


AFRICAN UNION		UNION AFRICAINE
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**68th ORDINARY SESSION OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS**
14 April to 04 May 2021
Virtual meeting

**Consideration of Concluding Observations and Recommendations on State
Periodic Reports**

**Concluding Observations and Recommendations on the Kingdom of
Lesotho's Combined Second to Eighth Periodic Report under the African
Charter on Human and Peoples' Rights and its Initial Report under the
Protocol to the African Charter on the Rights of Women in Africa**

I. INTRODUCTION

1. The Kingdom of Lesotho (Lesotho) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter or the Charter), having signed the Charter on 7 March 1984, and ratified and deposited its ratification instrument on 10 February 1992 and 27 February 1992, respectively.
2. In accordance with Article 62 of the African Charter, Lesotho submitted its Initial Report in 2001 and this was reviewed by the Commission at its 31st Ordinary Session (2nd to 16th May 2002, Pretoria in South Africa). The Initial Report covered Reports due from the ratification of the Charter to 2001. It should be noted that the Initial Report could not be reviewed at the 30th Ordinary Session of the Commission in 2001 due to the fact that representatives of the country were not present at the said session.
3. The present Combined Periodic Report is identified by Lesotho as the Combined Second to Eighth Periodic Report under the African Charter on Human and Peoples' Rights and its Initial Report under the Protocol to the African Charter on the Rights of Women in Africa. It covers, for the Charter, the period from 2001 to 2017, and, for the Protocol to the African Charter on the Rights of Women in Africa (Women's Protocol or Maputo Protocol), the period

between 2004 and 2017. These Reports are submitted in accordance to Article 62 of the Charter and Article 26 of the Maputo Protocol.

4. The African Commission on Human and Peoples' Rights (the Commission) considered the Report at its 64th Ordinary Session, held from 24 April – 14 May 2019 in Sharm el Sheikh, Arab Republic of Egypt.
5. The Report was presented to the Commission by the Delegation from Lesotho (the Delegation) headed by the Honourable Mokhele Moletsane, Minister of Justice and Constitutional Affairs; it was also comprised of the following officials:
 - Honourable Haae Phoofolo, Attorney General
 - Mr Tanki Mothae, Principal Secretary, Ministry of Law
 - Ms Polo Chabane, Chief Legal Officer, Human Rights Unit
 - Mr Santi Mofoka, Chief Legal Officer, Ministry of Education
 - Ms Malebona Takalinane, Acting Director, Legal Affairs, Ministry of Justice
 - Ms Mampoja Mokorosi, Legal Officer, Ministry of Social Development
 - Ms Mathato Nkuatsana, Adolescent Health Programme Manager
 - Mr Rannyaliseng Maanela, Gender Officer, Ministry of Gender
 - Ms Pulane Lechesa, Legal Officer, Ministry of Foreign Affairs
6. The Report highlights developments which have taken place in the country in the area of promotion and protection of human and peoples' rights, and the legislative, administrative and judicial measures put in place to comply with the country's obligations under the African Charter and the Maputo Protocol for the periods mentioned above in relation to these treaties.
7. The Commission appreciates the presentation of the Report by the high-level delegation from Lesotho, and the constructive dialogue that followed the presentation.
8. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern identified in the Report and from information given during the review of the Report.
9. Finally, the Commission makes recommendations to Lesotho on measures needed to strengthen the enjoyment of human rights as guaranteed by the African Charter, the Maputo Protocol as well as other relevant regional and international human rights instruments.

II. POSITIVE ASPECTS

Reporting Obligations

10. The Commission:

- i. Welcomes the efforts made by Lesotho in preparing and presenting its report and commends the country for its objectivity in the Report and during the constructive dialogue as well as its commitment to implementing the provisions of Article 62 of the African Charter and Article 26 of the Maputo Protocol.
- ii. Welcomes the explanation provided regarding overdue periodic State Reports and the efforts to align with guidelines of reporting set by the Commission; including the consultative process which was followed in the drafting of the report and the participation of civil society, specifically some with observer status before the Commission.
- iii. Welcomes the submission of the Initial and Combined Report of Lesotho providing information on the legislative, policy and institutional measures which have been taken to implement the Maputo Protocol.
- iv. Also welcomes the commitment to clear the confusion in the sequencing of reporting before the Commission so that there is no mistake in the numbering of any particular periodic report submitted to the Commission.

Legal framework for the Promotion and Protection of Human Rights

11. The Commission welcomes the ratification by Lesotho of the following regional and international instruments:

African legal instruments

- i. *Constitutive Act of the African Union, 16 February 2001;*
- ii. *African Charter on Human and Peoples' Rights, 10 February 1992;*
- iii. *Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights, 28 October 2003;*
- iv. *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 18 November 1988;*
- v. *African Charter on the Rights and Welfare of the Child, 27 September 1999;*
- vi. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 26 October 2004;*
- vii. *African Youth Charter, 31 May 2010; and*
- viii. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons, 11 April 2018.*

International legal instruments

- i. *Convention on the Prevention and Punishment of the Crime of Genocide, 29 November 1974;*

- ii. *International Convention on the Elimination of All Forms of Racial Discrimination, 4 November 1971;*
- iii. *Convention on the Protection of All Persons from Enforced Disappearance, 6 December 2013;*
- iv. *International Covenant on Economic, Social and Cultural Rights, 9 September 1992;*
- v. *International Covenant on Civil and Political Rights, 9 September 1992;*
- vi. *International Convention on the Suppression and Punishment of the Crime of Apartheid, 4 November 1983;*
- vii. *Convention on the Elimination of All Forms of Discrimination against Women, 17 July 1980;*
- viii. *Convention on the Rights of the Child, 21 August 1990;*
- ix. *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 6 September 2000;*
- x. *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 6 September 2000;*
- xi. *Rome Statute, 30 September 2000;*
- xii. *The Geneva Conventions, 20 May 1968; and*
- xiii. *Convention on the Rights of Persons with Disabilities, 2 December 2008.*

12. The Commission further commends Lesotho for the enactment of the following laws:

- i. *Chapter 2 of the 1993 Constitution of Lesotho, as well as a number of other Acts and policies constituting the legal framework for the promotion and protection of human rights in Lesotho;*
- ii. *Race Relations Act No.9 of 2005;*
- iii. *Chieftainship Act 1968;*
- iv. *Legal Capacity of Married Persons Act No. 9 of 2006;*
- v. *Penal Code Act No. 30 of 2010 (PCA);*
- vi. *Criminal Procedure and Evidence Act No. 9 of 1981;*
- vii. *Sexual Offences Act No. 3 of 2003;*
- viii. *Section 7 of the Labour Code Order of 1992;*
- ix. *Children's Protection and Welfare Act No. 7 of 2011;*
- x. *Education Act No. 3 of 2010;*
- xi. *Statement of Objects and Reasons of the Education Act;*
- xii. *Speedy Court Trials Act No. 9 of 2002;*
- xiii. *Legal Aid Act;*
- xiv. *Communications Act;*
- xv. *Public Meetings and Processions Act No. 14 of 2010;*
- xvi. *Labour Code Order No. 24 of 1992;*
- xvii. *Public Service Act of 2005;*
- xviii. *Aliens Control Act 1966;*
- xix. *Refugee Act 1983;*
- xx. *Citizenship Act 1971;*
- xxi. *National Assembly Electoral Act 2011;*
- xxii. *Local Government Elections Act 1998;*
- xxiii. *Land Act of 2010;*
- xxiv. *Workmen's Compensation Act 1977;*
- xxv. *Public Health Order 1970;*
- xxvi. *Environment Act 2008;*
- xxvii. *Drugs of Abuse Act 2008;*
- xxviii. *Education Act No.3 of 2010;*

- xxix. *Higher Education Act 2004;*
- xxx. *Legal Capacity of Married Persons Act;*
- xxxi. *Marriage Act of 1974;*
- xxxii. *Deserted Wives and Children (Amendment) Order (1971);*
- xxxiii. *Anti- Trafficking in Persons Act (2011);*
- xxxiv. *LHWP Order of 1986;*
- xxxv. *Mines and Minerals Act of 2005;*
- xxxvi. *Internal Security (General) Act 1984;*
- xxxvii. *Lesotho Defence Force Act 1996;*
- xxxviii. *Lesotho Mounted Police Service Act 1998;*
- xxxix. *National Security Service Act 1998;*
- xl. *Administration of the Judiciary Act of 2011;*
- xli. *Deeds Registry Act of 1967;*
- xlii. *Companies Act of 2011;*
- xliii. *Intestate Succession Proclamation 1953;*
- xliv. *Administration of Estates Proclamation 1935; and*
- xlv. *Old Age Pension Act of 2005.*

13. The Commission commends Lesotho for the following bills and laws awaiting enactment or effective implementation by the relevant authorities and institutions:

- i. *Disability Equity Draft Bill 2014*
- ii. *Domestic Violence Bill 2018*
- iii. *Receipt and Access to Information Draft Bill*
- iv. *Draft ATI Bill*
- v. *Domestic Violence Bill*
- vi. *Act on the Human Rights Commission*

Institutional and Policy Measures Promoting and Protecting Human Rights

14. The Commission commends establishment of the following institutions which play an important role in the promotion and protection of human rights:

- i. *National Assembly*
- ii. *Independent Electoral Commission*
- iii. *Office of the Ombudsman*
- iv. *College of Chiefs*
- v. *Lesotho Defence Force*
- vi. *Lesotho Mounted Police Services*
- vii. *Police Complaints Authority*
- viii. *Juvenile Training Centre*
- ix. *Police Training College*
- x. *Legal Aid Counsel*
- xi. *Community Policing Forums*
- xii. *Broadcasting Disputes Resolution Panel*
- xiii. *Land Administration Authority*
- xiv. *Wages Advisory Board*
- xv. *Directorate of Dispute Prevention and Resolution*
- xvi. *Labour Court*

- xvii. *Labour Appeal Court*
- xviii. *National Aids Commission*
- xix. *Special Education Unit*
- xx. *Lesotho Distance Teaching College*
- xxi. *Lesotho Housing and Land Development Corporation*
- xxii. *Lapeng Care Centre for Abused Women and Children*
- xxiii. *Child and Gender Protection Unit (CGPU)*
- xxiv. *Lesotho Highlands Development Authority (LHDA)*
- xxv. *Judicial Service Commission*
- xxvi. *Victims' Support Unit*
- xxvii. *Ithuseng Vocational Rehabilitation Centre*

15. The Commission commends the adoption of the following policies to guarantee the protection and promotion of human rights:

- i. *LMPS Service Charter*
- ii. *Broadcasting Code of 2014*
- iii. *ICT Policy*
- iv. *Radio Frequency Spectrum Management Policy*
- v. *National Decentralisation policy 2014*
- vi. *Vision 2020*
- vii. *Land Administration Reform Project*
- viii. *The Systematic Land Regularization project*
- ix. *Labour Codes of Good Practice of 2003*
- x. *National Strategic Development Plan 2012/13 – 2016/17*
- xi. *National Volunteer Core Program*
- xii. *National Migration and Development Policy;*
- xiii. *National Labour Migration Policy;*
- xiv. *National Employment Policy*
- xv. *Sanitary Services & Waste Removal Regulations 1972*
- xvi. *Citizen Voice and Action Programme*
- xvii. *Child Health Now Campaign*
- xviii. *National Health Strategy for Adolescents and Young People 2015-2020.*
- xix. *Revised Action Plan for Women and Girls and HIV and AIDS 2012-2016.*
- xx. *Sexual and Reproductive Health Strategic Plan 2015-2020*
- xxi. *RMNCHA&N) strategy*
- xxii. *Test and Treat' strategy*
- xxiii. *Lesotho Population-Based HIV Impact Assessment*
- xxiv. *Lesotho Education Sector strategic Plan 2005/2015*
- xxv. *School Nutrition Policy*
- xxvi. *School Improvement Plan Manual*
- xxvii. *Child Friendly School Standards*
- xxviii. *Lesotho Rural Electrification Project*
- xxix. *National Information System for Social Assistance*
- xxx. *National Policy for Orphaned and Vulnerable Children*
- xxxi. *Social Development Policy*
- xxxii. *National Disability and Rehabilitation Policy 2011*
- xxxiii. *Action Programme for the Elimination of Child Labour (APEC) 2013/2017*
- xxxiv. *Curriculum and Assessment Policy 2009*
- xxxv. *Lesotho Highlands Water Project*
- xxxvi. *Environmental Impact Assessment Policy*
- xxxvii. *Poverty Reduction Strategy*

- xxxviii. *Gender and Development Policy 2003*
- xxxix. *National Decentralisation Policy 2014*
- xl. *Water and Sanitation Policy 2007*
- xli. *National Action Plan on Gender Based Violence 2008*
- xl.ii. *Lesotho National Health Strategy for Adolescents and Young People 2015-2020*
- xl.iii. *National Family Planning Guidelines 2012*
- xl.iv. *Planned Parenthood Association (LPPA) Strategic Plan 2010-2014*
- xl.v. *National Reproductive Health Policy 2009*
- xl.vi. *National Sexual and Reproductive Health Strategic Plan 2015-2020*
- xl.vii. *Revised Action Plan for Women and Girls and HIV and AIDS 2012-2016*
- xl.viii. *National Behaviour Change Communication Strategy (2008-2013)*
- xl.ix. *The National Guidelines for the Prevention of Mother-to-Child HIV Transmission*
 - l. *The National HIV Prevention Strategy for a Multi-Sectoral Response*
 - li. *Public Service Workplace and HIV and AIDS policy 2007*
 - lii. *Lesotho National Policy for Older Persons 2014*
 - liii. *National Disability Mainstreaming Plan*
 - liv. *National Disability and Rehabilitation Policy 2011/2016*

Death penalty

16. The Commission commends the:

- i. The moratorium on the death penalty since 1996;
- ii. The tabling of the abolition of death penalty for national debate as part of a national reform process;

Prohibition of torture and cruel, inhuman and degrading treatments

17. The Commission commends the:

- i. Approval by Cabinet of the adoption of a policy on torture which is said to be part of the process to have a consolidated and comprehensive anti-torture law;
- ii. Existence of a draft initial report under CAT;
- iii. Steps taken to report under the simplified procedure, as applicable, of the Committee Against Torture;
- iv. Provision of training for law enforcement agencies regarding the prohibition of torture;
- v. Prosecution of law enforcement officers implicated in cases of torture;

Prisons, Conditions of Detention and Policing

18. The Commission commends the:

- i. Submission of disaggregated data on prisons;
- ii. Efforts to provide health services for detainees, including HIV prevention and treatment services;
- iii. Efforts to address overcrowding, including implementation of non-custodial sentences as well as releasing on parole;
- iv. Establishment of a Legal and Human Rights Unit within the Lesotho Correctional Service;
- v. Provision of human rights training to officers of the Lesotho Correctional Service.

Refugees, Asylum Seekers, Internally Displaced Persons and Migrants

19. The Commission commends the:

- i. Various measures taken to protect the rights of refugees, internally displaced persons and migrants;
- ii. Commitment and efforts to domesticate the Kampala Convention, including the inclusion of this output in an annual plan for 2019/2020.

Judiciary

20. The Commission commends the:

- i. Development of a backlog strategy, including the effective implementation of the Speedy Court Trials Act and by resorting to Restorative justice;
- ii. Existence of legal aid;

Police

21. The Commission commends the:

- i. Fact that Section 6(3) of the Constitution and the Criminal Procedure Act of 1999 regulates police detention, which is 48 hours maximum;
- ii. Fact that human rights are part of the syllabus of Police training and continuous training is provided to officers by the Human Rights Unit at the Ministry of Law through seminars and workshops;
- iii. Fact that Police officers stand to be made accountable for their human rights violations;

Freedom of Expression, Access to Information and Freedom of Assembly

22. The Commission commends the:

- i. Declaration of criminal defamation as unconstitutional by courts;
- ii. Fact that no journalists or media personnel were in prison at the time of the review;
- iii. Unhindered utilisation of ICTs to express oneself, disseminate and access information;
- iv. Enactment of the Meetings and Processions Act of 2010 which allows people to enjoy their rights to assemble and protest;

- v. Fact that refusal by the Police to grant authorisation for demonstration upon an application could be challenged in court;

National Human Rights Institutions

23. The Commission commends the:

- i. Establishment of a functional Office of the Ombudsman;
- ii. Ongoing efforts towards the establishment of a national human rights institution for the protection and promotion of human rights;

Human Rights Defenders

24. The Commission commends the:

- i. Existence of a diversified Civil Society, including Human Rights Defenders;

Women

25. The Commission commends the:

- i. Commitment to fully domesticate the Maputo Protocol;
- ii. Audit of laws in 2000 with a view to reviewing, through a law reform process, those which do not cater for the rights of women;
- iii. Commitment and efforts to work on repealing section 18(4)(c) of the Constitution through constitutional reforms, as well as on the withdrawal of Lesotho's reservation to Article 2 of CEDAW;
- iv. Various legal frameworks put in place to protect the rights of women and children;
- v. Coordinated efforts to improve rural women's access to sexual and reproductive health rights;
- vi. Various measures taken in collaboration with partners and civil society organizations to facilitate women's empowerment, safe motherhood and reproductive health rights at the national level, as well as the generation and utilization of disaggregated data and gender information to inform policy development;
- vii. The introduction of the right of the woman to give her nationality to her children;

Persons with Disabilities and Older persons

26. The Commission commends the:

- i. Fact that collaboration of Government with CSOs is a reality and is ongoing, for example the Government is working with the Federation of the Disabled to have a Bill on Disability;
- ii. Achievement of universal old age pension;
- iii. Provision of sign language in courts;
- iv. Ongoing efforts to ensure that legislations or draft Bills are made available in Braille whenever possible;

Children

27. The Commission commends the:

- i. Fact that the right to education of herd boys is achieved by the literacy programme;
- ii. Continuous education programme in place in the country;
- iii. Existence of human rights education in academic curricula of the country;
- iv. Existence of a system of comprehensive education to tackle pregnancy at school;
- v. Fact that children with disabilities can be enrolled in special schools;
- vi. Fact that mass registration of births is being conducted for three years from 2017;

Economic, Social & Cultural Rights

28. The Commission commends the:

- i. Affectivity of free primary education since 2000;
- ii. Revision of the National Health Policy in 2017;
- iii. Establishment of a principle of free health services;
- iv. The ongoing implementation of a policy to bring health facilities closer to populations and with special focus on rural areas;
- v. Fact that health facilities owned by the State are equipped with more special services than that which are available in the private sector; for instance, all district hospitals performing C-section;
- vi. Fact that payment of health services starts only from the level of district hospitals, while at the level of health centres, health services are free;

- vii. Fact that in case of emergency, the Ministry of Health or medical services do not wait for payment before attending to older persons and persons with disabilities or other vulnerable individuals identified as such by the State;
- viii. Fact that vulnerable groups are covered by social grants, including on health aspects, as the Ministry of Social development pays their medical bills;
- ix. Existence of about 35 cash grants which cover a range of situations or issues, including old age pension of 700 Maluti/month for persons of at least 70 years, grants for children received by families, education assistance, etc;
- x. Existence of community development programmes implemented by the Ministry of Social Development in order to improve the livelihood of communities;
- xi. Fact that adult literacy is 86%.

HIV/AIDS

29. The Commission commends the:

- i. Existence of the National AIDS Commission which was established to deal specifically with the pandemic and has been functional since 2017;
- ii. The “test and treat” policy which is applied as a key part of the struggle against AIDS;
- iii. Decrease in HIV-AIDS prevalence due to the ongoing and coordinated work on the ground, with the actual prevalence having dropped to 25% currently;
- iv. Availability of antiretroviral, and absence of shortage of these, medications in the country;
- v. Support from development partners to Lesotho’s health system by providing antiretroviral medications, free testing including self-testing for pregnant women and their partners, sensitization schemes, education on AIDS, mobile clinics, male circumcision;

- vi. Fact that mobile clinics work at night to cater for sex workers, cross border clinics cater for people working in South Africa, and that men friendly facilities exist to encourage male testing;

Extractive Industries

30. The Commission commends the:

- i. Mineral and Mining Act being drafted whereby, amongst other positive moves, 1% of the revenues from the resources would go to the local communities where the exploitation is taking place;
- ii. Existence of training for stakeholders in relation to child labour in the mining sector;

III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS AND THE MAPUTO PROTOCOL

- 31. In the context of a purely dualist system as applied in Lesotho, the absence of systematic and comprehensive domestication of the Charter and the Maputo Protocol, as well as other human rights treaties, appears as a major restricting factor to the enjoyment of all rights under international human rights law recognised as being duly ratified by the country.
- 32. Despite the Government's efforts to comply with the provisions of the African Charter and the Maputo Protocol, the limited resources at its disposal, especially finances, human resources and infrastructure, inhibit its ability to ensure that all its citizens enjoy the rights and fundamental freedoms enshrined in these human rights instruments.
- 33. The existence and continuous observance of deep rooted cultural and religious practices some of which are recognised by the Constitution and other laws of Lesotho; for which evidence has established that these are incompatible with Lesotho obligations under International Human Rights Law.
- 34. Climate change and its consequences such as droughts, flooding and capricious weather with its unpredictable features has a huge negative impact on the economic, social and cultural settings of Lesotho, which result in unconducive environments for the enjoyment of all human rights.
- 35. The slow pace at which legislative and policy reforms are undertaken to meet its obligations under the African Charter and the Maputo Protocol.
- 36. The absence of strong institutional frameworks in key government institutions and agencies, which therefore inhibit the effective delivery of goods and services and democratic accountability to the citizens.

37. The African Charter, the Maputo Protocol and even ordinary legal frameworks are not widely disseminated to the public to enable them to know and hold duty bearers accountable for non-implementation of the provisions therein.

IV. AREAS OF CONCERN

38. Whilst acknowledging the efforts made by the Government of Lesotho to promote and protect human rights, the Commission is concerned about the following:

Ratification of Regional/International Human Rights Instruments

39. The Commission is concerned that Lesotho has not ratified the following human rights instruments:

- i. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;*
- ii. African Charter on Values and Principles of Civil Service and Administration;*
- iii. African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development;*
- iv. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);*
- v. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;*
- vi. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;*
- vii. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;*
- viii. Optional protocol to the Convention on the Rights of Persons with Disabilities; and*
- ix. Optional Protocol to the Convention on the Rights of the Child on a communications procedure;*

Legal frameworks, reforms and participation

40. The Commission is concerned by:

- i. The absence of domestication of duly ratified treaties pertaining to human rights and the inapplicability of these due to the dualist system in place in Lesotho as far as the relationship between international law and domestic law is concerned;*
- ii. The delay in adopting critical legal frameworks aimed at giving effect to the international obligations of Lesotho and particularly some relative to the core recommendations made to Lesotho by the Commission;*

- iii. The Member of Parliament Act of 1998 which governs the institution having been declared unconstitutional;
- iv. The issue of floor-crossing in Lesotho;
- v. The fact that though the Constitution provides for it, public participation in legislation is lacking and this is due to the inexistence of a legal specific framework to ensure implementation of public participation in Governance;
- vi. The existence of contradicting legal framework governing some vulnerable groups, for instance, with regard to the definition of the child which is not the same in the Children Protection and Welfare Act and in other legal instruments.

Impunity

41. The Commission is concerned by the prevalence of impunity which is a serious challenge to human rights in Lesotho;

Security Sector

42. The Commission is concerned that:

- i. The political environment has brought about issues like security and safety, militarisation of politics and politicization of the military which is prejudicial to human rights and has led to loss of lives;
- ii. The existence of police brutality and that torture is being utilised by security forces in the country;

Death penalty

43. The Commission is deeply concerned that the death penalty still exists in the statutes of Lesotho;

Prohibition of torture and cruel, inhuman and degrading treatments

44. The Commission is concerned that:

- i. No specific legislation exists on torture;
- ii. Lesotho is yet to report under CAT;
- iii. Law enforcement officers are implicated in cases of torture;
- iv. Absence of a national mechanism on the prevention against torture;

Prisons, Conditions of Detention and Policing

45. The Commission is concerned that:

- i. Prisons conditions are yet to be compliant with international standards as the Delegation noted issues of overcrowding and unacceptable remand time (with some inmates having spent more than 7 years on remand);
- ii. Overcrowding is hindering detention conditions and rights of detainees;

Refugees, Asylum Seekers, Internally Displaced Persons and Migrants

46. The Commission is concerned by:

- i. Non-implementation of recommendations from various treaty bodies which pertains to the rights of refugees, internally displaced persons and migrants;
- ii. Non-domestication of the Kampala Convention;
- iii. The lack of information on IDPs.

Judiciary

47. The Commission is concerned that:

- i. The constitutional crisis caused by the conflicting relationship between the Judiciary and the Executive which has a negative impact on the smooth functioning of institutions in a democratic society;
- ii. Challenges exist in the administration of justice including inadequate number of judicial personnel, poor conditions of service and the backlog of cases;
- iii. Delays exist in courts, resulting in inmates spending years on remand;
- iv. The Judiciary faces challenges including insufficient funds and poor working conditions of personnel in the system;

Freedom of Expression, Access to Information and Freedom of Assembly

48. The Commission is concerned that:

- i. Laws are still not amenable to access to information, namely the Treason Act and the Communication Act of 2012;
- ii. There are still laws which limit the ambit of freedom of expression; these include the Sedition Proclamation No. 4 of 1938: section 4 of the Act prohibits uttering of seditious words; 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.

- iii. There is no law on access to information;
- iv. There is no regulatory body for the print media;
- v. There is no self-regulatory body for the media in Lesotho;

The Office of the Ombudsman

49. The Commission is concerned that financial constraints exist at the Office of the Ombudsman resulting in shortage of staff and the subsequent incapacities in discharging its mandate;

Human Rights Defenders

50. The Commission is concerned by the absence of specific laws protecting human rights defenders in their work;

Women

51. The Commission is concerned by:

- i. The country's reservation made on CEDAW, namely on Article 2 of the Convention;
- ii. Section (4)(c) of the Constitution which is a key legal barrier to the rights of women and discriminatory in essence to them;
- iii. The persistence of traditional and religious influences and patriarchy which hinders efforts to free women and girls from gender prejudices despite the legal framework and policies put in place to ensure gender equality as well as the protection of rights of girls and women;
- iv. Existence and prevalence of gender-based violence;
- v. Access to land by women which remains problematic despite the Land Act of 2010, and the traditional inequality in inheritance which favours the first male child;
- vi. The low representation of women in decision-making positions.

Persons with Disabilities and Older persons

52. The Commission is concerned by:

- i. The delay in the adoption process of the Disability Bill;

- ii. There being no specific legislation dealing with older persons in Lesotho;
- iii. Discrimination based on age prevails in Lesotho;
- iv. Attacks on older persons, including extrajudicial killings by burning or beating, being prevalent in the country. The reasons for these attacks are all linked to their vulnerability as they are accused of practicing witchcraft or attacked to steal their money or properties. Furthermore, the attacks and abuses are most of the time perpetrated or facilitated by members of their families;
- v. The burden to older persons who have become caretakers and guardians of their grandchildren, due to their parents having left in search of jobs, as these vulnerable individuals are no longer capable of raising children due to their old age and conditions;
- vi. The quality of life of older persons in Lesotho which is wanting as their mental and physical health is not properly addressed. This is due to the lack of memory clinics in the country and the absence of specific measures in the health system to cater for older persons. In addition, health centres are not easily accessible to older persons due to long distances and the lack of mobile clinics which they have requested in vain;
- vii. The fact that there is no awareness regarding dementia touching older persons in Lesotho and that there are no statistics on this disease despite its prevalence;
- viii. The lack of care facilities and homes for older persons in Maseru even though the country has two institutions of this type;

Children

53. The Commission is concerned by:

- i. The inexistence of specific legislation prohibiting child marriage;
- ii. The existence of child labour in the mining sector;
- iii. The phenomenon of street children who do not attend school and therefore have no access to the right to education;

- iv. The high rate of pregnancy at school which is due to poverty and promotes child marriage;
- v. The inadequacy of special schools for children with disabilities, as the few in existence are insufficient;
- vi. The prevalence of child labour based on cultural and social codes;
- vii. The prevalence of child marriage in the country and its serious consequences, such as the health concerns and reduced access to education for girls.

Economic, Social & Cultural Rights

54. The Commission is concerned by:

- i. The level of poverty in the country which is said to be the root cause of vulnerability;
- ii. The serious crisis of joblessness in the country which is a source of various challenges as far as human rights are concerned;
- iii. The practical ineffectiveness of primary education made free and compulsory since 2000;
- iv. The lack of facilities to properly implement the right to education in rural areas, like overcrowding of classes, long walking distances between home and schools, etc.;
- v. The inexistence of a national insurance scheme in the country;
- vi. The insufficiency of the various existing social benefits;

HIV/AIDS

55. The Commission is concerned by:

- i. The high prevalence of HIV-AIDS, which is presently 25% of the population.
- ii. The negative impact of HIV-AIDS on the right to education, as many older children have had to leave school to care for younger siblings in the absence of parents for reasons linked to HIV-AIDS;
- iii. The fact that stigma is a reality in relation to HIV-AIDS issues and that sexual minorities face the problem of accessibility to health services;

- iv. Issues of accessibility to health facilities by rural populations, especially those in mountainous areas, which hampers the enjoyment of the right to health and the struggle to curb HIV-AIDS;
- v. The fact that the issue of LGBTI is very sensitive in a Christian society and that this has a negative impact on the struggle against HIV.

Extractive Industries

56. The Commission is concerned by challenges pertaining to the effectiveness of the regulatory framework in the mining sector, in regards to the requirements for conducting social and environmental impact assessments, as well as the human rights impact, prior to the exploitation of the resources.

Cooperation with the Commission

57. The Commission is concerned by challenges faced by Lesotho in fulfilling its reporting obligation before the Commission; these include limited resources of the country and the inexistence of a permanent mechanism on reporting to treaty bodies;

V. Recommendations

58. In view of the foregoing, the Commission makes the following recommendations to the Government of Lesotho:

Ratification of Regional/International Human Rights Instruments

59. Lesotho should ratify the following human rights instruments:

- i. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons;*
- ii. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;*
- iii. African Charter on Values and Principles of Civil Service and Administration;*
- iv. African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development;*
- v. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);*
- vi. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;*
- vii. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;*
- viii. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;*

- ix. *Optional protocol to the Convention on the Rights of Persons with Disabilities; and*
- x. *Optional Protocol to the Convention on the Rights of the Child on a communications procedure.*

Legal frameworks, reforms and participation

60. Lesotho should:

- i. Incorporate the promotion and protection of human and peoples' rights in all its actions as well as in the legal, policy and institutional reforms which would be initiated as a result of the ongoing national dialogue;
- ii. Accelerate all processes relative to the adoption of critical legal frameworks in line with Lesotho's international obligations, with specific attention to those recommended by the Commission in its conclusions from the previous promotion mission to the country;
- iii. Take steps to conduct a thorough and systematic domestication of all regional and international human rights instruments that have been ratified;
- iv. Establish an environment and framework conducive to public participation in public affairs in order to ensure ownership and national consensus around issues of public interest;
- v. Review the Member of Parliament Act of 1998 which has been declared unconstitutional for it to be in conformity with the supreme law of the country;

Impunity

61. Lesotho should take steps to address the prevalence of impunity which is a serious challenge to human rights in the country;

Security Sector

62. Lesotho should:

- i. Embark on reforms aimed at the transformation of security forces (Police and Army) into republic forces serving only the legitimate interest of the State and the People of Lesotho, as opposed to paying allegiance to individuals or political forces.

- ii. Investigate all allegations of human rights violations involving the security sector and publish the outcome of all investigations;
- iii. Introduce regular human rights training of personnel at all levels.

Judiciary

63. Lesotho should:

- i. Undertake the necessary consultations and measures to resolve the constitutional crisis between the Judiciary and the Executive;
- ii. Restructure the Judiciary to address the current confusion in the hierarchy, whereby only the Chief Justice sits atop the structure and all other judges are at the same level below;
- iii. Establishment of a formal Constitutional Court;
- iv. Ensure that in the reform of the Judiciary, the Chief Justice sits at the apex Court of the land, which would be the Constitutional Court when it comes to be in formal existence;
- v. The reform should ensure that the Chief Justice is recommended for appointment by the Judicial Services Commission and not the Government;
- vi. Review the existing selection process of judges to ensure greater transparency, as positions are currently not advertised;
- vii. Equip the Judiciary with adequate staffing and address the backlog of cases;
- viii. Guarantee the independence of the Judiciary, and increase its resources for efficient and effective justice service delivery;
- ix. Ensure that the cases of all detainees whose trials and appeals are pending will be promptly heard and their rights to fair trial are respected;
- x. Ensure that the Judiciary plays its role in combatting impunity.

Death Penalty

64. Lesotho should:

- i. Maintain the moratorium on the death penalty;

- ii. Commute all death sentences to life imprisonment;
- iii. Take all necessary measures towards the total abolition of the death penalty from the statutes.

Prevention of Torture

65. Lesotho should:

- i. Adopt specific laws on the prevention of torture and other such cruel and degrading treatment;
- ii. Take steps to report under CAT;
- iii. Establish a national mechanism on the prevention against torture;
- iv. Conduct systematic investigations on each allegation of Police brutality and the practice of torture;
- v. Fully implement the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines).

Prisons and Conditions of Detention

66. Lesotho should:

- i. Immediately release all those on remand in detention centres who have exceeded the legal remand time;
- ii. Mainstream human rights in the training of prisons personnel by developing the available vocational training and providing such equipment and materials in prison;
- iii. Ensure that prisons infrastructure meets minimum international standards on detention and in particular to address overcrowding by completing the construction of unfinished buildings;
- iv. Improve the sanitary provisions and conditions relating to the detainees;
- v. Provide adequate staffing to prisons and improve the working conditions and facilities of all personnel in the prison service;

- vi. Adopt measures to ensure that all detainees have regular communication with their families and facilitate regular access to the prisons by NGOs and CSOs;
- vii. Abide by standards and principles relative to prisons and detention centres which are laid down in the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines).

National Human Rights Institution

67. Lesotho should:

- i. Establish and operationalise a Paris Principles compliant NHRI;
- ii. Provide the necessary resources for the effective and efficient operations of the Commission;
- iii. Work with the Commission to develop a national human rights action plan;

The Office of the Ombudsman

68. Lesotho should:

- i. Raise more awareness of the role of the Office of the Ombudsman;
- ii. Allocate the necessary resources to the Office for its effective and efficient functioning;
- iii. Provide adequate funding to the Office of the Ombudsman to enable it to properly and efficiently discharge its mandate;
- iv. Sensitize the Police and the Director of Public Prosecutions in order for these institutions to collaborate effectively with the Office of the Ombudsman;
- v. Provide the Office of the Ombudsman with prosecutorial powers.

Freedom of Expression and Access to Information

69. Lesotho should:

- i. Enact a law on access to information;

- ii. Review the legal framework for the rights to freedom of expression and access to information which is draconian namely, review the Treason Act and the Communication Act of 2012, Seditious Proclamation No. 4 of 1938: section 4 of the Act prohibits uttering of seditious words; 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;
- iii. Ensure that the media sector and media landscape include key elements like trade unions, code of ethics, regulatory bodies, etc.
- iv. Ensure that advertising market is fair and not utilised by government to punish outlets deemed not favourable to its governance;
- v. Improve working conditions and employment conditions in the media sector;
- vi. Work towards establishing professionalism in the media sector in order to avoid subjective polarisation, which is detrimental to peace and stability as well as to human rights.

Human Rights Defenders

70. Lesotho should enact a law specific to the protection of human rights defenders.

Women

71. Lesotho should:

- i. Reverse/withdraw the reservation made under CEDAW;
- ii. Conduct constitutional reform aiming at removing Section (4)(c) of the Constitution which is a key legal barrier to the rights of women and discriminatory in essence to them;
- iii. Ensure that the reform gives to women the right to pass their nationality to their spouses and children on an equal basis with men;
- iv. Enact a law to provide for a 50 percent quota for women in all decision making positions;

- v. Embark on sensitization, civic education and provide incentives for women to take up leadership roles and to contest for public offices;
- vi. Reform electoral laws, systems and regulations for political parties to remove barriers which women face when vying for elected offices;
- vii. Increase efforts, enact legal frameworks and implement the policies or legal avenues against child marriage and gender based violence and conduct awareness raising programs in local languages;
- viii. Review land tenure laws and systems to increase women's ownership and access to land;
- ix. Increase economic activities of women and ensure they have access to finance to support their livelihood activities;

Refugees, Asylum Seekers, Internally Displaced Persons and Migrants

72. Lesotho should:

- i. Implement recommendations from various treaty bodies which pertains to the rights of refugees, internally displaced persons and migrants;
- ii. Domesticate the Kampala Convention;
- iii. Provide information on IDPs.

Persons with Disabilities and Older Persons

73. Lesotho should:

- i. Domesticate the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons;
- ii. Initiate comprehensive sensitization of authorities and the population on issues of disability and older persons so that the nation is aware of, and respects, these rights;
- iii. Ensure that the Disability Bill which is to be enacted complies with the standards set in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities;
- iv. Enact a law on older persons which is in line with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons;
- v. Protect older persons from discrimination and violence;

- vi. Ensure the provision of more facilities to cater for the needs of older persons and embark on awareness raising programs in relation to how to mainstream the rights of older persons and persons with disabilities, and specifically address the issue of dementia which is prevalent amongst older persons;
- vii. Ensure that the universal pension for older persons starts at the age of 65 or ideally 60; rather than at 70 as is currently the case;
- viii. Create and operate a house for older persons in Maseru.

Children

74. Lesotho should continue and strengthen programmes and policies in place which aim at ensuring that children receive the special attention they need, namely with regards to education, health and protection against harmful traditional practices like child labour, which are mainly due to poverty, and are detrimental to their rights. Specific steps as outlined below should be taken:

- i. Enact specific legislation on child marriage;
- ii. Elaborate and implement strategies to systematically combat child labour in the mining sector;
- iii. Elaborate and implement strategies to fight against the phenomenon of street children, including ensuring their access to the right to education;
- iv. Increase to a sufficient number of special schools for children with disabilities;
- v. Elaborate and implement strategies to combat cultural and social codes related to child labour;
- vi. Elaborate and implement strategies to combat child marriage in the country.

Economic, Social & Cultural Rights

75. Lesotho should:

- i. Devise proactive strategies, including making use of international cooperation to uplift its economic situation so that the level of poverty is reduced and the vulnerability it creates is mitigated;

- ii. Ensure that primary education made free and compulsory since 2000 is effectively rendered free and compulsory in practice;
- iii. Strengthen university infrastructure and other educational institutions and programmes to enable these to provide quality and affordable services;
- iv. Address the shortcoming in the social security schemes which exist and ensure universal coverage at least for the most vulnerable groups;
- v. Increase to an adequate level the value of the various existing social benefit schemes in the country;

HIV/AIDS

76. Lesotho should:

- i. Continue and strengthen efforts in the prevention and combat against HIV, including through international cooperation to secure funds and expertise required to adequately combat HIV/AIDS in the country;
- ii. Comprehensively combat stigma both in relation to HIV and LGBTI as it is a factor seriously hindering efforts to control HIV in Lesotho;

Extractive Industries

77. Lesotho should:

- i. Finalize the ongoing development of better legal and policy frameworks for the mining sector and ensure transparency of the sector by publishing the revenues it generates;
- ii. Ensure that environmental, social and human rights impact assessments are conducted prior to the exploitation of resources from the mining sector.

Cooperation with the Commission

78. Lesotho should:

- i. Establish a permanent mechanism in charge of ensuring that reporting obligations of Lesotho to treaty bodies are met;

- ii. Utilise all available means, including international cooperation and expertise to deal with the limited resources available as far as reporting to treaty bodies is concerned;
- iii. Translate the African Charter and the Maputo Protocol into local languages and widely disseminate it to the general public for their consumption;
- iv. Comply with its obligations under Article 62 of the African Charter and Article 26 of the Maputo Protocol by implementing the recommendations made herein;
- v. Implement the recommendations made in the 2018 Promotion Mission Report by the Commission;
- vi. Inform the Commission, in its next periodic report, of the measures taken to address all the above issues of concern and recommendations.

Adopted by the African Commission on Human and Peoples' Rights at its 68th Ordinary Session held virtually from 14 April to 04 May 2021