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**Lesotho**

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\* The present document was not edited before being sent to the United Nations translation services.

## I. Methodology and consultation process

1. The methodology used in compiling this Report is a combination of desk research and stakeholder consultations through a series of workshops. The Human Rights Unit of the Ministry of Justice and Human Rights first developed a framework for the compilation of the Report. That was followed by consultative workshop held with all Government Ministries. A National workshop involving all stakeholders was then held to complement and validate the draft Report.

## II. Background: Normative and institutional framework

### A. Background

#### (a) Geography

2. Lesotho is located in Southern Africa. It is landlocked and entirely surrounded by the Republic of South Africa. It covers an area of about 30555 square kilometres and has a population of about 1.88 million.<sup>1</sup>

#### (b) Political system

3. Lesotho is a constitutional monarchy. It gained independence from Britain on the 4<sup>th</sup> October, 1966. The King is the Head of State. There are three arms of Government, namely, the Executive, the Legislature and the Judiciary, to ensure checks and balances. The Head of Government is the Prime Minister.

4. Over the years, Lesotho's democracy has been evolving and at times proved to be fragile. Fragility manifested itself in the form of challenges posed after some elections. On occasion this led to the suspension of constitutional rule, temporary dictatorships and resulted in abuse of human rights. Lesotho held its democratic elections in 1965, 1970, 1993 and 1998 under the Westminster model based on multi-party democracy. Lesotho had been using the **First - Past – the - Post** electoral model. This model, though accepted and used in many democratic countries, was considered by some as not translating the national vote into a satisfactorily proportionate share of seats in the National Assembly. Experience in the 1990's revealed that the electoral model was not affording comfort to all parties. After the 1998 general elections, protests by an alliance of parties that had lost ensued. Following thorough stakeholders consultations Lesotho adopted an electoral system that combines the *First Past the Post* and *Proportional Representation* electoral models. This ensured a more inclusive National Assembly. As a result, Lesotho used that Mixed Member Proportional System in the 2002 and 2007 general elections.

#### (c) Legal system

5. Lesotho has a dual legal system: Roman Dutch Law (Common Law) and Basotho customs (Customary law). These two systems of law have equal validity with the proviso that in cases of inconsistency, statutory law prevails. However, the two systems cannot be applied simultaneously in a given situation.

## **B. Legislative framework**

### **1. National**

#### **(a) Constitution**

6. The Constitution of Lesotho 1993 establishes a constitutional monarchy and places the Constitution as the supreme law of the land. Fundamental human rights and freedoms are enshrined in Chapter II which contains civil and political rights. They include the right to life, the right to personal liberty, right to respect for private and family life, freedom of conscience, right to equality before the law and equal protection of the law, right to fair trial, freedom of movement and residence, freedom from inhuman treatment, freedom from slavery and forced labour, freedom from arbitrary search and entry, freedom from discrimination and freedom of expression.

7. Civil and Political Rights as expressed in Lesotho's Constitution provide for limitation of rights. This in implies that human rights are not absolute, as they can be restricted for purposes of public health, public morality and public security. For the aforementioned conditions, limitations and restrictions on some of the above rights are feasible. The restriction or limitation of rights, such as the declaration of the state of emergency must be done legally, by a legitimate and legal authority identified by law. Most importantly, any restriction or limitation of a right must be constantly monitored and reviewed by the relevant legal authorities, until causes of restrictions ceases and there is return to normality.

8. Principles of State Policy<sup>2</sup> are not enforceable by courts of law, but are to be implemented on an incremental basis, through policy, guidelines and social programmes that are subject to Lesotho's economic capacity and development. These principles of State policy entail rights of a socio-economic nature. These include equality and justice, protection of health, provision for education, opportunity to work, just and favourable conditions of work, protection of workers' rights and interests, protection of children and young persons, rehabilitation, training and social rehabilitation of disabled persons, economic opportunities, participation in cultural activities and protection of the environment, among others.

#### **(b) Legislation**

9. In addition to the Constitution, there are a number of laws that have been enacted which deal with the protection of human rights:

- Sexual Offences Act 2003 covers areas not addressed under the common law offence of rape. It takes into account the rights of the victims of this offence, the rights of the disabled persons, men, women and children
- Speedy Courts Trial Act 2002 ensures protection of the rights of offenders to a fair and speedy trial within a reasonable time
- Legal Capacity of Married Persons Act 2006 removes the minority status of married women and marital power of the husband over the person and the property of the wife with regard to administration of the joint estate
- Legal Aid Act 1978 provides for legal representation in courts to indigent people
- Deserted Wives and Children's Proclamation 1959 provides for the right of disserted wives and children to recover maintenance from their husbands and fathers
- Criminal Procedure and Evidence Act 1981 provides for the procedure in criminal proceedings and the rights accorded to the parties in the criminal justice system

- Children's Protection Act 1980 protects the rights of children in conflict with the law
- Labour Code Order 1992 protects the rights of workers
- Citizenship Act provides for the right to nationality
- Race Relations (Amendment) Act 2005 provides protection against practices of racial hatred
- Environment Act 2008 protects the right to a clean and healthy environment

## 2. International and regional

10. Lesotho has ratified almost all major international and regional human rights treaties, which include:

- International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup>
- International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>4</sup>
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>5</sup> with reservation to Art. 2
- Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>6</sup>
- Convention on the Rights of the Child (CRC)<sup>7</sup>
- International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families<sup>8</sup>
- Convention on the Rights of Persons with Disabilities (CRPD)<sup>9</sup>
- Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)<sup>10</sup>
- ILO Convention on Eradication of Child Labour<sup>11</sup>
- ILO Convention 111 Concerning Discrimination in Employment and Occupation<sup>12</sup>
- African Charter on Human and People's Rights<sup>13</sup>
- African Charter on the Rights and Welfare of the Child<sup>14</sup> and
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa<sup>15</sup>

11. Lesotho has reported on the following Conventions: ICCPR in 1999, ICERD in 2000 and CRC in 2001. Due to very limited capacity it has been lagging behind in reporting on other Conventions. There is presently a draft report on CEDAW, ICESCR and the periodic report on ICCPR.

12. During the examination of ICCPR, the Committee on Human Rights commented, amongst others, on the unsatisfactory conditions of prisons. Since then there have been major improvement of conditions in prisons. This effort is continuing.

13. As a way of implementing the concluding remarks of the Committee on ICERD, Lesotho amended the Race Relations Order 1971. The concern raised by the Committee was the absence of a comprehensive legislative framework prohibiting acts of racial discrimination and lack of effective remedies. The Amendment makes provision for teaching of tolerance and peaceful co-existence to inculcate a culture of tolerance between people of diverse origins.

14. The Committee on CRC recommended that the Children's Protection Act 1980 be amended in order to incorporate fully the principles of CRC. The Children's Protection and Welfare Bill is underway for Parliamentary consideration.

15. In Lesotho, international conventions are not self executing. They have to be domesticated into national laws or administrative regulations in order to be enforced. The exception is International Labour Organization agreements. Again limited capacity has been the sole cause of delays in domesticating some of the conventions.

## **C. Institutional human rights framework**

### **(a) Courts**

16. Fundamental freedoms and inherent human rights are guaranteed under an independent Judiciary that comprises of Court of Appeal; High Court; Subordinate Courts and specialized tribunals exercising a judicial function as enshrined in the Constitution<sup>16</sup>.

17. The courts in the performance of their functions are free from interference and subject only to the Constitution and any other law<sup>17</sup>. The Government as the Executive branch accords assistance that enables them to protect their independence, integrity, dignity and effectiveness. It is the duty of the Executive and the Legislature arms of Government to respect and observe the independence of the Judiciary. The courts decide matters before them impartially, on the basis of facts in accordance with the law without undue influence, threats, pressures or restrictions. Judicial proceedings are conducted fairly respecting the rights of all parties. The High Court sits as the Constitutional Court to hear human rights matters. Lesotho has drafted Judiciary Administration Bill that is ready for tabling before Parliament. The Bill incorporates basic principles that entrenches the independence of the Judiciary and establishes administration and conditions of service of the Judiciary.

### **(b) Parliament**

18. The Parliament of Lesotho is bicameral and consists of the Senate as the upper house and of the National Assembly as the lower house. The Senate consists of 22 Principal Chiefs and 11 other members nominated by the King with the advice of the Council of State. The National Assembly consists of 120 seats.

19. The right to participate in the affairs of the country is realized through representation of parliamentarians and this is through the mandate given to them during general or by-elections. Parliamentary Portfolio Committees are linked to various Ministries to oversee the activities of the public service and to ensure their accountability to the public.

20. In order to enable Parliamentarians to execute their mandate more competently and efficiently, the Government, through the Ministry of Justice and other civil society organizations, are already providing human rights training programmes.

### **(c) Independent Electoral Commission**

21. The Independent Electoral Commission (IEC) was established by the 1997 Second Amendment to the Constitution. The National Assembly Elections (Amendment) Act 2001 sets up the Commission with its responsibilities including, amongst others, the demarcation of electoral constituencies, compilation of the register of voters, organization and conduct of the National Assembly elections, Local Government elections and the *referenda*.

22. The IEC organized and held the first National Assembly elections in 1998 and held subsequent elections in 2002 and 2007 while the first Local Government elections were held in 2005.

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

## **D. National Human Rights Institutions**

### **(a) Office of Ombudsman**

24. The Office of the Ombudsman was established in terms of Section 134 of the Constitution. The Ombudsman complements the work of the Judiciary. It provides authoritative albeit informal and speedy procedures that render quick access to addressing complaints and settling disputes.

25. The Ombudsman has a constitutional and legal mandate which emanates from the Ombudsman Act 1996 to investigate actions of maladministration by administrative officers and also protects the rights of individuals who believe to be victims of unjust acts perpetrated by the Government and Statutory Corporations.

26. Ombudsman has intervened on claims of compensation lodged by persons relocated to new areas as a result of major infrastructure construction; on reinstatement of employees who were unduly suspended from their duties and on the enforcement of judgments. It has also undertaken awareness raising activities through public gatherings and radio programmes on issues of human rights and maladministration.

27. The Ombudsman has, pursuant to the provisions of Section 10 (b) of the Ombudsman Act, carried out inspections of police and military cells, all Correctional Institutions and establishments as well as Government hospitals and on that basis made appropriate recommendations. However, the office only makes recommendations without enforcement powers.

### **(b) Police Complaints Authority**

28. The Police Complaints Authority (PCA) is one of the institutions that promotes and protects human rights in Lesotho. It is established under Police Service Act 1998<sup>18</sup>. PCA has authority to investigate and report to the Police Authority or the Commissioner in respect of any complaint from a member of the public about the conduct of a member of the Police Service with regard to corruption and human rights. The Aim of the authority is to assist in effective policing and observance of human rights by the police service.

29. To facilitate accessibility of services, the Authority has signed Standard Operating Procedures which assist to circumvent the problems associated with lodging of complaints against the police with the Minister or the Commissioner. These procedures allow submission of complaints to police offices in the districts who then forward the complaints to PCA for investigation. PCA liaises with the police and has conducted training workshops on human rights protection, stock theft and customer care. Their success can be gauged through field reports that reflect compliance with human rights by the police service.

### **(c) Directorate on Corruption and Economic Offence**

30. The Directorate on Corruption and Economic Offences (DCEO) has been established by Prevention of Corruption and Economic Offences Act 1999. It is a body whose core business is to fight corruption and economic offences. The mandate of DCEO entails public education, prevention and investigations. DCEO educates the public against the consequences of corruption and thereby solicits and fosters public support in the fight against corruption. The prevention aspect entails examining practices and procedures of public bodies with a view to strengthen operational systems so as to reduce the opportunities of corruption. DCEO is responsible for investigating complaints or allegations

of corruption and economic offences. Matters that warrant prosecution are referred to the Director of Public Prosecutions.

## **E. Other human rights measures**

### **(a) Human Rights Unit**

31. Human Rights Unit was established in 1995 within the Ministry of Justice, Human Rights and the Correctional Service. The objective of the Unit is to inculcate a culture of observance and respect for human rights. The Unit receives complaints from the public and undertakes investigations of alleged violations of human rights and makes referrals where necessary; undertakes human rights awareness raising activities and reviews legislation and policies for compatibility with developments in the international sphere. The Unit has facilitated human rights training for law enforcement agencies, members of Parliament and Inter Sectoral Committee on Human Rights. It has organized commemoration of international human rights day annually.

### **(b) Gender Department**

32. The Department of Gender under the Ministry of Gender and Youth, Sports and Recreation, is tasked to advocate, promote and nurture gender equality. The Department has achieved the following *inter alia*: an outreach center for abused women and children which provides a short term refuge for abused women and children by providing basic medical, counseling and psychiatric services; advocacy programmes so as to curb gender based violence and with the support of Millennium Challenge Account-Lesotho, advocates for reform of existing laws to remove discrimination and for the enactment of laws to end gender based violence.

### **(c) Child and Gender Protection Unit**

33. Child and Gender Protection Unit (CGPU) was established in 2002 as a specialized unit within the Lesotho Mounted Police Service (LMPS) under the Ministry of Home Affairs to respond to the persisting acts of violence against women and children. The Unit provides user-friendly reporting environment that ensures confidentiality. It responds and investigates promptly all cases involving vulnerable groups including children as well as victims of gender-based violence.

34. The Unit is operating nationwide. CGPU raises awareness through media, public gatherings, congregations and school visits on the rights and responsibilities of children and women and safeguards their rights.

35. The Unit is keeping a profile of children in need of care countrywide. Through the assistance of UNICEF, the Unit is currently developing database which will help generate quality reports. In an attempt to provide user- friendly reporting environment, the Unit has been assisted by the Global Fund with prefabricated mobile offices, where available office space compromises victims' confidentiality.

### **(d) Victims of Crime Support Office**

36. Victims of Crime Support Office was set up within the Maseru Magistrates Court in 2006. The Office provides practical and emotional support to victims. It informs victims of their rights and of their role in the criminal justice process. It provides counseling and referrals. Offers information regarding the mechanisms of the criminal justice process including the status of their cases. It also provides information on redress through formal and informal justice procedures. It protects the victim from intimidation and further victimization.

37. The Office has an outreach programme in an effort to inform the public about its services through public gatherings around the country with the assistance of the police.

38. The challenge is the formulation of policy and enacting legislation specifically meant to protect the rights of victims of crime as well as that of establishing a relevant office. However, limited capacity accounts for the delayed action.

## **F. National Policies**

### **(a) National Vision 2020**

39. The Lesotho National Vision establishes a long term vision for Lesotho by looking beyond the short and medium term plans and macro-economic adjustment programmes. It explores options for achieving economic, social, political and human development progress to the year 2020. It identifies alternative development strategies suitable for Lesotho's situation, which yield: a stable democracy, peace and security, stability domestically and regionally, a healthy and well developed human resource base, a sound economy with decent standard of living, a well managed environment and advanced technology and good governance, considerable progress on the human development front among other things. The Vision is based on the principles of democracy, good governance and human rights. In the light of changed parameters in the aftermath of the global financial and economic crisis, which has hit least developed countries (LDCs) such as Lesotho, very hard, the need to revise the strategic framework is obvious. It will be supplemented by a medium term development Plan called the National Growth Strategy (NGS).

### **(b) Poverty Reduction Strategy Paper (PRSP)**

40. To achieve some of the goals and priorities outlined in the strategic framework, Vision 2020, the Government adopted three year PRSP in 2004, which outlined strategies for poverty reduction. At the expiration of that PRSP in April 2008, the Interim National Development Framework (INDF) was compiled to serve as an interim instrument guiding the development process between the end of PRSP and the publication of the National Growth Strategy (NGS) which will facilitate the implementation of Vision 2020.

41. The INDF will operate until 2011/12 before the operation of NGS which will cover a period of five years. The objectives of INDF are to promote good governance, improve public service delivery, accountability and poverty reduction.

42. PRSP was highly credible in terms of addressing the priorities for Lesotho. Its shortcoming was that it did not give adequate attention to other government components that are equally important but do not directly reduce poverty. Examples are safety and security, environmental and land reclamation issues.

### **(c) Justice Sector Vision and Strategy**

43. In an effort to strengthen public confidence in the justice sector, the Government developed a National Vision and Strategy for the Justice Sector in 2005. The Vision and Strategy strives to have a justice sector committed to providing a professional service in safety and security, accessible and efficient delivery of justice, improved rehabilitation of offenders, effective human rights protection system for all and promotion of zero tolerance to corruption.

44. The strategy envisaged the following human rights goals: amendment of the Criminal Procedure and Evidence Act to provide for protection of the rights of victims of crime; withdrawal of Lesotho's reservation to CEDAW; ratification of the two Optional Protocols to ICCPR; amendment of section 18 of the Constitution, justiciability of

Economic, Social and Cultural Rights; establishment of a National Human Rights Commission and establishment of witness protection system and declaration under CAT facilitating submission of complaints. Although the implementation of the strategy has not been fully achieved, a Victims of Crime Support Office has been set up and Lesotho has acceded to the Optional Protocol to ICCPR.

45. In line with the Vision and Strategy, statistics were compiled on cases pending in both the High Court and Magistrates Courts. The line Ministries developed a project proposal that aimed at reducing and ultimately ending the criminal backlog of cases in these courts. The project establishes a separate structure that handles the criminal cases backlog. The rationale behind the structure is to avoid creating a further backlog without interfering with proceeding criminal cases.

46. The formal criminal justice system is further supported by the informal criminal justice system which involves the communities in settlement of minor disputes through the use of restorative justice process and community service.

**(d) Curriculum and Assessment Policy**

47. Curriculum and Assessment Policy provides that education should strive for developing higher appreciation and acceptance of national culture and cultural diversity, history, values and norms which are basic for national unity and development, promoting basic understanding of democratic principles, human rights and responsibilities for effective participation and contribution to the life of society.

**(e) National Youth Policy**

48. National Youth Policy aims at promoting the dignity and self esteem of all youth; nurturing their physical, intellectual and moral being. It calls for government to take all measures necessary to accelerate their full participation in the socio-economic, cultural and political spheres of life. The Government is striving to create means of livelihood for youth and safeguarding their right to work including those with special needs. Youth enterprise development programme is ongoing. Other programmes aiming at the socio – economic empowerment of the youth are afoot.

### **III. Promotion and protection of human rights on the ground**

#### **A. Civil and political rights**

**(a) Right to life**

49. The Constitution provides for the right to life in Section 4 (1) (a) read together with Section 5 (1). The Court of Appeal stipulated that an individual's right to life, is *the most fundamental of all human rights*<sup>19</sup>. However, subsection (2) introduces exceptions to the right to life. The law relating to capital punishment is contained in Section 297 (1) of the Criminal Procedure and Evidence Act 1981.

50. Lesotho has retained capital punishment solely for the following offences: murder, treason and statutory rape. There are appropriate judicial safeguards against the capital punishment sentences as stipulated in the Constitution such as the Pardons' Committee and the prerogative of mercy by His Majesty the King. There has been no execution of capital punishment sentences since 1995<sup>20</sup>. The Court of Appeal has on some occasions changed such a sentence to life or long imprisonment<sup>21</sup>.

**(b) Freedom from Torture, Inhuman or Degrading Treatment**

51. The Constitution expressly prohibits torture and other cruel, inhuman or degrading treatment<sup>22</sup>. As law enforcement agencies that are involved in the custody, interrogation or treatment of individuals subjected to any form of arrest, detention or imprisonment, the Police, Military and Correctional Officers' training include human rights education

52. Ombudsman carried out investigations following allegations of torture and made recommendations accordingly. On the basis of the Ombudsman's recommendations, disciplinary measures were taken against officers concerned.

**(c) Right to Fair Trial and Access to Justice**

53. The right to fair trial is protected under Section 12 of the Constitution and expounded further in the Criminal Procedure and Evidence Act. The Constitution further guarantees the right to fair trial within a reasonable time by an independent and impartial Court.<sup>23</sup> The Government has enacted the Speedy Courts Trial Act which, amongst others, provides for fair and speedy trial of offenders within a reasonable time.

54. In an effort to ensure access to justice, the Government has established the Legal Aid Department, which provides legal assistance and representation to the indigent in the courts of law<sup>24</sup>. The Department continues to improve access to justice by extending its services to all the districts in the country by holding roving Legal Aid Clinics. The Judiciary also provides legal assistance *pro deo* to criminal defendants charged with capital offences that are likely to receive capital punishment.

55. The Government has ensured that in each district there are Subordinate Courts providing access to judicial services. The High Court is currently based in the capital city, Maseru. It has introduced an outreach programme through roving criminal court sessions so as to facilitate access to justice in remote Northern and Southern Regions twice a year in each region. Judgments of the Court of Appeal and High Court can also be accessed *via* the internet.

**(d) Freedom of expression**

56. The Constitution guarantees the right to freedom of expression and the press and the right to hold opinions without interference in Section 14. This right includes freedom to seek, receive and impart information of all kinds in all forms of media. This right may be subjected to restrictions in cases of protection of the rights of others and for the protection of national security or of public order.

57. Since 1999, privately owned radio stations and newspapers were established. Presently, there are about 10 privately owned radio stations and about 10 independent newspapers in a population of about 1.88 million.

58. The Government owns media houses that consist of 2 weekly newspapers, 2 radio stations and a television station. The Ministry of Communications is finalizing the Corporatization Bill, which provides for freedom of the press and for access to information and reassures members of the public of the transparency of Radio Lesotho, Lesotho News Agency and Lesotho Television. There is a draft Media Policy which encourages the growth of free, independent and pluralistic media. The Communication Bill establishes the framework for the regulation of the telecommunications, broadcasting and postal sectors. There is the Lesotho Communications Authority which regulates and supervises the sector.

59. There are no restrictions on the access to internet in the country and the Government does not monitor the E-mail or internet chat rooms. Through the Government website, all government Ministries and departments outline services offered, access to such services and links to some privately owned websites in the country.

**(e) Elimination of discrimination against vulnerable groups***(i) People with disabilities*

60. In an effort to promote the rights of people with disabilities, the Government has established the Rehabilitation Unit in the Ministry of Health to empower and rehabilitate people with disabilities. The Unit has been decentralized to all districts. There is an inclusive education programme across the country alongside the establishment of the Special Unit at the Ministry of Education and Training. The Government is assisting and supporting teachers with visual impairment by establishing Government run vocational training centers, which provide vocational training to people with disabilities.

61. In 2005, the Government established the Community Based Rehabilitation (CBR) programme with the support of the Norwegian Association of the Disabled (NAD). The Government is continuing to support and sponsor sporting activities for people living with disabilities. For instance participation in the Special Olympics, Para Olympics and deaf Olympics. The Government's Information Communication Technology (ICT) Policy is disability inclusive.

62. Lesotho has enacted laws that protect and promote disability rights and these include Buildings Control Act 1995 which specifies designs of new buildings suitable and accessible to people with disabilities. Sexual Offences Act stipulates that it is a criminal offence to commit a sexual act in relation to or in the presence of a disabled person as defined in the Act<sup>25</sup>. The Children's Protection and Welfare Bill provides that no person should treat a disabled child in an undignified or discriminatory manner.

63. There is also a draft National Disability and Rehabilitation Policy. The draft Policy will be used as a guidepost in designing, implementing and evaluating generic, as well as disability specific, public policies and programmes to ensure meaningful inclusion of people with disabilities into the mainstream society. By acceding to the CRPD, Lesotho elevated disability beyond social welfare, social care or charity issue to being a central issues of human rights and social development.

*(ii) Children*

64. The best interests of the child remain one of the top priorities in Government's policies and programmes. Lesotho has drafted Children's Protection and Welfare Bill that consolidates all issues affecting children into a single piece of legislation. The Bill entrenches the guiding principles of interpretation as enshrined in CRC which give context to children's rights. It covers children's rights at the individual, family, community and country level. It also addresses the rights of children in need of special care and protection, children with disabilities, child trafficking, children in conflict with the law and children infected with and affected by HIV and AIDS.

65. The Government has adopted a number of policies that enhance protection and promotion of the rights of children and youth. These include the National Social Welfare Policy 2004 which undertakes to protect children in all areas of life; National Policy on Orphaned and Vulnerable Children 2005 which aims at ensuring full care and support for orphaned and vulnerable children.

66. Gender and Development Policy specifically mentions the need for access to equal rights and opportunities for both girl and boy child. The National Reproductive Health Policy, which takes cognizance of the fact that young persons are at greater risk of contracting HIV and AIDS than other groups in the society, calls on the authorities to strengthen and enforce laws to protect this group against physical and sexual abuse and to increase access to information and services. However, the number of orphans has risen sharply and the Department of Social Welfare is unable to meet all their needs.

67. The Government, working together with the European Commission and United Nations Children's and Educational Fund (UNICEF) has introduced child support grant to support orphaned and vulnerable children. The grant has been distributed in 3 districts as a pilot and will be rolled out in the other 7 remaining districts in due course.

68. To facilitate reporting, a child helpline, which operates for 24 hours was established in 2009. The child helpline is housed under Lesotho Save The Children whose staff makes referrals of all the cases reported to relevant service providers. The degree of connectivity nationwide is the key to the success of this endeavour.

69. Child labour such as commercial exploitation of children, excessive use of children as domestic workers and exploitation of herd boys are concerns are being decisively addressed. Lesotho has a draft National Action Programme towards the elimination of child labour. This document describes the strategy to be followed to address the types of work that might be detrimental to the health and development of children.

(iii) *Women*

70. In line with regional and international human rights instruments, Lesotho has, at the national level adopted measures geared towards promoting women's rights and gender equality.

71. Under Customary Law, a woman was a perpetual minor under the guardianship and protection of a male member of her family. In addition inheritance issues were discriminatory against women. Cultural practices and traditional socialization patterns used to inhibit women in exercising their full rights and freedoms. Lesotho has made great strides in addressing issues of discrimination against women.

72. Chapter II of the Constitution sets out in Section 4 (1) (0) the right to equality and in 4 (1) (n) freedom from discrimination, which is also prohibited in Section 18 (1) and (3). Section 18(4) (c) elaborates and qualifies the foregoing. It is the basis for the reservation to Article 2 of CEDAW due to incompatibility with customary law. The central point, as Section 26 (1) and (2) indicate, is that the Constitution commits the country to policies that will promote a society based on equality and justice for all citizens regardless of gender. Perceived inconsistencies in this regard are among the issues of current national debates.

73. Legal Capacity of Married Persons Act therefore stands as a testimony to the commitment of the Government to end discrimination against women. The Act eliminates discrimination against women across all walks of life. The challenge being addressed is that of women under customary law.

74. After the enactment of the Legal Capacity of Married Persons Act, provisions of other laws that were discriminatory against married women were revisited and amended. Such laws include the Companies Act 1967, which was amended in 2008 that enables women to become promoters or directors of company without having to seek their husbands' consent. The Land Act 1979 was also amended in 2008, and provides for joint title to land for spouses married in community of property.

75. On gender representation in political and decision making leadership positions, Lesotho has 26 women (1 woman as the Speaker of the House) *vis - a - vis* 94 men in the National Assembly; 6 women out of a total of 19 in Cabinet; 3 women among 6 Assistant Ministers; 12 women out of a total of 33 members in the Senate; 6 women out of 19 Principal Secretaries; 6 women among 13 Judges; 5 women among 13 Ambassadors'; 1 woman (Chairperson) out of 3 members of the Independent Electoral Commission. Commissioner of Police is a woman.

76. In line with the commitments made in international agreements and Gender and Development policy, Sexual Offence Act was enacted in 2003. The Act brings a link between issues of Gender Equality and HIV and AIDS.

77. The Government of Lesotho in collaboration with development partners and civil society organizations has initiated programmes and projects benefiting women's advancement on various fronts. An example is the Gender Credit Programme whose objective is to enable self-employment among women. This is done by providing women capacity building services and extending credit support to the development of sustainable enterprises. Women make up 80% of beneficiaries.

78. The Legal Aid Department ensures women's protection by representing indigent Basotho women and children in legal matters. In most cases it is in those cases where they claim maintenance fees from their husbands and fathers respectively.

79. Domestic violence is persisting. Authorities have not yet enacted legislation in this regard due to limited capacity. Domestic violence is still dealt with under the general law of assault and customary law.

80. There is need to legislate against human trafficking which affects mainly women and girls. Again limited capacity is the constraining factor in addressing this phenomenon expeditiously.

81. The challenge of enacting legislation dealing with abortion remains. So far it is still being dealt with under common law as a crime except in cases of necessity including preservation of a woman's life or due to her mental and physical health or in cases of rape or incest. Strengthened capacity would ensure expeditious action in this regard.

(iv) *Inmates*

82. Prison Proclamation of 1957 establishes Lesotho Prison Service, its management and administration. In order to align itself with Fundamental Principles of the Standard Minimum Rules for the Treatment of offenders, and the White Commission Report on Prison Conditions in Lesotho, the Government demonstrated its commitment to improving prison conditions by demolishing and reconstructing prisons that were beyond repair; by effecting major repairs to uninhabitable institutions; improving nutrition and health standards.

83. Young offenders are detained separately in juvenile detention facilities, male and female offenders are detained in separate institutions. At the moment, there is no separate facility for pre-trial detainees. Special attention is paid to vulnerable detainees in particular youth, elders and the terminally ill. Nursing mothers are allowed to stay with infants below two years and in exceptional cases up to the age of three. An amendment to the Criminal Procedure and evidence Act was passed in 2009 that provides for the transfer of mentally ill convicts to forensic hospital.

84. The Correctional Service has developed HIV and AIDS Policy and Strategic Plan in an attempt to improve the general health of inmates and to fight the spread of infectious diseases including HIV and AIDS.

85. Speedy Courts Trial Act sets time limit of 60 days for remand of inmates in custody and its implementation has significantly reduced overcrowding in prisons.

86. Lesotho Correctional Service is confronted by the following challenges: further reduction of prison population; more improvement of prison conditions; containing the spread of HIV and AIDS pandemic.

## **B. Economic and social rights**

### **(a) Health**

87. In Lesotho, access to health services is coordinated through collaborative effort of four institutions, namely, the Government through the Ministry of Health and Social Welfare, Christian Health Association of Lesotho (CHAL), the Private Practitioners or Sector and Non-Governmental Organizations. There are 20 hospitals in all with 2466 beds. There are also 157 health centres and four filter clinics. There is one doctor for every 14,808 people and 2990 people per nurse. The Ministry of Health has embarked on reforms targeted at reducing morbidity and mortality, as well as inequalities in accessing health and social welfare services and to aggressively improve the health status of the population. Reforms undertaken seek to achieve a sustained increase in access to quality preventive, curative and rehabilitative health services throughout the country.

88. Fees for normal surgical deliveries are standardized in the hospitals while services in all health centers are free. The health centers cater for basic curative services, child immunizations and family planning, most, but not all, are trained to offer anti-retroviral treatments.

89. The Government is building a 425 bed referral hospital in Maseru and three filter clinics.<sup>26</sup> The Millennium Challenge Corporation is supporting the rehabilitation of 150 Health Centers, training of health professionals and construction of the National Laboratory. All these initiatives are aimed at improving access to health services and providing improved quality of services.

90. The biggest health concern in Lesotho is the prevalence of the HIV and AIDS pandemic. The Ministry of Health and Social Welfare offers counseling and testing for pregnant women as part of antenatal care. In Government hospitals and clinics, pregnant women receive free ante-natal check-ups and thereafter their new born babies are entitled to free immunization course up to the age of 5 years including the vitamins and nutritional supplements.

91. The challenge to the health sector include further improvement of access to the health centers, reaching a critical mass of health professionals and securing adequate equipment and supplies.

### **(b) Education**

92. Literacy rate was estimated to be 84.4 per cent in 2003. According to 2006 statistics Lesotho has about 1455 primary schools with an enrollment of 424,855 pupils roughly evenly split between males and females, with 10418 teachers of whom 6141 were qualified. There are about 240 secondary schools with 94,545 students and 3673 teacher of whom 2651 are fully qualified. Females are in majority at this level. There were 2597 students in various post secondary institutions. At the university level there were 6726 students, 52 per cent of them male and 48 per cent female<sup>27</sup>. Additional students at secondary, post secondary and university level study abroad. Lesotho subscribes to the African Charter on the Rights and Welfare of the Child thus, views education as a right to every child. This has been witnessed by the introduction of Free Primary Education (FPE) in 2000. In addressing poverty crisis that hinders effective and efficient schooling, FPE package includes government sponsored schools feeding programme that caters for pupils nutritional needs.

93. To ensure the success of FPE programme, the Government is engaged in a project of constructing more schools at both primary and secondary levels. Japan has contributed greatly to construction of schools in Lesotho. The main teaching training institution, Lesotho College of Education has also expanded its intake capacity to respond to the increasing number of enrolments in schools.

94. The Government has further put in place bursary schemes for orphaned children, especially double orphans as well as those who are destitute at secondary level. The Government has also introduced the Textbook Rental Scheme which makes access to instructional material less costly. The bursary scheme for tertiary level is administered by the National Manpower Development Secretariat for secondary school graduates in various areas of study both locally and in the SADC region.

95. The Ministry of Education has introduced, on a pilot basis, human rights education in ten schools.

96. Curriculum and Assessment Policy provides that mother tongue be used as a medium of instruction up to class 3, while English is taught as a subject at this and other levels. This is in recognition of the existence of minority groups in languages. The policy further states that sign language shall form part of the new language policy.

97. Education Amendment Bill makes free primary education compulsory and makes it an offence for any parent to keep a school going child at home.

98. The Ministry of Education aspires for an inclusive education that caters for the needs of all learners irrespective of their physical abilities and disabilities, gender and race. In this regard, Lesotho College of Education has introduced Special Education in its curriculum. Among the challenges that the Ministry faces is to provide adequate infrastructure, equipment and supplies for utilization at school level. The biggest challenge is still to avail infrastructure, equipment and supplies that will address the specific needs of pupils with diverse disabilities in schools. Low capacity of the economy is the constraint.

**(c) Right to food**

99. In recognition of the need to achieve food security, the Government formulated a National Plan for Food Security in 2005. The aim of the plan is to increase the availability and access to food and to ensure the stability of supply and effective utilization of food. The plan incorporates a number of strategies to this effect, notably the promotion of agricultural and good production and provision of institutional support.

100. Authorities have adopted several strategies to increase agricultural productivity. There are programmes afoot designed as implementation of those strategies. It is too early to assess their impact.

101. Communities are encouraged to form cooperatives and are being provided with training in relevant management practices.

**(d) Environmental Protection**

102. The mandate of the Government to protect the natural and cultural environment is derived from the Constitution.<sup>27</sup> It adheres to internationally accepted principles of the 1972 Stockholm Declaration and the 1992 Rio Declaration, it endorsed and adhered to regionally acceptable principles contained in the SADC Policy and Strategy for Environment and Sustainable Development, and the African Ministerial Conference on Environment.

103. Lesotho has, as a result, taken measures to address sustainable development and other environmental issues. These include the formulation of a National Environmental Action Plan in 1989; the establishment of a National Environment Secretariat within the Office of the Prime Minister in 1994; the development of Lesotho's Agenda 21 Action Plan in 1995; the adoption of a National Environmental Policy in 1998 to address Lesotho's national development priorities and the adoption of the Environment Act in 2001 to provide the framework for the management of the environment and natural resources.

104. Notable achievements include development of the Environmental Impact Assessment Guidelines, the production of the State of the Environment and Bio-diversity Reports, the preparation of the Water Quality Guidelines and the Industrial Effluent Standards, as well as the pre-feasibility studies on solid waste management.

**(e) Old Age Pension Fund**

105. The Government introduced non-contributory old age pension fund in 2004 for elderly people aged seventy and above. It enables the aged to afford some of their basic needs to the degree that the economy can sustain. It has been increased from US\$26.8 to US\$40.22 per month from 2007/08 fiscal year. The global financial and economic crisis threatens this social safety net mechanism.

## **IV. Achievements and best practices, challenges and constraints**

### **A. Achievements and best practices**

**(a) High literacy rates**

106. "Education For All" assessment indicated that Lesotho is in a unique position in Sub-Saharan Africa for having higher enrolment and completion rates for girls than boys in schools.

**(b) Mixed Member Proportional Representation Electoral Model**

107. This model has worked well for Lesotho as it addresses inclusiveness in parliamentary representation among the political parties. The process has improved inter-party dialogue, encouraged inclusiveness and broader representation in the National Assembly. Creation and empowerment of Local Councils has deepened participatory democracy in Lesotho.

**(c) Advancement of women**

108. Several measures have been adopted in order to promote women's rights politically. Pursuant to the SADC Protocol on Rights of Women, the Local Government Act was amended in 2004 to allocate and reserve no less than 30% of the seats in the Local Councils for women. However, this law was challenged on the basis that it discriminated against men<sup>28</sup>. Court of Appeal ruled that the law does not discriminate against men but that it seeks to remedy the situation in which women were excluded from participating in decision making in the country.

109. Lesotho far exceeded the SADC requirement of 30% representation with a record of 58% representation of women in the Local Government Elections of 2005. It also surpassed the 50% standard set by the African Union.

**(d) Assessment of the African Peer Review Mechanism**

110. Lesotho acceded to the African Review Mechanism (APRM) on 4 July 2004 in demonstrating unwavering commitment to pursue democratic governance. The review process started with a national consultative workshop that was held in Maseru in 2005. A Ministerial Sub-Committee was set up and a country APR Focal Point established. A broad-based and all-inclusive APRM National Governing Council (NGC) was set up to manage the APRM process in the country.

111. The self assessment process was conducted by a consortium of local Technical Research Institutes, namely the Institute of Southern African Studies of the National University of Lesotho, the Lesotho Institute of Public Administration and Management in the Ministry of Public Service. Lesotho submitted its Self Assessment Report and Programme of Action in November 2008, paving way for fielding of the Country Review Mission.

112. The Country Review Mission was fielded from 23 March to 9 April 2009 and comprised 14 members representing at least 10 African nationalities. The mission interacted with the three arms of Government: Executive, Judiciary and Legislature. The mission also held discussions with various non-state stakeholder groups and met with institutions with a bearing on governance such as Auditor General, the Central Bank and the Independent Electoral Commission. The mission was concluded following wrap up sessions with the Cabinet and NGC. Lesotho was assessed at the 11<sup>th</sup> Forum Summit of the Peer Review Mechanism held in Libya on 30 June 2009.

**(e) Strategies and programmes on HIV and AIDS**

113. The Government considers containing and reversing spread of HIV and AIDS as a priority in the overall national human and economic development agenda. Hence the following efforts: Programmes on prevention, care and treatment; free access to primary care; *Know Your Status* campaign; free voluntary counseling and testing; awareness and education campaigns; free provision of ART; mainstreaming HIV and AIDS into all policies and programmes such as the Vision 2020 and the MDGs plans and budgets. In addition there is an allocation from each Ministry's budget of 2% to activities geared towards each Ministry's HIV and AIDS programmes. HIV and AIDS education has been introduced in the curriculum of the Teachers' Training College and the National Aids Commission has been established.

**B. Challenges and constraints**

**(a) Agricultural production**

114. Agricultural production has continued to pose a challenge over the years due to a combination of factors: limited arable land; repeated drought spells; erratic weather patterns and inadequate agricultural technology. According to the figures compiled by the Central Bank of Lesotho in 2004, output in crop production declined by 1.9%; in 2005 by 1.7%; in 2006 it increased by 1.7% and the preliminary figures for 2007 showed a drop in yield of 8.6%.<sup>30</sup> This means that the country is becoming more dependent on imports of cereals, vegetables, fruits.

115. To address this problem, the Ministry of Agriculture and Food Security was allocated considerably increased budget<sup>31</sup> to intensify training and strengthen extension services, revive irrigation schemes and to promote conservation agriculture where it is viable. Moreover, this allocation is directed towards the procurement of additional farming equipment and supplies, to increase capacity and timely assistance of farmers with farm operations and harvesting and for rehabilitation of Lesotho Agricultural College and farmers training centers. However, improving agricultural production remains a challenge. Any delays in this area retards poverty alleviation and achievement of food insecurity.

**(b) HIV and AIDS**

116. Lesotho has been assessed as having the third highest HIV and AIDS prevalence rate of 23%.<sup>32</sup> a result, most children have been left as orphans and have increasingly become

caregivers to sick parents, younger siblings and other relatives. There is also an increase in child mortality as well as maternal mortality as a result of the pandemic.

117. Despite strategies and programmes undertaken up to this point there is still need for further intensified and accelerated efforts in order to effectively deal with the situation.

**(c) Current global economic crises**

118. As a landlocked country and with an open economy, Lesotho has been vulnerable to the effects of the global financial and economic crisis. The impact of the drop in the global economic performance has had the following devastating negative effects on Lesotho:

- The demand for its exports has dramatically fallen. This has meant stockpiling, lay-offs and retrenchments as well as some factory closures all resulting in raising of the already high unemployment rates and spreading and deepening poverty, especially as the ripples ran through the economy.
- The network of banks that provided export-import financing and letters of credit to exporters could no longer do so because of the global crises. Lesotho was not spared the severe trade credit crunch.
- The fall in commodity prices, led to retrenchments and lay-offs of migrant workers abroad leading to the steep fall in remittances and so exacerbation of poverty.
- The decline in demand for both capital and consumer goods imports into the Southern African Customs Union (SACU) region, has meant a sharp decrease in the SACU Revenue Pool and in the share of Lesotho. Likewise revenue from Value Added Tax and other indirect taxes dropped drastically; yet LDCs such as Lesotho depend heavily on indirect taxes for raising public revenue.
- Foreign Direct Investment (FDI) was adversely affected.
- The already meager Official Development Assistance (ODA) to Lesotho (that is, comparatively very low ODA per head) dwindled further as development partners encountered financial and economic hardships.

**(d) Unemployment and Migrant Labour**

119. The high unemployment rates which have been amplified by extensive retrenchments of migrant workers, who return home to find dwindling employment opportunities and no credible mechanisms in place for absorbing them remains a challenge. However, the National Union of Mine Workers has established a Mine Workers Development Agency that provides training in some skills for self - employment, such as, fruit –juice making, farming and gardening for returning migrant workers. Migrant workers in other industries abroad are also being laid off and retrenched. Upon arrival they find manufacturers in Lesotho also either scaling down production or closing and so retrenching workers on account of the global economic situation. Escalating poverty has been the outcome.

120. Creating jobs and broadening economic participation are crucial to alleviate poverty, hunger and destitution. This is one of Government's priorities even with very meager resources at its disposal. US\$15,000,000 was allocated to the Integrated Watershed Management Project which uses the service of the unemployed across all ten districts for land reclamation. A further US\$6,703,670 was allocated to the Development Fund for the Councils. Under this fund, communities identify desired local infrastructure projects, such as, building rural roads or developing irrigation systems and the unemployed in that community are engaged on rotation for US\$6.44 per day. These figures are being sharply

revised downwards due to the financial constraints attributable to the global financial and economic crisis. It is a serious setback for these poverty reduction measures.

**(e) Domestication of international instruments**

121. Lesotho is a State Party to a number of international treaties, conventions and protocols. Lesotho is trying hard within its means to comply and to complete the process of domesticating them through legislation. In the current circumstances it is difficult to assess their impact.

## **V. Key national priorities, initiatives and commitments**

**(a) Accelerate sustainable economic growth**

122. Lesotho's socio-economy has faced serious development challenges which include deep and widespread poverty, extremely high unemployment, severe food insecurity, and dealing with the HIV and AIDS pandemic. In spite of these challenges, Lesotho's economic performance improved during the period 2002-2008, when the real Gross Domestic Product (GDP) grew by an annual average of 3.8 %. The Government expects a sharp decline in the rate of real GDP growth down to 1.4 per cent in 2009 and then a mere 3 per cent in 2010 and down to 2.8 per cent in 2011. Over the period 2002-2008, the rate of inflation averaged 7.5% annually. It stood at 4.2 per cent in December 2009 (year-on-year). Per capita GNI(ppp) stood at about US\$1940 in 2007. Vision 2020 and INDF form the policy framework for the Government to pursue economic growth, socio-economic development and poverty reduction.

**(b) Establishment of a National Human Rights Commission**

123. UNDP and Ireland have been instrumental in supporting the Government to establish the National Human Rights Commission. Two missions undertaken by consultants in 2007 and one of the duties of the consultants were to draft a model legislation facilitating the establishment of the Commission. The model legislation has been completed. The Government has undertaken Human Rights Institutions Trainings for members of Inter-sectoral Committee on Human Rights. Work is still in progress in the establishment of the Commission.

**(c) Improvement of access to justice**

124. As one of the national priorities, the Government continues to implement key strategies for improving access to justice and speed up delivery of justice as envisaged in the Justice Sector Vision and Strategy.

**(d) Intensified and continuous efforts in the fight against corruption**

125. Lesotho has put in place oversight institutions to combat corruption that includes the Parliamentary Public Accounts Committee, Office of the Auditor General and the DCEO. These institutions are effectively implementing their mandates and the public will be continuously educated on the fight against corruption and money laundering through educational programmes and continuous awareness raising campaigns.

**(e) Strive to achieve objectives of Vision 2020 and Millennium Development Goals**

126. The objective of Lesotho's long term strategic framework, the National Vision 2020, have already been delineated in paragraph 39 above. It reflects the aspirations of Basotho, identifies the challenges which need to be addressed in order to achieve significant progress

towards the Vision's attainment. The Government continues to strive for the achievement of those objectives.

127. Lesotho is a signatory to the Millennium Declaration, which was adopted by United Nations in September 2000. As much as Lesotho is still facing challenges such as HIV and AIDS pandemic, eradication of poverty and promotion of a global partnership for development, Lesotho remains committed to the attainment of the MDGs.

## **VI. Technical assistance and capacity-building in the area of human rights and justice**

128. Lesotho requires technical assistance and capacity building in the following areas in the realm of Human Rights and Justice:

- Preparation of national state party reports
- Improvement of case management and tracking procedure throughout the criminal justice process; and upgrading of the Judiciary to best practice level in general
- Drafting and processing of bills (for domestication of relevant conventions and for those areas relevant to human rights not yet covered by legislation)
- Setting up of the National Human Rights Commission
- Intensifying public education on Human Rights
- Upgrading of school curriculum on Human Rights
- Public financial and socio-economic management in general

The list is certainly not exhaustive and will in any case be adjusted periodically given the dynamic nature of factors underlying human rights.

### *Notes*

- <sup>1</sup> Census 2006.
- <sup>2</sup> Chapter III of 1993 Constitution of Lesotho.
- <sup>3</sup> Ratified on 9/12/1992.
- <sup>4</sup> Ratified on 09/12/1992.
- <sup>5</sup> Ratified on 21/09/1995.
- <sup>6</sup> Ratified on 04/12/1971.
- <sup>7</sup> Ratified on 09/04/1992.
- <sup>8</sup> Ratified on 01/01/2006.
- <sup>9</sup> Acceded to on 02/12/2008.
- <sup>10</sup> Ratified on 12/12/2001.
- <sup>11</sup> Ratified on 14/06/2001.
- <sup>12</sup> Ratified on 06/09/2000.
- <sup>13</sup> Ratified on 28/05/1992.
- <sup>14</sup> Ratified on 28/11/1999.
- <sup>15</sup> Ratified on 26/10/2004.
- <sup>16</sup> Section 118 (1).
- <sup>17</sup> Section 118 (2).
- <sup>18</sup> Section 22 (1).
- <sup>19</sup> *Khathang-Tema-Baitsokoli And Another v Maseru City Council And Others* 2005 - 2006 LAC 85 at 88-89.
- <sup>20</sup> *Nkosi v Rex* 1990 – 1994 LAC 538.

- <sup>21</sup> Peter Molise v Rex C of A (CRI) NO.16/06, Basia Lebeta v Rex C of A (CRI) NO.1/08, Moroa Ha-Busoe Chabeli v Rex C of A (CRI) NO.9/2007.
- <sup>22</sup> Section 8 of the Constitution.
- <sup>23</sup> Section 12 of the Constitution.
- <sup>24</sup> Legal Aid Act of 1978.
- <sup>25</sup> The Act defines a ‘disabled person’ as “persons affected by disability of a physical, intellectual, sensory, medical or mental nature or other disability irrespective of its cause, whether temporary or permanent, to the extent that a person is unable to appreciate the nature of the sexual act, or is unable to resist the commission of such an act, or is unable to communicate his unwillingness to participate in such an act”.
- <sup>26</sup> The three filter clinics are stationed at Likotsi, Mabote and Qabane
- <sup>27</sup> Statistical Yearbook 2008.
- <sup>28</sup> Section 36.
- <sup>29</sup> Molefi Tsepe v Independent Electoral Commission C of A (CIV) No 11/05 (unreported).
- <sup>30</sup> Budget speech 2009/10.
- <sup>31</sup> Budget speech 2009/10.
- <sup>32</sup> Lesotho Demographic Health Survey 2004, HIV Sentinel Surveillance 2007.
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