



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### List of issues prior to submission of the second periodic report of Lesotho\*

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

1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/79/Add.106).<sup>1</sup> Please indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol and whether there is sufficient awareness of the Optional Protocol among those who believe that their human rights under the Covenant have been violated.

2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations, including examples of cases in which the provisions of the Covenant have been referred to by national courts.

#### 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)

3. In the light of the dualist approach applied by the State party, please provide information on measures taken to ensure that the provisions of the Covenant are fully incorporated into the domestic legal system and may be invoked before and applied by the Lesotho courts. With reference to the Committee's previous concluding observations (paras. 6–9), please report on any progress made to ensure that the national legal framework is fully consistent with the Covenant, including the following sections of the Constitution: sections 7 (3) (f) and (6), 14 (2) (c), 15 (2) (c) and 16 (2) (c), which allow for the imposition of restrictions that exceed those permitted by articles 12 (freedom of movement), 19 (freedom of expression), 21 (peaceful assembly) and 22 (freedom of association) of the Covenant; sections 12 (11) (a) and 13 that may raise issues of compatibility with article 14 (2) and (3) (d) of the Covenant; and section 18 (4) (a) (b) and (c), which seems to allow for the application of discriminatory laws incompatible with articles 2 (1), 3, 23 and 26 of the Covenant. Please provide information on any instances in which customary laws have been

\* Adopted by the Committee at its 125th session (4–29 March 2019).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations.



in conflict with the rights protected in the Covenant and on the measures taken to review, identify and repeal the provisions of the Laws of Lerotholi that are incompatible with the provisions of the Covenant.

4. Please provide information on the status of the national human rights commission bill of 2014 and indicate whether the commission is now established and operates in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). With regard to the Office of the Ombudsman, please provide information on: (a) its mandate; (b) measures to ensure the effective fulfilment of its mandate, particularly the provision of human and financial resources; and (c) the complaints received and the number of complaints relating to the provisions of the Covenant.

#### **State of emergency and security measures (art. 4)**

5. In the light of the Committee's previous concluding observations (para. 8), please report on measures taken to ensure the compatibility of section 21 (1) of the Constitution, and of any regulations currently in place to govern states of emergency, with article 4 of the Covenant. Please provide information on the Internal Security (General) Act of 1984 and its compatibility with the provisions of the Covenant.

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

6. In view of the Committee's previous concluding observations (para. 19), please report on the steps taken to shed light on past and more recent human rights violations and to ensure the establishment of the truth and the right to reparation for victims and their families, in particular regarding the killings in Butha-Buthe in 1995. Please provide information on the measures taken to shed light on the human rights violations resulting from the political crisis in August 2014, in order to combat impunity.

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

7. In addition to the constitutional provisions on discrimination, please indicate whether there are any specific laws or other measures in place in the domestic system to deal with discrimination, and if so, please provide details. Please clarify whether domestic law: (a) provides a definition of discrimination that encompasses all prohibited grounds of discrimination, including race, colour, property, birth, sexual orientation, gender identity, language, health, social and other status; (b) covers direct, indirect and intersecting forms of discrimination; and (c) provides for effective judicial and administrative remedies. Please describe the measures taken to combat and prevent acts of discrimination, stigmatization and violence, particularly those committed against elderly persons, sex workers, persons with HIV/AIDS and lesbian, gay, bisexual, transgender and intersex persons. In that regard and in view of the Committee's previous concluding observations (para. 13), please provide clarification on the current legal status of sexual acts between consenting adults of the same sex. Please provide an update on the status of the National Disability Bill.

8. With reference to the Committee's previous concluding observations (para. 10) and in the light of Lesotho Vision 2020, please provide information on the measures aimed at ensuring respect for equality between men and women, and reviewing and repealing all discriminatory laws against women, both positive and customary, particularly with regard to nationality, marriage and its dissolution, property rights and inheritance. In that regard, please provide information on the case of *Masupha v. Senior Resident Magistrate for the Subordinate Court of Berea and Others* before the Constitutional Court. Please report on the measures taken to improve the representation of women in political and public life, including in senior leadership and decision-making positions.

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

9. In view of the widespread societal acceptance of violence against women, please provide detailed information on the content of the domestic violence bill 2018 and on measures taken to ensure its speedy adoption. Please comment on allegations that cases of sexual and domestic violence remain largely underreported, and provide information on

measures taken to: (a) abolish associated social taboos that lead to women's fear of being stigmatized, and to encourage victims to file complaints; (b) support victims of violence; and (c) increase the capacities of the Gender and Child Protection Unit, the Victims' Support Unit and shelters for victims. With reference to the Committee's previous concluding observations (para. 12), please report on measures taken to address, prohibit and eliminate harmful practices against women and girls, such as female genital mutilation and labia elongation, early marriage, abduction (forced elopement) or rape of girls resulting in a forced marriage, and virginity testing. Please provide information on the number of complaints of such practices and the number of prosecutions pursued and convictions secured for those responsible.

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

10. With reference to the Committee's previous concluding observations (para. 11) and in the light of article 45 of the 2010 Penal Code, please provide information on the number of legal abortions and estimated number of clandestine terminations of pregnancy performed annually, and indicate whether the State party intends to repeal the restrictions in its legislation that may compel women and girls to resort to unsafe abortions. Please provide updated statistical data on maternal and infant mortality rates and explain the efforts made to: (a) ensure access to safe and affordable contraceptive methods and to education on reproductive health, particularly to prevent teenage pregnancies; and (b) improve access to health-care services for pregnant women and to postnatal checks for women and newborns. Please respond to allegations of forced HIV testing of pregnant women and forced sterilization without consent and knowledge.

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

11. With reference to the Committee's previous concluding observations (para. 15) and in the light of section 5 of the Constitution, please indicate whether the long-standing moratorium on the death penalty has been officially proclaimed. Please describe the measures taken towards repealing the legal provisions relating to the death penalty and explain how section 298 (1) of the Criminal Procedure and Evidence Act of 1981 is compatible with the provisions of the Covenant. Please indicate whether the State party is considering ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Please provide information on the measures taken to generate support for a move away from the death penalty.

12. With reference to the Committee's previous concluding observations (para. 17), please provide information on the legal standards applied in the State party for the appropriate use of force and firearms by law enforcement officials and on the compliance of those standards with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please respond to allegations of police officers using live ammunition to disperse and suppress riots and provide information on the reported use of live ammunition against a nurses' strike in 2014. Please explain how section 5 (2) of the Constitution, and in particular its reference to the protection of property, is compatible with article 6 of the Covenant as interpreted by the Committee in its general comment No. 36 (2018) on the right to life.

13. Please provide information on measures taken to address the allegations that extrajudicial killings and enforced disappearances have been committed by law enforcement officials, notably members of the Lesotho Defence Force and the Lesotho Mounted Police Service, particularly after 2016. Please provide detailed information on measures taken to ensure that all reported cases of such killings and enforced disappearances are promptly and thoroughly investigated, that the perpetrators are prosecuted and punished with sanctions commensurate with the gravity of the crime, and that the victims receive full reparation, including adequate compensation. In particular, please provide information on the investigative and accountability measures taken in connection with the deaths of Thelingoane Mota, Mamoleboheng Besele, Tumelo Mohlomi, Khothatso Makibinyane, Paseka Pakela and Lekhoele Noko.

**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)**

14. With reference to the Committee's previous concluding observations (para. 16), please indicate whether the State party intends to adopt a specific anti-torture law that would, *inter alia*, criminalize torture as defined in international human rights instruments. Please specify the legal grounds on which those responsible for torture are currently prosecuted, and the victims compensated. Please explain how section 32 of the 2010 Penal Code is compatible with article 7 of the Covenant.

15. In the light of the Committee's previous concluding observations (para. 20) and the most recent concluding observations of the Committee on the Rights of the Child (CRC/C/LSO/CO/2, para. 27), please provide information on measures taken recently to repeal all provisions relating to corporal punishment, with regard to both adults in the penal system, particularly sections 8 (2) and 307 of the Criminal Procedure and Evidence Act, and to children, particularly article 16 of the Children's Protection and Welfare Act of 2011, in schools, the home, the juvenile legal system or any other setting, and to ensure that corporal punishment is never carried out in practice.

16. Please comment on the allegations that torture and other cruel, inhuman or degrading treatment remains widespread among law enforcement officers, particularly among members of the police force, the Lesotho Defence Force and the Lesotho Mounted Police Service, notably for the purpose of interrogation and to extract forced confessions. Please respond to allegations that criminal investigations into complaints of torture and ill-treatment are not prompt or impartial, and that the rate of investigations, prosecutions, convictions and sanctions for such offences is low. Please provide information on the Police Complaints Authority established by the Police Service Act of 1998, in particular on measures taken to ensure its independence, and its geographic reach throughout the country. Please clarify whether the Authority may receive complaints directly from the public, publish its findings and refer cases for criminal prosecution.

17. Please comment on the allegations of harsh and life-threatening conditions in prisons, including overcrowding, inmate violence, rape, physical abuse from officers, inadequate access to medical care, lack of special facilities for incarcerated persons with disabilities and inadequate sanitary conditions. Please provide information on the shooting in July 2013 by correctional officers at Maseru Central Prison, allegedly resulting in the death of 13 prisoners. Please provide information on: (a) whether any independent mechanism has been established to regularly monitor and inspect all places of detention, and is entitled to receive official complaints and investigate them; (b) the ability of prisoners to complain directly to such a mechanism; (c) the annual number of cases of ill-treatment, and investigations and sanctions against officers in places of detention; and (d) the steps taken to build new prison facilities and renovate existing ones.

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

18. In the light of the Anti-Trafficking in Persons Act of 2011, please clarify whether all forms of trafficking, including sex trafficking, child sex trafficking and forced labour, are criminalized and punished with penalties commensurate with the gravity of the crime. Please provide information on any efforts made to detect, prevent and investigate cases of trafficking effectively and punish the perpetrators. Please provide specific data from the last five years on the number of complaints received of trafficking in persons, the investigations and prosecutions pursued, the convictions secured, the nature of the sentences imposed and the reparation and protection afforded to victims.

19. Please describe any measures taken to implement the recommendation of the Committee on the Rights of the Child to end the subjection of children to the worst forms of child labour, particularly agricultural work, including animal herding, and the forced domestic work of girls that commonly leads to sexual abuse (CRC/C/LSO/CO/2, para. 56).

**Liberty and security of person (arts. 9 and 17)**

20. With reference to the Committee's previous concluding observations (para. 18), please report on measures taken to eliminate arbitrary arrests by law enforcement officers

and to respect in practice the maximum period (48 hours) a suspect can be held in detention before being brought before a magistrate. Please provide information on: (a) the percentage of persons among the prison population in pretrial detention; (b) the average time spent in pretrial detention; and (c) the non-custodial alternative measures to pretrial detention and their application in practice. Please clarify whether police officers of the rank of inspector or above can search individuals or homes without a warrant and, if so, please provide information on the safeguards aimed at limiting the abuse that may arise from such powers.

#### **Administration of justice (art. 14)**

21. Please provide information on measures taken to strengthen the capacity of the judicial system, in particular to: (a) ensure the development of a pool of qualified judicial candidates, particularly at the highest judiciary level; (b) address the lack of financial and human resources; (c) reduce delays in the administration of justice and the backlog of cases, particularly before the High Court; and (d) ensure the full dissemination and implementation in practice of the Code of Judicial Ethics. Please respond to reports that the Court of Appeal has not scheduled any session since 2016 and that the appointment process of the President of the Court of Appeal has been subjected to undue prolonged delays. Please indicate whether the State party intends to transform the Court of Appeal into a permanent institution.

22. With reference to the Committee's previous concluding observations (para. 21), please report on any measures aimed at ensuring the independence of the judiciary and particularly: (a) clarify whether judges currently benefit from a permanent status; and (b) indicate whether the State party intends to review the appointment process for the Chief Justice of the High Court and the judges of the Court of Appeal, and the composition of the Judicial Service Commission, a body in charge of appointing regular judges, composed of members mostly appointed by the executive. Please provide information on allegations that high-profile and political cases are likely to be judged with prolonged delays or with partiality and that legal practitioners, including lawyers and judges, may face intimidation in such cases.

#### **Right to privacy (art. 17)**

23. With reference to the Committee's previous concluding observations (para. 24), please provide information on the Data Protection Act of 2011. In particular, please indicate: (a) the legal safeguards against the power of the National Security Service and other security agencies to intercept mail and tap telephones; and (b) whether the Data Protection Commission has been established, and specify its budget and mandate, particularly in relation to the National Security Service.

#### **Freedoms of expression and assembly (arts. 2, 19 and 21)**

24. With reference to the Committee's previous concluding observations (para. 23), please indicate whether newspapers still have to obtain a certificate of registration under the Printing and Publishing Act of 1967 and, if so, explain the process to obtain such a certificate and to challenge any refusal to grant a certificate. Please provide details on the Lesotho Communications Authority established under the Lesotho Communications Authority Act of 2000, particularly on: its mandate; the appointment process of its members, the processes followed to deliver broadcasting licensing for communication service providers, and any safeguards aimed at ensuring its independence. Please clarify the role of the minister in broadcasting matters, including with regard to policies on revocation or suspension of existing licences and a moratorium on new licences, since the adoption of the Lesotho Communications Authority (Amendment) Act of 2006.

25. With reference to the Committee's previous concluding observations (para. 22), please specify the measures aimed at addressing the hostility to which journalists are reportedly frequently subjected. Please comment on reports that journalists are the target of serious acts of intimidation, including death threats and judicial harassment, notably for covering political matters, both from public authorities and private citizens. In that regard, please provide information on the outcome of the prosecution of five members of the Lesotho Defence Force for the attempted murder of the journalist Lloyd Mutungamiri.

Please comment on reports of the arbitrary suspension of radio signals for allegedly broadcasting defamatory content against officials. Please provide information on the regulatory frameworks regarding: (a) censorship of and content restrictions on the media; and (b) the prosecution of journalists for libel, and specify the number of related prosecutions, including their detailed rationale and their outcome, for the last five years. Please describe measures taken to implement the Constitutional Court's ruling of 21 May 2018, in which the Court declared that criminal defamation was unconstitutional.

26. Please provide information on the regulatory frameworks regarding the registration of trade unions and indicate whether the State party intends to review its labour legislation to ensure that trade unions that do not represent 50 per cent or more of employees may still be registered and exercise their right to freedom of assembly. Please comment on allegations that employees face obstacles when attempting to join trade unions.

27. Please provide information on the permit system governing the organization and holding of demonstrations and other peaceful assemblies. Please provide details on the alleged use of violence by police officers to disperse student protests on the campus of the National University in April 2017.

**Participation in public affairs (arts. 19 and 25)**

28. Please provide information on measures aimed at addressing the political instability in the country, particularly since 2014, which has led to challenges in the functioning of the National Assembly. Please comment on allegations of acts of intimidation carried out against opposition leaders.

29. Please provide information on the measures taken to strengthen the accountability and transparency of the Government and, in particular, indicate whether the State party intends to adopt a legislative framework on access to public information. Please also provide information on the measures taken to tackle corruption in law and in practice, and on current investigations, prosecutions, convictions and penalties in relation to government officials at all levels for acts of corruption.

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