

DEVELOPMENT FOR PEACE EDUCATION

**Submission
to
Human Rights Council
UPR Process**

June 2014

1. INTRODUCTION

Lesotho is in terms of Sec 1 (1) of its Constitution a democratic kingdom, connoting the Basotho embracement of democratic principles such as civil liberties and the Bill of Rights while paying allegiance to the customs. This leads to the hybrid system of governance of elected democracy and hereditary monarchy, thus providing an interesting case for assessment of respect of human rights.

Development for Peace Education (DPE) a civil society organisation in Lesotho is presenting the human rights situation in Lesotho from civil society perspective.

1.1 The Human Rights Architecture and International Human Rights Obligations

Lesotho has a constitution that was adopted in 1993 and this is the supreme law of the land. Any law that is inconsistent with the constitution shall be null and void to the extent of its inconsistency. The constitution provides for the fundamental human rights and freedoms in its chapter two. However, these rights that are justiciable are only civil and political. The socio-economic and cultural rights are merely stated in the constitution as principles of state policies and are therefore clearly not justiciable.

Lesotho has ratified more than 26 International and more than 23 Regional Treaties/Conventions¹ and they including most Human Rights obligations. The challenge however is that there is no repertoire of the signed obligations for Lesotho. This makes it difficult not only for civil society to monitor but also for the government to measure progress in domestication.

Though in terms of signing Lesotho is better off, what lags behind is domestication.

1.2 Methodology

DPE has used its network of more than 120 community based organisations in its eight geographic areas in seven community councils and six of the ten administrative districts to compile this report. The report has been compiled from various inputs and activities in which government ministries and civil society organisations under the auspices of members of Lesotho Council of NGOs participated.

This report aims at reporting on the human rights situation that prevails in the country since Lesotho was reviewed under the UPR process in 2010. It looks at progress made since then, compliance of Lesotho with its international obligations under the UN Human Rights System, political and civil liberties and recommendations.

¹ Lesotho Government, 2010.APRM Country Review Report. Maseru.Pgs 47-49.

2. SINCE THE LAST REVIEW

In the last review Lesotho had 137 recommendations made by DPE on behalf of civil society organisations in Lesotho and Members of the Council. In the list only 24 were rejected, 9 given General Response and for 8 there was no response and for 1 there was voluntary pledge. There has been some few signings in this period. Though there are some points implemented, in general terms there is poor performance and slight progress in the respect of human rights.

- Children’s Protection and Welfare Bill was promulgated into Law though no full-fledged programme of implementation has been made. This is critical in this age where children are not only subjects child trafficking but abuse even within their own families;
- The Anti-Human Trafficking Law has been made. The efforts of police, civil society organisations and other actors in this area is as yet to be a popular effort;
- The Constitutional Amendment has been made to introduce Human Rights Commission and the legislation proposed. Civil Society Organisations have raised concern on the appointment of Commissioners by the Prime Minister and the limited functions of the Commission. Government is reluctant to take the process to fruition. In several consultations with civil society the highest leadership of the Ministry of Justice and Human Rights has promised that the Bill will be in parliament next few weeks but it has never happened.
- No progress has been made on the establishment of an all-encompassing platform for human rights actors to ensure progressive and collaborative monitoring of progress, education and awareness.

Although there is more willingness of government to engage with civil society the challenge remains on the content of such engagement.

3. Human Rights Status in Lesotho

3.1 The Judiciary

The independence of the judiciary in Lesotho is potentially questionable given that the appointment of the Chief Justice of the High Court is done by the King acting on the

advice of the Prime Minister. The appointment of the other judges is done by the Judicial Service Commission, whose members are composed of members that are mostly appointed by the Prime Minister. The exclusion of important stakeholders like the Law Society of Lesotho in the Judicial Service Commission is a cause of concern.

The sluggish progress in cases including the high profile cases and the political/democracy/governance oriented makes judiciary a deterrent to justice and democracy.

3.2 The police service in Lesotho

The Police Complaints Authority procedural requirements that the complainant should first lodge their complaint with the Police Chief, defeats the purpose. There are some reports of police brutality which could be effectively dealt with by the progressive Police Complaints Authority. Police torture is reported in special operations. There is similar concern about the army. Their operations labelled anti-crime operations have resulted in torture of women and children even in cases where suspects are identified and known. Some family members have been tortured simply because the suspected member of family would not be found at home during raids.

Use of force and physical assaults against detainees by police appear to be common in Lesotho in order to extract confessions. **Still** Lesotho has not enacted any legislation specifically implementing the UN Convention against Torture.

3.3 The Ombudsman

Though this is a good structure for protection of human rights, its mandated remains limited to

- (i) other injustices in the public service except decisions of the Cabinet whereas, it is at the command of executive authority where politically motivated injustice could be decided upon. In the principle of protection of people against arbitrariness of state, excluding such as a high platform of state decision making does not provide full protection,
- (ii) (ii) the public sector. Injustices done outside this purview go unabated.

3.4 Human Rights Deficiencies

3.4.1 Despite progress made in women empowerment in terms of policy and legislative transformation, females still suffer the remaining discriminative elements of the elements of traditional and patriarchal Basotho society. In line

- with the customs of Basotho entrenched on the chieftainship Law, Senate Masupha has lost the appeal where she challenged the decision that she cannot inherit the chieftaincy of her late parents as their only child simply because she is a female.
- 3.4.2 Freedom of expression in Lesotho has benefited from the pluralistic nature of the media marked by the booming of various radio stations. There is also a marked reduction in media personnel being accused of defamation. There is however no enabling legislation that codifies the rights and ensures that they are practically protected even to restrain abuse of such freedom. Despite the call and campaign by the media and the civil society fraternity for the transformation of state broadcasting into public broadcast, the government continues to own and dominate news content of the state controlled media; print and electronic to the detriment of the other voices of different political orientation. Only political rallies of the ruling party are broadcast on television and state radio.
- 3.4.3** Contrary to the international guidelines people in Lesotho particularly expecting mothers are subjected to HIV testing without consent which is also mandatory to prenatal services, Lesotho Defence Force and other disciplined forces make HIV testing mandatory upon whose positive results one is not recruited, Basotho face various forms of criminalisation including sterilisation without consent and knowledge.
- 3.4.4 People are excluded in various ways from participating in the democracy that they have created. This is despite the provision of the constitution of the right to participate in one's governance either directly or through freely chosen representatives;
- 3.4.5 Workers' rights in Lesotho are protected the Labour Code Order 1992 which is no longer adequate to among others protect right of the factory workers and others who do not work under conducive conditions.

4. RECOMMENDATIONS

The following recommendations are made for Lesotho Government:

1. Establish Human Rights Commission that has necessary powers to investigate, have binding decisions over human rights matters and take matters of human rights abuse to court;
2. Enact Public Participation Law that will enable and empower citizens to (i) participate to the extend of their will and wish in all the stages of law and policy making stages and (ii) check powers of the legislators who at times make laws irrespective of the views of the people they represent;

3. Transform recruitment of statutory and other senior positions; Independent Electoral Commission, Chief Justice, Human Rights Commission, Ombudsman into a professional and participatory process as one recommended by the UN Lesotho sponsored expert in 2012;
4. Enact the Receipt and Access to Information Bill and establish the long awaited media council provided in the media policy which has not yet been adopted by the government after 15 years of delaying tactics;
5. Adopt the Media Policy that shall provide all the necessary remedies to the irregularities in the media sector that are amenable to the principles of democratic dispensation. This shall be in line with the UN Nations Universal Declaration of Human Rights, *Article 19*;
6. Transform Radio Lesotho, Ultimate FM, Television Lesotho, Lentsoe la Basotho/Lesotho Today and the Lesotho News Agency, from direct government control to the non-state controlled authority. This shall be compliance to the African Charter on Broadcasting and the Windhoek Declaration;
7. Review the Public Processions & Meetings Act;
8. Ratify all the ILO Conventions;
9. Make the socio-economic rights basic human rights justiciable in the courts of law;
10. Resuscitate National AIDS Commission;
11. Make changes to the Constitution to allow parliamentary endorsement of the international treaties/conventions before they could be signed;
12. Enact Law that protects rights of people who are tested without consent, whose rights to services and equal treatment are limited to their negative HIV status determined without their free choice;
13. Stop pre-recruitment and mandatory HIV testing;
14. Include rights of a girl child to inheritance in the currently processed Domestic Violence Bill;