

**THE KINGDOM OF LESOTHO COMBINED SECOND TO EIGHTH PERIODIC REPORT UNDER THE AFRICAN  
CHARTER ON HUMAN AND PEOPLES' RIGHTS AND INITIAL REPORT UNDER THE PROTOCOL TO THE  
AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA**

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**THE KINGDOM OF LESOTHO**

**COMBINED SECOND TO EIGHTH PERIODIC REPORT UNDER THE AFRICAN CHARTER ON  
HUMAN AND PEOPLES' RIGHTS**

**And**

**INITIAL REPORT UNDER THE PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF  
WOMEN IN AFRICA**

**APRIL 2018**

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**ABBREVIATIONS AND ACRONYMS**

ABC	All Basotho Convention
BCP	Basotho Congress Party
BNP	Basotho National Party
MFP	Marema-Tlou Freedom Party
DC	Democratic Congress
AD	Alliance for Democrats
NIP	National Independence Party
LCS	Lesotho Correctional Service
LMPS	Lesotho Mounted Police Service
LDF	Lesotho Defence Force
CSOs	Civil Society Organisations
NGOs	Non-governmental Organisations
DPSPs	Directive Principles of State Policy
PR	Proportional Representation
FPTP	First Pass The Post
LCMPA	Legal Capacity of Married Persons Act

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CP&E	Criminal Procedure and Evidence Act
CPWA	Children's Protection and Welfare Act
CGPU	Child and Gender Protection Unit
MDGs	Millenium Development Goals
SDGs	Sustainable Development Goals

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**DEFINITIONS**

***Bohali:*** Payment, traditionally in the form of cattle, and lately either in cattle, other animals or cash made by the groom's family to the bride's family when there has been an agreement for marriage of the couple

***Basotho:*** People of Lesotho, singular ***Mosotho***

***Malapa ha a jane:*** A customary law principle used in polygamous marriages in terms of which each household keeps its own property and such cannot be inherited by the other family or families

***Pitso:*** public gathering      Plural: ***Lipitso***

***Mala marriage:***      A customary law marriage equivalent to surrogacy

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**PART A: THE AFRICAN CHARTER**

**EXECUTIVE SUMMARY**

1. The Kingdom of Lesotho is a democratic country headed by a constitutional monarchy. It is situated in Southern Africa. It is a former British Protectorate which gained independence in 1966. Prior to independence, Lesotho was formerly known as Basutoland, named after a nation called Basotho which occupied the territory during the 1800s. It was thereafter renamed Lesotho.
2. The Kingdom of Lesotho ratified the African Charter on Human and Peoples' Rights (African Charter) on 9 April 1991. Pursuant to article 62 of the African Charter, Lesotho submitted its initial report on implementation of the African Charter in 2000 and it was considered in 2001. The initial report covered the period between 1991 and 2000.
3. The second periodic report was due in 2004 and subsequent reports every two years thereafter. However, due to several factors including lack of human and financial resources as well as political instability, Lesotho has not been able to report periodically as stipulated in article 62 of the Charter. The Centre for Human Rights, University of Pretoria has provided technical assistance which has enabled the Kingdom of Lesotho to submit this report which combines the second to eighth periodic reports covering the period between 2001 and 2017.
4. Part B of this report contains information on Lesotho's implementation of the Protocol to the African Charter on Humana and Peoples' Rights on the Rights of Women in Africa (The Protocol) which Lesotho ratified on 26 October 2004. It covers the period between 2004 and 2017.
5. The current report was prepared in accordance with the reporting guidelines developed by the African Commission. Consultations were made with various government

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departments and Civil Society Organisations (CSOs) who played a crucial role in drafting and validation of this report.

**BACKGROUND INFORMATION AND GENERAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION**

6. Background information regarding the land of Lesotho, geographic setting, the people of Lesotho, official languages and the legal system remain the same as contained in the initial report. However, it is important to note that the people of Lesotho consist of Basotho, Sesotho speaking people who are the majority in the country and a small minority of Baphuthi and Xhosa's who are mostly located in the Southern part of the country in the districts of Quthing and Qacha's Nek as well as Matebele who are in various parts of the country. The latest statistics estimate Baphuthi to constitute about 2 percent of the total population. That is, about 40 000 people. These statistics have not been disaggregated by sex.
7. Lesotho is located in Southern Africa and totally surrounded by South Africa as its only neighbour. This has resulted in a close relationship between the two countries as the economic, political and security situation in one country has a huge impact on that of the other country.
8. Since the last periodic report, the population of Lesotho has increased from 1, 8 million in 2002, 2,01 million in 2010 and 2,2 million in 2016. The actual population is estimated by the World Bank to have risen to about 2,3 million in 2018.

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**General framework within which civil and political rights are protected in Lesotho**

9. Civil and political rights are contained in chapter 2 of the 1993 Constitution of Lesotho. The underlying principle in this chapter is equality and non-discrimination captured in sections 4 and 18 of the Constitution.
10. Section 2 of the Constitution provides for constitutional supremacy in terms of which all laws are subject to the Constitution. That is, the parliament may not pass a law which is inconsistent with or violated the human rights contained in Chapter 2 of the Constitution.
11. Section 22 of the Constitution provides for enforcement of human rights through the High Court. It provides that:

***If any person alleges that any of the provisions of sections 4 to 21 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other persons alleges such a contravention in relation to the detained person), then, without prejudice to any***

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*other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.*

12. Since consideration of the last report, the Kingdom of Lesotho has enacted several laws and established institutions which are aimed at implementation of the African Charter and the Protocol. These laws and institutions are considered more fully in relation to respective articles of both the African Charter and the Protocol.

## **ARTICLES 2 & 3: FREEDOM FROM DISCRIMINATION AND RIGHT TO EQUALITY**

### **Constitutional measures**

13. Section 4 of the Constitution provides that every person in Lesotho is entitled to the human rights and freedoms contained in the Constitution regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Constitution thus guarantees all human rights contained in therein based on the principles of equality and non-discrimination.<sup>1</sup>
14. Section 22 of the Constitution renders the rights therein justiciable in that any person who alleges that their rights as contained in the Constitution have been infringed may approach the High Court for redress. The Constitution further empowers the High Court to make any order it deems fit for the purpose of enforcing or securing the enforcement of any right contained in the Constitution.
15. Freedom from discrimination is contained in section 18 of the Constitution which provides that 'subject to the provisions of subsections (4) and (5) no law shall make any provision

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<sup>1</sup> Section 4 of the Constitution lists all the rights protected under the Constitution, and guarantees protection of the basis of non-discrimination and equality; it is not a source of substantive rights contained therein. This is because Section 4 contains a proviso limiting the enjoyment of the said rights within the ambits of specific limitations contained in substantive provisions dealing with the rights mentioned under Section 4

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that is discriminatory either of itself or in its effect.<sup>2</sup> In this regard, discrimination is defined as:

***Affording different treatment to different persons attributed wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject to or are accorded privileges or advantages which are not accorded to persons of another such description.***

16. The descriptions under section 18(3) are not exhaustive as has been pronounced by the High Court sitting in its constitutional jurisdiction in ***Tseuoa v Minister of Labour and Employment and Others*** that:

***While admittedly the resultant discriminatory effect of section 38A (4) does not fall within the definition provided for under subsection (3) of section 18 of the Constitution, it nonetheless discriminatory in its effect for the reason of it being prejudicial to a selected few such as Applicant in casu. For this reason it is not justifiable. That may well be why even the definition itself contains the phrase 'or other status' which in my opinion was meant to cover other criteria not listed therein or which might not have been foreseeable at the time the definition was***

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<sup>2</sup> Section 18(4) contains the following exceptions to the non-discrimination rule: (a) laws relating to persons who are not citizens of Lesotho; (b) Personal law relating to adoption, marriage, divorce, burial, devolution of property on death and other like matters which is the personal law of that description; (c) application of the customary law of Lesotho with respect to any matter in the case of persons, who under that law, are subject to that law; (d) for the appropriation of public revenues or other public funds; or (e) any other reasons justifiable in a democratic society.

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***given. In this case, the status is that of Applicant falling under the private sector in contrast with litigants falling within the public sector.***<sup>3</sup>

17. In ***Fuma v Lesotho Defence Force and Others***, the Constitutional Court held that the phrase 'other status' in sections 4 and 18 also include disability as a prohibited ground of discrimination.<sup>4</sup>

18. Section 18 (4) (c) of the Constitution contains exceptions to the general non-discrimination rule. It provides that subsection (1) shall not apply to any law to the extent that that law makes provision:

(a) ***With respect to persons who are not citizens of Lesotho;***

(b) ***In the application of ... the law in respect of adoption, marriage, divorce, burial, devolution of property on death or other like matters....***

(c) ***For the application of the customary law of Lesotho...***

(d) ***For the appropriation of public revenues or other public funds or***

(e) ***Where persons mentioned in (3) are subject to disability or restriction or may be accorded privilege or disadvantage...is reasonably justifiable in a democratic society.***

19. As stipulated in the initial report, Lesotho has a dual legal system in terms of which Sesotho Customary Law operates side by side with the 'received law' being Roman Dutch Law, Constitutional law and Statute. The dichotomy between Sesotho Customary Law and Received law is very prevalent in respect of Marriage Law, Administration of Estates and Devolution of Property on Death. The choice of personal law applicable to personal

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<sup>3</sup> (2007) LSHC 141

<sup>4</sup> *Fuma v Lesotho Defence Force and Others* (2013) LSHC 68

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affairs is a prerogative of such persons. The exception to section 18 is therefore meant to preserve the ability for persons to choose which legal regime to regulate their own personal affairs.

20. While section 18 (4) contains exceptions to the right to freedom from discrimination, in order to allow indigenous progressive recognition of the right in its full extent, it also contains a proviso that 'nothing shall prevent the making of laws in pursuance of principles of state policy in promoting a society based on equality'. Pursuant to this provision, the parliament of Lesotho has progressively introduced legislation and policies which seek to off-set many of the limitations previously in place by reason of customary law.
21. According to section 18(7), the prohibition against discrimination is not only binding on the state but also on private individuals and commercial entities such as shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment and resorts maintained either partially or wholly out of the public funds.
22. With regard to equality, section 19 of the Constitution provides that '[e]very person shall be entitled to equality before the law and to the equal protection of the law'. In the case of ***Lesotho National General Insurance v Nkuebe*** the Court of Appeal held that although sections 18 and 19 may seem to overlap, they generally require different approaches.<sup>5</sup> Section 18(3) imports an understanding that discrimination may be confined but equality under sections 19 has much wider connotation than the discrimination provision in that it may not be deviated from.

### Legislative measures

23. As a means of eliminating racial discrimination, the parliament of Lesotho has enacted the **Race Relations Act No.9 of 2005**. The Act forbids any act of discrimination based on

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<sup>5</sup> *Lesotho National General Insurance v Nkuebe* LAC (2000-2004) 799 paragraph 11.



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race in any place of public resort, public facilities and schools. Most importantly, it criminalises incitement to racial intolerance and sponsorship, support or defence of any racial intolerance. The Act further attributes vicarious liability to employers for acts of racial discrimination done by employees.

24. **Chieftainship Act 1968** allows widows who do not have male children, to succeed their deceased husbands and be chiefs in their own right until their death.
25. In order to eliminate discrimination based on sex in the Lesotho's marital regime, there has been enacted the **Legal Capacity of Married Persons Act No. 9 of 2006 (LCMPA)**. The primary purpose of the **LCMPA** is abolition and repeal of marital power in terms of which the wife was regarded as a minor and the husband had power over the person and property of his wife. The Act repeals all laws relating to administration of joint estates, common law, customary law and any other marriage laws in which a husband acquires marital power over the person and property of the wife. The **LCMPA** is therefore a progressive endeavour by the government of Lesotho to comply with its international obligations including articles 2 and 3 of the Charter.
26. Since submission of the initial report to the African Commission, the parliament of Lesotho has enacted several laws aimed at achieving equality between men and women in political participation and other aspects in the public sphere. These laws are elaborated upon in **part B** of this report.

**Judicial measures on equality and non-discrimination**

27. Pursuant to section 22 of the Constitution which provides for the right to challenge violation of human rights in the High Court, several cases challenging discriminatory laws and decisions have been brought before the Constitutional Court of Lesotho. These cases and the court's ruling in relation thereto are illustrated in **table A1** below.

**Table A1: Equality and Non-discrimination Cases in Lesotho**

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Case	Issue for determination	Ruling
<b><i>Mokhele &amp; Others v Commander LDF &amp; Others</i></b>	Applicants were female members of the LDF who were dismissed for having breached the LDF policy in terms of which female members of the army undertake not to be pregnant within five years of their recruitment.	The Constitutional Court held that the dismissal is discriminatory and unconstitutional as it contradicts section 18 of the Constitution.
<b><i>Molefi Tsepe v The IEC and Others</i><sup>6</sup></b>	Whether reservation of 1/3 quota of seats for women in local government council amounts to discrimination against men in violation of section 18 of the Constitution.	Reservation of constituencies for women under the Local Government Elections Act 2005 was justified affirmative action which gave effect to the non-discrimination provisions of Section 18 as well as Lesotho's international human rights obligations under the African Charter and the African Women's Protocol.

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<sup>6</sup> Molefi Tsepe v IEC and Others (2005) LSHC 96

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<b><i>Senate Gabasheane Masupha v Senior Resident Magistrate- Berea &amp; Ors</i></b>	Section 10 of the Chieftainship Act 1968, which limits succession to chieftainship to first-born male children challenged as discriminatory on the basis of sex in violation of sections 18 and 19 of the Constitution	Discrimination based on customary law permissible under section 18(3) of the Constitution
<b><i>Fuma v LDF and Others</i></b>	A soldier who was retired on medical grounds in terms of section 24 of LDF Act claimed that his retirement violated section 18 of the Constitution and was discriminatory on the basis of his HIV status and his visual disability.	The Constitutional Court held that the decision to retire him violated his right to equality and freedom from discrimination under section 18 and 19 of the Constitution. It held further that his right to human dignity had resultantly been transgressed by the Commander in particular by having treated a person of his health condition inhumanely and unlawfully denying him a hearing before considering adverse decisions against him. <sup>7</sup>
<b><i>Timothy Thahane v Specified Offices</i></b>	Applicants had challenged the Specified Offices Defined Contribution Pension Fund	The Court of Appeal of Lesotho agreed with the conclusion of the Constitutional Court that the

<sup>7</sup> Fuma v Lesotho Defence Force and Others (2013) LSHC 68

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<p><b><i>Defined Contribution Pension Fund</i></b></p>	<p>(Amendment) Act 2014 on the basis, inter alia, that it amounted to unfair discrimination contrary to sections 18 (1) and (3) of the Constitution.</p> <p>differentiation between the Applicants and their counterparts is permissible and reasonably justifiable in a democratic society having regard to its nature and special circumstances pertaining to the two groups of former members of Parliament. The differentiation was found not to constitute discrimination. It was held that the Act was merely drawing a distinction between public office bearers whose tenure ends in different ways and attracted different benefits.<sup>8</sup></p>
<p><b><i>The Road Transport Board &amp; 3 Others v Nothern Venture Association C of A (Civ) 2no. 10 /2005</i></b></p>	<p>Applicants were a society of persons who owned motor vehicles known as ventures which were used as a means of public transport. They challenges Regulation 7 of Road Transport Regulations 2004 which was used to deny them licences for public transport and argued that such</p> <p>Section 18 of the Constitution proscribes differentiation for reasons attributable to status which is absent under regulation 7. Differentiation under regulation 7 is not based on any of the characteristics outlined in section 18 of the Constitution. Case dismissed.</p>

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<sup>8</sup> Thahane v Specified Offices Defined Contribution Pension Fund and Others (2017) LSCA 10

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	regulation discriminated from owners of other makes of vehicles.	
<b><i>Sekoati Gert Lelimo v Lesotho National General Insurance Co. Ltd &amp; 3 Others Cons. Case No 2 /2013</i></b>	Applicant challenged section 8 of the Motor Vehicle Insurance Order 1989 on the grounds that the formula for calculation of compensation for motor vehicle accidents which is prescribed under section 8 is discriminatory to such victims who, in most circumstances are the poorest of the Lesotho population.	The case was dismissed on account of prescription as the applicant had failed to lodge his claim for compensation within the period of 2 years as prescribed under section 10 of the Motor Vehicle Insurance Order 1989. However, in obiter the Court urged the insurance company to be considerate and act in the spirit of <i>botho</i> when awarding compensation.
<b><i>Mantsubise Khasake-Mokheithi &amp; Another v Tsabalira Moloi &amp; 11 Others CIV/APN/73/2013</i></b>	Sections 11 and 12 of the Laws of Lerotholi which preclude females from inheriting challenged as being discriminatory and in violation of sections 18 and 19 of the Constitution of Lesotho	Sections 18 of the Constitution sanctions customary law based discrimination. Secondly, because Lesotho uses a dualist approach to international law, in the absence of any national law which domesticates international human rights instruments such as CEDAW, the court cannot declare the laws of Lerotholi discriminatory.
<b><i>Jessie Ramakatane v Director of Public Prosecutions &amp;</i></b>	Applicant and three others had sought political asylum in South Africa. Upon regime change in	Execution of the warrant of extraction against the Applicant would be discriminatory as according to the

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Another

CIV/APN/205/2013

2012, the three with whom the constitution, even accused persons applicant had fled were who are similarly placed must be pardoned and they returned to treated in the same manner. Warrant Lesotho while the applicant was accordingly canceled. not and a warrant for his extradition from South Africa was signed.

### Challenges and factors inhibiting full equality and non-discrimination

28. Customary law as well as Basotho's cultural practices remain a big challenge to effective implementation of equality between men and women in areas of succession to the throne and in chieftainship. In terms of section 18(4) (c) of the Constitution, anything done under Sesotho Customary Law is immune from the non-discrimination provisions under section 18. Therefore, customary laws which have discriminatory effect are not regarded as discriminatory.
29. Section 10 of Chieftainship Act limits succession to chieftainship to male children. This section is based on Sesotho Customary Law and the Constitutional Court in the case of ***Senate Masupha v Senior Resident Magistrate of the District of Berea and Others***, declined to declare section 10 discriminatory and unconstitutional because of section 18(4)(c). The case is currently before the African Commission.

### Efforts which the government has taken to mitigate these challenges

30. There is currently an in-house review of the Chieftainship Act in order to include women to succeed to chieftainship.
31. The government of Lesotho in partnership with the College of Chiefs and other Civil Society Organisations has embarked on awareness-raising ***lipitso*** (community

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gatherings) campaigns for recognition of the inherent dignity of women and equality of all persons regardless of their sex and to change people's mindsets about the place and value of a Mosotho woman in society, in the country's economic development and in leadership including traditional leadership.

#### ARTICLE 4: RIGHT TO LIFE AND PERSONAL INTEGRITY

##### Constitutional measures

32. Section 5 of the Constitution of Lesotho protects the right not to be deprived of life arbitrarily. Exceptions under which the Constitution permits deprivation of life are: when a person is killed in defence of property or from violence of any person,<sup>9</sup> to prevent escape from lawful arrest, or to prevent escape from lawful detention,<sup>10</sup> for purposes of suppressing a riot, insurrection or mutiny<sup>11</sup>, to prevent commission of a crime by that person<sup>12</sup>, as a result of a lawful act of war or lastly in execution of sentence of death imposed by a court in respect of a criminal offence under the law of Lesotho.<sup>13</sup>
33. That is, the Constitution of Lesotho has retained the death penalty. However, such penalty is imposed in very rare and extreme cases only. The last death sentence was confirmed by the Court of Appeal in 1996 in the case of *Nkosi v The Crown*.<sup>14</sup> Since then, the Court of Appeal of Lesotho has always commuted a sentence of death delivered by the High Court to custodial sentence including life imprisonment or imprisonment for a defined period.<sup>15</sup>

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<sup>9</sup> Constitution of Lesotho section 5(2) (a).

<sup>10</sup> Constitution section 5(2) (b).

<sup>11</sup> Constitution of Lesotho section 5(2) (c).

<sup>12</sup> Constitution of Lesotho section 5(2) (d).

<sup>13</sup> As above.

<sup>14</sup> *Nkosi v The Crown* (1993-1994) LLR-LB 39.

<sup>15</sup> See for example in *Molise v. Rex LAC* (2007 – 2008) 61, where a death sentence was altered to imprisonment for a period of 17 years.

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**Legislative measures**

34. Legislative measures aimed at protecting the right to life include the **Penal Code Act No. 30 of 2010 (PCA)** and the **Criminal Procedure and Evidence Act No. 9 of 1981 (CP&E)** both of which proscribe murder. The two statutes also contain specific provisions with regard to the offences for which death penalty shall be imposed as well as the mode of its execution. According to sections 297 and 40 of the **CP&E** and **PCA** respectively, death sentence shall only be granted by the High Court upon an accused being convicted of murder with no extenuating circumstances, treason and rape. It is important to note that the common law crime of rape has been repealed by the **Sexual Offences Act No. 3 of 2003 (SOA)** which also contains the sentence of death in a case where a person convicted of a sexual offence is HIV positive and at the time of commission of the offence, such a person had knowledge or reasonable suspicion of the infection.<sup>16</sup>
35. Section 297 of the CP& E prohibits carrying out of a death sentence against a woman who by wilful act or omission causes death of her child being a child of under the age of 12 months. Furthermore the Act prohibits the carrying out of the sentence against a person convicted of an offence punishable by death if in the opinion of the court, that person was under the age of 18 when he committed the crime.<sup>17</sup>
36. **Section 298 (1) of the CP& E** prescribes the manner in which death penalty shall be carried out as follows:

***The form of sentence to be pronounced upon a person who is convicted of an offence punishable with death and sentenced to death shall be that he be returned to custody and that he be hanged by the neck until he is dead.***

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<sup>16</sup> Sexual Offences Act section 32(a)(vii).

<sup>17</sup> CP&E section 297(2)(b).



## ARTICLE 5: RIGHT TO DIGNITY, PROHIBITION OF TORTURE AND SLAVERY

### Constitutional measures

37. The Constitution of Lesotho entrenches a number of rights in recognition of the right to dignity. The right to dignity is an inherent right of every human being by virtue of being human, unqualified in its application. Section 8 of the Constitution protects the right to freedom from torture and other inhuman or degrading treatment in the following words:

***(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.***

***(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution.***

38. Section 9 of the Constitution of Lesotho entrenches the freedom from slavery and forced labour. Limitations with regard to forced labour are:

***(a) Any labour required during any period when Lesotho is at war or a declaration of emergency;***

***(b) Any labour reasonably required by law as part of reasonable and normal community or other civic obligations;***

***(c) Any labour required in consequence of a sentence or order of court;***

***(d) Any labour required of a person in lawful detention necessary for the interests of proper hygiene or maintenance of a place at which he is detained and***

***(e) Any labour required of a member of a disciplined force.<sup>18</sup>***

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<sup>18</sup> Constitution of Lesotho section 9(3).

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**Legislative measures**

39. **Section 7 of the Labour Code Order of 1992** provides that any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed for his or her own benefit or the benefit of any other private individual, association or other such body shall be guilty of an offence.
40. **Section 228 of the CP& E** provides for exclusion of evidence induced by torture from the criminal proceedings. This section was interpreted by the Lesotho Court of Appeal in the case of *Mabope and Others v Rex*.<sup>19</sup> In this case, the Court held that a pointing out, done consequent to torture of the person who makes it, is not free and voluntary and therefore inadmissible as evidence to prove commission of a criminal offence.<sup>20</sup>

**Administrative measures for prohibition of torture and slavery**

41. Section 10 of the LMPS Service Charter provides that, law enforcement officials shall not inflict, instigate or tolerate any act of torture or other cruel, or degrading treatment or punishment in any circumstances and shall refuse to obey any order to do so.

**Judicial measures**

42. The judicial measures adopted with regard to torture are that the Courts of Lesotho have excluded from criminal trials, evidence which has been obtained through torture. They have also provided judicial redress to victims of torture. These measures are illustrated in court cases arranged in tables **A2** and **A3** below.

**Table A2: Cases of police torture before the High Court**

Case	Facts	Ruling
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<sup>19</sup> *Malefetsane Phala Mabope and Others v Rex* 1993/1994 *Lesotho Law Reports* 154.

<sup>20</sup> As above.

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<b><i>R v Tau Lefu C of A (Cri) No.6/2011</i></b>	Respondent was convicted for two counts of murder and sentenced to 36 years imprisonment. He appealed against sentence.	The Court held that sentencing is a prerogative of a trial court. However, where the sentence is so excessive as to be grossly disproportionate to the offence charged, that amounts to torture and justifies intervention by the Court of Appeal. Sentenced reduced to 20 years.
<b><i>Thuso Matlotlo v R CRI/A/5/2001</i></b>	Applicant, a 52 year old man was charged before a magistrate court for abduction of a 14 year old girl for marriage. He pleaded guilty to the charge and was convicted. He appealed to the High Court and claimed that he had pleaded guilty because of torture.	The accused did not inform the Magistrate of the alleged torture. He raised it for the first time on appeal. His appeal was thus dismissed.
<b><i>Mosehle Molise v Officer Commanding Thaba- Tseka Police Post &amp; 2 Others</i></b>	Plaintiff was arrested on suspicion of stock theft. While in police custody he was severely assaulted. Ultimately the cattle were found, but not in his	The assault is clearly a criminal offence for which the perpetrators must be charged. Plaintiff was awarded M50, 000.00 for assault, M3, 000.00

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	possession. He lodged an action for damages. Allegations on torture were not refuted.	for pain and suffering and M12,000.00 for disfigurement.
<b><i>Morie Motiane v Officer Commanding Mabote Police &amp; Others CIV/T/507/2007</i></b>	This was an action for damages for both physical and psychological torture of the plaintiff by the police. He was arrested on suspicion of having committed murder. He was severely assaulted and suffocated. Medical reports showed swollen genitals, abrasions on both knees, wrist, chest and back.	Plaintiff's claim was upheld and he was awarded M50,000.00 for pain and suffering, M30,000.00 for <i>contumelia</i> and M605.00 for medical expenses.
<b><i>Mare Gilbert Taole v Sehloho &amp; Others CIV/T/27/2010</i></b>	This was a case for damages as a result of unlawful arrest, detention and assault of the plaintiff by the police. He was suspected of having stolen a laptop at his workplace. Liability was admitted but quantum of damages claimed was contested.	Plaintiff was awarded M200,000 for assault, M40,000 for unlawful arrest and detention and M200.00 for medical fees.

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<p><b><i>Zheng Shu Xhian v Chief Magistrate &amp; Others</i></b> <b><i>CRI/ANP/129/2012</i></b></p>	<p>Applicant was charged with contravention of S.6 of the Anti-Trafficking in Persons Act 2011. He pleaded guilty to the charge and was convicted. He lodged an appeal to the High Court in which he alleged that he pleaded guilty due to severe assaults and suffocation to which he had been subjected by the police while in custody.</p>	<p>The High Court set aside proceedings of Magistrate Court and found them to be irregular and prejudicial to the accused. The conviction was set aside and applicant set free to go home. However the Court held that the Crown was at liberty to institute fresh proceedings against him.</p>
<p><b><i>Lori Ramashala v Makutle Makutle &amp; 2 Others</i></b> <b><i>CIV/T/72/2011</i></b></p>	<p>Action damages arising out of unlawful arrest and torture. Plaintiff was arrested on suspicion of housebreaking and theft. He was severely assaulted with sticks and iron bars under his feet and on his waist. He was released and never charged with the offence which he was suspected of having committed.</p>	<p>Plaintiff was awarded M50,000.00 for unlawful arrest, M50,000.00 for assault, M50,000.00 for <i>contumelia</i> and M170.00 for medical expenses.</p>

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<b><i>Malefane &amp; Others v Letseng Diamonds</i></b>		
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43. There has also been numerous reports of torture of members of the Lesotho Defence Force (LDF) by other LDF officials accused of civil and military offences as well as torture of members of the public by LDF officers during internal order operations. Cases of military torture are illustrated in **table A3** below.

**Table A3: Torture cases within the LDF**

<b>Case</b>	<b>Facts</b>	<b>Ruling</b>
<b>Jobo &amp; Others v Commander LDF &amp; Others CIV/APN/189/194/198/203/2005</b>	Applicants were wives of members of the LDF who were arrested and detained on suspicion of mutiny. They lodged habeas corpus applications for release of production of the bodies of their husbands in court. They had not been informed of their arrest and alleged that their husbands had been kidnaped. Pursuant to the habeas corpus orders, the detained soldiers were brought to court handcuffed, feet in	The Court held that where serving soldiers are arrested under section 86 of the LDF Act , regardless of their rank, no one has the right or authority to order such soldiers to be tortured or o be subjected to inhuman or degrading punishment or other treatment. The Court held further that such treatment is not attenuated by section 24 of the Constitution, which states that the right to freedom from torture and

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	shackles and some with hooded faces. They told the court that they had also been subjected torture.	CIDT cannot be deviated from pursuant to the law of disciplined forces, such as the LDF. <sup>21</sup> The Court equated the shackling of detained solders to slavery and warned the Ministry of Defence, the Commander of the LDF and the Director of the Military Intelligence of the irreparable damage that these acts could cause to the image of Lesotho in the eyes of the international community. <sup>22</sup>
<b>Ramorantsi Ntaote v Commander LDF &amp; Others CIV/T/125/2001 (judgment May 2011)</b>	Plaintiff claimed damages for unlawful arrest, search, detention, assault and torture by members of the LDF and the Police. He was arrested on suspicion of burglary which had taken place at the LDF armoury while he was on duty. According to evidence led	He was awarded M20,000.00 for unlawful search, M100,000.00 for detention, M100,000.00 for assault and torture, M20,000.00 for pain and suffering and M10,000 for future medical expenses.

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<sup>21</sup> As above para 6.

<sup>22</sup> As above para 9.

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	before Court, the assault led to deterioration of his physical and mental health as a result of which he underwent medical review for over five years.	
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44. The arrest, detention and torture of members of the LDF beginning May 2015 as illustrated in the case of ***Jobo & Others v Commander LDF & others*** in **table A3** above led to killing of the commander of LDF Lieutenant General Maaparankoe Mahao on 25 June 2015. This killing led to the SADC's intervention and establishment of the Commission of Enquiry into the Lieutenant's death and circumstances surrounding it. The Commission also noted its report that according to information brought before it, the detained soldiers had been subjected to torture.<sup>23</sup>

## Challenges

45. The main challenge with regard to criminalisation of torture in Lesotho is that there is no specific anti-torture law except that **sections 94 and 95 of the Penal Code Act** proscribe torture committed as part of war crimes or crimes against humanity. As a result, officials who are implicated in cases of torture are seldom prosecuted and where they are, they are prosecuted under the Penal Code Act for offences such assault, or murder where the torture has resulted in the death of a victim.
46. Despite trainings to discourage police officers to use torture as an interrogation tool, prevalence of torture in Lesotho is high. There is a huge number of cases of torture

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<sup>23</sup> SADC Commission of Enquiry Report



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reported to the Police Complaints Authority and those in which members of the public have claimed damages against the government for acts of torture committed by the police and by the LDF as illustrated in **tables A2** and **A3** above. The police also resort to use of live ammunition to suppress riots and at times this leads to deaths and injury of members of the public.

### **Corporal punishment in the penal system**

47. It is important to indicate that although section 8(2) and section 307 of the CP&E authorise corporal punishment which had been part of the penal system of Lesotho for a long time, it has however been declared inhuman and degrading and is no longer administered.
48. Corporal punishment is no longer practiced as a form of punishment in the Lesotho's Penal system including in correctional institutions as well as the Juvenile Training Centre (JTC) where children in conflict with the law are rehabilitated.

### **Corporal punishment in schools**

49. **Children's Protection and Welfare Act No. 7 of 2011 (CPWA)**, abolishes corporal punishment together with any other form of punishment which is cruel, inhuman and degrading on children in execution of a sentence for a juvenile offence.<sup>24</sup>
50. **Section 4 of Education Act No. 3 of 2010** explicitly prohibits subjection of learners to cruel, inhuman and degrading punishment in schools. Although the section does not expressly forbid corporal punishment in schools, the **Statement of Objects and Reasons of the Education Act** mention specifically that the Act abolishes corporal punishment in schools in accordance with section 8 of the Constitution of Lesotho.<sup>25</sup>

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<sup>24</sup> CPWA, section 161.

<sup>25</sup> Statement of Objects and Reasons of the Education Act, paragraph 5.

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51. However, the challenge is that some schools still administer corporal punishment and because this type of punishment is still used in the homes, many parents do not report teachers who administer this form of punishment on their children.

**Progress made and proposed measures to end torture in Lesotho**

52. The Kingdom of Lesotho is committed to eradication of torture in Lesotho. To this end, it has ratified the **UN Convention against Torture (CAT) 1984** and is committed to implementing its provisions including the obligation to enact an anti-torture law which is compliant with CAT, article 5 of the African Charter as well the African Commission's Robben Island Guidelines adopted in terms of the **African Commission Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) 2002**.
53. In collaboration with development partners and civil society organisations the government of Lesotho has and continues to hold human rights trainings for all members of the Law Enforcement Agencies. The trainings are meant to sensitise the law enforcement officers that torture is a crime and a human rights violation which should not be used as an interrogation tool. Human rights is also included in the curriculum of the Police Training College (PTC) as well as the other law enforcement agencies.

**ARTICLE 6: RIGHT TO LIBERTY AND SECURITY OF PERSON**

**Constitutional measures**

54. Section 6 of the Constitution of Lesotho entrenches the right to liberty by providing that every person shall be entitled to personal liberty, that is to say he shall not be arrested or detained save as may be authorised by law.
55. The right to liberty may however be derogated from in the following circumstances:

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- (a) In execution of the sentence or order of a court, whether established for Lesotho or for some other country, in respect of a criminal offence of which he has been convicted;*
- (b) In execution of the order of the court punishing him for contempt of that court or of a tribunal;*
- (c) In execution of the order of a court, made to secure the fulfilment of any obligation imposed on him by law;*
- (d) For purposes of bringing him before a court in execution of the order of a court;*
- (e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Lesotho;*
- (f) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;*
- (g) For the purpose of preventing the spread of an infectious or contagious disease;*
- (h) In the case of a person who is or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or the protection of the community;*
- (i) For the purpose of preventing the unlawful entry of that persons in Lesotho, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Lesotho or for the purpose of restricting that persons while he is being conveyed through Lesotho in the course of his extradition or removal as a convicted prisoner from one country to another; or*
- (j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Lesotho or prohibiting him from being within such an area, or to such extent as may be reasonably justified for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining*

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***that person during any visit that he is permitted to make to any part of Lesotho in which, in consequence of any such order, his presence would otherwise be unlawful.***

56. The Constitution also provides the following safeguards for protection of arrested and detained persons:

- Section 6(2) provides that the arrestee shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention;
- Section 6(3) provides that a detained person shall be brought to court within forty-eight (48) hours of his arrest or as soon as is reasonably practicable. Where the detained person is brought to Court after 48 hours, the onus is on the arresting officer to prove that the period is reasonable.

### **Legislative measures**

57. The right to liberty is implemented through a number of legislative measures: Part V of the CP&E provides for the processes and procedures of arrest under the law either with or without a warrant.<sup>26</sup> **Sections 47 and 100 of the Penal Code Act** prohibit unlawful detention and taking of hostages respectively. **Speedy Court Trials Act No. 9 of 2002** provides for bringing accused persons promptly before court and also for criminal cases to be heard within a reasonable time.

### **Judicial measures**

58. Persons deprived of their liberty and or their relatives have recourse to several remedies including the writ of *harbeas corpus*. This remedy has been resorted to and upheld in

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<sup>26</sup> CP&E sections 23 to 38.

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several cases in which relatives sought orders for the Court to direct that the whereabouts of their relatives be disclosed either by the police or the army and that they be produced in court whether dead or alive some of which are illustrated in the table below.

**Table A4: Right to liberty cases**

Case	Remedy sought	Result
<b><i>Jobo &amp; Others v Commander LDF &amp; Others</i></b>	Harbeas corpus of solders who had allegedly been kidnapped by member of military intelligence	Soldiers brought to court and an explanation given that they had been arrested on suspicion of having committed mutiny
<b><i>Mamphanya Mahao v Commander LDF &amp; Others</i></b>	Harbeas corpus	Explanation given that the Applicant's husband had been killed in a crossfire during his arrest for alleged mutiny
<b><i>Khetheng Commissioner of Police &amp; Others</i></b>	Harbeas corpus in relation to a police officer who was last seen in police custody	In 2016 the COMPOL responded that the Applicant's son had been released. A year later his body was exhumed from a mass grave meant for unknown corpses and high ranking police officers and a former minister of defence were arrested and charged with his murder
<b><i>Commander Lesotho Defence Force and Others v Mareka (C OF</i></b>	Close Arrest in relation to a soldier who	The Court of Appeal upheld a decision of the High Court to place the Respondent under close arrest, as an alternative to being detained citing the jurisdiction of the court to interfere with

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<b>A (CIV) 27/15) [2015] LSCA 23</b>	the functions of any functionary when it involves the fundamental rights of a person.
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59. Where a person has been subjected to unlawful detention, he or she is also entitled to a remedy of compensation. Similarly, this remedy has been utilised as illustrated in the table below:

**Table A5: Unlawful detention cases**

<b>Case</b>	<b>Remedy sought</b>	<b>Result</b>
<b><i>Kopo and Another v Commander Lesotho Defence Force and Another</i> (CIV/T/259/2008) [2011] LSHC 122</b>	Damages for unlawful detention	The two (2) plaintiffs who sued for damages resulting from an unlawful detention were awarded the M100,000.00 and M40,000.00 respectively.
<b><i>Kalaile v Commissioner of Police and Another</i> (CIV/T/23/10) [2011] LSHC 130 (20 September 2011)</b>	Damages for Unlawful detention and malicious prosecution	The High Court awarded the plaintiff damages to the tune of M40,000.00.
<b><i>Thabang Maketsi and Another v COMPOL and Another</i></b>	Damages for Unlawful detention and arrest	The High Court awarded the plaintiff damages to the tune of M15,000.00.

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<b>(CIV/T/550/2011) [2013] LSHC 32</b>	
<b><i>Matete v Monyane and Others (CIV/T/579/2006) [2011] LSHC 98</i></b>	Damages for Unlawful detention      The High Court awarded damages to the tune of M51,000.00.

### **Challenges with implementation of the right to liberty**

60. One of the major challenges which Lesotho is facing is that despite continuous trainings, the police officers still have the culture of arresting suspects in order to carry out their investigations and do not investigate and arrest when ready to take the suspects to court. This has led to a number of cases in which the police have had to apply for further detention of suspects who are at times released without being charged. A state which could be avoided if proper investigations were carried out before the arrest.
61. The other challenge is that backlog of cases in the courts of law result in many people awaiting trial for prolonged periods which sometimes go beyond the period for which they would be detained if convicted.

### **Progress and measures proposed to address the challenges**

62. In order to address the challenge of backlog of criminal cases, over and above overseeing effective implementation of the Speedy Court Trials Act, the government of Lesotho has resorted to Restorative justice in terms of which suspects and victims of crime are reconciled and the suspect is ordered to make up for his wrong-doing through other means such as compensating the victim and other forms of punishment other than imprisonment. This is mostly done in minor non-violent offences.

## ARTICLE 7: RIGHT TO FAIR TRIAL

### Constitutional measures

63. The right to fair trial is entrenched in **section 12 of the Constitution** of Lesotho. Section 12 provides several guarantees including the following to ensure fair trial in criminal proceedings:

- Section 12(1): fair trial, within a reasonable time and by an independent and impartial court established by law;
- Section 12(2)(a) presumption of innocence until proven or pleaded guilty;
- Section 12(2)(b) prompt and detailed information of the nature of the offence charged, in a language which the accused person understands;
- Section 12(2) (c) adequate time and facilities to prepare for one's defence;
- Section 12(2)(d) legal representation of one's choice;
- the right to have an interpreter if the accused cannot understand the language of the proceedings;
- The Constitution also provides for the right to fair determination of a person's civil rights.

### Legislative measures

64. The constitutional protection of the right to fair trial is implemented through a number of legislations which regulate conduct of criminal trials as well as legal representation in all court proceedings. These laws include:



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- The **Legal Aid Act** which offers a statutory mechanism for provision of legal aid to indigent persons who cannot afford private legal representation.<sup>27</sup>
- **Speedy Court Trials Act** ensures that criminal trials are prosecuted within a reasonable time.
- **Section 228 of the CP & E** guards against self-incrimination by providing that evidence obtained through torture must be excluded from criminal proceedings.

**Judicial measures**

65. The inherent nature of the right to fair trial has been emphasised in various decisions such as:

- ***Commander of the Lesotho Defence Force v Maluke***.<sup>28</sup> In this case, the Commander of the Lesotho Defence Force had, at the army parade, labelled the Respondent as a criminal and expressed a need for the institution to make an example of him. The parade was attended by all members of the Court Martial who later presided over the criminal trial referred to by the Commander. The accused soldier challenged composition of the Court on the basis that it violated his right to fair trial. The Court of Appeal struck down the proceedings of the Court Martial on the basis that an exemption provision in the constitution saving the disciplined forces from the operation of the Bill of Rights did not abrogate rules of natural justice. The court thereby affirmed protection of fair trial rights under Section 12 of the Constitution.

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<sup>27</sup> The Act provides that whenever a person appears to a judicial officer to be in need of legal aid and has insufficient means, a magistrate may certify to the Chief Legal Aid Counsel that such person in the interests of justice in need of legal aid. Then the Chief Legal Aid Counsel shall then undertake the defence of such person.

<sup>28</sup> *Commander of the Lesotho Defence Force v Maluke* [2014] LSCA 42.

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- In ***Security Lesotho v Moepa***,<sup>29</sup> the High Court struck down a provision of the Labour Code Order which restricted right to legal representation in the Labour Court only when all the parties agreed to legal representation. The Court held the impugned provision to be inconsistent with Section 12(8) of the Constitution.
- In ***Zaly v Prime Minister***,<sup>30</sup> the High Court in its constitutional jurisdiction struck the provision of the Codes of Good Practice under the Public Service Act. The provision denied complete legal representation in disciplinary matters regardless of the gravity and complexity of the matter. The Court held that this provision is inconsistent with Section 12(8) of the Constitution.

### Administrative measures

66. The Legal Aid Act establishes office of the Legal Aid Counsel whose mandate is to provide legal assistance, including representation in criminal cases, for indigent people who cannot afford legal fees.
67. The government also pays fees to cover some costs of legal practitioners who provide *pro deo* legal representation to suspects of capital offences such as murder.
68. The government of Lesotho also supports academic and professional institutions as well as Civil Society Organisations such as the **National University of Lesotho Legal Aid Clinic (NULLAC)**, **Federation of Women Lawyers (FIDA)** and **Women and Law in Southern Africa (WILSA)** which provide legal aid to indigent people.

### Challenges

69. Challenges which hamper full implementation of the right to fair trial in Lesotho are:

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<sup>29</sup> *Security Lesotho v Moepa* [2015] LSHC 11.

<sup>30</sup> *Zaly v Prime Minister* Constitutional Case No. 15/2013.

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- Backlog of cases hamper speedy determination of both criminal and civil trials.
- In many cases such as those of ritual murder, the public often take the law into their hands and assault the suspects even before the police arrive at the crime scene. In order to address this challenge, the government of Lesotho has established Community Policing Forums comprised of members of the public who form crime preventing committees and are trained on the steps to take when the public has arrested suspects of crimes. The government is also engaged in public awareness campaigns through public gatherings and radio programmes in which members of the public are taught on the dangers of self-help and to cooperate with members of community policing forums to apprehend suspects and hand them over to the police instead of assaulting them.
- There are also instances in which court files disappear and leads to acquittal of suspects for want of prosecution or for lack of evidence. For instance, the case of ***R v Monyane Moleleki*** was dismissed because the court file could not be found.

## ARTICLE 8: FREEDOM OF CONSCIENCE

### Constitutional Measures

70. The right to freedom of conscience is entrenched in **section 13 of the Constitution** of Lesotho. The freedom includes enjoyment of freedom of thought and of religion, freedom to change religion or belief and freedom to manifest and propagate his religion in worship, teaching, practice and observance.
71. Lesotho is predominantly a Christian country, with the majority of people subscribing to various denominations of Christianity. However, there are no laws which force people into Christianity and the laws also allow other religions such as Islam and other African-based religions to be practiced freely.

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72. The Constitution itself as well as other legislative instruments prescribes series of oaths of office that contain religious connotations.<sup>31</sup> However, the Courts are particularly aware of the right to freedom of conscience and therefore witnesses who do not wish to take an oath are given the freedom to make an affirmation instead.

**Legislative measures**

73. **Section 13 Education Act 2010** proscribes rejection or failure to admit students in schools on the basis of their religion.

**ARTICLE 9: FREEDOM OF SPEECH AND RIGHT TO RECEIVE INFORMATION**

**Constitutional measures**

74. **Section 14 of the Constitution** of Lesotho entrenches freedom of speech and right to receive information. Section 14(2) contains limitations within which the right may be enjoyed consistent with its obligations under the Charter. These are:

*(a) The interest of defence, public safety, public order, public morality or public health; or*

*(b) For the purposes of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerns in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or*

*(c) For the purpose of imposing restrictions upon public officers.*

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<sup>31</sup> Schedule 1 of the Constitution of Lesotho 1993 'OATH OF OFFICE OF KING' the oath begins by saying, 'In the presence of the Almighty God...' and ends with a declaration, 'SO HELP ME GOD...'

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75. **Section 14 (4) of the Constitution** also provides a right of reply to statements made in public by a medium of communication.

**Legislative measures**

76. There is no law guaranteeing the media or citizens access to information and in particular state information. There is however, the **Receipt and Access to Information Draft Bill** which had been drafted by the Lesotho Law Reform Commission but has not yet been tabled before parliament.
77. The Parliament of Lesotho has enacted the **Communications Act** with mandate to regulate telecommunications, broadcasting and postal services. It further provides establishment of an Authority with a mandate to promote, develop and supervise provision of telecommunication service in Lesotho. The Authority has the power to grant broadcasting licenses.<sup>32</sup>
78. The **Communications Act** also establishes the Broadcasting Disputes Resolution Panel which has been operational since July 2013. The panel is established to develop a broadcasting code.

**Administrative measures**

79. The **Broadcasting Code of 2014** is currently awaiting ministerial approval. Furthermore the Act establishes the independence of the Lesotho National Broadcasting Services and the Postal Services.
80. Lesotho developed an **ICT Policy** which embodies a vision to create a knowledge based society fully integrated in the global economy.<sup>33</sup> The policy embodies a notion that access

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<sup>32</sup> The Communications Authority was created under law by the Lesotho Telecommunications Authority Act No. 5 of 2000 which is now repealed by the latter Act.

<sup>33</sup> ICT Policy for Lesotho adopted in 2005

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to information is key to meaningful participation in the political process. Some of the key aspects of its purpose is wealth creation, increase in ICT literacy in the country and empowerment of local participation of Basotho in the ICT sector.

81. In 2014, the government launched a **Radio Frequency Spectrum Management Policy** which clears a way for the implementation of innovative technological developments in line with its information access and dissemination objectives.

**State of media freedom in Lesotho**

82. Generally there is a wide consensus on the acceptance of freedom of speech. Media has played a key role in the advancement of freedom of speech in Lesotho since the media is often a platform of exchange of ideas and opinions which form the bedrock of this freedom. Lesotho has several independent newspapers which operate freely despite being often seen as critical of the government. There are more than 10 commercial radio broadcasters and two state run radio stations. There is one state-owned television broadcaster.
83. Social media such as Facebook, twitter and instagram are available in Lesotho. These are freely accessed and citizens often express their views on these media without interception. Neither are e-mails nor telephone communications through voice, text and whatsapp censored in Lesotho. There is no law which governs social media generally. The challenge with this freedom however, is that sometimes users of social media overstep the boundaries and violate the rights of other users or incite violence. Hence the government is considering regulation of the use of social media in Lesotho although no measures have been put in place yet.

**Challenges**

84. Despite considerable strides to guarantee the right to freedom of expression in Lesotho there are still laws which limit the ambit of this freedom. These include:

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- **Sedition Proclamation No. 4 of 1938:** section 4 of the Act prohibits uttering of seditious words. This section was used in the case of *R v Billy Macaefa (C of A (CRI) No. 9/2008) [2008] LSCA 21 (17 October 2008)* in which a leader of a workers union was charged with sedition in that he was inciting hatred towards the government of Lesotho during a speech at the union's rally.
- **The Internal Security (General) Act No. 24 of 1984, Official Secrets Act of 1967, Obscene Publications Proclamation 1912 and Printing and Publications Act No 10 of 1967** also limit the right to freedom of expression.

85. Due to political instability, Lesotho has experienced instances in which the right to receive information has been violated. For instance, on 30 August 2014, all local radio stations (private and public) were cut off air, allegedly by the military, for about five hours during what has been classified as an attempted coup. In a spate instance, a newspaper editor was shot and in other cases editors have been assaulted and or threatened. This challenge has been addressed by investigation and arrest of suspects who have been remanded on bail and the trial is yet to take place.
86. Because there is only one television channel in Lesotho, there is a perceived selective coverage of events relating to the ruling political party to the exclusion of opposition parties. The government is however taking all measures, especially during political rallies and elections campaigns to ensure that all political parties and independent candidates who stand for elections are given equal time on national television.

## ARTICLES 10 AND 11: FREEDOM OF ASSOCIATION AND ASSEMBLY

### Constitutional measures

87. The Constitution entrenches the freedom of association and assembly under sections 15 and 16 respectively. It permits association with other persons for ideological, religious, political economic, labour, social, cultural and recreational purposes. However, sections

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15(2) and 16(2) of the constitution limit these freedoms for the interest of defence, for protecting other persons and imposing restrictions on public officers.<sup>34</sup>

### Legislative measures

88. Freedom of association and assembly is further protected through a number of legislations such as:

- **Public Meetings and Processions Act No. 14 of 2010.** Section 3 of this Act provides for application process of holding a procession or an assembly. In order to ensure that the application process is not abused, the Act provides that the police should exercise their power timeously and favourably unless exceptional circumstances exists which would harm peace and public safety and security. The Act allows for an appeal to be lodged with the Minister responsible for Police should the Commissioner of Police refuse to grant a permit to conduct a peaceful assembly within the ambits of the law. In 2016, the Minister of Police upheld an appeal by students of the National University of Lesotho who were assembling against the government on what they perceived as a flagrant use of state resources to finance a controversial government fleet tender.
- The **Labour Code Order No. 24 of 1992** permits freedom of association for both employers and employees.<sup>35</sup> It also allows for the freedom of assembly in a form of industrial actions such as strikes and lock-outs.<sup>36</sup>
- The **Public Service Act of 2005** allows public servants freedom of association.

### Judicial measures

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<sup>34</sup> Sections 15(2) and 16(2) respectively for the interests of defence, for protecting other persons and imposing restrictions on public officers.

<sup>35</sup> Labour Code Order sections 6 and 168.

<sup>36</sup> Labour Code Order section 229.



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89. Pursuant to section 22 of the Constitution of Lesotho, the following cases pertaining to freedom of assembly and association have been adjudicated by the courts of Lesotho.

**Table A6: Freedom of assembly and Association cases**

Case	Facts	Ruling
<b><i>Lesotho Chamber of Commerce and Industry &amp; Others v Commissioner of Police &amp; Others CIV/APN/405/11</i></b>	Applicants had made an application for a permit under section 3 of the Public Meetings and Processions Act 2010 to hold a procession to inform the Prime Minister of their grievances pertaining to textile workers pay, taxi fare etc. however, on the eve of the procession, the permit was cancelled.	The police must be inclined to grant the permits unless if there exist exceptional and compelling threats or harm to peace, public safety or public order. Such discretion must also be exercised timeously in order for it not to infringe on the constitutionally protected right to freedom of assembly.
<b><i>National University of Lesotho v Ntitsane &amp; 61 Others</i></b>	NUL staff had grievances against management concerning working conditions and administration of the university. The staff members held 2 prayer sessions next to the administration block every	The Court held that because the prayers were not authorised, the staff must cease from such prayer sessions. Whether the prayers were legitimate or not, the court held, was neither here nor there. Consequently the

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day at 8;00 am and 4;pm. application for interdict was  
The university upheld and staff members  
management sought an prohibited from the prayer  
interdict against staff sessions.  
members on the ground  
that such prayers  
amounted to nuisance and  
also likely to disturb peace  
and bring about destruction  
of university property.

## Challenges

90. Challenges pertaining to freedom of association and assembly in Lesotho mostly affect public servants because, unlike the Labour Code Order which does not have stringent conditions on recognition of workers' unions, the Public Service Act requires that such associations have to be registered as friendly societies under **Societies Act No. 20 of 1966**.<sup>37</sup>
91. The other challenge is that public officers' associations become legible for recognition by the employer for collective bargaining purposes, only when they have membership of over 50 percent of overall public officers in the area concerned.<sup>38</sup>
92. The other limitation imposed by legislation on the freedom of assembly is that public officers are prohibited from engaging in strikes.<sup>39</sup>

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<sup>37</sup> Public Service Act section 21.

<sup>38</sup> Public Service Act section 22(2).

<sup>39</sup> Public Service Act section 19(1).

## ARTICLE 12: FREEDOM OF MOVEMENT

### Constitutional measures

93. Freedom of movement is provided for under section 7 of the Constitution. It provides that every person is entitled the right to move freely within Lesotho, the right to reside in any part of Lesotho, right to enter and leave Lesotho and immunity from expulsion from Lesotho. The Constitution also provides specific limitations to this freedom some of which are:

- (a) The interest of defence, public safety, public order, public morality or public health;*
- (b) By order of court when a person has been convicted of an offence, is admitted to bail and such restriction is a bail condition, or to secure his presence for extradition or lawful removal from Lesotho;*
- (c) For the prohibition of entry into Lesotho of a person who is not a citizen of Lesotho;*
- (d) For extradition*

### Legislative measures

94. Freedom of movement is protected through several laws including the **CP&E** which protects the right to liberty as illustrated under **Article 6** above, as well as the **Aliens Control Act 1966**, **Refugee Act 1983** and **Citizenship Act 1971** all of which regulate entry as well as sojourn in Lesotho.

### Judicial measures

95. The provisions of section 7 of the Constitution, the Aliens Control Act as well as Citizenship Act have been interpreted by the Constitutional Court of Lesotho as illustrated in the following cases:

### Table A7: Freedom of movement cases

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<b>Case</b>	<b>Facts</b>	<b>Courts' ruling and interpretation of the right to movement</b>
<b><i>Zwelakhe Mda v Minister of Home Affairs and Others.</i></b>	Applicant was denied a replacement for his passport which was due to expire. His application was turned down on the basis that he is not a born in Lesotho but in South Africa in 1956 as his father's 1985 application for naturalisation states that when he came to Lesotho 1963 as political refugees, applicant was already born. Applicant gave evidence of his old birth certificate and passport which show that he was born in Lesotho.	The Court held that refusal to renew applicant's passport amounts to arbitrary deprivation of citizenship status which is unjustified and violates his freedom of movement, particularly the right not to be refused entry to and exit from one's country.
<b><i>Pholoana Lekhoaba and another v Director of immigration and others</i></b>	Applicant was born in Lesotho but his parents moved to South Africa for employment while he was still of tender age. They then sought South African citizenship. Applicant regarded himself as a citizen of Lesotho because he still had relatives and a home in Lesotho. He	The Court held that the right to freedom of movement cannot be claimed by a person who is not lawfully in Lesotho. It went further that because Applicant failed to renounce his citizenship within five years of attaining majority, he has lost his citizenship of Lesotho which he had gained by birth. He

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	<p>married a Lesotho citizen and on his wedding day, he received a call from the police that he must go back to his home in South Africa. He left and came back the following day during which his wife showed him an order for his deportation which invalidated his temporary residence permit. Hence he lodged an application that he be declared a citizen of Lesotho by birth and also that the deportation order which restricted his movement in and out of Lesotho be declared unlawful, null and void.</p>	<p>was therefore not declared a citizen of Lesotho although the deportation order was declared unlawful, null and void.</p>
<p><b><i>Otubanjo v Director of immigration and others</i></b></p>	<p>The appellant is a Nigerian citizen, who in 2000 applied to the Teaching Service Commission (TSC) of Lesotho to take up a teaching post. He was admitted to the Lesotho Teaching Service. On entry into Lesotho he applied for a permit for indefinite sojourn (or indefinite permit, as it is also</p>	<p>On appeal it was held that freedom of movement includes the right to enter Lesotho and stay anywhere in Lesotho. However, such freedom is limited by section 7(3)(d) of the Constitution which provides that there may laws which restrict movement of persons who are not citizens of Lesotho. The Aliens Control is</p>

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termed) and a permit for temporary sojourn (or temporary permit). This was in terms of sections 6 and 7 respectively of the Aliens Control Act, 16 of 1966. The application for a temporary permit was granted pending permit 184/2001(application for an indefinite permit). This temporary permit was entered in his passport, together with the explicit endorsement until 28 March 2002. On 27 March 2002 the appellant was notified in writing, on behalf of the Minister that the latter had declined to grant the indefinite permit. He was also advised that his temporary permit would not be renewed on its expiry (the next day), and that he should arrange to leave Lesotho by then. He then lodged an application in the High Court that the Minister's decision be declared invalid. The application was dismissed such law and applicant has not showed how the Minister wrongly exercised his powers under the Aliens Control Act whose constitutionality the Applicant did not challenge. Consequently the appeal was dismissed.

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	and he appealed. The appeal was also dismissed.
<b><i>Beth Ktera Nassaka Mujuzi &amp; Others v Director of immigration &amp; Others</i></b>	Applicant entered Lesotho fraudulently, obtained employment as a nurse and was issued with a work permit. Later the work permit was cancelled and an attempt to deport her made. Regardless of fraudulent entrance into the country, the decision to deport her ought to have been done fairly and in accordance with the law. Deportation order stayed and Minister ordered to re-consider her application for permanent residence since she did not pose a threat to national security.

**Challenges and steps to mitigate them**

96. There are several challenges with regard to freedom of movement in Lesotho and most of these are based on Lesotho's political history, unemployment, poverty and the fact that Lesotho is completely surrounded by South Africa which is its only neighbour. Due to these factors, many Basotho cross between Lesotho and South Africa almost daily because they have relatives in South Africa and in Lesotho respectively, for work, medical care, school, grazing of animals and even daily grocery shopping.
97. For those who have travel documents issued by either country, there is not much of a problem, the problem is that for majority of those seeking employment in South Africa, they often do not have travel or work documents or stay in South Africa beyond the time stipulated in their documents.
98. In order to mitigate the challenge of people who stay and work in South Africa without proper documentation and thereby risking deportation, the Ministries of Home Affairs of

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both countries have put in place measures aimed to ease movement between Lesotho and South Africa. The government of South Africa offers **Lesotho Special Permit (LSP)** for those who work in the informal sector such as domestic work, construction and others.

## ARTICLE 13: RIGHT TO PARTICIPATE IN GOVERNMENT

### Constitutional and legislative measures

99. **Section 20 of the Constitution** of Lesotho enshrines every citizen's right to participate in government. This includes the right to part in the conduct of public affairs,<sup>40</sup> vote and stand for elections.<sup>41</sup>
100. Lesotho is a democratic constitutional monarch with a Prime Minister elected by parliament following a National Assembly Elections under a system of universal and equal suffrage and secret ballot after every five (5) years. The legal framework of elections in Lesotho consist of the Constitution as well as the **National Assembly Electoral Act 2011** and **Local Government Elections Act 1998**.

### *Electoral model*

101. At the time of submission of this report Lesotho has held ten (10) National Assembly Elections and different electoral models which were changed due to Lesotho's turbulent political history and post-elections related violence. The first National Assembly Elections were held in 1965, prior to independence, followed by the 1970 elections, during which the then Prime Minister declared a state of emergency and took over power for sixteen years, which regime was ousted through a military coup in 1986. Lesotho restored democratic rule in 1993 although the third parliament was dissolved through what has

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<sup>40</sup> Constitution of Lesotho section 20(1) (a).

<sup>41</sup> Constitution of Lesotho section 20(1) (b).



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been termed a 'royal coup' which was short lived as the forth parliament was restored in 1994. In 1998, another National Assembly Elections was held.

102. Due to political instability which followed the 1998 elections, a government of National Unity was established in 1998 and the electoral model was changed from first-past-the-post to **mixed member proportional (MMP) system** ahead of fresh elections which were held in 2002 in terms of which 80 constituency seats would be retained and 40 proportional representation (PR) seats would be added to ensure greater inclusiveness in the National Assembly. The MMP-PR system was used in 2002 as well as 2007 National Assembly Elections wherein two ballot papers were used. In terms of this model, two ballot papers were used: one for the constituency candidate and the other for the political party. The constituency vote determined who would represent the constituency in the national assembly while the party vote was used to elect candidates from the party lists and compensated parties which had won fewer constituency seats.
103. This model was amended by the **National Assembly Electoral Act 2011** in terms of which the two-ballot system was replaced with a single ballot system. The single ballot system uses a conversion method in terms of which seat allocation is based on votes amassed by a constituency candidate which are converted to party votes.
104. The PR seats are awarded in accordance with a zebra listing. In terms of this listing, all political parties taking part in elections must submit prior to elections, a list of a maximum of 120 party members who will be awarded PR seats based on the formula above. The list must be representative in that when it starts with a male candidate, the next must be a female, followed by a male and so on and so forth.
105. The single ballot system was used in the 2012 national assembly elections which adhered to the five year interval after the 2007 election. The results of the 2012 National Assembly elections yielded Lesotho's first three-party coalition government. However, due to political and security challenges which were brought by the fact that this was the first

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coalition government in Lesotho, in 2014 the first coalition government was dissolved and snap elections were held in 2015. Similar to the 2012 results, gave rise to the seven-party coalition government which also did not live up to the five years but was dissolved pursuant to the vote of no confidence in the Prime Minister and led to 2017 snap elections the result of which is the current four-party coalition government.

***Independent Electoral Commission***

106. Both the National Assembly Elections and the Local Government Elections are overseen by the Independent Electoral Commission (IEC) which is an independent constitutional body created by the **Second Amendment to the Constitution Act No 7 of 1997**. Section 7 of the amendment mandates the IEC to deliver regular, free and fair elections at all levels of government national and local. Mandate of the IEC include demarcation of electoral constituencies, compilation of the voter register, organisation and running of national assembly and local government elections as well as the referenda.

107. In all the elections organised by the IEC, both local and international observers have expressed their satisfaction with the IEC's overall management of the electoral process and its delivery of an acceptable, free, fair, transparent and accessible election to the people of Lesotho.

108. In line with its legislative mandate, the IEC captured the following information in relation to national assembly election in Lesotho:

**Table A8: 2015 elections- registered voters by age and gender**

Age Group	Gender		Grand Total
	Female	Male	
17-19	19,732	15,928	35,660
20-24	90,165	80,842	171,007
25-29	100,510	87,273	187,783

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30-34	101,377	87,952	189,329
35-39	80,602	67,508	148,110
40-44	53,926	44,229	98,155
45-49	43,755	33,080	76,835
50-54	39,703	28,191	67,894
55-59	35,013	23,536	58,549
60-64	28,703	20,901	49,604
65-69	22,719	15,457	38,176
70+	53,961	26,088	80,049
Unknown	4,582	3,554	8,136
Grand Total	674,789	534,539	1,209,287

*Source: IEC Report on 2015 elections*

***Registered political parties and independent candidates***

109. Section 25(1) of the National Assembly Electoral Act 2011 requires that in order for a political party to contest elections, an application must be made by the party President, Chairman or secretary, supported by at least 500 party members whose names appear on the voters list. Pursuant to this requirement, 24 political parties, 5 of which were newly registered, contested the 2015 elections.

110. Twenty four people registered as Independent candidates in 2015 elections.

***Civic and voter education***

111. Prior to elections, the IEC in collaboration with CSOs engage in civic and voter education with the view to enable IEC staff, political parties and individuals to understand and participate meaningfully in the electoral process.

112. The overall objectives set by the IEC for voter education include:

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- To reach out almost every category of elector population with voter/electoral education through crowd pulling strategies and individual mode to avoid post-elections conflict
- To train key stakeholders and IEC staff in the electoral process and other factors which influence credible, acceptable, free and fair elections in line with the international as well as domestic standards and principles of elections administration and management
- To provide information to traditionally marginalised groups such as herd boys in remote areas, people with disabilities, youth and women.

113. These objectives, the IEC fulfills through review and production of voter education and training materials, outreach campaign strategies, popularisation of code of conduct for voters.

114. The IEC also engaged five NGOs to complement its voter education activities. The NGOS engaged for the 2015 snap elections voter education were FIDA, CCJP, WLSA, LNFOD, TRC and CEF. They were able to reach voters as illustrated in the table below.

**Table A9: Voter education coverage**

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<b>Organisation</b>	<b>Districts covered</b>	<b>Thematic area or target group</b>	<b>Total number of voters reached</b>
FIDA CCJP	Butha-Buthe Mafeteng Quthing Qacha's Nek Thaba-Tseka	All groups, voter education in general	69,452
WLSA	Qacha's Nek Thaba-Tseka	Gender issues in elections	12,781 women and girls
LNFOF	Buthat-Buthe Leribe Berea Mafeteng Mohale's Hoek	Participation of persons with disabilities in the electoral process as voters and candidates	16,641
TRC	Leribe Maseru	All groups, voter education in general	168,997
CEF	All 10 districts	Young potential and eligible electors, both literate and illiterate, in and out of school including herd boys, tertiary institutions and textile industry workers. Methods used included: Fact to face contact in volleyball,	102,182: <ul style="list-style-type: none"> <li>• 21,072 face to face youth met through sports and entertainment</li> <li>• 60,000 through Facebook</li> <li>• 18,610 textile industry workers</li> </ul>

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edutainment,  
community bonanzas  
and entertainment  
activities by local  
artists, facebook and  
watsapp networks

***Political atmosphere***

115. With the exclusion of the 1998 National Assembly Election, Lesotho has had peaceful elections since the current constitutional dispensation. The elections are often generally peaceful and have experienced numerous constitutional changes of government. The Lesotho political atmosphere is delicate as political problems are directed at governance and not the election process.

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116. Lesotho has been a subject of several sub-regional (SADC) mediatory efforts due to political instabilities that plaque the country from time to time.<sup>42</sup> The army has at all times been seen at the centre of such problems with opposition parties accusing it of being government cronies to suppress opposition and dissent. Whereas the government has always insisted that the opposition is simply creating a mountain out of a mole hill in order to discredit it, involvement of the army in Lesotho's politics has raised concern of other human rights treaty bodies and human rights special mandates such as the Human Rights Committee<sup>43</sup> and the Special Rapporteurs on Torture, Enforced Disappearances.<sup>44</sup>

### Administrative measures

117. In order to ensure citizen's participation in government several legal notices pertaining to election time-table, appointment of nomination courts, returning officers, registration and suspension of registration as well as registration of 17 year olds are drafted and gazetted.

118. Lesotho has adopted a **National Decentralisation policy 2014**: The purpose of the decentralisation policy is to deepen and sustain grassroots-based democratic governance and promote equitable local development by enhancing citizen participation and strengthening the local government system, while maintaining effective functional and mutually accountable linkages between central and local government entities. The Decentralisation Policy has been formulated on the basis of the aspirations of democratic,

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<sup>42</sup> Lesotho has had a total of four regional interventions by SADC due to political instabilities since 1994 with the last one in 2015.

<sup>43</sup> Human Rights Committee (HRC), *Concluding observations on Lesotho's initial report* 8 April 1999 UN Doc CCPR/C/79/Add.106 paras 14, 16 - 19 in which the Committee raised its concerns about numerous instances of torture of persons in custody, excessive use of force, prolonged detention as well as impunity for crimes and abuses committed by members of the military

<sup>44</sup> OHCHR *Letter to the Government of Lesotho 'Mandates of the Working group on Arbitration; the Special Rapporteur on independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment'* 30 November 2015

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participatory and accountable governance that the Government and people of Lesotho aspired for through the **Vision 2020**.

**Judicial measures**

119. In line with the constitutional right to participate in government at all levels including standing for elections and challenging the electoral process, the High Court of Lesotho, has handled the following elections related cases.

**Table A10: Elections-related cases**

Case	Issues raised	Ruling
<i>Basotho National Party &amp; Lekhanya v Government of Lesotho and 16 Ors Constitutional case</i>	<ul style="list-style-type: none"> <li>• Validity of 2000 elections in line with S.20 of the Constitution.</li> <li>• Locus standi of BNP to challenge persons elected into parliament (S.69(3))</li> <li>• Non-joinder of other candidates who had participated in the elections</li> </ul>	Case dismissed
<i>Tsepe v IEC and Others C of A (civ) No. 11 of 2005</i>	<ul style="list-style-type: none"> <li>• Freedom from discrimination – whether reservation of 1/3 quota of local government seats for women in terms of s.26(1A) (a) &amp; (b) of Local Government Elections Act 1998 (As amended in 2004) was discriminatory</li> <li>• Right to participate in government</li> </ul>	Section 26 (1A) (a)& (b) introduced affirmative action measures in line with s.18 of the Constitution as well as Lesotho's international human rights obligation to



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		rectify past inequalities.
<i>Mahala Molapo v Ntsekhe &amp; Others Civ/P/2/2007</i>	<ul style="list-style-type: none"> <li>• Challenge against an elected candidate</li> <li>• Petition withdrawn</li> <li>• Withdrawal denied</li> </ul>	Dismissed with costs
<i>BDNP v IEC &amp; Others</i>	<ul style="list-style-type: none"> <li>• Correct calculation of quota for purposes of PR seats</li> </ul>	IEC correctly calculated in line with S. 3(1)(a) of the National Assembly Elections Act 2011.
<i>Basotho National Party v Principal Secretary of Ministry of Law, Parliamentary and Constitutional Affairs and 30 others, CIV/APN/240/93</i>	Applicant sought inspection of seals on ballot boxes in 28 Constituencies in the High Court.	Application dismissed for lack of jurisdiction. The High Court mentioned that the proper forum is the Court of Disputed Returns.
<i>Ndiwihleli Ndlomose and Another v Doreen Chaoana-Mapetja (C of A (CIV) NO.28/13) [2013] LSCA 31 (18 October 2013);</i>	The Applicant sought to challenge the election of the Respondent due to the fact that the Election Station Manager assisted people who did not qualify to be assisted during the elections according to the law.	The Court dismissed the application on the basis that the Applicant failed to show the Court that the conduct of the Station Manager could

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have reasonably  
affected the results.

### Challenges and efforts to mitigate

120. Due to challenges which Lesotho has faced during and after elections and also considering SADC recommendations, Lesotho as a state has begun the process of major reforms which will include constitutional, security, judicial and public sector reforms.
121. Failure of constitutional regulation of coalition governments and floor crossing in parliament has led to unstable governments as a result of which since 2012 Lesotho has had elections after every two years instead of the statutory five years.
122. Due to lack of resources, ballot papers for local government elections have not been translated in other minority languages such as xhosa which is used in some constituencies in the Southern part of the country.

### ARTICLE 14: RIGHT TO PROPERTY

#### Constitutional measures

123. The right to property is contained in section 17 of the Constitution of Lesotho which prohibits compulsory taking of possession and compulsory acquisition of property. However, exceptions to this general rule are contained in section 17(1)(a) which provides as follows:

***property may be acquired or taken possession of in the interests of defence, public safety, public order, country planning or utilisation of property for the benefit of the public.***

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124. In terms of section 107 of the Constitution and Section 4 of the Land Act 2010, the land in Lesotho belongs to the Basotho people and is held in trust by the King. Rights to land are however given on the basis of 60 and 90 year lease. Allocation of rights to use land in this regard is regulated by the Land Act 2010.
125. In order to safeguard arbitrary seizure of property, **section 17(2) of the Constitution** provides that there must be a law which makes provision for possession or acquisition and prompt payment of full compensation. For instance, when the fields and homesteads belonging to several Basotho were taken to make way for the Highlands Water Project (LHWP), the owners were duly compensated. More information on the LHWP and challenges with regard to compensation of affected communities is contained under article 21 on the right to dispose of natural resources.
126. **Section 17 (2)** provides for remedies available to a person whose property has been seized arbitrarily. Such a person shall have a right of direct access to the High Court for determination of his right to the said property, the legality of the seizure and the amount of any compensation to which he is entitled.

**Legislative measures**

127. Land ownership in Lesotho is regulated by the **Land Act of 2010**. The Act establishes a greater land tenure security for all land occupants, guards against arbitrary land seizure and establishes a simplified framework for systematic land regularization. It regulates the granting of titles to land, the conversion of titles to land, the better securing of titles to land, the administration of land, the expropriation of land for public purposes, the grant of servitudes, the creation of land courts and settlement of disputes relating to land.
128. In terms of **section 6 of the Land Act**, persons who may hold title to land are: citizens of Lesotho not less than 18 years of age with the exception of marriage, where title is a result of a gift or title is a result of inheritance; foreign enterprise for investment purposes

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provided that Basotho form at least 20 percent shareholding of the enterprise and companies duly registered under the laws of Lesotho.

129. **Section 13** deals with allocation in rural areas, where a local allocating authority in that area is endowed with powers to allocate and revoke allocation, in consultation with the chief in that area.
130. **Section 5 of the Land Act** also prescribes 'overriding interests' which diminish the right to own land in the following terms:

*A lease or allocation shall be subject to such of the following overriding interests as may, for the time being, subsist and affect the lease, notwithstanding that the overriding interests have not been recorded in the Deeds Register or record of allocation:*

- (a) water rights;*
- (b) any rights to mines, minerals, coal, mineral oil, or gas;*
- (c) any flora or fauna naturally occurring or present on the Land;*
- (d) any paleontological or archaeological remains;*
- (e) rights of compulsory acquisition, sale, resumption, entry, search and user conferred by any other written law;*

**Administrative measures**

131. From 2012 to 2013, the government of Lesotho, with the financial assistance of Millennium Challenge Corporation (MCC) engaged in a **Land Administration Reform Project** whose main objective was to regularise holding of legal title to the land occupants. The Systematic Land Regularization project ran in Maseru (city, urban and peri-urban areas) and Leribe from 2012 to 2013. People residing and having title to property in those areas were afforded a chance to apply for leases at no cost. This service was provided to both

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men and women alike, unmarried, married, widowed, persons with disabilities, in urban and remote (rural) areas.

132. Equal rights of men and women to own property and hold title to land as well as statistics disaggregated by gender, of persons who hold title to land and have leases registered in their names from when the systematic land regularization project took off to 2016 are provided in **part B of the Report**.

### Judicial Measures

133. The High Court has jurisdiction to deal with cases in which the right to property is infringed. Cases in this regard include the rightful inheritance to property and compensation for property affected by development. Some of the cases which the High Court of Lesotho has adjudicated on are illustrated in the table below.

**Table A11: Right to property cases**

Case	Facts	Outcome
<b><i>Attorney General &amp; Minister of Local Government vs Leoanika Moletsane &amp; 42 Others<sup>45</sup></i></b>		
<b><i>Joy to the World v Neo Malefane &amp; Others</i></b>	Appellant, a religious association bought right to land from one	Improvements made on property which does not

<sup>45</sup> Declaration of Selected Development Area in terms of Land Act 1979 – threatened eviction without compensation of bona fide occupiers having effected useful improvements – application of S. 17 (1).

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	<p>Mphana who later appeared not belong to the appellants does to have had rights to the said not bestow ownership of the land. The rightful heir to the said property on appellants property sought and obtained an therefore they ought to obey order of ejectment against the writ of ejectment because Mphana. When served with the they have not sought an ejectment order, appellant order that such writ be set refused to vacate the premises aside.</p> <p>on the grounds that it had the right to remain on the property by virtue of improvements it had effected on the property.</p>
<p><b>Lawrence Lebakae</b> <b>Nchapa v Vincent</b> <b>Mokete Letutla</b></p>	<p>Applicant was owner of The Court held that agricultural fields which were declaration of selected declared as selected development area and development area and his title resultant revocation of title deed was revoked. The without first hearing the title revocation was published in a holder violates sections 44 gazette but he was not given a and 45 of the Land Act 1979 hearing prior to such gazette. under which the Minister purported to have acted.</p>

134. With regard to land-related disputes, there has been established under the Land Act of 2010, District land Courts as well as the Land Court. Magistrate Courts in the ten districts

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of Lesotho sit as District Land Court, while the High Court has a Land Court division. Creation of specialised land courts has led to a speedy recovery of land-related disputes thus reinforcing protection the right to property in Lesotho.

## Challenges

135. Rapid growth and uncontrolled expansion of informal housing in urban and peri-urban areas has resulted in large numbers of residents without clearly defined property rights. In reaction to this challenge, the government of Lesotho with the financial and technical assistance of the (Millennium Challenge Account) MCA, launched the Land Administration Reform Activity which provided legal title to the occupants of the parcels/plots at no cost in accordance with the Land Act 2010.
136. The Land Administration Authority is currently engaged in similar project on **systematic land regularization in Semonkong**, where occupants apply to have leases registered in their names at no cost. This has helped people in remote rural areas, men and women, married, unmarried and widows, as well as people with disabilities, to have access to land administration services.
137. Due to limited resources, the government of Lesotho has not yet been able to implement the systematic land regularization project nationwide.

## ARTICLE 15: RIGHT TO WORK UNDER JUST AND EQUITABLE CONDITIONS

### Constitutional measures

138. **Section 29 of the Constitution** provides for the opportunity to work while **section 30** provides for just and favourable conditions of work and **section 31** provides for protection of workers' rights and interests. These are contained in chapter 3 of the Constitution as Directive Principles of State Policy (DPSPs).

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139. **Section 137 of the Constitution** was amended to establish the Public Service Commission which is vested with powers to appoint persons to hold or act in offices in the public service and the power to terminate appointment of such persons.<sup>46</sup>

**Legislative measures**

140. Labour and employment in Lesotho is regulated by the **Labour Code Order of 1992 (as amended)** and **Workmen's Compensation Act 1977**

141. The Labour Code and its amendments are the principal laws governing terms and conditions of employment in Lesotho. They have effectively rendered the right guaranteed and justiciable as the obligations can now be invoked from the **Labour Code Order** itself. They regulate the relationship between employers and employees ranging from contracts of employment, discrimination in the workplace, health and safety, remuneration, disciplinary measures for misconduct as well as termination of employment. Notably, in 2005 the Code was amended to cater for prohibition of discrimination on the basis of HIV.

142. The Labour Code permits union organisation which enables collective bargaining for negotiation of wages and improved conditions of work.

143. Employment in the public sector is regulated by the **Public Service Act 2005**.

**Administrative measures**

144. The Labour Code has been implemented through a number of policies and strategies including the Labour Codes of Good Practice of 2003 which sets minimum standards of conduct in disciplinary matters of employees and provides for conduct of industrial actions and negotiations between both the employers and employees.

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<sup>46</sup> Fifth Amendment to the Constitution Act 2004 section 2.



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145. Statutory minimum wages are set annually by the ministry of Labour and Employment with recommendations from a tripartite Wages Advisory Board representing the government, employers and employees.
146. The government of Lesotho has made migration a major theme of Lesotho's foreign and public policies. This is reflected in a range of Lesotho's key policy documents, including National Vision 2020 and the National Strategic Development Plan 2012/13 – 2016/17, as well as in historical bilateral labour agreements. Lesotho has actively participated in the Migration Dialogue for Southern Africa (MIDSA), an inter-governmental forum for policy dialogue on migration within SADC, as well as in the SADC Employment and Labour Sector Ministerial and Technical meetings which regularly deal with labour migration issues.
147. Lesotho has been a member of the International Labour Organisation (ILO) and has ratified about 23 international labour conventions. It has also ratified a range of international agreements pertaining to migration and migration-related matters, including (in 2005) the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. At the bilateral level, the Government of Lesotho has committed itself to discuss migration-related matters on the basis of bilateral cooperation with South Africa, through the Joint Bilateral Commission of Cooperation (JBCC).

**Judicial measures**

148. The Labour Code Amendment Act of 2000 established the Directorate of Dispute Prevention and Resolution (DDPR) which is aimed at resolving labour disputes through conciliation and arbitration. It is a semi-autonomous labour tribunal independent of the government, political parties, trade unions, employers and employers' organisations. The DDPR has been hailed for speedy and non-adversarial resolution of labour disputes. It is only when one of the parties is dissatisfied with the arbitration award that the matter is

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taken to the Labour Court, whose decision may be appealed to the Labour Appeal Court. Jurisprudence of the DDPR, Labour Court and Labour Appeal Court is shown in **table A12** below.

**Table A12: Labour Cases**

Case	Facts	Ruling
<i>Lehloenya v Lesotho Telecommunications Corporation</i> (LAC/CIV/A/04/2009) [2016] LSLAC 1 (04 March 2016);	Applicants were dismissed because of operational requirements by Lesotho Telecommunications Corporation (LTC) in July 1999. They instituted a case for unfair dismissal at the Labour Court on 15 February 2000, some five weeks outside the statutory time limit prescribed by section 70 of the Labour Code. However Applicants failed to apply as soon as they become aware of their non-compliance	The court held that hearing the merits of this matter some 16 years after the retrenchments would prejudice Respondent in the conduct of its case and result in an injustice being done. I take judicial notice of the fact that this long delay has affected the witnesses' accuracy of recollection of the events and that it might be difficult to obtain the evidence of particularly the overseas witnesses. Case dismissed.

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<p><i>Teboho Shata v Lerotholi Polytechnic and Another (LC 36/16) [2017] LSLC 6 (24 January 2017);</i></p>	<p>This was interlocutory application for an order of restraint against eviction of an employee from a staff house he occupied following his dismissal on grounds of misconduct by the disciplinary panel. The employee had lodged an appeal against the said dismissal with the institution's Council. He contended that he could not be evicted from the staff housing facility whilst his appeal to the Council was still pending.</p>	<p>Court decided that since the disciplinary panel's decision to dismiss him is not final, it is only fair that the appeal machinery be allowed to take its course.</p>
<p><i>G4S SECURITY (PTY) LTD V Thabang MOTA AND ANOTHER (LC/REV/37/13) [2017] LSLC 1 (09 February 2017);</i></p>	<p>The Arbitrator had ordered that the employer pay severance pay over and above the provident fund that the employee had already received.</p>	<p>The Court found the Arbitrator to have failed to apply her mind to the fact that an exemption certificate existed and the employer could not pay both proceeds from the provident fund and severance pay. The award was reviewed and set aside.</p>
<p><i>Thibeli v St Joseph Hospital (LC 41/12) [2017] LSLC 4 (09 March 2017);</i></p>	<p>The applicant lodged an unfair labour practice claim</p>	<p>The Court held that it does not have jurisdiction over the matter as the claim is tenable in the DDPR.</p>

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	<p>based on discrimination. He alleged that he was engaged by the respondent as a Counsellor in 1997 on permanent and pensionable terms and later assumed the position of Social Worker at grade E. He intimated that following the revision of Government employees' salaries in 2000, the respondent also revised its employees' salaries culminating in Social Workers being upgraded to F. He contended that despite this salary review, his salary was never changed. He alleged that he made several pleas to the respondent to effect the change to his salary, but to no avail. He claims that he was discriminated against because salaries of other employees were reviewed except his. Wherefore, he</p>	
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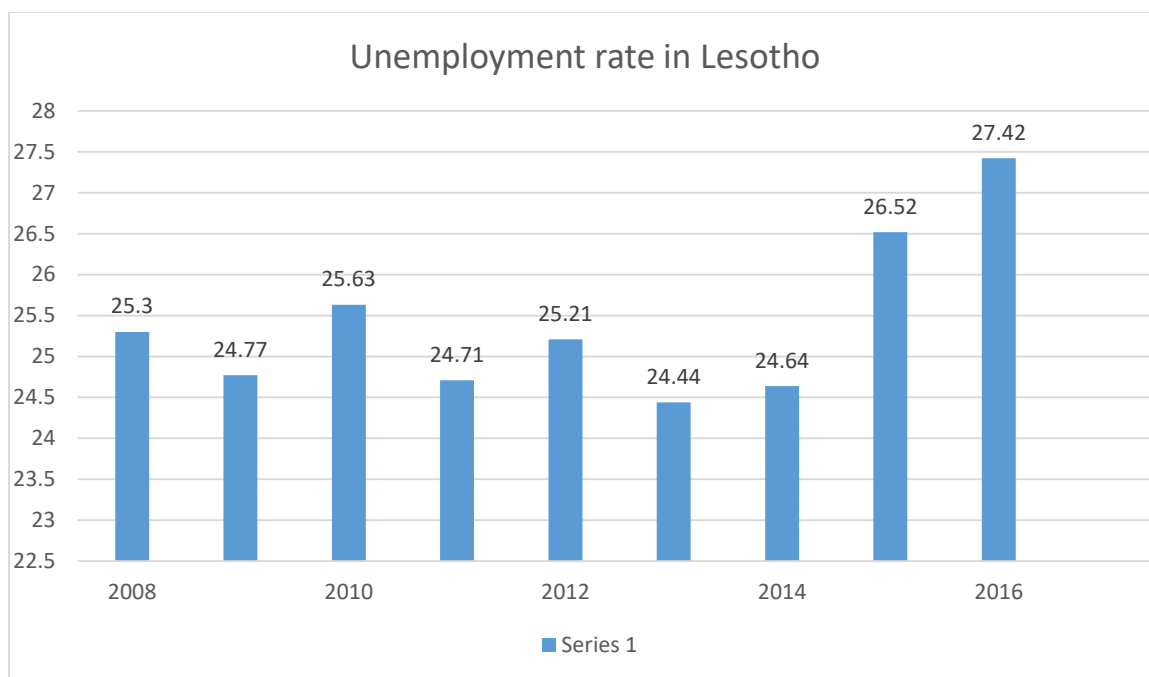
	seeks a declaration that the respondent unfairly discriminated against him.	
<i>Presitex Enterprise (Pty) Ltd v Mahapa and Another (LC/REV/41/14) [2017] LSLC 5 (11 April 2017);</i>	The employee was dismissed for poor performance. The arbitrator at the DDPR relied on Section 14 of the Codes of Good Practice which require a non - performing employee to be retrained and ordered reinstatement.	Court found it was improper for the Arbitrator to have ordered reinstatement where compensation was sought. Matter returned to DDPR for computation of compensation.

### **Challenges and efforts to mitigate**

149. A big challenge facing labour and employment in Lesotho there is very high unemployment rate. In 2013 about 25% of the population was unemployed. Thirty-five percent of this constituted young people and 30% of the general population of unemployed constituted women. The proportion of unemployment is linked to low levels of educational attainment and to vulnerability of households, their structure and living conditions. The probability of a member of a poor and uneducated family finding a job is very low because of limited opportunities for education, training and information about the job market.
150. Unemployment Rate in Lesotho increased to 27.42 percent in 2016 from 26.52 percent in 2015. Unemployment Rate in Lesotho averaged 28.10 percent from 1991 until 2016,

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reaching an all-time high of 39.30 percent in 1997 and a record low of 24.44 percent in 2013. According to according to Trading Economics global macro models and analysts expectations unemployment rate is expected to rise to about 26.27 percent at the end of 2018 and to drop to 19.50 percent by 2020.



*Source: Trendingeconomics.com (ILO)*

151. In an effort to mitigate the challenge of unemployment amongst the youth in Lesotho, in 2009, the Ministry of Gender in collaboration with UNDP began a National Volunteer Core Program. It is meant to collect information and create a database of youth who have completed certificate, diploma or degree from any tertiary institution which have not been employed. They are then attached to a relevant ministry or government department and private sector for a period of year during which the government provides them with a small stipend for transport and basic food they need while on internship. The objective of the program is to equip the youth with work experiment and to entice them to love their country. The challenge is that due to financial constraints the program can only

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accommodate 108 persons. However, all those who apply are kept in the database and when there is a vacancy, they are easily alerted.

152. Furthermore, supported by UN and other development partners, there has been an efforts to develop various labour migration policies. The Ministry of Labour and Employment developed (i) National Migration and Development Policy; (ii) (ii) National Labour Migration Policy; and (iii) National Employment Policy. Nevertheless, due to change in governments, all three policies are yet to be formally endorsed at Cabinet level.
153. The labour movement is fragmented with multiple unions competing for membership among workers.
154. While workers in private industries such as textile factories are permitted by law to engage in strikes, when a series of procedures aimed at amicable resolution of disputes fails, the law does not permit civil servants to strike. Therefore all public sector strikes are illegal.
155. Civil servants are also not allowed to form unions and this has been seen as hampering their bargaining power.

**ARTICLE 16: THE RIGHT TO BEST ATTAINABLE STANDARD OF HEALTH**

**Constitutional measures**

156. The right to health is categorised as a non-justiciable Directive Principle of State Policy (DPSP) in section 27 of the Constitution. It is subject to progressive realisation regard being had to available resources.

**Legislative measures**

157. The Kingdom of Lesotho has enacted several legislations which deal with public health and different aspects of it. These include:

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- **Public Health Order 1970** which is the main law governing public health in Lesotho including functions of the Ministry of Health, prevention and control of communicable diseases, vaccination of children and other people including inmates, prevention and introduction of diseases, sanitation and housing, protection of foodstuffs and matters relating to cemeteries and exhumation of bodies.
- **Labour Code Order 1992** which mandates employers to provide health and safety measures in the workplace.
- **Environment Act 2008** which makes provision for the protection and management of the environment and conservation and sustainable utilisation of natural resources of Lesotho. **Section 37** of the Act prohibits discharge of hazardous substances, chemicals and materials or oil into the environment and also provides for sanctions to those who contravene its provisions.
- **Drugs of Abuse Act 2008** which was enacted to repeal the Dangerous Medicines Act of 1973, to ensure the availability of certain drugs for exclusive medical, scientific and related purposes, while preventing their abuse; to prevent the diversion from lawful trade of controlled chemicals, controlled equipment and controlled materials for use in the unlawful manufacture of such drugs; to render drug trafficking and related conduct as serious criminal offences and to ensure that trafficking and related conducted as serious criminal offences and to ensure that offenders or suspects are brought to justice; to render certain conduct by drug users as criminal offences, to provide for the treatment and rehabilitation of drug-abusing or dependent offenders; to establish the Lesotho Narcotics Bureau; and for related matters.

**Administrative measures**

158. Over and above the legislative measures, the government of Lesotho has put in place the **Sanitary Services & Waste Removal Regulations 1972** which regulate erection of closets, removal of night soil and other refuse to ensure that such do not pose danger to the health of inhabitants as well as people who work in affected areas.



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159. In the financial year 2015/2016, the government allocated 13 percent of the national budget to the Ministry of Health. In 2016/2017, the Government met the target of allocating 15 percent of the national budget to the Ministry of Health as contemplated in the Abuja Declaration.
160. During the financial year 2015/2016, the Ministry of Health launched a retention programme for nurses and midwives working in remote areas of the country. The Government has also continued to train more medical doctors, with a third cohort of students having been sent to Zimbabwe beginning of 2015 and approximately 39 nurses sent for advanced midwifery training to address the challenge of high maternal mortality rate in Lesotho.
161. The Government subsidises most health care services to ensure that all citizens of Lesotho have access to primary healthcare;
162. Antiretroviral treatment continues to be provided free of charge in all Government health care centres.
163. From October 2014 to September 2015, the Ministry of Health in conjunction with World Vision developed a **Citizen Voice and Action Programme**, with the aim of increasing the capacity of the community to engage and advocate for improved quality health and education system. The Programme targeted young men and women. As a result of the Programme, in February 2016, the proportion of infants whose births were attended to by skilled birth attendants improved from 70% to 85%<sup>47</sup>. Further, mother's waiting rooms were constructed by the Government in health care centres in the Berea and Mohale's Hoek districts. New health centres were introduced in Sefikaneng, Makhunoane and Lenkoane villages.

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164. Further, the Ministry of Health in conjunction with World Vision, developed a campaign program called **Child Health Now Campaign** which ran from November 2014 to October 2016. The outcomes of the programme include; increase in access to essential health services in communities, improved community utilization and demand for health services as well as increase in human resource capacity at government health centres.
165. The Government is also committed to ensuring a healthy nation through immunization campaigns, health education and the fight against both communicable and non-communicable diseases. The initiatives include celebrations held on World AIDS Day on 01 December every year.
166. The Government hosts educational programmes including consistent and correct use of condoms on the national television and in various radio stations across the country.
167. The Government has undertaken HIV prevention programmes, which include prevention of mother to child transmission programmes, condom distribution and voluntary medical male circumcision. It works in partnership with a number of CSOs and development partners to raise awareness about the HIV/AIDS pandemic. A congruent example is the free issuance of condoms by the Government, with the support of partners such as UNFPA. Other partners include PSI, which has also been undertaking social marketing of condoms in collaboration with UNFPA. The Elizabeth Glaser Pediatric Aids Foundation (EGPAF) has been instrumental in collaborating with the Ministry of Health by continuing to scale up access to HIV services. EGPAF currently supports more than 205 sites in eight districts to implement a comprehensive HIV package of services. Kick 4 life campaign uses football to bring HIV prevention messages to young people. From the beginning of 2016, the campaign has reached over 250,000 youth aged between 15-24 years.<sup>48</sup>

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<sup>48</sup> Ministry of Health 2015 'Global Aids Response Progress Report 2015: Follow-up to the 2011 Political Declaration on HIV/AIDS Intensifying Efforts to Eliminate HIV/AIDS'

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168. UNFPA supported the Ministry of Health in implementation of helping babies training which developed the capacity of 13 master trainers and 53 health workers to identify risks signs of new born asphyxia and to perform new born resuscitation.
169. UNFPA supported MOH to review family planning guidelines to accommodate latest WHO released medical eligibility criteria which ensures that no one is left behind in particular patients with on ART.
170. Through the support of UNFPA, Ministry of Health through its routine data indicates 122 female and 22 males were reached with various methods of birth control: injections 134,366, pills 61802 and long term methods 20591.
171. Through UNFPA integrated SRHR/HIV/SGB outreach services, a total of 17184 people were reached during the outreach. Within this number 9261 people were provided with family planning services, 1283 reached with HIV and Testing Services. MOH received support through training health care providers in 10 District on integrated SRHR/HIV/SGBV.
172. Through UNFPA, MOH has conducted Service Delivery Point survey on availability and accessibility of maternal lifesaving commodities/ Family Planning commodities and services in all 179 health centres.
173. The Government of Lesotho through the Ministry of Health and in collaboration with development partners such as UNFPA has come up with a number of strategies aimed at improving the right to health in Lesotho. These include:
- **National Health Strategy for Adolescents and Young People 2015-2020.** According to the Strategy, adolescents and young people have a right to access information, skills and services concerning their health. The Strategy also addresses issues of prevention; contraception and education programmes for young people.

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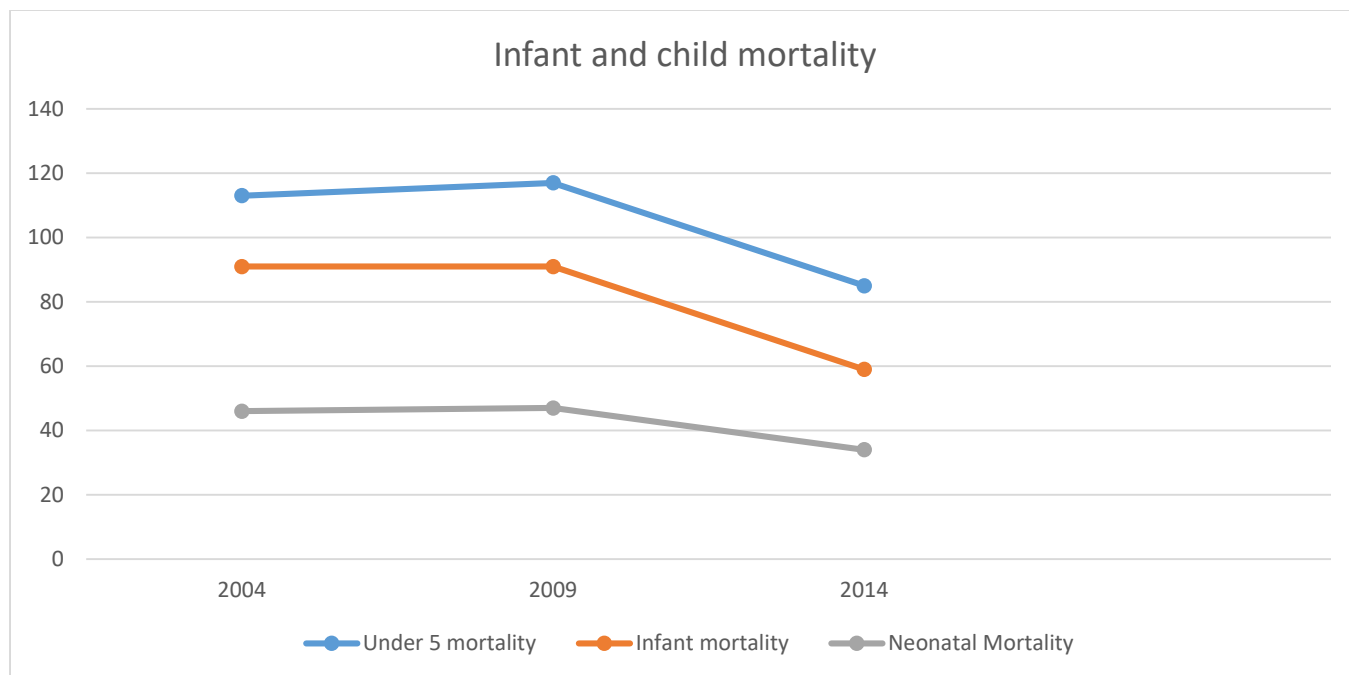
- **Revised Action Plan for Women and Girls and HIV and AIDS 2012-2016.** The Plan addresses issues of access to health care services, particularly in the area of HIV/AIDS and ARVs.
- **Sexual and Reproductive Health Strategic Plan 2015-2020** which covers sexual and reproductive rights of women and girls.
- **National Strategic Development Plan (NSDP) 2012/13-2016/17.** The plan seeks to deploy skilled health/birth attendants to all Government health centres, provide maternal health education to communities and develop skills specific to youth, scale up reproductive health education, including promotion of family planning and improvement of health services as well as scaling up essential nutrition package for pregnant and lactating mothers.
- UNFPA has also supported the development of **(RMNCHA&N) strategy** which will guide the delivery of integrated RMNCHA&N through the continuum of care. The strategy focuses on early ante-natal care (ANC) which will increase the uptake of timely maternal health services and contact opportunities between health care workers and pregnant women.
- **Sanitary Services & Waste Removal Regulations 1972** which regulate erection of closets, removal of night soil and other refuse to ensure that such do not pose danger to the health of inhabitants as well as people who work in affected areas.

### Challenges and efforts to mitigate the challenges

174. As shown by statistics below, maintaining the best attainable standard of health in Lesotho is mainly challenged by high infant and maternal mortality rates, HIV as well as access to contraceptives.
175. As far as Child health is concerned, neonatal, infant and under-5 mortality remain high. According to the Lesotho Demographic Health Survey (LDHS) 2014, neonatal mortality rate is 34 per 1,000 live births; infant and under-5 mortality rate is 59 and 85 per 1,000

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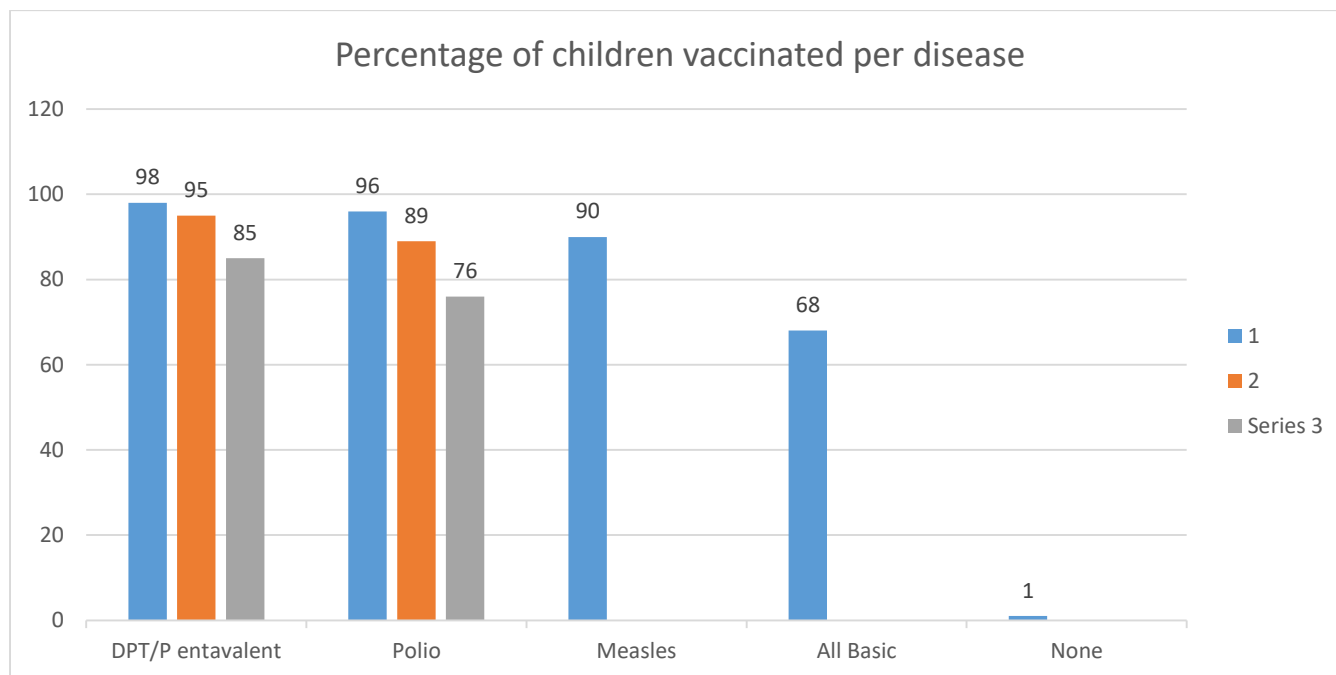
live births, respectively. This means that one in every 29 children dies in the first month of life; one in every 17 children dies before celebrating their first birthday, and one of every 12 children dies before their fifth birthday.



Source: *LDHS, 2014*

176. Children from poor homes, especially those in the rural areas and regions prone to natural disasters, are more likely to die than those from wealthier homes due to limited access to primary health services. According to the LDHS 2014, only 68% of children have received all three key vaccinations comprising one dose of Bacillus Calmette–Guérin (BCG) vaccine, which protects against tuberculosis (TB), three doses of the diphtheria, pertussis and tetanus (DPT) vaccine, three doses of polio vaccine and one dose of measles vaccine. Only one per cent of children did not receive any vaccination at all.

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Source: DHS 2014

177. Over and above vaccinations, the government has put in place, deworming and Vitamin A supplementation whose estimated coverage in children under five years by July 2017 was as follows:

- Vitamin A supplementation coverage is above 80% in 7 districts and below 50% in one district (Mokhotlong). Vitamin A supplementation is important because children with vitamin A deficiency are more likely to die of measles infection.
- Measles Rubella vaccination coverage is over 70% in all 10 districts. Three of these districts achieved over 90% coverage (“herd immunity”)
- Deworming coverage is above 50% in 9 out of 10 districts and only 20% in Mokhotlong. Deworming is important because it helps to prevent -micronutrient deficiencies).

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**Table A13: Situation vaccination, deworming and Vitamin A supplementation coverage  
in children under five years by Districts, July 2017**

District	Vitamin A	Deworming	Measles Rubella	DPT 3
Buthat-Buthe	69.8%	57.3%	85.4%	91.7%
Leribe	70.1%	63.1%	82.8%	86.6%
Berea	80.3%	65.0%	96.4%	79.6%
Maseru	82.5%	70.2%	85.5%	79.8%
Mafeteng	84.7%	72.9%	96.9%	88.1%
Mohale's Hoek	86.0%	84.1%	86.9%	91.6%
Quthing	92.9%	84.3%	85.7%	90.0%
Qacha's Nek	90.7%	88.4%	97.7%	100.0%
Mokhotlong	44.4%	20.0%	73.3%	80.0%
Thaba-Tseka	80.6%	59.7%	86.1%	90.3%

*Source: Lesotho Vulnerability Assessment Committee Report, July 2017.*

## **HIV/AIDS**

178. HIV/ AIDS is a burden to the health sector and is one of the factors that have contributed to the slow economic growth and social progress in Lesotho. AIDS has become the leading cause of morbidity and mortality in Lesotho. Lesotho has HIV prevalence rate of twenty-five per cent of adults aged 15-49 years old and is one of the highest prevalence rates in the world. Women are most hit by this pandemic (HIV prevalence indicators and their effect on women are illustrated in part B of this report).

179. In order to mitigate this challenge, in June 2016, Lesotho became the first African country to implement a **'Test and Treat' strategy**. The Strategy was launched on 19 April 2016.

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It provides that every person who tests HIV positive will be offered ART regardless of their CD4 count. This Strategy is in line with WHO guidelines released in September 2015<sup>49</sup> which seeks to remove all limitations on eligibility for antiretroviral therapy (ART) and recommend that anyone infected with HIV should begin ART as soon after diagnosis as possible.

180. The Ministry of Health is also implementing nationwide, the **Lesotho Population-Based HIV Impact Assessment** (LePHIA) to generate data on HIV and AIDS on the entire population. The survey will enable better understanding of the impact of HIV in the Country<sup>50</sup>.
181. Lesotho has re-established the National Aids Commission (NAC). It was inaugurated on 10 December 2015. NAC distributed 31 condoms per adult man in 2015, above the UNFPA's regional benchmark of 30.45 percent condom use among adults aged 15-49 with more than one sexual partner. The percentage of condoms distributed is 60.9 percent in 2015.

## ARTICLE 17: THE RIGHT TO EDUCATION

### Constitutional measures

182. **Section 28 of the Constitution** of Lesotho provides that Lesotho shall endeavour to make education available and shall adopt policies aimed at securing such.

### Legislative measures

183. Primary, secondary and high school education in Lesotho is regulated by the **Education Act No.3 of 2010** while tertiary education is regulated by **Higher Education Act 2004**.

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<sup>49</sup> 2015 World Health Organisation Guidelines

<sup>50</sup> Lesotho Budget Speech 2017-18



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184. Section 3 of the **Education Act** provides for free and compulsory primary education. It expressly seeks to implement section 28 of the Constitution by providing education to all. Pursuant to this provision, in 2015 about 98 percent of children of a school-going age had been enrolled in Primary Schools.
185. Primary Schools are predominantly owned by churches in Lesotho. However, churches have partnered with government for these schools to operate as public schools. The government is responsible for payment of teachers of these schools. The government also assist with improvement of the schools' infrastructure and also provides furniture and books used in the schools.
186. The Education Act also seeks to address several challenges which had previously been identified as factors which keep learners out of school and also contribute to high dropout rate. For instance, Section 6(5) makes it a criminal offence for any parent or a guardian of a child of a school attending age who fails to take such child to school.
187. **Section 11 of the Children Protection and Welfare Act 2011** which provides that a learner must not be expelled from school on account of pregnancy or attendance of an initiation school.
188. The Education Act prohibits corporal punishment in schools.
189. The Education Act also provides for inclusion of learners with disabilities in the mainstream education system.

**Administrative measures**

190. Over and above the legislative measures detailed above, the following policies and strategies have been put in place in order to effectively implement free and compulsory education in Lesotho and also to ensure inclusive education of learners with disabilities:

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- **Lesotho Education Sector strategic Plan 2005/2015 (ESSP)** was adopted to operationalize the constitutional obligation to quality education for all by reduction of poverty through the provision of sustainable universal and compulsory primary education.
- **School Nutrition Policy**, in terms of which all public primary schools provide lunch for learners. This policy is meant to lower the rate of school dropout due to hunger.
- Campaigns against early and forced child marriages as well as sex education to lower the prevalence of teenage pregnancies in schools.
- **School Improvement Plan Manual** in terms of which 150 facilitators have been engage with the aim of implementing the manual in 2017.
- In 2012, there was also established the **Child Friendly School Standards** whose aim is to trigger children's interest in education and thereby lower dropout rates.
- **Special Education Unit** within the Ministry of Education was established in 1991. It focuses on four fields, namely, visual impairment, hearing impairment, physical disability and intellectual impairment. The main objective of the Special Education programme is to advocate for the integration/inclusion of learners with special educational needs/disabilities into the regular school system at all levels in order to enable them to acquire appropriate life skills and education. The learners include those who have physical and sensory impairments as well as those with learning difficulties, the gifted and talented, those with intellectual disability and those with behavioural disorders. Notwithstanding this, the Ministry of Education recognises the need for support to specialised schools to cater for learners with extreme needs.
- The Ministry of Education is also working with the Council of Initiation Schools to agree on appropriate times when learners may be admitted to initiation schools so as to ensure that their attendance does not clash with the primary and high school calendar. This is aimed at ensuring that learners who opt to go for initiation schools, do not miss out on the formal school education.

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- The Ministry of Education has also made arrangements for informal education for herd boys.
- There has been established the **Lesotho Distance Teaching College (LDTC)** which provides for distance learning for people who, due to factors such as work or family are unable to attend school but would want to further their studies. Enrolment in LDTC is free and candidates are tutored on weekends. They also sit for the national examinations for Junior Certificate (JC) and Lesotho General Certificate of Secondary Education (LGCSE).

**Secondary and high school education**

191. Secondary and high school education is not free in Lesotho. However, the government has partnered with churches, who are the predominant proprietors of such schools, to arrange minimal fees for secondary and high school education. Teachers in these schools are also paid by government.
192. The Ministry of Social Development provides grants to pay for tuition fees for indigent and mostly, orphaned and vulnerable children at secondary and high school levels.

**Challenges which affect provision of education in Lesotho**

193. As illustrated in **part B** of the report, statistics show that unlike most sub-Saharan countries, throughout all levels of education, in Lesotho there are higher numbers of girls than boys enrolled in schools although the numbers decrease significantly as the levels of education go higher.
194. Factors which contribute to school dropout in Lesotho include poverty, teenage pregnancy, early marriages, sexual harassment by teachers, high parent mortality rate due to HIV/AIDS thereby forcing children to head households, failure to accommodate learners with disabilities in the mainstream schools due to a small number of specialised

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teachers (those who teach braille and sign language) being in urban areas only as well as preference to attend the traditional initiation schools.

195. Corruption on the part of government officials results in poor construction of schools and in some cases, total failure of construction. In the case of *Ministry of education v Thuto Ntsekhe PST 3/2015* a public servant was dismissed for her involvement in corruption which ended in the ministry of education losing 17 Million Maloti for schools which were reported to have been constructed to finality while in essence there was no construction at all.
196. The other challenge is that of high rate of teacher absenteeism. In the case of *Moeketsi Mokhobalo v Teaching Service Commission and 3 others C OF A CIV/2/2015* a teacher challenged the decision of the Teaching Service Commission to stop his salary due to absenteeism. The case was however dismissed.
197. Another challenge is sexual harassment of students by teachers is high both at primary and high school levels. The government of Lesotho has adopted both disciplinary and criminal prosecution measures against teachers who are involved in these acts. The case of *Sechaba Tsolo v Teaching Service Tribunal and 3 Others CIV/ APN/ 2014* is one of the cases in which criminal measures have been taken. A teacher was dismissed for sexual harassment of a female learner. The criminal case in this regard is still pending before the magistrate court in Maseru.
198. Early, child and forced marriages also contribute to the high rate of girl children who drop out of school. Measures to deal with child marriages are discussed in **part B** of this report.
199. Despite prohibition of corporal punishment by the Education Act, there are still some teachers who administer corporal punishment which sometimes lead to learners dropping out of school.

## Higher Education

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200. Higher Education is not free in Lesotho. However, the government of Lesotho provides loan bursaries to students admitted in institutions of higher learning through the National Manpower Development Secretariat.
201. Section 31 (1) and (2) of the **Higher Education Act 2004** provides that the admission policy in institutions of higher learning must not discriminate on account of race, gender, religion and political affiliation.
202. Although the government of Lesotho has put in place legislative and administrative measures to provide higher education in Lesotho, the following challenges still remain:
- Very few learners meet the thresh hold for admission in institutions of higher learning.
  - For students who cannot be paid for my NMDS, fees are very expensive and prohibitive;
  - Higher education is still viewed as a terrain for the elite and therefore some learners, although qualifying, opt to work instead of enrolling in institutions of higher learning.

**ARTICLE 18: RIGHT TO PROTECTION OF FAMILY, WOMEN, CHILDREN AND THE DISABLED**

**Constitutional measures**

203. **Section 11 of the Constitution** of Lesotho recognises the right to respect of private and family life. It is a justiciable right as it is contained in chapter two which is a Bill of Rights.
204. Section 18 of the Constitution provides for the right to freedom from discrimination on the basis of basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. That is, women are protected from discrimination on the basis of their sex. Although disability is not included as a prohibited ground of discrimination, the Constitutional Court in the case of *Fuma v Commander Lesotho Defence Force and Others*, held that the term 'other status' in section 18 includes

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disability. Therefore people with disability are also protected from discrimination on the basis of their disability.

205. **Section 33 of the Constitution** enjoins the government to put in place measures aimed at protection and promotion of the rights of persons with disabilities as well as their rehabilitation.

206. With regard to protection of children, **section 32 of the Constitution** provides that children and young persons are protected from economic and social exploitation. It provides that the employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is punishable by law.

### **Legislative measures**

207. As far as the family unit is concerned, the **Marriage Act of 1974** provides for registration and recognition of heterosexual marriages. No law in Lesotho recognises homosexual unions as marriages. Therefore all laws protecting the family in Lesotho refer to a family in the context of heterosexual couples. In terms of Sesotho customary law and culture, a family also includes the extended family. In terms of the **Legal Capacity of Married Persons Act** and the **Children's Protection and Welfare Act of 2011**, the family also includes adopted children.

208. Specific aspects of the types of marriage and their legal regimes are contained in **Part B** of this report.

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209. Women and children are also protected through the **Deserted Wives and Children (Amendment) Order (1971)**<sup>51</sup> which prevents destitution by requiring husbands to provide maintenance to family members.
210. Special protection of children is contained in the **Children's Protection and Welfare Act of 2011 (CPWA)** which provides for registration of all children including adopted children. It also provides for a child's right to the property of his or her parents.
211. The **CPWA** also addresses issues such as trafficking and abduction of children; children in contact and conflict with the law and restorative justice measures; legal representation and sentencing; establishment of children's courts and the employment of children.
212. **The Labour Code Order (1992), Anti- Trafficking in Persons Act (2011), Education Act (2010)** and **Sexual Offences Act 2003** also address specific aspects of child labour, trafficking and sexual exploitation of children, sexual offences against children and free and compulsory primary education. These laws are aimed at protection of children as members of their respective families.
213. The following laws cater for protection of people with disabilities:
- Section 30 of the National Assembly Electoral Amendment Act 2011 which requires that persons with disabilities be taken into account in political platforms and electoral processes (elections, rallies).
  - Section 6 of Children's Protection and Welfare Act of 2011 also specifically provides that children with disabilities shall not be discriminated against and section 13 specifically provides that children with disabilities have the rights to dignity and the right to education.

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<sup>51</sup> ORDER No 29 of 1971

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- There has also been a **Disability Equity Draft Bill 2014**. Although still a draft, when enacted into law, the Bill is aimed to address all issues relating to disability in Lesotho including establishment of a Disability Council.

**Administrative measures**

214. In order to protect the rights of children as well as spouses within the family, in 2013 the government of the Kingdom of Lesotho established the Department of National Identity and Civil Registry with mandate to deal with the registration of births, deaths and national identity documents.
215. To ensure sustainable and adequate housing for all families, there has been established a Government Cooperation (Lesotho Housing and Land Development Corporation) whose mandate is to provide housing sites, home ownership and rental accommodation to low income earners at affordable costs.
216. There is also a Lesotho Rural Electrification Project aimed at installation and electrification of rural communities at a lower cost.
217. Government also exempts low income earners from tax in order to ensure that their families are not deprived of means of livelihood.
218. For poorer families which cannot afford the above services although provided at low cost, the Ministry of Social Development provides support through a program known as National Information System for Social Assistance (**NISSA**). This programme operates by collecting and registering in the system, information aimed at ascertaining most indigent families which are then provided social assistance in the form of cash grants and payment of school fees for children in such families.
219. The Ministry of Social Development also has a child grant programme aimed specifically for orphaned and vulnerable children (OVCs). In terms of the **National Policy for Orphaned and Vulnerable Children** it aims to ensure that legal, policy and institutional



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frameworks for child protection are developed and strengthened at all levels. It further seeks to strengthen and establish co-ordination structures for OVC programmes and increase resource mobilisation to utilise them efficiently. It furthermore seeks to work towards formalising the existing non-formal institutions for OVC and to build capacity of support systems involved in their management. The policy further Improves provision of care and services for OVC and their families. Furthermore, it attempts to streamline and strengthen registration of OVC and maintain databases for the same and others.

220. The following policies also mainstream protection of persons with disabilities:

- **National Strategic Development Plan** which includes disability as a crosscutting issue.
- **Social Development Policy** which aims at ensuring the social inclusion of persons with disability.
- **National Disability and Rehabilitation Policy 2011** whose aim is to ensure the meaningful inclusion of persons with disabilities in mainstream society.

### Challenges and efforts to mitigate such challenges

221. One of the major challenges facing protection of children in Lesotho is child labour. According to statistics, 26, 42 and 31 percent of children aged 5-9, 10-14 and 15-17 respectively do work. Ninety-three percent of these children work and live in the rural areas while 7 percent live in urban areas. Twenty-three percent of the working children aged between 5 and 9 years work more than 7 hours per week, while those aged between 10 and 14 years work more than 21 hours a week. Fifty-five percent of working children are boys while 45 percent of them are girls. Seventy-two percent of working children are engaged in agricultural activities and 10 percent are engaged in domestic work.

222. In order to combat the problem of child labour in Lesotho, the Ministry of Labour has an **Action Programme for the Elimination of Child Labour (APEC) 2013/2017**. In terms

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of this Programme, the official minimum age for children to work is 15 years. Children of this age and above can work. However they may not be engaged in hazardous work. APEC outlines activities for prevention of employment of children including: awareness raising campaigns, training of law enforcement units, review of the school curriculum and others.

223. The Government of Lesotho also holds campaigns to commemorate Child Labour Day to create awareness on prohibition of recruitment of children.
224. The Ministry of Gender has **Lapeng Care Centre for Abused Women and Children** where psychosocial support and shelter is provided to children survivors of gender based violence. The Centre provides temporary place of safety to women and children survivors of GBV where they receive psychosocial support, mediation, economic empowerment, referral, health and legal services to ensure an integrated response and support services to survivors.
225. There has also been established within the Lesotho Mounted Police Service, the **Child and Gender Protection Unit (CGPU)** which deals mainly with protection of children, women and men who have suffered GBV by investigating allegations and ensuring prosecution of cases, as well as sensitizing the communities on issues of GBV.
226. An additional means to protection of abused children is a free telephone communication to all Police Stations through the Child Helpline. This is a significant outreach intervention which provides a platform and a mechanism for children to voice their concerns especially those relating to gender based violence and human trafficking. It also links displaced children to other services such as child welfare for protection and assistance.
227. With regard to children in conflict with the law, the Ministry of Justice through Department of Correctional Services has established the **Juvenile Training Centre (JTC)** which is aimed at rehabilitation of such children.

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228. Protection of the youth is overseen by the department of Youth in the Ministry of Gender, Sports and Youth. Amongst its programmes aimed at youth empowerment, the department has established Youth Centres which are equipped with computer labs and youth development officers who guide the youth on how to start businesses and also provides them with start-up kits.

**ARTICLE 19: RIGHT TO EQUALITY OF PEOPLE**

229. As stipulated in the initial report and in the background to this report, Lesotho was formed from unification of different clans and tribes of people who were running from the wars which took place in Southern Africa in the 1800s who came to Moshoeshe for protection. Together, all these people are called Basotho. The Kingdom of Lesotho endeavours to protect human rights on the basis of equality of all the Basotho people.

230. Majority of the Basotho people speak Sesotho. Hence, Sesotho and English are recognised as the official languages in Lesotho.

231. Linguistic minorities in Lesotho are the Baphuthi, Xhosas and Ndebele who mostly reside in the Southern part of the country and speak both Sesotho and their respective mother tongues.

**Constitutional measures**

232. Because of the acknowledgement of different cultures which the people of Lesotho have despite being unified into one nation, **section 35 of the Constitution** makes provision for participation in cultural activities.

**Administrative measures**

233. Although there is no legislation specifically dedicated to ensure equality of the peoples in Lesotho, there are policies and programmes which are aimed at ensuring that information is disseminated to all the people on equal basis and also to ensure that the minority

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languages do not face distinction. For instance, the **Curriculum and Assessment Policy 2009** provides that education should strive for developing appreciation and acceptance of national culture and cultural diversity, history, values and norms basic for national unity and development, promoting basic understanding of democratic principles, human rights and responsibilities for effective participation and contribution to the life of society.

234. The policy further states that mother tongue shall be used as a medium of instruction in primary schools from reception to grade 3 while English and Sesotho are taught as a subject at this and other levels. This is in cognisance of the Xhosas and Baphuthi who are linguistic minorities in Lesotho. The policy further states that sign language shall form part of the new language policy.

### Challenges

235. The challenge with the use of Xhosa and Sephuthi as medium of instruction in areas where it is commonly used is that there are very limited trained teachers who speak and understand these languages. However, the Government of Lesotho, in collaboration with the communities which speak Xhosa and Phuthi is working towards ensuring these languages are medium of instruction for the learners whom these are mother tongue.

## ARTICLE 20: RIGHT TO SELF DETERMINATION

### Constitutional measures

236. **Section 1(1) of the Constitution** of Lesotho denotes Lesotho as a sovereign democratic kingdom governed through regular, free and fair elections.
237. **Section 85(3)(a) of the Constitution** further permits through alteration of the Constitution, reconstitution of the fundamental nature of the state subject to a referendum submitted to the electors should that question ever arise.

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238. In terms of **sections 1 and 2 of the Constitution**, the territory of Lesotho shall comprise all the areas that immediately before 4 October 1966, were comprised in the former colony of Basutoland together with such other areas as may from time to time be declared by an Act of Parliament to form part of Lesotho.
239. Constitutionally, the people of Lesotho have the right to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage. This thus complies with both components of the right of self-determination being external self-determination; and internal self-determination which refers to a right of peoples to determine how they shall be governed and the right to be free from despotic governments.
240. The obligation to ensure free and fair periodic elections is vested in the Independent Electoral Commission (IEC) whose mandate and activities as well as Lesotho's electoral model are discussed under **article 13** on the right to participate in government.

**Legislative measures**

241. To ensure effective implementation of the right to self-determination, Lesotho has enacted the **National Assembly Electoral Act 2011** which governs elections to the National Assembly. The government of Lesotho has also decentralised power through creation of local government councils. Elections into these councils are governed by the **Local Government Elections Act 1998 (as amended)**. The first Local Government Elections were held in 2005 and the latest on 30 September 2017. Creation and empowerment of Local Councils has deepened participatory democracy in Lesotho.
242. One of the unique results brought by the electoral system in Lesotho is that in the 2012, 2015, and 2017 (snap) national assembly elections no single political party attained enough seats to form government. Hence in these years Lesotho had coalition governments.

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243. The first coalition government which was formed in 2012 was a three-party coalition government composed of the All Basotho Convention (ABC), Lesotho Congress for Democracy (LCD) and Basotho National Party (BNP). However, due to political instability which led to SADC intervention and mediation, the coalition government collapsed and snap elections were called in January 2015.
244. Following the 2015 elections, a seven party coalition government was formed. Once again Lesotho had political instability, the army commander, Lieutenant General Mahao was assassinated. This death together with two others once again led to SADC intervention. SADC established a commission of enquiry which recommended security, public sector and judicial reforms.
245. In 2016 members of the National Assembly passed a vote of no confidence in the Prime Minister for amongst others failing to implement the SADC reforms mentioned above. Acting in accordance with the Constitution the Prime Minister advised His Majesty the King to dissolve parliament. Hence the 2017 snap elections, which yielded the third coalition government, composed of four political parties.
246. Despite the political instability which has been caused by different factors, the mixed member proportional model has worked well to ensure the right to self-determination in Lesotho as it addresses equitable parliamentary representation among the political parties. The process has improved inter-party dialogue, encouraged inclusiveness and broader representation in the National Assembly.

**Judicial measures**

247. The Constitution of Lesotho does not only provide for the right to political participation and self-determination but also contains the right for candidates and voters to challenge election results as illustrated in **table A8** above.

**Challenges**

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248. A major challenge with regard to the right to self-determination in Lesotho is that the Constitution allows elected members of parliament to cross from one party to the other in parliament. This has been viewed as raping the will of the people in that the member who was elected under the banner or flag of one political party has the liberty to cross to another party without consultation with or permission of the people who elected him/her into parliament.

**ARTICLE 21: RIGHT TO DISPOSE OF WEALTH AND NATURAL RESOURCES**

**Constitutional and legislative measures measures**

249. **Section 34 of the Constitution** provides for the right to property in the following terms:

*Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment; and shall take such other economic measures as the State shall consider affordable.*

250. **Section 36 of the Constitution** provides for protection of the environment.

251. Section 3 of the Mines and Minerals Act provides that all rights in minerals are vested in the Basotho Nation.

252. With regard to disposal of water and diamonds, the government of Lesotho has entered into treaties and adopted legislative measures which govern compensation for individuals and communities affected by the Lesotho Highlands Water Project (LHWP) and mining in Lesotho.

**Lesotho Highlands Water Project**

253. Lesotho Highlands Water Project has been Lesotho's dream for a long time and was realised in 1986 through a treaty which Lesotho signed with the Republic of South Africa.

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The objective of the treaty was to transfer water from the mountains of Lesotho to the Gauteng industrial area.

254. Article 4(1) of the Treaty provides that the purpose of the project shall be to enhance the use of the water of the Senqu /Orange River by storing, regulating, diverting and controlling the flow of the Senqu/Orange River and its effluents in order to effect the delivery of specified quantities of water to the Designated Outlet Point in the Republic of South Africa and by utilizing such delivery system to generate hydro-electric power in the Kingdom of Lesotho.
255. The project was effected in two phases: phase 1A being construction of Katse and Mohale dams completed in 1996 and 2003 respectively. Phase Phase 1B involved the construction of the Mohale dams, the diversion tunnel to the Katse dam. Both phases also involved the construction of infrastructure such as tarred roads, feeder roads, bridges, camps, health facilities as well as environmental and social programmes. Phase 2, is construction of Polihali Dam. It began in 2016 and is expected to be completed in 2025.
256. Following this agreement and construction of the aforesaid dams, Lesotho's Gross Domestic Product (GDP) rose from 3 percent to 5.5 percent and an estimated 16 000 jobs were created. Furthermore, Lesotho is getting M53,000 Million Maloti per year in royalties from the sale of the water to the Republic of South Africa.
257. Other benefits which Lesotho, in particular the communities around the Katse and Mohale dams as well as Ha Lejone power station have gained from the project include construction of road networks throughout the mountains of Lesotho, construction of about 11 bridges, telecommunications systems network, schools, community halls and upgrading of clinics and development of two large scale trout farms (Katse fish farms and Highlands Trout).

**Compensation for affected communities**



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258. Provision for compensation of affected communities is contained in articles 7(18) and 15 of the LHWP Treaty which was domesticated through the LHWP Order of 1986. Article 17(18) provides that Lesotho Highlands Development Authority (LHDA) shall effect all measures to ensure that members of local communities in the Kingdom of Lesotho, who will be affected by flooding, construction works, or other similar project-related causes, will be enabled to maintain a standard of living not inferior to that obtained at the time of first disturbance: provided that such authority shall effect compensation for any loss to such a member as a result of such project-related causes, not adequately met by such measures.
259. Article 15 provides that the parties (the governments of Lesotho and South Africa) agree to take all reasonable measures to ensure that the implementation, operation and maintenance of the project are compatible with the protection of the environment and, in particular, shall pay due regard to the maintenance of the welfare of persons and communities immediately affected by the project.
260. The mode of compensation which the LHDA provided is cash compensation. This mode of compensation has posed several challenges including delay in paying out the compensation and also that the cash economy has impoverished the communities resulting in deterioration of their standard of living. The communities which were resettled to the urban areas no longer have access to land and suddenly have to pay for everything including water, which they accessed freely while still staying close to the rivers and wells in the highlands. There has also been loss of communal living and sharing which existed before.<sup>52</sup>
261. The major challenge surrounding the LHWP is that from the onset the 1997 LHDA Compensation Policy was not adhered to as there was no public participation in the design and decisions on the compensation packages. Some authors such as Tsikoane and

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<sup>52</sup> Ombudsman reports 2003 and 2006

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However argue that public participation was orchestrated by the nature of governments which concluded the treaty as Lesotho was under the military rule while South Africa was under the apartheid regime. Because the governments were not democratic, everything around the LHWP was conducted in secrecy and under an information black out.<sup>53</sup> Therefore, under democratic dispensation, and with the new phase which involves construction of Polihali Dam, the government of Lesotho is working closely with the affected communities to ensure that they do not suffer like the previously resettled communities.

262. According to the **Mines and Minerals Act of 2005**, the government has set itself a minimum of 20 percent shares in any proposed mining venture. There has been increased calls for more inclusion and greater share for the benefit of the locals from the government itself in the mining sector. Foreign investors gain at least between 70 to 80 percent accruing from natural resources primarily diamonds.

### Judicial Measures

263. In order to ensure that Lesotho enjoys the right to dispose of its wealth and natural resources without hindrance from outside companies and countries, in the case of ***Lahmeyer International GmbH v The Crown***,<sup>54</sup> a conviction was upheld by the Lesotho Court of Appeal and the company fined R12 million. The case arose out of the Lesotho Highlands Water Project, which is one of the biggest and most ambitious dam projects in the world, which entailed inter alia the construction of the Katse Dam in a remote and inaccessible part of the highlands of Lesotho. The High Court of Lesotho had found Masupha Ephraim Sole, chief executive of the Lesotho Highlands Development Agency,

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<sup>53</sup> Tsikoane 1990: 109 and Hoover 2001: 07

<sup>54</sup> C of A (CRI) 6 OF 2002 (April 7, 2004)

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guilty of accepting bribes from various multinational companies that were attempting to secure contracts related to the project.

**ARTICLE 22: RIGHT TO DEVELOPMENT**

264. Although the constitutional and legislative frameworks of Lesotho do not have a specific right referred to as the right to development, they however recognise that every Mosotho is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The laws of Lesotho recognise the right to self-determination and to full sovereignty over natural wealth and resources. Hence, as stated in article 21 above, when adopting laws and policies aimed at exploring the natural resources through activities such diamond and coal mining, construction of dams, roads, schools and healthcare facilities, the government involves the concerned communities in order to ensure that people of Lesotho are at the centre of the development process, and that such is aimed to improve the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits.

265. The government ensures that development processes are informed by the people for whom they are meant. This is done through various means including decentralisation of power to ensure local representation as well as through public gatherings to ensure that all people in the communities actively take part in the planning of development activities as well as their execution.

**ARTICLE 23 RIGHT TO PEACE AND SECURITY**

**Constitutional measures**

266. Section 146 of the Constitution of Lesotho establishes the Lesotho Defence Force (LDF) with mandate to maintain the internal defence of Lesotho while Section 147 creates the

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Lesotho Mounted Police Service (LMPS) which is tasked with the maintenance of law and order.

### Legislative measures

267. There has been enacted a number of laws which are aimed at maintaining peace and order in Lesotho. These include:

- **Internal Security (General) Act 1984** whose aim is to consolidate all laws relating to internal security. It criminalises all acts which may hamper peace and security in Lesotho including interference and destruction of essential services and labels such as an offence of sabotage. It also criminalises all forms of participation in subversive acts including membership or association with unlawful organisations whose activities are geared towards interference with peace and security. The Act also prohibits individuals' behaviour that may pose a threat to public safety, public order and public morality such as going armed in public without a lawful excuse,<sup>55</sup> using obscene, abusive, threatening or insulting language with intent to provoke a breach of peace as well as conduct or publication which incites public violence.<sup>56</sup> It proscribes manufacturing, possession and supply of dangerous weapons as well as explosives, incendiary or corrosive devices or substances for unlawful purposes.<sup>57</sup> The Act also criminalises training or drilling persons to use arms or practice of military exercises, movements or evolutions without permission of the Minister.
- **Lesotho Defence Force Act 1996** establishes the Lesotho Defence Force (LDF) to be employed in the defence of Lesotho, in the prevention or suppression of terrorism,

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<sup>55</sup> Internal Security Act S. 25

<sup>56</sup> Internal Security Act S. 26

<sup>57</sup> Internal Security Act S. 50

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internal disorder as well as maintenance of essential services including maintenance of law and order and prevention of crime. The Act also provides for employment of the LDF out of and beyond Lesotho.

- **Lesotho Mounted Police Service Act 1998** which provides that it shall be the duty of every person attested as a police officer to serve the person of Lesotho in that office, diligently, impartially and, with due regard to the Constitution to: a) Preserve the peace and maintain law and order; b) Prevent all offences against persons or property; c) Detect offences apprehend offenders and bring them to justice.
- **National Security Service Act 1998** establishes the National Security Service (NSS) with mandate to protect national security; in particular to protect the state against acts of espionage, terrorism or sabotage and from activities of agents of foreign powers and from actions of persons intended to overthrow or undermine democracy by political, industrial or violent means.

### **Administrative measures**

268. Lesotho's **Vision 2020** document identifies seven pillars of development as democracy, unity, peace, education and training, economic growth, management of the environment, and advancement in technology. It states in particular that by the year 2020 Lesotho shall be a stable democracy, a united and prosperous nation at peace with itself and its neighbours. In terms of this Vision statement, by 2020, Basotho shall be a peaceful nation living in harmony with their neighbours. The nation will have long and lasting peace characterized by truthfulness, love, tolerance, justice, honesty, unity and plenty. Basotho will be a coherent society with a fair distribution of income and wealth. At the international level there will be peaceful and strong strategic relations with the Republic of South Africa (RSA) and a full proactive involvement with other countries, regional and global institutions. The nation will successfully deal with its challenges including crime,

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unemployment and poverty. Basotho will have an advanced sense of political maturity and effective conflict and dispute resolution mechanisms to safeguard their peace.

269. The government of Lesotho has also adopted several measures such as joint peace demonstrations by the LDF and LMPS to assure the public that the two institutions are working together and will continue to work together to maintain peace and security in the country despite clashes that had taken place during an attempted coup in 2014.

### Challenges

270. As stipulated in the background information in Lesotho's initial report and in the background information above, Lesotho has had political instability from its independence to date. The instability has been characterised by post-election violence in 1998, attempted coup d'état in 2014, the killing of the army commander and other individuals in 2015 and the killing of an acting commander and two other senior army officials in 2017.
271. As a means of ensuring the people's right to peace, over and above resort to use of legislative and institutional frameworks available in Lesotho, the government of Lesotho has requested intervention from **SADC** in order to ensure that political instability and sporadic killings do not escalate to armed conflicts which may have catastrophic effect on the people of Lesotho. For instance, following the 1998 post-election violence, SADC military intervention assisted to quell what would have otherwise amounted to a full-fledged armed conflict in Lesotho. In 2014, following the attempted coup, SADC Troika on Defence, Politics and Security made up of Namibia, South Africa and Zimbabwe met to map the way forward. This was followed by a meeting between the then LDF Commander Tlali Kamoli and regional military officers from the SANDF, Zimbabwe Defence Forces (ZDF) and Namibia Defence Forces (NDF) to allow the return of the prime minister and guarantee national security.

## ARTICLE 24: RIGHT TO SATISFACTORY ENVIRONMENT

### Constitutional measures

272. Section 36 of the Constitution recognises a duty on the state to protect the environment for the benefit of the people.

### Legislative measures

273. Section 4 of the **Environment Act** protects the right to live in a scenic, clean and healthy environment. The provision also places a duty on every person to safeguard the environment. An aggrieved person may also bring proceedings against any person or entity involved in conduct causing or likely to cause harm to the environment or human health.

274. Section 5 of the **Environment Act** establishes the National Environmental Council which is charged with the responsibility of determining policies ensuring environmental protection and co-ordinating cohesion between different role players in environmental protection.

275. Section 58 of the **Mines and Minerals Act** mandates holders of mining rights to conduct their activities in such a manner as to preserve the natural environment, to minimise and control waste or undue loss of or damage to natural and biological resources and to prevent or where unavoidable, promptly treat pollution and contamination of the environment.

### Administrative measures

276. **Lesotho has an Environmental Impact Assessment Policy** in terms of which the impact of all development projects on the environment has to be assessed before approval and implementation of such projects.

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**ARTICLE 25: DUTY TO PROMOTE AWARENESS OF THE CHARTER**

277. The government of Lesotho in collaboration with CSOs and Development partners has held several human rights awareness campaigns aimed at popularizing all international human rights instruments including the Charter.

278. The government of Lesotho also commemorates human rights days such as international human rights day, disability day, youth day and others and in these celebrations, contents of the Charter are made known to the public.

279. A number of laws which implement the Charter including the Constitution of Lesotho, the Legal Capacity of Married Persons Act and the Children's Protection and Welfare Act have been simplified and translated into Sesotho.

**ARTICLE 26: DUTY TO GUARANTEE JUDICIAL INDEPENDENCE**

**Constitutional measures**

280. Section 118(2) of the Constitution recognises independence of the judiciary. The judiciary operates independent of the executive and legislature. Section 118(3) of the Constitution further provides that the Courts shall, in the performance of their functions be independent and free from interference and subject only to this Constitution and any other law.

**Legislative measures**

281. There has been enacted, the **Administration of the Judiciary Act of 2011**, which provides for a separate and independent administration and finances of the Courts and for incidental matters.

**Judicial measures**

282. Appointment of judges to the Court of Appeal of Lesotho has been challenged in the case of ***Qhalehang Letsika & Others v Kananelo Mosito & Others*** in which some lawyers



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challenged appointment by the Prime Minister, of a judge who had been impeached by a duly established tribunal for failure to pay tax prior to his appointment.

**Challenges**

283. Independence of the judiciary in Lesotho has had several challenges including non-accountability by the judiciary, political appointment of the Chief Justice and President of the Court of Appeal and non-representation of other stake holders such as the Law Society, Academia, CSOs and politicians in the Judicial Service Commission which is responsible to appoint puisne judges and all other judicial officers.

**ARTICLE 27: DUTY TOWARDS THE FAMILY**

**Constitutional and legislative measures**

284. The Constitution does not identify any positive duties of persons towards the family as a unit. However, there are a number of laws which have a bearing on the duty towards the family. These include the Marriage Act 1979 which defines marriage as a union between man and woman to the exclusion of others. The Deserted Wives and Children Proclamation mandates husbands to maintain their wives and children and the Children's Protection and Welfare Act governs children's affairs including their maintenance and adoption where circumstances require.

**ARTICLE 28: FREEDOM FROM DISCRIMINATION**

285. Lesotho's implementation of these rights has been dealt with under Articles 2 and 3 above.

## **PART B: THE PROTOCOL**

### **INTRODUCTION**

286. The Kingdom of Lesotho ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Protocol) on 26 October 2004. The Protocol complements the African Charter by stipulating means through which States Parties must ensure that African women fully realise their human rights on the basis of equality with men.
287. In terms of article 26 of the Protocol, states parties are enjoined to submit periodic reports on their implementation of the Protocol every two years. Thus, Lesotho's initial report was due in 2006. However, because of technical constraints and political instability which the Kingdom of Lesotho has experienced in the past decade, it has not been able to comply with this obligation. With technical assistance provided by the Centre for Human Rights, University of Pretoria, the Kingdom of Lesotho has been able to prepare this report which covers the period between 2006 and 2017.
288. This initial report has been compiled in accordance with article 26 of the Protocol as well as the Guidelines for State Reporting issued by the African Commission on Human and Peoples' Rights.
289. The report was compiled in consultation with government ministries and departments, representatives of various human rights institutions; civil society and community based organisations.
290. The report contains details regarding the legislative, administrative, judicial and other measures which the Kingdom of Lesotho has put in place to implement protection of the rights recognised in the Protocol. The statistics used in this report are secondary data obtained from population censuses of 2006 and 2016, Lesotho Demographic Survey (LDS), Lesotho Government Ministries and Research conducted by various Civil Society

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Organisations and Development Partners. Sources of all the data in the form of percentages, figures, tables and graphs are acknowledged.

## **BACKGROUND INFORMATION**

### **Demographics of the female population in Lesotho**

291. Lesotho's latest Population Census was held in 2016. However, results have not yet been published. Country Metres estimated the total population to be 2 173 390 by 1 January 2017. The table below shows percentage distribution of *de jure* population by sex in ten administrative districts into which Lesotho is divided.

**Table B1 percentage distribution of *de jure* population by sex and district**

District	Male	Female	Total population
Butha-Buthe	48.9	51.1	105 403
Leribe	49.7	50.3	331 117
Berea	48.4	51.6	273 832
Maseru	48.3	51.7	389 627
Mafeteng	50.9	49.1	183 507
Mohale's Hoek	49.8	50.2	181 196
Quthing	49.9	50.1	129 533
Qacha's Nek	49.4	50.6	63 910
Mokhotlong	49.8	50.2	105 538
Thaba-Tseka	49.9	50.1	130 532

Source: 2011 LDS

292. Although the districts differ from one another in population size, table 10.1 shows that there are more females in all the districts with the exception of Mafeteng which has a male

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population of 50.9 percent and female population of 49.1 percent. Despite women constituting majority of the population in Lesotho, they have historically been marginalised in enjoyment of civil and political as well as social, cultural and economic rights. However, as will be illustrated in the next parts of this report, the government of Lesotho has made strides in addressing the historic discrimination of women through legislative, judicial and administrative measures although as will be illustrated some challenges still remain.

**Table B2: Sex Ratios by Age-group and residence**

Ratios		
Age Group	Urban	Rural
00 – 04	98.5	105.7
05 – 09	93.9	99.2
10 – 14	97.8	106.1
15 – 19	82.8	115.9
20 – 24	77.2	112.2
25 – 29	80.4	120.3
30 – 34	94.6	118.4
35 – 39	97.5	111.1
40 – 44	88.6	96.3
45 – 49	94.5	93.3
50 – 54	71.3	72.8
55 – 59	84.2	77.0
60 – 64	87.7	80.4
65 – 69	66.1	78.9
70 – 74	49.8	62.6
75 – 79	49.0	51.3
80 – 84	31.9	48.4
85+	30.4	3.0

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Total	87.0	100.9
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**Source: 2011 LDS**

293. **Table B2** reflects further that the district of Maseru, which is Lesotho's capital city, has the lowest male population of 48.3 percent and highest female population of 51.7 percent. This variance is influenced by employment of women in the textile industry enabled by African Growth and Opportunity Act (AGOA). This status is also reflected in table 10.2 which shows that there are more females in the urban areas than in rural areas in Lesotho: 87 males to 100 females in the urban areas and 101 males for every 100 females in the rural areas.
294. Despite women constituting majority of the population, the working class and voters in Lesotho, they are still not represented in decision making positions at both the central and local government levels.<sup>58</sup> Sadly, women are also majority of the poor.<sup>59</sup>
295. Factors which act as barriers to women's full participation in economic and political governance include culture, tradition and social norms which are influenced by patriarchal ideologies which negatively affect women in Lesotho.
296. In order to address these challenges, the government of Lesotho has adopted several legal, judicial and administrative measures which have contributed to Lesotho having a Gender and Development Index score of 65 percent and ranking 4<sup>th</sup> of the 14 SADC countries in terms of gender and development. While Lesotho has made good progress in promoting gender equality and empowering women and female participation in the political and socio economic sectors, it has however not met all its targets under MDG 3.

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<sup>58</sup> According to LCN (2015) *The status of women in Lesotho* 8, 'women in Lesotho are spectators who play the role of voting others into political space'.

<sup>59</sup> LCN (2015) *The status of women in Lesotho*

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The government of Lesotho continues to implement measures and strategies to achieve gender equality as envisaged under Sustainable Development Goal 5 (SDG 5).

**APPLICABILITY OF THE PROTOCOL**

297. Lesotho applies a dualist approach to all international instruments. Non-domesticated international instruments are not applicable in the courts of Lesotho until there is an Act of parliament which incorporates them into the national legal framework.<sup>60</sup> Currently the Protocol has not been domesticated through an Act of parliament and therefore would not ordinarily be applicable in the courts of law. The general rule notwithstanding, the Constitutional Court has emphasised that the Constitution and other subsidiary laws in Lesotho must be interpreted in accordance with Lesotho's international human rights obligations. Hence the Court applied the Protocol in *Molefi Tsepe v IEC* in which earmarking of local government constituencies for women was held to be an affirmative action in accordance with the principles of equity contained in the Protocol.<sup>61</sup>

**BUDGET FOR WOMEN**

298. There has been established a Ministry of Gender, Sports and Youth which is the focal point for formulation of gender policies, laws, gender mainstreaming and empowerment of women in all spheres. The government of Lesotho has budgeted for women in various ways including a separate budget which is dedicated directly to the department of gender. Amongst measures which the Department has put in place to cater for needs of women is support of women-led economic activities and vocational training. The other way in which women's needs are budgeted for is through other ministries such as the Ministry of Health which has various strategies and programmes aimed at covering women's sexual

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<sup>60</sup> *Sello v Commissioner of Police and others* CIV/APN/10/1980 High Court Judgement of 22 February 1980 (unreported) (herein after *Sello*). See also *Law Society of Lesotho v Right Honourable Prime Minister* C of A (CIV) No. 5 /1985 court of Appeal Judgement of 3 September 1985 (herein after *Law Soceity*)

<sup>61</sup> *Molefi Tsepe v IEC and others* (full citation)

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and reproductive health as well as sexual and reproductive health of adolescent girls and for primary health care. The Ministry of Social Development has a budget for women in distress, women with disabilities and elderly women.

## GENDER MAINSTREAMING

299. The government of Lesotho regards gender equality as a core commitment towards human development in Lesotho. Lesotho's long term **National Vision 2020** and **Poverty Reduction Strategy** recognise gender inequality as both a major cause of poverty and an impediment to sustainable development in Lesotho. The government also acknowledges that gender discrimination is the source of inequitable and low economic growth, of high prevalence of HIV and AIDS, and inadequate governance.

300. In order to mitigate the scourge of gender inequality in Lesotho, the government has embarked on the process of ensuring that women and men have equal access and control over resources, development benefits and decision-making, at all stages of the development process and projects, programmes and policies. In order to achieve gender mainstreaming in Lesotho, women's experiences and prejudices based on various factors including cultural stereotypes are taken into account in policy formulation as well as enactment of laws.

## GENDER AUDIT OF LAWS

301. In 2000, the Law Reform Commission of Lesotho in consultation with NGOs which work in the area of women's rights engaged in a law reform process that was aimed at reviewing laws that do not cater for the rights of women. Consequently, discriminatory laws were repealed and various laws were enacted to strengthen the protection of women's the rights. The laws which were enacted pursuant to this audit are as follows:

302. The **Legal Capacity of Married Persons Act 2006 (LCMA)** was enacted to remove marital power of men and minority status of women married both under custom and civil

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rites. The Act gives married women equal status with their husbands in the family and in making decisions about acquisition and disposal of assets of their joint estate, raising children, choice of domicile and other matters incidental to a marital relationship.

303. The **Sexual Offences Act 2003** was enacted to repeal of the common law crime of rape, which was very restrictive as to what acts constitute rape. The **Sexual Offences Act** is comprehensive with regard to acts which constitute sexual offences inclusive of marital rape. It also provides for compulsory HIV testing of perpetrators of sexual violence and imposes heavier penalties on perpetrators who commit sexual violence knowing their HIV/AIDS positive status.
304. **Land Act of 2010** was enacted to allow women access to land as well as the right to register their rights to such land in their own names.
305. **Deeds Registry Act of 1967**. Parts of the Act dealing with marital power were repealed to allow women to register movable and immovable property in their own names.
306. **Companies Act of 2011** was enacted to allow women to register companies and to be Directors to such companies without requiring their husbands' consent. It also provides women opportunities for collateral to obtain credit from financial institutions.
307. **Education Act of 2010** provides for free and compulsory education for both boys and girls. It also prohibits expulsion of female students who fall pregnant and mandates schools take them back after delivery.
308. **Anti-trafficking in persons Act of 2011** criminalises all forms of trafficking and sexual exploitation. It provides for heavy penalties against perpetrators and also provides for protection and support of victims of trafficking who are usually women and children.
309. **Children's Protection and Welfare Act of 2011** gives women equal custody of children and also provides for the children's right to be supported by both parents thus easing the



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burden of maintenance of children on single, divorced or deserted women who raise children without support from the children's fathers.

310. **Penal Code Act 2010** regulates all common law crimes such as assault which includes domestic violence.
311. **Local Government Elections (Amendment) Act of 2011** provides for a temporary measure in terms of which 30 percent quota of seats in municipal, urban and community councils to be reserved for women and be distributed proportionally amongst political parties.
312. **National Assembly Elections (Amendment) Act of 2011** requires that all political parties contesting Proportional Representation ((PR) elections must submit a gender balanced (zebra) to the IEC. In terms of section 47(2)(b) of the Act.

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ARTICLE 2: ELIMINATION OF DISCRIMINATION (EQUALITY / NON-DISCRIMINATION)

**Constitutional measures**

313. Chapter Two of the Constitution of Lesotho focuses on the protection of fundamental human rights and freedoms. **Section 4** of the Constitution guarantees freedom from discrimination. It provides that every person in Lesotho regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is entitled to the rights contained in the Constitution.
314. Section 18 of the Constitution provides for freedom from discrimination and empowers the government to progressively make laws and policies with a view of promoting justice and

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equality for all citizens of Lesotho.<sup>62</sup> This element of section 18 has been instrumental in advancement of the rights of women in Lesotho. However, exceptions to the general rule of non-discrimination include customary law. Section 18(4)(c) provides that the non-discrimination provision shall not apply 'customary law of Lesotho with respect to any matter in the case of persons who, who under that law, are subject to that law'. Customary law is mostly applied in cases relating to marriage, inheritance and succession to chieftainship. On the basis of this exception, the Constitutional Court in *Senate Gabasheane Masupha v Magistrate Berea and Others* held that section 10 of the Chieftainship Act 1968 in terms of which only first born male children are entitled to succeed to chieftainship is not unconstitutional as it is a rule of the customary law of Lesotho and therefore exempted by section 18(4) (c).

315. Based on the provisions of Section 18(4)(c), the Kingdom of Lesotho entered a reservation on **Article 2 of CEDAW**.<sup>63</sup>
316. Section 19 of the **Constitution of Lesotho** further recognises the right to equality before the law.
317. Section 26 of the Constitution provides that Lesotho shall adopt policies aimed at promoting a society based on equality and justice for all its citizens regardless of amongst others sex.

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<sup>62</sup> Section 18(4) (e) the proviso on the last paragraph thereof provides that nothing shall prevent the making of laws in pursuance of the principles of state policy of promoting society based on equality justice for all citizens of Lesotho and thereby removing any discriminatory law.

<sup>63</sup> 'The Government of the Kingdom of Lesotho does not consider itself bound by Article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the Throne of the Kingdom of Lesotho and the law relating to succession to chieftainship. The Lesotho Government's ratification is subject to the understanding that none of its obligations under the convention especially in Article 2 (e) shall be treated as extending to the affairs of religious denominations. Furthermore, the Lesotho Government declares it shall not take any legislative measures under the Convention where those measures would be incompatible with the Constitution of Lesotho.'

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**Legislative measures**

318. Apart from the Constitution, the Kingdom of Lesotho has also enacted other laws with the aim of eliminating discrimination against women. For instance, the Legal Capacity of Married Persons Act which repeal marital power which husbands had over their wives; the Land Act 2010 which entitles women to have land registered in their names and Companies Act which allows women to hold positions of directors in companies without their husbands' consent.

**Judicial Measures**

319. The legal reforms aimed at eliminating discrimination against women in all spheres of life have been applied in various cases summarised in the table below. However, the challenge which remains is that section 18(4)(c) of the Constitution exempts acts done pursuant to customary law from the discrimination test under sections 4, 18 and 19. The effect of section 18(4) (c) is illustrated in the case of ***Senate Masupha v Magistrate Berea and Others***.

**Table B3: Cases on elimination of discrimination against women**

Case	Summary
<b><i>Molefi Tsepe v IEC</i></b>	The Constitutional Court and the Court of Appeal held that affirmative action in terms of which 30 percent of seats in local government elections were reserved for women was justifiable discrimination and in accordance with the Constitution of Lesotho and Lesotho's obligations under international human rights instruments including the Protocol.
<b><i>Senate Masupha v Magistrate Berea and Others</i></b>	The Constitutional Court and the Court of Appeal held that Section 10 of the Chieftainship Act in terms of

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which only first born male children can succeed to chieftainship is not discriminatory as it is in accordance with Sesotho customary law which in accordance with section 18(4)(c) of the Constitution is exempt from the non-discrimination provisions of section 18.

### Administrative Measures

320. Pursuant to the DPSP in section 26 of the Constitution, the Kingdom of Lesotho has adopted the following measures with the aim of ensuring gender equality in Lesotho:

- **Gender and Development Policy 2003:** The overall goal of the policy is to take gender concerns into account in all national and sectoral policies, programmes, budgets and plans in order to achieve gender equality in the development process. The policy address various factors which would ensure full equality between men and women including access to equal opportunities in the development processes, equal access to education, health services and control over resources such as land and credit. The policy also highlights promotion of equal opportunities and participation in politics and decision-making including decision-making in sexuality matters as important to achieve gender equality and to reduce the spread of HIV/AIDS and other STIs in Lesotho. Factors which inhibit equality are identified in the policy to include gender based violence (GBV). In terms of this policy the government of Lesotho also seeks to eradicate problems such as GBV, to guide in allocation of resources and public expenditure in a manner that ensures equal beneficiary of both males and females, to set guidelines for public awareness and promotion of the link between gender equality and development through media. The policy is also used as a guide in gender mainstreaming process for all Government

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Ministries, which will serve to address gender concerns in a wide spectrum of developmental issues.

- **National Decentralisation Policy 2014:** whose conception and implementation is guided by a number of principles including gender equality and equity.
- **National Vision 2020:** With particular reference to gender equality, the Policy provides that by the year 2020, there will be no gender disparity and that men and women will be equal before the law and will be accorded equal opportunities in all aspects of life.
- **National Strategic Development Plan 2012/13-2016/2017:** one of the cross-cutting issues in the plan is promotion of gender equality. Amongst the challenges identified by the plan are poverty, unemployment and inequality. The plan is therefore aimed at reducing women's social subordination and empower them to contribute more fully to development and poverty reduction.
- **Water and Sanitation Policy 2007** aims to promote equality in provision, use, management and access to potable water supply and sanitation services. The policy takes into account vulnerable and marginalised groups of women and girls. It is therefore aimed at ensuring integration of gender equity into water resources programmes and activities and to ensure that all genders participate in the formulation and implementation of all development.

## Challenges

321. The main challenge in Lesotho is lack of awareness on human rights particularly women's rights. This undermines the ability of women to seek redress when their rights are violated. The implementation of the laws and policies on women's rights is taking place at a slow pace. Also, the cultural and societal resistance to gender equality is a serious obstacle to efforts that are being made in eliminating discrimination against women.

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322. The other challenge is that the laws and policies are aimed at women as a group. The government of Lesotho is aware that women are not a homogeneous group and that certain groups of women such as rural women, women living with HIV, women with disabilities and sexual minorities have specific challenges which affect their rights to equality and non-discrimination. Hence efforts in the form of administrative measures are being made to address these groups of women as indicated in detail in the next articles.

### **ARTICLE 3: THE RIGHT TO DIGNITY**

#### **Constitutional measures**

323. The Right to dignity is a constitutional imperative entrenched under a number of substantive rights. There are measures that have been taken with a view to preserving the dignity of women besides the generality of the provisions relating to the dignity. **Sections 8 and 11 of the Constitution** provide for the right to freedom from inhumane treatment and right to respect for private and family life respectively.

#### **Legislative measures**

##### ***Sexual harassment***

324. **Section 200 of the Labour Code Order 1992** provides that 'any person who offers employment or who threatens dismissal or who threatens the imposition of any other penalty against another person in the course of employment as a means of obtaining sexual favours or who harasses workers sexually shall commit an unfair labour practice'.

325. **Section 51(1) of the Penal Code Act 2010** criminalises indecent assault which is defined as touching a person without such person's consent in an indecent manner. A touch is, according to the Act, deemed indecent if according to the standards of reasonable members of the community, it demonstrates a sexual intention or motive.

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326. **Section 3 of the Sexual Offences Act 2003** criminalises a non-consensual sexual act which is defined as physical contact, exposure or display of sexual organs in any coercive circumstances including application or threat of application of force. However, it does not address unlawful verbal sexual advances.

***Prostitution***

327. Section 55 of the **Penal Code Act** defines as a person who engages in sexual activity for payment. It does not criminalise prosecution per se but criminalises conduct of a third person who incites, instigates or engages or procures another to engage, either in Lesotho or elsewhere, in prostitution.

328. The socio-economic hardships faced by women, particularly unemployment contributes sharply to young women engaging in prostitution despite a stark social disapproval of the practice. Women engaged in prostitution are generally discriminated against and exposed to various forms of danger, to life and bodily integrity.

***Sexual Orientation***

329. Under the Constitution, there is no specific protection granted to a person on the basis of sexual orientation. However, it may not be disputed that it could be included in the reading of **Section 18** under '*other status.*' Both the **Penal Code Act** and the **Sexual Offences Act** do not criminalize non-violent sexual intercourse between two consenting adults of similar sex.

***Evidence in cases of sexual Offences***

330. Section 18 of the **Sexual Offences Act** prohibits the court from drawing an adverse inference from the fact that the complainant there was a delay between commission of a crime and laying of a complaint.

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331. Section 3 of the **Sexual Offences Act** allows for the court to proceed with any trial involving sexual offences *in camera* or closed court. More often the evidence likely to be given in these trials would be highly disparaging and even malignant to the dignity and character of women involved therein. The Act further provides that the court may make an order to disallow publication of the information if the proceedings were held *in camera*.<sup>64</sup>

### **Administrative measures**

332. Because of the health risks faced by prostitutes, the Ministry of Health in partnership with the Lesotho Planned Parenthood Association (LPPA) have a mobile clinic through which sexual and reproductive health services and other primary health services are provided in a private manner and in areas which are easily accessible by prostitutes. Services in these mobile clinics are provided from Monday to Saturday, from 6:00pm to 11:00 pm as these are the times during which sex workers are available in the streets.

### **Judicial measures**

**Table B4: Sexual offences cases**

Case	Facts	Judgement & Sentence
<i>R v Tsotleho Thulo</i> <i>CRI/S/04/2013</i>	The accused was charged and convicted before the Magistrate Court on 10 May 2013 with contravening section 8(1) read with section 2(d)(i) and 32(a)(vii) of Sexual Offences Act in	Sentenced to 25year imprisonment.

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<sup>64</sup> Section 25 of the Sexual Offences Act



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	that he had committed his 5 year old daughter, having tested HIV Positive in 2008 and already undergoing treatment.	
<i>R v Teboho Leteba</i>	Accused charged before the magistrate court for contravention of Sexual Offences Act in that he committed a sexual act on a 7 year old girl to whom he was related. The magistrate convicted him and committed him to the High Court for sentence.	The High Court followed remarks of the Court in S v Rubie that 'punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to particular circumstances.' It also took into account the sentiments of Hlajoane J in the case of <b><i>R v Tsotleho Thulo</i></b> (above) that 'A rapist does not only murder a victim, he destroys her self-respect and destroys her feeling of physical and mental integrity and security. His monstrous deed often haunts his victim and subjects her to mental torment for the rest of her life, a fate far worse than loss of life.' Accused

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		sentenced to 20 years imprisonment.
<i>Setoi Setoi v Director of Prosecutions &amp; Others</i> <i>CRI/APN/12/2012</i>	Appellant charged with contravention of the Sexual Offences Act. He applied for bail. In objecting that the accused be granted bail, prosecutor led evidence of the complainant to the effect that the accused had threatened to beat complainant. On this ground, application for bail refused. Accused appealed to the High Court.	The High Court held that the Magistrate was correct in admitting evidence of the complainant when considering the bail application as this is authorised by section 28(1)(a) & (b) of the Sexual Offences Act.
<i>R v Kutloano Shai</i> <i>CRI/S/003/2013</i>	Accused was convicted of contravention of section 3 of the Sexual Offences Act in that he had committed a sexual act against a complainant who had physical disability. Matter remitted to the High Court for sentencing.	Accused sentenced to 8 years imprisonment. Court took into account and as mitigating factors accused's low level of intelligence and sophistication and opted for an 8 year sentence as opposed to mandatory 10 years.

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<p><i>Sello Leuta v Senior Resident Magistrate Berea &amp; 2 Others C of A (Cri) 3 /2016</i></p>	<p>Appellant was convicted and sentenced to 5 years imprisonment by the magistrate court for violation of section 8(1) of the Sexual Offences Act 2003 in that he committed a sexual act with a child aged 14 years. He filed an application for review in that the magistrate failed to inform him of the right to legal representation. The High Court confirmed conviction and sentence. The appellant appealed against the High Court decision.</p>	<p>The Court provided a checklist which should be followed in order to ensure that people charged under the Sexual Offences Act are duly informed of the seriousness of the offences alleged as well as their rights in accordance with the principles of fair trial.</p> <p>Conviction and sentence set aside. However, accused not acquitted and the decision to charge him afresh left with the DPP.</p>
<p><i>Tsepe Ralibuseng v Director of Public Prosecutions &amp; 2 Others CRI/A/14/2012</i></p>	<p>Appellant charged with contravention of section 3 of the Sexual Offences Act in that he forcefully had sexual intercourse with a girl aged 16. Magistrate refused his bail application but gave no reasons for</p>	<p>The High Court set aside the magistrate's refusal of appellant's bail application and admitted him on bail on several conditions including that he should not interfere with witness and must also secure an independent person who shall on his own recognisance stand him</p>

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	such refusal. He appealed against the refusal	surety in the amount of M5,000.00
<i>R v Tumelo Manesa CRI/S/4/10) [2011] LSHC 45 (31 March 2011);</i>	Accused was charged and convicted with contravention of the Sexual Offences Act. The matter was remitted to the High Court for sentencing which was not done until a year and half later. Accused pleaded that he must be discharged of the offence because due to the delay in sentencing.	The court held that while the sentencing ought to have been done on time, the delay does not entitle him to being discharged. He was sentenced to 10 years imprisonment from which the one and half year already served, was deducted.

## **Challenges**

333. Although the laws of Lesotho do not criminalise prostitution and homosexuality, those who fall in these categories are often victims of societal discrimination and persecution. The government however works hard to instill the spirit of tolerance of all people in Lesotho.

## **ARTICLE 4: THE RIGHTS TO LIFE, INTERGRITY SECURITY OF THE PERSON**

### **RIGHT TO LIFE**

#### **Constitutional measures**

334. **Section 5 of the Constitution** of Lesotho provides for an inherent right to life and that no one shall be arbitrarily deprived of such life. The limitation to this right is death penalty. It

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must be noted however that it has been over twenty years since the last execution of death penalty.

### **Legislative measures**

335. **Section 40 of the Penal Code Act** provides that '[a]ny person who performs any unlawful act or omission with the intention of causing the death of another person, commits the offence of murder if such death results from his or her act or omission.' It provides further that a person convicted of murder shall be sentenced to death except if such person was 18 years at the time of commission of the offence or was pregnant at the time of sentence or there exist extenuating circumstances.

336. **Section 298 of the Criminal Procedure and Evidence Act** also provides that death penalty may not be imposed on pregnant and nursing mothers.

### **Protection of women from violence**

337. Gender based violence is one of the major factors which undermine women's integrity and security of person in Lesotho. According to gender links, 86 percent of women in Lesotho experienced GBV at least once in their lifetime. Hence Lesotho is ranked 3<sup>rd</sup> highest prevalence of IPV in the SADC region.<sup>65</sup> Women are beaten by their spouses for such reasons as arguing with their husbands, refusing to have sex, going out without the husband's consent. However, other than the 86% stated by Gender Links, there are no statistics on GBV in Lesotho. In 2009, with the support of UNFPA, the Ministry of Gender has commissioned a baseline study on the prevalence of forms of GBV in selected districts as well as assessment of ten institutions to determine their capacity and capability to

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<sup>65</sup> Gender Links 2015 <http://genderlinks.org.za/csw-newsletter/Lesotho-third-highest-prevalence-of-intimate-partner-violence-2015-06-10/>

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prevent GBV. According to the findings of the study, most prevalent forms of GBV are physical and emotional abuse which vary from low to moderate.

338. There are various laws enacted to end gender based violence which takes place in all spheres of life including the family, at work and in public. These include the section 3 of the **Sexual Offences Act, Penal Code Act** and **Anti-trafficking in Persons Act** which prohibit all forms of physical, psychological and sexual violence.

339. There is also **Domestic Violence Bill 2018** which is intended to focus specifically on domestic violence. When enacted into law, the purpose of the Domestic Violence Act will be to provide for protection, prevention and criminalization of domestic violence as well as advocacy for rights of victims of domestic violence and related matters. It will cover different forms of abuse including physical, psychological, sexual and economic abuse perpetrated through various ways including but not limited to stalking and use of technology such as social media and telephones.

### **Administrative measures**

340. In order to mitigate the challenge of GBV in Lesotho, the Ministry of Gender and Youth, Sports and Recreation, with the financial support of UNFPA and Gender-Links and in partnership with various CSOs formulated the **National Action Plan on Gender Based Violence 2008**. The plan focuses on legislation and policy, socio-economic, cultural and political rights, public education and awareness, integrated approaches and budgetary allocations specifically aimed at reducing GBV and providing support to its victims.

341. The government of Lesotho has also mainstreamed gender into the police training curriculum and the Ministry of Gender frequently holds awareness raising campaigns against GBV.

### ***Violence against sexual minorities***

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342. While there is no law which specifically protect sexual minorities in Lesotho, there is also no law which outlaws homosexuality. Furthermore, despite a major sector of the society having reservations about homosexuality on the basis of culture and religion, there are no reports of women who have been subjected to violence on the basis of their sexual orientation. Rather, the system has been receptive to sexual minorities in that one organisation, Matrix, has been registered and it carries its activities without hindrance from the government. Furthermore, in September 2017, the first chest operation for a transgendered man was carried out in Lesotho in a referral hospital in which the government has shares. This is thus an indication of government's tolerance of sexual minorities in Lesotho.

***Support to victims of violence***

343. Despite absence of a domestic violence law, the government of Lesotho in collaboration with development partners and CSOs has adopted administrative measures to support victims of domestic violence. These measures include:

- establishment of the office of **Gender and Child Protection Unit (GCPU)** within the police service with mandate to handle cases of gender based violence;
- establishment of **Victims' Support Unit** within the Magistrate Court with mandate to support victims during prosecution of cases including those of gender based violence and
- establishment of **Lapeng Care Centre**, a temporary home for victims of GBV.

***Challenges***

344. The main challenge with affects elimination of violence against women in Lesotho is that there is general acceptance of wife battering within the society. The other challenge is that the CGPU does not have full capacity to deal with the number of cases as well as sensitivity and complexity of cases of GBV. In relation to provision of support to victims of

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GBV, the challenge is that there is only one care centre within the whole country whereas there are several cases of GBV.

**ARTICLE 5: ELIMINATION OF HARMFUL PRACTICES**

**Legislative measures**

***Trafficking in women and girls***

345. **The Anti- Trafficking in Persons Act 2011** is aimed at preventing trafficking of persons, in particular women and children, as well as prosecution and punishment of those who commit the offence of trafficking as well as those who participate in trafficking by other means such as incitement to commit the offence. Since its enactment, there have been some convictions and a number of victims who have been rescued.

***Female Genital Mutilation (FGM)***

346. There is no particular law which criminalises FGM in Lesotho. There are also no statistics which reflect its prevalence. Lack of statistical data is attributed to several factors including that firstly, female initiation schools are very scarce in Lesotho; secondly, there is no proof that rituals performed in female initiation schools involve any of the acts which have been categorised by World Health Organisation (WHO) as FGM. However, the government has embarked on public awareness campaigns on the dangers of FGM and that it constitutes human rights violation.

347. Common practices related to interference with the female genitalia include virginity testing and labia elongation. Although these practices may not have harmful physical effects as FGM does, the circumstances under which they are performed deny girls the right to bodily integrity because they are mostly done to girls who have no full understanding of the rationale behind the practice except that the elongation is for sexual gratification of their husbands and failure to do it undermines one's chances of getting married. This is regardless of whether the girls aspire to get married or not. As a result, girls are often



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forced to conform to the societal construct and undergo such practices and where they have not, they are ostracised by their communities and labelled as defiant and insubordinate. Just like FGM, these practises are not documented and therefore their prevalence is not known. There are also no laws which prohibit such practices.

***Early and Forced Child Marriages (EFCM)***

348. According to the **Marriage Act 1974**, the minimum age of marriage is 21 years old. However, the law allows girls to marry at 16 and boys at 18 with the written permission from the Minister. The Children's Protection and Welfare Act defines a child as anyone under the age of 18 but does not say anything about child marriages.

349. Despite legal prohibition of early marriages, UNICEF estimates that in Lesotho every 1 in 5 girls gets married before reaching their 18<sup>th</sup> birthday.<sup>66</sup> UNICEF's Demographic and Health Survey of 2014 shows that 17.7 percent of girls aged between 15-19 years were married. EFCM does not only hinder achievement of MDGs, but it also infringes the girls' right to choose their partners at an appropriate age. It also violates their right to health (complications from pregnancy and childbirth are amongst leading causes of their death and exposure to STIs) and education.<sup>67</sup>

**Administrative measures**

350. Measures which have been adopted to deal with harmful practices in Lesotho include establishment of the **Human Rights Commission** whose legislative framework is in place although the Commission has not yet been operationalized; **CGPU** (whose mandate is discussed in **Part A** of this report), holding of public gatherings to disseminate information on the wrongfulness of these practices and involvement of traditional leaders in such campaigns. Since the Human Rights Commission is not yet operationalized, the

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<sup>66</sup> Girls Not Brides <http://www.girlsnotbrides.org/about-child-marriage>

<sup>67</sup> Sunday Express "Escaping Child Marriage by a Whisker" January 31, 2017

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government of Lesotho collaborates with civil society organisations to campaign against EFCM.

351. The Queen of Lesotho has spearheaded a campaign against child marriages and has called on national and community leaders to take action to end child marriages.

**Challenges**

352. The main challenge which remain with regard to elimination of harmful practices is that some of these practices are deeply rooted in cultural practices and therefore it takes long and hard work to convince the people of their harmful nature. Some practices are performed discretely and therefore statistics on their prevalence and suitable ways of intervention not easy to ascertain.

**ARTICLES 6 AND 7: RIGHTS RELATING TO MARRIAGE**

353. The General Proclamation 2B imported Roman Dutch law and its legal traditions into Lesotho although it still left room for application of African law (later known as Sesotho customary law), thus creating a dual legal system which applies to date. In terms of this legal dualism, Sesotho customary law operates side by side with the 'received law.'<sup>68</sup> This has resulted in two marital regimes being customary marriages and civil rights marriages.

354. The two types of marriages are governed by two different legal regimes. Sesotho customary marriages are governed by customary law; most part of which is contained in the Laws of Lerotholi. The laws of Lerotholi governs, marriage formation, the marital relationship and dissolution of marriages. The civil rights marriage on the other side is governed by the Marriage Act 1974.

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<sup>68</sup> T Thabane & I Shale 2012 'The impact of the African Charter and Women's Protocol in Lesotho' in *The impact of the African Charter and Women's Protocol in selected African states* 79.

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355. Under both marital regimes, the marriage is defined as a union between a man and a woman, that is, marriage between people of the same sex is not recognised.

**Sesotho Customary Law Marriage**

***Formation of a Sesotho customary marriage***

356. The Laws of Lerotholi do not stipulate the age of marriage. However, the Children's Protection and Welfare Act puts the age of marriage at 18.

357. Section 34 of the Laws of Lerotholi stipulates the elements of a valid customary marriage as:

- a. Consent of both parties**
- b. Consent of parents or those who stand in *loco parentis***
- c. Agreement as to bohali**
- d. Part payment of bohali**

358. The challenge with these elements is that failure to meet any one of the elements invalidates the marriage, sometimes, to the detriment of a widow whose marriage is challenged after death of the 'husband'.

359. The other challenge is that the payment of 'bohali' has been criticised by the CEDAW Committee as one of the factors which influence GBV. However, the general perception of Basotho people is that 'bohali' symbolises union of the two families and therefore not payment for the bride. The woman is taken to have been married into the family and not just to her husband. This comes with the obligation on the entire family to protect the woman, including from violence by her husband. Secondly, acts of GBV are mostly attributed to those who have not paid 'bohali' as they do not value the marital union and therefore abuse their wives.

***Polygamy***

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360. Sesotho Customary Law permits polygamous marriages. Women in polygamous marriages are protected through the principle of “*malapa ha a jane*.” The essence of this principle is that the husband is obliged to provide for each of the wives and the children born out of such marriages can only inherit from their mothers’ houses.

361. The principle of ‘malapa ha a jane’ has been applied in several cases including that of ***Letsika v Letsika and Others (CIV/APN/560/2007)*** in which Hlajoane J stated that:

**when a man marries more than one wife customarily he is considered as having created many houses. Each wife will be allocated her own house and property such as fields, animals and household property. The first male issue in each house will be the heir in that house in which he is born. The wife in each house after their husband’s death will only inherit that which belonged to her house.**

***Dissolution of a customary marriage***

362. Dissolution of a Sesotho customary marriage is governed by Laws of Lerotholi and such is done in the Local Courts. Both men and women have a choice to file for divorce. However upon dissolution of a customary marriage, the woman is only entitled to take her personal property such as clothing, cooking utensils and farming implements. Although the law provides thus, the practice of the Local Courts has been to opt for equitable division of the joint estate.

**Civil rites marriage**

363. Civil rites marriages are governed by **Marriage Act of 1974** as well as **Legal Capacity of Married Persons Act of 2006**. The Marriage Act sets the marital age at 18 for boys and 16 for girls. The Children’s Protection and Welfare Act does not have an explicit provision on marital age. However, it provides that a child is anyone below 18. Therefore, a girl aged 16 is under the Act, a child.

364. The Marriage Act does not permit polygamous marriages.

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365. In terms of the **Legal Capacity of Married Persons Act**, both partners have equal rights to acquire and administer the property of the joint estate.

**Choice of marital regime**

366. A Sesotho customary marriage is automatically in community of property while a Civil rights marriage can be in or out of out of community. If no express choice is made, the default marital regime is in community of property. The predominant marital regime in Lesotho is in community of property.

367. There are several challenges with regard to the choice of marital regime in Lesotho. These include the fact that in practice the marriage officers do not give the parties the information as to the existence of the other regime and therefore they are under the impression that all marriages are in community of property.

368. Although there are two separate marital regimes in Lesotho, many marriages are a combination of the two in that, even when a civil rights marriage is intended, the union always begins with customary rituals including negotiations between the two families, agreement and payment of *bohali*. It is only when this stage is passed that a date for a wedding is set and the civil rights marriage takes place. The challenge with this practice has been that when intending to take a second wife, some men claim that their first marriage is a customary law marriage and that the subsequent solemnisation in church was not itself marriage but confirmation of an already existing marriage.<sup>69</sup>

**Retention of maiden name**

369. There is no law which compels married women to change their names and surnames to those of their husbands. However, in practice when a woman gets married, she is given a name. In some families the name is given immediately upon marriage during welcoming

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<sup>69</sup> See *Ramaisa v Mphulenyane*

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rituals including slaughtering of a sheep for her. In some families, she is given a name after the birth of a first child whom she shall be name after. The woman then uses this name together with the surname of her husband. The practice is so deeply rooted in Basotho culture that upon marriage women change their national identity documents to include their marital names and surnames. However, there is no law which compels women to adopt to this change of maiden names.

370. Some women choose not to use the marital name but change the surname only while others choose to retain their maiden names and surnames. There is no law which compels women to change and therefore women are at liberty make any of these choices.

**Choice of residence by mutual agreement**

371. Historically, the choice of residence for a married couple was exercised by the husband who had marital power over the person and property of his wife. However, with the repeal of marital power by the **Legal Capacity of Persons Act 2006** both spouses have the equal right to choose the place of residence.

372. In practice however, the choice is still left in the hands of the husband. For instance, upon marriage, whether a customary or civil rights marriage, on the evening of the marriage, the couple goes to the husband's home where rituals are performed to welcome the wife into the family. From this day, the wife is expected to 'automatically' stay with the husband's family until the time when they have a place of their own. In exceptional cases where the wife is employed at a place far from the husband's home, they can then leave with the husband and stay at their place but are still expected to return 'home'.

**The Woman's right to retain her nationality or to acquire that of her husband**

**Constitutional measures**

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373. In terms of **sections 40 and 41 of the Constitution** of Lesotho, any woman who is or has been married to a Lesotho citizen shall become a citizen of Lesotho only after applying for citizenship, taking an oath of allegiance and being registered as a citizen.
374. Citizenship by marriage can only be passed by a male Lesotho national to a non-Lesotho female spouse. A non-Mosotho female who marries a Mosotho male can acquire Lesotho citizenship by virtue of marriage while a non-Mosotho male who marries a Mosotho female cannot acquire Lesotho citizenship by virtue of marriage.

**Legislative measures**

375. Issues of citizenship and nationality are regulated by Lesotho **Citizenship Order of 1971** which provides that a person can attain Lesotho citizenship by birth, naturalization or registration. In terms of Section 2 of the Lesotho **Citizenship (Amendment) Order 1989**, where a non-Mosotho woman marries a Mosotho male, she has an option to either renounce or retain her citizenship. Section 4 of Lesotho **Citizenship Order 1971** provides that women who were married to Basotho men before Lesotho attained independence in 1966 are entitled to be registered as citizens.
376. This provision thus protects the rights of women to citizenship in that marriage does not automatically change the nationality of a married woman before and after independence. If a Mosotho male marries a non-Mosotho female, that non-Mosotho female will have a choice of becoming a Lesotho citizen through registration. Similarly, a Mosotho female does not lose her citizenship simply because she is married to a non-Mosotho male.
377. However, a challenge with retention of a foreign citizenship is that in terms of **section 6 of the Land Act**, a non-Mosotho woman cannot hold title to land even if married to a Mosotho male. That means when land is acquired, it is only registered in the names of husband and it is indicated that the spouse is a non-national and her names are not reflected in the title document. A further challenge is that upon death of the husband, the non- Mosotho surviving spouse cannot inherit the land in question.

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**Children**

378. In terms of both common law and Sesotho customary law, all children born in wedlock take the nationality, clan and religious denomination of their father.

**Right of the woman to acquire her own property**

379. In terms of the **Legal Capacity of Married Persons Act**, a married woman has equal rights as her husband to acquire and dispose off property which forms part of the joint estate. However, the Act is silent as to the right of a married woman to acquire property in her own name to the exclusion of her husband. The common law in this regard is that a woman married in community of property acquires property for the joint estate and when such property is land, it has to be registered in the names of both spouses. However, a woman married out of community of property may acquire and register property in her own name.

**ARTICLE 8: RIGHT OF ACCESS TO JUSTICE AND EQUAL PROTECTION BEFORE THE  
LAW**

**Constitutional measures**

380. Section 19 of the Constitution provides for the right to equality before the law and equal protection of the law.

**Legislative measures**

381. **Legal Aid Act 1978** establishes office of the Legal Aid Counsel which is aimed at providing free legal services for indigent litigants. The office has been most utilised mostly to represent women in divorce and maintenance cases to ensure that men maintain their spouses and children and also to ensure equitable distribution of marital property upon divorce. However, the legal aid service is not limited to marital disputes but also includes representation in criminal and other cases.



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## **Challenges**

382. Customary law does not embrace equality between men and women and therefore does not guarantee women right of equality before the law.

## **ARTICLE 9: THE RIGHT TO PARTICIPATE IN POLITICAL AND DECISION-MAKING PROCESS**

383. Women are visible participants in Lesotho's politics. However, out of the thirty registered political parties, only one of them, Reformed Congress of Lesotho (RCL) is led by a woman, Mrs. Keketso Rantso. Only a few women feature in the political parties' National Executive Committees (NECs). Women constitute the colour, permanent feature and driving force behind political campaigning in Lesotho. They drive the singing, dancing and lately decorating to ensure that their parties present the best force and image. As a result of their inferior position at party level, women are underrepresented in parliament.

384. With regard to other decision-making processes, Lesotho has had a number of women in key positions such as the Governor of the Central Bank, the Chief Justice, the Speaker of the National Assembly who served in the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Parliament of Lesotho and was changed in 2017 when the 10<sup>th</sup> Parliament resumed.

## **Constitutional measures**

385. The right to participate in politics and decision making is guaranteed in the Constitution. Section 20 provides that every citizen has the right to participate in government. This includes the right to participate in the conduct of public affairs,<sup>70</sup> vote and stand for elections.<sup>71</sup>

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<sup>70</sup> Constitution of Lesotho section 20(1) (a).

<sup>71</sup> Constitution of Lesotho section 20(1) (b).

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**Legislative Measures**

386. In order to ensure women's participation in politics and their representation in parliament, the National Assembly Elections Act was amended to require that for purposes of the Proportional Representation seats, all political parties have to submit before the election day, a list of candidates, in an order mixed by gender which has been termed 'zebra list' to represent the political party when PR seats are allocated.

***Women in parliament***

387. As indicated in part A of this report, Lesotho has had about 10 National Assembly Elections and two Local Government Elections.

388. Following the 2012 National Assembly Elections women constituted 28 percent of the 8<sup>th</sup> Parliament. According to UNDP, *"The proportion of men elected under the FPTP component remains disproportionately high, thus resulting in 26 percent overall representation of women in the National Assembly, a decrease from 2007."*

389. In the 2015 National Assembly Elections, out of the 1,117 candidates, 780 were men while 337 were women. Women Constituted 25 percent of Members of Parliament in that there were 30 women out of the 120 seats in the National Assembly (9<sup>th</sup> Parliament).

390. Of the 80 constituencies around the country only 9 of them (i.e. 11 percent) elected women, against 71 constituencies (89 percent) that elected men. The other 18 women went to parliament through the zebra listing of the proportional representation policy and they make 40 percent of the 40 PR seats.

391. Following the 2017 snap elections, women's representation in the National Assembly (10<sup>th</sup> Parliament) dropped to 23 percent. Women currently hold 27 out of 120 seats as opposed to 2015 when the number was 30.

392. President of the upper house of parliament (Senate) female.

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***Women in Cabinet***

393. The number of women in Lesotho cabinet is still disproportionately low in Lesotho. Women Constituted 38 percent of the 2007 Cabinet in that there were 9 women out of 24 Ministers and Deputy Ministers.
394. In 2012 women the number dropped to 28 percent in that there were 8 women out of 29 cabinet posts of Ministers and Deputy Ministers.
395. In 2015, the number of total Cabinet seats went up to 35 Ministers and Deputy Ministers. However, the number of women remained 8, thus bringing the percentage of women down by 5 percent to 23 percent.
396. In 2017 the Cabinet was made up of 36 members, five of whom were women ministers and three women deputy ministers. Thus women currently constitute 22 percent of Lesotho's cabinet.
397. The decrease of women in cabinet is attributed to formation of coalition governments as each party puts its leaders (who are men) first and in the 2012 and 2015 coalition governments the leaders were all men. The difference with the 2017 cabinet is that one of the leaders of the four parties which formed the coalition is a woman. However, the challenge with representation of women in cabinet remains.

***Women in Local Government***

398. Lesotho's first Local Government Elections were held in 2005. In these elections, women constituted 58 percent of the elected. The UNDP acknowledged that Lesotho was the highest in SADC, but warned that *"there remain complex social, cultural, political, economic, electoral and legal obstacles that continue to pose challenges for aspiring female Parliamentary representatives in Lesotho."*

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399. The 58 percent was a result of a quota system which Lesotho had adopted through the **Local Government Elections (Amendment) Act 2005**. In terms of this amendment, 30 percent of all constituencies were reserved for women. That is, only women could contest in these constituencies. Women and men could both compete on a winner-takes-all basis in the remaining 70 percent of seats. The Electoral Act made provision for this system to rotate to different constituencies for at least three elections, at which time it would be evaluated and assessed. This amendment was however challenged by one of the male contestants in the case of *Molefi Tse'pe v the IEC and others*. The grounds were that it infringed his constitutional rights. However, the Constitutional Court ruled that the electoral law was a 'justifiable discrimination'.
400. Political parties lobbied the Independent Electoral Commission (IEC) to investigate and initiate a law more favourable to all. Political parties argued that they needed to be free to field candidates in any constituency.
401. Lesotho amended its electoral legislation ahead of the 2011 elections. The new system did away with reserved seats. However, it introduced 30 percent seats reserved for women above and beyond the original constituencies. These were distributed between parties using proportional representation. In order to ensure the new system delivered gender parity, civil society organisations, including Women in Law Southern Africa and Gender Links, worked with the Ministry of Gender, Youth, Sports and Recreation on a 50/50 campaign. The campaign sought to equip women politicians with knowledge and skills on gender, governance, electoral laws and how to run political campaigns.
402. In the 2011 elections which followed the proportion of women elected decreased to 49 percent. However, the result is considered by many as a more representative reflection of the aspirations of voters after amendments to the country's quota system were implemented for the vote. The decrease notwithstanding, Lesotho remains in the lead as far as women's representation in SADC local government.

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**Table B5 Lesotho 2011 local government election results**

Political Party	Total Number of Councillors				FPTP Results by Sex				Women Reserve d Seats	
	Women	Men	All Coun cillors	% W o m e n	Wome n	Me n	Tot	%Wom en	Wome n	%
<b>LCD</b>	411	280	691	60	221	28	501	44	190	64
<b>ABC</b>	98	84	182	54	22	84	106	21	76	26
<b>BNP</b>	21	13	34	62	2	13	15	13	19	6
<b>NIP</b>	4	2	6	50	0	2	2	0	2	1
<b>LPC</b>	4	3	7	57	1	3	4	3	3	1
<b>LWP</b>	0	2	2	0	0	2	2	0	0	0
<b>BAC</b>	0	1	1	0	0	1	1	0	0	0
	14	13	27	52	6	13	19	32	8	3

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<b>OTHER PARTIES</b>										
<b>Independents</b>	30	143	173	-	30	14	173	17	-	-
<b>Elected Chiefs</b>	45	108	153	29	-	-	-	-	-	-
<b>Total</b>	627	649	1276		282	54	823		298	
<b>%</b>	49	51		49	34	66		34	100	100

**Source: Compiled from the IEC Database, 2011 and MLGC information. Compiled by Matseliso Mapetla, National University of Lesotho.**

403. Women's low representation in the local government has been attributed to multifaceted barriers deeply rooted in the institutional structures, cultural ideologies, religion, social norms as well as socialisation. The institutional barriers include failure of political parties to nominate women councillors. The other factor is low education background of women councillors which makes it difficult for them to understand the language used in project documents, procedures and regulations which finally make women reluctant to participate as candidates in local government elections.

***Women in the judiciary***

404. The highest Court in Lesotho is the Court of Appeal. The Court of Appeal is not permanent as it sits for only two sessions per year. Judges of the Court of Appeal are also not

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permanent and they called per session. Judges of the High Court also sit in the Court of Appeal.

405. The judiciary in Lesotho is headed by the first female Chief Justice, Ms Nthomeng Majara who was appointed in 2014. Women constitute 33 percent of the judiciary as there are four women out of twelve judges of the High Court of Lesotho.

406. Out of three chief magistrates, two are women. Women also constitute 60 percent of magistrates in the entire country.

**ARTICLE 10: THE RIGHT O PEACE**

407. Constitutional and legislative measures in this regard are detailed under article 23 in Part A of this report.

408. The government of Lesotho is committed to inclusion of women in all peacekeeping activities in accordance with UN Resolution 1325 on Women, Peace and Security as well as the African Union Post Conflict Reconstruction and Development Policy (PCRDP). To this end, women have been included in national and regional peacekeeping missions. In 2009, Lesotho participated in the first military nurses conference which involved networking amongst military nurses in ten SADC countries. Following this conference, members of the LDF including women, have been deployed in conflict areas such as South Sudan and Somalia.

409. At the national level, the government of Lesotho has established law enforcement institutions such as the Lesotho Defence Force (LDF) and the Lesotho Mounted Police Service (LMPS) which are aimed at ensuring peace in the country. Women are recruited both in the LDF and LMPS and between 1998 and 2011, LMPS was headed by a woman commissioner.

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410. Women through their civil society organisations have been included in peacekeeping activities including political conflict resolution and security sector reforms to ensure that they participate in prevention of conflict and preservation of peace in the country.
411. The government of Lesotho has had intentions to reduce military expenditure in favour of development activities including access to clean portable water. However, due to political instability that has faced the country in the last decade, the annual military budget for 2017/2018 has been increased by 16 percent in order to ensure protection of the right to peace.

**ARTICLE 11: PROTECTION IN ARMED CONFLICT**

**Constitutional and legislative measures**

412. Lesotho is fully committed to protection of women in times of armed conflict. This protection is extended to women during conflicts that may take place in Lesotho or those who seek asylum or refuge due to armed conflicts in other countries. Lesotho is a party to and if committed to abide by the United Nations Convention Relating to the Status of Refugees (UN Refugee Convention) 1951 and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) 1969.
413. **The Refugees Act of 1983** is aimed at protection of refugees and asylum seekers. In terms of the Refugee Act refugees are exempted from the application of the **Aliens Control Act** which outline entry into Lesotho. Registration, rights and expulsion of refugees are governed by the Refugee Act. It defines a refugee in the following terms:
- (1) **subject to subsection (2), a refugee is any person who,**
    - (a) **owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,**



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- (i) is outside the country of his nationality is unable or owing to such fear is unwilling to avail himself protection of that country or**
- (ii) not having a nationality, and being outside the country of his former residence, is unable or owing to such fear is unwilling to return to it, or**
- (b) ...**
- (c) belongs to a class of persons declared by the Minister to be refugees for purposes set out in paragraphs (a) or (b).**

414. **Section 11 of the Refugee Act** contains Lesotho's non-refoulement obligations. It provides that a person shall not be rejected at any Lesotho frontier or be expelled or otherwise compelled to return to or remain in a country:

- (a) where he seeks to leave or has left or outside of which he finds himself, for any of the reasons mentioned in section 3(1)(a) or (b) or**
- (b) where he may be tried or punished for offences of a political nature.**

**Administrative and other measures**

415. During the apartheid regime, Lesotho was a host country for thousands of South African refugees which included women. Since the demise of apartheid which was the main cause of the refugee problem in this sub-region, Lesotho has experienced a significant reduction of refugee influx. It currently hosts about 64 refugees of various nationalities. The majority of refugees living in Lesotho are fully integrated and do not require any form of assistance from the UNHCR. They are economically productive and self-sufficient. Some are employed as teachers, doctors and radiographers. The legislative framework and the Government's policy favour local integration.

416. Refugees have the right to work, freedom of movement and they have access to social services. The Government provides social grants in the amount of 400 Rand per month, as well as free accommodation and utilities for persons with specific needs.

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## Challenges

417. The changing economic and financial climate has had a serious impact on Lesotho, making it difficult for the State to avail the necessary resources even to its citizens. In addition, the prevailing economic situation has potential to fuel xenophobic attitudes in the population, which once used to be more receptive, because of the increase in competition for scarce resources and lack of employment opportunities for the larger population. In order to quell this, the government promotes local integration for refugees as a policy to the highest possible effect, despite the challenges of the economic crisis and also promotes the spirit of tolerance amongst Basotho.

## ARTICLE 12: THE RIGHT TO EDUCATION AND TRAINING

### Constitutional measures

418. The right to education and training are contained in **section 28 of the Constitution** which provides that Lesotho shall endeavour to make education available to all and shall adopt policies aimed at education is directed to full development of the human personality, that primary education is compulsory and available to all, that secondary and tertiary education is made accessible and progressively made free.

419. Although the Constitution does not specifically mention education of women and girls, provision of such on the basis of equality can be inferred from section 26 of the Constitution which mandates the government to adopt policies aimed at promoting a society based on equality and justice for all its citizens regardless of sex.

### Legislative measures

420. Legislative measures put in place for education include the **Education Act 2010** and **Higher Education Act 2004** which are discussed in detail under article 17 in **part A** of this report.

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421. **Section 3 of the Education Act** provides for free and compulsory primary education while secondary and tertiary education are not free. However, the government through the Ministry of Social Development subsidises tuition and other fees for orphaned and vulnerable children in secondary and high school.

**Administrative measures**

422. The ministry of development planning through the office of National Manpower Development Secretariat (NMDS) provides loan bursaries for tertiary education in and outside Lesotho. The payment of tuition and granting of loan bursaries are not awarded on the basis of sex but on merit.

423. Lesotho has one of the highest basic literacy rates at 88 percent. Of this number, 56 percent is a number of females in urban areas and 58 percent is the number of women in rural areas who can read and write Sesotho and English with ease, compared to 44 percent of males in urban areas and 43 percent in rural areas. The Lesotho Bureau of Statistics indicates that illiteracy seems to be much more pronounced in males at 70 percent in urban areas and 76 percent in rural areas compared to females at 30 percent in urban and 24 percent in rural areas.

424. The **table B6** shows the current status, goals and progress on education in Lesotho. In 2011 the World Economic Forum's Gender Equality Ratings ranked Lesotho number 9 in the world, implying a positive approach in trying to bridge the gender gap. Relative to most Sub-Saharan African countries, Lesotho has relatively high literacy and net primary school enrolment, but with a reversed gender gap signifying discrepancy to the advantage of girls. However, it is one of the few countries in Sub-Saharan Africa that has at least attained equal balance in primary education; indicating almost equal numbers of males and females in school. Men are seen to be trailing behind women in a variety of academic performance measures, particularly in secondary and higher education. While the country

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is on-track for the indicator on equitable primary education, it is off-track on the indicators for balanced access to secondary and tertiary education.

**Table B6: Primary School Enrolment Rates and Gender Parity Indices**

Gross Enrolment									
Year	Males	Females	Total	GPI					
2000	118.1	122.6	120.3	1.04					
2004	126.2	127	126.6	1.01					
2005	126	126.3	126.1	1.00					
2009	116.2	116.2	116.2	1.00					
2012	111.6	108.8	110.2	0.97					
Net Enrolment									
2000	78	85.3	82	1.08					
2004	81	86	83	1.06					
2005	80.6	85.7	83.1	1.06					
2009	78	83.2	80.9	1.06					
2012	79	82.6	81.1	1.04					
OFF TRACK									
		baseline 2001	2003	2007	2008	2010	2011	2012	2015
Female-male ratio in secondary education		128	07	131	134	36	36	133	100
Female-male ratio in tertiary education		118	04	107	112	23	46	146	100

Source: *Millennium Development Goal report for 2015.*

## Challenges

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425. The main challenges which face girls in school are sexual harassment and teenage pregnancy. As indicated in part A of this report, the government of Lesotho has adopted both disciplinary measures and criminal prosecution against teachers who sexually harass pupils. It has also adopted a policy in terms of which girls who fall pregnant while in school are allowed to continue with their studies until the time when they give birth and are allowed back to school afterwards.
426. Early and forced child marriages remain challenges to completion of high school and tertiary education in Lesotho.
427. The high prevalence of HIV/AIDS has left many child-headed households and because of cultural stereotypes, the greater burden is on girl children who are forced to drop out of school in order to take care of sick parents or younger orphaned siblings.
428. Poverty also leads to high dropout rates amongst girls who sometimes miss classes when on menstrual periods due to lack of sanitary towels. The government and other NGOs have begun programmes in terms of which sanitary towels are made available and free of charge in schools although not all schools are covered yet.

## ARTICLE 13: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### Constitutional and legislative measures

429. As indicated in **Part A** of this report, the Constitution of Lesotho contains the economic, social and cultural rights in its chapter 3, not as rights but as DPSPs, which are subject to progressive realisation taking into account the country's available resources. In terms of **section 25 of the Constitution**, the DPSPs are not justiciable in the Courts of Law.
430. The parliament of Lesotho has enacted a number of laws aimed at ensuring that women are economically empowered. These laws include the **Legal Capacity of Married Persons Act 2006, the Land Act 2010 and Companies Act 2011**. As illustrated above,

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women no longer need consent of their husbands to enter into contracts, to access loans and to be directors in companies. Thus, they may freely enter into commercial activities.

## **Challenges**

431. Despite the legislative measures to economically empower women, men dominate in the sectors of industry, mining, public administration, electricity, private enterprise, construction, transportation, and communications – sectors where economic and political power is concentrated. It says female ambassadors across a wide spectrum of sectors are relatively few.

432. As indicated in the table below, men are dominant in economic decision-making in a public sector as they constitute 62.5 percent relative to 37.5 percent of women representation. This gender imbalance implicates inequality in participation of economic policy formulation and implementation. Low women representation ultimately translates to limited access of women to enhance gender economic planning that advocates for women economic empowerment and well-being.

**Table B7: Heads of economy related institutions in Lesotho**

Position	Name	Sex
Minister of Finance	Hon. Dr. M. Majoro	M
Minister of Trade and Industry	Hon. T. Mapesela	M
Minister of Small Business, Development Cooperatives and Marketing	Hon. Mr. C. Phori	M
Minister of Development Planning	Hon. T. Aumane	M
Minister of Social Development	Hon. M. Doti	F
Governor of Central Bank	Dr. R Matlanyane	F
1 <sup>st</sup> Deputy Governor	Dr. M Makhetha	M
2 <sup>nd</sup> Deputy Governor	Ms. M Makenete	F

*Source: Government website & Central Bank of Lesotho website*

## ARTICLE 14: HEALTH AND REPRODUCTIVE RIGHTS

### Health and reproductive rights

#### Access to health services - article 14 (2)(a)

#### Constitutional measures

433. The Constitution of Lesotho recognises the right to health as a directive principle of state policy under Chapter III of the Constitution. **Section 27(1) (e) of the Constitution** provides that the Government shall adopt policies aimed at ensuring the highest attainable standard of physical and mental health for its citizens, including policies designed to improve public health.

434. The provision of health care services is premised on the principle of non-discrimination as safeguarded by **section 18 of the Constitution**. The section prohibits differential treatment on the basis on the sex.

#### Legislative measures

435. **Section 4 of the Environment Act 2008** guarantees the right to a healthy and clean environment. It proscribes any conduct that causes harm to human health. The section provides a remedy to anybody whose health is endangered by such conduct.

436. **Section 232(1) and (2) of the Children's Protection and Welfare Act 2011** gives a child the right to consent to medical treatment if the child is 12 years of age or of sufficient maturity and mental capacity to understand the implications of the treatment or operation. **Section 234** guarantees access to medical and health services. It states that a child should be provided with emergency health and medical assistance, including reproductive health information in cases where a child has been abused and exploited.

#### Administrative measures

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437. In 2015, the budget that was allocated to the Ministry of Health was 13 percent of the entire national budget. In 2016, the Government met the target of allocating 15 percent of the national budget to the Ministry of Health as enshrined in the Abuja Declaration.
438. **Lesotho National Health Strategy for Adolescents and Young People 2015-2020.** According to the Strategy, adolescents and young people have a right to access information, skills and services concerning their health. The Strategy also addresses issues of prevention; contraception and education programmes for young people.
439. **National Strategic Development Plan 2012/2013-2016-2017:** The aim of the plan is to improve quality, quantity of healthcare services and to retain skilled health professionals/personnel; to increase coverage and access to health services; to strengthen the management and accountability of health facilities and systems. And to promote research and documentation of traditional medicine.
440. The government of Lesotho has established healthcare centres in order to improve access to healthcare services. Over and above these, it has also partnered with faith-based health centers, such as the Christian Health Association of Lesotho (CHAL) to work together to improve access. These centres have amongst others, **Mother's waiting rooms** established by the Ministry of Health in partnership with the World Vision in 2015, with a view to improve access to maternal healthcare by pregnant women. So far the facilities are available in Berea and Mohale's hoek districts. New health centers were introduced in Sefikaneng, Makhunoane and Lenkoane village
441. The government of Lesotho also undertakes in collaboration with civil society organizations in the implementation of Key Population Vulnerable to HIV Program which assesses and seeks to improve accessibility of health care services to key populations such as LGBTI's, Sex workers and people using injectable drugs.

**Public education**



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442. The Ministry of Health in conjunction with World Vision Lesotho, developed a campaign program called Child Health Now Campaign which ran from November 2014-October 2016. The purpose of the Campaign was to enhance access to health care in communities. The outcomes of the programme include; increase in access to essential health services, improved community utilization and demand for health services as well as increase in human resource capacity at government health centers.
443. With effect from October 2014 to September 2015, the Ministry of Health in conjunction with World Vision Lesotho, developed a Citizen Voice and Action Programme, with a view to increasing the capacity of the community to engage and advocate for improved quality health and education system. The Programme targeted young men and women. As a result of the Programme, in February 2016, the proportion of infants whose births were attended to by skilled birth attendants improved from 70 percent to 85 percent.
444. Further, the Ministry of health embarks on a number of educational programmes through different media platforms such as radio and television slots. Educational programmes include information about general access to health care services, including HIV/AIDS and nutrition, women's reproductive rights and others.
445. In Lesotho family planning is part of the Sexual and Reproductive Health Programme of the Ministry of Health and an important strategy in the NSDP 2014-2017. Although knowledge on at least one method of contraception is high among women (99%) and men (98%) aged 15-49 years old, the contraceptive prevalence rate is only 60%, among sexually active unmarried women aged 15-49 years old. Educated women from wealthy backgrounds are more likely to use modern contraception than less educated women from poor homes.

**Accessibility for rural or impoverished women**

446. In order to guarantee physical accessibility of health care services for impoverished women and those women living in rural areas, the government as the key provider of

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health services has developed community based centers in mountainous and hard to reach places. The Government's efforts are supplemented by the private sector such as the Christian Health Association of Lesotho (CHAL) and NGOs who also provide hospital and clinic-based Health services in Lesotho in remote areas of Lesotho. Women living in the rural areas are able to access services from these institutions. In places where there are no community centers, the government provides mobile clinics to reach people. The Government also has a programme called 'flying doctors' whereupon doctors are dispatched to community centers in the rural areas to offer health care services. This arrangement is made for those community centers which do not have doctors.

### **Challenges**

447. There are various challenges inhibiting access the health care services of women and girls. These include:

- Cultural and societal stereotypes
- Lack of expertise of health care providers
- Lack of interest to test litigation
- Lack of proper infrastructure to enable access to health such as roads
- Lack of economic accessibility of health services.
- Health care services are not entirely free but are subsidized. Poor women still find it challenging to pay even the subsidized amount.
- Lack of disaggregated statistics
- Development of legislations and policies that are not costed to facilitate their implementation
- Several Faith- Based Organisations (FBOs) which offer services mainly to rural and hard to reach communities around the country do not offer family planning services due to their religious inclinations, as such in places where they are based, women and girls do not have access to contraceptive methods.

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- The government is yet to provide dentaderns and lubricants for the benefit of sexual minorities.

***Reproductive health services, including the reduction of maternal mortality (article 14(1)(a),(b) &(c)***

**Constitutional and legislative measures**

448. **Section 27(1) (e) of the Constitution** provides that the Kingdom of Lesotho shall develop policies to guarantee the right to health while **section 18** provides for the right to freedom from discrimination.

449. Section 11 of the **Children's Protection and Welfare Act** provides that a child has a right to sexual and reproductive health information and education appropriate to her age. Section 234 also guarantees access to medical and health services including reproductive health information.

**Administrative measures**

450. The government of Lesotho has adopted the following policies geared towards reproductive health care:

- **National Strategic Development Plan 2012/13-2016/17:** The plan seeks to deploy skilled health/birth attendants at all health centers, provide maternal health education to communities and develop specific to youth, scale up reproductive health education, including promotion of family planning and improvement of health services as well as scaling up essential nutrition package for pregnant and lactating mothers.
- **National Sexual and Reproductive Health Strategic Plan 2015-2020:** The strategic plan covers access to sexual and reproductive rights of women and girls.

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- **National Family Planning Guidelines 2012:** The guidelines guarantee women and adolescents' right of access to contraceptive or family planning methods of their choice.
- **Planned Parenthood Association (LPPA) Strategic Plan 2010-2014:** The Plan outlines activities that LPPA had planned to undertake, in partnership with the Ministry of health with a view to increasing knowledge on contraceptive information and services to women and adolescents.
- **National Reproductive Health Policy 2009:** The policy addresses sexual health, family planning, safe motherhood (including post abortion care) and HIV & AIDS. It also advocates for equal access to safe, effective, affordable and acceptable methods of family planning for both men and women, and calls for their involvement in promotion of sexual and reproductive health.
- During the financial year 2015/2016, the Ministry of Health launched a retention programme for nurses and midwives working in remote areas of the country. The government has also continued to train more medical doctors, with a third cohort of students having been sent to Zimbabwe beginning of 2015 and approximately thirty-nine nurses sent for advanced midwifery training to address maternal mortality.

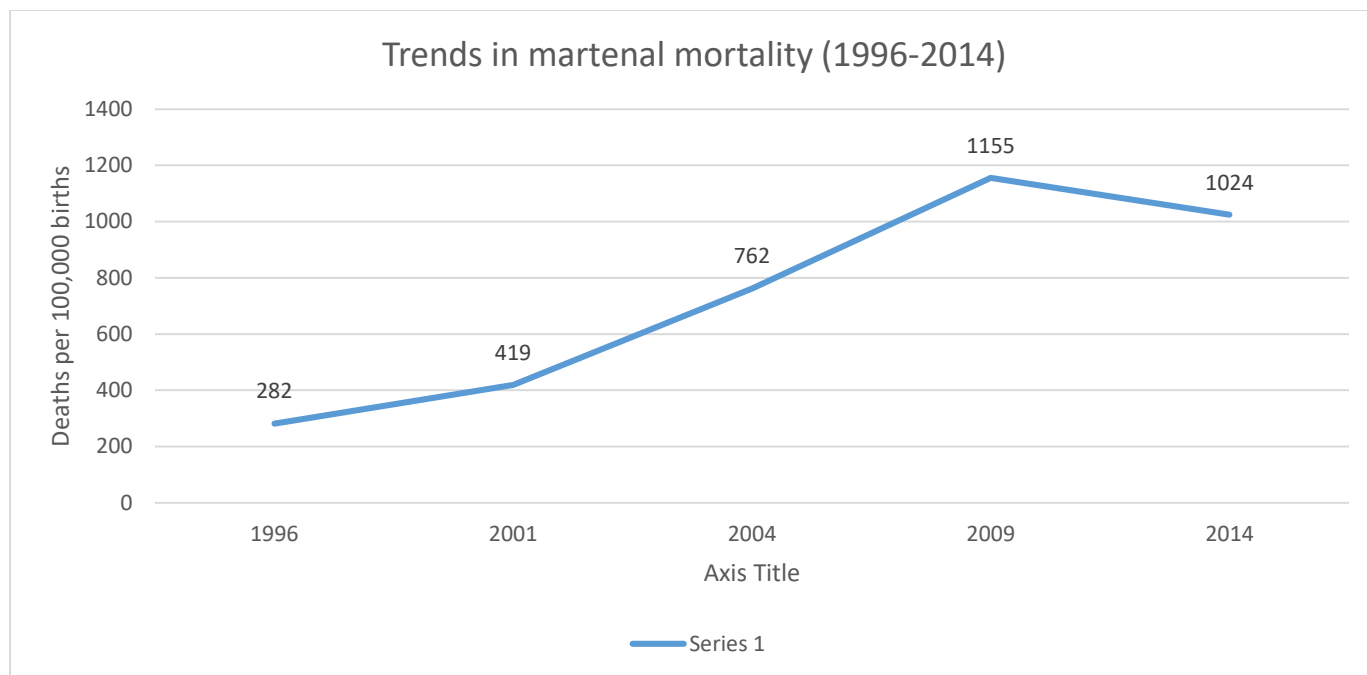
## Challenges

### *High Maternal Mortality*

451. The main challenge with regard to women's health is that Lesotho has high maternal mortality of 1,024 deaths per 100,000 live births (2014), just slightly lower than 1,155 in 2009. This is because important health care services during pregnancy and childbirth and after delivery are still limited for the poor, especially those living in rural areas. Delivery in health facilities stands at only 77% in 2014 (an increase from 59% in 2009). Home deliveries are still common in rural areas and among less educated and poor women. Only

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62% of women and 18% of new-borns receive the recommended postnatal health checks within two days of delivery. Poor and uneducated women who live in rural areas and poor communities (for example, in Botha-Buthe, Mokhotlong and Thaba-Tseka districts) are unlikely to visit any health facility, more likely to give birth at home and are not assisted by a skilled provider, and having an unvaccinated infant.



Source: LDHS 2014

***High Teenage pregnancy rate***

452. Another challenge which remains in Lesotho is that teenage pregnancy has remained unacceptably high for the past 10 years with estimates of 20% in 2004 and 19% in 2014. These numbers are even higher among adolescent girls in the rural areas than in urban areas.

***Provision for abortion (article 14 (2) (a))***

**Legislative measures**

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453. **Section 45 (2) of the 2010 Penal Code** authorizes medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

### **Administrative measures**

454. **National Reproductive Health Policy 2009:** The policy addresses reproductive health issues such as safe motherhood (including post abortion care).

### **Challenges**

455. Due to the restrictive nature of abortion in the **Penal Code Act**, adolescent girls and women who fall pregnant in most cases resort to procuring abortions which are not performed by qualified medical personnel and thereby using extremely dangerous methods to terminate unwanted pregnancies.<sup>72</sup> Some of them drink methylated spirit, medicinal herbs and others corrosive preparations, whilst others use sharp instruments which sometimes result in perforation of the uterus, severe bleeding, infections and psychological trauma that may lead to sterility, severe bleeding and in worst cases death.<sup>73</sup>

### **HIV/AIDS (Article 14(1)(d))**

456. As illustrated in **Part A** of this report, HIV/ AIDS is a burden to the health sector and is one of the factors that have contributed to the slow economic growth and social progress in Lesotho. AIDS has become the leading cause of morbidity and mortality in Lesotho. Twenty-five per cent of adults aged 15-49 years old in Lesotho are infected with HIV, and is one of the highest prevalence rates in the world (Table 8). The prevalence of HIV is significantly higher among women (29.7%) than men (18.6%), with women aged 35-39

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<sup>72</sup> United Nations Population Fund Lesotho National Reproductive Health Survey Analytical Report' 2003 (1) 71.

<sup>73</sup> United Nations Population Fund Lesotho National Reproductive Health Survey Analytical Report' 2003 (1).

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years old having the highest prevalence of 46%. Additionally, the incidence rate of HIV is 1.9 per 100 person years and is among the highest in the world.<sup>70</sup> One out of four new HIV infections occur among adolescent girls and young women, mainly as a result of exclusion, inter-generational sexual relationships, discrimination and gender based violence. Approximately 310,000 children and adults are living with HIV.

**Table B8: HIV prevalence indicators**

Indicator	Value of indicator
HIV Prevalence (national)	24.6%
HIV Prevalence (men)	18.6%
HIV Prevalence (women)	29.7%
HIV Prevalence Peak age (women)	35-39 years (46%)
HIV Prevalence Peak age (men)	40-44 years (44%)

457. Of particular concern is HIV prevalence among vulnerable and risk populations. The prevalence of HIV is 72% among sex workers, 43% in factory workers, 33% in men who have sex with men and 31% among prison inmates. Prevalence is higher in urban areas than in rural, and by districts, ranging from a low rate of 17% in Mokhotlong to a high rate of 28% in Maseru. The World Health Organisation (WHO) estimates a TB incidence of 916/100,000 and prevalence of 613/100,000 in Lesotho. This is an increase in prevalence from 548/100,000 in 1990 mainly due to HIV. The rate of TB/HIV coinfection is high, at 76%<sup>73</sup>.

458. The key drivers that significantly contribute to new infections in the general population include multiple and concurrent sexual partners, low and inconsistent use of condoms, low rates of medical male circumcision, mother-to-child transmission and gender based violence. Poverty and poor psychosocial support are also factors that increase susceptibility to HIV infection. Only 39% women and 31% men have a comprehensive knowledge (transmission and prevention) of HIV with lower rates in rural women (43%)

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and men (26%) compared to urban women (46%) and men (42%). According to the LDHS (2014), 7% of women and 27% of men had two or more sexual partners, and among these, only 54% of women and 65% of men reported using a condom during their most recent sexual encounter.

459. More women (84%) than men (66%) had been tested at least once for HIV and had received their results. Currently, 56% of all people living with HIV are on antiretroviral therapy (ART) (adults 56% and children 5%), but far below the 80% global coverage target for 2015. Equally the PMCT coverage is still relatively low at 65%. Mother-to-child transmission rates increase from 6% at six-weeks of life to 14% at the end of the breastfeeding period. This is due to socioeconomic, workplace and cultural constraining factors to antiretroviral treatment especially in the breastfeeding period. In summary the root causes of poor health system in Lesotho and limited access to health services include the following:

- Limited Accountability – supervision; limited documentation & data; limited implementation of policies
- Inadequate skills & capacities – limited human resources;
- Weak supply chain management;
- Socio-cultural factors - Limited community empowerment and limited access to services.

460. In order to mitigate the challenges presented by the HIV/AIDS prevalence in Lesotho, the following administrative measures have been adopted:

- Since 2016, Lesotho adopted, and is implementing, the WHO guidelines on treating every person testing positive for HIV (**Test & Treat**). The strategy provides that every person who tests HIV positive will be offered ART regardless of their CD4 count. This Strategy is in line with WHO guidelines released in September 2015 which seeks to



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remove all limitations on eligibility for antiretroviral therapy (ART) and recommend that anyone infected with HIV should begin ART as soon after diagnosis as possible.

- **Revised Action Plan for Women and Girls and HIV and AIDS 2012-2016**

- **National Strategic Development Plan 2012/2013-2016/2017** outlines strategic objectives and actions as reduction of new I infections through intensification of HIV prevention and integration with treatment, increase of coverage and quality of treatment, care and support services and facilities and Improvement of institutional effectiveness and co-ordination. The Plan addresses issues of access to health care services, particularly in the area of HIV/AIDS and ARVs.
- **National Behaviour Change Communication Strategy (2008-2013):** The increase and spread of HIV and AIDS in Lesotho is associated with a range of driving factors that are cultural, traditional, behavioural, socio-economic and biological. The behavioural change strategy is meant to engage a multi-sectoral approach that will reduce the sexual transmission of HIV through promotion of responsible practices. It is aimed at encouraging behaviour change and risky sexual behaviors, which have been identified as driving factors for increase and spread of HIV in Lesotho.
- **The National Guidelines for the Prevention of Mother-to-Child HIV Transmission** Mother to Child Transmission (MTCT) of HIV is by far the main source of HIV infection in children. UNAIDS estimates that more than 90% of children acquire HIV through MTCT during pregnancy, labour, delivery and breast feeding. Since a significant proportion of HIV infected infants die in the first year of life, Prevention of Mother to Child Transmission (PMTCT) of HIV services provide an opportunity for securing Lesotho's posterity. The National Guidelines for Prevention of Mother to Child Transmission of HIV which promote a four pronged approach consisting of: (i) Primary prevention of HIV infections among women of child-bearing age; (ii) Prevention of unintended pregnancies among HIV infected women; (iii) Prevention of HIV transmission from infected mothers to their children (iv) Provision of continuous care, treatment and support for infected mothers, their partners and children.

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- **The National HIV Prevention Strategy for a Multi-Sectoral Response** which describes how the national HIV prevention response will reduce levels of HIV incidence by directly addressing the drivers of Lesotho's epidemic. A number of overarching principles underpin the strategy. These include addressing the key epidemic drivers; creating an integrated, comprehensive response; strengthening a decentralised response; improving the use of strategic information; employing a human rights-based approach; and intensifying social and behaviour change communications (SBCC).
- **Public Service Workplace and HIV and AIDS policy 2007:** The Policy serves as the basis of development of HIV and AIDS program by all government ministries. Public servants are guaranteed easy access to HIV Testing and Counselling programs as part of health care services provided by ministries.

461. The Government works in partnership with a number of CSOs to raise awareness about the HIV/AIDS pandemic. A congruent example is the free issuance of condoms by the Government, with the support of partners such as UNFPA. Other partners include the Population Services International (PSI), which has also been undertaking social marketing of condoms in collaboration with UNFPA. The Elizabeth Glaser Pediatric Aids Foundation (EGPAF) has been instrumental in collaborating with the Ministry of Health by continuing to scale up access to HIV services. EGPAF currently supports more than 205 sites in eight districts to implement a comprehensive HIV package of services. Kick 4 life campaign uses football to bring HIV prevention messages to young people. From the beginning of 2016, the campaign has reached over 250,000 of 15-24 year olds.

462. In June 2016, Lesotho became the first African country to implement a 'Test and Treat' strategy. The Strategy was launched on 19 April 2016.

463. At least 60 percent of migrant workers in Lesotho textile factories come from other parts of the country. The UNGASS report shows that HIV prevalence amongst textile workers where 88 percent are women, 40.1 percent. As a result of interventions by Apparel Lesotho Alliance to Fight AIDS (ALAFa) on programmes regarding the reduction of stigma

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and behavior change within textile industries, it is reported that there has been greater use, rate of consistent condom use, a lower frequency of sexual relations with non-regular partners and a lower frequency of multiple and current partnerships. The closure of ALAFA due to financial challenges has had negative impact on textile workers.

## **Public education**

464. The Government, through the Ministry of Health, has embarked on a number of awareness raising campaigns, with a view to combating and fighting against the HIV/AIDS pandemic. The initiatives include celebrations held on World AIDS Day on 01 December each year. Further, the Government hosts educational programmes including consistent and correct use of condoms on the national television and in various radio stations across the country.

## ***Sex education (article 14 (1) (g))***

### **Legislative measures**

465. **Section 11(6) of the Children's Protection and Welfare Act 2011** provides that a child has a right to sexual and reproductive health information and education appropriate to his age.

### **Administrative measures**

466. The following administrative measures address the obligation to provide sex education as one of the strategies to deal with the HIV pandemic in Lesotho:

- **Lesotho National Health Strategy for Adolescents and Young People 2015-2020:** According to the Strategy, adolescents and young people have a right to access information, skills and services concerning their health. The Strategy also addresses issues of prevention; contraception and education programmes for young people.
- **School Health Policy 2005**

- **Curriculum and Assessment Policy 2009**

## **Challenges**

467. The major challenge with provision of sex education in Lesotho is that there are cultural stereotypes about sex education and that certain matters concerning sex are considered taboo. Many teachers and parents are still reluctant to open up about sex and sexual health to their children.

## **ARTICLE 15: THE RIGHT TO FOOD SECURITY**

### **Constitutional and legislative measures**

468. The Constitution does not have a specific provision on the right to food security. However, by protecting rights such as the right to property as well as equal access to land and other means of income, the Constitution ensures that women have equal access to food.

469. **The Equality of Married Persons Act 2006** read with the **Land Act 2010** reinforce equal access to food security by providing that married women shall have equal rights with their spouses to own, administer and dispose of property, including land.

### **Administrative measures**

470. As illustrated in the challenges below, chronic food insufficiency and hunger remain big challenges in Lesotho and are of grave and a major concern to the government. Hence the government, working together with development partners and NGOs has embarked on a number of strategies aimed at improving food security in Lesotho. These administrative measures include:

- **Food commodity subsidies**
- **Crop subsidies**

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- Block farming

## Challenges

471. Due to a number of factors, Lesotho faces chronic food insufficiency and hunger. These factors include:

- Constrained food supply: caused by declining agricultural productivity. The country, thus, relies on food imports; which are expensive, and depletes foreign reserves;
- Limited access to food: poverty and an extremely skewed income distribution that limit the poor's access to food;
- Poor food utilization caused by inadequate feeding and food preparation practices, limited dietary diversity and skewed intra-household distribution of food; and
- Instability caused by climate change, the El Niño induced drought of the 2015-16 season, food price hikes, and economic shocks (devaluation).<sup>74</sup>

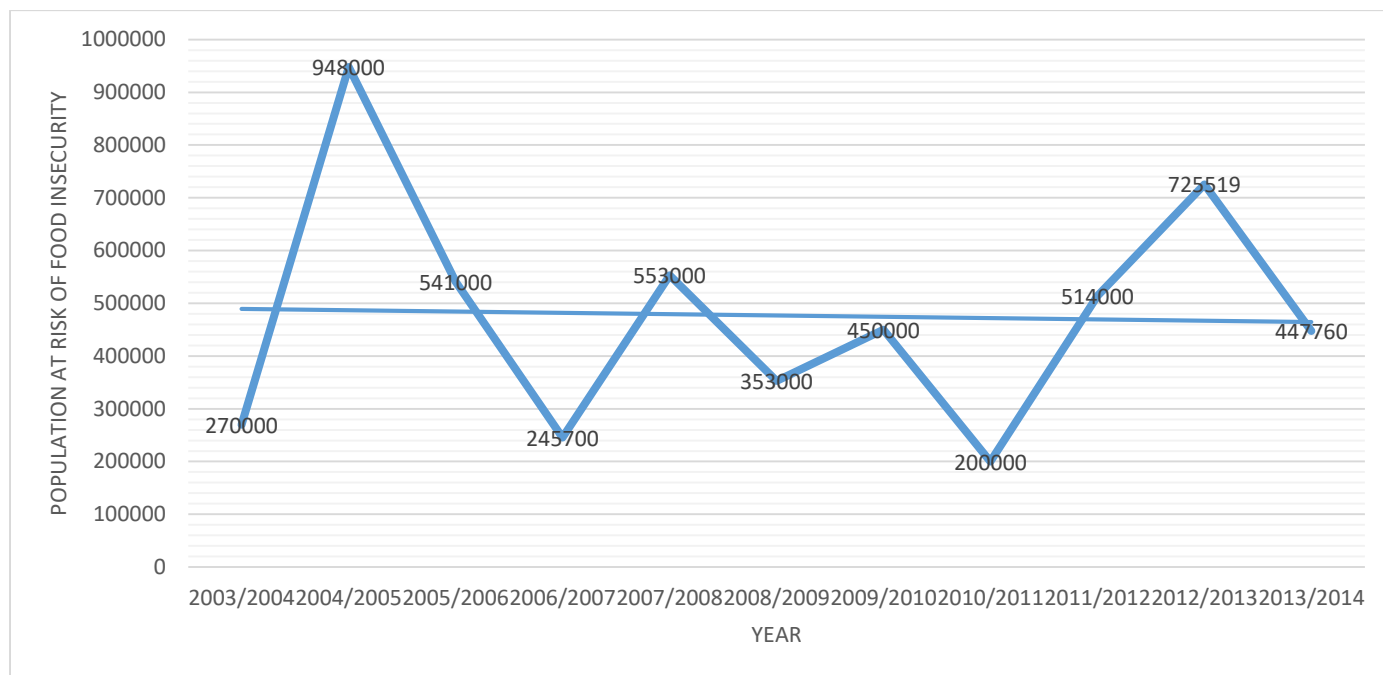
472. The table below shows the dire situation of food insecurity in Lesotho. The numbers rose from 270,000 people in 2003/04 to 948,000 the following year in 2004/05 and has been fluctuating. As at 2013/14, the number stood at 447,760 people who were at the risk of food insecurity.

## Number of people in need of food Aid 2003-2014 in Lesotho

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<sup>74</sup> World Bank, 2015; LDHS, 2014; Lesotho MDGs End-point Report, 2015.

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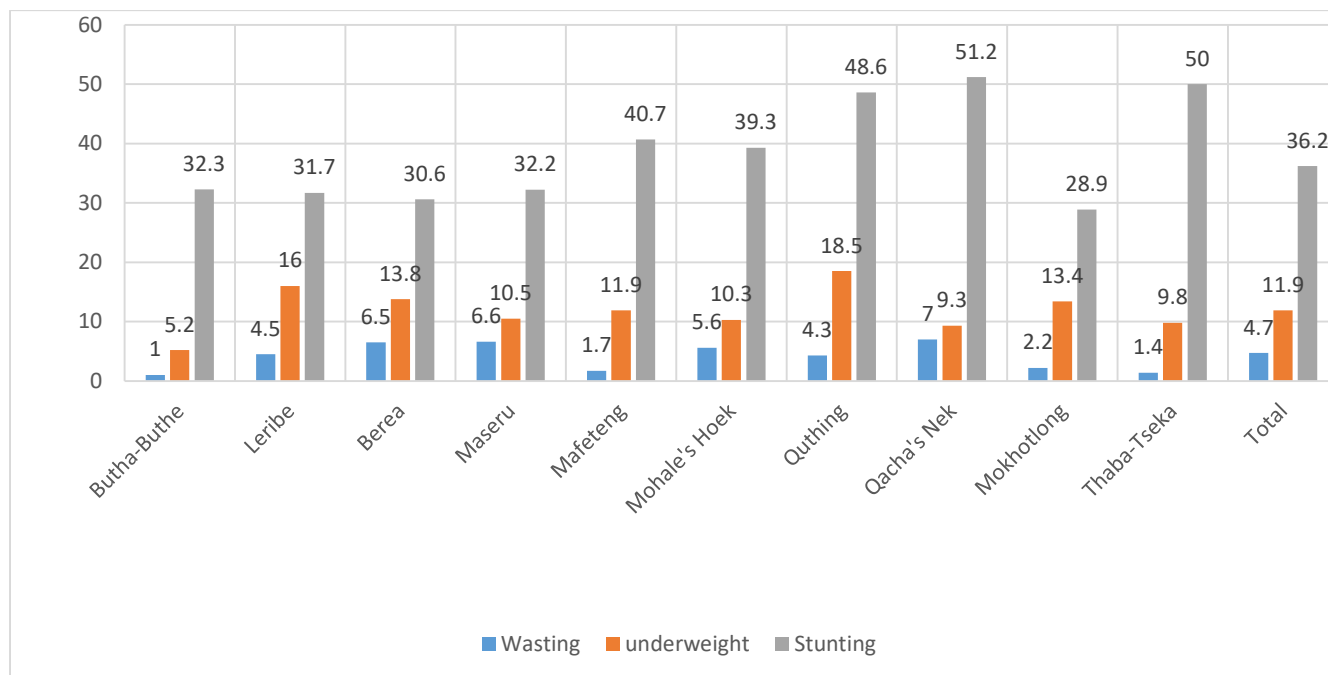


**Source: LVAC, 2013, 2014**

473. Women and children, in rural areas in particular, suffer from chronic hunger. As reflected in the next chart, stunting in Lesotho ranges from a minimum of 28.9% in Botha Bothe to 51.2% in Qacha's Nek. The national prevalence of stunting is 36.2% which would suggest an increase from the 2014 DHS (33.3%). Indicatively, wasting in Lesotho range from a minimum of 1.0% in Botha Bothe to 7.0% Qacha's Nek. The national prevalence of wasting is 4.7% which would suggest an increase from the 2014 DHS (3.5%).

**Prevalence of malnutrition in children under 5 by district**

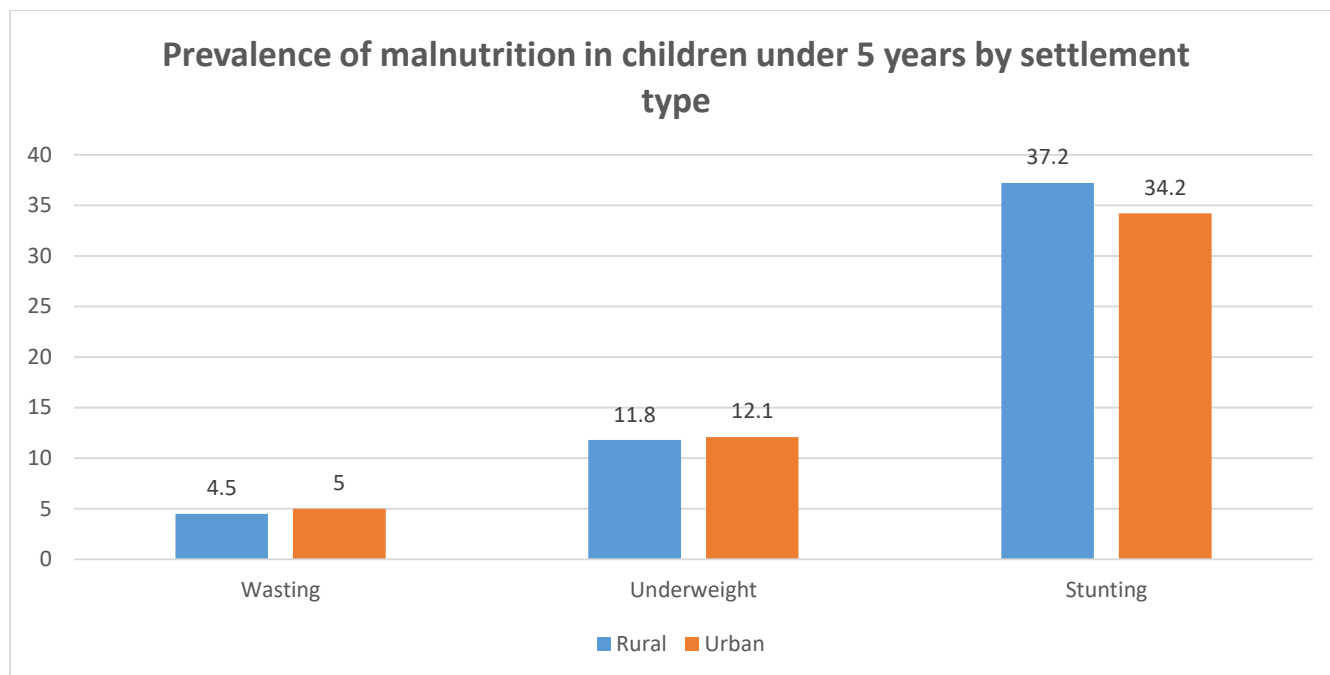
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**Source: Lesotho Vulnerability Assessment Committee Report, July 2017**

355 The trends of stunting, underweight and wasting from 1992 to 2016 are shown below. These indicators of malnutrition have remained high to date. Prevalence of stunting is higher in the rural areas than in the urban areas while for both wasting and underweight, prevalence is higher in the urban areas. These statistic suggest that overall, compared to the 2014 demographic health survey (DHS), malnutrition is increasing in Lesotho.

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*Source: Lesotho Vulnerability Assessment Committee Report, July 2017*

474. Threats that have a significant impact on food sufficiency and security in Lesotho include the following: poor farming methods (less use of modern technology); global warming and climate change; drought; floods and extreme temperatures; and loss of biodiversity.<sup>75</sup>

## **ARTICLE 16: THE RIGHT TO ADEQUATE HOUSING**

### **Constitutional measures**

475. **Section 34 of the Constitution** provides that Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment and shall take such measures as the state shall consider affordable. This is one of the

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<sup>75</sup> UNDP report 2017 page 28



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DPSPs which in terms of section 25 of the Constitution of Lesotho are not justiciable in the courts of law.

476. **Section 17 of the Constitution** of Lesotho prohibits compulsory taking of possession and compulsory acquisition of property. The Constitution thus protects rights of all, including women not to be arbitrarily deprived of the housing they have already acquired, mandates government to adopt policies which encourage all Basotho, including women to acquire housing but does not guarantee its provision.

### Legislative measures

477. The **Land Act of 2010** addresses gender inequality by providing for a leasehold system which recognises joint ownership of land to spouses married in community of property and ensures that every woman's name appears in the registration. The Act also grants for women to be part of land allocation structures.
478. With regard to married women, the **Legal Capacity of Married Persons Act 2006** enhances equity in land holdings and transactions by allowing women to have the same rights as men to possess, inherit, buy and sell land as opposed to previously where women did not have the right to possess and inherit land.
479. The table below shows gender lease statistics of (2004-2014).The statistics indicate the male dominance in lease ownership from 2004 to 2010. There has however been a drastic change since 2011 up to 2015 as female lease ownership became dominant. Joint lease ownership also increased drastically since 2011. Drastic changes in both female and joint lease ownership is a direct result of **Land Act 2010**.

**Table B9: Gender lease statistics 2004 -2014**

Year	Male	Female	Joint	Co	Other	Total
2004	376	147	21	21	0	565
2005	401	124	41	19	0	585

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<b>2006</b>	283	111	43	23	0	460
<b>2007</b>	351	126	64	32	0	573
<b>2008</b>	359	175	55	2	28	619
<b>2009</b>	626	287	132	34	0	1079
<b>2010</b>	562	318	256	0	0	1136
<b>2011</b>	781	1938	2806	77	31	5633
<b>2012</b>	629	1010	1929	195	36	3799
<b>2013</b>	5813	14 419	21 415	37	108	41 792
<b>2014</b>	1375	3213	5299	31	134	10 102
<b>2015</b>						
<b>2016</b>						
<b>2017</b>						

**Source:** *Land Administration Authority, 2015.*

### **Administrative measures**

480. **Lesotho National Shelter Policy** outlines some of its general principles as market driven delivery of housing, equitable access to housing as well as empowerment of women in the shelter sector.

481. **Gender Policy 2003** calls for equal access to and control over resources such as land and credit.

482. There has been established the **Lesotho Housing and Land Development Corporation (Lesotho Housing)** in which the government of Lesotho is a majority shareholder and the Lesotho National Development Corporation is the minority shareholder. Lesotho Housing is mandated to provide shelter and housing to meet the requirements of people in Lesotho. Its principal business is to build houses for sale, provision of rental accommodation and serviced sites for residential and commercial purposes.

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483. To fulfil the requirements of the mandate, Lesotho Housing increases the supply of shelter and help meet the housing requirements of Lesotho as determined by Government and the local authorities by:

- a. Implementing on a self-financing basis a broad array of schemes including self-help housing, sites and services, land development, and cooperative housing.
- b. Assisting private parties to develop land and deliver housing.
- c. Engaging in the development and management of rental housing schemes where it is deemed to be in the economic interest of the Corporation to manage the property.
- d. Assisting in the mobilization of capital available to the shelter sector by emphasizing in its activities efficiency and cost recovery programmes to ensure a good return on investment and
- e. developing a long term capital programme that will assure the Corporation's continuing financial viability and ability to remain a vital participant in Lesotho's shelter sector.

## Challenges

484. Section 18(4) of the Constitution of Lesotho allows for discrimination based on customary law. As a result many women have been expelled from their marital and /or maiden homes and left with no housing on the basis of customary law principles on marriage and inheritance. For instance, in the case of ***Ramatlapeng v Jessie***, the Court of Appeal of Lesotho upheld a decision of the High Court that a woman who has returned to her maiden home to seek solace from her husband's ill-treatment without divorcing her husband, 'ngala' does not have a right to live in her maiden home indefinitely.<sup>76</sup>

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<sup>76</sup> *Ramatlapeng v Jessie* (C of A (CIV) 15 of 2016) [2016] LSCA 39 (28 October 2016) paras 18 and 19.

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485. Customary rules relating to inheritance also inhibit women's access to loan facilities as they often do not have land to place as collateral for home loans.

**ARTICLE 17: THE RIGHT TO POSITIVE CULTURAL CONTEXT**

**Constitutional measures**

486. **Section 35 of the Constitution** provides that Lesotho shall endeavour to ensure that every citizen has an opportunity to freely participate in the cultural life of the community. The term 'every citizen' thus includes women.

**Legislative measures**

487. Although **section 10 of the Chieftainship Act 1968** limits succession to chieftainship to male children, the Act however does not totally exclude women from participation in their culture through traditional leadership. The Act allows women to act in the office of chiefs when they are away or unable to carry out their duties for any reason, to act as regents when their sons are minors, or to be chiefs in their own rights when they do not have male children.

488. **Section 17 of the Children's Protection and Welfare Act 2011** mandates Lesotho to protect all children from harmful traditional practices.

**Administrative measures**

489. **Gender and Development Policy of 2003** provides that positive aspects of the Sesotho culture shall be retained and used for protection of previously marginalised groups such as women. As a result, women and girls in Lesotho do not face any major barriers to participate in the cultural life of their communities.

490. The department of Culture within the **Ministry of Tourism, Environment and Culture** has put in place several activities aimed at preservation of culture in Lesotho. The

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department also ensures that all, including women participate actively in such activities. These include commemoration of **King Moshoeshoe on 12 March** every year, **King Moorosi commemoration on 18 November** and a specific **culture week in September** every year.

## Challenges

491. While women have opportunity to share their creativity through artistic cultural items such as 'mokorotlo' (Basotho hats), clay pots, tapestry, traditional dresses and others, sex-specific challenges hinder them from accessing specialized technical and entrepreneurial training as well as financial resources which would enable them to benefit fully from their participation in cultural activities.

## ARTICLE 18: THE RIGHT TO A HEALTHY AND SUSTAINABLE ENVIRONMENT

492. The **Environment Act 2004** as well as **Water and Sanitation Policy** elaborated upon in **Part A** of this report address administrative measures which the government of Lesotho has put in place to guarantee the right to a healthy and sustainable environment for all, including women. These laws and policies are not gender specific but address the right to a healthy and sustainable environment for all.

## ARTICLE 19: THE RIGHT TO SUSTAINABLE DEVELOPMENT

493. While there is no law which regulates the right to sustainable development, the **Gender and Development Policy 2003** recognises that in order for Lesotho to attain sustainable development, women should be fully included on the basis of equality with men, in all development projects from the time of their planning to execution.

## ARTICLE 20: RIGHTS OF WIDOWS

### Legislative measures

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494. There are a number of laws which govern the widows' rights including right to inherit from her deceased husband as well as the right to guardianship of her children. Due to legal dualism, widows' rights are governed both by customary law and statutory law.
495. Under Sesotho customary law, widows have no right to inherit property of their husbands as such is governed by **section 14 of the Laws of Lerotholi** which provide that the heir to a deceased's estate shall be the
496. This position has been clarified by Maqutu in his book in the following terms:

*The idea of a woman having an estate of her own is foreign to indigenous law. How this affects succession has never been cleared. In practice at the death of a Mosotho the joint estate is often never divided. As a general rule (the) heir inherits the whole estate of the deceased, the widow, becoming his dependent towards whom he has duties in accordance with indigenous law. The fact that the widow might have half the joint is in general disregarded despite the fact that Roman Dutch Law is the common law of Lesotho.*

497. Statutory law is applicable in inheritance cases where customary law is not applicable. The relevant laws in this regard are:

- **Intestate Succession Proclamation 1953**
- **Administration of Estates Proclamation 1935**
- **Land Act 2010**

498. Under these laws, widows have equal rights as men depending on whether the deceased left a will when he died or died intestate. In terms of the **Intestate Succession Proclamation**, where the marriage was in Community of Property, the surviving spouse (widow) shall be entitled to his or her half share of the joint estate, the remaining half shall be shared equally between her and the children. Where the marriage was out of Community of Property, the widow will be entitled to her property. She will also inherit the

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children's share if it does not exceed M1, 200. Where there are no children, she shall be the sole heir.

499. These provisions were applied in the case of *Liphehlo v Liphehlo Civ/Apn/52/2014* where the Land Court stated that:

*The above statutory framework ushered in a criterion for appointment of an heir free from the primogeniture rule of the customary law. The widow, and in her absence the designate of the allottee has superior rights to inherit landed property. It is only if there is no widow or a designate that the family has a role in nominating one of their members as the heir.*

500. According to **section 204(1) of the Children Protection and Welfare Act**, upon death of a husband, the widowed woman shall be the guardian of her children.

501. In terms of section 24 of the Marriage Act (1974), a widow or widower who wishes to remarry, shall register the property of the former marriage in respect of the minor children. This provision permits widows to remarry but provides a safeguard for the minor child(ren)'s property from the previous marriage.

502. Moreover, Section 10 read with Section 15(4) of the Land Act (2010) implies that in as much as the land tenure title assumes to be held jointly by spouses, the widow's immovable property cannot form part of the joint estate should she wish to remarry.

### **Administrative measures**

503. There is no specific budget allocated for widows, they benefit only from other social grants by virtue of qualifying. For instance, if the widow qualifies for old age grants, then she shall be entitled to such; or if she has a disability she shall be entitled to disability grant.

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504. There has been established the office of the Master of the High Court whose mandates includes oversight of reported estates and also ensures that widows' rights to inherited and guardianship of the minor children are protected.

505. The Office of the Master of the High Court deals with estates which are administered under the Administration of Estates Proclamation, Inheritance Act and Intestate Succession Proclamation, while estate administered under Sesotho Customary law is overseen by the Office of the District Administrator in each of the ten districts.

506. The office of the Master of the High Court provides education on administration of estates.

**Judicial measures**

507. Both the Sesotho customary law and the statutory laws on the rights of widows have been applied in the courts of law as illustrated in the table B10 below.

**Table B10: Cases on rights of widows**

Case	Facts	Ruling
<b><i>Teboho Lepule v Manthabiseng Lepule &amp; Others C of A (civ) 5/2013</i></b>	Deceased was married in community of property to his first wife (applicant's mother) who predeceased him and he married the 1 <sup>st</sup> respondent. Applicant claimed that when his mother died, half of the estate devolved upon him and therefore could not be inherited by his father's surviving widow (1 <sup>st</sup> respondent)	The court held that by virtue of being married in community of property, the 2 <sup>nd</sup> wife, the surviving widow was entitled to her deceased husband's property which included the property he had amassed during his first marriage.
<b><i>Maserai Kobeli v Joseph Moseneke &amp; Ors C of A (Civ) 28/2014</i></b>	Widow sought an order to eject third parties from property registered in the names of her deceased husband to whom she was	The court held that she has the right to the property since she was married in community of property and had not consented to the sale



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	married in community of property.	on which the evictees were relying.
<b><i>Kopano 'Mota v Malineo 'Mota &amp; Ors C of A (civ) 12/2015</i></b>	The decaed's only male child sued his mother for him to be appointed heir, alternatively to be awarded his child's share from his father's property.	The court held that a child cannot be entitled to inherit, even a child's share during the widow's lifetime.

## **Challenges**

508. Despite protection by the law, the main challenge which remains is that many widows, especially those in the rural areas do not have adequate information on their rights and available remedies where such have been violated.

## **ARTICLE 21: WIDOWS' RIGHTS TO INHERITANCE**

### **Constitutional measures**

509. **Sections 11 and 17 of the Constitution** provides that no person shall have their property taken arbitrarily and that every person has a right to private property and family life.

### **Legislative measures**

510. **Section 10 of the Land Act 2010** provides that where parties were married in community of property and a husband dies, the widow inherits the land which was part of the joint estate as per the presumption of joint title. This presumption applies in both civil and customary marriages.

511. With regard to other property other than land, the widow is entitled to her spousal share of 50 percent of the joint estate, as well as a child's share to the remaining fifty percent.

### **Administrative measures**

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512. Administrative measures in this regard are those explained in article 20 above.

**Judicial measures**

513. The above laws which protect the rights of widows have been applied in a number of cases including *Mothae v Commander LDF* (2010) and *Sebeko v Sebeko* 2009 in which the Courts have enforced the widows' right to inherit property of her deceased's husband.

**Challenges**

514. Due to legal dualism in terms of which received law operates side by side with Sesotho customary law, the laws of inheritance overlap as the customary law of inheritance is based on primogeniture in terms of which the heir is the first born male child. This principle is sometimes used to disinherit widows despite the clear stipulations in the Land Act that land shall devolve upon the widow.

**ARTICLE 22: SPECIAL PROTECTION OF ELDERLY WOMEN**

**Constitutional measures**

515. **Sections 4(1) and 18(3) of the Constitution** prohibit discrimination based on age.

**Legislative measures**

516. The **Old Age Pension Act of 2005** makes provision for a tax-funded non-contributory old age social grant. In terms of this Act, all citizens of Lesotho aged 70 years and above who are not earning a pension or social grant from consolidated fund are eligible for a monthly social grant. Currently the grant is fixed at **M700.00** per month.

517. Elderly women are often victims of sexual violence in Lesotho. This problem is dealt with under the **Sexual offences Act 2003** and the **Penal Code Act of 2010** both of which proscribe non-consensual sexual acts.

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**Administrative measures**

518. The Ministry of Social Development is allocated a budget to deal with vulnerable groups of the society including elderly women.

519. The following policies have also been adopted to address the plight of elderly women in Lesotho:

- **Lesotho National Policy for Older Persons 2014** advocates for observance of the rights of the older persons by establishing structures that will improve the status of older persons and their well-being. The Policy is also aligned with the WHO definition which divides old age into three categories: the young old, the middle old and the oldest old.
- On 16 August 2017, the ministry of Social Development launched public campaigns against violence against elderly people. The aim is that this will be done on the same day every year thereafter. This comes as a result of the prevalent manslaughter of the elder people on the basis that they are associated with witchcraft.

**Other measures**

520. The Ministry of Social Development is in the process of enacting the law for elderly people however, the processes are at an infancy stage because the relevant Ministry has only acquired concurrence from line ministries before it goes to cabinet.

521. The government of Lesotho is in the process of ratifying the Protocol for Older Persons.

**Challenges**

522. Old age homes are not common in Lesotho. As a result, many elderly women stay on their own and end up being targeted for rape, robbery and other violent crimes. The other challenge is that there is no particular reporting mechanism for elderly women to report

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cases of abuse. Therefore they have to follow the same route of reporting like any other case.

523. Due to backlog of cases in the courts of Lesotho generally, cases in which involve abuse of elderly women are not dealt with speedily as a result of which sometimes such women die before they obtain justice.

524. There are no financial resources to cater for financial assistance of elderly women who are less than 70 years. Therefore elderly women aged 69 and below are not eligible for the social grant despite that they may due to ill-health and old age not be in a position to earn income.

525. Elderly women in Lesotho have become victims of violent and often fatal attacks by members of the community on allegations that they are involved in witchcraft.

526. They are also forced to raise grandchildren due to various factors such as death of the children's parents and at times parents leave them with the children in order to seek employment in the urban areas or in South Africa. Sometimes they are left with the children without any justifiable course.

**ARTICLE 23: SPECIAL PROTECTION OF WOMEN WITH DISABILITIES**

**Constitutional and Legislative measures**

527. **Section 33 of the Constitution** provides for the rehabilitation, training and social resettlement of persons with disabilities. In addition the provision calls upon the government of Lesotho to design policies promoting the placement of people with disabilities in workplaces for their well-being. However, this provision is not enforceable by law.

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528. There is no disability specific law in Lesotho. However, there is a **Disability Equity Bill** which has been tabled before parliament is intended to be passed into law before the end of 2018.

529. **Section 15 of the Sexual Offences Act 2003** provides that it is an offence to engage persons with disabilities in sexual activities if that person did not consent or they are unable to consent due to severity of their disability. In the same manner the **Section 52 of the Penal Code Act 2010** reinforces the Sexual Offences Act.

### **Administrative Measures**

530. The Ministry of Social Development has adopted a number of plans to counter the challenges women with disabilities face. These include:

- **National Strategic Development Plan 2012/2017** which is focused on poverty reduction for persons with disabilities including women with disabilities.
- **National Disability Mainstreaming Plan** which is focused solely in including persons with disabilities in every law, programs and service.
- **National Disability and Rehabilitation Policy 2011/2016** was adopted to set up a framework for inclusion of PWDs in the mainstream poverty reduction strategy and social development programmes. It is also from this policy that the Disability Equity Bill emanates.
- Social grants in terms of which persons with disabilities receive public assistance in the form cash and assistive devices.
- There has also been established the **Ithuseng Vocational Rehabilitation Centre** which is a free institution that is intended to equip persons with disabilities with various skills to enable them to start their own businesses. This institution mainly targets person with disabilities who are from disadvantaged families. In 2018 the Center had about 66 women with disabilities out of the 105 overall candidates enrolled at the centre.

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- In order to provide access to information for all people with hearing disability, the national television provides **sign language during news bulletin**.

## Challenges

531. Women with disabilities still face a lot of discrimination not only due to disability but also due to them being women. There is also inadequate infrastructure that reasonably accommodates persons with disabilities. The law enforcement mechanisms are ineffective or stagnant with regard to cases of persons with disabilities.

532. Women who graduate from Ithuseng Vocational and Rehabilitation Centre are unable to start their own businesses because they are not provided with start-up kits upon graduation.

533. There are also allegations of women with disabilities being subjected to forced sterilisation.

## ARTICLE 24: SPECIAL PROTECTION OF WOMEN IN DISTRESS

### Constitutional and legislative measures

534. There is no specific constitutional provision which relates to women in distress. The **Labour code of 1992** and **Public Service Act 2005** provide for maternity leave for pregnant and nursing women.

### Administrative measures

535. There is a budget allocation for poor people, this includes women who are in distress for various reasons. Furthermore, the Ministry of social development subsidises medical expenses for pregnant women and also provides formula, clothes and diapers for nursing women who cannot afford these essentials.

## Conclusion

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389. The departure from dictatorial and military regimes to democratic governance has borne fruit for human rights protection in Lesotho. This era has been characterised by ratification of more international human rights instruments including the African Charter and the African Women's Protocol.
390. Despite challenges which have beseeched Lesotho's political history, the government of Lesotho has demonstrated its commitment towards protection of human rights not only by ratification but also implementation of the standards contained in the ratified instruments. As reflected in this report, since 1993 Lesotho has put in place various legislative, administrative and judicial measures aimed at ensuring equality between men and women, improving education for all, combating HIV and other communicable diseases and also empowering women and youth to take part in political decision-making processes.
391. It is important to acknowledge that the Kingdom of Lesotho has not yet fully implemented the Charter and the Protocol due to several challenges including cultural beliefs and attitudes. However, the government of Lesotho is fully committed to improving its legal, institutional and policy frameworks in order to implement the African Charter and the African Women's Protocol further than it has so far.