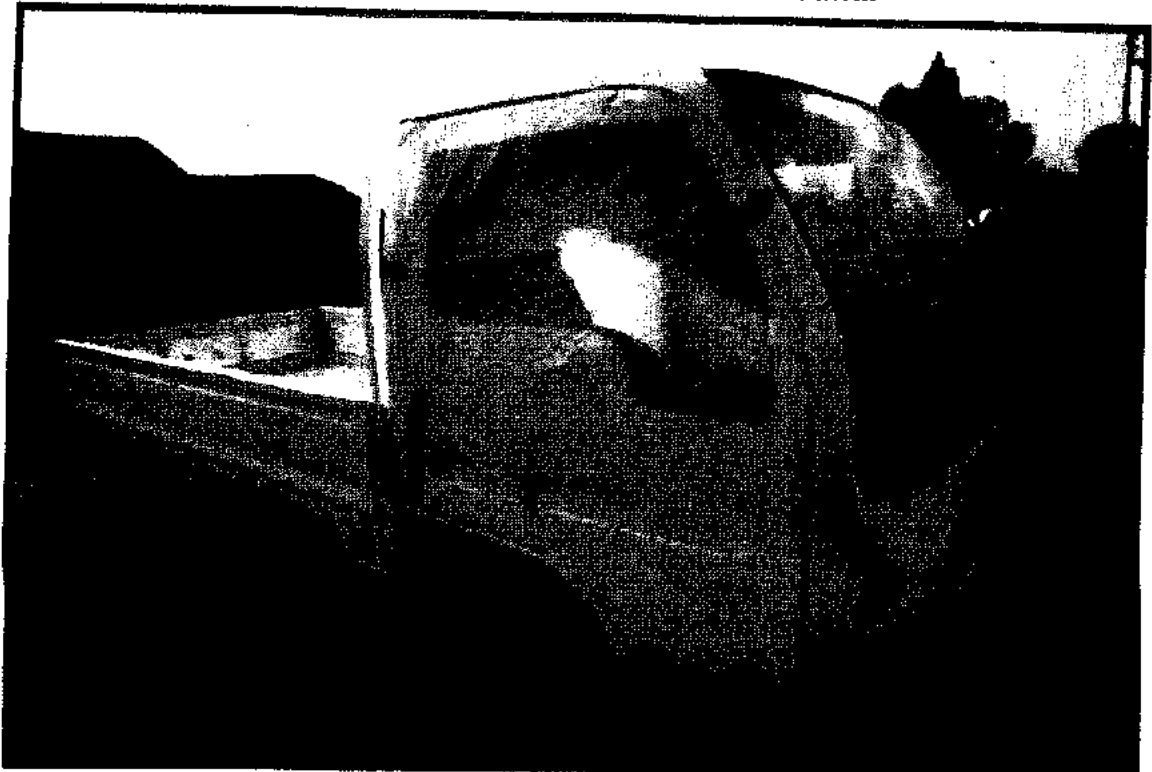


Photo 28 Showing the right side of the dome of the vehicle.



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Photo 31 Showing positions of bullet holes in the seats

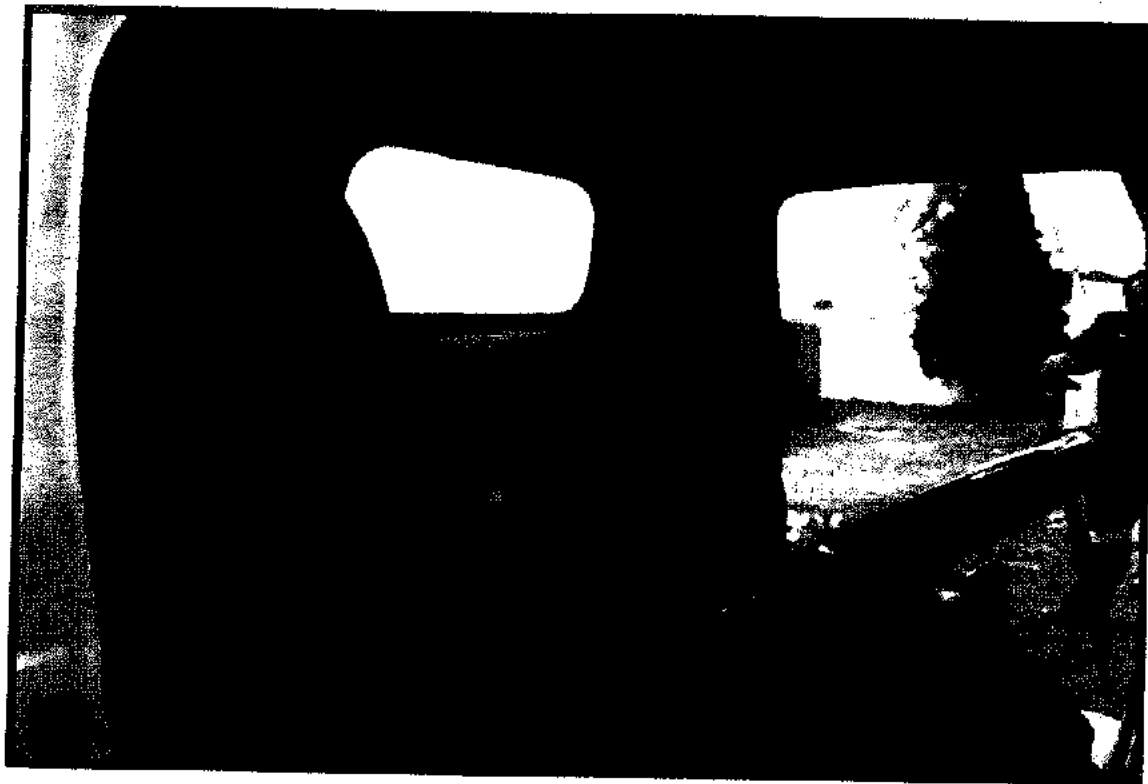
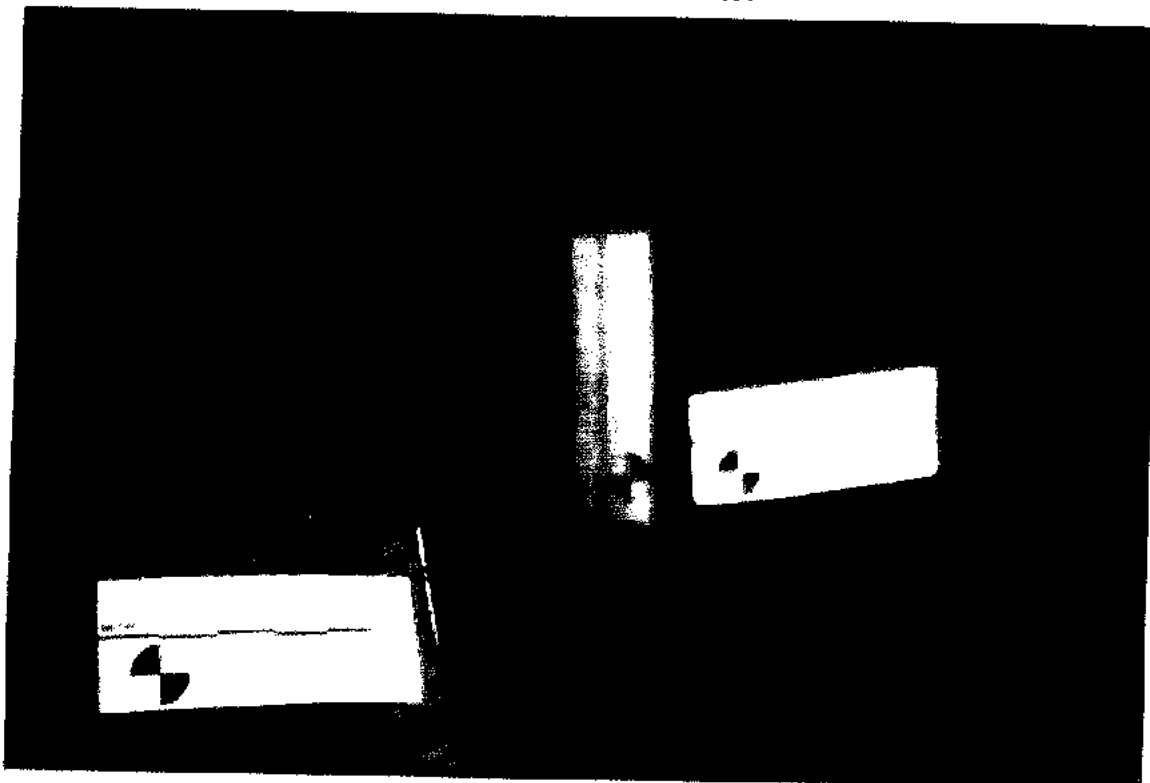
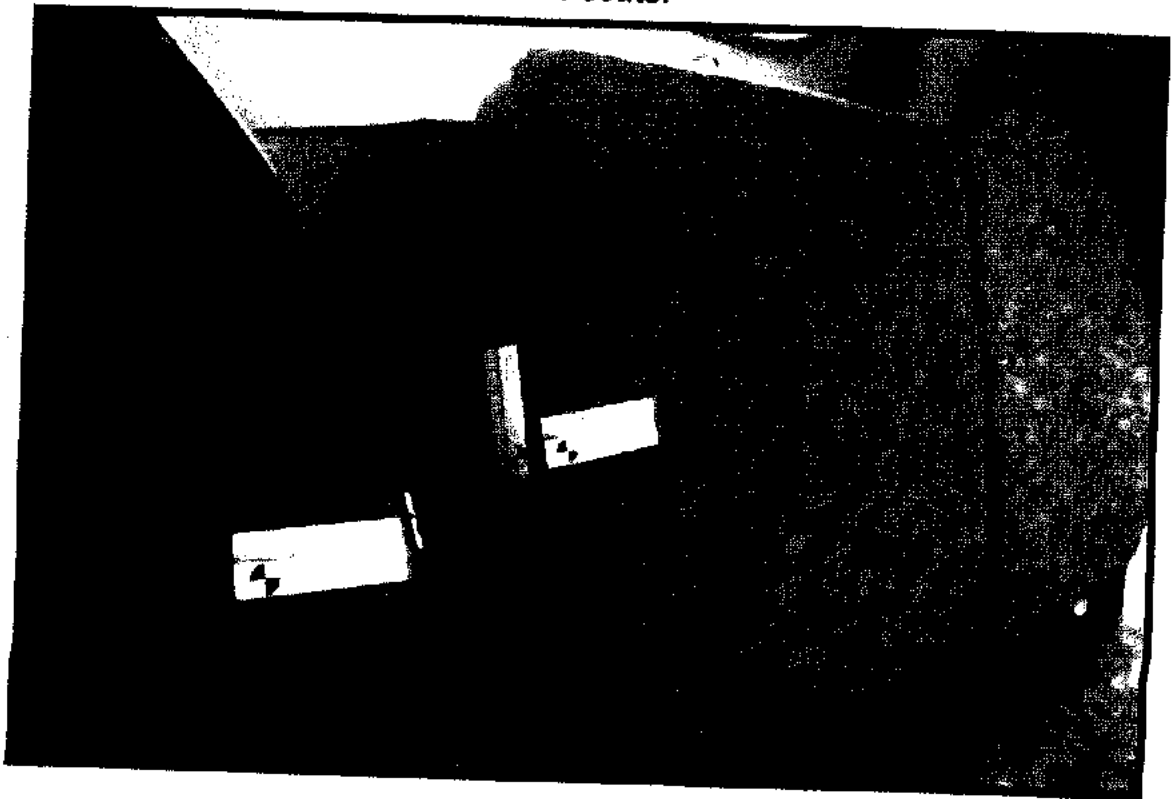


Photo 32 Showing the bullet holes in the seats.

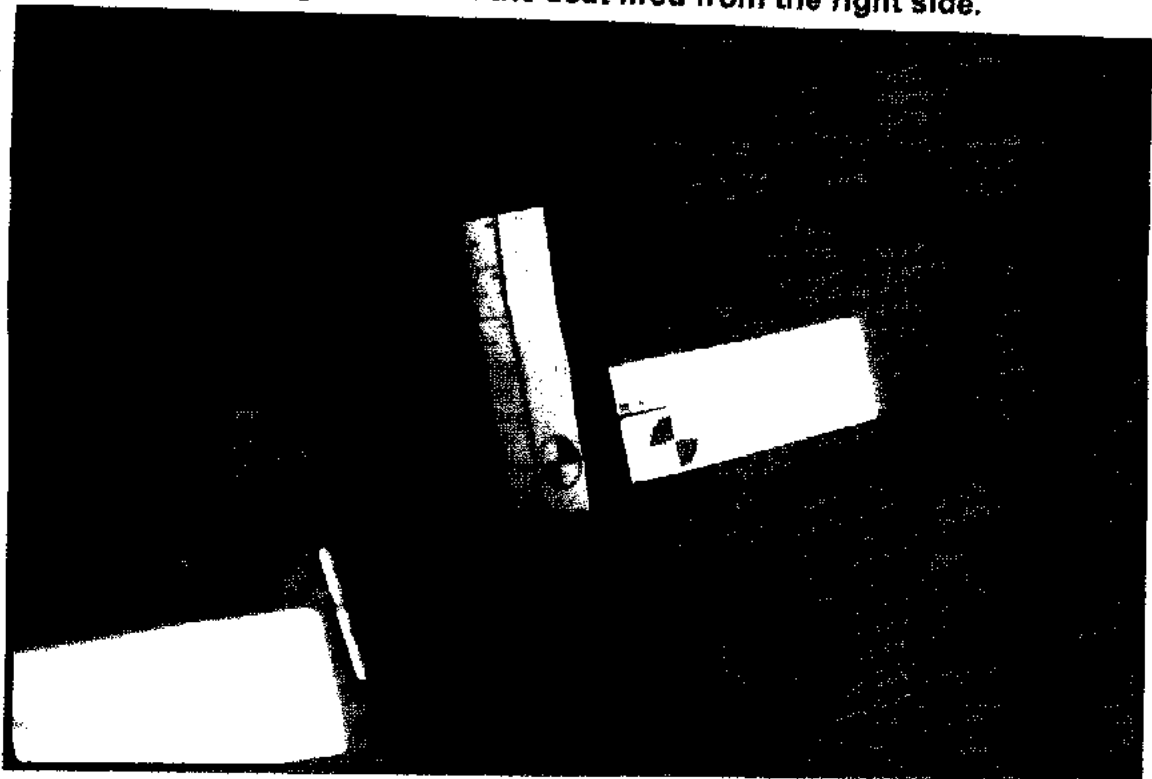


*[Handwritten signatures]*

**Photo 33** Showing the holes in the seats.



**Photo 34** Showing the hole in the seat fired from the right side.

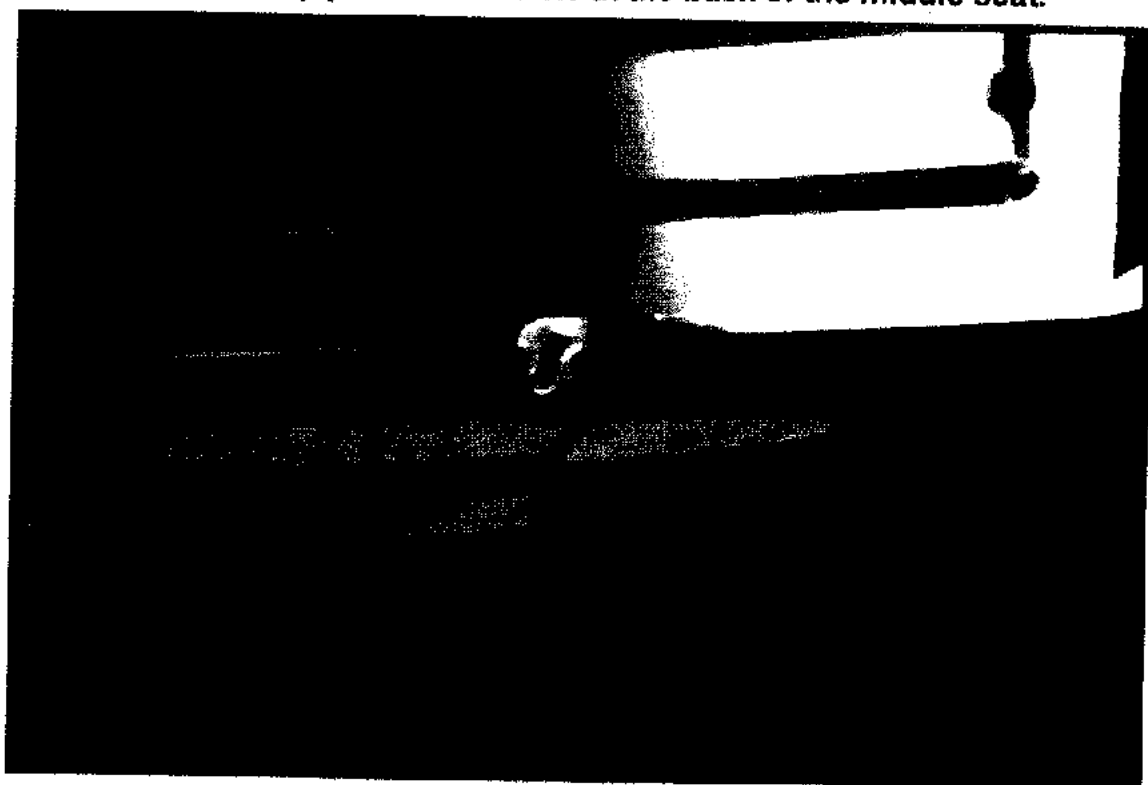


*[Handwritten signature]*

Photo 35 Showing the penetrating bullet hole at the back of the middle seat.



Photo 36 Close-up photo of the hole at the back of the middle seat.



*[Handwritten signature]*

Photo 37 Showing the position of the bullet hole in the panel of the right door.

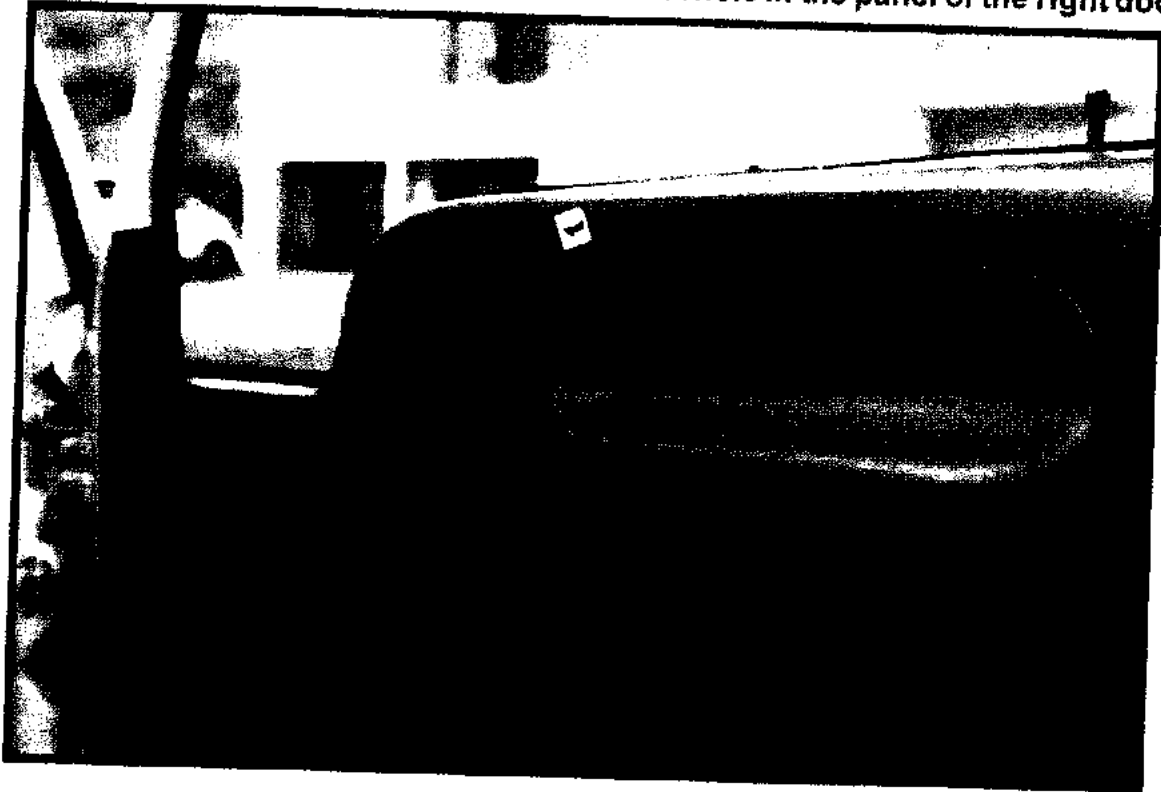
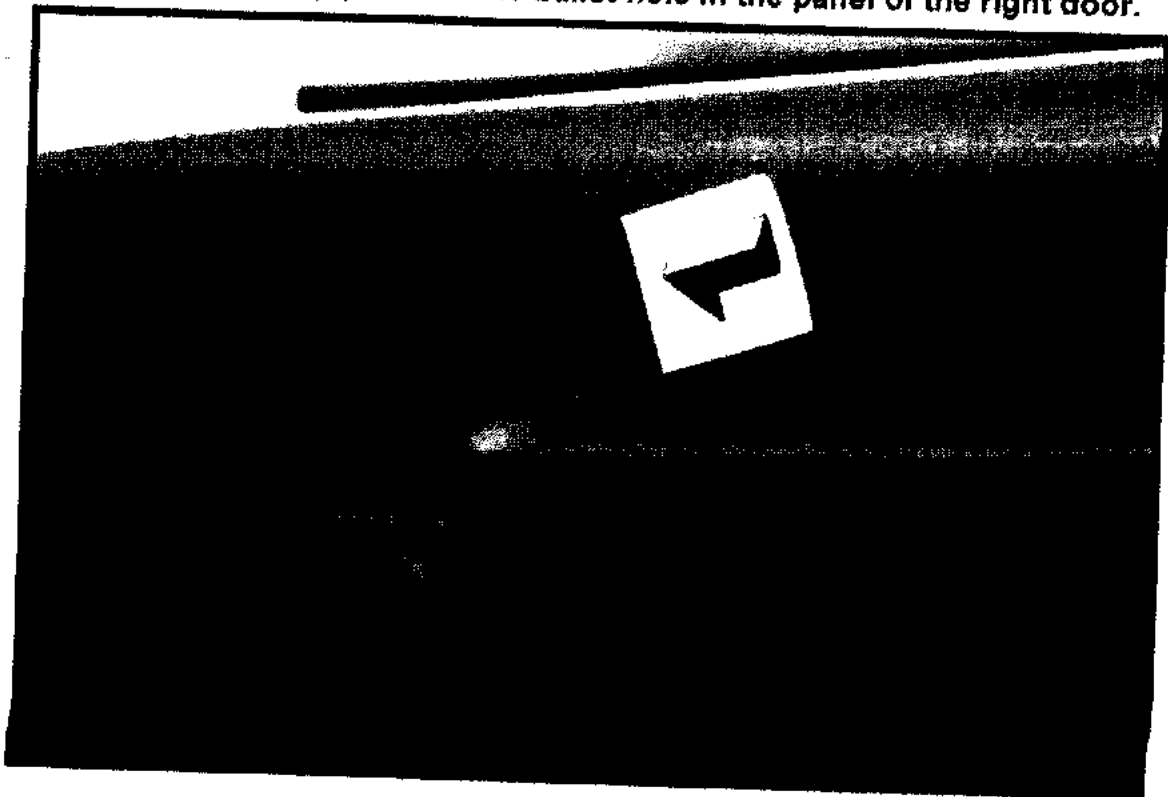


Photo 38 Close-up photo of the bullet hole in the panel of the right door.



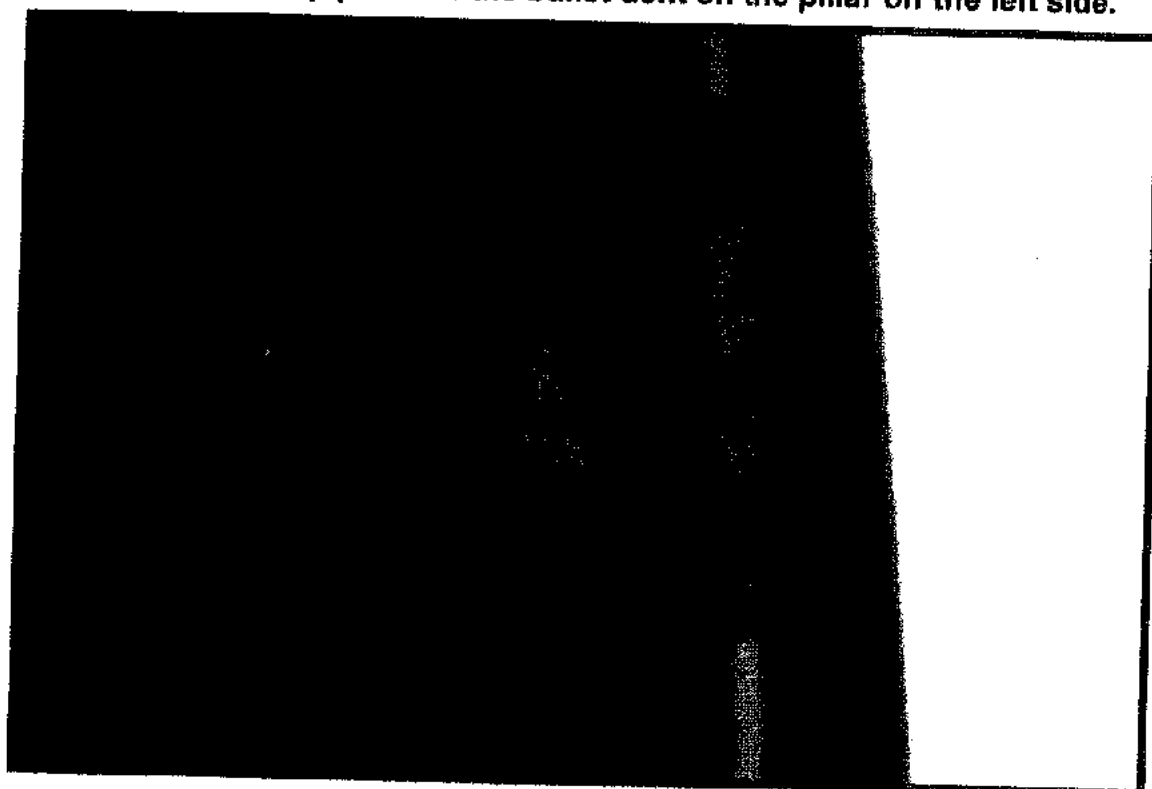
*[Signature]*

*[Signature]*

**Photo 39** Showing the position of the bullet dent of the pillar on the left side.



**Photo 40** Close-up photo of the bullet dent on the pillar on the left side.



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*[Handwritten signature]*

**Photo 41** Showing the glass particles embedded in rubber.



**Photo 42** Showing the glass particles embedded in rubber.



*[Handwritten signature]*

Photo 43 Showing bullet trajectory of a bullet fired from the left back.

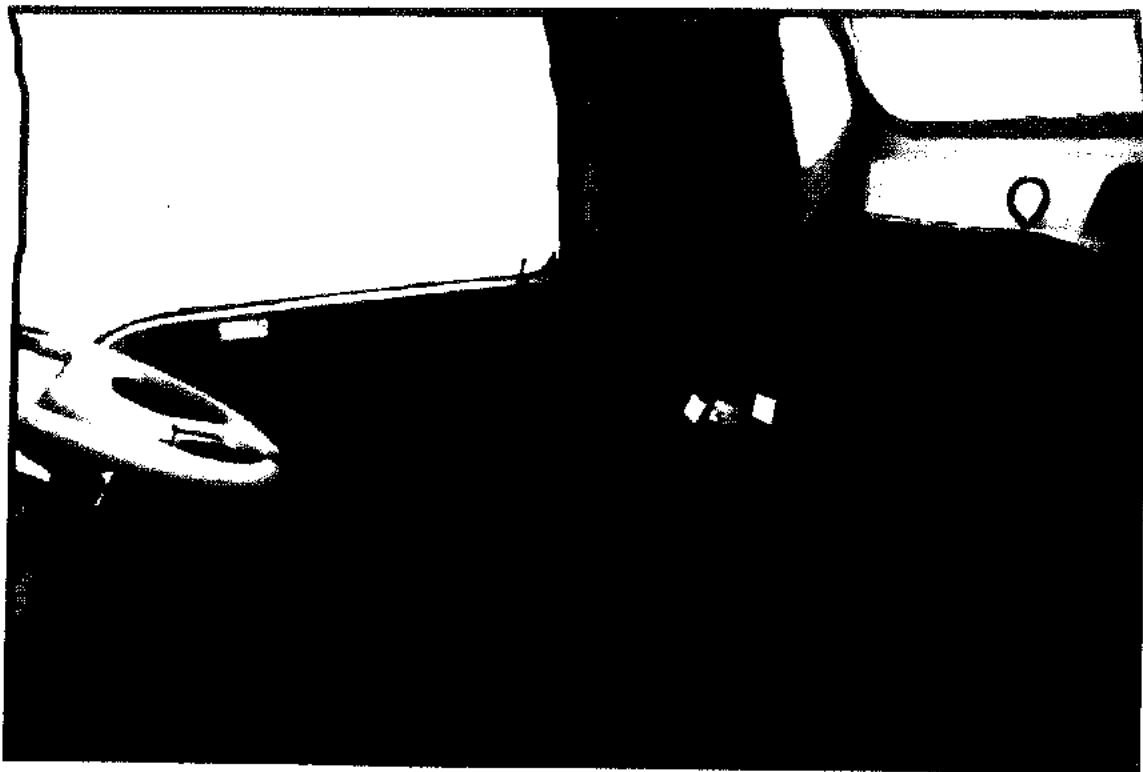
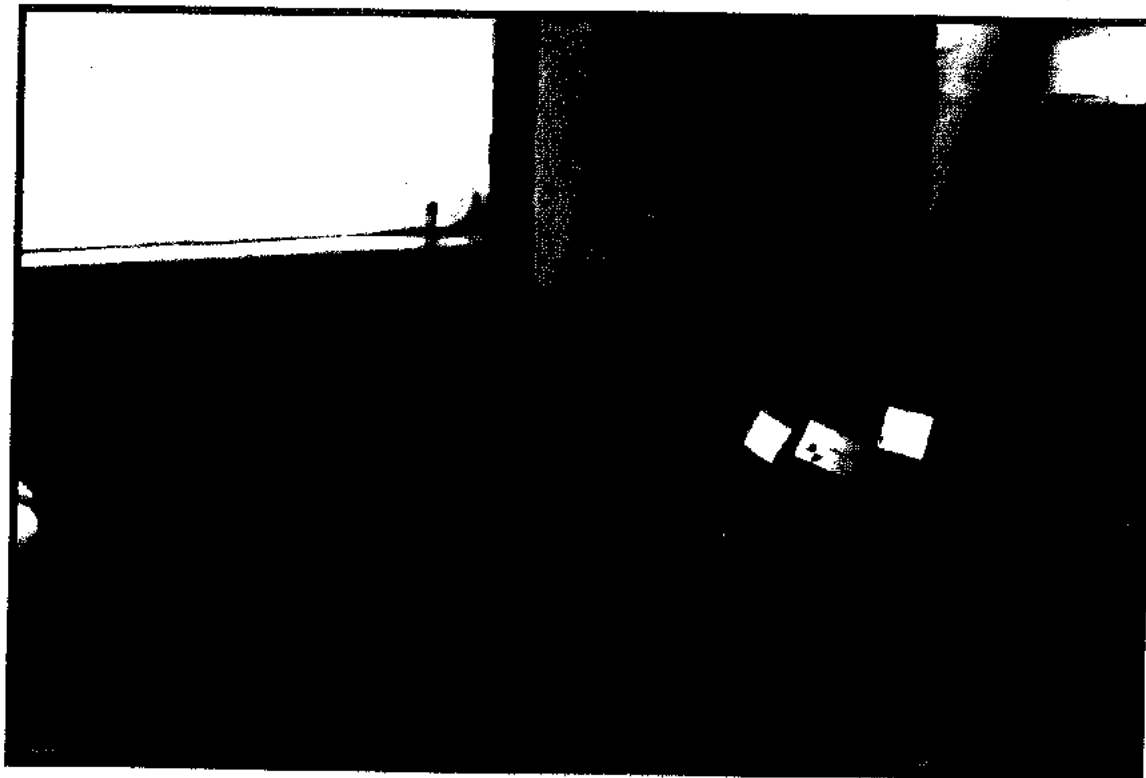


Photo 44 Showing bullet trajectory of a bullet fired from the left back.

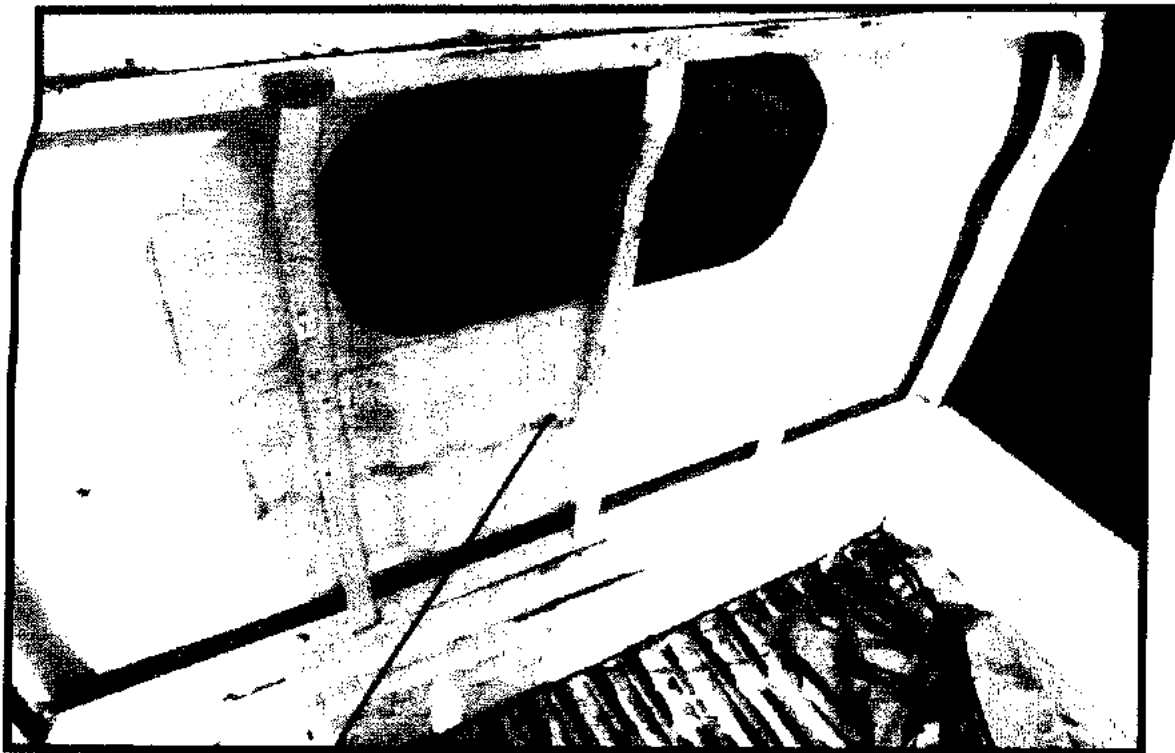


*[Handwritten signature]*

**Photo 45** Showing bullet trajectory of a bullet fired from the left back.



**Photo 46** Showing bullet trajectory of a bullet fired from the left back.



*[Handwritten signature]*

*[Handwritten signature]*



Photo 52 Showing area marked A3 with cartridge case recovered.

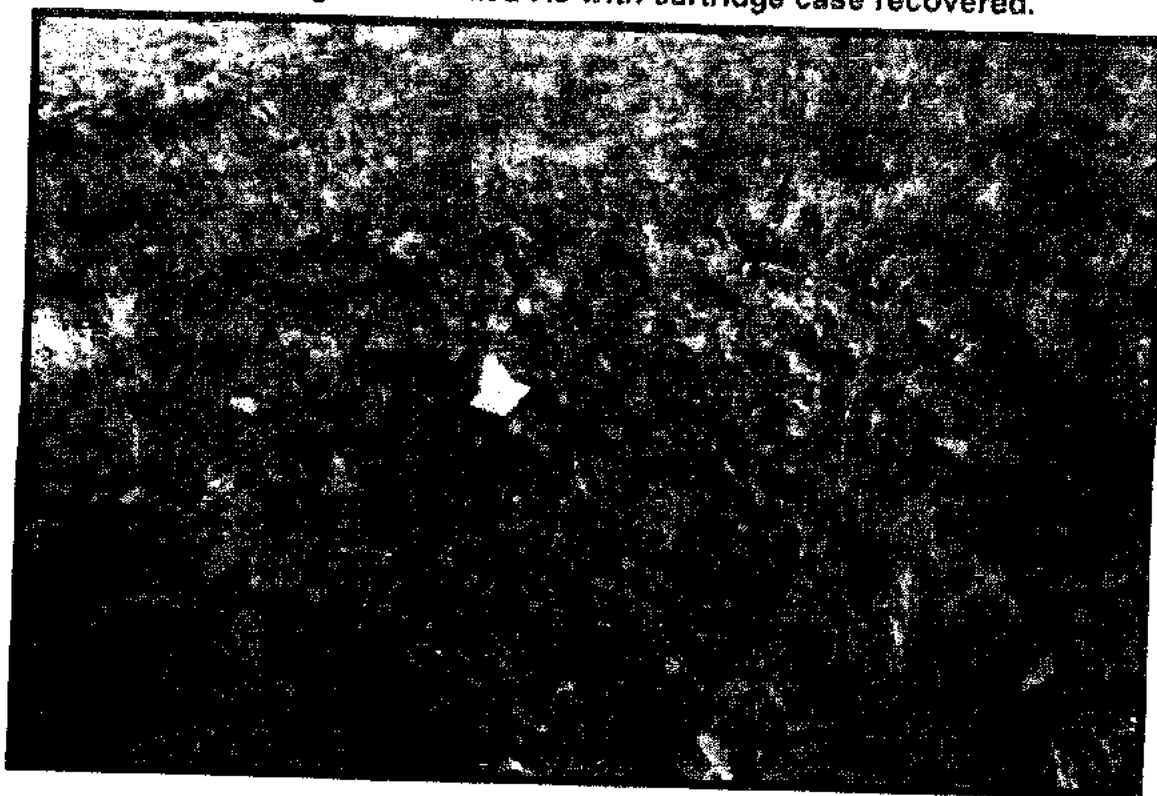


Photo 53 Close-up photo of the cartridge case recovered at area A3.



*[Handwritten signature]*

11.



After examination of the clothing, the body of the deceased, the vehicle and the crime scene I could determine that:

- 11.1 The bullet holes noticed on the clothing items were consistent to the gunshot wounds sustained by the deceased.
- 11.2 The wound marked 4 sustained on the upper arm had secondary wounds which are consistent to pseudo-tattooing. This is caused secondary missiles due to bullet impact on the intermediate target with the window being intermediate target. The wound had characteristics of an unstable bullet. This bullet perforated glass causing it to be unstable and also creating secondary missiles which were small glass particles which resulted in pseudo-tattooing. This is an indication that the driver's window was closed during the incident and the deceased was positioned on the driver's seat. This is most likely the first wound inflicted.
- 11.3 The exit wound sustained at the back was caused by a separated bullet and is in line with wound marked 2 on the chest. Bullet fragmented on impact in the body a small fragment of the bullet exited at the back. A minute piece of lead was recovered in the back rest of the middle seat.
- 11.4 The bullet that made the dent on the left post had characteristics of low velocity and unstableness. This bullet most likely hit the right arm of the deceased prior to hitting the post. This could be the reason of losing it velocity and being unstable.
- 11.5 The bullet holes at the back of the dome and the seats, was fired from the left back of the vehicle and I was informed that it happened in a separate incident prior to the incident that led to the death of deceased mentioned above.

12.

Conclusions:

Taking the fore mentioned evidence into context, it can be concluded that the deceased was shot while positioned in the vehicle on the driver's seat. The driver's window was closed and shuttered by a bullet or bullets fired into the vehicle.



13.

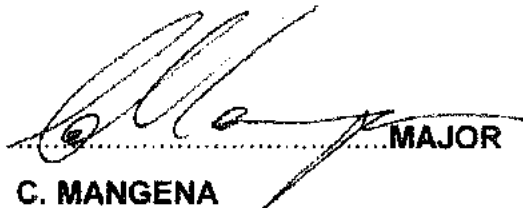
The abovementioned conclusions were arrived at by means of an examination and process, which require knowledge and skill in Forensic Ballistics.

14.

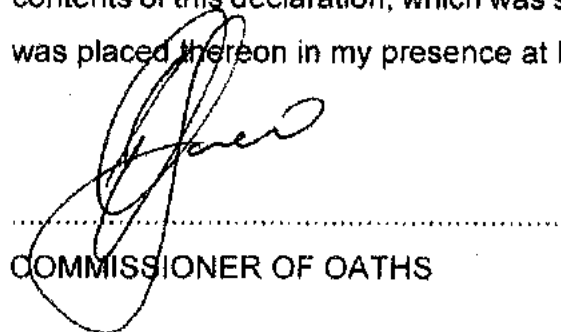
I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

  
MAJOR  
C. MANGENA

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn before me, and the deponent's signature was placed thereon in my presence at PRETORIA ON 2015-08-04

  
COMMISSIONER OF OATHS

Olebile Edward Sere  
Forensic Science Laboratory  
270 Pretoria Road  
SILVERTON 0184

Lieutenant Colonel

..... SOUTH AFRICAN POLICE SERVICE

/cm

# Annexure 6:

## Rules of Engagement

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ANNEX TOORFOD

## RULES OF ENGAGEMENT

### General Rules

1. In all situations you are to use the minimum force necessary. Firearm must only be used as a last resort.
2. Your weapon must always be made safe; that is no live round is to be carried in the breech and in the case of automatic weapons the working parts are to be forward, unless you are ordered to make your weapon ready or you are about to fire.
3. You are to avoid casualties on both sides that is those who arrest and to be arrested.

### Challenging

4. A challenging must be given before opening fire unless:
  - (a) To do so would increase the risk of death or grave injury to you or any other person.
  - (b) You or others in the immediate vicinity are under armed attack.
5. You are to challenge by shouting LDF \* stop or I fire. Or words to that effect.

### Opening Fire

6. You only open fire against a person:
  - (a) If he/she is committing or about to commit an act likely to endanger life and there is no way to prevent the danger. Dependent always on the circumstances, the following are some examples of such acts:
    - (i) Firing or being about to fire a weapon.

SECRET

(ii) Planting, detonating or throwing an explosive device (including any mortar or other improvised explosive device).

7. If you have to open fire you should:

- (a) Fire only aimed shots.
- (b) Fire no more rounds than is necessary.
- (c) Take all reasonable precautions not to injure anyone other than your target.

SECRET

# Annexure 7:

## Pathologist Report

10.

On the same day, on Wednesday the 08<sup>th</sup> of July 2015 we visited the crime scene at Halekete Village on the road between Mahlabathing and Mmatshabo. The alleged crime scene was pointed out to us by investigating team and the following areas were pointed out to us:

- 10.1 The possible area where the deceased fell as there was presence of blood prior to our examination according to the information supplied by the investigation team. **The area is marked with stones as visible on photos 48, 49 and 51.**
- 10.2 The area where glass particles were observed on the road. This area was regarded as the most likely area where the vehicle stopped. **Area is marked A1 on photos 48, 49 and 50.**
- 10.3 The area where a fired cartridge case was recovered by team members prior to our examination. **The area is marked A2 on photos 48, 49 and 51.**
- 10.4 A fired 5,56 x 45mm calibre cartridge case was recovered during our examination of the crime scene. **The area where this cartridge case was recovered is marked A3 on photos 48, 49, 52 and 53.**

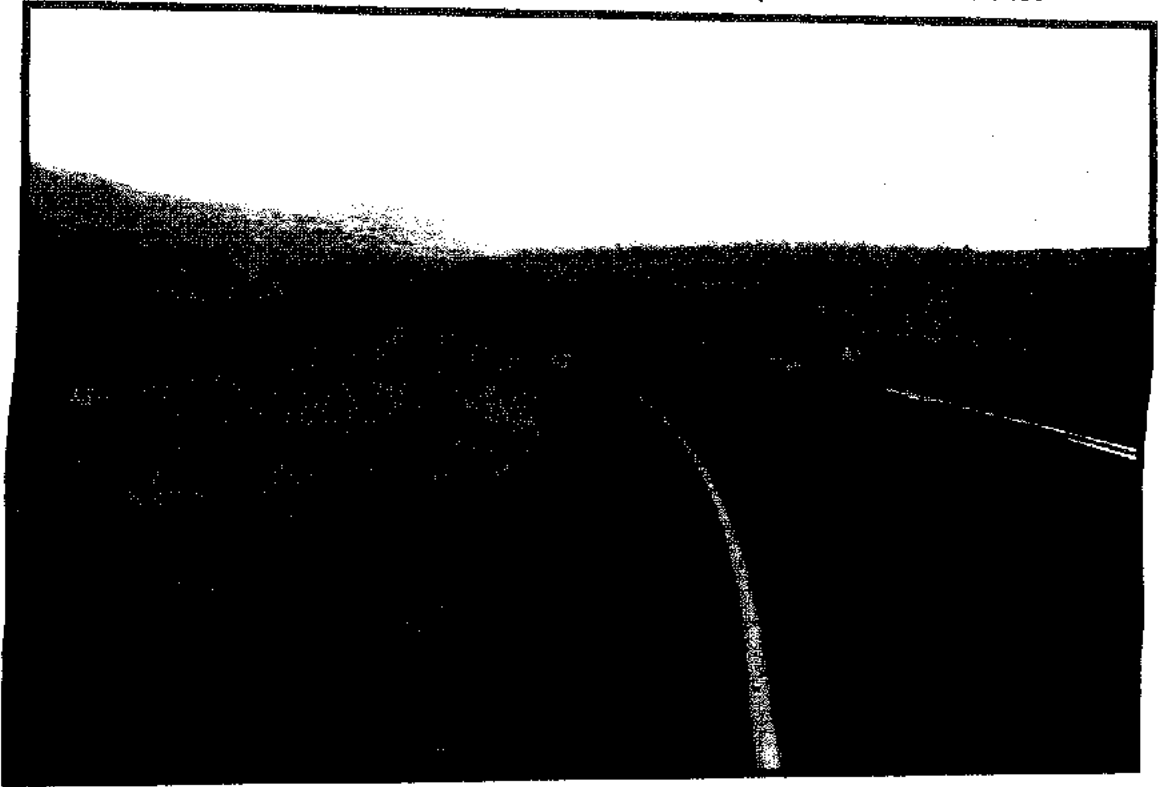
**Photo 47** Showing houses closer to the crime scene.



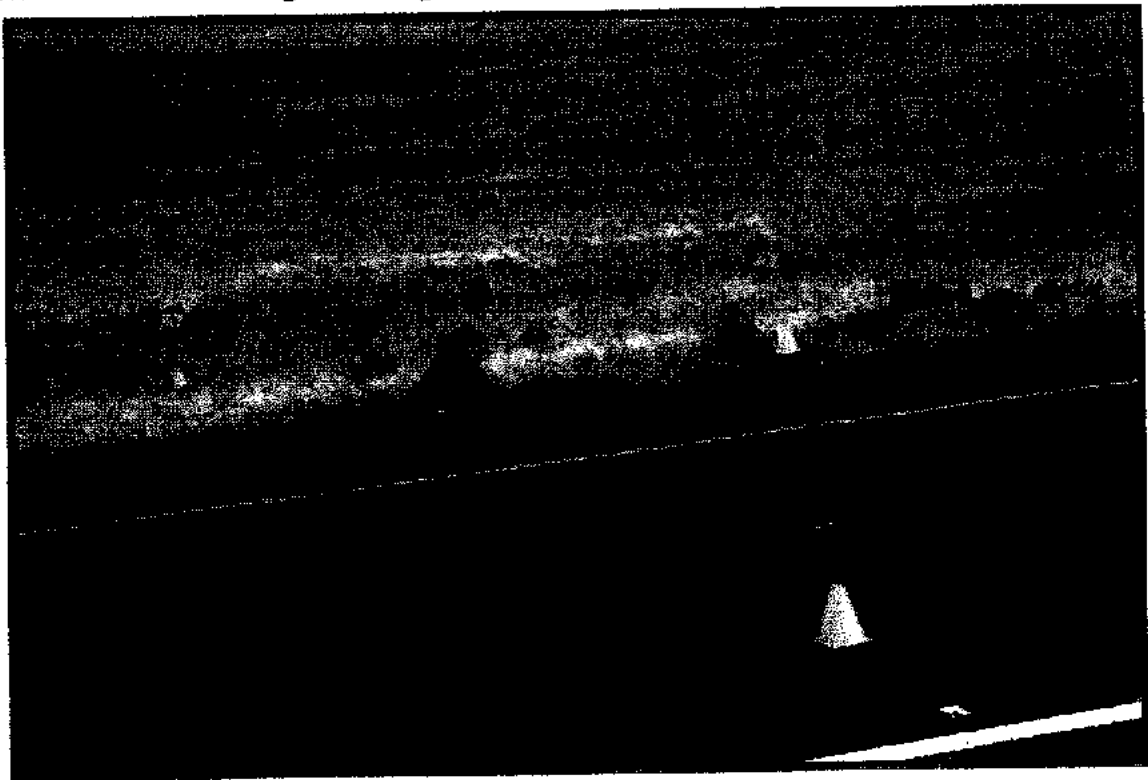
*[Handwritten signatures]*



**Photo 48** Showing the alleged crime scene and positions A1 to A3.

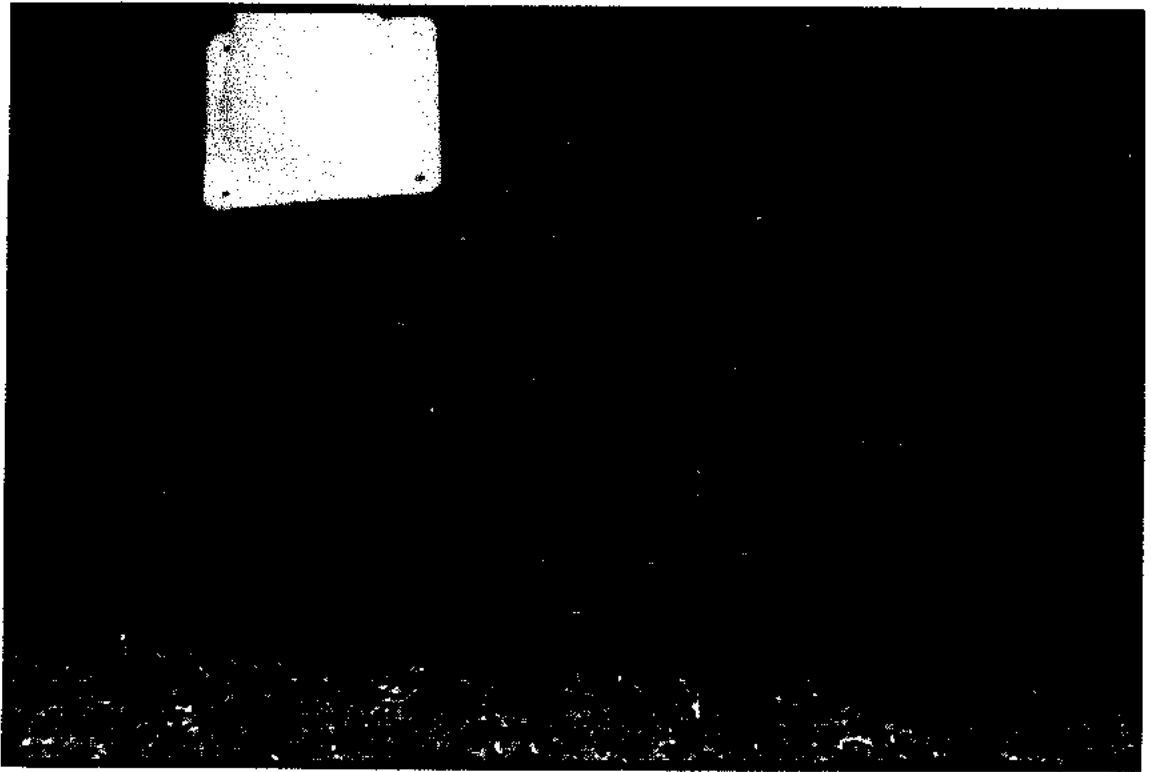


**Photo 49** Showing the alleged crime scene and positions A1 to A3.



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**Photo 50** Showing glass particles on the road at area marked A1.



**Photo 51** Showing areas marked A2, A3 and hip of stones as position of deceased.



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GAUTENG PROVINCE

REPUBLIC OF SOUTH AFRICA  
WESTERN CAPE & GAUTENG PROVINCIAL GOVERNMENT: HEALTH  
FORENSIC PATHOLOGY SERVICES TYGERBERG & JOHANNESBURG  
REPORT ON A MEDICO-LEGAL POST MORTEM EXAMINATION

To the MAGISTRATE of:

We, Professor Shabbir Wadee and Professor Jeanine Vellema hereby certify:

- (i) That we jointly examined the body of a Black male on the 03<sup>rd</sup> of July 2015 at the BLOEMFONTEIN FPS MEDICO-LEGAL LABORATORY, beginning at 10:30
- (ii) That the body was identified to us:  
(a) By D/USgt Seeko of the LESOTHO PITSO-GROUND SCU and F/O SJ Phenathe of the BLOEMFONTEIN FPS MEDICO-LEGAL LABORATORY  
(b) as that of BDR NO: 480 / 2015  
(c) whose age was reported to be 47 Years - see Lesotho Mounted Police Service (LMPS) 22: Report of Sudden Death or Death by Misadventure Form: Mofoka RCI 26/05/15

- (iii) That the death occurred as informed, on the 25<sup>th</sup> of June 2015

- (iv) That the **CHIEF POST MORTEM FINDINGS** in this case were:

The body of a middle-aged Black male with a reported history of having been shot through the right front window of his vehicle, while he was in the driver's seat of the vehicle. There are autopsy features of a perforating gunshot wound through his right chest, a perforating gunshot wound through his right upper arm joined to a penetrating gunshot wound of the right and left upper chest muscles and soft tissues, a superficially lacerating gutter gunshot wound over his right upper arm and a superficially perforating gunshot wound over his right forearm.

The perforating gunshot wound track through his right chest perforates his ribs and the middle lobe of his right lung, but the direction of this gunshot track cannot be determined definitively from autopsy features alone. However, this track has a front-to-back or back-to-front directionality, which might be confirmed by further evidentiary examination of his surroundings (the vehicle) at the time of the shooting.

The perforating gunshot wound track through his right upper arm passes from right to left and slightly downwards, resulting in comminuted compound fractures of the right upper humerus. The track of this wound re-enters the body over the right antero-lateral upper chest, passes from right to left and slightly downwards through the upper anterior and lateral chest muscles and soft tissues, and a spent deformed bullet-jacket and bullet were retrieved from this track: the deformed bullet-jacket from the right antero-lateral chest muscles and the spent bullet from the left antero-lateral chest muscles. There is evidence of intra-thoracic haemorrhage and aspiration of blood, as a result of the perforating gunshot wound through the right lung.

- (v) That the **CAUSE OF DEATH** was determined to be:

**GUNSHOT WOUNDS OF THE RIGHT CHEST AND RIGHT ARM**

Dated at TYGERBERG and JOHANNESBURG on this 13<sup>th</sup> day of July 2015

Signatures	SA Wadee	J Vellema
Qualifications	BSc, MBChB, MMed (UKZN), FC For Path(SA)	MBBCh (Wits), FC For Path(SA)
Position	Head Clinical Department / Chief Specialist WESTERN CAPE DOH FPS	Head Clinical Department / Chief Specialist GAUTENG (SOUTH) DOH FPS
Postal Address	PO Box 241, Cape Town, 8000	Private Bag X9, Braamfontein, 2017
Tel	+27 21 - 931 8043 / 938 9949 / 932 2040	+27 11 - 489 1600 / 53 / 54

CONFIDENTIAL

Capt Frans Joubert

28.7.15

## SCHEDULE OF OBSERVATIONS

## GENERAL

- 1     **HEIGHT:** 1 870 mm  
**PHYSIQUE:** Muscular but slender  
**MASS:** 83.5 Kg  
**NUTRITION:** Well nourished
- 2     **SPECIAL IDENTIFYING FEATURES:**
  - Middle-aged Black male
  - There is a toe-tag secured with a blue ligature to the Left toe of the decedent, with the following information recorded on it:
    - BDR 480/2015
    - Maaparankoe Leuta Mahao
    - Gunshot
    - 2015/06/26
- 3     **SECONDARY POST-MORTEM CHANGES:**
  - The body has been refrigerated and is cold to the touch.
  - There is post mortem rigor of all the limbs.
  - The internal organs show signs of early decomposition and autolysis.
- 4     **EXTERNAL APPEARANCE OF THE BODY AND CONDITION OF THE LIMBS:**  

There are stickers over the body associated with various wounds, numbered from 1 to 10, as described below:

  1. There is a yellow-brownish abrasion measuring 85 X 55mm over the Right anterior costal margin, 1 235mm above the Right heel level.
  2. There is a 38 X 15mm transversely oblique lacerated penetrating wound with an eccentric collar of abrasion more prominent anteriorly, over the right anterior chest, 1 410mm above the Right heel level.
    - 2.1. The entire wound area including the collar of abrasion measures 100 X 35mm.
    - 2.2. There is surgical wound packing material in the wound.
  3. There is a 25 X 15mm irregular lacerated penetrating wound with an eccentric collar of abrasion more prominent laterally, over the Right antero-lateral upper chest in the Right anterior axillary line, 1 520mm above the Right heel level.
    - 3.1. The entire wound area including the collar of abrasion measures 40 X 40mm.
  4. There is a 45 X 35mm lacerated penetrating wound with an eccentric collar of abrasion more prominent supero-laterally, over the Right antero-lateral upper arm, 1 580mm above the Right heel level.
    - 4.1. There is surrounding pseudo-tattooing extending up to 15mm from the wound margins.
    - 4.2. The entire wound area including the collar of abrasion measures 75 X 75mm.
    - 4.3. There are compound comminuted fractures of the upper Right humerus visible beneath this wound.
  5. There is a 25 X 12mm lacerated penetrating wound with a concentric collar of abrasion, over the Right antero-medial upper arm, 1 530mm above the Right heel level.
    - 5.1. The entire wound area including the collar of abrasion measures 40 X 40mm.
    - 5.2. There is surgical wound packing material in the wound.
  6. There is a 100 X 40mm lacerated oblique gutter wound with a surrounding collar of abrasion more prominent superiorly, over the Right medial lower upper arm, 1 450mm above the Right heel level.
    - 6.1. The entire wound area including the collar of abrasion measures 120 X 55mm.
    - 6.2. There is surgical wound packing material in the wound.
  7. There are two large lacerated superficially penetrating wounds with a 10mm wide skin bridge between them, over the Right antero-medial forearm.
    - 7.1. The top wound measures 70 X 35mm and is 1 350mm above the Right heel level.
    - 7.2. The lower wound measures 120 X 60mm and is 1 300mm above the Right heel level.
    - 7.3. There is surgical wound packing material in both wounds.
    - 7.4. These two wounds appear to be joined by a track passing through the superficial forearm tissues between these wounds.

8. There is a 40 X 40mm abrasion with vertical linear striations in it, directly below- and involving the Right nostril laterally.
9. There is a 45 X 25mm abrasion with vertical linear striations in it, over the Right upper forehead.
10. There is a 10 X 8mm lacerated penetrating wound over the Right upper back, 150mm below the level of C7 and 75mm lateral to the midline.
- 10.1. This wound is 1 460mm above the Right heel level.

**Additional wounds that are noted with no numbered stickers associated with them are as follows:**

11. There is an 80 X 90mm irregular bruise over the mid upper anterior chest, 1 520mm above the Right heel level.
12. There are a few small abrasions over both knees, ranging in size from 5 X 4mm to 10 X 5mm.

#### **TRACKS OF THE WOUNDS:**

- i. Wounds 2 and 10 are joined by a track perforating the Right chest, the direction of which cannot confidently be determined by autopsy examination alone. From wound 2 (over the Right anterior chest), the track perforates the 5<sup>th</sup> rib on the Right anteriorly, perforates the middle lobe of the Right lung, perforates the 6<sup>th</sup> and 7<sup>th</sup> ribs on the Right posteriorly, and passes through wound 10 (over the Right posterior chest).
- ii. Wounds 4, 5 and 3 are joined by a track, which enters the body at wound 4 (over the Right antero-lateral upper arm), exits at wound 5 (over the Right antero-medial upper arm) and re-enters the body at wound 3 (over the Right antero-lateral chest).  
The track passes from Right to Left and slightly downwards, perforates the Right upper arm resulting in comminuted compound fractures of the Right upper humerus, perforates the Right-, Middle- and Left upper antero-lateral chest muscles and soft tissues and terminates in the Left antero-lateral upper chest muscles.  
In this track, a spent, deformed bullet jacket was retrieved from the Right antero-lateral upper chest muscles in the Right anterior axillary line, at the level of the Right lateral 2<sup>nd</sup> intercostal space and a spent bullet was retrieved from the Left antero-lateral upper chest muscles in the anterior axillary line, at the level of the Left lateral 3<sup>rd</sup> intercostal space.
- iii. Wound 6 is a superficial gutter gunshot wound over the Right medial lower upper arm.
- iv. Wound 7 is a superficially perforating gunshot wound over the Right antero-medial forearm.

#### **HEAD AND NECK**

##### **5 SCALP:**

- There is a small subcutaneous contusion measuring 20 X 15 mm over the Right frontal area, corresponding to the external scalp abrasion (wound no 9) in paragraph 4.

##### **SKULL:**

- The skull is intact – there are no abnormalities of fractures noted.

##### **6 INTRACRANIAL CONTENTS:**

- There are no intracranial injuries or abnormalities noted.

**Brain Weight:** No scale available to weigh organs

##### **7 ORBITAL, NASAL AND AURAL CAVITIES:**

- There are no abnormalities or injuries noted.

##### **8 MOUTH, TONGUE AND PHARYNX:**

- There are no abnormalities or injuries noted.

##### **9 NECK STRUCTURES:**

- There are no abnormalities or injuries noted.

#### **CHEST**

##### **10 THORACIC CAGE AND DIAPHRAGM:**

- There is extensive contusion and laceration of the Right and Left anterior and anterolateral

- chest muscles and soft tissues, at the level of the 2<sup>nd</sup> and 3<sup>rd</sup> ribs and intercostal spaces.
- There is subcutaneous contusion of the soft tissues anterior to the sternum, at the same level, corresponding to the externally visible bruise over the mid upper anterior chest (wound no 11) in paragraph 4.
- A spent, deformed bullet jacket was retrieved from the Right antero-lateral upper chest muscles in the Right anterior axillary line, at the level of the Right lateral 2<sup>nd</sup> intercostal space.
- A spent bullet core was retrieved from the Left antero-lateral upper chest muscles in the anterior axillary line, at the level of the Left lateral 3<sup>rd</sup> intercostal space.
- There is 200ml of free blood in the Right chest cavity.
- There is a large perforating fracture defect through the 6<sup>th</sup> and 7<sup>th</sup> ribs on the Right posteriorly.
- There is a large perforating fracture defect through the 5<sup>th</sup> rib on the Right anteriorly.
- The diaphragm is intact.

11 **OEESOPHAGUS:**

- There are no abnormalities or injuries noted.
- There is a small amount of brownish food rests in the oesophagus.

12 **TRACHEA AND BRONCHI:**

- There is a small amount of blood-stained mucous in the trachea and right main bronchus.

13 **PLEURA AND LUNGS:**

- Both lungs are mottled from blood inhalation.

**RIGHT LUNG:**

- The Right lung is partially collapsed, congested and slightly oedematous.
- There is an extensively lacerated perforating wound with associated pulmonary contusion, through the middle lobe of the Right lung.
- The upper and lower lobes of the Right lung are contused.
- The hilum of the Right lung is intact.

Right Lung Weight: No scale available to weigh organs

**LEFT LUNG:**

- The Left lung is congested and slightly oedematous.

Left Lung Weight: No scale available to weigh organs

14 **HEART AND PERICARDIUM:**

- The coronary arteries and ostia are normal.
- There is a small 1 X 3mm subendocardial haemorrhage in the posterior wall of the left ventricle.

Heart Weight: No scale available to weigh organs

15 **LARGE BLOOD VESSELS:**

- There are multiple small yellowish atheromatous lesions measuring approximately 1 X 1mm each, in the intima of the proximal ascending thoracic aorta.
- There is haemolytic staining of the intima, due to early decomposition and autolysis.

**ABDOMEN**16 **PERITONEAL CAVITY:**

- There is no free blood in the peritoneal cavity.

17 **STOMACH AND CONTENTS:**

- The stomach contains 200ml of brownish, partially digested food.

18 **INTESTINES AND MESENTERY:**

- There are no abnormalities or injuries noted.

19 **LIVER, GALL BLADDER AND BILIARY PASSAGES:**

- There is a 55mm laceration over the diaphragmatic aspect of the Right lobe of the liver, extending to a depth of 20mm into the liver parenchyma, with minimal associated

parenchymal haemorrhage and no liberated associated free blood.

- The liver is slightly pale.

Liver Weight: No scale available to weigh organs

20 **PANCREAS:**

- There are no abnormalities or injuries noted, but the pancreas is soft due to autolysis.

Pancreas Weight: No scale available to weigh organs

21 **SPLEEN:**

- There are no injuries noted, but the capsule of the spleen is wrinkled.

Spleen Weight: No scale available to weigh organs

22 **ADRENAL GLANDS:**

- There are no abnormalities or injuries noted.

Right Adrenal Gland Weight: No scale available to weigh organs

Left Adrenal Gland Weight: No scale available to weigh organs

23 **KIDNEYS:**

- There are no injuries noted, but both kidneys are slightly pale.
- The capsules of both kidneys strip with ease.

Right Kidney Weight: No scale available to weigh organs

Left Kidney Weight: No scale available to weigh organs

24 **URINARY BLADDER AND URETHRA:**

- There are no abnormalities or injuries noted.

25 **PELVIC WALLS:**

- There are no abnormalities or injuries noted.

26 **GENITAL ORGANS:**

- There are no abnormalities or injuries noted.

**SPINE:**

27 **SPINAL COLUMN:**

- There are no abnormalities or injuries noted.

28 **SPINAL CORD:**

- The spinal column was not opened.

**SPECIMENS RETAINED:**

NATURE OF SPECIMEN	NATURE OF INVESTIGATION	DISPOSAL OF SPECIMEN:- Handed to:
1. Blood Sample	1. Blood Alcohol Concentration (Seal No: PMK 202977/8)	1. F/O SJ Phenethe (Bloemfontein FPS)
2. Blood Sample	2. DNA Reference Sample (Ref No: 05D3AA5658MX)	2. W/O BBB Mlumbi (SAPS National Crime Scene Management)

**EXHIBITS RETAINED:**

DESCRIPTION	SCIENTIFIC ANALYSIS / EVIDENCE	DISPOSAL OF ITEM:- Handed to:
1. 7.62mm Bullet core (Left anterolateral chest muscles – Left anterior axillary line – Level of the 3 <sup>rd</sup> intercostal space)	1. SAPS Forensic Science Laboratory Ballistics Unit	1. W/O BBB Mlumbi (SAPS National Crime Scene Management)
2. Deformed Bullet Jacket (Right anterolateral chest muscles – Right anterior axillary line – Level of the 2 <sup>nd</sup> intercostal space)	2. SAPS Forensic Science Laboratory Ballistics Unit	2. W/O BBB Mlumbi (SAPS National Crime Scene Management)
3. Clothing (Had been washed and accompanied the body in a separate bag)	3. SAPS Forensic Science Laboratory Ballistics Unit	3. W/O BBB Mlumbi (SAPS National Crime Scene Management)

**ADDITIONAL OBSERVATIONS:**

- There was no scale available to weigh the organs during the autopsy examination.
- The clothing accompanying the decedent had been removed from the body and had been washed, prior to examination:
  - The clothing comprised: a pair of black-and-red trainers, a short-sleeved grey T-shirt, a short-sleeved pin-striped light-brown-and-white shirt, a short-sleeved khaki shirt and a knitted sleeveless blue-and-black patterned vest.
  - The clothing had been cut and torn presumably during the resuscitation efforts at the Hospital.
  - The examination of the clothing revealed correlation of the defects in the clothing with each other and with the gunshot wounds over the body.
- All the internal organs show signs of early decomposition and autolysis, with haemolytic staining of the endocardium and intima of the larger arteries.

**HISTORY OBTAINED:**

Please see attached copy of Makoanyane Military Hospital (MMH) Report:

**SUMMARY OF HOSPITAL FINDINGS:**

- The patient's name was documented as Maaparankoe Mahao, his age as 47 years and his sex as male.
- The attending Doctor was recorded as Dr Rishi.
- The patient was admitted to the outpatients ward on the 25<sup>th</sup> of June 2015, with multiple gunshot injuries to the Right chest and Right arm.
- The time of the incident / injury was not known.
- The patient was examined at approximately 15h40 and the following was documented:
  - The patient was unconscious and actively bleeding from his wounds
  - He was not responding to verbal stimuli
  - His pulse and blood pressure were not recordable
  - He had cold, clammy extremities
  - No spontaneous respiration was observed
  - Active resuscitation was initiated
  - He was intubated with an ETT
  - Bag and mask ventilation was attempted
  - Compression dressings were applied over the wounds
  - Despite aggressive resuscitation efforts, no life signs were observed
- The patient was declared dead at 16h15.
- The Cause of Death was attributed to "multiple gunshot wounds of the right chest and right arm".
- The Report was signed by Lt Col Rishi Dwivedi of the MMH.



**DEATH REGISTER NO BDR 480/2015**

GW 7 /15

Please see attached copy of Lesotho Mounted Police Service (LMPS) 22: Report of Sudden Death or Death by Misadventure Form: Mofoka RCI 26/06/15:

- A 47 year old male with a brown complexion died on the 25<sup>th</sup> of June 2015.
- He was found lying dead on a trolley at Makoanyane Military Hospital on the 26<sup>th</sup> of June 2015

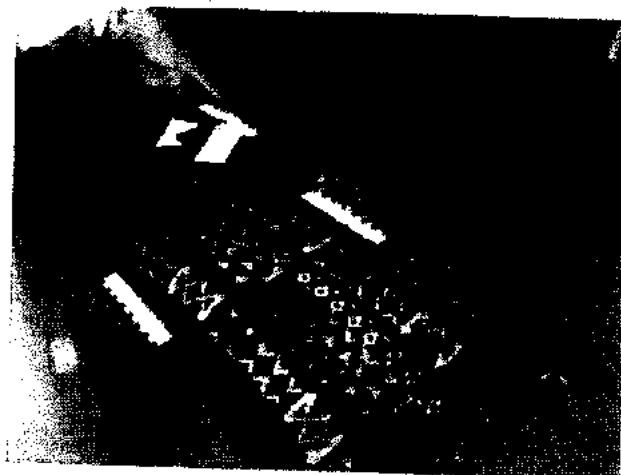
**X-RAY SCREENING:**

Post mortem C-Arm X-Rays performed at the Bloemfontein FPS Facility revealed the following:

1. A spent bullet in the Left anterolateral chest muscles in the Left anterior axillary line at the level of the 3<sup>rd</sup> intercostal space.
2. A deformed bullet jacket in the Right anterolateral chest muscles in the Right anterior axillary line at the level of the 2<sup>nd</sup> intercostal space.
3. Multiple small metal fragments in the Right upper arm soft tissues, associated with comminuted fractures of the Right humerus.
4. Multiple small metal fragments in the Right and Left upper chest, more densely distributed on the Right.

DHA 1663A with number 994135 issued.

**IMAGES OF WASHED CLOTHING:**



CONFIDENTIAL

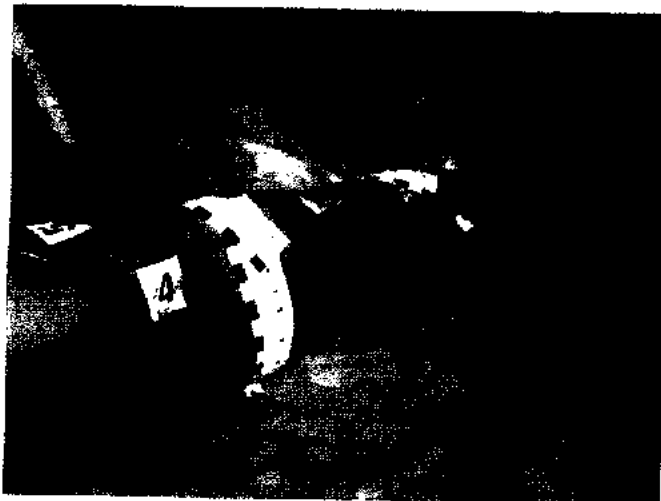
## IMAGES OF BODY, WOUNDS &amp; PROJECTILES



- The body is that of a middle-aged Black male
- There is a toe-tag secured with a blue ligature to the Left toe of the decedent, with the following information recorded on it:
  - BDR 480/2015
  - Maaparankoe Leuta Mahao
  - Gunshot
  - 2015/06/26



- There are stickers over the body associated with various wounds, numbered from 1 to 10, predominantly over the Right Arm, Right chest (anteriorly and posteriorly) and face.



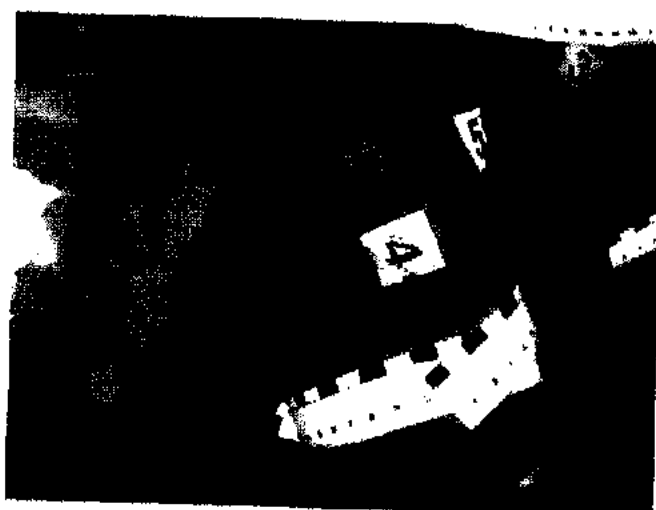


4. There is a 45 X 35mm lacerated penetrating wound with an eccentric collar of abrasion more prominent supero-laterally, over the Right antero-lateral upper arm, 1 580mm above the Right heel level.

4.1. There is surrounding pseudo-tattooing extending up to 15mm from the wound margins.

4.2. The entire wound area including the collar of abrasion measures 75 X 75mm.

4.3. There are compound comminuted fractures of the upper Right humerus visible beneath this wound.



3. There is a 25 X 15mm irregular lacerated penetrating wound with an eccentric collar of abrasion more prominent laterally, over the Right antero-lateral upper chest in the Right anterior axillary line, 1 520mm above the Right heel level.

3.1. The entire wound area including the collar of abrasion measures 40 X 40mm.

4. There is a 45 X 35mm lacerated penetrating wound with an eccentric collar of abrasion more prominent supero-laterally, over the Right antero-lateral upper arm, 1 580mm above the Right heel level.

4.1. There is surrounding pseudo-tattooing extending up to 15mm from the wound margins.

4.2. The entire wound area including the collar of abrasion measures 75 X 75mm.

4.3. There are compound comminuted fractures of the upper Right humerus visible beneath this wound.

5. There is a 25 X 12mm lacerated penetrating wound with a concentric collar of abrasion, over the Right antero-medial upper arm, 1 530mm above the Right heel level.

5.1. The entire wound area including the collar of abrasion measures 40 X 40mm.

5.2. There is surgical wound packing material in the wound.

6. There is a 100 X 40mm lacerated oblique gutter wound with a surrounding collar of abrasion more prominent superiorly, over the Right medial lower upper arm, 1 450mm above the Right heel level.

6.1. The entire wound area including the collar of abrasion measures 120 X 55mm.

6.2. There is surgical wound packing material in the wound.

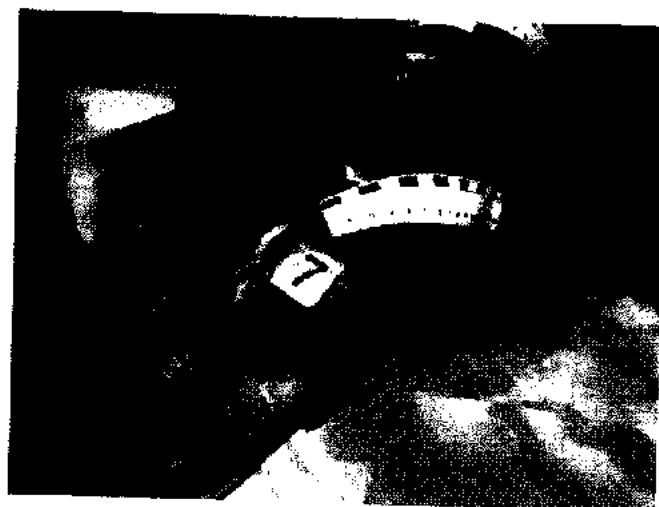
7. There are two large lacerated superficially penetrating wounds with a 10mm wide skin bridge between them, over the Right antero-medial forearm.

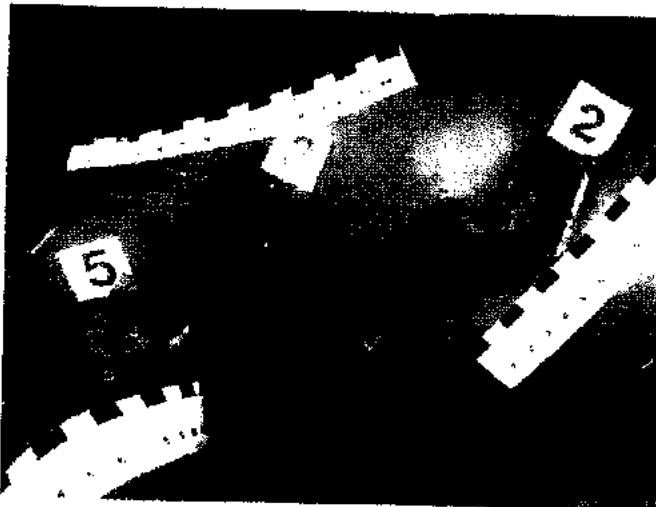
7.1. The top wound measures 70 X 35mm and is 1 350mm above the Right heel level.

7.2. The lower wound measures 120 X 80mm and is 1 300mm above the Right heel level.

7.3. There is surgical wound packing material in both wounds.

7.4. These two wounds appear to be joined by a track passing through the superficial forearm tissues between these wounds.





2. There is a 38 X 15mm transversely oblique lacerated penetrating wound with an eccentric collar of abrasion more prominent anteriorly, over the right anterior chest, 1 410mm above the Right heel level.

2.1. The entire wound area including the collar of abrasion measures 100 X 35mm.

2.2. There is surgical wound packing material in the wound.

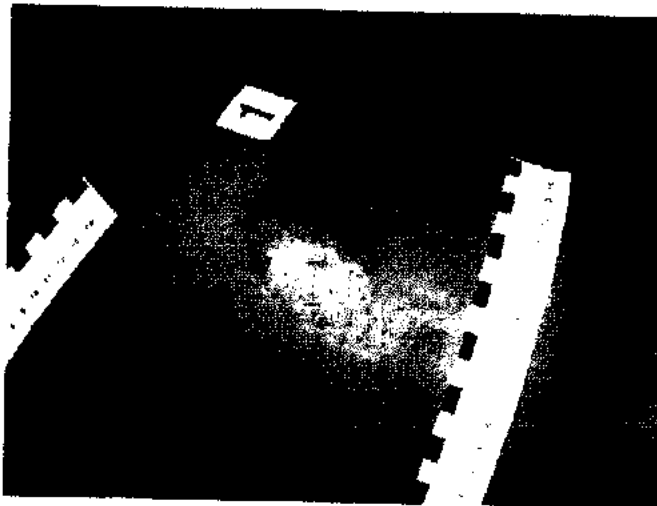
3. There is a 25 X 15mm irregular lacerated penetrating wound with an eccentric collar of abrasion more prominent laterally, over the Right antero-lateral upper chest in the Right anterior axillary line, 1 520mm above the Right heel level.

3.1. The entire wound area including the collar of abrasion measures 40 X 40mm.

5. There is a 25 X 12mm lacerated penetrating wound with a concentric collar of abrasion, over the Right antero-medial upper arm, 1 530mm above the Right heel level.

5.1. The entire wound area including the collar of abrasion measures 40 X 40mm.

5.2. There is surgical wound packing material in the wound.



1. There is a yellow-brownish abrasion measuring 85 X 55mm over the Right anterior costal margin, 1 235mm above the Right heel level.



10. There is a 10 X 8mm lacerated penetrating wound over the Right upper back, 150mm below the level of C7 and 75mm lateral to the midline.

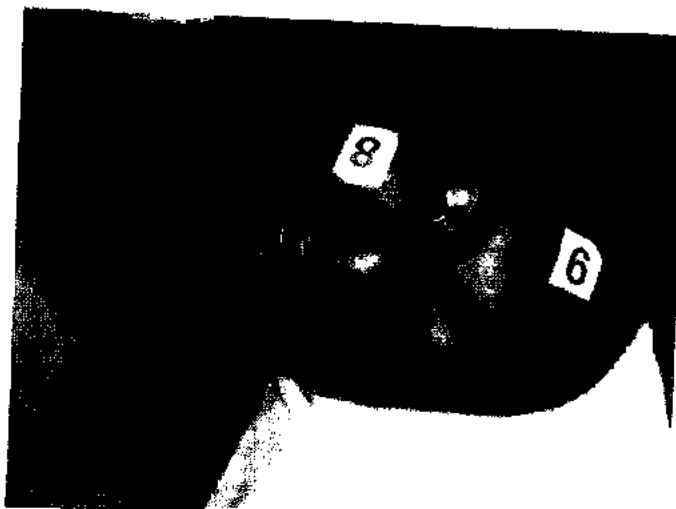
10.1. This wound is 1 460mm above the Right heel level.

DEATH REGISTER NO BDR 480/2015

GW 7/15



12. There are a few small abrasions over both knees ranging in size from 5 X 4mm to 10 X 5mm.



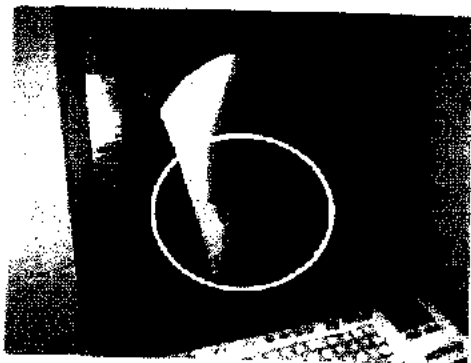
8. There is a 40 X 40mm abrasion with vertical linear striations in it, directly below- and involving the Right nostril laterally.

9. There is a 45 X 25mm abrasion with vertical linear striations in it, over the Right upper forehead

**X-RAY SCREENING:**

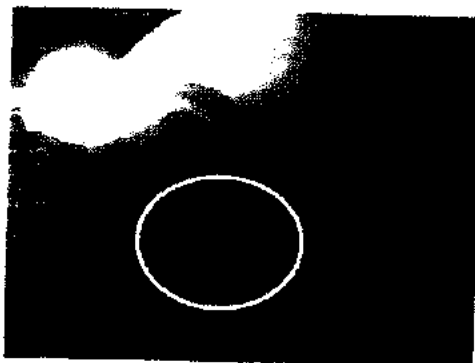
Post mortem C-Arm X-Rays performed at the Bloemfontein FPS Facility revealed the following:

1. A spent bullet in the Left anterolateral chest muscles in the Left anterior axillary line at the level of the 3rd intercostal space.
2. A deformed bullet jacket in the Right anterolateral chest muscles in the Right anterior axillary line at the level of the 2nd intercostal space.
3. Multiple small metal fragments in the Right upper arm soft tissues, associated with comminuted fractures of the Right humerus.
4. Multiple small metal fragments in the Right and Left upper chest, more densely distributed on the Right.

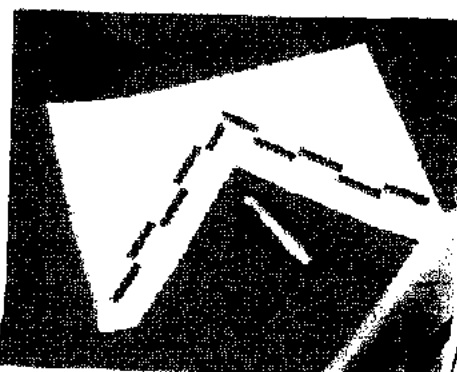
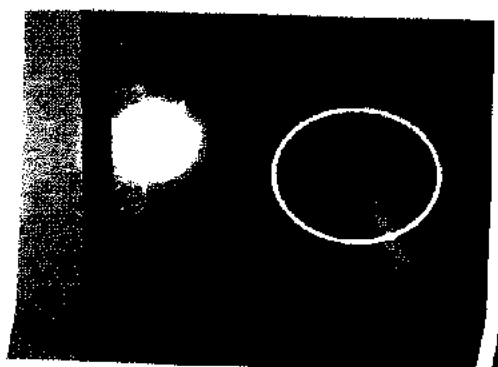


**Multiple small metal fragments in the Right upper arm soft tissues, associated with comminuted fractures of the Right humerus.**

These injuries are associated with the wound track of wound 4, 5 & 3. The track passes from Right to Left and slightly downwards, perforates the Right upper arm resulting in comminuted compound fractures of the Right upper humerus, perforates the Right-, Middle- and Left upper antero-lateral chest muscles and soft tissues and terminates in the Left antero-lateral upper chest muscles.



A spent, deformed **BULLET JACKET** was retrieved from the Right antero-lateral upper chest muscles in the Right anterior axillary line, at the level of the Right lateral 2nd intercostal space.



A spent **BULLET** was retrieved from the Left antero-lateral upper chest muscles in the anterior axillary line, at the level of the Left lateral 3rd intercostal space.

An additional wound noted with no numbered sticker associated with it:

11. There is an 80 X 90mm irregular bruise over the mid upper anterior chest, 1 520mm above the Right heel level.

**WOUND TRACK NO II: (See Paragraph 4)**

Wounds 4, 5 and 3 are joined by a track, which enters the body at wound 4 (over the Right antero-lateral upper arm), exits at wound 5 (over the Right antero-medial upper arm) and re-enters the body at wound 3 (over the Right antero-lateral chest).

The track passes from Right to Left and slightly downwards, perforates the Right upper arm resulting in comminuted compound fractures of the Right upper humerus, perforates the Right, Middle- and Left upper antero-lateral chest muscles and soft tissues and terminates in the Left antero-lateral upper chest muscles.

In this track, a spent, deformed bullet jacket was retrieved from the Right antero-lateral upper chest muscles in the Right anterior axillary line, at the level of the Right lateral 2nd intercostal space and a spent bullet was retrieved from the Left antero-lateral upper chest muscles in the anterior axillary line, at the level of the Left lateral 3rd intercostal space.

**WOUND TRACK NO II: (See Paragraph 4)**  
Wounds 4, 5 and 3 are joined by a track, which enters the body at wound 4 (over the Right antero-lateral upper arm), exits at wound 5 (over the Right antero-medial upper arm) and re-enters the body at wound 3 (over the Right antero-lateral chest).

The track passes from Right to Left and slightly downwards, perforates the Right upper arm resulting in comminuted compound fractures of the Right upper humerus, perforates the Right, Middle- and Left upper antero-lateral chest muscles and soft tissues and terminates in the Left antero-lateral upper chest muscles.

**WOUND TRACK NO I:  
(See Paragraph 4)**

Wounds 2 and 10 are joined by a track perforating the Right chest, the direction of which cannot confidently be determined by autopsy examination alone.

From wound 2 (over the Right anterior chest), the track perforates the 5th rib on the Right anteriorly, perforates the middle lobe of the Right lung, perforates the 6th and 7th ribs on the Right posteriorly, and passes through wound 10 (over the Right posterior chest).

**WOUND TRACK NO I:  
(See Paragraph 4)**

Wounds 2 and 10 are joined by a track perforating the Right chest, the direction of which cannot confidently be determined by autopsy examination alone.

From wound 2 (over the Right anterior chest), the track perforates the 5th rib on the Right anteriorly, perforates the middle lobe of the Right lung, perforates the 6th and 7th ribs on the Right posteriorly, and passes through wound 10 (over the Right posterior chest).



**HEART AND PERICARDIUM:**  
(See paragraph 14)

The coronary arteries and ostia are normal.

There is a small 1 X 3mm subendocardial haemorrhage in the posterior wall of the left ventricle.

**LIVER, GALL BLADDER AND BILIARY  
PASSAGES:**  
(See paragraph 19)

There is a 55mm laceration over the diaphragmatic aspect of the Right lobe of the liver, extending to a depth of 20mm into the liver parenchyma, with minimal associated parenchymal haemorrhage and no liberated associated free blood.

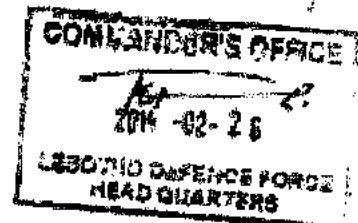
The liver is slightly pale.

**RIGHT ARM DISSECTION**

Extensive dissection of the soft tissues and vasculature of the Right arm does not reveal any major vessel injuries or significant haemorrhages.

# Annexure 8:

## Dissolution of Court Martial



**DISSOLUTION OF A COURT - MARTIAL**

**LESOTHO DEFENCE FORCE ACT 1996**  
**(ACT NO.4 of 1996)**

**WHEREAS**

section 92 (1) of the Lesotho Defence Force Act No.4 of 1996 (hereinafter called the "Act") confers on me the power to convene a court-martial and appoint officers to constitute the same; which power includes as well the power of dissolution;

**AND WHEREAS**

section 92 (2) of the Act confers on me the right to delegate the power under section 92 (1) above, to the Commander of the Lesotho Defence Force;

**AND WHEREAS**

through the Lesotho Defence Force (Delegation of Powers) Legal Notice No.131 of 2000 the power to convene a court-martial referred to under section 92 (1) above was delegated to the Commander of the Lesotho Defence Force;

**WHEREAS**

in terms of section 100 (1) of the Act the convening authority, who is the Minister of Defence, may, by order, dissolve a court-martial if it appears to him necessary or expedient in the interests of the administration of justice that such dissolution should be made;

**AND WHEREAS**

the fact of the delegation of the convening power under section 92 (2) in no way precludes the Minister from exercising his powers under section 92 (1), including under section 100 (1) of the Act;

**AND WHEREAS**

under the delegated power as aforesaid, on the 20<sup>th</sup> day of January, 2014 the Commander of the Lesotho Defence Force convened a court-martial to try No.9402 Brigadier Maaparankoe Mahao for allegedly contravening sections 75, 77 and 79 of the Act;

**WHEREAS**

as the Minister responsible for the Lesotho Defence Force, including the safety and security of the Basotho nation, I have pondered at length over the issue of the said trial and all the surrounding circumstances attendant to it; in particular, the question whether or not the on-going prosecution of such high ranking officer (in the context within which it is taking place) is in the best interests of the Army and the nation as a whole;

**AND WHEREAS**

in consideration of all the circumstances of the prosecution, I am convinced that, not only the interests of the administration of justice are most likely not to be properly served, but that in any event, it is not in the public interest of the nation as a whole, including the Army itself, that the court-martial proceedings against Brigadier Maaparankoe Mahao should continue more than they have, up to this point.

**WHEREFORE**

I, THOMAS MOTSOAHAE THABANE, the Prime Minister of Lesotho and Minister of Defence and National Security, in exercise of my powers under section 92(1), read with section 100 (1) of the Act, hereby, as I do, dissolve the court-martial constituted against Brigadier Maaparankoe Mahao No.9402, as per the Convening Order of the Commander of the Lesotho Defence Force dated 20<sup>th</sup> day of January 2014.

**DATED AT MASERU THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2014.**

  
**THOMAS MOTSOAHAE THABANE**

**PRIME MINISTER AND MINISTER OF  
DEFENCE AND NATIONAL SECURITY**

# Annexure 9:

## List of Cases

List of pending cases against members of the LDF:

	STATION	CIR NO.	OFFENCE	SUSPECTS	WARRANT OF ARREST
1.	MORIJA	673/01/12	Attempted Murder	Warrant Officer..... 1* Corporal..... 2* Private..... 3* Private..... 4*	
2.	MOHALE	03/04/12	Attempted murder & malicious damage to property		
3.	MAFETENG	30/04/12	Murder	No..... 2 <sup>nd</sup> Lieut..... 5* No...Private... 6* No...Private... 7* Private..... 8* Private..... 9*	Summons issued
5.	MOKHOTLON G	274/06/13	Assault GBH	Private..... 10* Private..... 11* Private..... 12* Private..... 13*	
6.	THAMAE	146/05/14	Murder, Attempted	No..... Lance	

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			Murder & Malicious Damage to Property	Corporal..... <sup>14*</sup> No..... Private..... <sup>15*</sup> No..Private... <sup>16*</sup>	
7.	Maseru Central Police Station	616/10/12	Assault GBH & Sexual Offence	Lance Corporal ..... <sup>17*</sup> Lance Corporal.... <sup>18*</sup> Lance Corporal..... <sup>19*</sup>	
8.	Maseru Police Headquarters	778/09/14	Murder	Not available	Not available
9.	Maseru Central Police Station	2535/02/15	Murder and Attempted Murder	Not available	Not available
10.	Not available	Bombings of 27 <sup>th</sup> of January 2014	Treason	..... <sup>20*</sup> Brigadier..... <sup>21*</sup> Captain..... <sup>22*</sup> ..... <sup>23*</sup> Captain..... <sup>24*</sup> Lieutenant Colonel..... <sup>25*</sup> 2 <sup>nd</sup> Lieutenant.... <sup>26*</sup> 2 <sup>nd</sup> Lieutenant.....	Summons issued

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				..... 27*	
				2 <sup>nd</sup>	
				Lieutenant.... 28*	
				Major	
				..... 29*	
11.	Not available	30 <sup>th</sup> of August 2014	High Treason	Brigadier..... 30*	
				Major..... 31*	
				Major..... 32*	
				Captain..... 33*	
				2 <sup>nd</sup>	
				Lieutenant..... 34*	
				2 <sup>nd</sup>	
				Lieutenant..... 35*	
				Corporal..... 36*	
				Lance	
				Corporal.....	
				..... 37*	

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SECTION 8 (3) AND (4) OF THE PUBLIC INQUIRIES ACT NO.1 OF 1994

FOOTNOTES (A)

1. There is a matter which is sub-judice affecting the individual and the Commission, in respect of the Commission's work, findings and recommendations. It would be disrespectful to the dignity and independence of the courts of law to publish this portion of the report.
2. Notwithstanding that in its report the Commission has omitted to make available the list, if any, of witnesses who testified before it, or persons invited to testify but declined, I am, nevertheless, aware that the individual did not testify, nor was he invited by the Commission to do so before the Commission could make any findings and recommendations against him. To proceed to negatively find against him and recommend prejudicial action in spite of the fact that he was not given an opportunity to explain away any misgivings about him, is a serious flaw. And this particular aspect of the matter has affected a number of individuals. It cannot be fair to publish their names in the circumstances.
3. Same remarks as in footnote two (2) above apply herein with equal force and effect.
4. Same remarks as in footnote two (2) above apply herein with equal force and effect.
5. Same remarks as in footnote one (1) above apply herein with equal force and effect.
6. Same remarks as in footnote one (1) above apply herein with equal force and effect.
7. Same remarks as in footnote one (1) above apply herein with equal force and effect.

8. Same remarks as in footnote one (1) above apply herein with equal force and effect.
9. Same remarks as in footnote two (2) above apply herein with equal force and effect.
10. Same remarks as in footnote one (1) above apply herein with equal force and effect.
11. Same remarks as in footnote two (2) above apply herein with equal force and effect.
12. Same remarks as in footnote one (1) above apply herein with equal force and effect.
13. Same remarks as in footnote one (1) above apply herein with equal force and effect.
14. Same remarks as in footnote one (1) above apply herein with equal force and effect.
15. Same remarks as in footnote one (1) above apply herein with equal force and effect.
16. There are two things involved here: one is that of relevance of issues interrogated under the rubric "Other Matters Relevant to the Inquiry"; and the other, whether individuals have been treated fairly by the Commission in relation to any possible criminal trials against them.

The question is whether indeed such matters as commented upon under the said heading, including findings and recommendations thereunder, are "relevant" to the Inquiry, bearing in mind that quintessentially, and shorn of verbosity, the terms of reference of the Commission were only five (5) in number.

Conveniently grouped together, the terms of reference of the Commission were:

- (a) Review of the investigation into the alleged mutiny plot;
- (b) Investigating the alleged kidnapping of former members of the LDF and alleged killings of members of the opposition;
- (c) Investigating the allegation by the opposition and Civil Society that Lieutenant General Kamoli's reappointment has resulted in divisions in the Lesotho Defence Force, and has led to political and security instability.
- (d) Investigating the fatal shooting of Brigadier Maaparankoe Mahao (it is true that this particular item is further split into a number of sub-items, but this does not change the fact that, put together, they make one item, being the investigation of the death of Brigadier Mahao and its circumstances); and
- (e) Investigating the legality of removal/appointment issues around the top leadership of the Lesotho Defence Force in respect of Lieutenant General Kamoli and Brigadier Mahao.

It is very much doubtful that there is any nexus between the authorised five terms of reference above and some of the issues which the Commission investigated. It is self-evident that the phrase "Any Other Matters Relevant to the Inquiry" is evidently of limited elasticity. It cannot possibly connote that the Commission was at large to investigate anything it thought fit to do. However, the Commission appears to have fallen into this mistake, by not only commenting, but actually making findings and recommendations in relation to suspected offences whose commission predates (*emphasis added*) the incidents which the Commission was mandated to investigate. For example, some of these offences relate to the years 2012, 2013 and 2014, long before the time to which the authorised terms of reference relate. The offences are supposed to have been committed at various places in Lesotho (Mafeteng, Morija, Mokhotlong, etc. etc). They range from murder to sexual offences. It is not apparent what they have to do with the five authorised terms of reference. But there is even a more serious concern:

Having dealt with wholly extraneous issues to its mandate, the Commission made findings and recommendations based thereon.

To its credit though, and in spite of the pitfalls above, the Commission did quite systematically and logically deal with each of the mandated five topics above, making findings and recommendations. It is true that it appears to have given quite a wide meaning to the phrase "Other Matters Relevant to the Inquiry", but otherwise it did tackle the issues it was mandated to do.

Whilst on the aspect of "Other Matters Relevant to the Inquiry", it will be recalled that the investigation of the 30<sup>th</sup> August, 2014 incident, involving a military operation at some police stations in Maseru, had been rejected both by the Commission and SADC, after the Government had proposed that, among others, it be an issue for investigation by the Commission.

How then can possibly this incident be made part of the commentary by the Commission, even going further to actually make adverse findings and recommendations against individuals?

Generally, I found Annexure 9 of the report quite problematic in ways demonstrated above; as it bears little relationship to the five issues which the Commission was mandated to investigate. The question is whether it would be fair to publish names of individuals, associating them with criminal offences under Annexure 9, in circumstances where the Commission investigated issues that did not fall within its scope of mandate; and, in fact, some had even been rejected by both the Commission and SADC as not worth an investigation. The answer to the question is obvious.

It is in the above circumstances that I expunged individual names from Annexure 9. To do otherwise, I considered, would have been an act of unfairness to the individuals concerned.

18. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.

19. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
20. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
21. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
22. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
23. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
24. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
25. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
26. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
27. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
28. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
29. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
30. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
31. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
32. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.

## FOOTNOTES (B)

- 1\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 2\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 3\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 4\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 5\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 6\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 7\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 8\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 9\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 10\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 11\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 12\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 13\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 14\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 15\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.



19. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
20. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
21. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
22. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
23. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
24. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
25. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
26. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
27. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
28. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
29. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
30. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
31. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.
32. Same remarks as in footnote seventeen (17) above apply herein with equal force and effect.

- 16\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 17\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 18\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 19\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 20\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 21\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 22\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 23\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 24\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 25\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 26\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 27\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 28\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 29\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 30\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 31\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.

- 32\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 33\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 34\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 35\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 36\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.
- 37\* Same remarks as in footnote (A) seventeen (17) above apply herein with equal force and effect.

DATED AT MASERU THIS 4<sup>th</sup> DAY OF FEBRUARY, 2016



PAKALITHA BETHUEL MOSISILI

PRIME MINISTER

## ADDENDUM TO THE FOOTNOTES

### NOTA BENE

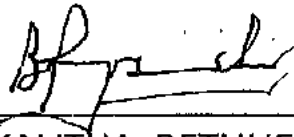
The report of the Commission bears some typographical/editing mistakes. Because the Public Inquiries Act ( "Act" ) only empowers the Prime Minister to excise from the report portions thereof which may be detrimental to or endanger national security, individual rights to privacy, fairness, etc. etc., there is, therefore, no right or power on the part of the Prime Minister to correct typographical/editing mistakes in the report. Thus, save for the *expunging* exercise, the Prime Minister could not do anything about the report, including its typographical/editing mistakes. In consequence, the report was published *as is*, save for the exercise fully explained in the FOOTNOTES (A) AND (B) accompanying the publication of the report.

Examples of typographical/editing mistakes in the report: Glaring is the *page* numbering exercise. ANNEXURE 5 of the report is the "BALLISTIC REPORT," and it is paged; but either it is the paging which is erroneous or a page of the report ( which clearly would have been page "19" ) was omitted by the compiler of the report. SADC has already been notified to rectify. This is so because immediately following page 18 is page 20.

One other mistake detected is on page 48 of 62 of the report, at the top. It reads: " .....Lieutenant General Kamoli he developed the LDF unevenly....." The "he" is clearly a slip of the finger.

The point that is being made is simply that even where the Prime Minister may have detected certain typing or editing mistakes in the report, he could not do anything about it, beyond the authorised role which he had to play in terms of section 8 (3) and (4) of the Act.

DATED AT MASERU THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2016.



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PAKALITHA BETHUEL MOSISILI  
PRIME MINISTER

