

SOUTHERN AFRICA LITIGATION CENTRE

**Lesotho's 3rd Universal Periodic Review
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**Joint Submission by:
Southern Africa Litigation Centre
with assistance by
Lesotho Federation of Women Lawyers (FIDA)**

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Southern Africa Litigation Centre (SALC)

The Southern Africa Litigation Centre (SALC) promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation support and capacity building.

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Lesotho Federation of Women Lawyers (FIDA)

The Lesotho Federation of Women Lawyers (FIDA) provides advice and information on women and children's rights so that they can achieve social justice. Current work especially focuses on property or land claims, domestic abuse, women's empowerment and children's rights.

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Introduction

1. Lesotho has made great strides towards becoming a participatory democracy which respects the rule of law and human rights. Certain victories for human rights have been achieved in the courts of Lesotho. The High Court in *Basildon Peta v Minister of Law, Constitutional Affairs and Human Rights and 2 Others*¹ declared that criminal defamation is unconstitutional. In *Ramakatsa and Others v Commissioner of Police and Others*² the High Court declared that those charged with a crime have a right to be seen by a court within 48 hours of arrest. Furthermore, the High Court, in *Private Lekhetso Mokhele and Others v The Commander, Lesotho Defence Forces and Others*,³ declared that the military cannot discriminate based on sex or gender against pregnant women. These achievements should be celebrated and replicated.
2. Despite these advances, certain laws and policies continue to infringe on the rights of people in Lesotho. The crime of sedition and the presence of other laws chill free expression. Criminal penalties for unregistered associations and unpermitted assemblies violate the rights of freedom of assembly and association. Journalists, opposition politicians, and human rights defenders face police harassment and security threats. There is no law providing for requests of government information, which restricts the right to access information. Many communities which are displaced by large projects face unequal access to potable water. Discrimination against women is written into the Constitution, and creates a legal environment which does not provide women with equal protection under the law. These shortcomings should be addressed by Lesotho in its upcoming review by the African Commission on Human and Peoples' Rights (African Commission).
3. These submissions point to the failure of the Government of Lesotho to uphold its human rights obligations in the context of freedom of expression; freedom of assembly and association; security and the rights of journalists and human rights defenders; freedom to access information; right to water; and the equal rights of women. These areas will be further discussed below.

Freedom of Expression

4. In May 2018 the Lesotho Constitutional Court declared the offence of criminal defamation unconstitutional in the case of *Basildon Peta v Minister of Law, Constitutional Affairs and Human Rights and 2 Others*.⁴ Mr. Peta was charged with the offence of criminal defamation after the Lesotho Times in 2016 published a satirical column relating to the then-Commander of the Lesotho Defence Force, Tlali Kamoli. The decision to challenge the offence was in response to the repression of journalists in the country at the time.

¹ (CC 11/2016) [2018] LSHC 3 (18 May 2018)

² (CC No. 22/2018) [2019] LSHCONST 1 (16 April 2018)

³ CIV/APN/442/16 [2018] LSHC 2 (14 February 2018)

⁴ (CC 11/2016) [2018] LSHC 3 (18 May 2018)

5. Removing the offence of criminal defamation is a positive development for the freedom of expression of the people of Lesotho. However, other criminal laws still infringe on the right to freedom of expression. Lesotho prohibits infringing the dignity of the royal family. Furthermore, the archaic offence of sedition, making it an offence to “excite disaffection”; has also seen a revival in new media and criminal laws in Lesotho. These are impermissible restrictions on freedom of expression.
6. Other laws also have negative impacts on freedom of the press. Under the Penal Code of 2010, police can force journalists to disclose sources for the sake of helping police with investigations. Additionally, under section 7 of the Printing and Publishing Act,⁵ the law requires newspapers to be registered with the government.
7. Article 9 of the African Charter states in part:

“Every individual shall have the right to express and disseminate his opinions within the law.”
8. Freedom of expression, as protected by the ICCPR and Article 14 of the Constitution of Lesotho, is one of the foundational rights necessary for a free democratic society. States must protect the right of people to freely express themselves and cannot restrict this freedom unless it is provided for in law and necessary for public order, health, security or to protect the rights of others.
9. The government of Lesotho appears unwilling to address its impermissible restrictions on freedom of expression. During its 2015 Universal Periodic Review before the Human Rights Council it noted, but refused to support, recommendations 114.16 (Ghana) 114.18 (Canada) related to freedom of expression.
10. Firstly, as was reported in the 29th Session of the Human Rights Council, “the recommendation to decriminalise defamation and review the media related laws did not enjoy the support of Lesotho. The draft Media Policy, which was soon to be approved by Cabinet, will set the bar and old laws will be reviewed in conformity with the Policy.”⁶ Although the government did not support this recommendation, the Constitutional Court went on to declare the provision unconstitutional.
11. Additionally, the report on the 29th Session of the Human Rights Council indicated that, “The recommendation to review and update laws that could lead to self-censorship, such as the Sedition Proclamation and the Internal Security (General) Act, to ensure compliance with international human rights obligations does not enjoy the support of Government. Those laws ensure respect for the rights of citizens.”⁷

⁵ Act 10 of 1967

⁶ “Report of the Human Rights Council on its twenty-ninth session” A/HRC/29/2, para. 511

⁷ “Report of the Human Rights Council on its twenty-ninth session” A/HRC/29/2, para. 513

12. Sedition is still criminalised in Lesotho. This, along with the other laws which curtail a free press and free speech prevent Lesotho from achieving freedom of expression as protected in its Constitution and under international human rights law.

13. Suggested recommendations for the government of Lesotho

- a. Repeal the crime of sedition from the Penal Code.
- b. Reduce restrictions and regulations on the press.

Freedom of Assembly and Association

14. In Lesotho, the Public Meetings and Processions Act requires acquisition of a permit in order to call an assembly. Failure to acquire a permit can lead to penalties imposed by the courts. Furthermore, the Societies Act of 1966 (1983 am.), requires registration of NGOs in Lesotho. Registration is mandatory, and there are fines or jail terms of up to five years for failing to register an NGO.

15. Freedom of assembly and association are important rights, enshrined in the ICCPR and Articles 15 and 16 of the Constitution of Lesotho, that protect the ability of people to meet, share ideas and create collective actions which can lead to important civic change. While some regulation of associations and assemblies can be helpful in facilitating the right to assembly and associations, regulations should not impede these rights.

16. While aspects of the laws regulating association and assembly are beneficial, such as encouraging police to act promptly and favourably towards assembly applications and providing for an appeals process for denials, some aspects of the laws do not meet best practices in protecting the rights to freedom of assembly and association.

17. For example, the African Commission’s Guidelines on Policing Assemblies in Africa state:

“Recognising the important expressive role that spontaneous assembly can play in a democracy, law enforcement agencies must have in place processes and procedures to ensure the facilitation of spontaneous assemblies, including in relation to known or scheduled political or social events, commemorative days, and in anticipation of decisions made by courts, parliaments and other state authorities. Lack of prior notification of an assembly does not render an assembly unlawful and should not form the sole basis of a decision by law enforcement officials to disperse an assembly.”⁸

18. Having a law which provides for penalties for failure to register impermissibly restricts the rights of people to peaceful spontaneous assembly.

19. Similarly, while registration of organisations can be helpful to promote an active civil society and provide for increased funding opportunities, five years of jail time for failure

⁸ “Policing Assemblies in Africa: Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa” *African Commission on Human and Peoples’ Rights*, para. 9.1.

to register is an excessive penalty. Registration should be an option which confers benefits, not a requirement which carries penalties including incarceration for potential violations.

20. Suggested recommendations for the government of Lesotho

- a. Amend the law to remove penalties for failure to register an association.
- b. Amend the law to remove penalties for being part of an assembly which lacks a permit.

Freedom to Access Information

21. Lesotho lacks legislation that would give access to its citizens of information that is essential to participating in a free, democratic society. Since 2012, the African Commission on Human and Peoples' Rights adopted a Model Law on Access to Information, however, the Lesotho government has made no progress towards adopting a law on Access to Information.
22. Journalists cannot access information from government information officers because the Public Service Regulations of 2008 provides that a public officer shall take an oath of secrecy and an officer "who discloses information which is in his or her protection and confidentiality" commits a disciplinary offence. Lesotho also has overly broad laws which prohibit the publication of information relating to a corruption investigation, even when the public interest ought to allow such publication.
23. The right to access information, especially information pertaining to the public operation of government, is essential in a participatory democracy. Citizens should be able to easily discover what considerations go into policy decisions, how their taxes are being spent and the discussions that politicians and bureaucrats are having as they write legislation and regulations.
24. Lesotho has recognised the legislative gaps that prevent important access to information. In paragraph 76 of the Combined Report, Lesotho states:

"There is no law guaranteeing the media or citizens access to information and in particular state information. There is however, the Receipt and Access to Information Draft Bill which had been drafted by the Lesotho Law Reform Commission but has not yet been tabled before parliament."
25. Lesotho has drafted a Receipt and Access to Information Draft Bill which should be passed in order to create procedures for citizens to gain access to important information about the working of governments. The passage of this bill should also address other legislative hurdles to freedom to access information. Specifically, journalists and the press should be protected from criminal liability for reporting on the workings of governments.
26. Additionally, there has been movement to try and pass a draft Cyber Crimes Bill. Any bill addressing cybercrime and cyber security should ensure the protection of human rights. It should reflect the SADC Model Law on Computer Crimes and Cyber Crimes (2013) and

the AU Convention on Cyber Security and Data Protection (2016). As the internet and technology continues to develop, it will play a greater role in how citizens access information about their government. The proliferation of the internet is an ideal time to engrain human rights protections in laws regulating the use of the internet.

27. Suggested recommendations for the government of Lesotho

- a. Pass the Receipt and Access to Information Draft Bill.
- b. Ensure that passage of any future Cyber Crimes Bill includes ample opportunity for public participation and protects the human rights of internet users, including the right to access information.

Security and Rights of Human Rights Defenders, Journalists, and Citizens

28. Over the past two years, journalists and human rights defenders have frequently been threatened when they reported on corruption related cases or anti-government protests.
29. Between 2015 and 2016, political activists who were supporters of opposition political parties were often arrested by police; sometimes they were released without charges. Home Affairs Deputy Minister Machesetsa Mofomobe was arrested more than once without any charge, although the police would claim that he was being interrogated for treason. Chief Executive Officer of Lesotho National Development Corporation (LNDC) Mohato Seleke was also arrested and harassed by police for allegations that he was masquerading as “Makhaola Qalo”, a personality active on Facebook who published confidential government information on social media.
30. A group of soldiers was abducted and detained in the Military Maseru Maximum Prison in May 2015. They were accused of mutiny. Some of the soldiers escaped the country, and were in exile in South Africa. At the time, no activist or journalist was able to freely report on the issue. The officers from Transformation Resource Centre (TRC), the only non-governmental human rights organisation which has observer status at the African Commission on Human and Peoples’ Rights, received threats for advocating for the release of soldiers who were abducted on suspicion of mutiny.
31. Following the 2017 election and the transition of power, thirty four members of the Lesotho Defence Force and the Lesotho Mounted Police were arrested on the charges of murder and attempted murder for alleged crimes which occurred between 2011 and 2016. Following their June 2017 arrests, all thirty four were denied bail. To date, there have not been any trials.
32. SABC Lesotho Correspondent Nthakoana Ngatane was allegedly harassed and forced into exile by the All Basotho Convention (ABC), a group which supports the Prime Minister’s party. She is still in exile.
33. In June 2016, Editor Lloyd Mutungamiri and Senior Journalist Keiso Mohloboli, of the Lesotho Times and Sunday Express Newspapers, were arrested for writing a story about

the army. The story was headlined, “Exit strategy for Kamoli”. After an intense and threatening interrogation, the duo was released without charges.

34. A week later on 5 July 2016, Lloyd was again arrested, and was released again, still with no charge. Four days later, on 9 July 2016, unknown assailants attacked and shot Lloyd four times in the head.
35. On 8 February 2018 members of the Kao village staged a protest against the Storm Mountain Diamond Mine. Police from Butha-Buthe were called to break up the protest. When the police arrived, they shot towards the protesters, killing a villager named Terene Pitae and causing others to sustain serious injuries. The police were not investigated nor reprimanded.
36. Police have continued to harass members of the Kao community. This includes a police raid early in the morning of 27 December 2018. Police beat men and women in the village with knob kerie and clubs. Poshoane Moloji, a vocal community activist, was killed during the raid. 16 other community members were taken to Mamohau Hospital in Leribe district because of their injuries.
37. Where journalists and HRDs are shot, injured or killed by the State, those responsible need to be held accountable. Unfortunately there is often little redress if the police refuse to investigate, and it is difficult to find avenues for redress. Lesotho has a Police Complaints Authority, but the authority does not receive complaints directly from the public, making it difficult to follow up on unresolved assaults and deaths.
38. All people are to be equal under the law, regardless of whether they are part of the ruling government or part of the opposition party. This is enshrined in Articles 4 and 6 of the Constitution of Lesotho. Those who speak out about potential human rights abuses or the press who reports on issues of national importance should still be protected by the law. Citizens play an essential role in holding governments accountable when they violate the rights of other citizens, and this work should be protected.
39. The government should work to create an environment that is robust for civil discourse. Violence perpetrated against anyone should be investigated, and the perpetrators should be held to justice. The government, police and security forces should not participate in the harassment of individuals who critique the government. Arbitrary arrests should be prohibited.
- 40. Suggested recommendations for the government of Lesotho**
 - a. Conduct trainings for police officers on human rights and prevention of arbitrary arrests and torture.
 - b. Following arrest, ensure that detainees are brought promptly before an independent court and proceed with a fair trial in reasonable time.

Right to Water

41. The Lesotho Highlands Water Project (LHWP) has led to many concerns about the right to water and sanitation for communities impacted by the dams. The project's dams impact watersheds over 40 percent of the country's total area. For a country that already struggles to provide access to safe drinking water for its population, altering the water system at such drastic levels could exasperate the problem.
42. Phase 1A of the project, construction of the Katse Dam was completed in 1997, and phase 1b, construction of Mohale Dam, was completed in 2003. During phase 1 there were years long delays in implementing Rural Sanitation and Village Water Supply projects for impacted and displaced communities. In the case of Katse Dam, the Lesotho Highlands Development Authority (LHDA) ought to have implemented the KLM/WATSAN project as a component of its Environmental Action Plan (EAP). In terms of this project, communities directly affected by LHWP (in the areas of Katse, Lejone and Matsoku) as well as those indirectly affected would be supplied with portable water and sanitation as part of efforts to mitigate adverse impacts resulting from implementation of LHWP.
43. To date more than ninety-nine (99) communities remain without water and sanitation more than 20 years after they were affected by LHWP. The seven villages which now have access to clean water were forced to resort to litigation, assisted by the local public interest law centre Seinoli Legal Centre, when it became clear that LHDA was unwilling to restore water supply in their villages. Mapeleng village and seven other villages surrounding the Katse Dam had lost their water supply in 1995 when their natural springs dried up as a result of seismic activity that occurred during inundation of Katse Dam. The taps provided by LHDA, however, are still not reliable, and at times dry up.
44. What is astounding is the fact that the Katse village, where the hotel and residences of LHDA officials reside, has an abundant supply of potable running water and yet the neighbouring village of Bokong which is within a walking distance remains without water. Ironically the water tank which supplies LHDA's residential area is located in the heart of the village of Bokong. Additionally, villagers are prohibited from drawing any water from the dam reservoir.
45. Phase II of the LHWP has already begun with the construction of the Polihali dam where more than sixteen thousand people living in more than 72 villages will be affected by the impending construction. The negative impacts on water and sanitation that occurred during Phase I of the project seem inevitable as all five main rivers upon which the residents rely for water (Sehonghong, Khubelu, Mokhotlong, Senqu and Moremoholo rivers) will be flooded by the Dam. However, there are no clear plans by the LHDA regarding how the plight of these communities will be ameliorated.
46. Access to clean, healthy drinking water is an essential aspect of achieving the best attainable physical health, as protected under the ICESCR and Article 27 of the Constitution of Lesotho.

47. During its 2015 Universal Periodic Review before the Human Rights Council Lesotho supported recommendation 113.86 (Togo) which called for the development of water access and sanitation facilities, and to combat the disparities between urban and rural areas.
48. Access to clean drinking water is an essential human right. Lesotho has a human rights obligation to provide for the progressive realisation of this right. When government development programs, such as the LHWP, interrupt previously enjoyed access to safe drinking water, it is all the more important that Lesotho ensures that impacted people regain access to affordable and available potable water.
49. We also encourage Lesotho to consider the sustainability of these large dam projects as climate change and global warming continue to alter water cycles in the country. While economic development can aid the Lesotho government in achieving its water and sanitation goals, a concerted effort and prioritization needs to lead to the reinvestment from the LHWP into the water and sanitation infrastructure. This is especially true for the highland communities which are most impacted by the project.
- 50. Suggested recommendations for the government of Lesotho**
- a. Dedicate more money to water and sanitation in order to provide universal access to potable water and improved sanitation facilities.
 - b. Conduct a review of compensation effort by the LHDA, and ensure just compensation of communities relocated and impacted by the LHWP.

Women's Rights in Lesotho

51. Lesotho has made progress in recognizing, advancing respect for, and enforcing women's rights. For example, on 14 February 2018, the Lesotho High Court handed down judgment in a landmark case on women's rights. The judgment of Sakoane J (as part of a 3 panel bench) in the case of *Private Lekhetso Mokhele and Others v The Commander, Lesotho Defence Forces and Others*⁹ sets an important precedent on the rights of pregnant employees in the military. The applicants were 3 female soldiers who were discharged from the Lesotho Defence Force on the grounds of pregnancy. The discharge was based on a Standing Order issued by former Commander Kamoli which stated that a soldier may not become pregnant in the first 5 years of service. The Court declared that both the decision to discharge the applicants and the Standing Order were unlawful and ordered that the applicants be reinstated to their positions and ranks in the LDF without any loss of benefits.
52. Despite some positive developments, there remains considerable challenges for women's rights recognition, enforcement and respect. Additionally, the violation of women's rights is written into Section 18 of the Constitution of Lesotho, which allows discrimination against women if it is part of customary law.
53. Women are subjected to discriminatory customary practices which violate their rights. In terms of Customary Law women cannot succeed their fathers with regards to chieftainship.

⁹ CIV/APN/442/16 [2018] LSHC 2 (14 February 2018)

In addition, the King can also be succeeded by his male heir only. This means that women are excluded from the traditional political power structures.

54. There are laws and policies that aim at protecting women's rights, but there is a struggle by the government to implement and enforce them. Two laws which set out to protect gender equality are the Legal Capacity of Married Persons Act of 2006 and the Land Act of 2010. The Legal Capacity of Married Persons Act gives married women the same legal rights as married men. The Land Act changed the law that provided only men can register land, and allows women to register land in their names. The Acts are further strengthened by the Gender Policy of Lesotho.
55. However, there are many women who still have their marital property and land taken away by their in-laws. These women reside in remote areas of Lesotho. In some cases, the community leaders are complicit in these violation of property rights. FIDA has encountered many of these women through its Legal Aid Clinic and Community projects.
56. Furthermore, women in Lesotho are often physically and sexually abused with impunity. Sexual abuse victims rarely get the justice they deserve because of the backlog in cases. Typically, the cases never reach finality due to the incompetence of police officers and prosecutors. This has led to low reporting levels and very few cases being prosecuted to finality.
57. Victims of domestic violence still receive no protection under the law. Lesotho's legislature has failed to enact the Lesotho Domestic Violence Bill of 2012. The sanctity of the family and marriage still overrides the emotional and physical well-being of married women. Women continue to be abused by their spouses or intimate partners. Matters concerning domestic violence and abuse are traditionally handled within the family unit. In most cases, the abuse continues for years until the wife or intimate partner gathers enough courage to leave the home. The absence of domestic violence legislation exacerbates the continued violation of women's rights.
58. There is also a problem of young women being abused by their caregivers or guardians. These young women are usually orphans, however, there are also reported cases of fathers molesting their own children. Sadly, the alleged perpetrators are often sent back to their alleged victims.
59. Men and women should be treated equally before the law, however, even the Constitution of Lesotho violates this basic premise of non-discrimination. Lesotho has ratified the African Charter, as well as the Protocol on the Rights of Women, but it continues to violate the dignity of women by keeping them unequal under the law. In addition to the formal inequalities, the lackluster response of government to violence against women prevents it from meeting its obligations under these treaties to "combat all forms of discrimination against women".
60. When reporting on its human rights obligations, Lesotho has both strove for gender equality in some areas, while preserving its right to discriminate against women in others.

61. Lesotho has been actively working to address problems of gender-based violence. For example, it supported many recommendations related to the topic at its 2015 Universal Periodic Review before the Human Rights Council. These were recommendations 113.5 (Costa Rica), 113.6 (Brazil), 113.7 (Germany), 113.8 (United Kingdom of Great Britain and Northern Ireland), 113.22 (Ghana), 113.54 (France), 113.67 (New Zealand), 113.68 (South Africa), 113.69 (Turkey), 113.70 (Djibouti), 113.71 (Turkey) and 113.72 (Philippines)

62. Furthermore, Lesotho reported that:

“Gender based violence is being addressed by holding capacity building training sessions for Child and Gender Protection Unit (CGPU) officers, judiciary, prosecutors, chiefs, traditional and religious leaders on gender issues, human rights and how to manage gender based violence cases.”¹⁰

63. Lesotho also recognizes that there remain societal barriers against women which prevent them from seeking redress. It supported recommendations 113.9 (Latvia), 113.41 (Russian Federation), 113.53 (Slovenia), and 113.57 (Thailand) addressing discrimination against women and the need to raise awareness about gender stereotypes.

64. However, even with these acknowledgements, Lesotho remains resolute in gender discrimination. For example, in the 2015 Universal Periodic Review, Lesotho noted, but refused to support recommendations 115.6 (Ireland) and 115.12 (Slovenia) regarding discrimination against women. The report states:

“The recommendation to strengthen at the constitutional level and in a specific manner, the provisions that prohibit discrimination against women did not enjoy the support of Lesotho. The Government has made strides in prohibiting discrimination against women. The issues relating to succession to the throne and chieftainship, which was the basis of the reservation to Article 2 of CEDAW, was yet to be addressed.”¹¹

65. The formalised discrimination against women in the laws and Constitution of Lesotho hamper any efforts by the government to address other aspects of societal discrimination against women. All people, including women, deserve to have their full dignity protected before the law. The ability to discriminate against women based off of customary law does more than impact the specific rights addressed by the customary laws in questions, it also creates a society where inequality and oppression is embedded into the legal fabric of the country. This can have a negative impact on the psyche of women and can have a chilling effect on their effort to protect other rights. Bringing full legal equality to women can only help the government in addressing its concerns about violence against women, and discrimination against women in other venues.

¹⁰ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Lesotho, /HRC/WG.6/21/LSO/1.

¹¹ “Report of the Human Rights Council on its twenty-ninth session” A/HRC/29/2, para. 512.

66. Suggested recommendations for the government of Lesotho

- a. Repeal Section 18(4)(c) of the Constitution of Lesotho.
- b. Conduct community trainings on the Legal Capacity of Married Persons Act of 2006 and the Land Act of 2010 to help educate women about their property rights.
- c. Provide training and financial support for public lawyers dedicated to helping women protect property claims that are being encroached on by community leaders or family members.

Conclusion

67. We hope that Lesotho will continue to press forward in its quest to greater protect human rights. In order to achieve this goal, Lesotho should:

- a. Repeal the crime of sedition from the Penal Code.
- b. Reduce restrictions and regulations on the press.
- c. Amend the law to remove penalties for failure to register an association.
- d. Amend the law to remove penalties for being part of an assembly which lacks a permit.
- e. Pass the Receipt and Access to Information Draft Bill.
- f. Ensure that passage of any future Cyber Crimes Bill includes ample opportunity for public participations and protects the human rights of internet users, including the right to access information.
- g. Conduct trainings for police officers on human rights and prevention of arbitrary arrests and torture.
- h. Dedicate more money to water and sanitation in order to provide universal access to potable water and improved sanitation facilities.
- i. Conduct a review of compensation effort by the LHDA, and ensure just compensation of communities relocated and impacted by the LHWP.
- j. Repeal Section 18(4)(c) of the Constitution of Lesotho.
- k. Conduct community trainings on the Legal Capacity of Married Persons Act of 2006 and the Land Act of 2010 to help educate women about their property rights.
- l. Provide training and financial support for public lawyers dedicated to helping women protect property claims that are being encroached on by community leaders or family members.