



International Convention on
the Elimination
of all Forms of
Racial Discrimination

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OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF
THE CONVENTION

Fourteenth periodic report of States parties due in 1998

Addendum

Lesotho*

[15 June 1998]

* This document contains the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth periodic reports, submitted in one document, due on 4 December 1984, 1986, 1988, 1990, 1992, 1994, 1996 and 1998, respectively. For the fifth and sixth periodic reports of Lesotho, submitted in one document, and the summary record of the meeting at which the Committee considered that report, see documents CERD/C/90/Add.2 and CERD/C/SR.608.

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I. GENERAL

1. Lesotho is situated between 28 and 30 degrees South and between 27 and 30 degrees East and is completely surrounded by the Republic of South Africa. The country covers about 30,300 square kilometres, of which slightly less than 9 per cent is arable.
2. Lesotho's people, the Basotho, are still largely a rural people with about 84 per cent of them living in rural villages. The rapid rise in the population is serious, particularly when the Government of Lesotho has been making attempts to control population growth. The population has a high proportion of children, a proportion which is expected to grow still further.
3. The country is divided into 10 administrative districts accountable to a democratically elected Government. This Government took over from a Military Council. Constitutional rule was therefore restored in March 1993 when a new constitution was adopted and elections were held. Dr. Ntsu Mokhehle, was sworn in on 2 April 1993 as the new Prime Minister of Lesotho.
4. The legal system of Lesotho is dual, with customary law operating side by side with the general law although in practice common law prevails. The customary law is made up of different practices of the people, some of which have been interpreted and acted upon by the courts thus making them customary law. The general law on the other hand is made up of statutes and common law (the latter is a mixture of Roman, Dutch and some English law). Whether, in any one case, the customary or the general law will be applicable, is determined by the nature of the case - whether criminal or civil, the parties involved and other rules relating to choice of law in situation of conflict of laws. The dual legal system in the country has led to assumptions that people in the rural areas would know customary law, while those in the urban areas, would know and practise common law.
5. The structure of the courts reflects this duality of the legal system. Basotho or customary courts administer the customary law while the other courts administer the general law. The courts are structured in such a way that at the bottom of the hierarchy are the Local Courts, which are Courts of first instance for any matter involving customary law. Both the Local and Central Courts are sometimes referred to as customary or Basotho Courts. An appeal from the Local or Central Court goes to the magistrate courts. The magistrate courts have automatic review of proceedings of Local Courts. From the latter court, it goes to the High Court and finally to the Court of Appeal.

II. INFORMATION RELATING TO ARTICLES 2 TO 7

Article 2

6. It is the policy of the Government of Lesotho to ensure that all acts or practices of racial discrimination against persons, groups of persons, are prohibited and that public authorities and public institutions conform with the provisions and obligations of the Convention. Hence, the following policies and measures have been taken.

7. In Lesotho, every person, regardless of race and nationality is free to seek medical assistance at any health institution. Equal treatment is afforded to all persons concerning issues such as medical fees and drugs. The Medical Association is composed of medical professionals of various races and nationalities.

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

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

9. Education is used as an instrument whereby all persons at all levels are given a chance to show their abilities, thus instilling respect for human dignity and achieving social integration. At every level, that is, from primary school to university level, the schools are multiracial. It is a stated objective of the Government to improve the efficiency of the schools. Hence, the Government aims to extend its control over the schools, their growth, distribution, size, curriculum, staff and facilities. The Government has enacted the Education Act 1996 and the preamble stipulates that every child is protected from practices which may foster racial or any other form of discrimination or prejudice. In this way, the Government is trying to achieve racial harmony and to provide education for children of every race, colour and religion.

10. The Social Welfare Department is within the Ministry of Health and it gives assistance to all persons who are destitute or in need of any kind of help regardless of race or colour. Assistance is provided for people who are in need of accommodation, food, education, counselling and health care. No person, irrespective of creed, race, religion, colour or sex, is discriminated or denied this assistance.

Legislation for eliminating racial discrimination

A. The Constitution

11. The Constitution is the supreme law of Lesotho and if any other law is in conflict with it, that law, to the extent of inconsistency, is null and

void. The Constitution protects all persons from being discriminated against on racial grounds. Section 18 of the Constitution stipulates, in part, as follows:

"(1) subject to the provisions of subsections (4) and (5) no law shall make any provision which is discriminatory either of itself or in its effect";

"(2) subject to the provisions of subsection (6), no person shall be treated in a discriminatory manner by any written law or in the performance of the functions of any public office or any public authority";

"(3) in this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description";

"(7) no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public."

12. In terms of Section 22 (1) any person who alleges that he has been discriminated in one way or another, has a right to resort to the courts of law (High Court) for redress.

B. Race Relations Order of 1971

13. This order prohibits discrimination on racial grounds in places of public resort. Section 3 provides that

"No person shall be discriminated [against] in relation to access to any place of public resort or facilities or services of a public nature."

14. The order stipulates further that an employer shall be held responsible for acts of racial discrimination done by the employee whether or not the employer had any knowledge or approved the acts.

15. The order entitles the plaintiff to apply to the High Court compelling compliance with the provisions of the order where there has been discrimination on the basis of race.

Measures to review, amend or repeal legislation which
has the effect of perpetuating racial discrimination

16. Although there is a small minority of Basotho of Indian origin, the concept of racial discrimination is not known in Lesotho. Therefore, there has been no amendment to any legislation concerning racial discrimination.

17. There is no single organization which deals with the integration of the various racial groups and the elimination of barriers between races.

18. In Lesotho, there are no special measures which are given to a certain group for the free and equal enjoyment of human rights. Equal treatment is given to all persons regardless of their race, sex, colour or creed.

Measures taken to bring racial discrimination
to an end

1. Education

19. In Lesotho, the educational system does not discriminate on the basis of colour, race, social status, sex or religion. The Education Act 1996, in its preamble, provides that every child is protected from practices which may foster racial or other forms of discrimination or prejudice. The policy of the Lesotho Government is basic education for all regardless of race.

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

21. There have been difficulties in some areas as certain classes of people have established schools and there has been some discrimination. In Islamic English Medium School vs Abdul Razak Osman and others (still pending before the magistrate court), the school was to be closed as a private school but would directly be run by the mosque. The reason, among others, being that the children were dirty and not fit to enter the mosque premises.

22. The Applicant (school) stated that the Respondents were interfering with the children's education and also being unfair to the nation's children.

23. However, such cases as the above are very rare and it can be concluded that in education even if such cases may arise, they are settled out of courts of law.

2. Employment

24. The Labour Code Order of 1992 prohibits discrimination on the basis of race, colour, sex, marital status, religion, political opinion, national extraction or social origin. The act has provisions for the protection of fundamental rights of employees and also prohibits unfair labour practices. Where any of the provisions of the Act are contravened, an aggrieved employee can seek redress from the Labour Court.

25. In September 1996, workers of the Lesotho Highlands Water Project (LHWP) went on strike. Ultimately, the police had to intervene and some of the workers were killed. It is worth mentioning that the reasons of the strike were not on racial grounds but this was a labour dispute.

26. Lesotho is a party to the following ILO Conventions as an effort to comply with international labour norms:

- (a) Minimum Age (Industry) Convention, 1919;
- (b) Right of Association (Agriculture) Convention, 1921;
- (c) Weekly Rest (Industry) Convention, 1921;
- (d) Equality of Treatment (Accident Compensation) Convention, 1925;
- (e) Minimum Wage-Fixing Machinery Convention, 1928;
- (f) Forced Labour Convention, 1930;
- (g) Underground Work (Women) Convention, 1935;
- (h) Contracts of Employment (Indigenous Workers) Convention, 1939;
- (i) Penal Sanctions (Indigenous Workers) Convention, 1939;
- (j) Freedom of Association and Protection of the Right to Organize Convention 1948; and
- (k) Right to organize and collective bargaining Convention, 1949.

27. There have been no cases which have been brought before the court in relation to racial discrimination. Complaints of cases of victimization are brought before the court time and again, but these do not fall within the ambit of racial discrimination, as victimization takes place even where the employer and employee are of the same race.

28. The Basotho nation is largely made up of Sotho-speaking people; with one language (Sesotho) spoken throughout the country. There is a small minority of Indian, Xhosa and Phuthi. They are not discriminated in any way and are free to speak their language and practise their cultures. The State therefore ensures that there should be full participation in the development of the country by all. In all sectors, that is, public and private, professional associations, there are people of various races.

Article 3

29. There are a few pieces of legislation which prohibit discrimination and these have already been mentioned under article 2 above.

30. Lesotho is a member of the United Nations, the organization of African Unity, the Commonwealth and various other organizations which eradicate and condemn racial discrimination and apartheid among the African peoples.

31. Lesotho is a party to the International Convention on the suppression and punishment of the crime of apartheid, thus she condemns and prohibits discrimination and apartheid in all its forms.

Information on the status of diplomatic, economic and
other relations with the Republic of South Africa

32. Prior to the Republic of South Africa's first democratic general elections in 1994, Lesotho already had diplomatic relations with South Africa. However, the working relations between the two countries were not good as South Africa blamed Lesotho for safeguarding her citizens. During the apartheid era, Lesotho took care of refugees from the various movements in South Africa with the assistance of the United Nations High Commission for Refugees.

33. Today, after the democratic general elections in the Republic of South Africa, Lesotho and South Africa work closely and in harmony and this is recognition of the legitimacy of the new Government.

Article 4

34. The Race Relations Order 1971 (sect. 5) stipulates that any person who deliberately aids, induces or incites any person to discriminate on racial grounds is guilty of an offence. There are no known cases of these having featured before courts of law up to now.

Article 5

35. The Constitution of Lesotho provides that every person is protected by the law. Section 19 states that "every person shall be entitled to equality before the law and to equal treatment of the law".

The right to a fair trial

36. Section 12 (1) of the Constitution stipulates that every person charged with a criminal offence has to be afforded a fair trial within a reasonable time by an impartial court.

37. Section 12 (2) states that every person charged with a criminal offence shall:

"(a) be presumed to be innocent until he is proved or has pleaded guilty;

(b) be informed as soon as reasonably practicable, in a language that he understands and in adequate detail, of the nature of the offence charged;

(c) be given adequate time and facilities for the preparation of his defence;

(d) be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge."

Right to personal liberty

38. The Constitution states, in section 6, subsection 1, that every person regardless of race, sex or creed is entitled to personal liberty and shall not be arrested or detained save as may be authorized by the law, and these are some of the exceptions:

"(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of the court punishing him for contempt of that court or tribunal; and

(c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law."

39. Any person who is unlawfully arrested or detained without reasonable cause shall be entitled to compensation from that other person or from any other person or authority on whose behalf that person was acting.

The right to participate in Government

40. Section 20 of the Constitution states that every person who is a citizen of Lesotho, has the right to participate in public affairs, directly or through his representatives. Further, that every citizen has the right to vote and stand for elections and to have access to the public service.

41. In 1993 democratic elections were held under the Electoral Act of 1993 and the people were given a chance to vote for the government of their choice.

42. In 1995 Development Councils' elections were held under the Development Council Order of 1991 as amended. This was another chance for the people of Lesotho, regardless of race, to elect their own representatives in Development Councils.

43. The Public Service Act of 1995 states that every person is entitled to a post of any grade for which he qualifies. There is no discrimination on this regardless of race and creed.

44. The Local Government Act of 1997 gives all citizens an opportunity to improve their respective communities.

Other civil rights

45. The right to movement and residence within the border of the State is catered for under section 7, subsection 1, of the Constitution. It states as follows:

"(1) Every person shall be entitled to freedom of movement, that is to say, the right to move freely throughout Lesotho, the right to enter Lesotho, the right to leave Lesotho and immunity from expulsion from Lesotho."

If this right is interfered with, the complainant may apply to the High Court.

46. According to section 37 of the Constitution of Lesotho, "every person who immediately before coming into operation of the Constitution is a citizen of Lesotho under the Lesotho citizenship order 1971 shall, on the coming into operation of the Constitution continue to be a citizen of Lesotho".

47. The Marriage Act of 1974 states that "every person has a right to enter into the marriage contract voluntarily - no person may be compelled to marry against his or her wish". This is also covered by section 34 (1) of Part II of the laws of Lerotoli. This states that "a marriage shall be deemed to be complete when there is agreement between the parties to the marriage".

48. In Lesotho, there is no single legislation that prohibits a person to own property as well as in association with others. The Constitution is silent on this issue.

49. The Constitution in section 17 (1), prohibits taking compulsorily possession of property whether movable or immovable by government agencies, but there are certain exceptions. These are, for instance, where the acquisition is necessary in the interests of defence, public safety, public order, public morality and others. However, section 17 (2) stipulates that any person having an interest or right over the property which has been compulsorily acquired shall have direct access to the High Court for the determination of his interest or rights, e.g. compensation.

50. There is no racial discrimination concerning the issue of inheritance in Lesotho. However, due to the dual legal system that exists, there are problems. According to the Administration of Estates Proclamation of 1935, the issue of inheritance is dealt with under the common law if a Mosotho has "abandoned tribal custom and adopted a European mode of life and who, if married, have married under European law". Other Basotho estates are administered in accordance with the customary law. It is still not clear as to what the basis should be for the choice of law in the field of inheritance.

51. Section 13 of the Constitution of Lesotho provides that every person is entitled and must not be hindered in the enjoyment of freedom of conscience, including freedom of thought and religion, freedom to change his belief either alone or in community with other and both in public and in private except with his own consent. No person shall be required to receive religious instructions or take an oath that is contrary to his religion.

52. In Lesotho, there is no official religion. The main religion is Christianity. There is the Roman Catholic Church, Lesotho Evangelical Church, the Anglican Church of Lesotho, the Methodist Church, Zionist Church and others. All persons are free to choose their own denominations regardless of race.

53. The right to freedom of opinion and expression is catered for under section 14 (1) as follows:

"Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence."

54. This right is adequately covered under section 15 of the Constitution which provides that every person shall be entitled to freedom to assemble with other people and this must be done without arms. However, this right may be limited in the interest of defence, in protecting the rights of other people and for imposing restrictions upon public officers.

55. Section 16 caters for the right to freedom of association in part as follows:

"Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of freedom to associate freely with other persons for ideological, religious, political, economic, labour, social, cultural, recreational and similar purposes."

Economic, social and cultural rights

56. The Constitution of Lesotho provides in section 29 that Lesotho shall work towards ensuring that every person has the opportunity to gain his living by work which he freely chooses. This right is also catered for under the Labour Code of 1992.

57. To ensure that this right is exercised, the Government's economic policies continue to be aimed at expanding public works programmes, including projects funded by the Lesotho Highlands Water Authority.

58. The Constitution provides in section 30 that Lesotho shall adopt measures which ensure that the wages are fair and there should be equal remuneration for work of equal value without distinction of any kind and that there should be equal pay for equal work, safe and healthy working conditions and the protection of women before and after birth. These are also catered for under the Labour Code.

59. According to section 31 of the Lesotho Constitution, the Government shall take steps to ensure establishment of trade unions to protect workers' rights and interests. Section 168 of the Labour Code also stipulates this issue.

60. According to section 34 of the Constitution, Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment. The Government responded by establishing three housing institutions, namely: Lesotho Housing Corporation (LHC, 1971), Lower Income Housing Company (LEHCO-OP, 1995) and Lesotho Building Finance Corporation (LBFC, 1976). These institutions, which were mandated to facilitate housing for specific income groups, were placed under the Department of Housing in the Ministry of Home Affairs. In 1988 the housing institutions were reorganized so that LHC and LEHCO-OP are now a single statutory body known as Lesotho Housing and Land Development Corporation.

61. According to section 27 of the Constitution, Lesotho shall adopt measures of the highest standard of physical and mental health for its citizens including among others, policies to improve environmental and industrial hygiene, to provide for prevention, treatment of epidemic and other diseases, and to create conditions which would assure to all medical service and attention and to improve public health.

62. The Government has adopted the following policies and these apply to every person irrespective of race. These are, accessibility to health care - a 1986 policy document set four targets to ensure the accessibility of health care to all persons: a differential fee structure should be enforced, private and national insurance schemes should be established by 2000, social security schemes for the very poor should be established by 2000, and every Mosotho should be within two hours' walk of a health facility.

63. There is also the policy of primary health care. The Government states that "through primary health care every Mosotho should attain a state of complete physical, mental and social well-being so that he/she can live a productive life and contribute to the socio-economic development of Lesotho".

64. Section 28 of the Constitution stipulates that Lesotho shall make education available to all and must adopt policies guaranteeing that education is directed to the full development of the human personality, dignity and strengthening the respect for human rights, and to make primary education compulsory and available to all. Further secondary education, including technical and vocational education, should be made accessible to all. Higher education should also be made accessible to all on the basis of capacity.

65. Lesotho has adopted policies which deal with education and training. It is a long-term aim of the Government of Lesotho to provide all Basotho children with seven years of primary education. There are between 1,200 and 1,500 primary schools in Lesotho. The Government at present is attempting to improve the quality of education rather than expanding primary provisions. Thus it has introduced the concept of "Education with Production" into the curriculum. This policy applies to all children regardless of race or creed.

66. Section 35 of the Constitution provides that Lesotho shall ensure that every citizen has an opportunity to freely participate in the cultural life of the society and to share in the benefits of scientific advancement. Further, Lesotho shall adopt measures to protect the interests of any citizen in any scientific, literary or artistic production of which he is the author.

67. The Ministry of Tourism, Sport and Culture is in this regard the custodian of artistic and cultural development programmes. Lesotho is a member of the World Intellectual Property Organization (WIPO) and subscribes to the protection of artistic and cultural achievements. There is also the Copyright Order of 1989 which promotes and protects every person to secure this right. National museums are accessible to all regardless of race.

68. Places which are intended for the general public and can be freely entered by all persons regardless of race, sex or creed. This is also covered by section 18 (7) of the Constitution of Lesotho.

69. However, it is worth mentioning that section 19 of the Children's Protection Act 1980 stipulates that no child shall, except under a licence granted by a police officer, attend any public entertainment other than that which is organized by educational institutions or a national sporting authority.

Article 6

70. In Lesotho, the Race Relations Order of 1971 protects and remedies against racial discrimination.

71. Under section 22 (1) of the Constitution, any person who feels that his fundamental rights have been violated in any way may apply to the High Court for redress. However, at the moment, there has been no application to the High Court by any person seeking redress.

72. There is no specific body which deals with racial discrimination. However, there is an office of Ombudsman, which deals with complaints from the public. The main function of this office, according to section 134 of the Constitution, includes investigating any action taken by an officer or authority in the exercise of administrative functions in a case where it is alleged that a person has suffered injustice as a consequence of that action. The Ombudsman's office has dealt with a number of cases since its establishment in 1993 but there is not a single case on racial discrimination.

Article 7

73. Article 7 stipulates that States parties should undertake to adopt measures, especially in the fields of teaching, education, culture and information with a view to combat prejudices which lead to racial discrimination. On culture, Lesotho has entered into various cultural agreements with other countries, for instance, Mozambique; there is the agreement on scientific and cultural cooperation of 1978. Zambia signed the agreement of cultural cooperation of 1984. There is, however, no information being disseminated to promote better understanding, tolerance and friendship within the racial and ethnic groups in the country.
