

# **LESOTHO**

**Civil Society Report on the Implementation of the ICCPR**

**Submitted for review to the Human Rights Committee**

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# List of Acronyms

ICCPR International Covenant on Civil and Political Rights

UN United Nations

CPWA Children’s Protection and Welfare Act

LGBTI Lesbian, Gay, Bisexual, Transgender, and Intersex

NGOs Non-Governmental Organisations

LCN Lesotho Council of NGOs

HIV and AIDS Human immunodeficiency virus, acquired immunodeficiency virus

# **LESOTHO**

**Civil Society Report on the Implementation of the ICCPR (For the adoption of the List of Issues)**

**Submitted for review to the Human Rights Committee**

By the following organisations:

Lesotho Council of Non-Governmental Organisations (LCN)

Federation of Women Lawyers (FIDA)

Catholic Commission for Justice And Peace (CCJP)

Matrix Support Group Association (MATRIX)

Lesotho Young Christian Students (LYCS)

Transformation Resource Centre (TRC)

Lesotho Network of the Development of the Blind (LNDB)

Campaign for Education Forum (CEF)

Survivor of Lesotho Dams (SOLD)

Women and Law in Southern Africa-Lesotho (WLSA)

**February 2019**

# **PART A: REPORT OVERVIEW**

## **INTRODUCTION**

The essence of an open, accountable and responsive Government ensures respect of principles of democracy within a State. When a State has monopoly in decision-making, it does not only threaten the element of accountability but also jeopardizes the independence of institutions entrusted with inculcating a culture of democracy and respect for human rights.

The values of democratic States include human dignity, achievement of equality, advancement of human rights and freedoms, and respect for fundamental principles of democracy. In Lesotho, gross violation of human rights occurs in many instances with a disregard of the solemn proclamation of international instruments, especially the International Covenant on Civil and Political Rights (ICCPR), which is also exported in the country’s constitution, and entitles everybody to protection without distinction. The Lesotho Council of Non-Governmental Organisation as the umbrella organisation to coordinate civil society in Lesotho and manage the voice of citizens, coordinated and convened an information session on ICCPR, for NGOs to frame summary of questions and recommendations on the list of issues for Human Rights Committee to be presented to the Government of Lesotho. This was an opportunity to challenge the high political polarization within governance institutions.

## **MANDATE OF CIVIL SOCIETY ORGANISATIONS**

The violation of human rights in the absence of a strong and countervailing monitoring institutions on human rights, guarantee a downfall for the poor and indigent. Undoubtedly, civil society organizations play an important role as agents of accountability to monitor protection and promotion of such rights; they are the voice of the voiceless and ensure a responsive and answerable Government, as they are able to successfully challenge abuses by Government through collaborative and joint initiatives.

# **PART B: THEMATIC ANALYSIS**

## **Article 1-The right to self-determination**

## 1.1 Background

* Section 1(1) of the Constitution- Lesotho shall be a sovereign kingdom
* Section 2 of the Constitution- Constitution shall be the supreme law of Lesotho and any other law that is inconsistent with the Constitution shall be deemed null and void.
* The power is segregated in terms of ward councillors and village and principal chiefs
* Lesotho is a democratic State; has a constitutional monarch and a democratically elected Government and councils
* Every citizen is free to choose his/her own political affiliation

### 1.2 Recommendation/Concerns

* What laws has the Government put down to ensure the stability and endurance of coalition Governments
* Are there any effective policies on public participation to ensure that citizens are consulted on their rights and their views validated before any decision is taken?
* Is the process of reforms inclusive and participatory?
* Does the Government have inclusive policies for minority group such as disabilities, LGBTI community, the Xhosa and Phuthi tribes?

# **Article 2 -Non Discrimination and equal enjoyment of rights (Art 2 and 3)**

## 2.1 Background

* **National framework within which the Covenant is implemented**
* The Constitution in chapter 2 enshrined a Bill of Rights afforded to all citizens without discrimination and these rights are justiciable before the courts of law.
* The very same constitution has a proviso for discrimination on the basis of custom
* Girl children are excluded on issues of inheritance (customary)
* Girl child can be expelled from school on the basis of pregnancy, this happen especially in church regulated schools
* Inaccessible facilities for the disability group e.g. buildings, technology used does not accommodate them
* Inadequate promotion of the contents of the Covenant to the public?
* Restricted application of the Covenant in decided cases before the courts of law, where international instrument is taken as guidelines but not binding because they have not been domesticated. For instance, the Case of Senate Gabasheane Masupha when addressing the issue of discrimination against a girl child in chieftainship and succession matters

### 2.2 Recommendations/Concerns

* When will the proposed amendments to the structure and operation of the Human Rights Commission be taken into consideration?
* Are there any measures undertaken by the State to promote the Covenant to the citizens, public institutions; incorporate human rights standards during recruitment of Police, Judiciary and Members of Parliament and their respective portfolios?
* Amendment of s18(4) of the Constitution which permits discrimination on the basis of custom
* Amendment of s10 of the Chieftainship Act and the Laws of Lerotholi that exclude a girl child in issues of succession and inheritance
* The Courts to engage the Human Rights Approach in deciding cases Are there any measures in place to ensure protection of the LGBTI community with regard to their identity, health rights, privacy?
* Election of women as in executive’s offices such as the office of the Prime Minister
* When will the State adopt legislation that specifically criminalizes domestic violence and provide information on its scope and content?
* What measures have been taken to ensure that acts of domestic violence are effectively investigated and perpetrators prosecuted and sanctioned?
* Other steps taken to combat domestic violence such as training for judges, prosecutors, police and health officers and awareness-raising campaigns for women on their rights and available remedies, as well as information on the number of safe shelters and the resources allocated to the assistance of victims of domestic violence and trafficking
* School attendance for girls; any compulsory measures to ensure retention of girl children in schools especially during pregnancy and/or death of their parents? What efforts are being put in place to address school attendance for the boy child, particularly those who tend to livestock in the mountains?
* Identity of children; can illegitimate children have identity and nationality of the father regardless of the relationship or marital status of the parents?

# **Article 6- The Right to Life**

## 3.1 Background

* Sec 5 of the Constitution reiterates the inherent right to life for every person but specifies exceptions
* In carrying out their mandate of investigation and arrest, police can shoot to kill suspects
* Prime minister’s comments in support of excessive use of force influences Police brutality
* Delayed justice for victims and their dependant due to back log of cases, disappearance of dockets
* There is still a provision for death penalty in Lesotho
* There is a controversial discussion on the issue of abortion viz a vis the right to life. The issue of abortion is said to affect the right to life of the foetus leaving out the interest of the mother.

### Recommendations

* What measures are undertaken to ensure the indivisibility of the essence of human rights? Any social security measures to marginalised groups such as the disability group provided by the State to guarantee the right to life?
* Any steps taken by Government to abolish the death penalty?
* Legalise abortion in Lesotho for unwanted pregnancies

# **Article 7- Torture, Cruel and Inhumane or Degrading Treatment**

## 4.1 Background

* The Constitution at s4(1)(d) provides for the protection against inhumane treatment.
* Police brutality; in peaceful protests, investigations (people are beaten, shot, suffocated and tubed) and during arrests and detention
* Surfacing cases of forced sterilisation on women living with HIV/AIDS
* Unhygienic living conditions for prisoners
* Cases of enforced disappearances

### 4.2 Recommendation

* Enactment of specific law on torture with clear definition and scope
* Amendment of the Constitution to provide for clear definition
* Control measures to protect against admissibility of confessions obtained as a result of torture
* Any steps undertaken to put to an end the issue of police brutality? Is there any law criminalising it to ensure justice in such cases?
* Strengthen the Police Complainant Authority and ensure that its decisions are enforceable and binding and that they can demand accountability
* Any specific law that criminalises torture and set out clear punishment for such?
* Are there any investigations that have been carried out to establish the responsibility of, and to punish those found responsible for such acts?
* Any measures taken to prevent the recurrence of further abuses?
* Uniform training within the SADC region for law enforcement incorporating the human rights standards.
* What steps have been undertaken by Government to ensure abolition of corporal punishment.

# **Article 8- Slavery**

## 5.1 Background

* The Constitution in s 4(1)(e) prohibits slavery and forced labour
* Anti-Trafficking in Persons Act 2011 for victims of trafficking
* Children’s Protection and Welfare and Act 2011 increases sentencing for trafficking of children
* The Labour Code order 1992, definition of employee denote slavery
* Domestic workers and care givers work 24/7
* Children made to herd animals against their will without pay/direct pay. Thus payment given to a third part or none at all. Some are paid on annual basis

### 5.2 Recommendation

* What laws are put in place to protect people from acts in the form of slavery e,g domestic workers scope of work and minimum wages
* Amendment to the labour laws to eliminate the use of servant in definition of employee and other related issues
* Any measures in place to strengthen the labour courts or offices to accommodate informal settings such that the instances of matters between domestic workers and their employers can be mediated upon not in labour offices but in an informal office where a lot of technicalities are eliminated.
* What measures are put into place for victims of trafficking with regard to shelter and justice? Is the public provided with such information?
* Are there any monitoring mechanisms for protection of children against forced labour?

# **Article 9 and 10 - Right to liberty**

## 6.1 Background

* The Constitution in s4(1)(b) provides for the right to liberty which could only be limited on the basis of law
* People usually skip the country and live in exile in times of political upheavals

### 6.2 Recommendation/Concerns

* How soon is the accused family identified and informed of his arrest?
* Any steps to ensure that places of detention are official, safe and hygienic?
* is it necessary for the police to handcuff a suspect who is not resisting arrest?
* How is reasonable force determined?
* Engagement of speed trials to avoid backlog of cases, overcrowding of prisons and unnecessary stay in prisons without trials
* Prisons to focus on rehabilitation to avoid repetition of offences
* Develop programmes for reintegration of offenders in the communities and engage social workers in the process
* Ensure the protection of prisoners against sexual acts within the prison
* Arrangement of spouses/partners to visit the prisoner for conjugal rights and to provide comfort and support
* Provision of sanitary pads and condoms in the Prisons

# **Article 17 –Right to privacy**

## Background

* S 11 of the Constitution provides for right of privacy

### 7.2 Recommendation

* there should be justified intervention with a person’s privacy
* Provision of search and arrest warrants by police so that people could hinder the process of investigation on the basis of failure to produce such
* What remedies are available to a person’s whose privacy rights have been violated?
* Is the information about available remedies on invasion of privacy to the complainant**?**
* Enact specific law against interception, recording displaying of information and pictures on social medias
* There should be programmes to sensitise the health personnel not to take decisions as to the number and spacing of children a person should have, that should be a decision of a mother.
* There should be laws criminalizing acts of coerced and forced sterilisation with regard to sexual reproductive and health rights so that women should make an informed decision on these rights.

# **Article 19 & 20 - Freedom of conscience and to provide information and freedom of expression**

## 8.1 Background

* s13& s14 of the Constitution
* censored media
* censored content

### 8.2 Recommendation

* remove censorship on media
* End threats directed at journalists

# **Article 21 &22- peaceful assembly and freedom association**

## 9.1 Background

* s 15 & s16 of the Constitution
* threats and use excessive force during protests by police
* Police discretion to give permission to protestors
* no conducive environment for the disabled especially the blind- no access to what?
* high rate of killings by the security sector during political campaigning

### 9.2 Recommendation

* Government to allow for plurality of voices including people living with disability
* Government to provide financial aid to NGOs focusing on grassroots movement
* demand for accountability and provision of remedies in case of violation

# **Article 23- Marriage**

## 10.1 Background

* Marriage Act 1974, Children Protection and Welfare Act 2011, Laws of Lerotholi, Legal Capacity of Married Persons Act 2006 and Sexual Offences Act 2003, Land Act 2010
* Non consolidation of marriage laws
* No uniform age for marriage
* High prevalence of early/forced marriages
* Marital rape and gender based violence, intimate partner violence
* Exclusion of same sex marriages
* Discrimination on issues of inheritance

### 10.2 Recommendation

* Consolidation of marriage laws and standard age for marriage
* Eliminate early marriages
* Strengthen institutions and capacitate the personnel dealing with sexual and gender based violence as well as raising awareness to the public
* Include other groups such as the LGBTI in marriage issues
* Division of the deceased estate property under custom to include all the deceased’s children irrespective of sex or gender

# **Article 24- Rights of a Child**

## 11.1 Background

* Children Protection and Welfare Act 2011 (CPWA)
* Child is a person between 0-18
* Identity and Nationality passed by father in case of children born wedlock, however if mother not married it comes from the mother’s side
* Immediate birth registration
* Master of the High Court has jurisdictions over issues of inheritance involving children

### 11.2 Recommendation

* Amendment of CPWA to include provision prohibiting early child marriages and punishment
* Every child to have both parents appear on the birth certificate irrespective of legitimate relationship between the parents
* Increase the age of child to 21; at the age of 18 one is usually in high school and has not yet attained alternative sources of living
* Focus on rehabilitating juvenile offenders

# **Article 25- Right to Participate in Public Affairs, Vote,**

## 12.1 Background

* National Assembly Electoral Act 2011
* Democratic voting; free and fair
* No braille provision on the voters’ card

### 12.2 Recommendation

* Provide for a secretive and accessible voting for the disabled especially the blind

# **Article 27- rights of minorities**

## 13.1 Background

* Linguistic minority groups of Xhosa and Phuthi speaking; marginalised in terms of services provided in Sesotho

### 13.2 Recommendation

* Inclusion of minorities on every platform