

**Submission to the Universal Periodic Review (UPR) by the
Transformation Resource Centre - TRC
Submitted in terms of para 15 of annex to Human Rights Council Resolution**

5/1

Submitted on 18 July 2019



CSOs involved in this Report:

1. Transformation Resource Centre – TRC
2. She-Hive
3. Sentebale
4. Catholic Commission for Justice and Peace - CCJP
5. Lesotho Council of Non-Governmental Organisations – LCN
6. Lesotho National Federation of Organisations of the Disabled – LNFOD
7. Saviours of Lesotho Dams - SOLD
8. Development for Peace Education – DPE
9. Lesotho Teachers association – LTA
10. Lesotho Teachers Trade union - LTTU
11. Independent Democratic Union – IDUL
12. Lesotho Nursing Association – LNA
13. Maseru Women Senior Citizens – MWSC
14. National University of Lesotho Students Representative Committee
15. Lerotholi Polytechnic Students Representative Committee
16. MATRIX (LGBTI)

I. INTRODUCTION

1. This is a joint submission by Transformation Resource Centre (TRC) and other Civil Society Organisations (CSOs), a list of which is annexed hereto, to the UN Human Rights Council in relation to Lesotho's third Universal Periodic Review (UPR) which is due in January/February 2020.
2. TRC is a non-governmental organisation registered as such under the Societies Act of 1966. It is an ecumenical resource centre dedicated to promotion and protection of human rights, good governance, and advocates for justice, peace and participatory development in Lesotho.

II. CONTEXT OF THE REPORT

3. This report examines the government of Lesotho's compliance with its human rights obligations to respect, protect and promote human rights in the Kingdom of Lesotho in accordance with customary international law as well as human rights instruments to which Lesotho is a party. It contains information on the follow-up to recommendations made in the last UPR cycle (2015) and highlights the human rights situation in Lesotho since then. It also suggests recommendations to be made to the government of Lesotho in order improve human rights protection in Lesotho.
4. The coalition of CSOs which compiled this report acknowledge the legislative and policy frameworks adopted towards protection of human rights in Lesotho. However, they are of the opinion that Lesotho has not implemented majority of the supported recommendations made in the previous cycle. The following specific areas are covered in this report: equality and non-discrimination, torture and police brutality, fair trial, access to justice and independence of the judiciary, freedom of association and assembly, health, property, work, education and rights of children.

III. KEY HUMAN RIGHTS ISSUES AND AREAS OF CONCERN

Equality and freedom from discrimination

5. Following the 2015 review, nine countries, recommended that Lesotho must consider lifting/withdrawing its reservation to article 2 of the UN Convention on Elimination of All forms of Discrimination Against Women (CEDAW).¹ Lesotho noted this recommendation. However, to date no efforts or deliberations at all levels of government including parliament or cabinet have been made in order to adopt the country's stance in relation to this recommendation. This is so despite the negative effect this reservation has had to equality and non-discrimination of women in Lesotho as illustrated in the case of *Senate Gabasheane Masupha v Magistrate Berea & Others*,² in which the Constitutional Court, basing itself on this reservation and section 18(4)(c) of the Constitution of Lesotho dismissed an application which sought to nullify section 10 of the Chieftainship Act, 1968 which

limits succession to chieftainship to first born male children to the exclusion of female children.

6. Lesotho supported the recommendation to change its legal framework by domesticating CEDAW, changing discriminatory laws and including in the Constitution and other laws, provisions prohibiting discrimination against women in matters such as adoption, marriage, divorce, devolution of property, burial and death.³ As stated in the above paragraph, it is noted with concern the government of Lesotho has not implemented this recommendation and has not made any effort to amend section 18(4)(c) of the Constitution as well as section 10 of the Chieftainship Act, 1968 which discriminate women on the basis of custom.
7. Because violence against women has been categorised as a form of discrimination, a recommendation was made that Lesotho must prioritise enactment of the Domestic Violence Bill into an Act of parliament, to prevent domestic violence including sexual violence and to investigate and punish such acts. Despite having supported this recommendation, to date the Bill has not been passed into an Act of Parliament while acts of gender-based violence continue to take place.
8. The recommendation to align customs and attitudes with international obligations to eliminate discrimination against women also received Lesotho's support.⁴ This recommendation has not been implemented in as much as vulnerable groups such as persons with disabilities as well as sexual and linguistic minorities in Lesotho continue to face discrimination based on attitudes and customary practices.
9. Despite research and acknowledgement in the National Policy for Older Persons 2014 that elderly persons constitute about 8 percent of the overall population in Lesotho, they continue to face discrimination and the government has not adopted laws aimed at protecting them from such discrimination. The traditional mind-set of respect, support and protection of older persons has changed and they have become victims of discrimination, violence and harmful practices. In the absence of law to prevent such, elder people in Lesotho are mistreated in various ways including omission (neglect) and commission (physical, psychological, financial or other material maltreatment). Due to the laws and practices that discriminate women in general, elderly women suffer more discrimination in that they become victims of property grabbing and have become

easy targets for a number of criminal activities including rape, violence and theft. Older women are also often accused of witchcraft and this has led to violence against them and murder.

10. In various international fora, Lesotho has acknowledged the existence of minority ethnic groups such as Baphuthi, Xhosas and Matebele in some parts of the country thus discarding the long-standing perception that Basotho are a homogenous nation. However, the government has not adopted any laws or policies aimed at preserving the minority cultures and languages. For instance, in terms of the Constitution, official languages are Sesotho and English only, thus leading to assimilation of the minorities into the majority Sesotho-speaking community.
11. While the Constitution of Lesotho lists prohibited grounds of discrimination, the list does not include sexual orientation. Over and above this, there is also no legislative framework for protection of the LGBTI community. This omission leads to discrimination of various forms including denial of access to healthcare services, targeted assaults by the police, non-recognition of their unions as lawful marriages and their prohibition to adopt children. Discrimination in accessing healthcare services has led to high prevalence of HIV and other sexually transmitted infections (STIs) amongst the LGBTI community and spread of such in the entire country. There is also discrimination against inter-sexed children whom at birth, are subjected to sex-reassigning and consequently a number of complications when such a child is older. Due to lack of legal protection, LGBTIs are also direct victims of domestic violence, denial of rights within their families, social exclusion and being forced into conventional marriages and initiation schools amongst others.
12. Persons with disabilities face discrimination in different forms including lack of employment opportunities, access to justice, as well as lack of inclusion and accommodation in education.
13. TRC, LNFOD, MATRIX and MWSCA suggest the following recommendations to the Government of Lesotho:
 - a) To amend the Constitution and repeal section 18(4)(c) which allows discrimination on the basis of customary law, to include disability and sexual orientation as prohibited grounds of discrimination and also include minority languages as official languages in Lesotho;

- b) To enact a law aimed at protection of elderly people in Lesotho;
- c) To pass the Domestic Violence Bill into an Act of Parliament and
- d) To pass the Disability Equity Bill into an Act of Parliament.

Access to justice, equality before the law and independence of the judiciary

14. Lesotho supported seven out of eight recommendations relating to justice and noted one. The supported recommendations were to the effect that Lesotho must align its domestic laws with the Rome Statute of the ICC,⁵ implement the Maseru Facilitation Declaration and Maseru Security Accord,⁶ hold peaceful, free and fair elections⁷ call for international technical assistance and also consider benefiting from countries that have succeeded in reforms to improve the functioning of justice,⁸ carry out national reforms to ensure independence of the judiciary⁹ and review minimum age of criminal responsibility.¹⁰
15. Majority of these recommendations have been implemented except for those relating to reforms and ensuring independence of the judiciary. The reforms process has been going on for longer than it was anticipated in the roadmap.
16. With regard to independence of the judiciary, since 2015 the executive has taken advantage of the Prime Minister's excessive constitutional powers to temper with independence of the judiciary. This has been done through politically motivated appointments and removals of the Chief Justice and the President of the Court of Appeal on the basis of politically motivated charges which have taken place with the change of two regimes since 2015. In 2019 when this report was submitted, President of the Court of Appeal had been served with a letter calling on him to show cause why he cannot be suspended while the substantive Chief Justice has been on suspension since May 2018. The same President of the Court of Appeal had been dismissed upon controversial charges and later re-appointed when the political regime changed. This thus clearly shows that such appointments and dismissals are purely meant to serve political interests.
17. The political interference with the judiciary has led to stifling of the wheel of justice in Lesotho as the Court of Appeal is often dysfunctional in that some scheduled sessions have been cancelled, to the detriment of litigants, some of whom are in

detention, including two who are currently on death row. Due to these factors, the nation has lost confidence in the judiciary.

18. Access to justice and attainment of fair trial have also been hampered by the fact that cases of domestic violence are often treated in a cavalier manner in that victims are told to make peace with the perpetrators without the perpetrators being taken before the courts of law. This is normally done by the Child and Gender Protection Unit (CGPU) of the Lesotho Mounted Police Service (LMPS).
19. People with intellectual and psychosocial disabilities were previously denied legal capacity on the basis of their mental capacity as they were regarded as incompetent to give evidence in court. However, TRC welcomes the Constitutional Court in the case of *Koali Moshoeshoe & Others v Director of Prosecutions & Others* in which the court declared section 219 of the Criminal Procedure and Evidence Act (CP&E) 1981 unconstitutional.¹¹ The challenge which remains however, is that following the judgment, no measures have been put in place to accommodate persons with disabilities within the criminal justice system, hence they remain targets of criminal activities including sexual abuse and violence.
20. TRC has also noted that there are no means of ensuring protection of victims of crime and in many cases suspects are granted bail to the detriment of such victims.
21. TRC therefore suggests the following recommendations to the government of Lesotho:
 - a) To speed up the reform process as the justice sector forms part of such process and to ensure that the process leads to curtailing excessive executive powers on the appointment and removal of members of the judiciary in order to ensure independence, effectiveness and accountability of the judiciary;
 - b) Appointing court intermediaries, similar to those employed in the Children's Court in order to ensure accommodation and access to justice for persons with intellectual and psychosocial disabilities.

Right to life and freedom from torture

22. Lesotho supported the recommendations to domesticate the UN Convention Against Torture (CAT),¹² by adopting laws which criminalise torture and consequently investigating and prosecuting allegations of torture and other cruel, inhuman and degrading treatment. It also supported the recommendation to ratify the Optional Protocol to CAT (OPCAT).¹³
23. Despite support of these recommendations, Lesotho has not implemented any of them. It has not ratified OP-CAT, State Party Report to the Committee Against Torture has not been submitted, CAT has not been domesticated, there is still no anti-torture legislation, perpetrators of torture are not punished and its victims are without redress.
24. As a result of absence of a comprehensive legal framework, many acts of torture as well as police and military brutality have since 20015 taken place in Lesotho. For instance, from January 2017 to June 2018, a total of 22 people died at the hands of police, some in custody and others during arrests and protests.
25. Amongst the many cases of police brutality are the cases of one Katiso who was assaulted at Police Head Quarters on suspicion of stealing from a security company in which he is employed.
26. In 2017 a group of young men of Koro-koro were assaulted by the police on their way to a funeral. The following morning one of them was found dead. His corpse was found lying at a nearby cemetery with a large wound on the head and his facial skin ripped off. A post-mortem report suggested that his face was ripped off in an attempt to remove a bullet from his skull. It is therefore suspected that he had been shot the previous night, the police took his body, removed the bullet and abandoned it at the cemetery. Since then, no investigations and prosecution relating to his death have been made.
27. In 2018 villagers of Kao who were dissatisfied with failure of the mining company in their region, to fulfil its promises of employment and development launched a protest during which many of them were assaulted by the police and one Terene Pitae was shot dead during the protest.
28. On 27 December 2018 the police raided the village of Ha Shishila and assaulted about 64 men of that village on allegations that one of them had fought with a police officer over a girlfriend at a public bar the previous day. One Poshoane was severely assaulted by the police with sticks and stones as a result of which he died.

29. On 11 January 2019, one Sempe Molapo was assaulted by the police at his home and when his father and brother tried to intervene, they were also assaulted. Molapo was taken to the hospital by the same police and was pronounced dead on arrival.
30. On 16 February 2019, two men of Qacha's Nek, Mongali and Sekhonyana were found dead in a police cell at Hlotse Police station. A post-mortem report suggested that they were suffocated to death.
31. A common feature in the above and other similar cases is that no investigations and criminal proceedings have been taken against the perpetrators.
32. On 22 February 2019 TRC, Amnesty International and Southern African Human Rights defenders issued a joint statement calling on the Lesotho authorities to ensure independent investigations of cases of torture and murder which were committed in Kao. However, to date no investigations have been made.
33. Members of the public have also been assaulted and killed by the Military. Many of these acts took place in the district of Qacha's Nek wherein soldiers have been deployed to oversee law and order, which is ordinarily a function of the police. For instance, on the 4th April 2016 Mrs. Mamoleboheng (Puseletso) Besele of Lebakeng in Qacha's Nek district was transferred by her chief to the soldiers at Ha-Molomo Military Base to deal with civil matters within Mrs. Besele's family. Soldiers intervened by beating her with a spade, a knobkerrie and a sjambok. Post-mortem examinations revealed severe damages on kidneys, womb and bladder as the cause of her death. Case Number: Qacha's nek RCI 13/03/16.
34. The government is also failing to stop the violence amongst the Famo music gangs which has been taking place in the district of Mafeteng and in South Africa for a long time, before the 2015 review to date. These acts of violence have resulted in brutal deaths of members of the gangs, members of their families and other villagers. Some men in these villages have deserted their families and gone into hiding. In their absence women, children and elderly people become victims of murder. In one village, *Rothe, Mafeteng*, a widow was brutally killed at night in front of her two children, a son aged fourteen (14) years and a daughter of six (6) years, because the husband was dead, no one was around to protect them; and the police arrived around dawn the following day.¹⁴
35. The following recommendations are suggested for the Government of Lesotho:

- a) Domestication of CAT through enactment of an anti-torture legislation
- b) Ratification of OP-CAT
- c) Submission of initial report on implementation of CAT
- d) Investigation, prosecution and punishment of perpetrators of torture and other cruel, inhuman and degrading treatment
- e) Provision of redress including rehabilitation, victims of torture and members of their families

Freedom of association and peaceful assembly

- 36. Regarding these rights, Lesotho received and supported two recommendations to align national laws with international standards¹⁵ and to ensure that the Public Processions and Meetings Act, then Bill, does not adversely affect these rights.¹⁶
- 37. Despite having shown support to these recommendations, freedom of association and peaceful assembly are unduly limited. The Public Processions and Meetings Act gives the police excessive powers including the discretion to give permits for processions and meetings. This discretion has been unduly influenced and permission sometimes withheld on political grounds.
- 38. In other instances, protestors or those given a permit to assemble are beaten or treated in violence by the police. For instance, on 12 April 2017, university students at IEMS were charged before the Maseru Magistrate Court with contravention of section 7(1)(e) of the Act in that they attended and or took part in a meeting which they “were not permitted” to so attend.
- 39. The Public Service Act prohibits formation of trade unions by public servants thereby stifling their ability to negotiate with the employer and or strike.
- 40. In this regard, the following recommendations are suggested to the government of Lesotho:
 - a) Amendment of the Public Processions and Meetings Act, 2010 to replace the duty to apply for permit with the duty to “notify” the police about an intended procession or meeting.
 - b) To amend the Public Service Act to allow civil servants to unionise.

Right to health

41. Lesotho accepted recommendations to combat poverty,¹⁷ prevent HIV,¹⁸ and improve access to healthcare services.¹⁹
42. However, Lesotho is failing to protect the right to health and bring down the high mortality rate which is among other reasons, brought by unplanned pregnancies and street-abortions (abortions done in and at secret places because abortion is criminalised by section 45 of the Penal Code Act.²⁰ In a newspaper interview on 15 September 2018, Health Minister Mr Nkaku Kabi stated that Lesotho's only referral hospital, Queen 'Mamohato Memorial Hospital is experiencing overcrowding and no longer accepting patients. He acknowledged such overcrowding is mainly caused by illegal and incomplete abortions as some of their wards are filled with patients whose lives are at risk because of such.
43. Enjoyment of sexual and reproductive rights is also hampered by unavailability of contraceptives in church-based health centres which are majority in the country.
44. Linked to poor service delivery by healthcare givers including nurses is scarcity of facilities in hard to reach areas, shortage of staff and uncondusive work environment which risks the occupational health and safety of the nurses. Failure to provide necessary equipment in all health facilities as well as overcrowding of such facilities also puts the nurses at the risk of legal suits in case of any loss, damage or suffering as a result of services provided in such circumstances.
45. TRC and the Nursing Association of Lesotho therefore suggest the following recommendations to the government of Lesotho:
 - a) Decriminalisation of abortion and enactment of laws to regulate it.
 - b) Decentralisation of healthcare services
 - c) Establishment of a Health Commission through an Act of Parliament for it to regulate healthcare profession instead of it being left in the purview of the Public Service Commission due to the peculiar needs of this profession
 - d) Increase of the Budget to the Ministry of Health in order to improve implementation of the right to health by amongst others employing specialised medical practitioners, ensuring the welfare of medical practitioners during practice, and make provision for their early retirement

Right to property and enjoyment of natural resources

46. The rights of individuals and communities affected by the Lesotho Highlands Water Project (LHWP) have been violated by the Lesotho Highlands Development Authority (LHDA) in various ways including denial of participation in the decision-making processes affecting expropriation of their land and other property, insufficient compensation, delayed payment of compensation with no interest upon payment and failure to compensate them for loss of communal property.
47. While the land and other properties expropriated could last the residents a lifetime, the compensation period by LHDA has been limited to 50 years.
48. Because of resettlement that was not thought through members of these communities are amongst the poorest in Lesotho as there were also no capacity building programmes when they were moved from a life of farming to cash-based life.
49. The LHWP has led to degradation of life as well as the natural environment in the affected areas.
50. TRC and Survivors of Lesotho Dams (SOLD) therefore suggests the following recommendations for the government of Lesotho:
 - a) Adoption of comprehensive compensation policies and laws to guide compensation which considers, the rights of affected communities and individuals
 - b) Carry out both environmental and social impact assessments before engaging in development projects
 - c) Revisit the 50 years compensation offer and increase it to 90 years
 - d) Improve public participation in development activities to ensure that affected people give informed consent to expropriation of their property and also benefit from such developments.

Right to work

51. There is an alarmingly high unemployment rate in Lesotho.

52. There is discrimination against factory workers when it comes to conditions of employment, in particularly pregnant women. They are given 6 weeks unpaid maternity leave unhealthy and very unfair on the welfare of the new mothers and the new born babies.
53. The following recommendations are therefore suggests for the government of Lesotho:
 - a) Improvement of employment opportunities for all without discrimination of whatever nature including political opinion, disability etc
 - b) Improvement of working conditions of the factory workers

Right to education

54. Lesotho supported the recommendations to ensure gender equality in education, access to education in hard-to- reach areas and inclusive education for learners with disabilities.
55. Although Lesotho has tried to implement these recommendations, challenges with regard to learners with disabilities, herd boys and children from poor families still remain.
56. Despite its obligation under the Convention on the Rights of Persons with Disabilities (CRPD) to ensure inclusive education and reasonable accommodation of learners with disabilities in mainstream schools, the challenge is that the buildings, including those constructed after ratification of the CRPD and support of these recommendations are no accessible to learners with physical disabilities. Furthermore, teachers are not trained in inclusive education and as such for instance, many of them cannot communicate in sign language nor use brail to accommodate learners with hearing and visual disabilities.
57. The school dropout remains high due to factors such as pregnancy, child marriage, going to initiation school, lack of funding to study and unfriendly environment for LGBTI learners.

58. The other challenge regarding implementation of the right to education is that the teachers are overloaded as the teachers-student ratio does not conform to international standards.
59. Lesotho has introduced a new curriculum but failed to provide resources to support the teachers in implementing such. This has thus affected the quality of education that is being offered. Furthermore, teachers are not trained on effective implementation of this new curriculum.
60. The government of Lesotho has also introduced a school feeding programme with the aim of addressing the poverty in Lesotho and also retaining learners in school. However, in recent years the programme has been dysfunctional, service providers are not paid and therefore food is no longer available in majority of schools. This has led to high dropout rate in the rural areas where learners depended on the food provided in schools.
61. Limitation of free primary education and financial assistance to learners below the age of 18 has also hindered access to education by previously disadvantaged learners who have not for a long time had access to education.
62. LNFOD, LAT and LTTU suggest the following recommendations to the government of Lesotho:
 - a) Effective implementation of the Education Act and the Children's Protection and Welfare Act to ensure access to education for all learners.
 - b) Enactment of the Disability Equity Bill into an Act of Parliament in order to ensure reasonable accommodation of learners with all forms of disabilities.
 - c) Revisit the new curriculum and resuscitate the seemingly collapsing education system
 - d) Provide social grants to all orphaned and vulnerable children
 - e) Deal away with age limit on the Free Primary Education qualification to accommodate previously disadvantaged learners
 - f) Revive Distance Learning to accommodate learners who cannot be in class during the normal learning hours like herd boys, teenage mothers and learners who were married very young;

Rights of children

63. Lesotho supported the recommendations to

64. Despite prohibition of child labour under both the Labour Code and Children's Protection and Welfare Act, children continue to be employed as domestic workers, hawkers, sex workers, herd boys and factory workers. However, the government fails to punish parents and guardians who expose children to work.
65. Although public awareness campaigns against child marriages are often held, early and forced child marriages continue to take place at an alarming rate in Lesotho. Owing to poverty and vulnerability, girls from under privileged families sink in, they are married off or get into marriage voluntarily with an aim to escape from their poverty. Because majority of the girls get married to older men than them, they are often subjected to oppression, domestic violence, and are exposed to maternal mortality due to bearing children while still young.
66. There are many children who grow up without their family, parents or any relative maintaining them; some are living by the streets (street kids). On the other hand, there are also kids who stay alone at home or with their elderly grandparents sometimes sick, who sleep with little or no food at all. And children living with their grant-parents live off the pension for their grandparents from the government, but the amount of money is not even enough to cover both the basic needs of the elderly and the children.²¹
67. In this regard, TRC, She-Hive and Sentebale suggests the following recommendations to the government of Lesotho:
 - a) Implementation of the laws against child labour and punishment of its perpetrators
 - b) Eradication of early and forced child marriages.
 - c) Financial and psychological support of vulnerable children with an aim of removing all children from the streets and reconciliation with families or placement in OVC homes.

¹ Rwanda, Ireland, Germany, Brazil, Canada, France, Norway, Slovenia and South Africa

² Constitutional Case No. 5/2010 LSHC 9

³ Canada, Netherlands, Costa Rica,

⁴ Recommendations by Slovenia and Ghana

⁵ Costa Rica

⁶ Sweden

⁷ United States

⁸ Algeria

⁹ Netherlands

¹⁰ Slovakia

¹¹ Koali Moshoeshe & Others v DPP & Others

¹² France, Costa Rica, Australia and Chad

¹³ Montenegro, Denmark, Spain, Togo, Chile, Costa Rica, United Kingdom, Portugal, Argentina, Brazil, France, Ireland and Spain

¹⁴ 'Mapule Motsopa, "The Wounds that have refused to heal" (January 11, 2019) The Post www.thepost.co.ls/new/the-wounds-that-refuse-to-heal/ (accessed 12 July 2019)

¹⁵ Chad

¹⁶ Ireland,

¹⁷ Algeria, Botswana, China

¹⁸ Argentina, China

¹⁹ Bangladesh,

²⁰ *Penal Code Act, No. 6 of 2010*

²¹ 'Mapule Motsopa, "The Wounds that have refused to heal" (January 11, 2019) The Post www.thepost.co.ls/new/the-wounds-that-refuse-to-heal/ (accessed 12 July 2019)