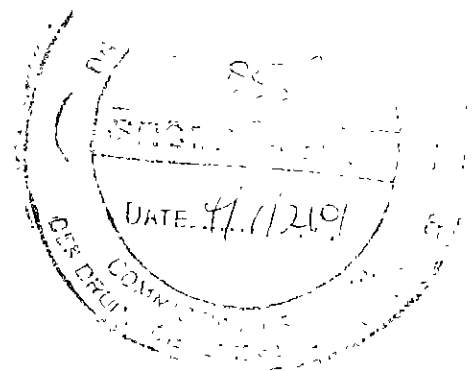




THE KINGDOM OF LESOTHO

INITIAL REPORT ON THE IMPLEMENTATION OF THE
AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS:
TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S
RIGHTS, IN TERMS OF ARTICLE 62

MASERU, LESOTHO: AUGUST 2000



ERRATA

The following spelling errors have been detected. It is regretted that they were not seen at the time of the finalisation of the report. However it is never too late hence this errata.

- Page 2,3,6,7,9 and 10 (Basutoland).
- Page 7, last para, 3rd line, 8th word (practised).
- Page 7, last para, 9th line, 7th word (Dutch)
- Page 9, 2nd para, 3rd line, 5th word (Presidents) .
- Page 10, last para, 4th line, last word (anarchy).
- Page 14, point No.2, 2nd line, 7th word (tribunal).
- Page 17, para (j), 4th line, 8th word (occurred).
- Page 19, 4th para, 4th line, 13th word (acceded).
- Page 25, 2nd para, 2nd line, 3rd word (repealed).
- Page 28, last para, 3rd line, 3rd word (re-designated).
- Page 30, para next to one marked (3), 3rd line, last word (siege).
- Page 31, 7th line from top, 3rd word (colloquium).
- Page 35, 3rd para, 1st line, 7th word (UN).
- Page 35, 3rd para, 2nd line, 3rd word (stock-pilling).
- Page 36, 5th para, 5th line, 8th word (inter-sectoral).
- Page 52, 1st line under article 8, 10th word (conscience).
- Page 55, 2nd para, 2nd line, 6th word (censorship).
- Page 57, 2nd para, 5th line, 8th word (conditionality).
- Page 58, under article 13 (b), 9th word (periodic).
- Page 63, 2nd line from top, 5th word (succinctly).
- Page 63, 1st para, 8th line, 1st word (cancellation).
- Page 63, 1st para, 9th line, 6th word (nullified)
- Page 65, 6th para 6th line, 1st word (inter-sectoral)
- Page 73, under article 21, 5th para, 2nd line, 15th word.(register able)
- Page 77, 1st line 5th word (solidarity)
- Page 79, 3rd para, 1st line, 2nd word, 6th line 3rd word, 4th para 2nd word (in-service)
- Page 80, 2nd para, 3rd line 2nd word (focussing)
- Page 80, 3rd para, 13th line, 7th word (grass-root)
- Page 82, 3rd para, 3rd line, 7th word (inter-alia)
- Page 83, under Treaties and Conventions, 2nd line 9th word (Protocol)

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BACKGROUND TO THE REPORT AND SYNOPSIS

The Kingdom of Lesotho ratified the **African Charter on Human and People's Rights**, of June, 1981, on 9 April, 1991. This was in preparation for the democratic process, which was ushered in on the 27 March, 1993, when the first democratic post independence elections were held.

Lesotho's initial report on the domestic implementation of the **African Charter** (as it is here in referred to) was due in or about 9 April, 1993. However, this was not to be. There are many factors, which militated against preparation of the report. These inter alia, included lack of manpower to undertake the reporting exercise, the destabilisation of the democratically elected government, etc.

In 1995, the Government of Lesotho got support from the **Commonwealth Secretariat** and two professional staff of the **Human Rights Unit**, who were already involved with reporting ^{and} given special training on reporting and successfully completed reporting on the implementation of the **International Covenant on Civil and Political Rights, (ICCPR), 1966**; and the **United Nations Convention on the Rights of the Child (CRC), 1989**. The said reports were submitted to the relevant United Nations Committees.

It was our strategy to start with the **ICCPR** Report because the guidelines there-of are more detailed than those of the **African Charter**. Since the two instruments, i.e the **ICCPR** and **The African Charter** cover almost the same ground, with few variations, the information provided under the **ICCPR** was then adapted as nearly as possible, to suit the guidelines to Periodic Reporting under Article 62 of the **African Charter on Human and People's Rights**, prepared by **Professor U.O. Umzurike**, on behalf of the **African Commission on Human and People's Rights**.

The Report covers the period 1991 - to the present. It provides information on legislative, judicial and administrative procedures, actions and interventions, which are intended to give effect to the domestic implementation of the **Charter**. In some instances the information provided may not be as comprehensive as required. This is due to the fact that the task of collecting data and information, for purposes of reporting is a very arduous one. It requires the officer to devote all his or her time to the reporting exercise. Given the constraints of manpower within the **Human Rights Unit**, this is not possible, as there are also other equally demanding activities to be attended to.

The Report in the first part, comprising paragraphs 1.0 - 1.19, provides information on: The Land of Lesotho (Geographic Setting) The People; Political History and Framework. Population, including Demographic Data; The Official Languages; Social Economic Indicators. The Legal System; Basic Documents on Human Rights and Major Human Rights Instruments to which Lesotho is a State Party; Political Developments Pertaining to Civil and Political Rights; Steps taken to Improve the : Disabled, Children, Women, and Foreign Service Power sharing Between Men and Women at all Levels of Decision Making including: The Senate, the National Assembly, Public Service, and Cabinet; The Role of NGO's in Empowering Women, HIV/AIDS Education and Awareness; Steps taken to Protect Family Cohesion; Religion;

The Government, i.e. the Monarchy, Elected Officials, and Appointed Officials. The legal framework within which human rights are protected; And the enforcement of the provisions of the **Charter** by the courts and other tribunals or administrative authorities.

The rest of the report is dedicated to the implementation of the various rights contained in the Charter. This covers all articles of the Charter, i.e. from Article 1 to Article 29. It contains information relating to the recognition of all the rights contained in the Charter and also the country's undertaking to honour the obligations thereof, as well as guarantying to all individuals, citizens and aliens alike residing in Lesotho, all the rights contained in the Charter.

These include: the right of equality before the law (non discrimination); the right to life; the right not to be subjected to torture or in human or degrading punishment; the right to personal liberty and security of person; the right to have a cause heard, presumption of innocence, trial within a reasonable time; freedom of conscience, religion; the right to receive information and dissemination of information and opinion; freedom of association; the right to assemble freely; the right of freedom of movement; the right to participate in government, equal access to public service, access to public property; the right to property; the right to work under equitable conditions, equal pay for equal work; the right to enjoy best attainable state of physical and mental health; the right to education, cultural life and protection of moral and traditional values; protection of the family, duty of the state to assist the family, elimination of discrimination against women; equality of all people and non domination of people by another; the right to self determination; the right to dispose of wealth, recovery of wealth, adequate compensation, disposal of natural resources; the right to economic, social and cultural development; the right to international and national peace; the right to a satisfactory environment; the duty to promote and ensure through teaching, education and publication, the respect for the rights contained in the **Charter**; and the duty to guarantee the independence of the courts.

At the end of the Report there is a list of the statutes and legal instruments referred to in the Report, including : agreements, Lesotho Cabinet Decisions, Lesotho cases as well as other reports and documents.

THE KINGDOM OF LESOTHO

1.0 THE LAND OF LESOTHO

1.1. GEOGRAPHIC SETTING

Lesotho is a small country lying towards the Southern tip of Africa. At 30 350km/2 in area, Lesotho is one of the smallest countries within the African Continent. Lesotho has an arable land slightly less than 9%. It is situated between 28 degrees and 31 degrees South and between 27 degrees and 30 degrees East. This geographical setting puts Lesotho right within the Republic of South Africa, where to the North and West shares its boundary with the predominantly Sesotho and Afrikaans speaking Free State Province, to the South is the predominantly Xhosa speaking Eastern Cape, and in the East is the Zulu speaking province of Kwazulu-Natal. Over 75% of the country is highland country, and the highest peak in Southern Africa, which is found in Lesotho is Thabana-Ntlenyana. It is 3 482 metres high. The average height of the lowlands is between 1 000 and 1 800 metres, and this is where the capital town Maseru lies, and where the majority of the population lives.

1.2 THE PEOPLE

In the 1820's commotion called the lifaqane wars in what was then known as Nguni-land started. When the wars started no one could have foreseen the magnitude of its impact on the overall history of the entire Southern African region. One of the effects of the war was the formation of new nations such as the Basotho nation founded by **Moshoeshoe** and the Swazi nation founded by **Sobhuza**. Therefore, the Basotho did not exist as a nation before 1820.

Moshoeshoe was a pragmatic leader, who was able to forge unity among his people and defeated his enemies through diplomacy, and military conquest, whenever there was a need. He was also able to defeat the British and the Boers on the battle field, but was latter forced to seek British protection at a time when the Boers were poised to take over Basotho land by force, and hence Lesotho was declared a British protectorate on 18th March 1868.

It took more than ninety years for Basotho to regain political leadership, which was in the hands of the British Commissioner, with **Dr Leabua Jonathane** inaugurated as Lesotho's first Prime Minister in 1966 and **King Moshoeshoe II** as its first constitutional monarch

Lesotho's newly found democracy did not see its full term of five years. **Dr Jonathane** failed to hand over power to the Basotholand Congress Party, which had won the 1970 elections, for reasons best known to himself. Actually what **Dr Jonathane** did was to suspend the 1966 constitution, declare a state of emergency and ruled by decree up until he was overthrown by the military in a bloodless coup in 1986. The military handed over power to the civilian government in 1993, under the leadership of **Dr Ntsu Mokhehle**.

Lesotho's people, the Basotho are largely a rural people with about 84% of the population living in the rural villages. The population has a high proportion of children, which proportion is expected to grow further.

1.3 POLITICAL HISTORY AND FRAMEWORK

(a) Nation Building

Lesotho's political history goes as far back as the days of nation building by **Moshoeshoe I** (founder of the Basotho). **Moshoeshoe** built the nation from remnants of tribes fleeing from the destructive lifaqane wars lead by the Zulus. His tribe, the Mokoteli was one of the smallest tribes among the Basotho tribes, but **Moshoeshoe** was able to build a nation from such a small tribe. His success was not largely, as other people believe, due to desperation on the side of those fleeing the Zulu mayhem, but it was due, in most part, to his genius, his diplomacy (which was quite in short supply in those days), and his military skills.

Moshoeshoe's political organisation during nation building and beyond was to put small tribes directly under his control and members of his immediate family. Bigger tribes were allowed to keep their chieftaincy intact provided they pledged allegiance to him.

(b) Missionaries and Moshoeshoe

In 1832 **Moshoeshoe** heard about the Christian faith and white missionaries. **Moshoeshoe** saw this as an opportunity to have some experienced advisors to help in his dealings with the white settlers on his land. French Missionaries from the **Paris Evangelical Society** namely, **Abbousset**, **Casalis** and **Gosselin** arrived in Basotholand in 1833. The missionaries were allowed to propagate their religion freely among the Basotho. In return they were to be treated as **Moshoeshoe's** subjects, which means that they could be compelled to advise him on any matters pertaining to Basotho affairs. The missionaries were quite instrumental in securing protection for the Basotho from the British, when the Boers were poised to take over Basotholand by force.

(c) Trouble with Boers.

In 1835 white farmers from the Cape began arriving in Basotholand, unlike other immigrants, these people were not willing to become Moshoeshoe's subjects, as a result a series of conflicts erupted between the Basotho and the new-comers. The Basotho were at first able to defeat their opponents, but with time the balance of power shifted in favour of the Boers and the Basotho were spared as a nation by the declaration of the British, that as from 18 March 1868 Basotholand was a British protectorate. **Moshoeshoe** died two years later on 11th March 1870.

At the time of **Moshoeshoe's** death, the economy of Lesotho was going through an agricultural boom. Surplus grain was exported to the rest of Southern Africa, most notably to the white settlers in exchange for cash (hence the beginning of moneytising of Lesotho's butter exchange). However, the prosperous Basotholand was an eye sore to the white settlers, who had other plans for the Basotho. They valued the Basotho for their labour to work mostly in the diamond mines of Kimberly and other newly discovered mines in South Africa. The white settler government therefore made it illegal for the white settlers to buy grain from the Basotho and they started to import grain from Europe.

This measure brought down regional prices of grain. As a result, this calculated move by the settler deprived the Basotho of their livelihood. They were forced to seek employment in the Mines of South Africa.

This was the beginning of the present migrant labour system to South Africa, which came at the expense of a decline in agriculture. Loss in agricultural production and the beginning of migrant labour system inevitably brought with them a decline in the Chief's control over their subjects. As they lost their wealth and the following of their people, chiefs found themselves forging a relationship with colonial masters.

This new face of the chiefs, who had always played a role of Pan-Africanism, left their subject, without any legitimate leadership.

It was this fact and the traditional anti imperialist feelings of the Basotho people that led to the establishment of the first political party. The party known as the Lekhotla la Bafo was formed by one **Josiel Lefela** and the former Prime Minister of Lesotho **Dr Ntsu Mokhehle** joined the party ranks in 1942.

Dr Ntsu Mokhehle later formed his political party in 1952. Formed under the ideology of Pan-Africanism, the Basotholand Congress Party was naturally regarded as a Communist Part. As a result, the Catholic Church saw it as an enemy of religion, while South Africa saw it as an enemy of apartheid and therefore an enemy of the state.

With all these powerful enemies (of the BCP) it was not much of a surprise when two new parties were formed in 1960. These parties were the Basotholand National Party (BNP) and the Marematlou Freedom Party (MFP). The BNP was formed or at least it campaigned for prolonged British rule. They peached anti-communist rhetoric and hence became friend with the Catholic Church and Chiefs.

Lesotho is a sovereign Kingdom under the Leadership of a democratically elected government. The powers and function of government are guided and derived from the 1993 Constitution, which is the Supreme Law of Lesotho.

Lesotho's Constitution accords a special place for the Monarch. The Monarch who is head of Government, is deemed to be above partisan politics. The Government of Lesotho is known as his Majesty's Government. There is the separation of power between the Executive, the Judiciary and the Legislature. The Legislature is divided into two houses. The lower house comprises elected representatives, while the upper house or Senate consists of nominees, including the 22 Principal Chiefs. There are however, debates in parliament to restructure the Senate, so that Senators are also elected by the people.

1.4 POPULATION

The population of Lesotho according to the 1996 census is estimated at 1,835,867 of which 939,686 is female. According to the 1986 population census, "the population of Lesotho was estimated to be increasing at a natural rate of 2.6% projected to grow by 2.8% per annum by the year 1996".

1.5 DEMOGRAPHIC DATA

The population census of 1996 reveals an estimated population aggregate as follows:

CITIZENS OF LESOTHO

AGE GROUP	FEMALES	MALES
00-04	98,918	100,098
05-09	116,020	118,142
10-14	124,627	126,686
15-19	113,337	109,476
20-24	89,804	81,808
25-29	64,369	60,395
30-34	57,956	52,809
35-39	48,457	44,366
40-44	40,359	37,946
45-49	31,948	32,828
50-54	27,198	25,697
55-59	21,718	21,036
60-64	25,156	20,088
65-69	14,617	11,440
70-74	12,214	8,280
75-79	11,018	6,709
80-84	5,072	2,522
85+	6,177	2,483
A N S	30,721	33,372

Total of estimated population census 1996

Females 939,686

Males 896,181

TOTAL 1,835,867

The 1986 population census revealed that the population of Lesotho amounted to 1,565,086, while the 1996 population census reflects a population total of 1,835,867. The recent population census reflects a total population increase of 270,781, which is an increase of 17.3 percent. On average the population growth rate has been 2% per annum.

Among the estimated 2 million people that make up the Basotho, a small minority of Europeans, Asians, Americans and Africans from the Republic of South Africa (RSA), Botswana, Namibia, Zimbabwe, Mozambique, Angola, Tanzania, Malawi, and other countries like Uganda exist.

1.6 OFFICIAL LANGUAGES

English and Sesotho are the official languages of the country. However, in selected places like the Ministry of Foreign Affairs and the department of French at the National University of Lesotho (NUL), the French language is used in so far as the career of the foreign service requires, and the arena of the academic world demands from the University.

The foreign immigrant population in Lesotho enjoys the freedom to speak their respective languages of origin without any restriction.

1.7 SOCIO ECONOMIC INDICATORS

The preliminary estimates of Lesotho's 1998 national accounts indicate that the country's overall economic situation deteriorated in 1998. The political crisis of 1998 resulted in the destruction of Lesotho's economic sector through looting and burning down of the major businesses. According to a preliminary assessment the damage was estimated to be over M300 million. This estimate includes the cost of demolition, reinstatement and professional fees of individual firms, who are doing reconstruction.

In 1998, the gross domestic product (GDP) declined in real terms by 5.5%, the first GDP decrease in the 1990's. With a 7% decrease in the total imports in volume, the overall supply in the economy declined significantly. The domestic production in most sectors declined especially in the following sectors: electricity, water, construction, hotels and

restaurants. The manufacturing sector, which had shown a relatively high growth rate in earlier years also registered a negative growth rate in 1998.

The inflows of income and current transfers from abroad in 1998, were less than those in 1997, even in nominal terms. Thus, both gross national income (GNI) and gross national disposable income (GNDI) declined in both nominal and real terms during the year. The nominal GDP, however, increased somewhat over the 1997 level, reflecting a domestic inflation rate of about 9 percent.

The average nominal income per person amounted to 3,133 Maloti (US\$570) in 1998, which was slightly lower than the 1997 level.

Together with the real decline in GDP as well as in imports and resource inflows from abroad, the aggregate demands broadly declined in 1998. In real terms, the households' consumption and the domestic investment decreased, while the Government consumption increased. The exports, which had continued to increase in earlier years, declined by 7.6% in volume terms.

Source: Bureau of Statistics: Report on National Annual Accounts.

1.8 THE LEGAL SYSTEM

The legal system of Lesotho is characterised by a dual legal system, whereby customary law and the received common law operate side by side. The customary law derives from Sesotho customs and usages, which have been practiced since time immemorial. It is sometimes referred to as the laws of Lerotholi. This is because it was during the reign of Paramount Chief **Lerotholi**, that efforts were made to compile customary law into documentary form. The common law on the other hand is made up of statutes and the received Roman Dutch law. The latter i.e. Roman Dutch law, which developed in the Province of Holland during the 13th and 14th Century, has been influenced by some principles of English Law. This Roman Dutch law was imported into Basotholand, by the British High Commissioner in the Cape Colony, when he became the administrator of Basotholand, through Proclamation 2B of May 29, 1884. Whether in any one case the customary or the common law will be applicable, is determined by the nature of each case - whether criminal or civil, the intention of the parties involved, and other rules relating to choice of law in situations of conflict of laws.

1.9 BASIC DOCUMENTS ON HUMAN RIGHTS AND MAJOR HUMAN RIGHTS INSTRUMENTS TO WHICH LESOTHO IS A STATE PARTY.

The major human rights instruments to which the state is a party and the steps taken to internalise them:

- African Charter on Human and People's Rights, June 1981 - ratified on April 9, 1991
- U. N. Convention on the Rights of the Child, 20 November 1989, at New York, ratified on 9 April, 1992.
- International Covenant on Civil and Political Rights, 16 December 1966, New York, ratified on 9 December, 1992.
- International Covenant on Economic, Social and Cultural Rights, 16 December, 1966, New York, ratified 9th December, 1992.
- Optional Protocol to the International Covenant on Civil and Political Rights (Individual Communication - GA Resolution 2200 A (XXI) of 1966, (Instrument of ratification is being prepared).
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 18 December, 1979, ratified on 22nd August 1995 - (Entered into force 30 days after date of deposit - i.e. 21st September, 1995).
- International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, New York, ratified 4th November, 1971.
- Convention Against Torture. (Instrument of ratification is being prepared)

On steps taken to internalise these human rights instruments, the Government, through the Human Rights Unit of the Ministry of Justice, Human Rights and Rehabilitation endeavours to sensitise public servants and law enforcement agencies on the rights protected in these instruments as well as issues of human rights generally. The Unit, in collaboration with the Danish Centre for Human Rights has in the past held 5 in-service training courses for Magistrates, Probation, and law enforcement agencies. In addition to this, an executive seminar for top policy makers was held on 15 November 1997.

1.10 POLITICAL DEVELOPMENTS PERTAINING TO CIVIL AND POLITICAL RIGHTS

In August, 1994 King **Letsie III** suspended the Constitution and created an interim government. The country responded to this coup by almost 100% support for two stay-at-homes from work organized through the Lesotho Council of Non-Governmental Organizations (LCN). It became clear that there was no support from the nation for the usurpers of power; and when South Africa, Botswana, and Zimbabwe intervened diplomatically, the coup collapsed and the democratically elected government was restored to power.

Although the Council of State as well as heads of churches had tried to facilitate dialogue and promote a spirit of reconciliation, there was still serious suspicion and lack of trust. The issues elaborated by Presidents **Mandela, Mugabe** and **Masire**, who are serving as guarantors of the settlement, expressed in an eight point memorandum of understanding was envisaged as being crucial for Lesotho in order to avoid a situation of continued and serious polarisation. The eight points memorandum of understanding stated that:

1. Foreign guarantors will remain directly involved.
2. Non-Governmental, religious and traditional bodies will be consulted.
3. The Commission of Inquiry into the monarchy will be cancelled and Moshoeshe II reinstated to the throne.
4. The 1993 Constitution will be observed, especially in relation to human rights.
5. No action will be taken against King **Letsie III**.
6. Members of the August Provisional Council will be indemnified.
7. Laws and constitutional provisions on the Public Service and Security Services will be respected.
8. All parties will respect the political neutrality and loyalty of security services and judiciary.

King **Moshoeshe II** was restored to the throne in 1995, but died in January, 1996. King **Letsie III** succeeded him thereafter.

In June 1997, political developments within the then ruling Basotholand Congress Party, culminated into the formation of Lesotho Congress for Democracy (LCD). The newly formed LCD, led by the late Prime Minister - **Dr. Ntsu Mokhehle**, continued as the government under Lesotho Congress for Democracy LCD. Some legal experts within and outside Lesotho gave their opinions, which pointed to the fact that the new party LCD and the Government was not unconstitutional. However, this development has so far, not been challenged in a court of law.

Now that three years have passed ever since it happened, it may be assumed that it will never be challenged. **Dr. Ntsu Mokhehle** resigned leadership of the Party in 1998. The current Prime Minister, **Prof. Bethuel Pakalitha Mosisili** was elected his successor.

As indicated under article 13 here-under, the second Amendment to the Constitution Act No. 7 of 1997 provides for the establishment of an Independent Electoral Commission, whose mandate is to facilitate the enjoyment and realisation of some civil and political rights.

After the results of the 1998 elections, allegations were made by an alliance of opposition parties to the effect that there were serious irregularities, which in some cases amounted to fraud, particularly with the registration process and compilation of the voters list, during voting and handling of electoral materials.

The alliance of opposition parties, namely Basotho National Party (BNP), Basotoland Congress Party (BCP), and Marematlou Freedom Party (MFP), did not accept the results of the elections. The alliance then filed petitions in the Court of Disputed Returns in respect of fourteen (14) constituencies.

The alliance presented a petition to the King on the 4th August, 1998, in which they asked the King to intervene and dissolve the Government, dissolve Parliament and form a Government of National Unity, which would prepare for fresh elections. The protesters camped outside the Royal Palace gate well beyond the permitted time, demanding an answer from the King, and despite pleas from the police they refused to disperse. Section 4 of the Public Meetings and Processions Act No. 2 of 1993 permits a police officer, a headman or representative of headman to impose conditions on holding of meetings or processions if it is necessary to prevent damage or harm to public safety or public order. The police had given protestors 5 hours, that is from 10:00 am - 3:00 pm, for their demonstration.

Meanwhile, the protestors were singing political songs and kept a night vigil of approximately 42 days. Businessmen sympathetic to the protestors provided food and money. Cooking was done at the Palace gates. **Bishop Khoarai** of the Roman Catholic Church held a mass for the protestors, and some women church groups visited the protestors and prayed with them. The local Red cross made its presence felt by attending to the wounded and injured and also distributed condoms as there were allegations of casual sexual practices by the protestors during the night

On the 5th August, 1998, the Prime Minister made a speech in Parliament, in which he outlined the electoral problems Lesotho has experienced since 1970. He urged the nation at large, and the opposition alliance in particular to desist from unlawful acts and to respect the courts of the land, otherwise Lesotho would descend into a state of anarchy and lawlessness.

On the 17th August 1998, the armed protestors led by youth groups, clashed with the police, and as a result, some people were injured or killed. Thereafter the protestors forced people to observe stay away from work and also vandalised property belonging to street vendors. This period witnessed serious violation of human rights, including the right to life, the right to own property, the right to liberty of movement, etc. Work in the Government offices in Maseru was brought to a stand still. Both Parliament and the courts stopped functioning. This led to a total break down of law and order. The protestors resorted to seizing Government and parastatal corporations' vehicles and commandeered them to the Royal Palace. The official cars of two judges of the High Court were seized by protestors and completely destroyed. The vehicle of the Honourable Minister of Justice, Human Rights and Rehabilitation was also stoned and the rear side screen was shattered.

Prior to the situation deteriorating further, the then South African Deputy President, **Mr. Thabo Mbeki**, was invited to Lesotho on the 10th August 1998, by the opposition parties, in order to intervene and mediate. He suggested to the government and the opposition parties the idea of having an independent audit of the election results. In the mean time a three point agreement was reached, i.e

- *all parties agreed to seek to normalise life in Maseru, to remove vigilantes from the streets and allow normal traffic flow.*
- *humanitarian relief would be allowed to go to these most affected, and people would again have access to hospitals, food, shops, banks, funeral services, etc.*
- *all parties agreed to commit themselves to the independent audit of the election results.*

As agreed, a Commission of Enquiry into the conduct and results of the Lesotho General Elections, held in May 1998, was established to look into the alleged fraudulent acts in compilation of the voters roll; alleged irregularities in the demarcation process; alleged irregularities in the counting of votes; alleged irregularities in reconciliation of votes cast with the voters roll; and any acts of vandalism in respect of materials. The Commission was required to make recommendations to SADC, through its chairperson on possible solutions to the impasse.

The Commission released its report on 17th September, 1998, and inter alia found that there had been a number of irregularities pertaining to non observance of procedures as laid down in the law. However the Commission could not say whether the election results of the 23rd May, 1998, did not in effect constitute a reflection of the wish of Lesotho's electorate.

In particular it was pointed out in recommendation 6.1 that:

the evidence and counter evidence of the opposition auditors and IEC auditors does not provide conclusive proof that the announced results and the actual results are correct or rigged.

The report went further to say in recommendation 7.7 that:

... it has been suggested that a new general election should be held on the basis that irregularities cast doubt on the fairness of the 1998 elections. We are unable to say that the invalidity of the elections has been conclusively established. We point out, however, that some of the apparent irregularities and discrepancies are sufficiently serious concerns. We cannot however postulate that the result does not reflect the will of the Lesotho electorate. We merely point out that the means for checking this has been compromised and created much room for doubt.

The Government, faced with this grave insecurity, following a breakdown of law and order, invited the intervention of SADC countries, in order to restore law and order as well as to reinstate the senior army officers, who had been forced out of the army unconstitutionally.

The SADC forces entered Lesotho in the early hours of September 22, 1998. They encountered resistance at Makoanyane Barracks, resulting in a number of deaths including 10 SADC Soldiers. The scenario changed for the worst, when certain elements in the alliance of opposition parties deliberately and systematically set fire to buildings in Maseru, Mafeteng, Mochale's Hoek and Roma including private dwellings belonging to Lesotho Congress for Democracy (LCD) members, including members of Parliament and Ministers.

According to a preliminary assessment the damage was estimated to be over M300 million. This estimate includes the cost of demolition, reinstatement and professional fees of individual firms, who will do reconstruction. As a direct result of the conflict, between 90-100 people were killed, 200 were injured, 1000 were displaced, while 4016 lost employment. This destruction had very serious social and economic consequences for every one in Lesotho.

Government property, in particular, the Local Government Ministry and the Labour department buildings were destroyed, other Government buildings and vehicles were also destroyed, or stolen by looters. Part of the old High Court building, the civil registry and files, office equipment and two judges chambers were also burned to ashes.

As a way forward, the SADC delegation facilitated an agreement between the Government and the opposition political parties, on the 2nd October, 1998, at the United Nations House, Maseru.

It was agreed that fresh elections be held within 15-18 months; that the parties would abide by and respect the outcome of the elections; the parties agreed on the restructuring and resourcing of the Independent Electoral Commission to ensure it is able to effectively discharge its mandate; the formulation of a code of conduct for Political Parties, which would ensure creation of a climate conducive for free political activity and desisting from making inflammatory statements; the review of the electoral system with a view to ensuring greater and inclusive participation in the political affairs of Lesotho; parties agreed to work together to create levels of security and stability necessary to ensure free and fair elections; parties also agreed to work together to restore stability and desist from any action that may compromise the professionalism of the security forces.

It was further agreed on the 14th October, 1998 that:

- *A structure be put in place to facilitate the preparation for and holding of elections in Lesotho, as agreed on 2nd October 1998, in conjunction with the Legislative and Executive Structures in Lesotho.*
- *This structure will also seek to create and promote conditions conducive to the holding of free and fair elections set out above.*
- *The parties agreed to continue discussion on the responsibilities of such a structure. To this end the parties agreed to establish technical teams, which will examine all proposals and report back.*

A time table was agreed upon for the implementation of the agreement brokered by SADC. The Government facilitated the establishment of the structure mentioned above. It was to be styled as the Interim Political Authority (IPA), as spelled out in the Interim Political Authority Act No 16 of 1998. Section 4 thereof states as follows:

The objective of the Authority shall be to facilitate and promote, in conjunction with Legislative and Executive Structure in Lesotho, the preparation of general elections to be held within a period of 18 months from the date of this Act by:

- *creating and promoting conditions conducive to the holding of free and fair elections;*
- *levelling the playing field for all political parties and candidates that seek to*

participate in the elections:

- *eliminating any impediments to legitimate political activity;*
- *ensuring that no person is victimised on account of his political beliefs;*
- *eliminating any form of intimidation which has a bearing on the elections;*
- *ensuring that all political parties and candidates are free to canvass support from voters and to organise and hold meetings, and for that purpose to have access to all voters;*
- *eliminating political patronage of any kind; and*
- *ensuring equal treatment of all political parties and candidates by all governmental institutions and in particular by all government owned media, prior to and during the elections.*

Political parties submitted names of their representatives in the Interim Political Authority. Each one of the 12 registered political parties submitted two names, which were published in Government Gazette as Legal Notice No 166 of 1998.

The Interim Political Authority held a two day national consultative forum on possible electoral models at Maseru Sun Hotel. Later there was impasse on the model to be used in the election and the matter was submitted to arbitration. The Arbitration tribunal constituted under section 16 of the Interim Political Authority Act No. 16 of 1998, was presided over by Justice **J. Browde, Dr Mahao** and **Dr. Makoa**. It made the following award, on the 15 October 1999:

1. The arbitration tribunal is fully cognisant of the politically sensitive nature of the issue which the submission to arbitration has called upon them to decide.
2. The deed of submission states that this tribunal may act as the "amicable compositeur" which we understand empowers this triibunal not only to make its award applicable to the electoral model for the 2000 election but also make an award which is applicable on a permanent basis.
3. This tribunal is of the unanimous view that the that the "First Past the Post" model hitherto applied in the Kingdom has been a source of a great dissatisfaction and has been a major cause of unrest after elections.

4. We, therefore, are unanimously of the view that the country needs to embrace the Proportional Representation model as soon as is practically possible and to move in that direction forth with.
5. This tribunal, well aware of certain factors (including but not confined to the time constraints involved in holding the election by May 2000) which have been argued before us by counsel on both sides and which impinge upon the model to be applicable in the 2000 election, has decided to make a two pronged awarded in the following terms:
 - 5.1 for the 2000 election only the mix ratio of constituency seats (FPTP) to Proportional Representation (PR) shall be 80/50.
 - 5.2 thereafter the mix ratio shall be on the basis that the FPTP and PR are 50% each of the seats in the National Assembly.

The Government and the Interim Political Authority is currently fine-tuning details of the Proportional Representative aspect of the model and serious negotiations to this end are being chaired by **Bishop Khoarai**. In compliance with the demand of the Interim Political Authority, Government acceded to the demand that the Chairman and 2 Commissioners of the Independent Electoral Commission step down. The Chairman and 2 Commissioners were paid their terminal benefits.

There after political parties made nominations to the Council of State, names of persons to be appointed. These were scrutinised and finally three persons were appointed to the Independent Electoral Commission (IEC), as documented in Legal Notice No. 54 of 2000. They are **Merses Leshele Abel Thoahlane** - Chairman; **Mokhele Rantsie Likate** - Member; and **Mafole Sematlane** - Member.

Meanwhile the fifty soldiers, who were alleged to have been behind the mutiny in Lesotho Defence Force, which culminated in the unlawful dismissal of senior army officers, were arraigned before a Court Martial, established in terms of section 127 of 1993 Constitution. Of these 9 were discharged. The trial of the said soldiers is still going on.

The trial of police men, who also allegedly mutinied in 1994 has ended. The judge is writing judgment. It had been anticipated that judgment would have been delivered on the 28 April, 2000, but it was postponed to 30 May 2000, and again to 30 June. It has been once again postponed to 30, July 2000. Regarding the murder of the Deputy Prime Minister **Selometsi Baholo** in 1994, 13 suspects were arrested after SADC intervention in September 1998. They are awaiting trial.

The Government and Independent Political Authority (IPA) agreed to engage outside consultants (one from Ghana and the other from Denmark), to evaluate the process carried out by the IPA in preparation for the proposed next elections. The Consultants have accordingly advised that given what is still outstanding to be done in preparation for elections, the realistic time is between 10 - 12 months from 1st May 2000, which means March 2001.

In the meantime, the Government established a Commission of inquiry into political disturbances of September 1998, in terms of Legal Notice 33 of 2000, pursuant to section 3 of the Public Inquiries Act No. 1 of 1994. The Commission is chaired by **Mr. Justice R.N. Leon**, with **Justice J. Browde** and **B.L.L. Shearer** as members. The terms of reference are as follows:-

- (a) to investigate, probe, examine and analyse the background to political instability and disturbances which occurred in Lesotho during the period between 1st July, 1998 to 30th November, 1998;
- (b) to identify the political parties and the persons who spear-headed and individuals who organised, participated in all activities related to the demonstration before the Royal Palace;
- (c) to investigate and examine as to whether there was a conspiracy, to destabilise and overthrow the lawfully constituted Government of the Kingdom of Lesotho;
- (d) to establish the circumstances relating to the aforesaid conspiracy, to identify the bodies or persons who covertly participated or assisted in the said conspiracy including the role played by them in furtherance of the conspiracy to destabilise and overthrow the lawfully constituted Government of the Kingdom of Lesotho;
- (e) to examine the role played by the Lesotho Defence Force in the preservation and maintenance of law and order in the Kingdom of Lesotho.
- (f) to examine and analyse the role played by the Lesotho Mounted Police Service in the preservation and maintenance of law and order in the Kingdom of Lesotho;
- (g) to examine and analyse the role played by the National Security Service in the protection and preservation of the National Security of Lesotho;
- (h) to examine, analyse and appraise the various incidents relating to the confrontation between elements of the Lesotho Defence Force and the Lesotho Mounted Police Service which took place in and around the Royal Palace Maseru;

- (i) to investigate, examine and appraise attacks on some Police Stations and to identify the individuals and bodies who planned, organised, and participated in such criminal activities;
- (j) to investigate, appraise and evaluate the bodies or persons who incited, aided, persuaded and summoned members of the Lesotho Defence Force to stage a mutiny against the Command of the Force and the lawfully established Government of the Kingdom of Lesotho which occurred on 11th September, 1998 and thereafter;
- (k) to investigate all the circumstances attendant and surrounding the arson and looting of commercial and business establishments in and around Maseru City, Mafeteng and Mochale's Hoek which occurred on 22 September, 1998 and thereafter. The bodies and persons who conspired, planned and executed such criminal activities to be identified;
- (l) to investigate, appraise and evaluate any other issue relevant to and which may impinge on the foregoing;
- (m) to make such recommendations as to what action can be taken to prevent a repetition of those events.

The commission will submit a written report to the Prime Minister within 6 weeks of commencement of the inquiry or any such other date as the Prime Minister may prescribe.

1.11 STEPS TAKEN TO IMPROVE THE FOLLOWING:

(a) DISABLED

Government has declared its policy on disabled children through the Department of Social Welfare. The policy aims are:

- to reduce the dependency of disabled children on others, in order to make the best of their skills;
- to promote self-reliance;
- to provide rehabilitation services for disabled persons with special needs;
- to expand skills training services for a large number of disabled persons;
- to establish a revolving fund that assists disabled persons to start self-employed projects;
- to achieve the integration of disabled persons into education, training and employment programmes along side non-disabled persons;
- to promote public education concerning the rights of persons with disabilities.

The Department of Social Welfare is presently working on disabled persons legislation with the Lesotho National Federation of Organisations of the Disabled (LNFOD)

The Department of Social Welfare, through its Rehabilitation Unit, assists disabled persons of a working age, to acquire work skills, attitudes and habits that will enable them to produce and respond to service needs and labour market trends in their respective areas. Disabled persons are provided with help and guidance on social problems which may interfere with their rehabilitation and eventual reintegration. Efforts are also made to build up the person's self confidence and motivation. Disabled persons are provided with medical, psycho-social and vocational assessment suitable for different kinds of training and work.

Disabled persons are helped to function within an integrated system of rehabilitation service. Delivery of this service makes the best use of relevant resources for the identification of rehabilitation needs, training, placement and supervision of each disabled person.

The Social Welfare Rehabilitation Unit also operates a revolving loan fund scheme for disabled persons. The scheme aims at helping disabled persons to start modest self-employment businesses. The Unit also assists disabled persons with equipment such as wheel-chairs, clutches, callipers and many other items.

There are also welfare organizations that also provide services for disabled persons. Institutions include St. Angela home for the disabled, Morapeli Home for disabled girls, St. Paul's School for the deaf, Hlokomela Bana and the Lesotho Association of Mentally Handicapped Children. These organisations provide accommodation for disabled rural-based children, who are not able to reach their community schools. Some of these organisations provide school fees to children, whose parents are not able to pay fees.

The Special Education Unit of the Ministry of Education also monitors an integrated education programme for the disabled. The programme aims at integrating children with disabilities into ordinary schools, raising awareness regarding disabled children's right to education and training to work with children with different disabilities.

In the employment sector, people with disabilities are given equal opportunity of employment with the exception of the mentally handicapped. There is one formal institution which gives better access to people with disabilities.

(b) CHILDREN

Non-governmental organisations have been instrumental in assisting disabled children to live fully integrated lives in society. Community based rehabilitation centres have been established. These have been successful in raising awareness through training on disability issues, identifying disabled children and advising parents on simple rehabilitation techniques.

The Department of social welfare provides public assistance to all needy and destitute persons, including children. The assistance comes in the form of food packages, clothing, blankets and an allowance to persons and children found eligible for assistance. School fees are provided to children whose families are not able to send them to school.

Lesotho has a policy of Health for All by Year 2000. Most programmes that support and promote the survival and development of the child are implemented by the Ministry of Health and Social Welfare. Some main achievements for children include:

- the expanded programme on immunisation coverage has reached 71 per cent;
- hospitals now have oxygen concentrators to combat respiratory infection in children;
- the Maternal and Child Health and Family Planning Units are instrumental in the promotion of ante-natal care, supervised births and training of rural personnel.

Children in Lesotho are accorded the freedom of expression. The Day of the African Child is normally celebrated in Lesotho in the constituencies, to commemorate the rights accorded to children by the African Charter on the Rights and Welfare of the African Child. This takes place despite the fact that Lesotho has only recently acceded to the Charter.

In addition to the celebration of the Day of the African Child, where children articulate their freedom of expression through music, games and poetry, children have also staged a mock parliament, in front of real parliamentarians, during which they expressed messages of hope concerning the welfare of children in Lesotho. During the celebration of the Day of the African Child, cultural events involving children are held. Children dress up in traditional dresses. The culmination of the celebration of this Day is a traditional meal prepared for children.

Attempts have been made to involve children much more in children's programmes on radio and television. More instructional materials are being broadcast for schools on radio. Children's dramas and Sunday school programmes are also broadcast on radio.

Several children are found abandoned every year in Lesotho. For children who are abandoned, the Department of Social Welfare works with Lesotho Save the Children, which serves as a place of safety for neglected and abandoned children. The refuge is normally on a temporary basis, while the workers consider a child's case. For orphaned children, the Department of Social Welfare places Children in the Save our Souls (SOS) children's village and Mantšase Orphanage. The children are normally placed there for care and safety.

Consequently, there is a growing problem of street children. There are various NGO's which are trying to counsel street children and encourage them to develop an interest in the family as an element of unity.

The Juvenile Training Centre (JTC) is an approved school established pursuant to section 27 sub-sections (1) and (2) of the Children's Protection Act. In practice it operates as a detention centre, with some rehabilitative functions. These institutions are not sufficient in capacity to accommodate the number of children in need of care in Lesotho.

Lesotho signed the Convention on the Rights of the Child (CRC) in 1990, and ratified it on 9 April 1992. The Government has translated the Convention into the local language (Sesotho). Non-Governmental Organizations are already engaged in teaching rural Basotho people about the Convention, translating it and making it accessible to the local community. The Children's Protection Act of 1980 is under review by the Law Reform Commission.

Preparations are underway for ratification of the following International Labour Organisation (ILO) conventions, which are aimed at eliminating child labour:

- minimum Age (No.138) 1973.
- worst forms of child Labour (No. 182) 1999.

(c) WOMEN

The Law Reform Commission, which was established in 1993 and became operational in 1997, deals with amongst others, gender issues. Its main task is to review and recommend the revision, amendment or repeal of the laws that are outdated, ineffective and discriminatory in nature and effect. These, therefore, include laws and practices which discriminate against women. The Law Reform Commission has drafted the Married Persons Equality Bill, whose main purpose is to abolish all the laws and rules, in terms of which a husband acquires the marital power over the person and property of his wife. The effect of the abolition of the marital power is to remove all the restrictions, which the marital power places on the legal capacity of a wife. This will allow the wife to perform any act, which was restricted by law due to the marital power. For example,

a wife will be able to contract, litigate, register property in her name, act as a trustee of an insolvent estate, be a director of a company and bind herself as surety.

Lesotho has drawn a draft National Policy on Gender and Development. The objectives of the Gender Policy are:

- to ensure equal opportunity and participation by men and women in the development process in order to promote a better standard of living for all.
- to ensure equal access to and control over resources such as labour, income, education and training;
- to ensure that fair and equal gender sensitive laws exist and are enforced;
- to set up comprehensive programmes of gender training and gender awareness, complemented by regular periodic assessment, monitoring and dissemination of information to all sectors of society;
- to redirect allocation of resources and public expenditure to make them equally available to men and women;
- to raise public awareness and promote understanding of the link between gender equality and development through the media;
- to ensure equal opportunities and participation in decision making.

The draft gender policy also provides strategies to achieve equality of opportunity between men and women. It is worth mentioning that this policy is still in debate

Lesotho ratified the convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on the 22 August 1995. CEDAW was ratified with a reservation to Article 2. This reservation was made by the Government of Lesotho due to some religious denominations that had reservations about women being ordained priests and thus occupying high levels of authority within the church institution and also about substantive succession to chieftainship and Monarchy. Efforts are being made to uplift this reservation on religious institutions.

(d) FOREIGN SERVICE

Regulation 1423 of the Foreign Service Regulations of 1969 provides that a man who intends to marry shall notify the Minister of Foreign Affairs of his intention to do so whereas a woman who marries a foreigner, while in the foreign service has to resign from work unless the Minister of Foreign Affairs directs otherwise.

A revision has been made to this regulation. The draft amendment puts more emphasis on the right of officers to respect for private and family life. It was therefore recommended that any officer, who intends to marry, while in the foreign service, may do so, unless it would not be in the interests of defence, public safety, public order, public health or public morality or for the purpose of protecting the rights and freedom of other persons as elaborated in section 11 (1) and (2) of the Lesotho Constitution 1993. This regulation has, however, not yet come into force.

1.12 POWER SHARING BETWEEN MEN AND WOMEN AT ALL LEVELS OF DECISION MAKING

(a) The Senate

Section 54 of the Constitution of Lesotho stipulates that there shall be a Parliament which shall consist of the King and the Senate and National Assembly. Women are a minority in both Houses of Parliament. The Senate consists of twenty-two Principal Chiefs and eleven nominated members.

Of the twenty-two Principal **seven** are women. These women are not Principal Chiefs, but they are in the Senate because they are either acting for their minor sons or their husbands who have died or have been suspended from office. Out of the **eleven** nominated members, only **three** are women.

(b) The National Assembly

The National Assembly is currently made up of **eighty** elected members. Of these only **four** are women. Neither the Constitution nor the Electoral law have any discriminatory provisions against women to stand for elections.

(c) Public Service

In Lesotho, women form the majority of public servants. Of the twenty one Principal Secretaries only four are women. There are nine female Deputy Principal Secretaries as compared to ten male Deputy Principal Secretaries. There are two female Ambassadors out of eleven male Ambassadors. There are nine judges, and of these, only one is a female judge.

(d) Cabinet

There is only one female Minister out of **fourteen** Cabinet Ministers.

1.13 ROLE OF NGOs IN EMPOWERING WOMEN

Non-Governmental Organisations such as the Lesotho Federation of Women Lawyers (FIDA), Women and Law in Southern Africa Research Trust (WILSA), Lesotho National Council of Women (LNCW) and the Community Legal Resource and Advice Centre (CLRAC) are engaged in counselling and assisting victims and survivors of violence.

Some of the organizations hold workshops throughout the country. The objective is to educate the women on the laws, which discriminate against them, and on Children's Rights. Brochures and simple written material in the local language (Sesotho) are produced. They also provide legal aid and render legal advice to Lesotho women. Some of them disseminate education to the society and educational institutions. Some of the publications are on inheritance, maintenance, widows and family, to mention, but a few.

There are other Non - Governmental Organizations, which have been instrumental in articulating a call for women's participation in the economy. Most of them promote women's interests by starting income-generating projects for the members. Some of them enlighten women about economic, health and educational issues concerning them and the community at large. Further, they assist women, who intend to go into business, to properly set up and operate successful business ventures.

1.14 HIV/AIDS EDUCATION AND AWARENESS

The Lesotho National Council of Women and other affiliates of the Lesotho Council of Non-Governmental Organisations are particularly active in AIDS prevention and education programmes. Other NGOs in this field include the Lesotho Red Cross Society, the Lesotho Planned Parenthood Association, the Christian Council of Lesotho, Care International, the Catholic Secretariat and Christian Hospital Associations of Lesotho (CHAL). These organisations have formed the Lesotho Network of AIDS Service Organisations (LENASO). AIDS education is vital, because the pandemic is spreading at alarming rate.

These NGOs are engaged in AIDS education programmes through workshops. They also carry out programmes on dissemination of information through newsletters, brochures and drama. Statistics reveal that women are more vulnerable to the disease than men, therefore, in these workshops and conferences, the target group is women, based on the reported cases from health clinics and hospitals. For further information refer to article 4 here-in.

1.15 STEPS TAKEN TO PROTECT FAMILY COHESION

The Constitution provides for the right to respect for private and family life. Section 11 of the Constitution reads thus:-

- (1) Every person shall be entitled to respect for his private and family life and his home.
- (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 makes provision.
 - (a) in the interest of defence, public safety, public order, public morality or public health, or
 - (b) for the purpose of protecting the rights and freedoms of other persons.
- (3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) except to the extent to which he satisfies the court that, that provision, or as the case may be, the thing done under the authority thereof does not abridge the rights guaranteed by section (1) to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in subsection 2 (a) or for purpose specified in subsection 2 (b).

The marriage Act No. 10 of 1974 provides in the preamble that the Act is intended to make provision for the solemnization and registration of marriages, thus protecting the institution of the family that result from such marriage.

Section 3 of the act provides that no person may be compelled to enter into a contract of marriage with any other person or to marry against his wish.

Presently under both the common law and customary law, upon marriage in community of property, the husband acquires marital power over the person and property of his wife and the wife thus becomes a minor under the guardianship of her husband. This is not the case, where marriage is proceeded by an ante nuptial contract, where the marital power of the husband is excluded. The husband has full contractual capacity and can bind the joint estate with his contracts. The wife can only enter into contracts with the consent of her husband. The wife's limited contractual capacity extends to only household necessities.

The wife can only challenge the fraudulent use of the joint property by her husband. The husband is the sole guardian of the legitimate and adopted children. Wives have no capacity to sue or be sued unassisted by their husbands. However, the Married Persons Equality Bill 2000, is intended to change the position. The main purpose of the Bill is to abolish all the laws and rules in terms of which, a husband acquires the marital power over the person and property of his wife. The effect of the abolition of the marital power is to remove all the restrictions, which were placed on the legal capacity of the wife. The wife will be able to enter into contract, litigate, register property in her name, act as an executrix of a deceased estate, act as a trustee of an insolvent estate, etc. The Bill introduces equality of partnership between spouses in the family.

The public holidays act of 1967 made the 1st of July every year as a family holiday. The act was repealed by the Public Holidays Act No 7 of 1995, which did away with family day holiday.

The family is recognised as a basic unit of society whose role in society is recognised. The family is entitled to be provided with an environment that assures protection and support. Lesotho has, like most other African countries, an extended family system, whereby parents, children and other relatives live together.

There are two parents and single parent families. In most cases the dislocation of family life is brought about mainly by the migrant labour system, whereby one of the parents, especially the father, is a migrant worker in the Republic of South Africa or other neighbouring countries.

There are Christian organisations, which protect and support the family institution. The Respect Life and Family Association of Lesotho (RLFAL) is a catholic association, which was founded in 1993 under the auspices of the Catholic Bishops Conference. The Association's chief objective is the protection of the family. It has trained counsellors, whose duties include education of families towards building better family life. It provides pre-marriage counselling to couples, who are preparing to get married.

The counsellors organise and hold workshops for people. In 1999 five (5) family workshops were held by the association. The topic for the workshops was HIV/AIDS/Alcohol and their effect on the family.

The association has a Marriage Encounter Programme, which focusses on the improvement of family life of married couples. Couples spend a weekend away with trained counsellors and they reflect upon their relationships, their responsibilities and obligations as regards the equal partnership between spouses, the shared responsibility in the care, raising up of children, the concept of freedom within the family etc. The sessions are held at least four times a year.

The Mother's Union is an Anglican Society founded in England. It is a society of Anglican women. It has a chapter in Lesotho. It has as its main objective, the protection of the family institution. It offers pre-marriage counselling, and advises couples on how best to share family responsibilities. It focusses on the proper upbringing of children. It runs programmes that promote mutual respect, tolerance and cooperation in the family and on peaceful solution of family conflicts. Visits are paid to families and in most instances invitations are made to the society for counselling purposes.

The Assemblies of God and its sister/affiliate churches also has a mother's fellowship, which promotes spiritual and social upliftment of its members, particularly the mothers, children as well as their husbands.

Much remains to be done by the government to strengthen and support organisation which enhance and recognise the crucial role of the family.

1.16 RELIGION:

Basotho are predominantly Christian with about 99% indicating some allegiance to the Christian establishment. Out of the 99% about 45% claim to be Catholics, the Lesotho Evangelical (the first Christian Church to arrive in Lesotho) and Anglican share the remaining 55%, with Lesotho Evangelical Church boasting a bigger share. There are also congregation of Methodist, African Methodist Episcopalian, Seventh Day Adventist, independent Pentecostal/born again churches, such as Assemblies of God, Jehovah's Witnesses, as well as a small Community of the Bahai, and Moslems.

1.17 THE GOVERNMENT

The Government is made up of the Executive, the Legislature and the Judiciary. These three arms of government are independent of one another, that is to say, they adhere to the doctrine of separation of powers.

The organization of the executive can be broadly put into three distinct categories: (a) the Monarchy, (b) Elected Officials and (c) Appointed Officials.

(a) The Monarchy

The King in Lesotho is appointed by the College of Chiefs according to the customs and tradition of the Basotho. According to the customs a successor to the throne should be an elder son of the reigning monarch, if such a successor is deemed not fit to hold the throne, it will be the next son of the reigning monarch.

As Head of State the King has several functions. He has powers to appoint the Prime Minister, Ministers, Assistant Ministers, and huge array of other high ranking government officials. The King does not appoint officers of his government through his own discretion. There are guidelines in the Constitution on how he carries out his task.

(b) Elected Officials

These are people who have been elected into the national assembly through periodic general elections held every five years. This group is the one from which the, Prime Minister, Deputy Prime Minister, Ministers, Assistant Ministers and Cabinet originate.

The Prime Minister is appointed by the King, through the advice of the Council of State. In its advice to the King, the Council of State will select a leader of the party, that has won the election, through pure numeric strength. The Prime Minister, who is the head of government, is charged with the day to day running of government. He is expected to give audience to the King on the matters relating to affairs of the State.

The Deputy Prime Minister is also appointed by the King, on the advice of the Prime Minister. His main duty is to exercise the Prime Minister's powers in an event of the Prime Minister's incapacitation, or absence from the country.

Minister's and Assistant Ministers are appointed by the King acting in accordance with the advice of the Prime Minister. The Ministers and their assistants are charged with giving general direction on the running of government departments, which may not be less than seven at one time. It must be mentioned that some of the Ministers may not members of the National Assembly, but are members of an appointed body called the Senate.

The Cabinet is made up of the Prime Minister and his Minister. This body is in charge of the National Assembly and the Senate and acts as a Mediator between the King and this two bodies. The Cabinet is also charged with advising the King on the running of the government of Lesotho.

(c) Appointed Officials

Appointees in the executive could be put into two categories; those that are appointed into bodies and those that are appointed into individualised positions. An example of the former is Council of State and that of the latter are Principal Secretary, Government Secretary, Attorney-General, and Director of Public Prosecutions.

The Council of State is made up of not more than ten individuals. This includes the Prime Minister, opposition politician, two Judges of the High Court, the Commander of the Defence Force, the Commissioner of Police, a Principal Chief, three civilians, a member of the legal profession in private practice, the Attorney General and the speaker of the National Assembly. The functions of this body is to assist the King in the discharge of his functions, some of which have already been mentioned.

The National Planning Board is made up of people with special abilities, which could contribute to the functions of the board. The Planning Board is allowed to have not more than twenty-four members. The functions of the Board can be broadly defined as preparation of economic development plans with particular emphasis on conservation and use of land and other natural resources. The National Planning Board is still to be elected. At the moment its functions are being performed by the Ministry of Economic Planning, Finance and Manpower Development.

Since the Ministers are expected only to give generalised guidance. in the running of departments entrusted to their leadership, the position of a Principal Secretary is necessary. Principal Secretaries are responsible to the Minister they are serving under and their main function is the day to day running of their departments. They act as mediators between the Minister and other Executives in his department, they mediate between the Minister and members of the public.

The Government Secretary, on the other hand, handles affairs of Cabinet through directive of the Prime Minister.

The Legislature is made of two houses, that is the Senate, and Parliament. The Senate comprises **thirty three** officials, of whom **eleven** are Principal Chiefs and the rest nominated officials.

The Judiciary is established under Section 118 of the Constitution, which vests all judicial powers in the courts of Lesotho. These include the Court of Appeal, the High Court, the Subordinate Courts and Court Martial, as well as such tribunals exercising a judicial function as may be established by Parliament.

1.18 LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED:

The democratically elected Government of Lesotho places a high premium on respect for promotion and protection of Human Rights. Pursuant to this, the Ministry of Justice and Prisons was redesignated as the Ministry of Justice and Human Rights in April 1993. with a view to realising this objective. Presently it styled as the Ministry of Justice, Human Rights and Rehabilitation.

The rights referred to in the Charter, are protected in chapter II of the 1993 Constitution of Lesotho. These are characterised as fundamental human rights and freedoms. They include the right to life; the right to personal liberty; freedom of movement and residence; freedom from inhuman treatment; freedom from slavery and forced labour; freedom from arbitrary search or entry; the right to respect for private and family life; the right to fair trial, freedom of conscience; freedom of expression; freedom of peaceful assembly; freedom of association; freedom from arbitrary seizure of property; freedom from discrimination; the right to equality before the law and equal protection of the law; and the right to participate in Government.

In addition to the Constitution, there are statutes which facilitate the enjoyment of the above mentioned rights. These laws are currently being reviewed by the Law Reform Commission, established in terms of The Law Reform Act No of 1993, to review those laws and make them (laws) compatible with the 1993 Constitution; and suggest repeal of those laws, which are archaic and unconstitutional; and thereafter consolidate them (laws).

Principles of state policy are contained in Chapter III of the 1993 Constitution. They are however not enforceable by any court, but are subject to Lesotho's economic capacity and development. These principles of state policy entail rights of a socio-economic nature; and include equality and justice, protection of health provision for education, opportunity to work, just and favourable conditions of work, protection of workers rights and interests, protection of children and young persons, rehabilitation, training and social resettlement of disabled persons, economic opportunities, participation in cultural activities and protection of the environment.

The Constitution provides for derogation in section 21; which provides that

- (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 6, (Right to personal liberty) section 18 (Freedom from discrimination), or section 19 (Right to equality before the law and equal protection of the Law), of this Constitution to the extent that the Act authorises the taking during any period when Lesotho is at war or when a declaration of emergency exists under section 23 of this Constitution is in force, of measures that are necessary in a practical sense in a democratic society for dealing with the situation that exists in Lesotho during that period.
- (2) Where a person is detained by virtue of any such law as is referred to in subsection the following provisions shall apply.
 - (a) he shall, as soon as reasonably practicable after the commencement of his detention be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained.

- (b) not more than fourteen days after the commencement of his notification of his detention shall be published in the Gazette stating that he has been detained and giving particulars of the provisions of law under which his detention is authorised.
 - (c) not more than one month after his detention and there after during his detention at intervals of not more than six months, his case shall be investigated by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
 - (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the investigation of the case of the detained person; and
 - (e) at the hearing of his case by the tribunal appointed for the investigation of his case he shall be permitted to appear in person or by a legal representative of his own choice.
- (3) On any investigation by a tribunal in pursuance of this Section of the case of a detained person, the tribunal shall make recommendations concerning expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation.

It should be noted however, that ever since the democratic government came to power in 1993, no state of emergency has ever been declared, not even during the turbulent political crisis of 1998, when Government was under seige.

1.19 ENFORCEMENT OF PROVISIONS OF THE CHARTER BY THE COURTS AND OTHER TRIBUNALS OR ADMINISTRATIVE AUTHORITIES.

The provisions of the Charter are not directly enforced by the courts or other tribunals or administrative authorities; in this regard Lesotho follows the English Common Law approach, observed throughout the majority of the British Commonwealth, whereby international Conventions/Covenants are not invoked directly in domestic courts. They have to be transformed into internal laws or administrative regulations in order to be enforced. Unless specifically implemented by domestic law making procedures, an international norm is not, of itself, part of our domestic law. This issue was raised and discussed during the deliberations of the Workshop on Administrative Law, held at Lesotho Sun: 20 - 23 August, 1995. The Workshop observed that the **Harare Declaration of Human Rights**, which endorsed the **Bangalore, Principles, 1988** would

be taken as offering guidelines on domestic application of International Human Right Norms, The **Bangalore Principles** provide that it is within the proper nature of Judicial Process for national courts to have regard to international human rights norms, whether or not incorporated in domestic law for the purpose of resolving ambiguity or uncertainty in national constitutions and legislation. The judiciary was sensitised on the relevancy and importance of referring to international or regional human rights instruments, during a judicial colloquium, organised by the Commonwealth between 24 - 28 February, 1997. We are yet to see results.

ARTICLE 1

The Sovereign State of Lesotho recognises the rights contained in the Charter and undertakes to honour the obligations there-of by adopting legislative or other measures to give effect to them, as indicated in the narration above.

ARTICLE 2

The rights recognised in the Charter are guaranteed to all individuals, citizen and aliens alike, residing in Lesotho. The Constitution specifically provides in section 4 (1) that every person in Lesotho is entitled, whatever his race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms, to each and all of the following-:

- (a) the right to life;
- (b) the right to personal liberty;
- (c) the freedom of movement and residence;
- (d) freedom from inhuman treatment;
- (e) freedom from slavery and forced labour;
- (f) freedom from arbitrary search or entry;
- (g) the right to respect for private and family life;
- (h) the right to a fair trial of criminal charges against him and to a fair
- (i) determination of his civil rights and obligations;
- (j) freedom of conscience;
- (k) freedom of expression;
- (l) freedom of peaceful assembly;
- (m) freedom of association;
- (n) freedom from arbitrary seizure of property;
- (o) freedom from discrimination;
- (p) the right to equality before the law and equal protection of the law; and
- (q) the right to participate in government.

In accordance with section 4 of the Land Amendment Order 1986, a citizen of Lesotho, who is not a Mosotho can not hold title to land. This is so because, given the population of Lesotho, which is about 2 million, naturalised citizens, who have more financial resources could buy all land and displace the indigenous Basotho.

The Constitution provides that for the avoidance of doubt and without prejudice, the provisions of this Chapter shall, except where the context otherwise requires, apply as well in relation to things done or omitted to be done by persons acting in a private capacity, whether by virtue of any written law or otherwise as in relation to things done or omitted to be done by or on behalf of the Government of Lesotho or by any person acting in the performance of the functions of any public office or any public authority. (Section 4 (2).

The Constitution of Lesotho provides for freedom from discrimination in section 18.

It reads as follows:

- (1) Subject to the provisions of subsection (4) and (5) no other law shall make any provision that is discriminatory either of itself or in its effect.
- (2) Subject to the provisions of subsection (6) no person shall be treated in a discriminatory manner by any person acting by virtue of any unwritten law or in performance of the functions of a public officer or any authority.
- (3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political opinion, national or social origin, property, birth other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not subject to or are accorded privileges or advantage which are not accorded to persons of another description.
- (4) Subsection (1) shall not apply to any law to the extent that the law makes provision: (c) for the 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.

Presently, the Lesotho Law Reform Commission has drafted a **Married Persons' Equality Bill of 2000**, thus varying the unequal marital power between men and women

Aliens in Lesotho are not discriminated against, but there is a procedure to be followed before they gain entry and sojourn in Lesotho

The Aliens Control Act No 16 of 1966 provides in section 5 (1) that no alien shall enter Lesotho or remain there for purpose of permanent residence (2) subject to the provisions of sections three and thirty eight, no alien shall enter Lesotho or be or remain there-

- (a) for the indefinite sojourn therein, unless he is in possession of a permit for the said purpose, issued in terms of section six, or
- (b) for the purpose of temporary sojourn therein unless he is in possession of a temporary permit issued in terms of subsection (1) of section seven or unless he has been permitted to enter under section nine;
- (c) for the purpose of travel therein or for the purpose of a visit for private, business or official purposes unless he is in possession of a valid passport.

Subject to the provisions of sections 3 and 38 if an alien is found in Lesotho and he is not in possession of an indefinite permit or a temporary permit or has not been permitted to enter under section nine or is not in possession of a valid passport or if the period of visit under paragraph (c) of subsection (2) as endorsed on a valid passport, has expired, his presence in Lesotho shall be unlawful for the purpose of part (iv), which relates to the expulsion of aliens.

ARTICLE 3

Section 4 (1) of the 1993 Constitution of Lesotho, states that every person in Lesotho is entitled, whatever his race, colour, sex language, religion political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms. Subsection (o) provides for the right of equality before the law and equal protection of the law.

ARTICLE 4

The right to life is guaranteed by the Constitution. Section 5 of the 1993 Constitution provides as follows:-

- (1) Every human being has an inherent right to life. No one shall be arbitrarily deprived of his life.
- (2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are here-in after mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is necessary in the

circumstances of the case-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence or if he dies as a result of a lawful act of war or in execution of the sentence of death imposed by a court in respect of a criminal offence under the law of Lesotho of which he has been convicted.

In order to guarantee to all human beings residing in Lesotho, the full enjoyment of the right to life as well as to protect them against arbitrary deprivation of life, the following measures were deemed appropriate.

Government is sensitising the security forces and police on respect for human rights. Although the law and judiciary are in place to punish perpetrators of human rights abuses the police in the past were reluctant and or unwilling to investigate certain cases in order to bring the culprits to justice. A case in point is the murder of the Deputy Prime Minister Hon. **Selometsi Baholo** in April 1994, which took very long to investigate. However, the suspects, who are military personnel, are currently appearing before the Court Martial. The perpetrators of the fatal shooting at Maseru Central Charge Office in October 1995, were also not brought to justice until recently. This position is well articulated by **Justice W.C.M. Maqutu**, of the High Court of Lesotho, when he says "we are presently faced with an upside down devolution of power. The Lesotho Government has inherited a situation in which Government is coerced by the public servants, who are supposed to be the arms of Government, through which to enforce its authority. Without state authority, human rights cannot be meaningful because court orders cannot be enforced." (see paper entitled "The Courts in Lesotho", presented by the Judge during the National Seminar on Human Rights and Democracy.

The same Judge obiter-dicta, in **Rex vs Kubutu CRI/T/51/91**, also had occasion to criticise the way police behave, and the manner in which they handle fire arms registers: their lack of training and discipline, their violence and intimidation in maintaining law and order and their careless attitude for the reputation and good name of the police force in general. The Judge was of the opinion that the police had turned into a bandit co-operative, which assaults, despoils and takes the lives of the public at will, although it is employed to protect it. The Police has undergone changes of late and it is hoped that under the leadership of the new Commissioner of Police **Mr. E.K. Petlane**, Lesotho will enjoy a civil and efficient police service.

In order to remedy the ugly scenario, the Government is determined to retrain the security forces and the police, by way of in-service training and concerted human rights sensitisation mentioned herein above:-

The Kingdom of Lesotho is a party to the International Treaty on the Non-proliferation of Nuclear Weapons, and Protocol 1973, in order to ensure that nuclear weapons, which threaten life, are not produced.

The Kingdom of Lesotho ratified the U.N. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction. The instrument of ratification was deposited on 7th December 1994. Also in April 1996, Lesotho signed the African Nuclear Weapon - Free Zone Treaty (The Treaty of Pelindaba).

When a situation developed in January 1994, in the armed forces of the country, where-by two rival factions emerged and started to fight each other, the Government took steps to ensure that full scale war did not erupt. These measures included involving, heads of state of Botswana, South Africa and Zimbabwe, the Secretary General of the Commonwealth, the Secretary General of the Organisation of African Unity, representatives of the United Nations and the then Anglican Arch-Bishop of Cape Town, in negotiating peace. Thereafter a Commission of inquiry comprising members from the above mentioned countries, as well as local personalities and the clergy was set up. The said Commission made recommendations to the Government, which are being implemented in order to ensure lasting peace and stability.

The Government of Lesotho, through the Ministry of Health and Social Welfare is making tremendous efforts in creating favourable conditions for the enjoyment of the right to life by increasing immunisation coverage as seen in the annexed report for the International Evaluation Survey on ARI, CDD, EPI and MHC/FP, of the Ministry of Health and Social Welfare, October 1993.

The situation and health status of women and children in Lesotho has been adversely affected by socio-economic, political and environmental developments in the country. Poverty has increased due to reduced export earnings associated with the world recession, retrenchment of Basotho miners from South African, mines and severe and persistent drought experienced in the last few years. Inadequate community participation in health care, inadequate quality and accessibility of health services, related to staff shortages, low staff morale, lack of transportation and impassible terrain in certain localities, have further contributed to deteriorating health status.

Over a one-year period chronic malnutrition amongst under-fives increased by 9 per cent (from 33% in 1992 to 42% in 1993). A 1993 micro-nutrients survey showed that goiter

also increased among children from the 1988 survey figures, although decreased slightly among women, with the total goitre rate for school-going children at 42.5% and for women of child-bearing age at 36%. The prevalence of vitamin A deficiency as of 1993 was 13.4%.

According to the Health Sector Development Plan, major diseases, which contribute to high mortality among children, are acute respiratory infections (ARI), immunization-preventable diseases and diarrhoea. Pneumonia accounts for 70% of hospital admissions for respiratory diseases for under one-year-olds and about 60% of the over-ones. Diarrhoea hospital admission rates have increased dramatically among under-fives, in part due to the drought and resulting poor water quality. The infant and child mortality rates are 106 per 1,000, and 156 per 1,000 live births respectively.

Five percent of hospital pediatric admissions are for TB cases in the under fourteen-year-old. Amongst adult men and women, there has been a dramatic increase (40 per cent) in the number of registered Tuberculosis (TB) cases between 1988 and 1992. The prevalence of HIV associated TB is much higher among females (18 per cent) than males (10 per cent). Sexually-transmitted diseases (STD's), particularly HIV/AIDS, threaten to increase child and maternal mortality rates as well as worsen household dependency ratios through the premature death of young adults (Disease Control Unit - MOHSW 1994).

Community health promotion has been improved through the training and deployment of Community Health Workers (CHWs). Community partnership in health service financing and income generation for food security have been improved in eight health service areas (HSA) through the Bamako Initiative (BI).

The Government of Lesotho has adopted primary health care (PHC) as its strategy for health development in the country. "The Health and Social Welfare Sector Development Plan, 1995/96 - 1999/2000" emphasizes improving access to health services - particularly for geographically hard-to reach communities, disparity reduction, decentralization, cost-effective interventions, partnership with the community, and intersectoral collaboration.

On the basis of the information currently available areas identified as contributing significantly to morbidity and mortality in the country, and therefore of priority for action, include TB, STD's, and HIV/AIDS, pregnancy-related conditions, diarrhoea, Acute Respiratory Infection (ARI), measles and malnutrition. These areas, which can be grouped into the broad categories of maternal health, child health, reproductive health and nutrition, will be the focus of the 1997-2001 UNICEF/GOL programme of cooperation.

The 1993 international evaluation survey of Mother and Child Health (MCH) Family Planning (FP) in Lesotho indicated a full immunisation coverage rate of 71 per cent of children under one year of age. The majority of the reasons given for children not being

fully immunized were attributable to low motivation.

In addition, the drop-out rate of 7.8 per cent DPT and 6.6 per cent polio between second and third doses were entirely attributed to wrong or short intervals. While 59 per cent of children had received BCG, 4 per cent had no scar. Of the 74 per cent of children who had received measles vaccine, 5 per cent had received it at an age earlier than recommended. In addition, the expanded programme of immunization (EPI) programme has recently experienced managerial and organizational constraints, resulting in, for example, vaccine stock out.

The 1993 evaluation found a drop in use of Oral Rehydration Solution (ORS) from 60 per cent to 42 per cent, although 85 per cent of caretakers knew how to use ORS. Case management at health centres was not satisfactory. Oral Rehydration Therapy (ORT) corners had been established in only 15 per cent of the facilities assessed and a total of 52 per cent of facilities reported ORS to be out of stock. Communication with caretakers was inadequate and 32 per cent of the facilities had no health education materials.

Acute respiratory infections (ARI) are responsible for 25 per cent of deaths of hospitalized children in Lesotho. In 1993, ARI accounted for 46 per cent of all outpatient visits of children under five years of age, compared to 14.5 per cent for gastroenteritis and 0.5 per cent for EPI targeted diseases. An evaluation in 1991 found that health personnel treated ARI patients with appropriate drugs, but communication of appropriate information to the child's mother/caretaker was poor.

The 1993 evaluation survey also revealed that most children continue to be breastfed and/or given fluids and food during diarrhoea episodes.

There are opportunities for better performance in the next programme cycle. The high literacy among women in Lesotho, the high immunization coverage and virtually nil reporting of poliomyelitis and tetanus in the last three years are opportunities for project success. Another opportunity is the introduction of the integrated management of the sick child as a major approach in the health system. Integrated management of the sick child will lead to more accurate identification of illness in outpatient settings, ensure more appropriate and, where possible, combined treatment of all the major illnesses and speed up referral of severely ill children. Health workers will be trained in how to communicate key health messages to mothers, thus helping them understand how best to ensure the health of their children.

The constituency needs assessment exercise in Lesotho is creating awareness of community need which will increase demand for health services for children and improve health facility expansion and utilization. The enthusiasm showed by the Boy Scouts and Girl Guides in ORT and ARI advocacy and social mobilization allows for personalized information dissemination to families nationwide. Increased awareness of the importance

of a holistic approach to child health, including proper nutrition, water and environmental sanitation, is encouraged.

The introduction of the infusofeed balloon device to Maluti and Mochale's Hoek hospitals in 1994, led to a 50 per cent reduction of mortality and a 21 per cent reduction of hospital stay time of children admitted with dehydration and malnutrition. The continued use of the device is an opportunity for improved management outcome in hospitals and health centres.

This project will consolidate gains and ensure they are sustained and improved. The managerial and technical skills and the motivation level of staff will be improved through decentralized training and supervisory support. Further efforts will be directed at improving health service coverage. Comprehensive health care and service delivery through all hospitals and health centres will be advocated for, as per basic service provision guidelines for the different levels of care.

In expanded Programme on Immunisation (EPI) emphasis will be on increasing the immunization rates, eliminating neonatal tetanus (NNT) and declaring Lesotho, a polio free country. Hepatitis B vaccine will be introduced. Vitamin A capsules will be distributed through the EPI programme. In order to ensure full access, accelerated EPI services will also be delivered through mobile and outreach teams, especially in the hard to reach rural mountain areas. The cold chain will be maintained to ensure availability of potent vaccines in all health facilities.

Community Health Workers (CHWs) will be trained and supervised to deliver services of advocacy and social mobilization as well as to treat minor ailments and vaccinate children.

The project will further update, at all levels, the skills of health workers in management of diarrhea and ARI and also to mobilize parents and caretakers on effective home case management.

For more information see attached Report - The International Evaluation survey on Acute Respiratory Infection, Control of Diarrhoea Diseases, Expanded Programme on Immunisation and Maternal Child Health (Family Planning: Ministry of Health and Social Welfare - October 1993).

The Ministry of Health and Social Welfare has since 1987 been involved in controlling and preventing the spread of HIV/AIDS in the country. This has been in collaboration with donor agencies. The number of AIDS patients and people who are HIV positive has been steadily increasing. According to AIDS Prevention Unit, Ministry of Health, Lesotho (June 1997) there were 2268 AIDS cases.

The recently released statistics from Disease Control: STD/AIDS Unit - Ministry of Health show a cumulative total of 10880 cases of AIDS, since 1986 - 1999.

As a preventive measure a national consensus workshop on strategic planning for the prevention and control of HIV/STD, Second Medium Term Plan 1995-2000, was held between 3-5 April, 1995, at Maluti Mount Hotel, Mphahlele's Hoek

This workshop identified a number of determinants for HIV/AIDS and also suggested interventions, which include avoiding pregnancy when one is HIV positive, promotion of maternal child health services including counselling, testing of blood for HIV before transfusion, sterilization of skin piercing instruments, etc.

The National Aids Programme, which is run by the Government aims at controlling the spread of HIV/AIDS in Lesotho and mitigating its impact on all vulnerable groups, individuals, families, communities, and the nation at large. It is mandated to spear head and co-ordinate all HIV/AIDS prevention, support and care activities in Lesotho, in collaboration with local and international partners to realise an HIV/AIDS free society. The programme targets every Mosotho, especially the youth and the most vulnerable groups, and individuals, with accessible, quality information and education with a view to changing attitudes and sexual behaviour, resulting in a decrease of occurrence of HIV/AIDS. The Programme and its partners, is wholly committed to promoting, counselling, support and compassionate care service for people living with HIV/AIDS, affected families and orphans.

In addition to governmental efforts, the Christian Council of Lesotho AIDS Education Unit, is also involved in the control of the spread of AIDS. Their activities include support to individuals and families affected by AIDS, bringing awareness of the population about AIDS, and advocating for change in sexual attitudes.

The Internal Security Act No.24 of 1984 was intended to regulate internal security of Lesotho. This however, has been abused by previous governments, to detain the opposition and anybody, whose views were contrary to those of the government of the day. This is being redressed by the democratically elected Government, particularly by repealing the oppressive parts of the law. It is significant to point out that the democratic Government respects the right to life and has never ordered/authorised extra-judicial execution of anybody.

As far as compensation of victims of torture is concerned, the law always takes its course. and victims go to court for compensation. There is however the issue of people who were shot at and killed and some maimed, when they demonstrated against the dissolution of the democratically elected Government, on 17, August, 1994. This will be solved in the near future, as Government has made it clear that despite the amnesty granted to the Defence Force, the Police, National Security Service, the Prisons and former members

of Lesotho Liberation Army, victims are free to claim compensation in Courts of Law.

The Government has not yet taken steps to abolish capital punishment. In practice however, most death sentences are commuted to life imprisonment or long prison sentences.

Since 1992 to date, 6 death sentences have been handed down by the High Court for murder, e.g. **Rex v Beleme CRI/T/76/90**, **Rex v Tlali Serine CRI/T/90/82**, and **Phumo vs Rex CA/CRI/7/90**, where the Court of Appeal commuted the death sentence to 7 years imprisonment, in **Rex vs Sosolo CRI/T/13/90**, the Court of Appeal commuted death sentence to 15 years, while in **Sekhobe Letsie and Another vs Rex CA/CRI/3 and 4/91**, the death sentence was commuted to life in respect of the second accused.

ARTICLE 5

Section 8 (1) of the Constitution provides that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment. Subsection (2) further provides that 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. The Government is concerned about torture, cruel and inhuman or degrading punishment. To this end the security forces are being sensitised about prohibition of torture, as was the case during the National Seminar on Human Rights and Democracy; and the in-service training courses for police and prison officers, organised under the auspices of the Support for Human Rights and Democracy Project. [See annexure National Seminar Report and In Service Training Reports].

This issue of torture has been debated in several fora in Lesotho, and it has been recommended that as a means of eradicating torture, by the police and security forces, the Commissioner of Police should not only invite torture victims to lodge complaints, but must ensure that information pertaining to the money paid out to torture victims is disseminated to the general public. It was also recommended that when the Commissioner of Police deals with torture complaints, the public ought to be invited and the Law Society should be represented at such hearings. This is yet to materialise.

It is also Government's intention to ratify the Convention Against Torture in the not far distant future.

The establishment of a Human Rights Unit and related structure, within the Ministry of Justice and Human Rights, as indicated above is instrumental in this regard.

The Constitution specifically provides for freedom from slavery and forced labour. Section 9 provides as follows:

- (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purpose of this section, the expression "forced labour" does not include
 - (a) any labour required in consequence of the order of a Court.
 - (b) any labour required of a person while he is lawfully detained that, though not required in consequence of the sentence or order of a Court, he is reasonably required in the interest of hygiene or for the maintenance of the place at which he is detained;
 - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or in the case of a person who has conscientious objections to service as a member of a person military or air force, any labour that person is required by law to perform in place of such service;
 - (d) any labour required during any period when Lesotho is at war or a declaration of emergency under section 23 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances or any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
 - (e) any labour reasonably required by law as part of reasonable and normal community or other civic obligations.

Forced labour, which is defined as work or service, which is exacted from any person under the menace of any penalty, and for which, the said person has not offered himself or herself voluntarily; is prohibited by the Labour Code Order, 1992.

Section 7 of the Labour Code Order states that;

- (1) Any person who exacts or imposes forced labour, as defined in the code, or causes or permits forced labour to be exacted or imposed for his or her own benefit or for the benefit of any other individual, association or other such body shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Maloti or imprisonment for a term not exceeding one year, or to both such fine and

imprisonment;

- (2) Any Chief or Public Officer who puts any constraint upon the population under his or her charge, or upon any individual member of such population, to work for any private individual, company, association or other such body shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand maloti or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

As far as prohibition of holding one in slavery and servitude is concerned, the Criminal Procedure and Evidence Act No 9 of 1981 provides under section 59 that:

- (1) If it appears to a Magistrate on complaint made on oath by a parent, husband, relative or guardian of a woman or girl, or any other person who in the opinion of the Magistrate is acting in good faith in the interest of the woman or girl, that there is reasonable ground for suspecting immoral purposes by any person in any place within the Magistrate's jurisdiction, he may issue a warrant to a peace officer authorising him to search for the woman or girl and when found to take the woman or girl and detain the woman or girl in a place of safety until the woman or girl can be brought before a Magistrate.
- (2) The Magistrate before whom the woman or girl is brought under this section may cause the woman or girl to be delivered up to her parent, husband, relative or guardian, or otherwise deal with her as the circumstances of the case require.
- (3) The Magistrate issuing a warrant may, by warrant direct any person accused of unlawfully detaining a woman or girl to be arrested and brought before him or some other magistrate having jurisdiction.
- (4) A woman or girl is deemed to be unlawfully detained for immoral purposes if she
 - (a) being under the age of 16 years and under the age of 21 years, is for those purposes detained against her will or against her parent or of any other person who has the lawful care or charge of her;
 - (b) being of or above the age of 21 years is for those purposes detained against her will; or
 - (c) is detained by any other person in order that she be unlawfully carnally known by any man.

- (5) A peace officer authorised by warrant under this section to search for a woman or girl may enter (if need be) by force any house or other place specified in the warrant and may remove the woman or girl there from.
- (6) Any warrant under this section shall be executed by the person mentioned in it, who unless the magistrate otherwise directs, may be accompanied by the parent, husband, relative or guardian or other person by whom the complaint is made, if such person so desires.

The Children's Protection Act No 6 of 1980 provides as follows under Section 8:

- (1) If it appears to a Magistrate on information on oath laid by any person who, in the opinion of the Magistrate, is acting in the interest of the child, that there is reasonable cause to suspect:-
 - (a) that the child has been or is being assaulted, ill-treated or neglected in any place within the jurisdiction of the Magistrate in the manner likely to cause him unnecessary suffering or injury to health.
 - (b) that an offence mentioned in the first schedule is being or has been committed upon or in connection with the child; or
 - (c) that the child is otherwise in need of care;

The Magistrate may issue a warrant authorising any police officer to search for the child, and if it is found that he is being or has been assaulted, ill-treated or neglected in that manner, or that an offence mentioned in the first schedule is being or has been committed upon or in connection with that child or that he is in need of care, to take him to a place of safety until he can be brought before a children's court.

- (2) A Magistrate issuing a warrant under this section may by the same warrant, cause a person accused of an offence in respect of the child to be apprehended and brought before a subordinate court and proceedings brought against him.
- (3) Any Police Officer authorised by warrant issued under this section to search and remove a child may enter (by force if need be) any house or other premises mentioned in the warrant and may remove the child therefrom.
- (4) It shall not be necessary in the warrant issued under this section to state the name of the child whose removal is thereby ordered.

The Children's Protection Act further provides in section 18 that:

- (1) if a parent or guardian of a child assaults, ill-treats, neglects, abandons or exposes him or allows, causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or causes him to injure or detrimentally affect his health, the parent or guardian is guilty of an offence and liable to R500 and 5 months imprisonment.
- (2) A parent or guardian of a child shall be deemed to have abandoned or neglected the child in a manner likely to cause him unnecessary suffering, injury or detriment to his health if he has:-
 - (a) unreasonably failed to provide him with adequate food, clothing, lodging or medical care;
 - (b) unreasonably left the child in the care of some other person or an institution and thereafter has shown no interest in the well being of the child;
 - (c) failed to provide adequate supervision of the child; or
 - (d) in the case of an infant, unreasonably left the infant in the circumstances likely to cause the infant physical or mental distress or harm.
- (3) A person may be convicted of an offence under this section notwithstanding -
 - (a) that the actual suffering or injury or detriment to health -
 - (i) has been obviated by the action of another person; or
 - (ii) has not occurred; and
 - (b) the death of the child in question.
- (4) Nothing in this section shall be construed as affecting the right of the parent or guardian of a child to administer reasonable punishment to the child.

ARTICLE 6

The Constitution of Lesotho provides under section (6) (1) 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 in any of the following cases, that is to say:-

- (a) in the execution of the sentence or order of a court, whether established in Lesotho or for some other country, in respect of a criminal offence which he has committed;

- (b) in the execution of the order of court punishing him for contempt of that court or of a tribunal;
 - (c) in the execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
 - (d) for the purpose of bringing him before a court in execution of the order of a court;
 - (e) upon reasonable suspicion of 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 for the protection of the community;
 - (i) for the purpose of preventing unlawful entry of that person into 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 person 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 an 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 in such an area, or to such an extent as may be reasonably justifiable 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 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.
- (2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:-

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within forty eight hours of his arrest or from the commencement of his detention, the burden of proving that he has been brought before a court as soon as is reasonably practicable shall rest upon any alleging that the provisions of this sub-section have been complied with.

(4) Where any person is brought before a court in execution of the court order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either conditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Without prejudice to the generality of any other provision of this Constitution or any other law by virtue of which a person is entitled to redress for a contravention of this section, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting.

The Criminal Procedure and Evidence Act No. 9 of 1981, also provides in section 32 (1) that no person arrested without a warrant shall be detained in custody for a longer period than in all circumstances of the case is reasonable and such period shall, subject to subsection 2, unless a warrant has been obtained for further detention upon a charge of an offence, not exceed 48 hours, exclusive of the time necessary for the journey from the place of arrest to the subordinate court having jurisdiction in the matter.

(1) Unless a person arrested without warrant is released by reason that no charge is to

be brought against him, he shall as soon as possible, be brought before a subordinate court having jurisdiction upon a charge of an offence, but if the Magistrate of the court is temporarily absent, and there is no other magistrate available who has jurisdiction in the matter, that person may be detained in custody until the return of the first mentioned magistrate or such other magistrate becoming available, whichever is earlier.

In January 1994, the democratic Government of Lesotho, experienced problems of destabilization, e.g. there was a fracas in the army, a number of citizens, including Members of Parliament, and Cabinet Ministers, were on various occasions unlawfully detained by Police and Security Forces. (This is well documented in the recent Amnesty International report). These incidents are likely not to be repeated, now that the police and Army as well as National security service, have been re-oriented and sensitised on human rights issues.

Where unlawful arrests and detention have been challenged in The High Court of Lesotho, the court has exercised its independence and awarded damages to the aggrieved parties. e.g. see **Nthaisane vs Officer Commanding CID Maseru and Another**, CIV/T/480/90, unreported, **Pholo vs Attorney General**, CIV/T/601/88, unreported.

As mentioned herein above the Government through the newly established Human Rights Unit, in the Ministry of Justice and Human Rights, disseminates human rights information to the Police and Security Forces, with a view to helping them (Police and Security forces) to improve their human rights record. (For details see Reports of In service Training on Human Rights and Juvenile Justice.

The Lesotho Prison Rules, contained in Government Notice No 27 of 1957, provide in rule 3, that the object of the training and treatment accorded to convicted prisoners and to persons detained in a Juvenile Training Centres, shall be to establish in them the will to lead a good and useful life on discharge, and to fit them to lead such a life. In particular, in the case of a person detained in a Juvenile Training Centre, such object shall be to keep them under discipline appropriate to the persons of their ages and description, and to give them such training and instruction as will lead to their reformation and to the prevention of crime.

Rule 8 (1) provides that "No cell shall be used for confinement of a prisoner, unless the Director and Medical Officer have certified that its size, lighting, heating, ventilation and fittings are sufficient to keep the prisoner in good health, and that it enables a prisoner to communicate at any time with an officer."

Rule 31 (1) states that "No officer shall use force unnecessarily when dealing with prisoners. If the application of force to a prisoner can not be avoided, no more force than is necessary shall be used and an immediate written report shall be made to the Director.

(statistics on such cases have not been readily available).

- (2) No officer shall deliberately act in a manner calculated to provoke a prisoner.

Where corporal punishment has been imposed by a competent court, guidelines set under rule 44 must be followed:

- (1) All corporal punishment must be attended by the Officer-in- Charge and Medical Officer.
- (2) The Medical Officer shall, immediately before the punishment is inflicted, examine the prisoner and satisfy himself that he is both mentally and physically fit to undergo the punishment. He shall make such recommendations for preventing injury to the prisoner's health as he may deem necessary, and the Officer-in-Charge shall give effect to such recommendations.

Separation of accused persons from convicted persons is provided for in rule 95. It states that - "Untried prisoners shall as far as possible, be kept apart from convicted prisoners". Despite the limited facilities available in the prisons, this rule is strictly followed by prison authorities.

Rule 96 further provides that - restriction on the association of untried prisoners shall be limited to prevent contamination or conspiracy to defeat the ends of justice.

An untried prisoner may, at his expense be supplied with food, clothing, hair cutting and shaving, private medical attention, books, writing materials, letters and other facilities for his defence in court; he may also not do any work in prison except with his consent. (see rules 97 - 107).

As far as separation of children is concerned, the Children's Protection Act provides in section 21 that, a child who -

- (a) is detained in a Police Station;
- (b) is being conveyed to or from any criminal court ;
- (c) is waiting before or after attendance in any criminal court; or
- (d) is in remand prison, shall be separated from adults.

Due to lack of facilities, this is not always done in practice, particularly at police stations.

The Prisons Proclamation No 30 of 1957 also provides for separation of juveniles. Section 7 (1) states that: The Resident Commissioner may provide Juvenile Training Centres, that is to say, places in which persons under eighteen years of age who are

ordered to be detained in such centres may be kept under discipline suitable to persons of their age and description and given such training and instruction as will conduce to their reformation and prevention of crime.

Rule 116 also provides that the Director may set aside such prisons or parts of prisons as he may deem fit, for the detention of young prisoners under the age of eighteen years, in order to secure their separation from other classes of prisoners. The Juvenile Training Centre was established in 1973. It is now being given attention to properly handle juvenile offenders. Recently a Management Board was established as required by law. It was recommended during the Workshop that deliberated this draft report that treatment of juveniles be made in the community rather than at the centre. This is being realised after commencement of the Community Service Sentence pilot project. The draft Prisons Bill is also to a large extent addressing the issues raised above.

Rule 2 of the Prison Rules, 1957 provides that the object of the training and treatment accorded to convicted prisoners, and to persons detained in juvenile training centres, shall be to establish in them the will to lead a good and useful life on discharge, and to fit them to lead such a life. In particular, in the case of persons detained in juvenile training centres, such object shall be to keep them under discipline appropriate to persons of their ages and descriptions, and to give them such training and instruction as will lead to their reformation and to the prevention of crime.

There are Rehabilitation Officers in the various prisons in the country to achieve this objective.

In pursuance of the above objective an in-service training was organised for Prisons, Police, Probation Officers, Magistrates and other interested groups, and were sensitised on the United Nations Minimum Standard Rules for the Treatment of Prisoners, and the Code of Conduct for Law Enforcement Officials. (October 16 - 20, 1995 see attachments).

ARTICLE 7

Section 19 of the Constitution provides that every person shall be entitled to equality before the law, as discussed in article 3 above.

Section 12 (1) states that if any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time, by an independent and impartial court established by law.

In order to ensure that the courts are impartial their (courts) independence is guaranteed under section 118 (2) of the Constitution, which provides that "The Courts shall, in performance of their functions under this Constitution or any other law, be independent

and free from interference and subject only to this Constitution and any other law. The Law Reform Commission has initiated the Administration of the Judiciary draft Bill 2000, which is intended to further enhance the independence of the Judiciary. A workshop for stakeholders to debate this bill before it is tabled in Parliament was held from the 5th - 7th April, 2000, at Maseru Sun Hotel.

To further enhance the independence of the Judiciary, the Government reviewed the conditions of service of Judges, which until recently were contractual, i.e. twenty four months. Cabinet in CAB/DEC/11, dated 23rd November, 1995 approved the appointment of local Judges on permanent and pensionable terms.

The Constitution provides in Article 12 (2) that every person who is charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty. This is well documented in various cases, where suspects are tried. The presumption of innocence is strictly adhered to by the Courts in Lesotho, hence the Courts are willing to grant bail in most bailable offences. [See Section 99 - 117 of the Criminal Procedure and Evidence Act 1981.]

Section 12 (2) (b) of the Constitution states that every person who is charged with a criminal offence shall be informed as soon as reasonably practicable, in a language he understand and in adequate detail, of the nature of the offence charged.

Section 12 (2)(c) of the Constitution provides that every person who is charged with a criminal offence shall be given adequate time and facilities for the preparation of his defence. In practice the accused is given notice of trial, and is advised about his right to legal representation. If he wishes to engage a lawyer to defend him, he (accused) must inform the Court accordingly. It is trite law, that the court must inform the accused of his right to legal representation, otherwise if the court proceeds, without doing so and the accused is convicted, on review or appeal, the court may order a retrial, as was held in **Pulumo v Rex** CRI/A/27/88, and **Phomolo Khutlisi v Rex** 1993-94 LLR - LB p18.

Although the Constitution provides that the accused person shall be afforded a fair hearing within a reasonable time (Sec 12 (1)), the law enforcement agencies sometimes do not seem to comply with this provision. The Criminal Procedure and Evidence Act in Section 32 (1) allows detention without warrant up to 48 hours. Suspects have been held in cells by law enforcement agencies for longer periods. The Government, through the Ministry of Justice and Human Rights is trying to sensitise the law enforcement agencies to comply with the law in this regard, and it appears that there are positive results.

Section 12(2)(e) of the Constitution states that every person who is charged with a criminal offence shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the Court and to obtain the

attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution.

Where the accused is an indigent person, provision for such person is made to get free legal representation. Section 4(1) of the Legal Aid Act No 19 of 1978 states that whenever a person is committed for trial by the High Court and, after inquiry, it appears to the Magistrate who has committed such person that:

- (a) it is in the interest of justice that such a person should have legal aid at his trial; and
- (b) such a person has insufficient means to enable him to obtain the services of a legal practitioner to represent him at his trial, the magistrate shall certify to the Chief Legal Aid Counsel that it is so in the interest of justice and that such person's means are so insufficient, and the Chief Legal Aid Counsel shall thereupon undertake the defence of such person as if he were a legal practitioner instructed by him.

It is worth bringing to the attention of the **African Commission on Human and People's Rights**, that the Lesotho Legal Aid Department, has over the years given legal assistance to indigent persons. For example in 1993/94 financial year, the Chambers of Chief Legal Aid Counsel appeared in 203 matters in the High Court. Of these 99 were criminal matters, a majority of which were bail application [See article on Legal Aid in Lesotho Law Reports and Legal Bulletin, 1991 - 1992 p 249 at p 252.]

Section 12(2)(f) of the Constitution states that the accused shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial free of charge. This is invariably done in both the Subordinate and High Court. Interpreters are paid by the state. In the Case of **Rex vs Nsabimana Shabani and Five Other 1991 - 92 LLR - LB p.55**, the proceedings did not commence until an interpreter was found for the accused, who spoke and understood only French and Swahili.

The Criminal Procedure and Evidence Act No 9 of 1981 in section 228 lays down the law governing admissibility of confessions.

Sub-section (1) states:

that any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence (whether before or after his apprehension and whether on a judicial examination or after commitment and whether reduced into writing or not, be

admissible in evidence against such a person provided the confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced there-to.

- (1) If a confession is shown to have been made to a police man, it shall not be admissible in evidence under this section unless it is confirmed and reduced to writing in the presence of a Magistrate.
- (2) If a confession has been made at a preparatory examination before any magistrate, it shall not be admissible unless the person making it has been previously, according to law, been cautioned by the magistrate that he is not obliged, in answer to the charge against him, to make a statement which incriminates him, and that what he says may be used in evidence against him.
- (4) In any proceedings any confession, which is by virtue of this section inadmissible in evidence against the person who made it, shall be inadmissible against him if he or his representative adduces in those proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made the confession, either as part thereof or in connection therewith, if such evidence is in the opinion of the officer presiding at such proceedings favourable to the person who made the confession.

Section 12(5) of the Constitution provides that no person who shows that he has been tried by a competent court and either convicted or acquitted shall be tried again for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

Sub-section 6 states that no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

Section 162 (2) (c) of the Criminal Procedure and Evidence Act states that an accused person may plead that he has already been convicted or acquitted of the offence with which he is charged.

ARTICLE 8

Section 13 (1) of the Constitution guarantees freedom of conscience. It states that every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance. The Constitution further provides in subsection (2) that every religious community shall be entitled, at its own expense, to establish and maintain places of

education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

Section 13 (4) of the Constitution states that no person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

Subsection 5 states that nothing contained in or 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 is:

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion.

In Lesotho there is no official/State religion. However, the main religion is Christianity which is constituted by the following denominations: Roman Catholic Church; Lesotho Evangelical Church; Anglican Church of Lesotho; Independent Pentecostal/Revivalist Churches, The Methodist Church; and Churches of Zion.

Many Basotho still believe in the African traditional beliefs. There is also the Islamic faith, and the Baha'i faith, which has been in Lesotho since 1954. Statistics on these religions are not readily available. The law does not restrict the right to freedom of association. The Registrar General at the Law Office received and processed 95 applications for registration of societies in 1992, 90 in 1993, 95 in 1994, 95 in 1995, no statistics were available for 1996. In 1997 28 societies were registered. There are no statistics for 1998, and 1999. Those for 2000 are in process. In practice, every application which satisfied the requirements of the societies Act, 1996 is registered. Where the information supplied by the applicant is inadequate or where the law is not complied with, the Registrar General advises the applicant accordingly and gives him/her time to rectify the papers. Once every thing is in order, the society in question is registered. See also under article 22 below.

ARTICLE 9

The Constitution provides for this right in section 14 (1), to the effect that every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without

interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any other person or class of person) and freedom from interference with his correspondence.

The restrictions on the right of freedom of expression are contained in section 14 (2) of the Constitution, which states that 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 makes provision:

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private life of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) for the purpose of imposing restrictions upon public officer.

It should be pointed out that indecent, obscene or objectionable literature may not be imported in Lesotho - see sections 22 (3) and 124 of the Custom Proclamation No. 67 of 1956.

The right of freedom of expression may not be invoked by a defendant on a charge of sedition, as was held in the case of **Rex v. Chief Evaristus Retšelisitsoe Sekhonyana** CRI/T/36/94, where the accused was charged with the offence of contravening section 4 (1) (b) as read with section 3 (1) (i), (ii), (iii) and (iv), of the Sedition Proclamation No. 44 of 1938. The court held that the accused had a seditious intention and accordingly found him guilty, and sentenced him to pay a fine of R 200 or to serve two years' imprisonment.

The Printing and Publishing Act No. 10 of 1967, as amended, is the principal law governing publication of documents and information. It does not deal with the registration and regulation of journalists. The current unwritten ministerial policy provides for provisional and yearly accreditation of journalists. No fee is paid for provisional accreditation, while M15 is paid for yearly accreditation. The Ministry of information and Broadcasting held a Media Policy Workshop on 6 and 7 March 1997. The objectives were to encourage the growth of free, independent and pluralistic media in Lesotho, which implies that the media should be independent from government control, and an end to media monopolies of any kind, including that of the Government

and other powerful sectors of society; protection of the rights of all citizens regardless of status and, in accordance with the provisions of the Constitution, the right to seek, receive and impart ideas by using any and all means of communication. The policy also seeks to ensure that all media have access to public information, and to review and encourage the repeal of media laws, which are considered absolute or inconsistent with a human rights culture.

Currently there are 14 privately owned news papers. There are three private F.M radio stations, which broadcast freely without censorship. In addition to the Government owned television, there is also an independent Christian television (Trinity Broadcasting Network - Lesotho), which airs strictly Christian programmes.

ARTICLE 10

The Societies Act No. 20 of 1966 provides in the preamble that it is intended to provide for the registering of societies, for the consequences of failure to register societies and for dissolving unlawful societies, to the extent that is necessary in a practical sense in a democratic society in the interest of public safety, public order, public morality and for protecting fundamental human rights and freedoms and, to make provision for related matters. Registration of societies is provided for in section 6, which states that:

- (1) on and after the appointed date any society, including a society which is excluded by the provisions, may apply to the Registrar General for the registration and the application shall be made in accordance with rules made under section 30.
- (2) the Registrar General upon application by a society may order that the society be registered or may refuse to make such an order in pursuance of the provisions of section 7.
- (3) a person aggrieved by a decision of the Registrar General under this section may within twenty-one days thereafter appeal against that decision to the High Court.
- (4) the Registrar General shall upon payment of the fee prescribed in the schedule issue a certificate in respect of every registration effected in compliance with the judgement of the High Court on appeal under section 3.

Section 7 further empowers the Registrar General to reject certain applications. It states as follows:

- (1) the Registrar General shall not refuse to order that a society be registered under this Act unless:
 - (a) the application for registration does not comply with the requirements of this Act or any rules made under section 30 or which contain provisions contrary to law; or
 - (b) the purpose of the society is unlawful or contrary to the interests of public safety, public order, public morality or prejudicial to fundamental human rights and freedoms; or
 - (c) the name of the society is identical with that which a society in existence is already registered, or so closely resembles that name as to be calculated to create the impression that the two societies are one and the same; or
- (2) if a society is registered in conflict with the provisions of subsection (1), the Registrar General may notify the society of that conflict, and the society shall within 30 days after the date of that notice make such changes as may be necessary to remove the conflict unless otherwise ordered by a court of component jurisdiction.
- (3) a society may not, without the consent of Motlotlehi, be registered by a name of Motlotlehi, be registered by a name which includes the words 'Royal' 'Crown' 'Government' or any other word which imports or suggests that it enjoys the patronage of Her Majesty or Motlotlehi or the Governments of the United Kingdom or Basutholand.
- (4) if a society is registered in conflict with the provisions of subsection (3) the Registrar General may notify the society of that conflict and the society shall change its name within 30 days from the date of that notice unless otherwise ordered by a court of component jurisdiction.
- (5) if a society does not make any change required under subsection (2) and (4) the Registrar General shall after a further 30 days, cancel the registration of that society unless otherwise ordered by a court of component jurisdiction.

The number of societies turned down for registration was not available at the office of the Registrar General because more often than not rejection was provisional, due to a minor failure to comply with the requirements laid in the Societies Act and Regulations. As soon as the defects are rectified the society in question is to be registered.

ARTICLE 11

Section 15 of the Constitution provides as follows:

- (1) that every person shall be entitled to and except with his own consent shall not be hindered in his enjoyment of freedom of peaceful assembly, without arms, that is to say, freedom to assemble with other persons.
- (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 question makes provision:
 - (a) in the interest of defence, public safety, public order, public morality or public health;
 - (b) for the purpose of protecting the rights and freedoms of other persons; or
 - (c) for the purpose of imposing restrictions upon public officers.

As far as violence against peaceful and unarmed demonstrators is concerned, there was an incident on 17 August 1994, when peaceful unarmed demonstrators were fired at in front of the King's Palace, during the Lesotho constitutional crisis, in which people were killed. After restoration of constitutionality to the country, it was provided for in the memorandum of understanding, as one of the conditionalities, that those responsible for the killings be granted amnesty. The Government has, however, made it clear that victims or their next of kin will not be prejudiced in their claim for compensation.

Freedom of association is guaranteed in the Constitution under section 16, which provides that every person shall be entitled to and (except with his own consent) shall not be hindered in his enjoyment of freedom to associate freely with other persons for ideological, religious, political, economic, labour, social, cultural, recreational and similar purposes, except in the interest of defence, public safety, public order, public morality or public health, etc.

The Labour Code Order 24 of 1992 provides in section 6 that freedom of association shall be guaranteed for all workers, employers and their respective organizations in accordance with the provisions of the Code, in particular parts xiii-xx. (It must, however, be noted that in the interest of security and social stability, parts III.D and part v of the Code do not apply to a public officer.) Those parts deal with the Labour Court and contracts of employment, termination, dismissal and severance.

ARTICLE 12

The constitution provides in Section 7 (1) that every person shall be entitled to freedom of movement, that is to say, the right to move freely throughout Lesotho, the right to reside in any part of Lesotho, the right to enter Lesotho, the right to leave Lesotho and immunity from expulsion from Lesotho.

Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

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 makes provision for such a restriction. There are no legal requirements for registration in the places of residence. In practice a citizen or alien is required to get introduced to the Chief of the area, where he resides, for the Chief to know his subject and the subject to know his Chief.

Prior to the democratisation process in 1993, in order for a citizen to get a passport to travel abroad, such as person if not a civil servant, was required to deposit money when applying for an International Passport. This amount was security. It was equal to a one way air fare of the place intended to be visited. This requirement has however been dispensed with after coming to power of the democratically elected government. Local Passports are issued, which are only valid for the Southern African countries.

ARTICLE 13

The Constitution provides in section 20 (1) that every citizen of Lesotho shall enjoy the right:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote or to stand for election at periodic elections under this Constitution under a system of universal and equal suffrage and secret ballot;
- (c) to have access, on general terms of equality, to the public service.

In March 1993 general elections were held and a democratically elected government came into being. Subsequent by-elections were also held in three constituencies. All these were held under democratic conditions, which ensured free and fair conditions.

In order to continue to ensure that elections are free and fair, the government agreed to establish an Independent Electoral Commission as suggested by opposition parties and the Lesotho Council of NGO's. The second amendment to the Constitution Act No.7 of 1997 provides for the establishment of an Independent Electoral Commission. Section 6 amends section 66 of Constitution, and provides that the commission shall consist of the following members, being persons of high moral character and proven integrity, appointed by the King acting in accordance with the advice of the Council of State:

- (a) a chairman, being a person who holds, has held or qualifies to hold high judicial office; and
- (b) two other members each of whom possesses any of the qualifications referred to in paragraph (a) or who possesses considerable experience and demonstrated competence in administration or in the conduct of public affairs.

Section 7 of the Second Amendment to the Constitution Act No.7 of 1997 amends section 66 of the Constitution by adding section 66 A, 66 B, 66 C and 66 D. Section 66 A (1) states that the Electoral Commission shall have the following functions:

- (a) to ensure that elections to the National Assembly and local authorities are held regularly and that every election or referendum held is free and fair;
- (b) to organize, conduct and supervise, in an impartial and independent manner, elections to the National Assembly and referenda under the provisions of this Constitution and any other law;
- (c) to delimit the boundaries of constituencies in accordance with the provisions of this Constitution and any other law;
- (d) to supervise and control registration of electors;
- (e) to compile a general register of electors and constituency register of electors for the several constituencies and to maintain such register or registers up to date;
- (f) to promote knowledge of sound democratic electoral processes;
- (g) to register political parties;
- (h) to ascertain, publish and declare the results of elections and referenda;
- (i) to adjudicate complaints of alleged irregularities in any respect of electoral or referendum process at any stage other than in an election petition; and

- (j) to perform such other functions as may be prescribed by or under any law enacted by Parliament.

Section 66 C provides for the independence of the Electoral Commission. It states that the Electoral Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

In 1995 Development Council elections were held under the Development Council Order No.18 of 1991 as amended. This was another chance for the people of Lesotho to elect their own representatives to Development Councils. The Chiefs and the rest of the population are being sensitized about the role of the Development Councils and it is anticipated that perceived fears from certain quarters will be allayed.

Section 136 (1) of the Constitution provides for the Public Service Commission. It states that there shall be a Public Service Commission, which shall consist of a Chairman and not less than two, nor more than four, other members, who shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission. Subsection (11) provides that the Commission shall, in the exercise of its functions, not be subject to the direction or control of any other person or authority. This therefore makes it independent in its work as provided under section 137 (1). This is the body that recruits public servants, without interference from the executive arm of Government.

ARTICLE 14

Section 17 (1) of the Constitution states that no property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say-

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit; and
 - (b) the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
 - (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
- (2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily

acquired shall have a right of direct access to the High Court for-

- (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and
- (b) the purpose of obtaining prompt payment of that compensation.

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) the rights of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

- (3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).
- (4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (2)-
 - (a) to the extent that the law in question makes provision that is necessary in a practical sense in a democratic society for the taking of possession or acquisition of any property, interest or right-
 - (i) in satisfaction of any tax, duty, rate, or other impost;
 - (ii) by way of penalty for breach of law, whether under civil process or after conviction of a criminal offence under the law of Lesotho;
 - (iii) as an incident of a valid contract or of the terms and conditions of service of public officer;
 - (iv) in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
 - (v) in circumstances where it is reasonably necessary to do so because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

- (vi) in consequence of any law with respect to prescription or limitation of actions;
 - (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purpose of carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out); or
 - (viii) in satisfaction of the right conferred under section 14 (4); or
- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of the following property (including an interest in or right over property), that is to say-
- (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
 - (iii) property of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
 - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.
- (5) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property, interest or right is vested in a body corporate established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament.

The right to property and the right to compensation in the event that such property is compulsorily acquired, have been succinctly addressed by the Lesotho Court of Appeal, per **Mahomed P**, as he then was, in the case of **Attorney General and Another v Swissbrough Diamond Mines and Others**, 1997 (8) BCLR p1122. (Lesotho Court of Appeal. In this case Swissbrough had been granted mining leases around the Highland Water Project area. It appeared that the concessions had been granted after the area was designated a Highland Water Project area. Swissbrough claimed compensation for cancellation of the leases. In the meantime the Military Government made an Order which cancelled the leases, and further nullified the action in court, without giving compensation. Swissbrough successfully challenged the validity of the order in terms of the Human Rights Act 1983. The Government appealed, but lost the appeal.

In articulating the right to property and the right to compensation, **Mohamed, P** gave a good exposition of the nature and contents of human rights. In particular he said

“... that the fundamental human rights which every citizen in a country is entitled to exercise inhere in him in consequence of his humanity and therefore inalienable; that no government however powerful be its military arsenal, however, awesome its police power indeed even however popular be its actual or perceived support among the populace at any given time in its history, dare be permitted to invade fundamental rights - however humble, however impotent, be the victim of such transgression; that the courts will fiercely protect citizens against the invasion of his rights; that the law has a sovereignty and a life beyond the life of the rulers in a country, who come and go”.

ARTICLE 15

In section 29, the Constitution provides as follows:

- (5) Lesotho shall endeavour to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts.
- (6) Lesotho shall adopt policies aimed at -
 - (a) achieving and maintaining as high and stable a level of employment as possible;
 - (b) providing technical and vocational guidance and training programmes; and
 - (a) achieving steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

According to Section 30 of the Constitution, Lesotho shall adopt policies aimed at securing just and favourable conditions of work and in particular policies directed to achieving -

- (a) remuneration which provides all workers, as a minimum with-
 - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, and in particular, women being guaranteed conditions of work, including pension or retirement benefits, not inferior to those enjoyed by men, with equal pay for equal work; and
 - (ii) a decent living for themselves and their families;
- (b) safe and healthy working conditions;
- (c) equal opportunity for men and women to be promoted in their employment to an appropriate higher level, subject to no consideration other than those of seniority and competence;
- (d) the protection of women who are in employment during a reasonable period before and after childbirth; and
- (e) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Protection of workers' rights and interests:

Lesotho shall take appropriate steps in order to encourage the formation of independent trade unions to protect workers' rights and interests.

ARTICLE 16

The Government of Lesotho, through the Ministry of Health and social Welfare, is making tremendous efforts in creating favourable conditions for the enjoyment of the right to life by increasing immunization coverage (see the annexed report* of the Ministry of Health and Social Welfare (MOHSW), October 1993).

The situation and health status of women and children in Lesotho has been adversely affected by socio-economic, political and environmental developments in the country. Poverty has increased due to reduced export earnings associated with the world recession, retrenchment of migrant miners from South Africa, and severe and persistent drought. Inadequate community participation in health care, inadequate quality and accessibility of health services related to staff shortages' low staff morale, lack of transportation and

impassable terrain in certain localities have further contributed to the deteriorating health status.

Over a one-year period chronic malnutrition amongst under-fives increased by 9 per cent (from 33 per cent in 1992 to 42 per cent in 1993). A 1993 micro-nutrients survey showed that goitre also increased among children from the 1988 survey figures, although it decreased slightly among women, with the total goitre rate for school-going children at 42.5 per cent and for women of child-bearing age at 36 per cent. The prevalence of vitamin A deficiency as of 1993 was 13.4 per cent.

According to the Health sector Development Plan, major diseases, which contribute to high mortality among children, are acute respiratory infections (ARI), immunization-preventable diseases and diarrhoea. Pneumonia accounts for 70 per cent of hospital admissions for respiratory diseases for under one-year-olds and about 60 per cent of the over-ones. Diarrhoea hospital admission rates have increased dramatically among under-fives, in part due to the drought and resulting poor water quality. The infant and child mortality rates are 106 per 1,000 and 156 per 1,000 live births respectively.

Five per cent of hospital paediatric admissions are for TB cases in the under-14-year olds. Amongst adult men and women, there has been a dramatic increase (40 per cent) in the number of registered TB cases between 1988 and 1992. The prevalence of HIV-associated TB is much higher among females (18 per cent) than males (10 per cent). Sexually transmitted diseases (STDs), particularly HIV/AIDS, threaten to increase child and maternal mortality rates, as well as worsen household dependency ratios through the premature death of young adults (Disease Control Unit - MOHSW 1994).

Community health promotion has been improved through the training and deployment of Community Health Workers. Community partnership in health service financing and income generation for food security have been improved in eight health service areas through the Bamako Initiative (BI).

The Government of Lesotho (GOL) has adopted primary health care (PHC) as its strategy for health development in the country. "The Health and Social Welfare Sector Development Plan, 1995/96 - 1999/2000" emphasizes improving access to health services - particularly for geographically hard-to-reach communities, disparity reduction, decentralization, cost-effective interventions, partnership with the community, and intersectoral collaboration.

On the basis of the information currently available areas identified as contributing significantly to morbidity and mortality in the country, and therefore of priority for action, include TB, STDs, and HIV/AIDS, pregnancy-related conditions, diarrhoea, ARI, measles and malnutrition. These areas, which can be grouped into the broad categories of maternal health, child health, reproductive health and nutrition, will be the focus of the

1997 - 2001 UNICEF/GOL programme of cooperation.

The 1993 international evaluation survey of Mother and Child health (MCH) Family Planning in Lesotho indicated a full immunization coverage rate of 71 per cent of children under one year of age. The majority of the reasons given for children not being fully immunized were attributable to low motivation. In addition, the drop-out rates of 7.8 per cent for DPT and 6.6 per cent for polio between the second and third doses were entirely attributed to wrong or short intervals. While 59 per cent of children had received BCG, 4 per cent had no scar. Of the 74 per cent of children who had received measles vaccine, 5 per cent had received it at an age earlier than programme has recommended. In addition, the expanded programme of immunization (EPI) programme has recently experienced managerial and organizational constraints, resulting in, for example, exhaustion of vaccine stocks.

The 1993 evaluation found a drop in use of Oral Rehydration Solution (ORS) from 60 per cent to 42 per cent, although 85 per cent of caretakers knew how to use ORS. Case Management at health centres was not satisfactory. Oral Rehydration Therapy (ORT) corners had been established in only 15 per cent of the facilities assessed and a total of 52 per cent of facilities reported ORS to be out of stock. Communication with caretakers was inadequate and 32 per cent of the facilities had no health education materials.

ARI are responsible for 25 per cent of deaths of hospitalized children in Lesotho. In 1993, ARI accounted for 46 per cent of all outpatient visits of children under five years of age, compared with 14.5 per cent for gastro-enteritis and 0.5 per cent for EPI-targeted diseases. An evaluation in 1991 found that health personnel treated ARI patients with appropriate drugs, but communication of appropriate information to the child's mother/caretaker was poor.

The 1993 evaluation survey also revealed that most children continue to be breastfed and/or given fluids and food during diarrhoea episodes.

There are opportunities for better performance in the next programme cycle. The high literacy among women in Lesotho, the high immunization coverage and virtual absence of reported cases of poliomyelitis and tetanus in the last three years are opportunities for project success. Another opportunity is the introduction of the integrated management of the sick child as a major approach in the health system. Integrated management of the sick child will lead to more accurate identification of illness in outpatient settings, ensure more appropriate and, where possible, combined treatment of all the major illnesses and speed up referral of severely ill children. Health workers will be trained in how to communicate key health messages to mothers, thus helping them understand how best to ensure the health of their children.

The constituency needs assessment exercise in Lesotho is creating awareness of

community need which will increase demand for health services for children and improve health facility expansion and utilization. The enthusiasm showed by the Boy Scouts and Girl Guides in ORT and ARI advocacy and social mobilization allows for personalized information dissemination to families nationwide. Increased awareness of the importance of a holistic approach to child health, including proper nutrition, water and environmental sanitation, is encouraged.

The introduction of the infusofeed ballon device to Maluti and Mohale's Hoek hospitals in 1994, led to 50 per cent reduction of mortality and a 21 per cent reduction of hospital stay time of children admitted with dehydration and malnutrition. The continued use of the device is an opportunity for improved management outcome in hospitals and health centres.

This project will consolidate gains and ensure they are sustained and improved. The managerial and technical skills and the motivation level of staff will be improved through decentralized training and supervisory support. Further efforts will be directed at improving health service delivery through all hospitals and health centres will be advocated for, as per basic service provision guidelines for the different levels of care. EPI emphasis will be on increasing the immunization rates, eliminating neonatal tetanus and declaring Lesotho a polio-free country. Hepatitis B vaccine will be introduced. Vitamin A capsules will be distributed through the EPI programme. In order to ensure full access, accelerated EPI services will also be delivered through mobile and outreach teams, especially in the hard-to-reach rural mountain areas. The cold chain will be maintained to ensure availability of potent vaccines in all health facilities. Community Health Workers will be trained and supervised to deliver services of advocacy and social mobilization as well as to treat minor ailments and vaccinate children.

The project will further update, at all levels, the skills of health workers in management of diarrhoea and ARI and also to mobilize parents and caretakers on effective home case management. For more information see the report at annex.

The Ministry of Health and Social Welfare has since 1987 been involved in controlling and preventing the spread of HIV/AIDS in the country. This has been in collaborating with donor agencies. The number of AIDS patients and people who are HIV positive has been steadily increasing. According to the AIDS Prevention Unit of the Ministry of Health, in June 1997 there were 2,2368 AIDS cases. A national consensus workshop on strategic planning for the prevention and control of HIV/STD, Second Medium-Term Plan 1995-2000, was held from 3 to 5 April 1995 in Mohale's Hoek. This workshop identified a number of determinants for HIV/AIDS and also suggested interventions, including avoiding pregnancy when one partner is HIV positive, promotion of maternal child health services including counselling, testing of blood for HIV before transfusion, sterilization of skin-piercing instruments, etc.

In addition to governmental efforts the Christian Council of Lesotho AIDS Education Unit also is involved in the control of the spread of AIDS. Their activities include support to individuals and families affected by AIDS, bringing awareness about AIDS to the population and advocating for change in sexual attitudes.

ARTICLE 17

The policy of the Lesotho Government is basic education for all. Furthermore, provision of sufficient numbers of people with appropriate qualifications and technical and managerial skills to ensure the development of the modern sector of the economy. The broad goals and policies of the Ministry of Education are therefore as follows:

- to provide free primary education for all Basotho;
- provide sufficient numbers of people with occupational, technical and managerial skills;
- provide opportunities for continuing education both in basic skills such as literacy and numeracy and in more advanced skills in industry and government;
- to incorporate cultural values in school activities;
- to promote cooperation between the churches, the government and the community.

Education is used as an instrument whereby all persons at all levels are given a chance to portray their abilities thus instilling respect for human dignity and achieving social integration. At every educational level, that is, from Primary School to University level, the schools are multi-racial. It is a stated objective of the government to improve the efficiency of the schools. Hence, the Government aims to extend its control over the schools, their growth, distribution, size, curriculum, staff and facilities through the newly enacted act.

The Government has enacted the Education Act of 1996 and its preamble stipulates that every child is protected from practices, which may foster racial or any other form of discrimination or prejudice. In this way, the Government is trying to achieve racial harmony and to provide education for children of all races, colour and religion.

Lesotho has adopted the World Declaration on Education for all, thus cherishing the aspiration of this declaration. The provision of pre-schooling has long been an issue in Lesotho, therefore, the Ministry of Education set up the Early Childhood Development Unit in 1985 which trains, monitors and promotes awareness of the needs of young children of all races.

In the year 2000, the government introduced universal free education, for all standard 1 classes throughout the country. Teaching is initially in Sesotho although English is poised to take over because of a rapid “Mushrooming” of English Medium private Schools.

The Ministry of Education is in charge of the Primary Schools syllabus as well as the setting of Standard 7 (Final Year of Primary School) examinations, which are a natural channel into secondary school education. Secondary education takes three years and it is jointly run with the Education Ministry of the Kingdom of Swaziland. The High school level, which takes two years after the secondary level is a sole responsibility of the University of Cambridge, in England. The high school level is again a channel into institutions of higher learning i.e. the University, Teachers Training College, Technical Schools, etc.

There are currently 1209 primary schools, 189 secondary schools, nine (9) technical vocational schools, one (1) teacher training college and one (1) university. Most schools are church owned, but receive Government subsidy.

In the education sector, the newly enacted Education Act of 1996 ,has established School Management Boards and School Committees, that are representative of parents, teachers, the Government and the Church, in those cases where the schools belong to the Church. This administrative arrangement is intended to cater for the smooth running of the schools, and applies to all schools.

ARTICLE 18

The Constitution provides in section 11:

- (1) that every person shall be entitled to respect for his private and family life and his home.
- (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 makes provision:
 - (a) in the interest of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedoms of other persons

The Constitution in section 18 (4)(c) permits the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.

This issue is of concern to many NGO's, which have lobbied for the amendment of the Constitution, to get rid of that provision.

The Commission is also referred to paragraph 1.11 of this report.

ARTICLE 19

As far as equality is concerned, it is guaranteed under section 19 of Lesotho's Constitution which provides that every person shall be entitled to equality before the law and to equal protection of the law. This notwithstanding the Customary law of Lesotho tends to relegate women to minority status. However, the equality of persons Bill is intended to address this situation.

ARTICLE 20

The 1993 Constitution provides that Lesotho shall be a sovereign democratic Kingdom: and that the territory of Lesotho shall comprise all the areas that immediately before the 4th 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.

It is important to point out that the democratically elected Government subscribes to both components of the right of self determination; external self determination; and internal self determination which refers to a right of people to determine how they shall be governed and the right to be free from despotic governments.

On the 4th October, 1966 the people of Lesotho regained their sovereignty in terms of section 1 of Independence Act 1966 (An Act of United Kingdom Parliament), which provided inter alia that immediately before the abovementioned date, the territory constituting the colony of Basutoland ceased to form part of Her Majesty's dominion and became an independent Kingdom under the name of Lesotho. Upon regaining sovereignty mentioned above, the people of Lesotho realised their right of self determination, (external self determination).

The first independence elections were held and won by the Basotho National Party (BNP.), which took the reigns of government and facilitated the enjoyment of the right of self determination (Internal self determination) from 1966 until 1970, when the second elections were held. The Basotho National Party lost these second elections to Basotho Congress Party (BCP.), and subsequently declared a state of emergency (State of Emergency Order No 1, 1970), suspended the Constitution (Constitution Suspension Order No 2, 1970), and invalidated the elections (General Election (Invalidation) Order No 4, 1970). This was an infringement of the people's right of self determination: (internal self determination).

In 1974 a nominated National Assembly was put in place, and continued *mutatis mutandis*, until 1985. In 1985 an "election" was planned, but because of the nature of the Government of the day, which was characterised by rampant intimidation and harassment of the opposition, and the manner in which the elections were to be held, the elections never materialised. The members of the Basotho National Party (BNP.) were returned "unopposed" and continued with governance. This state of affairs continued until January 20th, 1986.

In 1986 the Military stepped in and took over government machinery (Lesotho Order No 1, 1986) and continued to run government until 27th March, 1993, when elections were held under the (National Assembly Election Order No 10, 1992). Order No.1 of 1986 provided *inter alia* in section 3 that subject to the provisions of this Order all laws that were enforceable in Lesotho immediately before the coming into operation of this Order, shall continue to be of full force and effect: Provided that any such law which is inconsistent with this Order shall, to the extent of such inconsistency, be void.

The 1993 elections, which were won by Basutoland Congress Party were observed by the international community and were certified to have been free and fair, thereby allowing the people of Lesotho once again to enjoy their right of self-determination (internal self determination). This is confirmed by the court in the elections petitions, where the court held that there was no rigging and that the elections were free and fair. (**See Abel Moupou Mathaba and Others v Enoch Matlasele Lehema and Others 1993 - 1994 LLR - LB p.402**) See also **Basotho National Party v Principal Secretary of Ministry of Law, Parliamentary and Constitutional Affairs and 30 others, CIV/APN/240/93.**

The people's right of self determination (internal self determination) was again infringed on 17th August, 1994, when the democratically elected Government was over-thrown in a royal coup, by Order No 1 of 1994, which also suspended parts of the 1993 Constitution. This infringement of the right of self determination (internal self determination) lasted until 14 September, 1994, when the people's government was restored after the intervention of the Governments of Botswana, Zimbabwe and South Africa. The memorandum of understanding and measures and procedures relating to the restoration of Constitutional Order in Lesotho, between His Majesty King Letsie III and Dr. Ntsu Mokhehle, which was guaranteed by the Presidents of the Republics of Zimbabwe, Botswana, and South Africa, provided as follows:-

- (1) The guarantors commit themselves to remain directly involved in this understanding, and shall take all necessary measures to oversee the process to its successful implementation.
- (2) Consultations shall be continued with a broad range of political, non-governmental, religious institutions and other interest groups, including traditional leaders, in the Kingdom of Lesotho with a view to the

broadening of the democratic process in the Kingdom.

- (3) The Commission of Inquiry into the position of the monarchy instituted in terms of Legal Notice No. 81 of 1994 shall be cancelled with immediate effect and re-installation of the former King Moshoeshoe II shall be undertaken in consultation with the Royal family and College of Chiefs.
- (4) In acceptance of the principle of the rule of law and with the aim of good governance, the provisions of the Constitution of Lesotho, 1993, especially those relating to consultation, the seeking of advice and the right to be informed and the recognition of the basic rights of individuals and groups in a pluralist and civil society, shall be scrupulously observed and fulfilled.
- (5) As provided for by the provisions of section 50 of the Constitution of Lesotho, 1993, no recriminatory action, by legal proceedings or otherwise, shall be contemplated or initiated against the person of His Majesty King Letsie III or of the institution of the monarchy, relating to the issuing of Lesotho Order, No.1 of 1994.
- (6) Members of the Provisional Council, Advisers, Public Servants and Security Personnel shall be fully indemnified against any action or other legal proceedings, whether civil or criminal, resulting from actions or omissions by them, during the period 17 August, 1994 to the date of this understanding, in respect to the issuing of Lesotho Order, No.1 of 1994.
- (7) The provisions of the Constitution of Lesotho, 1993, and all the existing laws pertaining to the appointment, employment and discipline of members of the Lesotho Public Service, the Lesotho Defence Force, the Royal Lesotho Mounted Police, the National Security Service and the Prison Service shall be duly observed and fulfilled.
- (8) All parties shall be firmly committed to absolute neutrality of the Public Service and to the independence of the Lesotho Defence Force, the Royal Lesotho Mounted Police, the National Security Service, the Prison Service and the Judiciary from political influence and abuse. Urgent steps shall be taken to ensure the loyalty of the Security Forces to the State as well as the recognition by the government of the neutrality of the Kingdom's security establishment.

Constitutional Order was restored after the above mentioned memorandum of understanding, by Lesotho (Repeal) Order No.4 of 1994. Section 2 repealed Lesotho Order 1994. Section 3 states that for avoidance of doubt it is declared that Chapters IV and VIII of the Constitution of Lesotho and section 87 to 95 both inclusive, sections 158

and 159 of the Constitution of Lesotho are deemed to have always been in full force and effect. Section 4 states that Parliament of Lesotho which existed prior to the 17 August 1994 shall continue to exist. Finally section 5 provides that the Government of Lesotho which existed prior to the 17 August 1994 shall continue to be the lawful government of Lesotho. [Legal Notice No.95 of 1994 rectified the error in section 3 by omitting iv and viii and substituting vi and vii]. Elections were held again in May 1998, but as indicated above, they were disputed by the opposition and as a result Government in collaboration with the Interim Political Authority agreed to hold fresh election in or about March 2001.

ARTICLE 21

Lesotho has taken advantage of the highland water and established a water project called The Lesotho Highlands Water Project (LHWP) in terms of The Lesotho Highlands Development Authority Order No. 23 of 1986. The said water project is a joint venture between Lesotho and South Africa, following an agreement between the two Governments. The LHWP is estimated to cost \$2.5 billion.

The project involves construction of a series of dams for purposes of providing water for domestic consumption and export to South Africa; as well as production of hydro electric power for local use, and commercial, navigation, fisheries, agricultural, industrial, manufacturing, recreational and tourist purposes.

Through this project, Lesotho freely disposes of her natural resource, including water or "White Gold" as it is sometimes referred to.

In order to ensure that the people of Lesotho are not prejudiced in their disposal of natural wealth and resources, the Constitution of Lesotho vests all land in the Basotho Nation. The power to make grants of interests or rights in or over land, to revoke or derogate from any allocation or grant that has been made or otherwise to determine or restrict any interest or right that has been granted is vested in the King in trust for the Basotho Nation. (see sec. 107 and 108 of the Constitution of 1993).

Section 13 (1) of the Land Act, No. 17 of 1979 provides that the power to revoke an allocation shall apply in respect of land which is not the subject of a registrable title and shall be exercised by the Land Committee for the area of jurisdiction, under the chairmanship of the Chief having jurisdiction or such land committee as the Minister may establish under section 18.

There is need to give written notice of at least 30 days to the person affected as well as setting out clearly the grounds upon which the allocation is revoked. (section 13 (2) and (3). Where an allocation has been revoked as indicated above, and if the allottee has made lawful improvements on the land, the allottee is entitled to compensation in the amount of the value of the improvements. (section 15).

Lesotho is a member of the United Nations, the Organisation of African Unity, the Non-Aligned Movement and the Commonwealth of Nations. As a member of the above mentioned international organisations, the Government of Lesotho recognises the right of self determination for her people and other peoples (Internal and External self determination), in conformity with the United Nations Charter.

To this end, Lesotho has over the years, given unwavering support and expressed solidarity with the people struggling for freedom, independence; and against apartheid.

Lesotho also supports all resolutions of the UN on the exercise of the right of self determination.

In recognition of the foregoing, Lesotho's foreign policy is based on the cornerstone of close co-operation with its sole neighbour, The Republic of South Africa, as well as other countries in the sub-region; and respect of the sovereignty of all other independent states throughout the world and non interference in their internal affairs.

The Government of Lesotho is cognisant of the fact that realisation of the people's right of self determination is a sine-qua-non in the cultivation of friendly ties and co-operation among states as well as fortifying global peace and understanding.

ARTICLE 22

The Constitution in section 29 states that:

- (6) Lesotho shall endeavour to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts.
- (7) Lesotho shall adopt policies aimed at-
 - (a) achieving and maintaining as high and stable a level of employment as possible;
 - (b) providing technical and vocational guidance and training programmes; and
 - (c) achieving steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

It further provides in section 30 that:

Lesotho shall adopt policies aimed at securing just and favourable conditions of work and in particular policies directed to achieving-

- (d) remuneration which provides all workers, as a minimum with-
 - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, and in particular, women being guaranteed conditions of work, including pension or retirement benefits, not inferior to those enjoyed by men, with equal pay for equal work; and
 - (ii) a decent living for themselves and their families;
- (b) safe and healthy working conditions;
- (c) equal opportunity for men and women to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) the protection of women who are in employment during a reasonable period before and after childbirth; and
- (e) rest, leisure and reasonable limitation of working hours and period holidays with pay, as well as remuneration for public holidays.

Section 31 goes on to protect the workers rights and interests. It says:

Lesotho shall take appropriate steps in order to encourage the formation and to promote sound labour relations and fair employment practises.

On children and young persons the Constitution provides in section 32 that:

Lesotho shall adopt policies designed to provide that-

- (a) protection and assistance is given to all children and young persons without discrimination for reasons of parentage or other conditions;
- (b) children and young persons are protected from economic and social exploitation;
- (c) 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; and
- (d) there are age limits below which the paid employment of children and young persons is prohibited and punishable by law.

It also provides for the rehabilitation, training and social resettlement of disabled persons,

in section 33, which provides:

With a view to ensuring the rehabilitation, training and social resettlement of disabled persons, Lesotho shall adopt policies designed to-

- (a) provide for training facilities, including special specialised institutions, public and private; and
- (b) place disabled persons in employment and encourage employers to admit disabled persons to employment.

On economic opportunities, the Constitution states in section 34 that, 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. This is demonstrable by the Government's policy, which encourages Basotho to open business and also tender for all government procurement, as well as privatisation of parastatal corporations

Regarding participation in cultural activities, the Constitution states that Lesotho shall endeavour to ensure that every citizen has an opportunity to freely participate in the cultural life of the community and to share in the benefits of scientific advancement and its application. The Cultural and Arts festival organised by Morija Museum, in 1999 was supported and appreciated by the Government because it was consistent with the Government's policy objective on cultural and Arts. This cultural and Arts festival will now be an annual event.

The Constitution provides under section 35 that Lesotho shall adopt policies designed to protect the interests of any citizen in any scientific, literacy or artistic production of which he is the author. In pursuance of this, the Ministry of Natural Resources, which is also responsible for technology organised a fair in collaboration with the Registrar Generals Office in 1999. This fair brought together all local inventory to display their products.

ARTICLE 23

As a member of the Organisation of African Unity, (OAU) Lesotho Subscribes to the constituent and underlying principles of the OAU Charter, as well as other International Organisations, including the United Nations.

Lesotho has over the years strived to ensure that she co-exist with her sole neighbour the Republic of South Africa, the countries of the sub region, the entire African Continent in particular and the whole world in general.

Lesotho endeavours to cultivate friendly ties through diplomatic relations and bilateral

agreements intended to foster solidarity and friendly relations, as well as respect of the sovereignty of all independent states throughout the world and non-interference in their internal affairs. This is a positive step towards co-operation among states, and the fortification of global peace and understanding. These initiatives form a corner stone of Lesotho's foreign policy.

ARTICLE 24

As far protection of the environment is concerned the Constitution provides in section 36, that Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure to all citizens a sound and safe environment adequate for their health and well-being.

ARTICLE 25

The 1993 democratic elections of Lesotho ushered in a new political and socio-economic dispensation, whereby respect for fundamental human rights and freedoms became the cornerstone of the government's policy. The constitutional protection of the fundamental human rights and freedoms of civil and political rights is provided in chapter II of the 1993 Constitution of Lesotho, while the protection of the socio-economic rights is provided in Chapter III, and is expressed as principles of state policy. The categorisation of rights in this manner has legally been interpreted to mean that the quest for the enjoyment of civil and political rights is enforceable in a court of law, while the social and economic rights cannot be enforceable in a court of law. The rationale for the latter position has been that the enjoyment of socio-economic rights shall be dependant on the economic viability of Lesotho.

In this regard, the understanding and interpretation has been that the government shall attain progressive socio-economic implementation of these rights. The Constitution in Chapter II further provides derogation clauses in sections such as section 7(2) (freedom of movement), section 10(1)(a) (freedom from arbitrary search or entry), section 11(2)(a) (right to respect for private and family life), section 13(5)(a) (freedom of conscience) section 14(2)(a) (freedom of expression), section 15(2)(a) (freedom of peaceful assembly), section 16(2)(a) (freedom of association), and section 17(1)(a) (freedom from arbitrary seizure of property). The derogation clauses in these sections provide the restriction of the enjoyment of the specified rights in the interests of public safety, public order, public morality, public health, and for the purpose of protecting the rights or freedoms of other persons.

The Constitution in the sections that protect fundamental human rights and freedoms does not impose obligations on individual members to discharge any obligations based on the rights spelt out in the Constitution.

Consequently, the government of Lesotho, having put in place a Constitution, with the above-mentioned rights, felt there was a need to sensitize all people on human rights issues, in particular the public sector and the law enforcement agencies, who more often than not are in a position to abuse human rights in the discharge of their duties and obligations.

In an effort to achieve sensitization on rights guaranteed in the Constitution, the Ministry of Justice and Human Rights, being the line Ministry that was vested with the primary responsibility to promote and protect human rights, had its mandate strengthened and consolidated. Cabinet approved on the 12th September 1995 the establishment of a Human Rights Unit within the Ministry of Justice and Human Rights, having the following terms of reference:

- dissemination of information on human rights to law enforcement agencies, Non Governmental Organisations and other interested groups through documentation pamphlets, fact sheets etc;
- monitoring of human rights training programmes for law enforcement agencies, Non-Governmental Organisations and other interested groups;
- monitoring domestic legislation and ensuring its compatibility with international human rights instruments to the extent permissible within the cultural and historical setting;
- undertaking reporting obligations to Parliament the African Commission and the United Nations Committees on international human rights instruments ratified by Lesotho, such as the International Covenant on Civil and Political Rights of 1966. The African Charter on Human and Peoples` Rights of 1981, the Convention on the Elimination of Racial Discrimination - CERD, the International Covenant on Economic, Social and Cultural Rights of 1966 and others.

In attempt to achieve the promotion of human rights, through training programmes and dissemination of human rights information, the Government of Lesotho, through the Ministry of Justice and Human Rights and in collaboration with DANIDA through the Danish Centre for Human Rights (DCHR), initiated a six component human rights and democracy in Lesotho programme in 1994. The project was initiated following a needs assessment mission exercise, undertaken by a mission of experts from the Danish Centre for Human Rights. The project had six components namely:

- A national seminar on human rights and democracy, which was held from August 21st to 23rd 1995, supported by resource persons from Denmark, and Southern

African region, Lesotho included. The seminar which attracted some one hundred and fifty (150) representatives from law enforcement agencies, Parliament, Magistracy, the Judges, Representatives of Political Parties, the Church, Legal Officers of Government and Parastatals, examined human rights theories and institutions, including international and regional human rights instruments, the basic principles for the administration of justice, access to justice in Lesotho, the judiciary in Lesotho, juvenile justice, United Nations standards for handling juvenile cases, juvenile delinquency and criminality in Lesotho, Basotho legislation policy in the area of juvenile justice, developing a juvenile justice policy for Southern Africa, human rights and the use of Force, the function of police forces in a democratic society, United Nations Basic Principles on the use of Force and Firearms and an International Code of Conduct for Security Forces and the use of force, and the human rights of prisoners.

Following an analytical and critical discussion of the topics under review, pertinent recommendations that hinged upon issues of human rights and democracy were put forth. The seminar adopted inter-alia recommendations such as:-

- Imposing alternatives to imprisonment at the pre-trial, trial and post-trial in order to overcome over-crowding in prisons.
- Strengthening crime prevention measures through community policing, in order to curb crime.
- revamping the training curriculum of the police training college in order to create a friendly policing system, while doing away with a militaristic approach to the training of police.
- demystifying and simplifying the law and court procedures.

The inservice training courses on specific human rights and juvenile justice problems facing magistrates, probation officers, prison and police officers were held. These training programmes were held from November 1995 to November 1997. Within this period five inservice training courses were held. The topics discussed were tailored on the major themes of the national seminar on human rights and democracy of August 1995. While the inservice training programmes all made a theoretical analysis of the human rights concept, juvenile justice and other related social justice matters, the in-service training courses without exception emphasized the importance of balancing human rights within the administration of justice, protecting the rights of the victims and developing broad based sentencing options.

The inservice training courses were followed by an Executive Seminar for policy makers in the administration of justice. The executive seminar that was held in November 1997

adopted an action plan of all the recommendations emanating from the inservice training courses.

The DANIDA- Danish Centre for Human Rights (DCHR) Support on Human Rights and Democracy to Lesotho further included the printing of a Legal Bulletin and Law Report series focusing on current human rights issues and landmark cases on the advancement and development of human rights jurisprudence from the Court of Appeal. The publication of this Legal Bulletin in the volumes 1991-92, 1993-94, 1995-96 and 1997-98 has served as useful literature for the legal profession and society at large. The publication has provided a wider dissemination of both legal and human rights issues. Under the same project, DANIDA/(DCHR) provided funding for the Ministry's publication entitled **Introduction to the Law of Lesotho: A Basic Text on Law and Judicial Conduct and Practice, Volume 1**, with a section on human rights.

A study on the phenomenology of economic crime and corruption in Lesotho was conducted by a researcher from the faculty of law of the National University of Lesotho, in collaboration with a consultant from the Danish Centre for Human Rights. The research work recommended that a law be drafted to curb corruption and economic crime, including the establishment of a Directorate on the prevention of corruption. The Prevention of Corruption and Economic Offences Act of 1999, has been enacted, and it is providing social education on the evils of corruption and economic offences. During the democratic governance it has been realised that the right to development can be realized only if sufficient checks and balances are in place for safeguarding public revenue. Support to human rights Non-Governmental Organisations such as the Community Legal Resource and Advice Centre (CLRAC) has been offered by DANIDA, within the same programme of support. The assistance was rendered to provide human rights and para-legal training to the grassroots level.

The Human Rights Unit of the Ministry of Justice has also embarked on a number of human rights education programmes, within the regular recurrent budget of the Ministry. In 1998 during the celebration of the 50th Anniversary of the Universal Declaration on Human Rights, a series of educational programmes and materials were produced by the Unit, in order to sensitize the society and school children on human rights issues. Human rights stickers promoting a better understanding of the human rights concept were produced. These messages were produced in both the English and Sesotho language. Messages depicted ranged from wording such as:-

- A tolerant society is a prosperous society.
"Sechaba se nang le mamellano ke sechaba se nang le katileho".
- Strive for peace
"Sebelelsa khotso".

- Discrimination on the basis of race, sex, religion and political affiliation is not allowed.
“Khethollo e ipapisitseng le mohlobo, botona kapa botšehali, tumelo ea kereke kapa ea lipolotiki ha e amohelehe”.
- A situation of emergency, when certain rights are restricted does not justify extra-judicial executions.
“Boemo ba tsitsipano naheng boka baka kapa ba tlisa ho notloa ha litokelo empa hana haho bolele ho bolaea batho ka thoko ho molao”.

A human rights quiz for Secondary and High Schools was administered, testing the basic knowledge of the youth on human rights literacy. Almost all the sixty students who participated in the quiz got marks above average, indicating an understanding of human rights.

During the 50th Anniversary a T-Shirt was produced, conveying a human rights message that says, “*STRIVE FOR PEACE*”.

The Commonwealth Secretariat has also made a contribution towards the training of judicial personnel in matters of human rights. A judicial colloquium for Judges of the Republic of South Africa, Lesotho and Malawi was held in February, 1996. While the colloquium sensitized the judiciary on human rights concepts, the colloquium also indicated the importance of incorporating international human rights norms into domestic law, in cases where the law is silent or inconsistent with the provisions of the Constitution, or certain rights are at stake. In December, 1997 the Commonwealth Secretariat, through its political affairs division held a seminar on human rights and the elections. The aim of this seminar was to sensitize political parties, parliamentarians and the representatives of society on aspects of human rights that they have to be mindful of, in preparation for the elections.

ARTICLE 26

The Constitution guarantees the independence of the judiciary, and the judiciary operates independent of the executive and legislature.

Section 118 (1) of the Constitution provides as follows. The judicial power shall be vested in the courts of Lesotho which shall consist of-

- (a) a court of appeal;
- (b) a High Court
- (c) Subordinate Courts
- (d) such tribunals exercising a judicial function as may be established by Parliament.

The Courts shall, in the performance of their functions under this constitution or any other law, be independent and free from interference and subject only to this Constitution and any other law.

The Government shall accord such assistance as the courts may require to enable them to protect their independence, dignity and effectiveness, subject to this Constitution and any other law.

The Government does not interfere with the work of the judiciary, and is supportive of efforts intended to continue the independence of the judiciary. This is evidenced by the draft Judiciary Administration Bill 2000, which interalia provides for a separate and independent administration of the Courts and for incidental matters.

ARTICLE 27

ARTICLE 28

ARTICLE 29

We would appreciate guidance of the African Commission on Human and Peoples Rights on the above 3 articles, as we do not seem to comprehend what exactly is required of us.

ANNEXURE

Statutes and Legal Instruments:

- The 1993 Constitution of Lesotho.
- Criminal Procedure and Evidence Act 1981.
- Police Order 1971.
- Finance Order No.6, 1988.
- State of Emergency Order No.1, 1970.
- Constitution Suspension Order No.2, 1970.
- General Election (Invalidation) Order No.4, 1970.
- Lesotho Order No.1, 1986.
- National Assembly Election Order No.10, 1992.
- Order No.1, 1994
- Legal Notice No 95 of 1994.
- Lesotho Highland Development Authority Order 23, 1986.
- Customs Proclamation No.67, 1956.
- Land Act No.17 of 1979.
- Land Amendment Order, 1986.
- Aliens Control Act No.16, 1966.
- Labour Code Order No.24, 1992.
- Children's Protection Act No.6, 1980.
- Dangerous Medicines Act.
- Legal Aid Act No.19, 1978.
- Societies Act No.20, 1966.
- Sedition Proclamation No.44, 1938.
- Legal Notice No.22, 1995 (Labour Code Order Amendment).
- Second Amendment to the Constitution Act No.7, 1997.
- Lesotho Defence Force Act No 60, 1997.

Treaties, and Conventions:

- African Charter on Human and People Rights.
- International Treaty on Non-Proliferation of Nuclear Weapons and Protocol 1973.
- United Nations Convention on Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and their Destruction 1993.
- African Nuclear Weapon - Free Zone Treaty 1996, (the Treaty of Pelindaba).

Agreements:

Memorandum of Understanding and Measures and Procedures Relating to the Restoration of Constitutional Order in Lesotho, Between His Majesty King Letsie III and the Prime Minister Dr. Ntsu Mokhehle, 14 September, 1994

Lesotho Cabinet Decisions:

Cabinet Decision CAB/DEC/11

Lesotho Cases:

Attorney General and Lesotho Teachers Union and Others. CIV No.29/1995
Matsela Mongali and 14 Others vs. DPP 1991-92 LLR & LB p106.
Abel Moupo Mathaba and Others vs. Enoch Lehema and Others 1993-94 LLR & LB p402.
Rex vs. Monyake and Others CRI/T/44/93
Rex vs. Chief Evaristus Rets'elisitsoe Sekhonyana CRI/T/36/94
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Rex vs. Nsabimana Shabani and 5 Others 1991-92 LLR - LB p55
Jonny Waka Maseko vs. A.G. 1993-94 LLR & LB p207.
Simon Frank Mapetla vs. Solicitor General 1982-84 LLR p399.
Solicitor General vs Simon Mapetla C of A CIV No.17, 1984.
Nthaisane vs. OC CID Maseru CIV/T 480 90.
Pholo vs. Attorney General CIV/T/601 88
Kurubally vs. Kurubally 1982-84 LLR p377

Reports and Other Documents:

Report for the International Evaluation Survey on ARI, CDD, EPI and MCH/FP, of Family Health Division, Ministry of Health and Social Welfare, October, 1993.
Lesotho National Population Policy, June, 1994.
Inservice Training Course on Human Rights and Juvenile Justice - Reports 1 - 4.
Report on the National Seminar on Democracy and Human Rights, 1995.
Oral Rehydration Therapy - Evaluation Report.
Lesotho Population Data Sheet, Manpower Division, Ministry of Planning, Government of Lesotho, June, 1994.
Lesotho's Long Journey, Hard Choices at the Crossroads, Editors John Gay, Debby gill, David Hall, Sechaba Consultants Maseru, 1995.
The Situation of Women and Children in Lesotho - Government of Lesotho - UNICEF.
Lesotho Media Policy, June, 1997.
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