



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Thirtieth session**

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**Replies of Lesotho to the list of issues in the absence of its  
report due under article 29 (1) of the Convention\***

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\* The present document is being issued without formal editing.



## List of Acronyms

ATMCU	Anti-Trafficking and Migrant Control Unit
CGPU	Child and Gender Protection Unit
DPP	Director of Public Prosecutions
GANHRI	Global Alliance of National Human Rights Institutions
ICC	International Criminal Court
INTERPOL	International Criminal Police Organization
IOM	International Organization on Migration
LDF	Lesotho Defence Force
LMPS	Lesotho Mounted Police Service
MoLE	Ministry of Labour and Employment
MoU	Memorandum of Understanding
NCCC	National Children's Coordinating Committee
NGOS	Non-Governmental Organisations
NHRI	National Human Rights Institutions
NICR	National Identity and Civil Registry
NMRIF	National Mechanism Reporting Implementation and Follow-up
NRM	National Referral Mechanism
NSDP II	National Strategic Development Plan II
NSS	National Security Services
OHCHR	Office of the High Commissioner for Human Rights
SADC	Southern African Development Community
SARPPCO	Southern Regional Police Chiefs Cooperation Organization
SDG	Sustainable Development Goals
SOP	Standard Operating Procedures
TIP	Trafficking in Persons
TPP	Tripartite Partnership
UNDP	United Nations Development Program
VOT	Victims of Trafficking

## Introduction

1. In terms of Article 29 (1) of the Convention, Lesotho enjoys its responsibility to submit the report on measures taken to give effect to and implement the Convention. The Convention was ratified in December 2013. However, Lesotho lagged with her obligation to report until 2024 when she was considered on the implementation of the treaty without her initial report. Thereafter, the Committee issued the list of issues in September 2024. The responses herein incorporate efforts Lesotho is undertaking to integrate and mainstream Sustainable Development Goals (SDGs).

2. Of particular significance is SDG 16 which aims to promote peace, improve access to justice and strengthen all the institutions pertinent to the implementation of this Convention, that is LMPS, LDF, and the NSS. The aim of which is to firstly reduce all forms of violence and related deaths, end abuse, exploitation, trafficking and all forms of violence against and the disappearance of people. Secondly, developing effective, accountable, and transparent security institutions at all levels, including the judiciary.

3. Another pertinent goal concerning this Convention and its implementation in Lesotho is SDG 17, which calls for improved collaboration and partnerships across countries. This is particularly relevant to Lesotho in issues of extraditions, judicial collaborations, and criminal investigations. Regard being had to struggling economy of Lesotho, there is an acknowledged need to improve in areas of coordination and data collection, as encapsulated in the National Strategic Development Plan (NSDP) II extended and budget processes, which would assist in enhancing accountability.

## Process for preparation of the responses

4. Upon receiving the List of Issues, it was circulated among various ministries, including the security sector and civil society organizations. The National Mechanism on Reporting, Implementation, and Follow-Up (NMRIF) subcommittee, led by the Secretariat, convened to draft this report after collecting information from these ministries. For additional inputs, the draft responses were shared with NMRIF members, other line ministries, and relevant stakeholders not represented therein.

5. The process was inclusive as the relevant stakeholders were able to give their inputs to the report. The stakeholders' engagement and validation workshop was held to reinforce national accountability and promote ownership amongst stakeholders before approval and submission to the treaty body.

## Replies to the list of issues (CED/C/LSO/QAR/1)

### A. General information

#### Reply to paragraph 1

6. Lesotho is a dualist state therefore, international law is not self-executing as a result, an act of parliament has to be enacted to domesticate that international law. Therefore, for an international principle to be applicable in the domestic courts, that principle must first be transformed into national law through the legislative processes followed in that country otherwise, the courts in that jurisdiction will not enforce it.

7. 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. Currently, there are no decided cases where the provisions of the Convention have been invoked.

**Reply to paragraph 2**

8. Efforts are undertaken to finalise the operationalization of an independent National Human Rights Commission (the Commission). Amendment Bill to the Constitution 2024 has been passed into law. The Bill that seeks to amend the Human Rights Commission Act 2016 which implements the commission will be taken to Parliament since the Constitutional amendment has been passed.

9. Meanwhile, the Ministry of Law, is currently working on the budget for the operationalization of the Commission once the enabling legislation is passed. In addition to this budget, the Global Alliance of National Human Rights Institutions (GANHRI), United Nations Development Programme (UNDP) and Office of the High Commissioner for Human Rights (OHCHR) formed the tripartite partnership to support National Human Rights Institutions.

10. From this partnership, the Ministry of Law and Justice received financial support to procure furniture for the office of the Commission. Additionally, the Government and the United Nations have secured funding from the Peace-Building Fund for capacity building and support to the Commission once operational. Technical assistance for the establishment and strengthening process of a National Human Rights Institution training was held on 21–24 July 2025.

**Reply to paragraph 3**

11. Lesotho has not yet made the declarations under Articles 31 and 32 of the Convention which relate to the Committee's competence to receive and consider individual and inter-State communications. As of the current date, there is no indication of intention to make these declarations.

**B. Definition and criminalization of enforced disappearance (arts. 1–7)****Reply to paragraph 4**

12. Lesotho is yet to incorporate enforced disappearance as an autonomous crime in its domestic legislation.

**Reply to paragraph 5**

13. The Convention is echoed first in the Constitution. Section 6 protects the right to personal liberty which prohibits abduction and unlawful detention. The constitution further provides for the conditions upon which one can be arrested by an authorised authority. In line with sections 18 and 19 of the same, this right applies equally to all persons.

14. In situations where this right is infringed or about to be infringed, it can be vindicated in the High Court as the court of first instance. Further steps taken to address enforced disappearances include the Penal Code Act of 2010. While the Penal Code Act doesn't explicitly define "enforced disappearance" as a distinct offense, it does include provisions that encompass elements of this crime.

15. Section 5 of the Act outlines an offense for failing to report knowledge of a crime involving the taking or endangering of human life, which could be relevant to cases where a person disappears under suspicious circumstances. Furthermore, the act has provisions regarding creating or controlling dangerous situations and failing to prevent harm, which are relevant to scenarios involving disappearances.

16. At present, the Convention is implemented by using the following legislation:

- (i) The Constitution of Lesotho 1993;
- (ii) Penal Code Act 2010;
- (iii) Children Protection and Welfare Act 2011;
- (iv) Criminal Procedure and Evidence Act 1981 as amended;

- (v) Anti-Trafficking in Persons Act 2011 as amended;
- (vi) Lesotho Fugitive Offenders Act 1970.

17. The provisions invoked in national legislation to deal with facts amounting to enforced disappearance are the following:

- (i) The Constitution of Lesotho Section 6 (1) on the right to personal liberty provides that every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorised by law in the following cases; execution of sentence or order of court whether in or outside the country, bringing him before the court, to secure the fulfilment of any obligation imposed by law, upon reasonable suspicion of having committed a crime, reasonably suspected of being in an unsound mind, for unlawful entry in Lesotho or for deportation facilitation, and for purposes of removal of the prisoner from one place to another including outside the country;
- (ii) Such persons as mentioned shall be informed of their rights in the language they understand and the reasons for detention. Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting;
- (iii) The Penal Code 2010 Section 47 (1) indicates that a person who unlawfully by force, threats, deception or any other unlawful means deprives another person of his or her freedom of movement, commits the offence of unlawful detention. Subsection (2) thereto states that a person who unlawfully detains another with the intention of causing that person serious bodily harm or death, or with the intention of securing payment or any other advantage for the release of the unlawfully detained person commits an offence.

18. The measures taken to define widespread or systemic enforced disappearance as a crime against humanity are augmented by the following specific sections: Penal Code Act 2010 Section 94 legislates on crimes against humanity in line with article 5 of the Convention and the Rome Statute. It provides that if engaged as a widespread or systemic attack directed against any civilian population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, it is categorised as a crime against humanity under this Act. This section is in accordance with article 5 of the convention and the Rome statute of the International Criminal Court (ICC).

#### **Reply to paragraph 6**

19. Lesotho has a challenge of organised data as there is no system in place to disaggregate statistical data by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victims. However, the number of disappeared persons, place and date of disappearance in or from the state party is highlighted below:

- (i) *Lekhoele Noko* a Mosotho male, *Molise Pakela* a mosotho male, *Khothatso Makibinyane* Mosotho male, the trio were kidnapped by LDF members in May 2017 in Berea, who later strangled them to death and dumped them in Mohale dam where their remains were recovered and buried;<sup>1</sup>
- (ii) *Makarabo Mojakhomo*, a Mosotho female aged 34 yrs of head-man *Hlathe Majara* under chief *Mamolapo Majara* of Khubetsoana (charged with escaping from lawful custody) arrested at Police headquarters – pending investigation;
- (iii) *Mokalekale Khetheng*, a Mosotho male adult who was a member of Lesotho Mounted Police Service stationed at Leribe Police Station. He was arrested at Leribe, tortured, murdered and his remains were dumped at Ha Setho in Maseru District in March 2016 by 4 members of LMPS;

<sup>1</sup> Rex v Mphaki & Others CRI/T/0008/2018.

(iv) *Mohato Seleke* Mosotho male and *Lira Moeti*, Mosotho male aged 40 years. Both were abducted at Ha-Mabote in Maseru district and assaulted by the security agencies in February 2017.

20. The country has the statistics in relation to trafficking in persons, however, there is no statistics specifically for enforced disappearance described under art. 3. Also, there are no cases of illegal inter-country adoptions and disappearances in the context of migration.

#### **Reply to paragraph 7**

21. There is no specific register for the disappeared persons but where we have such reports, the following registers are used;- occurrence book and report of crime investigation. There is no cross-checking with other databases, such as registers of persons deprived of liberty. These databases are accessible to all interested persons freely without a charge and there is no specified methodology used to keep the existing databases updated.

#### **Reply to paragraph 8**

22. The Constitution permits derogation of rights. This is permissible provided such is made under the authority of an Act of Parliament during a period when Lesotho is at war or when the state of emergency under section 23 is declared. Under section 6, the right to freedom of personal liberty is also derogable.

23. To safeguard against enforced disappearance, Section 6 of the Constitution mentioned above, also guides that when a person is detained by virtue of any law, such a person shall as soon as reasonably practicable after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained.

24. Further, not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating reasons for detention and giving particulars of the provision of law under which his detention is authorised.

25. Moreover, in not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, the case of such a detainee shall be investigated by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice. He shall further be afforded reasonable facilities to consult a legal representative of their choice who shall be permitted to make representations to the tribunal appointed for the investigation of the case of a detained person.

26. Additionally, to address counterterrorism, the country enacted the Prevention and Suppression of Terrorism Act 2018. The Act provides for the prevention and suppression of terrorism and its related acts; the implementation of international instruments relating to the combating of terrorism; and related matters. This legislation has had a positive impact on the effective implementation of the Convention.

#### **Reply to paragraph 9**

27. There is no applicable legislation governing the acts and omissions enumerated in article 6 (1) (a) and (b) of the convention, rather the above-mentioned legislation in question 5 (c) are applied. However, section 25 of the Police Service Act 1998 gives Police officers power to obey only lawful orders, any order to arrest or detain without due process of law is not covered by law.

28. The legislation that addresses the prohibition to invoke an order or instruction from any public authority to justify an offence of enforced disappearance, which indicates whether the notion of "due obedience" as a criminal law defence is the Penal Code act 2010. Section 18(1) & (2) provides that a person who is placed in authority over another person commits an offence if he or she issues orders that are clearly or manifestly illegal. It further provides that it shall not be a defence to a criminal charge that the offence specified in the charge was carried out by the accused person while acting under the clearly or manifestly illegal orders of a superior placed in authority over him or her.

29. Section 51 of Lesotho Force Act 1996 provides that; “any person subject to this Act, who in such manner as to show defiance of authority, disobeys any lawful command given or sent to him personally commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding 2 years.”

30. In line with the above provision, Lesotho Defence Force Legal Training Guidelines and Lesotho Defence Force Human Rights Manual members of the organization are expected to obey only lawful orders and that they are obliged to disobey manifestly or palpably unlawful orders. Members are also aware that they are personally liable to be tried for unlawful acts they commit and they cannot legally rely on the pretext of superior’s orders. Members are regularly trained on what constitutes unlawful orders and manifestly unlawful orders which subordinates are expected not to obey.

31. The case of *R v Letsie and another*<sup>2</sup> demonstrates where national legislation guarantees a person who refuses to obey orders or instructions that prescribe, authorize, or encourage enforced disappearance having not been punished and also demonstrates remedies available to subordinates against potential disciplinary measures resulting from their refusal to carry out such orders.

32. In terms of the LMPS Standing Order 2016 Section 9 (3) “A strict system of obedience to orders must be enforced throughout all ranks of the Service. No police officer may reply to a Superior when reprimanded, nor dispute the propriety or justice of any order given. Should he have a complaint; he must prefer it in writing through the normal channels. Police officers preferring complaints must understand that a false or frivolous accusation or statement is punishable. A Police officer giving an order is responsible for its consequences, unless the method of carrying it out has been improper, negligent or contrary to the instructions received.”

#### **Reply to paragraph 10**

33. The Penal Code does not provide for the death penalty for any crime, including enforced disappearances. For the crime of abduction, the Code in section 47 provides for a fine of up to M10,000.00 (\$564) or imprisonment not exceeding 3 years. Under section 109 (3), the Code grants the judges powers to exercise judicial discretion when sentencing crimes against humanity.

34. The possible mitigating factors in cases of this nature include where the accused is the first offender, where the accused cooperated with the police in investigations of that case. On the other side, aggravating circumstances would include where the accused has committed such egregious acts and violated the bail conditions.

#### **Reply to paragraph 11**

35. There is no readily available and specific statistics for the number of reported cases of enforced disappearances since 2013. Reference is made to the response in paragraph 6 (a) above.

36. Overall, there is a lack of detailed data on the specific outcomes of investigations, prosecutions and finality on cases related to enforced disappearances. The examples of cases alluded to in paragraph 6 above are all continuing in court.

37. In Lesotho, victims of enforced disappearances and their families are entitled to various forms of reparation, including restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition. These measures aim to address the harm caused by the disappearance and restore the victims’ rights and dignity.

#### **Reply to paragraph 12**

38. The examples of cases given in response to para 6 above indicate allegations of enforced disappearances. Those cases are all attributed to security forces. All the perpetrators

<sup>2</sup> (CRI/T/40/90) LSCA 113 (13/7/1990).

were brought to court and the cases are all pending and at an advanced stage. However, there are no existing cases where the reparations have been awarded.

### **Reply to paragraph 13**

39. While specific figures on disappearances related to migration and trafficking are not readily available, reports indicate a limited number of trafficking cases with some perpetrators being remanded before courts. The Government is also working on improving protection efforts and has identified and referred trafficking victims for care and support.

40. 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 the purpose of prostitution, pornography, sexual exploitation, forced labour, drug trafficking, slavery, involuntary servitude or debt bondage.

41. In addition, 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 Maloti (\$112,955) and or life imprisonment.

42. The LMPS Anti-Trafficking and Migrant Control Unit (ATMCU) has maintained five specialized anti-trafficking focal points. In collaboration with CGPU, these units conduct anti-human trafficking campaigns. They have also cooperated with local NGO's in their campaigns. ATMCU has been established and is directly allocated funds. However, the limited number of labour inspectors and lack of funding within the Ministry of Labour and Employment (MoLE) remains a challenge. Furthermore, there is still a need for the officers to be equipped with specialized training on victim identification, trauma-informed interviewing, and investigating trafficking crimes skills.

43. In 2021, training on anti-trafficking in persons for Lesotho embassies and consular personnel was conducted. This also extended to law enforcement agencies, labour inspectors, teachers, health care providers, social workers and immigration officers to investigate, prosecute and withdraw victims of forced labour and sex trafficking. Post these capacity building initiatives, the Government was able to conduct inspections identifying migrant workers being trafficked.

44. In 2023, 191 Anti-Trafficking in Persons and Smuggling Joint Inspections were carried out in the following districts: Leribe, Botha-Bothe, Mohale's Hoek and Mafeteng. This is an improvement from 75 inspections that were carried out in 2022.

45. The Government through the MoLE has validated an Integrated National Action Plan on the Elimination of Child Labour II 2024–2029 to strengthen and coordinate all the national efforts geared towards elimination of child labour. The Government has also established within the Ministry of Police, the Anti-Trafficking and Migrant Control Unit to strengthen efforts for trafficking in persons and for prosecuting offenders. Prosecutors have been trained to deal specifically with trafficking in persons cases of child labour.

46. The Government has MoU with the Beautiful Dream Society (BDS). BDS provides shelter for females and children Victims of Trafficking (VoT). The State party does not have a shelter for male VoT. The main function of the shelter is to provide psychosocial support, rehabilitation and reintegration for VoT. The Government is also part of the Southern African Development Community (SADC) Trafficking in Persons (TiP) Network Data System that has been developed to intensify international, regional and bilateral cooperation. The challenge is that the system is not periodically updated.

47. The Anti-Trafficking in Persons (Amendment) Act was adopted in 2021 and introduces some important changes to the TIP-related definitions, including clarifying that in child trafficking the 'means' do not have to be present to constitute a case of human trafficking, so long as the 'act' and the 'purpose' (exploitation) are present.

48. Following the adoption of the Amendment Act the Government developed the National Referral Mechanism for the Protection of Victims of Trafficking Guidelines. The



overall objective of the guidelines is to support the coordinated identification of referral and provision of protection assistance for victims of trafficking in persons in line with national policy, legislation and international best practices.

49. To implement the objectives of the Anti-Trafficking in Persons Strategic Framework and Action Plan 2021–2026 Standard Operating Procedures (SOP) and National Referral Mechanism (NRM) for Victims of Trafficking (VoTs), the Government with the technical and financial support of International Organization on Migration (IOM) has been implementing counter trafficking activities since 2018–2023. This support extended to civil society in strengthening TiP response focusing on prevention and protection.

50. Further, the Government carried out a review on the legal framework on TiP which resulted in the development of Standard Operating Procedures (SOP) for law enforcement, National Referral Mechanism (NRM) for VoTs, Handbook for diplomats.

51. Lesotho received 135 asylum applications in 2022, and the total number of refugees and asylum seekers was recorded as 251 in that year.

52. To search for the disappeared persons, resort is made to the habeas corpus procedure to provide for the victims with the appropriate protection. The victims would also approach the court to seek reparations for unlawful detention.

53. Lesotho is taking measures to prevent enforced disappearances in the context of migration, including improving birth registration for children of migrant workers, raising awareness about the importance of birth registration, and strengthening consular services. These efforts are aimed at ensuring all children of Basotho migrant workers, particularly in South Africa, are registered and issued with personal identity documents.

## **C. Judicial procedure and cooperation (arts. 8–15)**

### **Reply to paragraph 14**

54. The provisions of Penal Code Act 2010 cannot be invoked to deal with cases of enforced disappearance for political motives to use for extradition. The criminal statutes are not used to push political motives.

55. The state has an extradition agreement with several countries such as South Africa and the Commonwealth countries. However, the agreements are not specific to the crime of enforced disappearance though it is included therein in line with Lesotho Fugitives Offenders Act 1970.

56. Lesotho has an agreement of extradition and mutual legal assistance with South Africa in which conditions or limitations could be applied in relation to requests for judicial assistance. The treaty entered into force on 23 December 2003. This treaty has been used several times and some limitations are “no to death penalty”.

57. International cooperation mechanisms through which Lesotho cooperates with other countries include Southern African Regional Police Chiefs Cooperation Organization (SARPPCO) and the International Criminal Police Organization (INTERPOL). These mechanisms are being engaged in the case of one Makarabo Mojakhomo, who disappeared from police custody in May 2018 is still pending investigation and the suspect has not been found.

### **Reply to paragraph 15**

58. The statute of limitations does not start running until the enforced disappearance is resolved, meaning the person’s fate is known and the perpetrators are no longer concealing their involvement. The statute of limitations for criminal proceedings is of long duration and proportionate to the extreme seriousness of the offense, as per international standards. The limitation of enforced disappearance starts when the crime ceases, taking into account its continuous nature.

59. There is a remedy under civil law where victims have the right to sue for unlawful detention and claim compensation. On the other hand, victims have the option to apply for

habeas corpus, this is a confirmation that the state guarantees the rights of victims of enforced disappearance during the term of limitation.

#### **Reply to paragraph 16**

60. The Constitution section 119 and the High Court Act 1978, both establish the High Court to be a court of competent original jurisdiction to hear and decide all civil and criminal cases. As a result, cases under art. 9(1) & (2) fall under the jurisdiction thereof. Section 2 (b) of Penal Code Act also grants extra-territorial jurisdiction over the offences that fall under the Act which includes the crime of enforced disappearance.

#### **Reply to paragraph 17**

61. Section 12 (1) of the Constitution states that if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. In the case of *Molapo v Director of Public Prosecutions*, the constitutional court indicated that in giving life to section 12 of the constitution, the prosecutor must give the defence the entire docket together with its statements for him to prepare his defence. This is a guarantee that any person tried for an offence of enforced disappearance benefits from a fair trial.

62. Also, the Constitution of Lesotho section 118(2)<sup>3</sup> establishes the courts and guarantees their independence. In a case where the litigant has a reasonable apprehension that the court will be impartial in deciding his or her case, the litigant including the victim of enforced disappearance has the right to apply for a recusal of the judicial officer.<sup>4</sup>

63. The investigative powers rest with the police in terms of CP& E 1981. The prosecution of criminal cases rests with the DPP in terms of the constitution. The military is not competent to investigate cases of enforced disappearances under domestic law. While the military may have a role in supporting investigations by providing information or logistical assistance, the primary responsibility for investigating and prosecuting cases of enforced disappearances rest with police and prosecution respectively.

64. Customary and military courts do not have the adjudicative powers in respect of cases of enforced disappearance as such, they are incompetent to impose any sanction or punishment. Such powers rest with the High Court as mentioned in the response to paragraph 16 above.

#### **Reply to paragraph 18**

65. The police officers as the authorities who have the powers to initiate investigations do not have the power to initiate investigations into enforced disappearance where there is no formal complaint or report. Where there is a report or complaint, the police have the necessary powers and resources to conduct investigations into allegations of enforced disappearance. They also have access to documentation and relevant information in order to conduct their investigation. Domestic law provides for the possibility of competent authorities to initiate investigations of enforced disappearance.

66. The Police also have access to any place of detention or any place where they have reasonable apprehension that the disappeared person may be present.

#### **Reply to paragraph 19**

67. The measures taken to search for a disappeared person starts when the Police receive the report. Immediately, relevant statements are obtained. Thereafter, physical search commences; these are crime scene investigation, systematic search, binary search etc. In the event of death DNA is done. Thereafter the remains are released to the relatives for burial

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<sup>3</sup> The courts shall, in the performance of their functions under this Constitution or any other law, be independent and free from interference and subject only to this Constitution and any other law.

<sup>4</sup> The following is an example of recusal applications before court where the accused persons are charged with unlawful detention.

purpose. However, there is no national DNA database kept and maintained by the state. The above procedures were employed in the cases of *Ts'ukulu v DPP*<sup>5</sup> and *R v Mphaki*.<sup>6</sup>

#### **Reply to paragraph 20**

68. The mechanisms in place to ensure that law enforcement or security forces do not participate in the investigation, suspects in this regard are interdicted as per section 53 of the Police Act 1998. The interdict commences from the inception of the investigation and continues for the duration of the investigation. However, in Lesotho, there are no private investigators. As a result, all the cases including those involving the police are investigated by the police.

#### **Reply to paragraph 21**

69. The mechanisms and measures that the state has for the protection of complainants, witnesses and relatives of the disappeared persons is provided for under Witness Protection Act 2021. This Act protects witnesses who may be vulnerable to harm due to their testimony in criminal proceedings.

70. The Act also aims to ensure the safety and welfare of witnesses who fear giving evidence because of potential threats, violence or serious injury from those affected by the proceedings. The Act further ensures that witnesses testify freely and without fear, thereby contributing to the fair administration of justice.

71. In granting bail, the court looks at the interests of justice. If the court is of the opinion that the interests of the society will be injured, bail is so denied. This is a form of protection to the complainants and the relatives of the disappeared persons.

### **D. Measures to prevent enforced disappearances (arts. 16–23)**

#### **Reply to paragraph 22**

72. Domestic law provides for an explicit prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearances. Section 6 (1) (c) of the Lesotho Fugitive Offenders Act of 1967, a person shall not be returned to his country if it appears to the minister or the court that his right to personal liberty shall be restricted. Expulsion, return, surrender or extradition of a person is executed following the approval of the requesting state by the Court of Lesotho as laid down in section 7 of the Act.

73. The country safeguards against a person being subjected to enforced disappearance in a requesting country in line with section 7. The request for expulsion, surrender or extraction of a person by a requesting country must be supported with a warrant of arrest clearly stating the reasons for arrest of a person or where a person is convicted.

74. The order of court would indicate the offence against which the person was charged, conviction and the sentencing justified by the law. In addition, where expulsion, return or extradition involves Mosotho in other countries, the applicable treaties which echoes the sections 7 and 8 of the Act apply.

75. To appeal the decision authorizing an expulsion, return, surrender or extradition, the hierarchy of courts allow that anyone affected by any decision can appeal. The Court of Appeal is the final arbiter in all cases in the country.

#### **Reply to paragraph 23**

76. Reference is made to the response in paragraph 8 above. To add thereon, the Constitution provides for the condition and procedures for arrest to safeguard against the unlawful deprivation of one's liberty and guarantees fair trial. Pursuant to these constitutional

<sup>5</sup> Thabo Tsukulu v The Director of Public Prosecution (CIV/APN/0431/2017).

<sup>6</sup> Rex V Rapele Mphaki & 9 Others (CRI/T/0008/2028) [2025] LSHC 1 (27 February 2025).

provisions, other laws including Lesotho Mounted Police Standing Order 2016 provide access to visitation by family, access to a legal representation.

77. Section 12 (5) of the LMPS Standing Order 2016, a detainee's legal representative shall be given time to interview the arrested person provided circumstances permit. Once a foreigner has been arrested, Police headquarters must be informed immediately so as to communicate such with the Ministry of Foreign Affairs and International Relations. Every person detained by the Police shall be allowed to communicate with his relatives or legal advisor. However, the communication shall strictly be monitored by Police officers in order to ensure that the investigation is not jeopardised.

78. In the case of *Molapo v DPP*<sup>7</sup> the court indicated that for purposes of fair trial under section 12, the prosecution should inform the defence of the case they have to answer in time. This includes all the statements that will be used on trial including informing their families in order for them to secure a lawyer of their choice. These principles are also in line with the Miranda Principles.

#### Reply to paragraph 24

79. Measures taken to ensure that all official registers and/or records of persons deprived of liberty, regardless of the nature of the place where they are deprived of liberty include; the Occurrence Book; Cell Register; the Detention Form. These forms are updated all the time when the person is detained and upon release and include the elements listed in article 17 (3) on the Convention.

80. There are no incidents where officials failed to record persons deprived of their liberty. However, in the event where the person has been kept in a detention facility for more than 48 hours, the arresting officer is mandated by law to apply for further detention from the magistrate's court.

81. On the occurrence books and cell registry the officer will have to indicate the clear reason why he has to keep the person detained longer than the prescribed time. In the occasion where the person gets detained without an order of court, the detainee has an option to sue for unlawful detention in the court of law and claim compensation.<sup>8</sup>

82. In the event where the detainee is reported missing through the application of the habeas corpus, Investigations are made to locate a detainee after which the responsible officer who failed to record the history of the detainee is reprimanded, in the case of *Mokalekale Khetheng* all the concerned Police officers were investigated, charged and brought to justice.

83. It is the duty of the Officer Commanding a station to inspect records and rectify accordingly, this also applies in the absence of the report of a missing detainee. In addition, Inspectorate, Complaints and Discipline offices habitually check the records or registers at

<sup>7</sup> Lepogo Seoezla Molapo v DPP 1997–98 LLR–LB 384. See also Seleemo Chaka v The Learned Magistrate and Others CIV/APN/0082/2020 [2020] LSHC 34. Maqhobela v Director of Public Prosecutions (CRJ/APN 359 of 2001) [2001] LSCA 69 (24 July 2001). Khotseng v Director of Public Prosecutions (CRI/APN 558 of 2011) [2012] LSHC 17 (8 May 2012). Khaketla v Director of Public Prosecutions (CRI/T/0098/2017) [2022] LSHC 40 (2 June 2022). Ramoepana v Director of Public Prosecutions (C of A (CIV) 33 of 2018) [2019] LSCA 44 (1 November 2019).

<sup>8</sup> See the following cases Malatiana v Compol (CIV/T/703/2019) [2023] LSHC 7 (10 February 2023). Issacs v Compol (CIV/T/293/2014) [2023] LSHC 5 (7 February 2023). Seleemo Mangobe V COMPOL (CIV/T/701/2011) [2024] LSHC 275 (7 June 2024). Mofee v The Commissioner of Police (CIV/T 47 of 2019) [2021] LSHC 68 (3 June 2021). Lori Ramashala v Makutle Makutle and Others (CIV/T 72 of 2011) [2013] LSHC 51 (15 August 2013). Lechesa Ranthimo v Commissioner of Police and Another (CIV/T 240 of 2007) [2014] LSHC 2 (27 February 2014). Thabang Maketsi and Another v COMPOL and Another (CIV/T 550 of 2011) [2013] LSHC 32 (28 February 2013). Lethole v Commissioner of Police and Others (CIV/T 4 of 2014) [2014] LSHC 74 (12 August 2014). Kopo and Another v Commander Lesotho Defence Force and Another (CIV/T 259 of 2008) [2011] LSHC 122 (9 March 2011). Mosehle Molise v Officer Commanding Thaba Tseka Police Post and Others (CIV/T 40 of 2012) [2013] LSHC 74 (11 March 2013). Mosehle Molise v Officer Commanding Thaba Tseka Police Post and Others (CIV/T 40 of 2012) [2013] LSHC 74 (11 March 2013).

different stations and take appropriate measures to correct the officers who have omitted to record the history of detainees accordingly.

84. Immediately when the person gets released from the correctional institution, the person is allowed to make his arrangements for their family to take him home. There is a special accommodation facility arranged where they temporarily stay, they get removed from the normal inmates house. This arrangement affords the detainees to immediately exercise their rights fully therefrom, with physical integrity.

85. In the situation of a police detention facility, when a person deprived of his or her liberty is released from custody, he or she is inspected by the station commander to ensure that he/she is in good condition or any other issue that he/she may need assistance with. This includes reporting about their health status and well-being at the time.

#### **Reply to paragraph 25**

86. Persons deprived of liberty are guaranteed rights to their representatives as per the response to paragraph 23 above. Habeas corpus applications in the high court are instituted by an interested person or member of the family.<sup>9</sup>

#### **Reply to paragraph 26**

87. Reference is made to the response to paragraph 23 above. Persons who have legitimate interest have a legal right to access the information pertaining to the deprivation of liberty of the detainee from the police station as the first place of contact.

#### **Reply to paragraph 27**

88. As a general practice, the prosecution and the police do not refuse to give information to the suspect or the detainees. This practice used to happen before the case of *Molapo v DPP* referred above in the response to paragraph 23.<sup>10</sup>

#### **Reply to paragraph 28**

89. There is pre-service and in-service training of police officers where they are taught Criminal Procedure including the Criminal Procedure and Evidence Act 1981 (CP&E). Training on human rights are also held for police, military and correctional services personnel as well as for presiding officers and prosecution assisting them to merge their work with national and international human rights standards. These trainings are held with support from the Office of the High Commissioner for Human Rights (OHCHR) and through that support, a human rights training manual has been developed.

90. Lesotho Mounted Police Service (LMPS) has weekly nationwide lectures for its serving members. To complement this, since 2021 LMPS has partnered with Sesotho Media and OHCHR, to hold training on basic human rights for recruits and members of LMPS Nationwide. Moreover, the Police Training College, in partnership with the Faculty of Law of the National University of Lesotho is developing a module on police brutality and the use of force for police recruits in training.

91. The Code of Judicial Ethics is disseminated upon the recruitment of judicial officers at all levels. There are also in-house training sessions where the importance of judicial conduct is emphasized. The Administration of Judiciary Act 2011 provides for an autonomous and accountable administration of the judiciary.

<sup>9</sup> The following habeas corpus cases are examples; *Jobo and Others v Commander- Lesotho Defence Force and Others* (CIV/APNS 189) [2015] LSHC 25 (18 June 2015). *Mabuse v Officer Responsible for Mafeteng Criminal Investigation Division* (CIV/APN 147 of 2019) [2021] LSHC 34 (25 March 2021). *Commander Lesotho Defence Force and Others v Mareka* (C of A (CIV) 27 of 15) [2015] LSCA 23 (7 August 2015). *Brigadier Mareka & Others v Commander Lesotho Defence Force* (C of A (CIV) 52 of 2016) [2016] LSCA 9 (29 April 2016). *Theko v Commissioner of Police and Another* (CIV/APN 149 of 90) [1990] LSCA 119 (23 July 1990).

<sup>10</sup> See the case of *Manyokole & Lesholu v Rex C of A* (CRI) N0.2 OF 2024.

## **E. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)**

### **Reply to paragraph 29**

92. In terms of Penal Code Act 2010, a victim is any person normally residing in the same private dwelling as a victim and includes any domestic servant of the victim. This is in line with the definition of victim contained in article 24 of the Convention.

93. The Constitution includes provisions for supporting and compensating victims of crime. Section 31A of the 6th Amendment to the Constitution 2011 provides for adoption of policies to ensure that victims of crime receive support services, including compensation mechanisms. Additionally, Section 11 addresses unlawful arrest and detention and states that victims thereof are entitled to compensation from perpetrators or relevant authorities.

94. In respect of the case of *Mokalekale Khetheng* their family has sued for compensation under the Sesotho maxim of 'raising the head'. This is the phenomenon where the deceased's parents or his child would approach the court to seek that the person who caused the death of their child, pay a certain amount of money or cattle which will be used to compensate the family. Though the claim is in the monetary format, this is slightly different from the common law approach where people would claim delictual damages. The difference is that this one comes from customary law.

95. The leaders of the police service in the country would also go on public platforms condemning the unfortunate act in the Mokalekale matter. These are the acts of guarantee of non-repeat by the institution in terms of the Convention.

96. The State is responsible to provide compensation or reparation under domestic law in the event of enforced disappearance. The time limit to access compensation or reparations is normally awarded by the court under the orders granted. Refer to habeas corpus cases above in response to paragraph 23.

### **Reply to paragraph 30**

97. There are no specific arrangements, legally or otherwise, specific to the persons subjected to enforced disappearances or their family members in relation to social welfare, financial matters, family law or property rights. However, depending on the circumstances of each case the existing laws and policies apply in each case. For example, where a person subjected to enforced disappearance was a breadwinner and left his family destitute, they shall be entitled and shall apply for social assistance from the Ministry of Social Development.

98. Upon receipt of the report from the member of the society, the police records it in an occurrence book. That report becomes the first information of a crime of the said disappearance. On that basis of which investigations begin.

99. The declaration of absence is then issued by the police through notice boards and the police social media platforms while investigations continue. In the event that the body of the disappeared person is found it will be exhumed, the DNA tests will be conducted and the reburial follows.

### **Reply to paragraph 31**

100. The Constitution in section 16 and Public Meetings and Processions Act 2010 generally guarantee the right to freedom of association, including the right to form and participate in organizations, particularly those focused on establishing the circumstances of enforced disappearances. These measures are in line with the international human rights law which emphasizes the importance of civil society in addressing enforced disappearances and assisting victims.

## **F. Measures to protect children against enforced disappearance (art.25)**

### **Reply to paragraph 32**

101. Section 46 of the Penal Code Act 2010 prohibits abduction of a child and a person who has committed such an offence is liable to imprisonment of not more than three years or a fine not exceeding M10,000 (\$564). In addition, Children's Protection and Welfare Act 2011 section 66 makes it criminal offence to wholly or in part engage in conferring or transferring of a child temporarily or permanently, possession, custody or control of a child commits an offence and is liable upon conviction for a fine not exceeding M20,000.00 (\$1128) or imprisonment not exceeding 5 years. It further makes it an offence to harbour or take possession, control or custody of a child without lawful authority.

102. To prevent occurrences of these offences, the CPWA is widely disseminated by the Department of Social Development, CGPU and Civil society organizations in communities and schools.

103. When people are suspected of having committed a crime mentioned in article 25(1) of the Convention, the CGPU which is manned by the specially trained personnel to investigate cases of children commences the investigations. When the investigations have concluded, the case is taken to the children's court and tried accordingly. Those who are responsible are committed to the correctional institute. The maximum sentences are prescribed under CPWA 2011 and the Penal Code 2010.

104. The Department of Social Development is the custodian for children's welfare thereby assuring that children are registered at birth. To implement this Act, This Department has coordinated with the Department of National Identity and Civil Registration (NICR). Section 81 of the Children Protection Welfare Act 2011 provides for the establishment of the National Children Coordinating Committee (NCCC) which consists of stakeholders in relation to child protection and the Civil Society Organizations has been established to ensure that children are registered at birth nationwide. There are also established units at the hospitals for birth registration immediately after the child is born.

105. The adoption system or process is provided in section 51 of the CPWA which stipulates who can adopt or foster. The approval is granted by the High Court and can also be annulled by the same court.<sup>11</sup> There are cases reported on the disappearance of a child by another parent, where the suspect is a parent, be it biological mother/father.

106. In most cases the suspected parent is the one who has been denied lawful custody but granted access. The child in this case will be returned to the lawful custody by the Child and Gender Protection Unit (CGPU) personnel from Lesotho Mounted Police Service. In case where a child is in the Republic of South Africa the cross-border protocols are followed for the return of such a child. The suspects are punished accordingly.

### **Reply to paragraph 33**

107. In relation to inter-country adoptions, monitoring is done by the social workers. Section 66 of the CPWA provides punishment for child traffickers and other related matters. Section 70 of the same Act provides for the punishment for a person who takes a child away from the legal custodian despite their relationship. All these measures strengthen the protection of children, be it enforced disappearance, trafficking or illegal adoption.

108. There are cases reported on the disappearance of a child by another parent, where the suspect is a parent. In most cases, the suspected parent is the one who has been denied lawful custody but granted access. The child in this case will be returned to the lawful custody by the Child and Gender Protection Unit (CGPU) personnel from the Lesotho Mounted Police Service. In case a child is in the Republic of South Africa the cross-border protocols are followed for the return of such a child. The suspects are punished accordingly.

<sup>11</sup> Pusetso Moleko V Ministry of Social Development & Ano. (CIV/ADP/0015/2024) [2025] LSHC 34 (18 March 2025).

**Reply to paragraph 34**

109. In the case of unaccompanied minors, the person who crosses the border to South Africa is expected to produce the affidavit made by the parents of the child. This measure applies even in the case where it is one parent who crosses the border. One is still expected to produce the affidavit of the other parent. This measure safeguards against the trafficking of children in the context of migration. However, the challenge that remains is that there is no forensic database that keeps genetic and forensic information of unaccompanied minors to facilitate the identification of disappeared children.

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