



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Second periodic report submitted by Lesotho
under article 40 of the Covenant pursuant to the
optional reporting procedure, due in 2020***

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A. General information on the national human rights situation, including new measures and developments relating to the implementation of the covenant

Reply to paragraph 1 of the list of issues prior to reporting (CCPR/C/LSO/QPR/2)

1. The recommendations were disseminated to various stakeholders through several workshops. The Covenant was translated into the local vernacular for easier dissemination during the awareness campaigns on the provisions of the rights therein. In 2012 an ad-hoc committee was set up to compile the state party report but it did not go through for various reasons ranging from change in membership of committee members which meant training had to be redone for new members and thus the momentum was lost; the little budget that the Government got from the Development Partners to supplement that of the Government could not see through the process. This means that data that was already collected became outdated hence the Ministry resorted to requesting the simplified reporting procedure. After receiving the list of issues from the Committee in April 2019, on 23 May 2019 a meeting was convened with relevant stakeholders from which an ad-hoc committee was established with the mandate to respond to the issues. A work plan was devised and members met from time to time. On completion of the draft, it was circulated to the stakeholders for their inputs as a validation workshop could not be held due to budget constraints.
2. There is no particular awareness campaigns on the optional protocol, but would be included in the general awareness of all the human rights instruments ratified by Lesotho.

Reply to paragraph 2 of the list of issues prior to reporting

3. In addition to the Constitution and its amendments, there are several laws that have been enacted which deal with the protection of human rights under the Covenant. These include:
 - Speedy courts trial Act 2002 ensures protection of the rights of offenders to a fair and speedy trial within a reasonable time
 - Sexual Offences Act 2003 covers areas not addressed under the common law offence of rape. It considers the rights of the victims of this offence, the rights of the disabled persons, men, women and children
 - Local Government Elections (Amendment) Act 2004 reserves 30% of constituencies to women to increase their participation in politics and decision-making positions
 - Race Relations (Amendment) Act 2005 provides protection against practices of racial hatred
 - Legal Capacity of married persons Act 2006 removes the minority status of married women and marital power of the husband over the person and property of the wife regarding administration of the joint estate
 - National Assembly Electoral Act 2011 gives effect to the Constitutional right of citizens to vote and stand for elections and makes provision for periodic elections under a system of universal and equal suffrage
4. Institutional framework within which human rights are promoted and protected since the adoption of the previous concluding observations include:
 - The Independent Electoral Commission (IEC) was established by the 1997 Second Amendment to the Constitution. The National Assembly Elections (Amendment) Act 2001 sets up the Commission with its responsibilities including, amongst others, the demarcation of electoral constituencies, compilation of the register of voters, organization and conduct of the National Assembly elections, Local Government elections and the referenda.
 - The IEC organized and held the first National Assembly elections in 1998 and held subsequent elections in 2002, 2007, 2012, 2015 and 2017 which were all found to be free and fair; while the first Local Government elections were held in 2005, 2011

and 2017. In addition to electoral process responsibilities, IEC disseminates voter awareness information through media and promotes the right to vote in Lesotho.

- The Directorate on Corruption and Economic Offences (DCEO) has been established by Prevention of Corruption and Economic Offences Act 1999. It is a body whose core business is to fight corruption and economic offences. The mandate of DCEO entails public education, prevention and investigations. DCEO educates the public against the consequences of corruption and thereby solicits and fosters public support in the fight against corruption. The prevention aspect entails examining practices and procedures of public bodies with a view to strengthen operational systems to reduce the opportunities of corruption. DCEO is responsible for investigating complaints or allegations of corruption and economic offences. Matters that warrant prosecution are referred to the Director of Public Prosecutions.
- The Police Complaints Authority (PCA) is one of the institutions that promotes and protects human rights in Lesotho. It is established under Police Service Act 1998. PCA has authority to investigate and report to the Police Authority or the Commissioner in respect of any complaint from a member of the public about the conduct of a member of the Police Service regarding corruption and human rights. The Aim of the authority is to assist in effective policing and observance of human rights by the police service.
- These procedures allow submission of complaints to police offices in the districts who then forward the complaints to PCA for investigation. PCA liaises with the police and has conducted training workshops on human rights protection, stock theft and customer care. Their success can be gauged through field reports that reflect compliance with human rights by the police service.
- Victims of Crime Support Office was set up within the Maseru Magistrates Court in 2006 and was legally established through the 6th amendment to the Constitution in 2011. The Office provides support to victims and protects them from intimidation and further victimization. It informs victims of their rights and role in the criminal justice process. It also provides information on redress through formal and informal justice procedures. The Office has outreach programmes to inform the public about its services through public gatherings around the country. The Office was decentralized to the northern region of the country in 2016 with the hope that it would be in each district once funds permit.
- The challenge is the policy formulation to guide office programmes and enacting enabling legislation establishing the office as well as protecting the rights of victims of crime. However, limited capacity accounts for the delayed action.
- Child and Gender Protection Unit (CGPU) was established in 2002 as a specialized unit within the Lesotho Mounted Police Service (LMPS) to respond to persisting acts of violence against women and children. The Unit provides user-friendly reporting environment that ensures confidentiality; promptly responds and investigates all cases involving victims of gender-based violence.
- The Unit operates nationwide and raises awareness through media, public gatherings, congregations and school visits on the rights and responsibilities of all vulnerable groups such as children and women and safeguards their rights. Through the assistance of UNICEF, the Unit is currently developing database which will help generate quality reports. To provide user-friendly reporting environment that does not compromise confidentiality, the Unit has been assisted by the Global Fund with prefabricated mobile offices.
- The Department of Gender under the Ministry of Gender and Youth, Sports and Recreation, is tasked to advocate, promote and nurture gender equality. The Department has established an outreach center which provides a short-term refuge for abused women and children by providing basic medical, counseling and psychiatric services. It runs educational and advocacy programmes to curb gender-based violence. The Office advocates for reform of existing laws to remove discrimination and for enactment of laws to end gender-based violence.
- Ministry of Social Development is a transformation from the Department of Social Welfare. The Ministry focuses on the protection of the rights of persons with

disabilities, orphans, and other vulnerable groups through self-sufficiency initiatives as opposed to social welfare approach which was residual and remedial hence resulting in dependency and stigma among beneficiaries.

5. Although in theory Lesotho is categorised as dualist, in practice the courts have invoked Lesotho's international obligations as far as protection of human rights is concerned. This highlights the important role that international law plays in domestic law; which is giving domestic effect to international obligations assumed by Lesotho under international treaties and the opportunity for individuals to claim rights protected by the conventions to which Lesotho is a party. Examples of cases in which the ratified instruments such as ICCPR were referred to include:

- *Molifi Tšepe vs IEC CIV/APN/11/05 CC* The court stated that measures must be taken to implement the provisions of the ICCPR to ensure the attainment of restitutionary equality, which are temporary and aimed at eliminating inequality in a specified segment of society. A report of the Human Rights Committee of the ICCPR in 1989 published a general comment (General Comment 18 (Thirty-seventh session 1989) Report of the Human Rights Committee Vol 1, UN doc A/45/40 as reproduced in Eide et al (eds) Economic, Social and Cultural Rights (2nd ed 2001) 173-5) on the implementation of article 26. Paragraph 8 states: "The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance". Preceding the local government elections: the appellant brought forward a case claiming violation of his constitutional right to stand for elections. His claim was based on the premise that the Local Government Elections (Amendment) Act 2004, that reserved 30% of all electoral divisions to be contested by women only, was discriminatory based on sex. He lost the case on grounds provided for by Sections 18 (4) (e) and 26 of the Constitution. The judgement refers to CEDAW in that Lesotho is a State Party to the Convention which recommends the adoption of special temporary measures to redress discrimination against women and the action taken under the Elections Act was a form of positive discrimination and affirmative action.
- *Peta vs Minister of Law, Constitutional Affairs and Human Rights CC/11/2016*. Application to declare sections 101, 102 and 104 of the Penal Code Act no. 6 of 2010 inconsistent with the Constitution. The court held: on account of the impugned sections' over breadth, vagueness of the concepts used, the availability of civil remedies and the overall undesirability of criminalizing defamation, they are declared inconsistent with section 14 of the Constitution. Further, that the declaration of invalidity shall operate retrospectively. Section 14 does not confer an absolute and unconditional freedom of expression. Freedom of expression must be enjoyed without prejudicing the rights of other persons, which is why under section 14(2) the Constitution allows for promulgation of laws which may curtail freedom of expression for the sake of protecting matters itemized in that subsection which include among others, individuals' reputational interests. This model of guaranteeing a right and then providing circumstances for its curtailment is based on Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

B. Specific information on the implementation of Articles 1 – 27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemented (art.2)

Reply to paragraph 3 of the list of issues prior to reporting

6. Lesotho has ratified several international conventions and it is trite that by ratifying the convention, a state party automatically submits itself to obligations under the said convention. In Lesotho, ratification of the Covenant does not presuppose automatic implementation of the provisions of the Covenant by the courts. Lesotho follows the English Common Law system, whereby international conventions and covenants are not

self-executing. To be enforced, they must be transformed into domestic laws by Parliament or into regulations by administrative bodies.

7. To address the challenge of implementing international conventions into domestic law, several members of the judiciary uphold the Bangalore Principles on the Domestic Application of International Human Rights Norm. This principle should be accepted as offering guidelines on the domestic application of international human rights norms. The principles provided that national courts should have general regard to international human rights norms, whether incorporated into domestic law, to resolve ambiguity in national constitutions and legislations. Nevertheless, in the event of conflict with national law, the latter should take precedence.

8. With respect to measures adopted to bring laws in conformity with the Covenant, as previously discussed, legislations that have been enacted include the following, to mention but a few:

- Speedy Courts Trial Act 2002
- Sexual Offences Act 2003
- Local Government Electoral Act 2004
- Legal Capacity of Married Persons Act 2006
- Public Meetings and Processions Act 2010
- Land Act 2010
- Penal Code 2010
- Education Act 2010
- Children's Protection and Welfare Act 2011
- Administration of Judiciary Act 2011
- National Identity Cards Act 2011
- Anti-Trafficking in Persons Act 2011
- 6th Amendment to the Constitution 2011(Human Rights Commission)
- 8th Amendment to the Constitution 2018 (Dual Citizenship)
- National Assembly Electoral Act 2011
- Lesotho Communications Act 2012
- Human Rights Commission Act 2016

9. Fundamental human rights and freedoms are guaranteed under the Constitution¹. However, the Constitution also provides for derogations and limitations of some of the rights and freedoms under the prescribed circumstances. This is where it is necessary to protect national security, public order, public health or public morals or the rights and freedoms of others or where the restrictions are consistent with the other rights recognized under the Covenant. Lesotho would apply a restrictive interpretation of any measure which seek to limit the enjoyment of human rights guaranteed by the Constitution.

10. The Constitution guarantees the right to freedom of expression and the press and the rights to hold opinions without interference in Section 14. This right includes freedom to seek, receive and impart information of all kinds in all form of media. Since 1999, there are about 10 private radio stations and more than 12 newspapers, all of which enjoy free broadcasting and publishing. Lesotho Telecommunications Authority (LTA), which is state owned, and the Media Institute of Lesotho (MILES), which is civil the society umbrella body on media, regulate media issues.

11. Regarding freedom of movement, the Court of Appeal, decided in the case of *Pholoana Lekhoaba vs Director of Immigration and Others CC/3/2007* that the Deportation

¹ Sections 4–24 of the Constitution of 1993.

Order dated the 12 March 2007 issued by the respondent to applicant is null and void and was set aside. It was alleged that he was the holder of the Lesotho passport and the South African Identity Card (ID) at the same time. The High Court of Lesotho had found him guilty of being a citizen of two countries without having denounced the citizenship of the other.

12. In the constitutional case of *Zwelakhe Mda vs Minister of Home Affairs and Others CC/4/2014* the Court held that arbitrary deprivation of citizenship status is unjustified, and wrongful refusal to replace expiring passport violates citizen's constitutional right to freedom of movement, particularly not to be refused entry to or exit from one's country as such a right would be empty without a concomitant right not to be deprived of the document which makes such movement possible. It said withdrawal of citizenship would be lawful only when done in compliance with law and procedure.

13. The essence of this comment is on the right to fair trial which is covered by Section 12 (1) of the Constitution. This Section states that: if any person is charged with a criminal offence, 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.

14. Regarding presumption of innocence (Article 14 (3) (d), 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 courts hence their willingness to grant bail in bailable offences.²

15. Section 12 s (11) (a) and (13) of the Constitution seeks to ensure that the accused person is to prove his or her case on the balance of probabilities once the prosecution has proved its case beyond reasonable doubt. The burden of proof is always on the prosecution. In cases concerning children, the law³ provides for such cases to be heard in camera.⁴

16. According to Section 4 (1) of the Legal Aid Act 1978, where the accused is an indigent person, provision for such person is made to get subsidised legal representation at a fee of M200 (approximately \$12). Further, the High Court Rules 1980⁵ provides for legal presentation pro deo.

17. Notwithstanding this, Legal Aid does not have the adequate capacity in terms of human and financial resources and decentralisation thus limited number of accused persons are provided with its services.

18. Section 18 (4) (a), the above provision makes a distinction between citizens of Lesotho and non-citizens, except in so far as it relates to entering and residing permanently or temporarily in the country. This distinction is not unusual as it is permitted by Article 1 (2) of the International Convention on Elimination of all Forms of Racial Discrimination which states that:

This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens.

19. The Aliens Control Act 1966 provides, in Section 5, the procedure to be followed by all aliens who want to enter, stay temporarily or for a longer period in Lesotho. Sections 3 and 38, of the said Act provide that no alien shall enter or remain in Lesotho for:

(a) The indefinite sojourn therein, unless he is in possession of a permit for the said purpose, issued in terms of section 6 which provides that

An application by an alien for a permit to enter Lesotho for the purpose of indefinite sojourn therein shall be made before his entry into Lesotho, in the form and manner prescribed by regulation, shall contain the information for which provision is made

² Sections 99-117 of the Criminal Procedure and Evidence Act 1981.

³ Section 23 of Sexual Offences Act No. 3 of 2003.

⁴ See Children's Protection and Welfare Act 2011.

⁵ Rule 16.

in the said form and shall be submitted to the Minister in a manner and by means prescribed by regulation. Such a permit is therein called an indefinite permit.

(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 7 or unless he has been permitted to enter under section 9 (2) which provides that:

This section shall apply to a distinguished visitor, a regular visitor for business or official purposes, an employee or officer of any Government or Public Corporation, and a director, officer or employee of a firm engaged in work in Lesotho under contract with the Government of Lesotho.

(c) For the purpose of travel therein or for the purpose of a visit for private, business or official purpose

20. Any alien who contravenes these sections if found in Lesotho and is not in possession of valid official documents can be charged under the aforesaid sections and if found guilty may be expelled from Lesotho. There is no distinction between a citizen of Lesotho and an alien as far as access to remedies in the courts is concerned.

21. Although Section 18 (4) (a) (b) and (c) may seem, *prima facie*, incompatible with Article 2(1), of the Convention, in actual fact, that is not what was intended by the legislature, rather it was meant to uphold the culture and traditions of Basotho. However, the Section has a proviso, which caters for gradual evolution of the society, and this provides as follows:

Nothing in this subsection shall prevent the making of laws in pursuance of the principle of State Policy of promoting a society based on equality and justice for all the citizens of Lesotho and thereby removing any discriminatory law.

22. Pursuant to this proviso, the Government, in collaboration with a number of Non-Governmental Organizations and other partners, has enacted laws in an effort to ensure their compliance with International Human Rights Instruments, and such laws, examples of which mentioned above, and policies enhance status of women.

23. Legal Capacity of Married Persons Act 2006 (LCMPA) addresses some of the concerns raised with respect to Section 18 (4) (b) and (c) of the Constitution. The preamble of the LCMPA provides that the purpose of the Act is “to provide for the removal of minority status of married women and to provide for incidental matters”. Section 3 thereof abolishes the marital power over the person and property of his wife and reads as follows:

3. (1) subject to the provisions of this Act, with regard to the administration of a joint estate the common law, customary law and any other marriage rules in terms of which a husband acquired the marital power over the person and property of his wife are repealed. (2) The marital power which a husband has over the person and property of his wife before the commencement of this Act is repealed.

24. All legal limitations that had been imposed onto Basotho women by virtue of being married have been removed by this law. Most importantly it has retrospective effect and as such it covers all married women and applies to all types of marriages entered into in the country. Section 3 (3), removed all the restrictions which marital power had placed on legal capacity of married women. Such restriction included inability to enter into contracts, sue or be sued in their names, registering immovable property in their names, acting as directors of companies, acting as a trustee of an estate, binding themselves as sureties and performing any other act which was restricted by any law due to the marital power before the commencement of the Act.

25. The Act has equalized power between women and men in marriages in community of property and insists on mutual consent in decisions that bind the joint estate. The Act has repealed specific sections of laws that discriminated against women:

- The Administration of Estates Proclamation 1953
- The Deeds Registry Act 1967
- The Marriage Act 1974

- Lesotho Bank Savings and Development (Amendment) Act 2008

26. Lesotho has taken measures to accelerate review of the laws pertaining to equality between men and women. In December 1999, the National Land Policy Review Commission was established to undertake the land reform, the National Land Policy for land allocation, possession and land management. The Commission produced a Report which recommended, among others, the following:

(a) All land in Lesotho should be vested in the Basotho nation and should be held by the State through the National Land Council as the representative of the nation and should be owned in accordance with the following land tenure system.

(b) The present customary land tenure system needs to be abolished. Accordingly, all land (including agricultural land) that was held under customary tenure should be held on leasehold tenure.

(c) All sections of the Laws of Lerotholi (customary law) dealing with land need to be repealed and land must be held in accordance with the proposed new Land Act.

All these efforts resulted in the enactment of Land Act 2010 which now gives women title to land.

27. The Government adopted the Gender and Development Policy in 2003. As gender inequalities and disparities lay paradoxically both at the heart of women's limited advancement and vulnerability, the Policy seeks to redress this situation addressing the challenges of gender inequities and inequalities, poverty, increased spread of HIV and AIDS, retrenchment and unemployment by adopting a rights-based approach to development. The Policy calls for non-discrimination towards women, men, girls and boys in the following ten priority areas: gender and poverty and economic empowerment; gender and education and training; gender and youth; gender and power, gender and politics and decision making; gender and health; gender-based violence; gender and civil society organizations; gender and the media; gender and the environment; gender and science and technology. These form also the critical areas of concern in the Beijing Platform for Action and its Declaration.

28. Lesotho entered a reservation on Article 2 of CEDAW. On ratification in August 1995, the Government's statement on the reservation read as follows:

"The Government of the Kingdom of Lesotho does not consider itself bound by Article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the Throne of the Kingdom of Lesotho and the law relating to succession to chieftainship. The Lesotho Government's ratification is subject to the understanding that none of its obligations under the convention especially in Article 2 (e) shall be treated as extending to the affairs of religious denominations.

Furthermore, the Lesotho Government declares it shall not take any legislative measures under the Convention where those measures would be incompatible with the Constitution of Lesotho."

29. In 2004, Lesotho withdrew from the reservation the text indicated in italics in the statement above. Thus, the reservation to the Article remains valid with regard to succession to the throne and to chieftainship.

30. There have been instances where Customary Law conflicted with the rights protected by the Covenant, and in trying to address such conflict some laws have been enacted which include:

- Legal Capacity of Married Persons Act 2006 – minority status of women and marital power of husband removed.
- Sexual Offences 2003 – recognizes 'rape' within a marriage setting.
- Land Act 2010 – women can hold title to land in their own right.
- Childrens' Protection and Welfare Act 2011 – decent name; chastisement amounts to degrading treatment.

Reply to paragraph 4 of the list of issues prior to reporting

31. The Ministry of Law, through the Human Rights Unit, worked on the establishment of the National Human Rights Commission. In 2011 the Constitution was amended to include this human rights institution and in 2016 the enabling legislation and regulations were promulgated. The structure of the Commission was approved, and positions were ready to be filled so that the Commission starts its work. Civil Society Organizations instituted a case against the Government on the road leading to promulgation of the Human Rights Commission Act 2016. The parties agreed to make further engagements and the case was withdrawn on condition that parties reach a mutual agreement on the matter. In 2018, the Government negotiated further with the civil society on how to reach consensus on the issues and began modalities of trying to amend the Human Rights Commission 2016 such that appointment of the Commissioners is not done solely by the Prime Minister and had suggested that such be through a panel which would recommend to the Prime Minister for advice to the King. This process has been stalled by a Cabinet decision in April 2019 that referred such to the general reforms for the country.

32. Office of the Ombudsman was established through the Constitution of 1993. Its enabling legislation was enacted in 1996. The Ombudsman is appointed by the King acting on the advice of the Prime Minister for a term of four years, renewable only once. The Ombudsman reports directly to Parliament on the activities of the office through annual reports and on complaints where there have been some delay and or refusal to implement the recommendations. The Ombudsman heads the office and has an Assistant whose mandate is purely administrative. There are eight investigation officers, a public relations officer and support staff. All staff members are public servants except the Ombudsman. The establishment list presently stands at 35.

33. The office has a five-pronged mandate to deal with complaints against the Government and parastatal agencies based on maladministration; injustice; corruption; human rights; and environment. However, the office cannot investigate Parliament; The King; Cabinet; Courts; and the Public Service Commission (PSC). There is nonetheless an exception regarding the Courts and PSC as the office can investigate where there is allegation of corruption and or undue delay.

34. The budget of the office is very low, with almost 70% for emoluments and a great percentage of operating costs going towards rent. The office used to get financial support from donors but not anymore as donors have expressly stated that they cannot fund the office's core activities which have to be funded by Government. There is also shortage of staff as it is not easy for eight investigators to effectively investigate and resolve complaints for the whole country while at the same time taking part in civic education. There is only one officer in the Public Relations office responsible for conducting inspections and inquiries with the Ombudsman and writing reports (inquiry, inspection, investigations, annual and special). Attempts have been made to have the staff establishment expanded with additional positions but all in vain.

The Ombudsman received complaints which related to provisions of the Covenant from 2014 to 2018 as illustrated in the table below

<i>Year</i>	<i>Received</i>	<i>Not sustained</i>	<i>Sustained</i>	<i>Closed (of sustained)</i>	<i>Open (carried forward to next year)</i>
2014	202	45	157	94	63
2015	110	22	88	68	20
2016	110	10	94	62	34
2017	153	53	100	64	36
2018	181	53	128	68	60

State of Emergency and security measures (art.4)

Reply to paragraph 5 of the list of issues prior to reporting

35. The Constitution provides that a declaration of State of Emergency must be Gazetted and be operational for 14 days unless it has been approved by resolution in each House of Parliament. Further, a person who feels aggrieved or likely to be aggrieved by such declaration may apply to the High Court for redress.

36. The Internal Security (General) Act of 1984 makes provision for the general security of persons and property in Lesotho. For example, section 13 provides for powers of arrest and detention for subversive activities; Part IV provides for offences against public safety, public order, public morality and the rights of persons. In section 25, a person who goes armed in public unlawfully in such a manner as to cause terror is guilty of an offence. Section 26 prohibits use of obscene, abusive, threatening or insulting words or behavior with intent to provoke a breach of peace. Part VI prohibits manufacturing of dangerous weapons; Part VII gives the Police powers of control, entry and search with or without a warrant; to mention but a few. The provisions of the Act are compatible with the Covenant.

Past human rights violations and impunity (arts. 2, 6, 7, and 14)

Reply to paragraph 6 of the list of issues prior to reporting

37. The Killings in Botha-Buthe in 1995 occurred in a riot situation hence the investigations were delayed as it was difficult to identify perpetrators of the violations. As a result, a Commission of Inquiry was set up. The Commission recommended that riot control be part of curricular of the Police Training College and further that a specialized riot control Unit be established within the Police and be equipped with modern equipment for riot control. As a result, a Special Operations Unit (SOU) was established to deal with similar situations.

38. There has been tension between the Kao mine and the locals who accuse the mine of renegeing on its commitment to compensate them for relocation from their homes to pave way for the mine as well as the failure to give them jobs. The villagers also accuse the mine of failing to implement meaningful development projects in the area. One person died and two others were critically injured in February 2018 after violent clashes broke out between the police and villagers who were protesting the alleged failure by the mine to honour its promises to compensate and relocate them from the areas affected by mining operations. Since then a series of meetings have been held at the mine aimed at addressing the villagers' grievances. The mine offered employment to the widow of the deceased and even offered compensation to his family and other victims of the clashes.

39. In another case of *R vs Tjekane Sebolai and others CRI/T/0001/19* the accused (three army officers) stand accused for killing Lisebo Tang, attempting to kill Tšepo Jane and damaging the latter's vehicle as well as defeating the ends of justice. The incident happened in May 2014 when the three officers were guarding the residence of the former army commander Lt – Gen Tlali Kamoli. Sebolai has been discharged as the Crown failed to prove that he was at the crime scene but others remain accused while the Crown is to call its last two witnesses who are said to be in China and South Africa and the there is no funding to secure their court attendance. The Prosecution may then be forced to close its case without them.

40. Lieutenant-General Mahao (newly appointed Commander of the Army) was ambushed and shot by his peers from the Lesotho Defence Force (LDF) near his farm in Mokema on 25 June 2015. His widely condemned killing kick-started a chain of events that resulted in the Southern African Development Community (SADC) establishing a commission of inquiry to probe the murder and the instability in Lesotho. In implementing some of the Phumaphi Commission of Inquiry recommendations. *R vs Tlali Kamoli and others CRI/T/0001/18* eight soldiers have been charged with his murder and they remain on remand pending their trial. The family of Mahao has received compensation by the present Government.

41. Lesotho experienced another killing of the Army Commander, Khoantle Motšo-Motšo, in 2017 barely two years after the killing of the other Commander. One army officer has been remanded on a charge of murder in *R vs Ramoepana CRI/T/0032/18*.

42. The army officers implicated in connection with the 30 August 2014 killing of police Sub-Inspector Mokheseng Ramahlolo during an attempted coup against the first government of Prime Minister Dr. Thomas Thabane and other human rights abuses await their trial while on remand since 2017 in *R vs Tlali Kamoli and others CRI/T/0001/18*. These same officers are the ones also implicated in the case of Mahao referred to in paragraph 39 and are facing a number of charges. The delay in the case has been caused by too many trials within a trial. For example, the accused sought the Judges to recuse themselves for foreseeable bias in the matter; when outside judges were sought and matter was ready to proceed, accused cried foul in that such judges will not be impartial and at some stage they did not have legal representation due to lack of funds.

Non-discrimination and equality between men and women (arts. 2, 3, 25, and 26)

Reply to paragraph 7 of the list of issues prior to reporting

43. There is currently no specific legislation that focuses on discrimination in the country, besides the Constitution that permits such discrimination in relation to cultural practices. However, there are several laws that contain within them laws prohibiting discrimination in different settings. Examples are as follows:

- The Labour Code Order no.24 of 1992 prohibits discrimination by providing for equal opportunity and treatment in employment (section 5(1)) the Act mandates that no distinction/exclusion shall be made based on race, colour, sex, marital status, religion, political opinion, national extraction or social origin.
- Legal Capacity of Married Persons Act 2006 abolished the marital power allowing women to be able to have a say in marital decisions that affect their lives without being regarded minors as it was customary law.
- Children's Protection and Welfare Act 2011 prohibits discrimination against a child based on gender, race, age, religion, disability, health status, language, custom, ethnic origin, rural or urban background, birth, socio economic status, refugee status or any other status.
- Land Act 2010 allows women to own property and inherit such without being discriminated against based on gender as was the customary practice (to only allow male heirs to inherit their parents land).
- Companies Act 2010 allows for both males and females to be able to register and own companies.
- Electoral Act 2004 allocated one third of all the electoral divisions contested to women, which was later changed in 2011 to having a 30% quota of women elected into councils. This was done to even out that political field allowing women to participate in politics without their discrimination. This positive discrimination law was further upheld in the case of *Molefi Ts'epe v Independent Electoral Commission and others (CIV/APN/135/2005)* where the applicant had contested the Electoral Act quota of 30% on the basis that it discriminated against him as a male candidate. The court held that the act of implementing the 30% quota for female candidates was to uplift women in the political arena as it was evident that there were no female representatives due to discrimination based on gender. The court held the quota to be positive discrimination and dismissed the application.
- The Sexual Offences Act 2003 also prohibits discrimination in the application of the act as it recognizes marital rape, protects people with disabilities from sexual abuse to mention a few.

44. There is currently no specific legislation that focuses on discrimination in the country. There are various laws which have provisions that prohibit all forms of discrimination. *Thabo Fuma v Commander LDF & Others CC/8/2011[2013]* dealt with

intersecting discrimination. The employee suffered disability due to HIV positive status and was forced to retire. Court held that the LDF had discriminated against him as other employee who suffered disability while at work were only redeployed and not forced to retire.

45. On whether domestic law provides for effective judicial and administrative remedies, reference is made to the case of *Fuma v Commander LDF & Others* above where the court provided an effective remedy.

46. Lesotho signed the African Union Protocol on the Rights of Older Persons in 2018. Older Persons Policy was adopted that aims to “promote protection and upholding of fundamental rights of older persons, by developing Laws protecting them from abuse”⁶. The Policy further promotes equality across all ages, prevents all forms of discrimination that deny older persons opportunities to enjoy their rights like all other citizens. The Older Persons Protection Bill 2019 is being drafted. The Government holds awareness and educational campaigns to sensitize the public on the rights of elderly persons and to protect them from abuse.

47. Discrimination and stigmatization that faced these groups/classes would be regarding service provisions particularly at health centres and police stations. In order to ensure a human rights based response to HIV, the Ministry of Health in collaboration with the development partners, CSOs and NGOs conduct social mobilization activities to raise awareness on HIV and AIDS, distribution of condoms with key social behavioral change messages, identification of gender based violence clients, referral and linkages to care and support especially the key populations and young people at community level to health facilities for clinical services.

48. 2016 Lesotho Legal Environment Assessment report demonstrated need for several policies and laws review, including National HIV and AIDS Policy 2006. United Nations Program on HIV/AIDS (UNAIDS) supported NAC to formulate National HIV and AIDS Policy 2019 to meet fully the rights and needs of People Living with HIV and vulnerable groups and address effectively challenges for fast tracking HIV response towards ending AIDS by 2030, reflect strategic directions reaffirmed in 2016 Political Declaration on Ending AIDS adopted to Fast-Track the AIDS response and accelerate progress towards achieving the SDG target of ending AIDS by 2030. The 2019 Policy that is under the Cabinet review.

49. A National Action Plan for HIV/AIDS and Law was endorsed by the Ministry of Law, Constitutional Affairs and Human Rights in August 2018. Informed by a robust assessment of HIV Legal Environment, the plan was developed by group of experts with UNAIDS and UNDP. Lesotho Joint team on AIDS has started to support implementation of the NAP for HIV/AIDS law and policy in 2018 and UNDP and UNAIDS selected Women and Law in Southern Africa to build the capacity of law enforcement agencies (police, magistrates etc to address human rights, GBV and HIV/AIDS related issues in 2018.

50. In *Fuma v Commander LDF & Others CC/8/2011[2013]*, The Applicant’s case was that after he became visually impaired, the medical board of the army recommended that he be retired on medical grounds. He challenged this retirement on the ground that he was not given a chance to make presentations before the board prior to its decision and that it was not his visual impairment that informed the decision of the medical board but the fact that he was HIV positive. He illustrated that there are members of the army whom after being visually impaired were not retired but were given other duties that suited their condition. He asserted that the difference with him was that he had become visually impaired as a result of the HIV and that it is based on his HIV status that the board retired him.

51. The Court held that the retirement was discriminatory and violated both the Constitution and Lesotho’s international human rights obligations. In holding that Lesotho has an international human rights obligation not to discriminate, the Court sought guidance from the South African case of *AZAPO & Others v President of South Africa*, where it was

⁶ The Policy for Older Persons 2014, page ix.

considered that municipal law should be interpreted to avoid a conflict with a state's international treaty obligations.

52. Sexual Offences Act 2003 covers all offences relating to sexual acts although it does not specifically repeal the common law offence of sodomy. Where there is consent between adults, there is no sexual offence and the Act is silent on the 'gender' of the adults and thus it would be difficult to go against them. Further, the Marriage Act 1974 does not recognize marriage of same sex.

53. According to the 2016 Housing and Population Census, persons with disabilities constitute 2.5 % of the population. Of this, 41% are males and 59% females, it is therefore imperative that as a minority group, they enjoy the same rights as those enjoyed by the majority and not be discriminated based on their disability. The Bill has been tabled before Parliament and is currently in the Parliamentary Social Cluster Committee.

Reply to paragraph 8 of the list of issues prior to reporting

54. To ensure equality between men and female, in *Mokhele & Others v Commander of LDF & Others CIV/APN442/16[2018]*, the Constitutional Court held that dismissal of female members of the army who were pregnant within five years of their recruitment is discriminatory and unconstitutional as it contradicts section 18 of the Constitution and it was reviewed and set aside. The applicants were reinstated back to their positions and ranks in the LDF without any loss of benefits. The Court made reference to the Declaration on the Elimination of Discrimination against Women; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 2000 ILO Maternity Protection Convention no. 183. It said: "these international legal instruments enjoin States to prevent discrimination against women on account of, inter alia, marriage or maternity by taking legal measures to prevent their dismissals from employment in the event of marriage and maternity and to provide paid maternity leave".

55. In reviewing and repealing all discriminatory laws against women, both positive and customary with regard to nationality, marriage and its dissolution, property rights and inheritance, the 8th Amendment to the Constitution 2018 allow for dual citizenship with the objective to provide for marriage to a Lesotho citizen and dual citizenship; to provide for restoration of Lesotho citizenship and to allow naturalized or registered Lesotho citizens to regain or retain their birth nationality. Further, the Immigration and Citizenship Bill 2019 uplifts the discriminatory provisions which were favouring women married to Lesotho citizens over foreign men who marry Basotho by providing for similar requirements for acquisition of citizenship.

56. Regarding Marriage and its Dissolution, the Legal Capacity of Married Persons Act 2006; Marriage Act 1974 are to be harmonized with other laws such as Children's Protection and Welfare Act 2011 in terms of eligible age of marriage for both boys and girls.

57. Regarding Property Rights and inheritance the Land Act 2010 provides that women can hold title to land in their own right; Companies Act 2008 states that women can be directors of companies without prior consent of their spouses.

58. Customary law as well as Basotho's cultural practices remains a challenge to effective implementation of equality between men and women in areas of succession to the throne and chieftainship. In terms of section 18(4) (c) of the Constitution, anything done under Sesotho Customary Law is immune from the non-discrimination provisions under section 18.

59. The Government has undertaken the following measures to mitigate the above challenge: there is currently an in-house review of the Chieftainship Act in order to include women to succeed to chieftainship. Government in partnership with the College of Chiefs and CSOs are embarking on awareness-raising community gatherings for recognition of the inherent dignity of women and equality of all persons.

60. The Government is currently working on codification of inheritance laws (zero draft Bill available) to have equal application in terms of distribution of resources or property for both men and women and to avoid discrimination that has been faced by women.

61. Customary Law as well as Basotho cultural practices remain a challenge to effective implementation of equality between men and women in areas of succession to the throne and chieftainship. In terms of section 18 (4) (c) of the Constitution, anything done under Sesotho Customary law is immune from non-discrimination provisions under section 18. The Constitutional Court in the case of *Senate Masupha v Senior Resident Magistrate of the District of Berea and Others* declined to declare section 10 of Chieftainship Act 1968 discriminatory and unconstitutional. The case is currently before the African Commission.

62. With regards to enhancing the representation of women in political and public life including senior leadership and decision-making positions, measures have been put in place and include: as a temporary measure, Local Government Elections (Amendment) Act 2004 was enacted and it reserved 30% of constituencies to women to increase their participation in politics and decision-making positions. *Molifi Tšepe case* referred to above upheld this provision. As a result, in 2005 Local Government Elections remarkable participation and representation of women was seen.

63. Local Government Amendment Act 2011 repealed a reservation of females' electoral divisions where men were not allowed to stand for elections. It provides for special seats for women - one Third Additional Reserved seats for women in every council in the Local Government elections held periodically (every 5 years). This intervention contributed to the 49 per cent representation of women in Local Government structures as councillors in 2011 Local Government elections. However, this was regarded regression from 58% women's representation in 2005. This is attributed to lack of male support (partners support) to women councillors.

64. National Assembly Electoral Act 2011 provides for zebra system to promote women in the Legislature. Section 47 (2) (b) requires that all political parties contesting Proportional Representation (PR) elections submit 'zebra' party lists to Independent Electoral Commission (IEC). However, there is still relatively low number (23% in 2012) of women contesting elections. After 2015 snap elections, women representation in cabinet was 20%. In the National Assembly, which was elected in 2017, out 120 members there are only 29 women. Cabinet has only 2 women out of 27 ministers, 2 out of 8 deputy ministers. This translates to only 11.42% of women representation in Cabinet. There are 25 male Principal Secretaries while females are 7. With respect to the Judiciary, currently the High Court is headed by a woman Acting Chief Justice. There are 8 male and 4 females justices including the Chief Justice.

65. Before the enactment of Legal Capacity of Married Persons Act 2006, married women could not be appointed as directors of companies without the consent of their husbands. In 2008 Companies Act was enacted and amended in 2011. Section 57 (2) of Companies Act (2011) provides that despite what is contained in customary or common law, a person married in community of property can become a director without the consent of the husband.

Violence against women and harmful practices (arts. 2, 3, 7 and 26)

Reply to paragraph 9 of the list of issues prior to reporting

66. There have been extensive consultations with various sectors of Government and Civil Society Organizations (CSOs) since 2017 on proposal to draft law on Domestic Violence. In addition, a briefing workshop was arranged to sensitize parliamentarians on the proposed provisions of the legislation in order to secure their support.

67. This is challenge that the State is facing as most of these cases occur within family and communal settings. Victims are reluctant to expose such perpetrators for fear of losing financial and economic support and stigmatization.

68. The MGYSR has strengthened two GBV networks in the district of Maseru. The overall role of the networks is to handle GBV cases at the community level and assist survivors with the reporting procedure. There is also male involvement in GBV prevention programme which aims to engaging men and boys as agents of change in promoting gender

equality and creating a healthy living environment. Accordingly, there is Khotla Lesotho, a males NGO, working on GBV prevention and human rights.

69. UNFPA strengthened capacities of Parliamentarians to advocate for and participate in the development and implementation of laws and policies on Sexual Gender Based Violence (SGBV) and Harmful Practices including linkages to SRHR related legislation and policies, and gender equality and non-discrimination. Through UNFPA support, the first GBV in emergencies baseline study in Lesotho was commissioned and a number of outreach activities done to strengthen prevention, response and coordination of GBV cases during emergencies.

70. Through UNFPA support, the first National Standard Operating procedures were developed to address GBV in emergencies. UNFPA also supported the Ministry of Health to revise the health response guidelines in addressing sexual offences and aligned it the World Health Organization (WHO) international standards, Health practitioners received capacity building on screening of GBV cases.

71. The Ministry of Education has revised out of school curricular to include comprehensive sexuality education and GBV. Over and above that, there is the office of Victims of Crime Support Unit as mentioned above in paragraph 4.

72. The Child and Gender Protection Unit (CGPU) was established in 2002 as a specialized unit within the Lesotho Mounted Police Service to respond to the increasing violence against women and children is operational in all the 11 police districts. Trainings are conducted from time to time to capacitate the office. Victims of Crime Support Unit – reference is made in response to ad paragraph 2 above.

73. Care Centre was established with the purpose to provide short-term stay for victims and survivors of domestic violence. The Lapeng Care Centre has been strengthened. The Centre currently operates 24 hours, and it provides psycho-social support and resilience skills to Gender Based Violence (GBV) survivors. The Centre has a permanent social worker, a nurse and a matron. Through UNFPA and UNAIDS support the centre received training for staff on basic developmental counselling to equip them with counselling skills on gender-based violence.

74. There has been an establishment of a Gender Technical Committee (GTC) which among other things in charge of identifying and carrying out educational programmes on harmful cultural practices that may be taken to be perpetuating violence against women. The committee advises Government on development of policies and guidelines on these issues. FGM does not exist in Lesotho.

75. In October 2017 under the Ministry of Social Development, Lesotho launched the ending child marriage campaign as an effort to eliminate the prevailing issue of child marriages in the country, as of 2017 the statistics showed that 17% of girls in Lesotho were married before their 18th birthdays, while 1% were married before their 15th birthdays. To address and eliminate cases of early and forced child marriages/abductions, where such are reported, and children are rescued. The government also works with NGOs such as Beautiful Dream Society to rehabilitate and provide shelter and schooling for such children.

76. The Government through the MGYSR, Ministry of Social Development and CSOs have been engaged in sensitizing the public on ending child marriage – a problem mostly encountered by girl children in Lesotho.

77. The Ministry of Social Development launched a campaign calling for an end to child marriages which was launched officially in November 2017 and such are on ongoing. As part of the efforts, Princess Senate Seeiso has been appointed the National Champion to Ending Child Marriage. Campaigns have so far been conducted in 39 community councils out of 64. Positive changes brought about the campaigns are that there has been a decrease of girls who marry before the age of 18 and there has been a growing number of companies and NGOs which provide girls with sanitary towels as lack of the towels contribute to girl's drop out of school and get married.

78. The Children's Protection and Welfare Amendment Bill 2019 (the Amendment Bill) makes child marriage a punishable offence. Other mechanisms/initiatives geared towards

abolishing child marriage include Violence Against Children Survey conducted by International Centre for ADIS Care and Treatment Programmes (ICAP) 2019, enactment of Sexual Offences Act 2003, Multi- Sectoral Child Protection strategy and UNICEF desk review on Violence against Children 2015.

79. In response to harmonization of Lesotho marriage laws and the CPWA with the Protocol, there has been the CPW Amendment Bill. The CPWA being the specific law to children mandates that a child cannot be married before the age of 18, by so doing the Bill repeals laws such as the Laws of Leretholi that allowed for children that are 16 years of age to be married with parental consent.

80. Section 17 of the CPWA 2011 also prohibits the subjection of children to cultural rites, customs or traditional practices that are likely to negatively affect their life, health, welfare, dignity or physical emotional, psychological, mental and intellectual development. Virginity testing and labia elongation were done in private and not talked about, the practice is fading in our cultural practices and as such there are no reported complaints.

Termination of pregnancy, maternal mortality and reproductive rights (arts. 2, 3, 6 and 7)

Reply to paragraph 10 of the list of issues prior to reporting

81. There is no statutory law on abortion in Lesotho. Common law prohibits abortion except when performed to save the life of the pregnant woman. In Lesotho Penal Code Act 2010 section 45 states that a person that willingly cause or induces the termination of pregnancy commits a criminal offence, save for when administered by a registered medical practitioner to protect the health of the expectant mother and instances where the unborn child would have severe mental defects, or where the pregnancy is due to incest or rape.

82. Many illegal abortions take place in private and or black market and get to be known only if there are complications where women and girls end up in hospitals for proper cleaning and care. In order to deal with the burden on the healthcare facilities, the Ministry of Health has engaged a consultant to assess the prevalence of abortion in Lesotho so as to develop guidelines on proper management of post-abortus care and to train on manual vacuum aspiration and would also to guide the Government on the decision to legalize abortion.

83. The findings from the 2016 Population and Housing Census based on deaths that occurred 12 months preceding the census suggest that the number of reported deaths has more than halved recording 17,657 deaths in 2016 as opposed to 49,343 deaths in 2006. The estimates of life expectancy at birth for Lesotho are 56.0 years for both sexes, 51.7 years for males and 59.6 years for females. The results reflect an improvement in life expectancies despite high prevalence of HIV and AIDS. The crude death rate from the 2016 census was 11.5 deaths per 1,000 population a decline from 26.5 deaths per 1,000 populations in 2006. [2016 PHC page 89].

84. The survival chances of infants differ according to sex. Mortality is most prevalent in males than it is in females at early ages. For instance, there were 102.5 male infant deaths in 2006, as opposed to 83.9 female infant deaths. In 2011 there were 80.0 male deaths compared to 77.0 female deaths that occurred before they reached age one. The 2016 Census also suggests 56.6 male infants died before completing their first birthday compared to 46.5 female infants. In 2016 population and housing census, the results show that the mean number of children ever born, surviving, and dead increases with increasing age. The sex ratio at birth is between 102 and 105 indicating that there are more males at birth than there are females. Infant mortality rate is 53.3, child mortality rate is 28.4, and under-five mortality rate is 80.2. [2016 PHC page 77].

85. Adolescent Health Programme aims at educating young girls about reproductive health issues so they avoid falling pregnant at a young age and contracting illnesses; this includes counseling services on sexual and reproductive health matters. Through school health education and life-skills programme, pupils are taught how to maintain healthy bodies. Key policies adopted in this regard include, among others, The National

Reproductive Health Policy 2008 which considers special needs of the different target populations and the need to abide by conventions guarding against discrimination based on gender, disability, culture and social status. The policy provides for amongst others, essential Sexual and Reproductive Health Package aimed at ensuring safe motherhood, family planning, infertility, reproductive health and GBV, male involvement, access to sexual and reproductive health services. There are adolescent corners in each Government Health services providers and some of the NGOs such as LPPA provides reproductive health education by peers. Currently out of 18 hospitals in the country, only 2 do not have corners due to space challenges but nurses are trained to offer friendly health services.

86. Health services for pregnant women are provided through the Safe Motherhood Programme which focuses on the wellbeing of the mother. It aims at reducing the number of deaths and illnesses associated with pregnancy and childbirth. Through the programme, women of reproductive age, i.e. 15 to 49 years, are taught and encouraged to take good care of their bodies by attending regular medical examination to identify curable illnesses such as breast and cervical cancer at an early stage. They are also educated on activities that increase the risks of illness to their bodies as well as those that can extend the individual's life expectancy. Mothers are generally encouraged to breastfeed their newborn because breast milk is sufficient and beneficial for infant nutrition in the first six months.

87. In Government hospitals and clinics, pregnant women receive free ante-natal check-ups and thereafter their new-born babies are entitled to free immunization course up to the age of 5 years including the vitamins and nutritional supplements. The prevention of mother-to-child transmission (PMTCT) programme was introduced in Lesotho in 2003. It includes provision of continuous care, treatment and support for infected mothers, their partners and children. NGOs, such as the Institute of Development Management and Lesotho Plan Parenthood Association, have formulated programmes offering training and counseling on PMTCT and HIV and AIDS. Mobile clinics are provided for hard to reach areas to ensure women have access to health care services. All these services are provided almost for free at all Government hospitals and clinics (at a fee equivalent to \$1).

88. The Ministry of Health offers free services to all SRH and HIV services. The Prevention of mother to child transmission of HIV program that has been established to reduce new HIV infections among children and to provide HIV services to all infected mothers and their families was established in 2003. In the first contact with every pregnant information and counseling is offered on the package of services offered including HIV testing for those who opt in for the test. This is done with the consent of women including adolescent mothers, so no one is forced to test for HIV but encouraged to do so. If the woman opt out counseling continues until post-delivery and their exposed infant is given prophylaxis. Option B+ was adopted in 2013 whereby all women are initiated on treatment when they found to be HIV positive. The Government has not received any claims of force HIV testing or forced sterilization without the women consent. However, there is an NGO which has made such claims but when asked to provide the Ministry of Health with such information so that proper action could be taken the organization went silent.

Right to life and excessive use of force by law enforcement agents (arts. 6, 7 and 21)

Reply to paragraph 11 of the list of issues prior to reporting

89. Section 5 of the Constitution states that no person shall be deprived of his or her life. Lesotho has taken note of the international trend towards the abolition of the death penalty. The death penalty has not been carried out since November 1995. Those who have been sentenced to death are either commuted to life imprisonment or given longer years in prison by the Appeal Court.

90. Lesotho retains the capital punishment for offences such as murder with extenuating circumstances, treason and sexual offence (statutory rape). However, there are appropriate judicial safeguards against the capital punishment as stipulated in the Constitution such as the Pardons' Committee and the prerogative of mercy by His Majesty.

91. The matter of repealing legal provisions related to death penalty has to be referred to the public for referendum which report will inform the decision of Government.

92. Ratification of the Second Optional Protocol to ICCPR will depend on the outcome of the referendum as the State will be guided by public opinion.

93. Since the death penalty is still contained in our Statutes as a limitation to the right to life, its abolition will be tabled for national debate as part of the National Reform Process.

Reply to paragraph 12 of the list of issues prior to reporting

94. The use of excessive force by the police and security forces to prevent flight of suspects or to secure confession from them is prohibited. Trainings that the police are exposed to have resulted in reducing this practice to a large extent. This is evident from the diminishing number of cases of assault and attempted murder filed by civilians against the Commissioner of Police and the criminal and disciplinary charges that had been laid against the police themselves.

95. In the case of *Machepha v Commissioner of Police and Another CIV/T/223/2005[2007]*, the plaintiff alleged that she was arrested and detained at Hlotse Police Station by the first respondent. The said police officers were acting within the scope and cause of their employment as servants of the crown, plaintiff being alleged to have committed theft and the reason for her detention in police cells at Hlotse Police Station. Subordinates of the first respondent had handcuffed plaintiff's feet and hands, choked her with a plastic bag and assaulted her. They further took plaintiff at midnight to Hlotse river her feet and hands cuffed, threw her into the river and interrogated her. She then issued summons against the Commissioner of Police and Attorney-General claiming, among others, payment of M50, 000.00 (approximately \$3,000) as damages. The Court found that the plaintiff was subjected to aggravated assault. It then ordered payment of the sum of M30, 000.00 (approximately \$1800) as damages.

96. Police Service Act 1998 provides for an inspector of police to monitor police performance. It also provides for a Police Complaints Authority which investigates and reports on public complaints about police conduct. The Police Complaints Authority reports to the Commissioner of Police and the Director of Public Prosecutions.

97. On the use of force, the police are guided by the statutes and other instruments, some of which are listed below:

- Section 5(2) of the Constitution provides that without prejudice to any liability for a contravention of any other law with respect to the use of force, a person shall not be regarded as having been deprived of his life in contravention of the section if he dies as the result of the use of force to such extent as is necessary in the circumstances of the case.
- Section 42 of the Criminal Procedure and Evidence Act 1981 provides that where a person has committed or is reasonably suspected to have committed any of the offences mentioned in Part II of the First Schedule and is fleeing or escaping arrest and there is no other means of apprehending or preventing the escape other than killing the person, such killing shall be deemed justifiable homicide.
- Section 32 of the Penal Code Act 2010 provides that no offence is committed by a person who applies reasonable physical force to another when it is necessary for the furtherance of public justice, execution of lawful orders, prevention of crime, apprehension of criminal suspects, defence of person or property and the lawful and reasonable chastisement of children.
- The SARPCCO Code of Conduct is an important yardstick in establishing what is expected from police and how they should behave in the betterment of policing and the promotion of human rights in the Region. The Standard on the use of force and firearms is that police officials may only use force when strictly necessary and to the extent required for the performance of their duties and adhering to national legislation and practice.

- The Office of the United Nations High Commissioner for Human Rights - Human Rights and Law Enforcement Trainer's Guide on Human Rights for the Police is also used by our training officers when they train others in the use of force and firearms.

98. On or around the 30 April 2014, police were deployed at or near Queen 'Mamohato Memorial Hospital to disperse an unlawful strike by the nurses. There was never use of live ammunition but rubber bullets while dispersing them. Even those that were injured, none of them had been shot at, rather sticks were used and when it came to shootings, the police used teargas and rubber bullets and not live ammunition. Section 5(2) of the Constitution, in particular its allusion to protection of property, as it relates to self-defense, is compatible with article 6 of the Covenant as interpreted in the Committee general comment 36 (2018) in para 3.

Reply to paragraph 13 of the list of issues prior to reporting

99. In order to address the allegations of extrajudicial killings and enforced disappearances by law enforcement officials, in particular members of LDF and LMPS, particularly after 2016, several safeguards have been put in place. Legislative measures in this regard include prohibition of unlawful detention and taking of hostages in terms of the Penal Code Act 2010. Judicial measures include the remedy of *habeas corpus* which enables the family or relatives of the disappeared person to demand the person's whereabouts. An example of such cases include that of *Khetheng vs Commissioner of Police and others...* . Police Constable Mokalekale Khetheng had disappeared whilst in Leribe police custody for alleged arson at the residence of Head of Police in Mokhotlong district. In 2016, his father lodged a *habeas corpus* case in the High Court to determine his whereabouts after he had received unsatisfactory response from Leribe police. In the end it appeared that PC Khetheng had been murdered and buried as unknown person. His body was exhumed barely three months of the current government regime and a proper burial arranged by the family. The police officials involved in his killing have appeared before courts.

100. Other cases which involved such killings and enforced disappearances and measures taken to see they are promptly and thoroughly investigated, that the perpetrators are prosecuted and punished with sanctions commensurate with the gravity of the crime include:

- Thelingoane 'Mota – a murder case was opened per Rural Headquarters RCI 55/07/17 after the deceased was found dead after some days of allegedly missing. Investigations are on-going and no one has been remanded. Mofoka police officers were implicated because they had stopped a vehicle carrying some men who were from a mortuary and conducted a stop and search. However, such police officers released those people to continue with their journey after searching them and only learned of the disappearance of the deceased when he was found dead by people who were going to church.
- 'Mamoleboheng Besele – we do not have a records relating to these names. All police posts were consulted and none have registered the killing of the person referred to.
- Tumelo Mohlomi – a murder case was opened per Roma RCI 63/04/17. Two members of the Lesotho Mounted Police Service, namely Police Constable Lefa Phihlela and Ts'eliso Motsoku were arrested and remanded per Maseru CR 0384/17. The matter is pending trial while waiting for ballistic report.
- Khothatso Makibinyane, Paseka Pakela and Lekhoele Noko – the case of was opened per Pitso-Ground RCI 61/05/17. Members of the Lesotho Defence Force, namely Brigadier Rapele Mphaki, Captain Mahlehle Moeletsi, Warrant Officer Liphaphapang Sefako, Sergeant Lekhooa Moepi, Corporal Mahlomola Makhoali, Corporal Mots'oane Machai, Private Nemase Faso, Private Nthathakane Motanyane and Private Tieho Tikiso were arrested and remanded into custody and they remain in custody while awaiting trial per the case *R vs Litekanyo Nyakane and others CRIT/0003/2018*.

101. There has not been any measures to ensure victims receive full reparation including adequate compensation with regard to enforced disappearances probably because criminal cases take long to be completed and would be the basis for claims against the Commissioner of Police or Commander LDF. With the high profile cases referred to above, once they are complete the Government would be anticipating such claims.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 6, 7, 10 and 24)

Reply to paragraph 14 of the list of issues prior to reporting

102. In order to show her commitment in eradicating torture by state agents, Lesotho ratified the Convention Against Torture (CAT) in 2001 and she is now preparing her initial report on the same through a simplified reporting procedure. Section 8 (1) of the Constitution expressly prohibits torture, inhuman and degrading treatment. It provides that 'no person shall be subjected to torture or to inhuman or degrading punishment or other treatment'. Section 8 (2) provides that 'nothing contained in or done under that 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 authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before coming into operation of this Constitution'. Freedom from torture is the only right, under the Constitution that is absolute. Notwithstanding this provision, torture is not expressly defined in any statutory law. There is no specific offence of torture and the courts have not defined it in their jurisprudence.

103. Lesotho has made significant progress in domesticating CAT. The Penal Code Act 2010 domesticates the Convention in part under section 95 and 96 which criminalize war crimes and crimes against humanity. Section 94(2)(b) defines torture in similar terms as CAT. The Ministry of Law has initiated steps towards adoption of anti-torture law. Cabinet has approved drafting of policy on torture which will lead to a comprehensive law in line with Lesotho's obligations to prevent and punish torture and provide redress to its victims.

104. Section 31 of the Penal Code Act No.6 of 2010 is used for prosecution while Lesotho Mounted Police Service (Administration) (Amendment) Regulations, 2004 23A 1(v) is used for disciplinary action.

105. Given the limited resources, the Government is not currently able to establish an independent committee for receiving and investigating complains of torture. Nevertheless, several oversight bodies are in place and have the mandate of investigating cases of torture, e.g. the Police Complains Authority and the Office of the Ombudsman. PCA's powers are to investigate, report and recommend to the Commissioner of Police the action to be taken against the involved police officers involved in torture of detainees in custody. The Lesotho Mounted Police Service (LMPS) has established Complains and Discipline Offices in all districts that deal with complaints against the police at all levels.

106. Section 76(1) of the Police Service Act is used for compensation of victims where the police officer involved was on duty thereby making the Commissioner of Police vicariously liable.

107. There have been cases of torture and the courts have found the Government agents responsible for the said acts of torture. An example here is the case of *Commander of Lesotho Defence Force and Others V Letsie C of A (CIV) 28/09*. In this case, the respondent, an officer in the Lesotho Defence Force, was arrested and detained until he was released in pursuance of an order granted by Monapathi J. During his detention, he was tortured by members of the Military Intelligence and, or with the assistance of, members of the Lesotho Mounted Police, all of whom, it is common cause, were acting in the course and scope of their employment. The respondent then instituted an action for damages against the appellants in which he claimed payment of the sum of M750 000.00 (approximately \$45 400). The respondent and a doctor in private practice who examined him shortly after his release gave evidence. The only issue in the court was the quantum of damages. The trial court awarded the respondent damages in the sum of M340 000

(approximately \$20 600), made up of M250 000 (approximately \$15 100) for pain and suffering and M90 000 (approximately \$5 400) for contumelia.

108. Section 32 of the Penal Code is compatible with article 7 of the Covenant because article 7 prohibits torture, cruel, inhuman or degrading treatment or punishment, whereas section 32 condones use of *reasonable force* where necessary and by reasonable force it means there is no infliction of severe pain or suffering.

Reply to paragraph 15 of the list of issues prior to reporting

109. There is no legislation that explicitly prohibit on corporal punishment of adults and children in all settings. Lesotho has ratified Convention on the Rights of a Child and the African Charter on the Rights and Welfare of Children has a mandate to protect children's rights. As a result, she adopted the CPWA 2011, which stipulates that "corporal punishment and public humiliation shall not be elements of diversion" (Section 127). Also, Section 16 strictly controls punishment in homes, in that it mandates the parents to consider the age of the child and ability to understand the purpose of the punishment. Further, Education Act 2010 prohibits corporal punishment in schools in accordance with section 8 of the Constitution which provides that a person shall not be subjected to torture or to inhuman or degrading punishment.

110. The Penal Code Act 2010 provides a legal defence for the use of corporal punishment of children, stating in Section 32 that "No offence is committed by a person who applies reasonable physical force to another when this is necessary – ... (b) for the lawful and reasonable chastisement of children."

111. Corporal punishment is lawful in penal institutions. The Prison Proclamation 1957 authorizes the imposition of corporal punishment for certain prison disciplinary offences although it has fallen out of practice.

Reply to paragraph 16 of the list of issues prior to reporting

112. The Constitution as the supreme law in Lesotho contains a bill of rights in chapter 2. Section 8 (1) therefore provides that "no one shall be subjected to torture or degrading punishment or other treatment". The constitution therefore guarantees the freedom from torture, but excludes lawful punishment from being regarded as torture, which exception is also contained in article 1 of CAT. The constitution thus protects freedom from torture as a non derogable right. This is in accordance with article 2 (2) of CAT and article 4 of ICCPR in compliance with state's obligations under customary international law as well the African Charter. Therefore, by assaulting or torturing members of the public or committing any acts which are cruel, inhuman or degrading by members of the Lesotho Defense Force violate constitutionally, protected rights.

113. Equally relevant to State's obligation against torture is the obligation to provide redress to victims of human rights violations. In this regard, section 22 of the Constitution is inconformity with article 2 (3) of the Covenant as it provides that a person whose rights have been violated may apply to the High Court for redress.

114. Despite this, challenges remain: it does not define torture; and does not criminalize torture as a distinct criminal crime nor contain any provisions which it may be inferred that torture is a crime.

115. Although, there is no law, which criminalizes torture in Lesotho, the legal system complies with this aspect of the obligation to prevent torture in that section 228 of the Criminal Procedure and Evidence Act of 1981 rejects the use of evidence that was obtained through the use of torture in judicial proceedings. Only a confession given freely, voluntarily by the accused and reduced to writing by a magistrate is admissible in courts of law.

116. This section was interpreted by the Lesotho Court of Appeal in the case of *Mabophe and Others V Rex 1993/1994 Lesotho Law Reports 154*. In this case, the court held that a pointing out, done consequent to torture of the person who makes it, is not free and voluntary and therefore inadmissible as evidence to prove commission of a criminal offense.

117. The Penal Code does not prohibit torture as a distinct crime, as a result of its omission, acts of police brutality, which amount to torture, are absorbed into other criminal offences, such as assault, aggravated assault, murder, culpable homicide and indecent assault.

118. It has also criticized the approach of charging perpetrators of torture with other offences other than torture as being inconsistent with the obligation to take legislative measures against torture. It stated that this approach fails to highlight the gravity of the offence of torture and consequently perpetrators do not get appropriate punishment and the victims are not availed the redress, which they deserve. Furthermore, this approach makes it difficult for the State to track, report upon and respond effectively to incidences of torture.

119. There is no legislation that specifically criminalizes torture and thus victims of torture get monetary compensation by lodging civil case against the ministry of police or defense. On the other hand, there is little information given on actions taken against such officers. To illustrate this, up to August 2019, there were 11 cases pending before courts and 10 others recommended for inquiry, while 30 police officers were to appear for criminal prosecution or disciplinary hearing. It is not clear whether the said cases were just for 2019 or prior years and what the outcome of each cases is.

120. To address this there are on-going educational campaigns and information dissemination against torture perpetrated by the security and law enforcement agencies. Also, on recruitment, their training includes this as a module and regular refresher courses with a view to conform to the international standards. In 2019, the Security Sector Reforms from Malawi, South Africa and Zambia trained and capacitated security and law enforcement agencies on the human rights standards on the use of force, torture and inhumane treatment.

121. The Police Complaints Authority (PCA) is a statutory body established in terms of Section 22 of the Police Service Act of 1998. It is a civilian body with a mandate to oversee policing, its mandate include: 'the responsibility for investigating and reporting to the Police Authority (whom in terms of the Act is the Minister) on any complaint referred to it by Police Authority or the Commissioner, which is a complaint from the members of the public about the conduct of a member of the police service.

122. Although the office is only in Maseru, there is no restriction on its geographical reach as officers do travel to other districts as and when necessary to carry out its work. The challenge is in its establishment under the Police Service Act and making it responsible to the Minister of Police as that compromises its independence and ability to embark on independent investigations.

123. In terms of Section 22 of the Police Service Act, members of the public do not have direct access to the PCA but must either go through the Commissioner of Police or the Police Authority who then forward such complaints to the PCA. It only investigates cases referred to it by the Minister of Police. However, where it gets reports from the public, they record the complainant's statement and submit it to the Minister for referral.

124. The challenge with this arrangement is that not all cases taken to the Minister are referred back to the PCA for investigations, and the law does not require the Minister to justify failure to refer such cases. Furthermore, majority of the people do not know the PCA.

125. After completing the investigations, PCA makes recommendations in the form of a report, to the Commissioner of Police for implementation or otherwise of the recommendations and cannot publish its findings or directly refer cases to criminal prosecution.

Reply to paragraph 17 of the list of issues prior to reporting

126. In order to address the challenge of overcrowding in detention facilities, there has been establishment of restorative justice system and diversion programmes for minor and non-violent offences. Courts also opt to impose non-custodial sentences including community service. Inmates who have been detained for a long time are also released on parole on account of good behavior. Speedy Courts Trial Act sets time limit of 60 days for

remand of inmates in custody and its implementation has significantly reduced overcrowding in prisons.

127. The Lesotho Correctional Service (LCS) has developed educational programs which entail, literacy and numeracy, formal and non-formal education including life skills. Recreational programs which include music, cultural dances, drama and sport activities have also been introduced in detention facilities. Further, LCS has established the Legal and Human Rights Unit which is tasked to train and empower both inmates and staff on human rights issues with a view to address inmate violence, inmates abuse from Officers and other offences.

128. The Correctional Service has developed HIV and AIDS Policy and Strategic Plan to improve the general health of inmates and to fight the spread of infectious diseases including HIV and AIDS. Inmates receive access to primary healthcare services at the Government expense as there is an on-site nurse, and there is a monthly visit of a doctor for better care. Inmates and staff receive training on health issues such as HIV/AIDS and other communicable diseases. New inmates get screened for Tuberculosis (TB) and HIV and receive free HIV testing, counselling and treatment services. Inmates are also allowed to be consulted and treated by their own private medical practitioners at their own expenses.

129. Lesotho Correctional Service is confronted by challenges such as reduction of prison population; special facilities for people with disabilities; improvement of prison food and nutrition; containing the spread of HIV and AIDS pandemic and other transmissible illnesses. All these are attributable to inadequate budget/funding but each fiscal year there is improvement of prison infrastructure.

130. In July 2013, there was a riot by inmates at Maseru Central Institution which was triggered by the officers who had embarked on strike. Several warning shots were fired as part of the measures that were taken to suppress such riot but however, no fatalities resulted.

131. The Ombudsman, the Judiciary and Non-Governmental Organizations such as Transformation Resource Centre carry out visits to various correctional facilities in the country. The international community such as the International Committee of the Red Cross (ICRC), The African Commission on Human and Peoples' Rights (2012 and 2018) have also visited the places of detention in the country on several occasions and issues of overcrowding and lengthy time spent on remand were a concern amongst others. From their reports prisoners and detainees have the right to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. Administrators at each prison deal with complaints and special officers answering directly to the prison wardens conduct investigations. In one visit, inmates interviewed at the Maseru Central Prison reported authorities were inconsistent in their responses to complaints, with some problems corrected.

132. There are sixteen (16) cases of inmate-on-inmate violence which were reported since January 2019. Disciplinary measures were taken in all of them guided by the Lesotho Correctional Service Act 2016. One the cases being a sexual offence was referred to the Police.

133. Between 2009 and 2010, there were reports of inmates ill-treatment that happened in Quthing Correctional facility. The Officers concerned were reprimanded and redeployed to other institutions as corrective measure. In January 2019, eight cases of physical abuse of inmates by officers were reported and disciplinary measures were taken against such officers.

134. In order to align itself with Fundamental Principles of the Standard Minimum Rules for the Treatment of offenders, and the White Commission Report on Prison Conditions in Lesotho, the Government demonstrated its commitment to improving prison conditions by demolishing and reconstructing prisons that were beyond repair; by effecting major repairs to uninhabitable institutions; improving nutrition and health standards. Maseru Central, Mofale's Hoek, Leribe and Mafeteng Open Camp Correctional Institutions have undergone massive renovations. Maseru female institution is also currently being renovated. Mafeteng was completely demolished and the process building a new one is underway.

Trafficking in persons, elimination of slavery and servitude (arts. 6, 7, 8 and 24)

Reply to paragraph 18 of the list of issues prior to reporting

135. In terms of the Anti-Trafficking in Persons Act 2011, all forms of trafficking are criminalized, and penalties are commensurate with the gravity of the offence. Part II of the Act spells out those acts that constitute acts of trafficking and they include those acts done under pretext of domestic or overseas employment or training or apprenticeship, for purpose of prostitution, pornography, sexual exploitation, forced labour, drug trafficking, slavery, involuntary servitude or debt bondage. In addition to this Act there is also Children Protection and Welfare Act 2011 which provides for criminalization of trafficking of children under its Part IX. In realization of the seriousness of this offence, both Acts provide for heavy sentences in case of conviction that range up to a fine of two million Maluti (M2m) and or life imprisonment.

136. The Commissioner of Police is in the process of establishing a department or unit that will deal specifically with the issue of trafficking. In the interim, there are officers under the Child and Gender Protection Unit (CGPU) that are assigned and trained in the detection and investigation of trafficking in persons. There is also similar arrangement in the office of The Director of Public Prosecutions (DPP) as there are prosecutors who are assigned and trained to deal with cases of trafficking in persons. There is also a pilot project called *“Counter Trafficking and Addressing Irregular Migration Through Strengthening Border and Migration Management, Sensitisation on Trafficking in Persons and Building Capacity of Law Enforcement and Border Officials in Lesotho”* intended to address the existing challenges at the key port of entries and counter trafficking targeting vulnerable communities living near hot spots along the official and unofficial border crossings in Lesotho.

137. Currently there are about 50 cases of trafficking reported and in thirteen of those the perpetrators or suspects have been remanded before courts of law. The challenges include the victims not being available for trial. To support victims, there is the office of Victims of Crime Office established under the Ministry of Justice to assist victims of crime in general not specifically human trafficking victims. The office generally eases the victims’ interaction with the criminal justice system. The office provides emotional and practical support to people affected by crime.

Reply to paragraph 19 of the list of issues prior to reporting

138. To eliminate child labour in the country the Ministry has repealed sections 228 and 229 of the CPWA in the new amendment bill, the implications of which will be that a child below the age of 18 cannot be employed into any type of work.

139. The following measures are being taken to implement the recommendations of the Committee on the Rights of the Child relating to issues of child labour and its worst forms:

(a) Provide sufficient resources to fully implement APEC and address in particular the exploitation of children for herding, domestic work and sexual exploitation, and conduct a study on the worst forms of child labour.

140. The Ministry is currently undergoing restructuring process which will see the formal establishment of the Inspectorate which will have its own budget, transportation, equipment and an increase in number of labour inspectors employed and dedicated to child labour. The new structure also suggests that there will be labour inspectors who will be responsible for conducting labour inspections in the informal sector; including domestic work and herding. Moreover, the Ministry has secured funding to conduct Rapid Assessment on the Worst Forms of Child Labour.

(b) Widely disseminate the Minimum Employment Guidelines for Shepherds/Herdboys (2014) and undertake awareness-raising programmes, including campaigns.

141. The Ministry of Labour and Employment holds monthly awareness campaigns in the form of public gatherings and radio programmes to sensitize the public. Furthermore, the Ministry is also in the process of translating and simplifying the 2014 Guidelines for Herders.

(c) Collect data on children involved in different types of child labour and establish a child-specific complaints mechanism that can receive, monitor and investigate reports on cases of child exploitation, and raise awareness among children of the mechanism.

142. The Ministry of Labour and Employment is intending to carry out a Rapid Assessment on the Worst Forms of Child Labour and once the results of the study have been disseminated the Ministry will be able to put in place child-specific complaints mechanisms and the study will also assist in on development of sector-specific awareness campaigns.

143. Legislative measures that seek to protect children from exploitative labour include the Labour Code Order no. 24 of 1992 and the CPWA 2011. The Code criminalizes employment of children in any commercial or industrial undertaking other than a private undertaking in which only members of the child's own family are employed. It goes further to categorise types of work that a child is permitted to do including those approved by department of Education. However, to further protect children from worst forms of child labour, promulgated the CPWA which exclusively prohibits exploitative child labour, and defines labour to be exploitative if it deprives or hinders a child access to health, education or development. It prohibits engagement of children in hazardous employment and industrial undertakings and creates offences which attract penalties. The CPWA sets the minimum age for admission of children to employment at 15 years. It also provides that children of 13 years and above may be engaged in light work. Light work is activities that do not interfere with a child's development and does not affect the child's attendance at school. The CPWA aligns with the requirement of the Education Act, 2010 that children be enrolled in primary schools also safeguards children from being involved in any form of labour that interferes with their entitlement to education.

144. The ILO cut off age for employment of 15 years still remains a concern to the government especially in relation to the CPWA amendment draft bill 2018, which continues to advocate for 18 years as the recognised global definition of a child, therefore there is a need to harmonize the respective provisions. Further, the Labour Code Order is currently under review spearheaded by the Ministry of Labour and Employment with the technical support of the International Labour Organisation (ILO).

Liberty and security of persons (arts. 9 and 17)

Reply to paragraph 20 of the list of issues prior to reporting

145. Measures to eliminate arbitrary arrests by law enforcement agents and to respect the 48-hour period of detention before being brought before a magistrate include:

- There is pre-service and in-service training of police officers where they are taught Criminal Procedure including the Criminal Procedure and Evidence Act No. 9 Of 1981 (CP&E). Part V thereof deals with arrests. Section 32 deals with procedure after arrest and explicitly provides that a person be detained within a reasonable period which does not exceed 48 hours unless warrant for further detention has been obtained.
- There are also trainings on Human Rights which aim at making police officers aware that arbitrary arrests are an infringement to one's human rights and should be avoided.
- The Police Directorate, being the one responsible for such payments also holds workshops for police officers and they have been made aware that due to lots of monies being paid as a result of civil claims, one will end up having to be surcharged where investigations reveal that they acted recklessly in performing their duties.

- Police officers are also made aware that those who act outside the confines of the law or do not perform their duties according to the expectations are corrected in terms of LMPS (Administration) Regulations 2003 as Amended in 2004, that is, disciplinary action whose procedure and punishments are laid down in Part V of the Police Service Act, will be taken against them.

146. Respect for the practice of 48-hour period is the protection of the right to liberty as hailed in our Constitution and the Covenant. Arbitrary arrests can be curtailed by inculcating the culture of strict observance rule to investigate and apprehend and not to apprehend and investigate.

147. Currently the Correctional Institutions have 26.7% of pre-trial detainees among the prison population. The average time spent in pre-trial detention is 30 days. Lesotho has Speedy Court's Trial legislation which allows the court to release accused persons at the expiration of 60 days if trial does not commence without reasonable grounds except under exceptional circumstances. In lesser serious offences, accused persons are released on their own cognizance. In some serious offense, they are ordered to furnish a surety.

148. The accused is served with criminal summons so that he can go to court on date of trial or remand. The accused is warned to go to court on the date of trial or remand and this usually happens in Road Traffic offences or family feuds. The police can decide not to oppose bail when one is being remanded especially in cases where one is not a habitual offender; is charged with a less serious offence and he will be given bail conditions.

149. In terms of our criminal procedure, section 47 of the CP&E, a policeman above the rank of Warrant Officer is allowed to search any personal premises if the delay in obtaining such search warrant would defeat the object of the search s.47 (1). The safeguards to limit the abuse are that the search shall be made during the day and in the presence of two more respectable persons of the locality in which the search is made s.47(2). Where one is found to have abused such powers, disciplinary action can be taken against them.

Administration of justice (art. 14)

Reply to paragraph 21 of the list of issues prior to reporting

150. Measures taken to strengthen the capacity of the judicial system are part of the Reforms Process and will be dealt with by the National Reforms Authority.

151. The key word is development. Lesotho does not have a Judicial Training institute. There is no budget put in place to refer its cadre to institutions of neighbouring countries. However, the Magistracy and the highest Judiciaries are manned by Professionals from Law School whose appointment process is through a Judicial Service Commission. Judicial Training Sessions are seldom when there is a donor fund.

152. For quite long the Judiciary has been hamstrung by a shoe string budget which affects equitable distribution of logistics and human resource constraint is critical at the highest court where the High Court is manned by about twelve Judges only and the Court of Appeal is an ad-hoc court which sits twice a year. Notwithstanding this, since promulgation of the Administration of Judiciary Act 2011, the Judiciary has a separate budget although it may not be sufficient.

153. A clarion call has been made by the Chief Justice to the Executive to increase the budget and thus enable the increase in human Resource and capacitate the Judiciary with an in-Service Training Institute for continuous Judicial Education as hailed in the Commonwealth Guidelines.

154. The measures taken have been to continuously appeal to the executive to provide funding for recruitment of more Judges at the High Court. Government efforts to decentralize the High Court to other two regions being North and South are fruitful as the Northern region Complex has been completed. In order to reduce delays in the administration of justice and backlog of cases, the High Court Rules were amended to include the Court Annex Mediation such that it is now imperative that cases start with

mediation to assist with early settlement. Further, the introduction of restorative justice at courts has helped to reduce backlog of cases.

155. Efforts are under way to effectively decentralise the Legal Aid and the Office of the Director of Public Prosecution to enable issuance of Directives from regions and districts. An electronic Case Management System and Case Tracking has been initiated which will curtail unnecessary delays in monitoring the cause for case backlog.

156. The Code of Judicial Ethic is disseminated upon recruitment of judicial officers at all levels. There are also in-house trainings where the importance of judicial conduct is emphasized. Implementation of the judicial ethics could be seen in the case of *Lesupi and Another v The Crown C of A (CRI)10/2011 [2012] LSCA 8(27 April 2012* where the serving magistrates were charged with defeating or obstructing the ends of justice in that they had inserted false entry in the pre-trial remand record of a pending criminal case. They were both found guilty by the trial court (High Court) and they appealed against their conviction. Lesupi lost the appeal while the other was exonerated.

157. The Court of Appeal sessions were delayed since appointment of the Court President had been contested in the courts of law. However, the Court of Appeal successfully held its sessions from 2017.

158. A restructuring of the Judiciary is in progress and a new structure has been approved which creates a permanent Court of Appeal. The new structure remedies the constitutional conflict relating to protocol between the Chief Justice and the President of the Court of Appeal. This was as a result of the proposed reforms for the judiciary and legal profession in line with SADC's 2016 recommendations for the implementation of multi-sector reforms in Lesotho for lasting peace and stability.

Reply to paragraph 22 of the list of issues prior to reporting

159. The Administration of the Judiciary Act was promulgated in 2011 to provide for an autonomous and accountable administration of the judiciary, the judiciary service, a budget of the courts and incidental matters. This is unlike in the past where the budget of the judiciary was controlled by the parent Ministry (Justice). The judicial officers are appointed by the Judicial Service Commission. The challenge that the country still faces is that recommendation for appointment of the Chief Justice and the President of the Court of Appeal is by the Prime Minister and in recent times it has proven to be controversial.

160. Lesotho adheres to the basic democratic principles of law as hailed in the International Treaties and the Lesotho Constitution. The country enjoys separation of powers and has three independent branches of governance as hailed in the Latimer House Guidelines. Our Judges enjoy security of tenure and are appointed on permanent and pensionable terms.

161. The country is undergoing national institutional reforms since the Phumaphi Recommendations. The recommendations for the national dialogue on reforms included a review and variation in the process of the Appointment of the Chief Justice, High Court Judges and of the Judges of the Court of Appeal and other Judicial Officers. The Reforms have recommitted to broaden the composition of the Judicial Service Commission in charge of appointment of all Judicial Officers of all ranks.

162. The Southern African Development Community (SADC) recommended that these so-called political cases be tried by solicited foreign Judges, however, the defendants have contested the appointment of foreign Judges alleging that they are not likely to be impartial and advocate for being tried by local Judges which legal battle has become a vehicle for delay of the trials. The Government has already recruited three foreign Judges. There is a perennial budgetary constraint in the judiciary which curtails the expedition of the recruitment process. Partiality and intimidation are a perception though certain local Judges have recused themselves or are likely to do so.

Right to Privacy (art. 17)

Reply to paragraph 23 of the list of issues prior to reporting

163. Data Protection Act of 2011 enshrines principles for the processing of personal information and aims to protect the privacy of individuals. It gives effect to the right of privacy and ensures that the benefits of using information do not weaken the protection of personal data. It thus seeks to balance the rights of individuals with the promotion of business. The Data Protection Commission as envisaged by the Act has not yet been established.

Freedom of expression and assembly (arts. 2, 19 and 21)

Reply to paragraph 24 of the list of issues prior to reporting

164. Newspapers are registered pursuant to the Printing and Publishing Act of 1967 and still must obtain certificate of registration. The process to obtain certificate of registration for newspapers is governed in terms of section 8 of the Act, as follows:

(a) The notice of intention to print and publish newspaper shall be given to the Register General;

(b) Payment of the fee prescribed in second schedule of the Act;

(c) The notice shall include the proposed name of the newspaper, name and residential address of each proprietor, publisher printer, manager, responsible editor and such information which may be required by the Registrar General;

(d) In the case of the newspaper which is the proprietor or is to be printed by an association of persons whether corporate or incorporate the application shall include the name and the residential address of the manager, chairman or other chief officer and of every director trustees or member of the committee or board of the association.

165. The Registrar General may, unless otherwise ordered by the court, refuse to issue certificate where the notice of the name of the newspaper has similar name with one already registered or which so nearly resembles that name as to be calculated to deceive in terms of section 8 (1). The Applicant may challenge such refusal based on reasonable grounds.

166. The Lesotho Communications Authority is a statutory body established in terms of the Communications Act 2012. Its mandate is to regulate communication sector in Lesotho. The mandate is limited to regulation of telecommunications, postal and broadcasting sector. This mandate entails granting, suspension and revocation of licences for provision of communications services; promoting fair competition; approving tariffs; managing the radio frequency spectrum; empowering and protecting consumers; type-approving terminal equipment, facilitating deployment of communications infrastructure and provision of good-quality communications services and other related responsibilities.

167. Members of the Board are appointed by the Minister of Communications, Science and Technology (“the Minister”). Prior to making appointments, an advertisement is published calling upon applications from suitably qualified candidates to submit expression of interest for appointment to the Board.

168. Broadcasting licences are only applied for when the Authority has made an invitation to apply. The invitation prescribes application requirements which must be complied with by the applicants. Prior to issuance of a licence, the Authority must, among others, satisfy itself that an applicant has the financial and technical capability to provide broadcasting services. The Authority also holds public consultation before deciding on any application for broadcasting licence. The decision to approve or reject application for broadcasting licence rests with the Board of the Authority. The decision to grant or reject application has to be made within 90 days of receipt of the application.

169. The Authority enjoys the right and legal protection to perform its functions without control or interference by any person or authority. The highest decision-making body on all matters within the jurisdiction of the Authority is the Board of Directors. Transparency in

the appointment of Board Members as outlined in 2 above, further enhances the independence of the Authority. The Board Members are also protected from arbitrary removal through provisions that stipulate instances when a Board member may be removed.

170. The Minister appoints members of the Broadcasting Disputes Resolution Panel (BDRP) whose mandate include resolution of all disputes regarding broadcasting content. The BDRP is also charged with preparing a broadcasting code which must be approved by the Minister. The Communications Act empowers the Minister to issue an emergency suspension order for 72 hours if he or she has reason to believe that continued operation by a licensee poses an imminent threat to national security or public order. Suspension beyond 72 hours must be approved by a court of law. However, under normal circumstances where there are no emergency issues of national security or public order, the power to suspend or revoke existing licences rests with the Authority. In the exercise of such powers, the Authority is bound to follow due process. Further, Moratorium on new licences since 2006 Amendment Act to LCA Act of 2000 has been lifted as new application were received and dealt with accordingly after the promulgation of the Communications Act 2012.

Reply to paragraph 25 of the list of issues prior to reporting

171. With a view to address the hostilities to which journalist are subjected to, the Ministry of Communications is engaged in the Development of Media Policy and Access and Receipt of Information Draft Legislation. The purpose of Draft Bill is to give effect to the freedom of expression by ensuring access to information and enabling people to use such information for the exercise or protection of their rights. The Bill will provide for whistle-blower protection. The Bill will give every person requesting a record containing personal information about that person from a private body a right of access to that record.

172. Journalists are sometimes subjected to harassment, intimidation including death threats. This is evidenced by multiple occurrence of reports of the journalists who had made reports concerning prominent members of the society including high political figures. Journalists retract from reporting about certain issues fearing for their lives. e. g. editor of Lesotho Times who was shot and injured while some received online attacks. The Reforms Process include the reform of the Media sector in totality. All the safeguards for journalists and the sector will be dealt with accordingly as the sector is part of the National Reforms Authority. The criminal trial on the attempted murder of journalist Lloyd Mutungamiri is still proceeding and has not been finalized yet.

173. The Minister of Communications had ordered suspension of radio signals for a radio station allegedly broadcasting defamatory content against officials solely because all radio signals are hooked on the Government Base Transceiver Station (BTS) and thus give them absolute power to control it. The affected radio stations took the Ministry to the regulatory authority (LCA) and the Ministry was ordered to lift such suspension with immediate effect and the Ministry obliged. The issue has been included in the National reforms such that that BTS will not have the sole control by Government.

174. Obscene Publications Proclamation 1912. The proclamation criminalises the importation, production, sale, exhibition, posting or advertising of indecent or obscene publications including books, newspapers, pamphlets, pictures, and photographs within Lesotho. In terms of sections 2 and 3 any person who imports into Lesotho or who, within Lesotho, produces any indecent or obscene publication is guilty of an offence. Section 7 criminalizes a person who sends by post any indecent or obscene publication or post card, letter etc. Section 8 prohibits the possession of any obscene publication for the purposes of trade; taking part in any business concerned with obscene publications or the advertising of obscene publications. Such activity constitutes an offence.

175. Further, Section 4 sets out a range of actions that the District Council may take in relation to a suspected indecent or obscene publication on any premises. These include: searching premises (including the use of force) and seizing the publication and destroying same, subject to certain procedural requirements. The owner of any obscene or indecent publication is liable to be prosecuted and convicted of any offence that may be proved against him.

176. Consequences of non-compliance with the proclamation Any person who is guilty of an offence shall be liable upon conviction to a fine of up to R500.00 and/or to imprisonment for a period of up to two years.

177. The Sedition Proclamation of 1938 makes provision for the suppression of sedition and seditious publications, and for the punishment of seditious offences. The proclamation applies to publications of seditious material. In terms of section 1 a “seditious publication” is defined as a publication having a seditious intention. A “seditious intention” is defined in section 3 as an intention:

(i) To bring into hatred, contempt or to excite disaffection against the person of the King, his heirs, successors, or the Government of the territory;

(ii) To excite the King’s subjects or inhabitants of the territory to attempt to procure the alteration otherwise than by lawful means, of any matter in the territory as by law established; to bring into hatred or contempt or to excite disaffection against the administration of justice in the territory;

(iii) To raise discontent or disaffection amongst the King’s subjects; and

(iv) To promote feelings of ill-will and hostility between different classes of the population of the territory.

178. However, the definition specifically provides that an act, speech or publication is not seditious if it intends to show that the King has been misled or mistaken in any of his measures, or to point out errors or defects in the government. Section 4(1) of the Proclamation prohibits any person who does or attempts or makes any preparation to do or conspires with any person to do any act with seditious intent. The section further prohibits the sale, distribution or reproduction of any seditious publication. The importing of any seditious publication is also prohibited but an exception is provided in the case where the person has no reason to believe that the publication is seditious. Section 4(2) prohibits the possession of any seditious publication.

179. The Act makes provisions for matters relating to the national security of Lesotho. Section 34 provides that, a person who, in any place whatever, acts or conducts himself in such a manner or speaks or publishes such words that it might be expected that the natural or probable consequences of his act, conduct or speech or publication will under the circumstances, be the commission of the public violence by members of the public generally or by persons in whose presence the act or conduct took place or to whom the speech or publication was addressed, is guilty of an offence.

180. Section 38 empowers the Minister of Defence (“the Minister”) to declare any place to be a protected place in the interests of public safety and section 39 makes it an offence for any person from approaching or entering protected place, vehicle or aircraft without the permission of the person in charge of the place, vehicle or aircraft.

181. Parliamentary Powers and Privileges Act of 1994. The purpose of the Act is to declare the powers, privileges and immunities of each of the Houses of the Parliament of Lesotho, its committees, members and related matters. Section 22 prohibits a person from printing or causing to be printed a copy of any report, paper, minutes or votes and proceedings of the Senate, the Assembly or committee without the authority of the Speaker of the Assembly or the President of the Senate. In proceedings instituted for publishing a report, paper, minutes, votes and proceedings of the Senate or the Assembly, section 23 provides that it is a defence if the report was published in good faith without malice.

182. The Criminal Procedure and Evidence Act of 1981 aims to consolidate and amend the law relating to procedure and evidence in criminal cases. In section 85(b) a magistrate is vested with the power to hold both preparatory examinations and trials behind closed doors (in camera) or to exclude women, minors, and the public generally or any class thereof (this would include journalists), if it appears to be in the interests of good order, public morals or the administration of justice. Section 70(5) prohibits any unauthorized publication by radio, printing or any other method of any information relating to a preparatory examination held in connection with a charge of the commission or attempted commission of an indecent act

or extortion unless the magistrate concerned has given written approval thereto after consulting the accused.

183. The Printing and Publishing Act 1967 Section 10 makes it an offence to import, print, publish, sell or offer for sale, distribute or reproduce printed matter or an extract therefrom which proves to be a clear and present danger to public safety, public order, public morality or fundamental human rights and freedoms.

184. Lesotho has not experienced any prosecution for libel against journalists probably because there is as yet no guidelines under which they would be charged hence the one case of criminal defamation which has been declared unconstitutional.

185. To implement the Lesotho constitutional Court's ruling of 21 May 2018 declaring criminal defamation as unconstitutional, the Ministry of Communications in the process of developing Media Policy which among others will provide for the freedom of expression by the media. The Policy objective will include to repeal criminal defamation or insult laws which impede freedom of speech and expression.

Reply to paragraph 26 of the list of issues prior to reporting

186. The Lesotho labour market is dichotomized as there are two statutes governing two different sectors; private and public sector. The private sector is governed by the Labour Code Order 1992 and it does not require trade unions to have 50 per cent or more representation of employees for them to be registered. In terms of the Labour Code "Workers and Employers, without any distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization of Government." It goes further to provide that the right to freedom of association and collective bargaining shall apply to all workers and employers in all sectors of the economy.

187. On the other hand, the public sector is governed by the Public Service Act 2005 in terms of which public officers can form an association which can only be recognized if it represents 50 per cent of officers. The Ministry of Labour and Employment is in the process of reforming the Labour Code Order with the aim of extending its application to the public sector. Once it comes into operation, that provision will be repealed. The Bill is currently in its drafting stage with the Office of Parliamentary Counsel. There is also a National Labour Policy which is yet to be adopted by Parliament as a guiding tool to achieve the goal of having one labour market and one labour legislation.

188. Allegations that employees face obstacles when attempting to join trade unions are unfounded as in the private sector the Labour Code Order 1992 does not put any prohibition but rather encourage it. The problem is still in the Public section as the Public Service Act 2005 puts stringent provisions for them. For example that they have to be at least 50% of the entire workforce excluding those in managerial positions. However, this is going to be cured by the intended labour law review whereby only one piece of legislation is going to be applicable to ensure equal protection. The exercise is being conducted in consultation with Social Partners and technical assistance from ILO.

Reply to paragraph 27 of the list of issues prior to reporting

189. Lesotho has the Public Meetings and Processions Act of 2010 which regulates public meetings and processions. Section 3 provides that a person who wishes to hold a public meeting or procession shall give a written notice at least seven days before holding such to the police. However, if such a public meeting or procession is urgent, the notice will be given at least two days together with reasons for the urgency. Section 4 empowers the officer to whom such application is made to grant or refuse permission within forty-eight hours and twenty-four hours for urgent applications. Where application is refused, reasons shall be given, and applicant shall be given a hearing.

190. Further, Section 5 gives police the power to revoke permission on the grounds that the intended meeting or procession may pose threat or harm to public safety, security or order, and the applicant will be given a hearing. However, where there has been such refusal or cancellation, the applicant can appeal to the Minister of Police. Further, should

the applicant still be dissatisfied with the decision, he is free to lodge a complaint in the courts of law.

191. In the case of *Socialist Revolutionaries v COMPOL et al CIV/APN/342/2019* the facts were that on 25 September 2019 the applicant (a political party) had lodged the application to hold a procession on 11 October 2019 with the police in terms of section 3(1) of Public Processions and Meetings Act 2010 (the Act). The COMPOL did not reply to the said application until the 8 October 2019. The reply refused such application on reasons of safety in line with section 4 of the Act. The Court held that the Act makes it mandatory for the police to reply within two days of receipt of the application to hold public procession yet police sat on the application for fourteen days before replying which is a breach of section 4 (1) (a) of the Act; it is also mandatory to afford applicants a hearing where it is anticipated that the application will be refused; the reason for refusal did not constitute exceptional and compelling circumstances for freedom of peaceful assembly as provided for in section 15 of the Constitution. The Court ordered that the applicant be granted the permission to hold their public procession. The Court referred to the case of *Lesotho Chamber of Commerce and Industry CIV/APN/405/2011 (unreported)* where the importance of the right to freedom of expression and assembly was emphasized.

192. On or around April 2017 students at the National University of Lesotho embarked on a strike and Roma Police went to the campus to try to control the situation whereby they used rubber bullets. It later transpired that one of the students (Molefi Monare) who was not participating in the strike had been shot in the eye with a rubber bullet and therefore was claiming damages.

193. In the same month while there was still some instability around the University, some two police officers on night duty were patrolling the area. Upon arrival at Kaycee's bar and restaurant where they were intending to notify the owner that it was past operating time, they were met by owner's patrons who upon seeing the blue light of the police vehicle, started to come out of the restaurant and attacking the two police officers by insulting them and throwing stones and bottles at them. The police who were overpowered fired warning shots in the air to try to disperse them and they later learned that a student (Tumelo Mohlomi) who was in the restaurant was shot and had died. The bullet was never meant to shoot anyone.

Participation in Public Affairs: (arts. 19 and 25)

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194. Following SADC intervention due to the escalating political instability since 2014, the Government in collaboration with the United Nations under Peace Building Fund entered into Lesotho National Dialogue and Stabilizing Project (LNDSP). The project is aimed at funding the Dialogue Process and to fund the Security Sector Reform Process. It further funds the communication strategy for the foreseeable reform process. The main objective of this project is to strengthen the human rights regime in Lesotho and to ensure efficient, transparent and accountable institutions with the focus on seven key sectors being: Judiciary; Parliamentary; Constitutional; Security; Public Service; Economic and Media Sector. When the institutions under these sectors run efficiently and are accountable to the nation including having good relations, they will be able to better protect the rights of the people. Improved laws will be able to meet the standards set by the human rights treaties.

195. The Reform Process is driven by the nation in a transparent, inclusive and participatory manner. A document the "*Lesotho We Want*" was produced by different sectors in government and relevant stakeholders; and it was endorsed by the SADC. In August 2019, the Parliament enacted the law establishing the National Reforms Authority. The promulgation of the law guarantees that the reform process will not collapse or be interfered with regardless of who is in Government. On 6 February 2020, the Authority was inaugurated and has thus begun its work with technical and financial support from development partners.

196. Furthermore, as mentioned above in *ad paragraph 6*, those who are alleged to have been involved in the human rights violations at that time have since appeared before courts of law to answer their cases. The Government has not receive any reports on allegations of acts of intimidation against opposition leaders, but if such claims are reported through proper channels, they will be dealt with accordingly.

Reply to paragraph 29 of the list of issues prior to reporting

197. On measures to strengthen accountability and transparency of government, the Government is works with the Parliament by letting the latter exercise its oversight function through the various portfolio committees and other oversight bodies. For example, the Parliamentary Public Accounts Committee (PAC) and the office of the Auditor General in ensuring accountability and transparency within the public sector, thus it is now easier to pick acts of corruption or fraud or embezzlement of public funds in the public sector. Further, public officers fill Declaration of Assets Forms annually which are ultimately submitted to the DCEO to deal with them accordingly. There are cases in which public officials at all levels including Ministers and Principal Secretaries have been brought to book by the DCEO (some of which having been referred to DCEO by the PAC) with a view to tackle corruption in law and in practice. The following are examples of such cases:

- *R v Timothy Thahane, Mosito Khethisa, Civa Innovation Management (Pty) Ltd, Mokhethi Moshoeshe CR1T/0092/2014* the case related to flawed procurement procedures by the Minister and PS which benefitted accused 3 – the case was withdrawn before trial against accused 1 (Tim Thahane) who was the Minister of Finance at the time of the charge for want of prosecution and accused 4 for lack of evidence against him; accused 2 (former Principal Secretary of Ministry of Finance) was convicted and fined M30, 000.00 (\$2,068.97) or 12 months imprisonment – he paid the fine immediately; accused 3 (a company) was found guilty and was ordered to compensate the Government M6, 500, 000.00 (\$448,275.86). The Company complied and paid back this money.
- *R v Mathibeli Mokhothu and Ntšalla Mafa CR1181/2007* the accused were charged with fraud or theft and they both pleaded guilty to the charge. Mokhothu was a Member of Parliament. They were sentenced to 3 years imprisonment or M6, 000.00 (\$413.80) fine and additionally to each compensate M15, 000.00 (\$1,034.50) into public coffers. They each paid their fine and compensation as ordered by the Court.
- *R v Retšelisitsoe Khetsi CR1113/2013* – The accused was then the Principal Secretary of the Ministry of Home Affairs and charged with bribery or corruption over awarding of M300,000,000.00 (\$20,689,655.20) for National ID and Passport contract to Nikuv International Projects where he was said to have received M5,000,000.00 (\$344,827.60). In 2017, after four years, the court quashed the charges against him saying prosecution had taken too long to proceed with the case thus denying the accused the right to fair trial.
- *R v Lebohang Phooko et al CR2235/ 2012* – the accused was the Principal Secretary for the Ministry of Public Works and Transport and was charged with seven other officers for contravening procurement regulations (corruption). The case was withdrawn as all the witnesses and the seven other accused died.
- *R v Selloane Qhobela CR/T/0804/17* – the accused was the Principal Secretary for the Ministry of Social Development. She was charged with fraud and theft of public funds in that she misrepresented to her Ministry that the official trip to took to USA was not fully sponsored and thus claimed full rate perdium of M67, 068.73 (\$4,625.43) against the law while knowing it was fully sponsored. The case is still continuing (part-heard).
- *R v Mamphono Khaketla CR0710/2017* – the accused is charged with attempted bribe of M4, 000,000.00 (\$275,862.10) from a vehicle fleet service that was engaged by Government. The accused was the Minister of Finance at the time, and the said ministry was the one engaged in the procurement of such services. The case is continuing before the High Court as the Magistrates Court did not have jurisdiction over it.

- *R v Borenahabokhethe Sekonyela CR0503/2018* – the accused is charged with corruption in that while he was the Principal Secretary of the Ministry of Home Affairs, he directed payment of undelivered goods which were never received by the Ministry. The case is on remand while investigations are continuing.
- *Rv Mahase Chaka CR0161/2020* – the accused (the then Director General of the Land Administration Authority) is charged of corruption or alternatively fraud in that he caused to be registered a title deed to land in the names of the person who did not have title to that land. The case is yet to be set for hearing.

198. In an effort to adopt a legislative framework related to access to public information, there is currently in place the Receipt and Access to Information Draft Bill to ensure that citizens have access to information, though it has not yet been tabled before Parliament. The Government will endeavor to ensure that the process is duly undertaken speedily when the process of consultations is complete.

199. The Government is committed to fighting corruption hence its endeavours to enhance the capacity of the DCEO. In order to improve DCEO's effectiveness, Cabinet approved an amendment to the Prevention of Corruption and Economic Offences Act and a Money Laundering Bill. It is also envisaged that the reforms processes will include give the DCEO autonomy such that it will be able to deal with cases directly before courts of law without having to seek directive from the Director of Public Prosecutions. Further that the enabling legislation will be amended to the effect that the Director General is not appointed by the Prime Minister but through transparent a selection panel. In particular, the DCEO in its efforts to intensify the fight against corruption has done the following:

- Drafted the Prevention of Corruption and Economic Offences Bill 2019 which reviews the mandate of the institution addressing the many challenges like the investigative powers of the DCEO enabling collaboration with financial institutions thus supplementing the already existing Anti money laundering legislation which are awaiting submission to Parliament.
- It has established the Asset Forfeiture Unit with the aim of ensuring that while criminal prosecutions take long, assets are confiscated through civil process ensuring that criminals do not benefit from acts connected to corruption. The assets that have been forfeited thus far include vehicles and immovable property (buildings).
