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## **Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1**

### **Lesotho\***

The present report is a summary of 4 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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

## **I. Background and framework**

### **A. Scope of international obligations**

1. The Lesotho Council of Non-Governmental Organisations (LCN), in a joint submission, reported that Lesotho has ratified most of the Human Rights treaties and some ILO conventions, some of them with reservations. LCN indicated that Lesotho ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) with the reservation that CEDAW will only be applicable if it is not inconsistent with the Constitution.<sup>2</sup> LCN recommended that Lesotho remove the reservations it has made to CEDAW.<sup>3</sup> LCN also reported that Lesotho has not incorporated most of these international instruments into national law.<sup>4</sup> World Vision (WV) made specific references to the international instruments related to children's rights.<sup>5</sup>

### **B. Constitutional and legislative framework**

2. LCN reported that Chapter two of the 1993 Constitution provides for fundamental human rights and freedoms. While civil and political rights are justiciable, socio-economic and cultural rights are merely stated as state policies.<sup>6</sup> LCN recommended that Lesotho make socio-economic human rights justiciable in the courts.<sup>7</sup>

3. LCN reported that the Children's Protection and Welfare Bill (2004), which consolidates and reforms the laws relating to the protection and welfare of children, has been tabled in parliament since 2004 but has not yet been enacted.<sup>8</sup> LCN recommended that Lesotho enact specific child legislation that protects the rights of children.<sup>9</sup>

### **C. Institutional and human rights infrastructure**

4. LCN reported that the Office of the Ombudsman is one of the structures established to address human rights complaints lodged mainly against civil servants. It is not mandated for human rights abuses that occur in the private sector. It also does not have any enforcement powers, which might have an impact on the implementation of the recommendations regarding reparations.<sup>10</sup>

5. LCN indicated that the establishment of the human rights commission is still outstanding though it is long overdue.<sup>11</sup>

6. LCN reported that the Police Complaints Authority, whose main role is to deal with complaints made against the police, did not make much progress in addressing its shortcomings such as lack of capacity and allegations of malpractice as one of its procedural requirements is that the complainant should first be lodged with the Minister before being referred to the Authority.

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

### **A. Cooperation with human rights mechanisms**

#### **Cooperation with treaty bodies**

7. WV recommended that Lesotho submit its overdue reports with regard to the Convention on the Rights of the Child and its two Optional Protocols.<sup>12</sup> LCN recommended that Lesotho report on the implementation of international agreements related to torture.<sup>13</sup>

### **B. Implementation of international human rights obligations, taking into account applicable international humanitarian law**

#### **1. Equality and non-discrimination**

8. LCN indicated that the Constitution prohibits discrimination of any kind and unfair treatment except where customary law is applicable. This encourages discrimination of women based on customary law.<sup>14</sup> LCN recommended that the Constitution should prohibit all forms of discrimination against women, whether due to customary law or not.<sup>15</sup> LCN also reported that Article 40(1) of the Constitution discriminates against women, in that it provides that a foreigner who marries a Mosotho man can be eligible to apply for citizenship of Lesotho. However, this is not the case if a Mosotho woman marries a foreigner, even if they choose to reside in Lesotho.<sup>16</sup> LCN recommended that Lesotho give similar citizenship rights to spouses of Basotho females and to their male counterparts.<sup>17</sup>

9. LCN reported that customary law treats women as minors and as such renders them incompetent to enjoy certain rights such as the right to inherit.<sup>18</sup> WV also referred to this issue.<sup>19</sup>

10. LCN indicated that the 1974 Marriage Act sets up the minimum age for marriage at sixteen, which encourages early marriage of girls.<sup>20</sup>

11. LCN added that children in rural Lesotho suffer neglect and discrimination by society and government.<sup>21</sup>

12. WV recommended that Lesotho revise all laws and make necessary changes, including through public campaigns, to assure equal treatment of all children without discrimination on the grounds of colour, sex, ethnic or social origin or disability.<sup>22</sup>

13. Matrix Support Group (MSG) reported that the legal system has made massive efforts to eradicate instances of discrimination and unequal treatment in almost all areas except in issues of homosexuality.<sup>23</sup> Although no provision in the Constitution explicitly provides for or prohibits homosexuality,<sup>24</sup> MSG noted that male homosexuality is illegal in Lesotho by virtue of the sodomy law, while the law is totally silent on female homosexuality.<sup>25</sup> MSG added that lesbians are also subjected to the patterns of discrimination suffered by gay men.<sup>26</sup>

14. MSG indicated that the sodomy law does not seem to have ever been enforced at any time in Lesotho save where it was not consensual, and that the Sexual Offences Act made the sodomy law useless.<sup>27</sup>

15. MSG reported that marriage is governed by customary law and common law (through the Marriage Act), both of them excluding same-sex marriage.<sup>28</sup> MSG reported that, although no mention of homosexuals is made anywhere in the Adoption Proclamation, homosexuals may not adopt as a couple because they are not allowed to enter into the institution of marriage, and because of the criminalisation of male homosexuality.<sup>29</sup>

## 2. Right to life, liberty and security of the person

16. LCN reported that use of force and physical assaults against detainees by police appear to be common in Lesotho in order to extract confessions. LCN underlined that torture and inhuman or degrading punishment or other treatment is prohibited under the Constitution, but that article 8 (2) of the Constitution states that “any ill-treatment done under the authority of any law shall not be held to be inconsistent with or in contravention of this section to extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of the Constitution”.<sup>30</sup> LCN also reported that there is no specific offence of torture in criminal law, and the courts have not defined torture in their jurisprudence.<sup>31</sup> LCN recommended that communities and relevant stakeholders be sensitised on issues of torture and other forms of ill-treatment.<sup>32</sup> LCN also recommended that Lesotho enact legislation to incorporate the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol into domestic legislation, in particular, the definition of torture.<sup>33</sup>

17. LCN reported that another challenge faced by the police service is that the army sometimes interferes with the discharge of their duties, by taking over particularly on matters that are political. This was experienced in Lesotho in the post election disputes of 2007 where the army abducted people that were alleged to be suspects and tortured them<sup>34</sup>.

18. LCN reported that prison living conditions are appalling and are damaging to the physical and mental well-being of inmates. Conditions such as poor sanitation, lack of nutritious food and medicines fall short of United Nations standards for the treatment of prisoners, and the worst conditions amount to ill-treatment or torture by some police officials during the interrogation stage.<sup>35</sup> LCN noted positive steps due to the willingness of the Government to reform the criminal justice system, and that some of the recommendations made by the Ombudsman and civil society organisations have been implemented.<sup>36</sup>

19. Global Initiative to End all Corporal Punishment (GIEACPC) reported that corporal punishment is lawful in the home, in schools and in the penal system as a sentence for crimes and in alternative care. In July 2008, a Child Protection and Welfare Bill was under consideration, which would prohibit judicial corporal punishment but not all corporal punishment by parents. The Education Bill (2009) would prohibit corporal punishment in schools.<sup>37</sup> GIEACPC strongly recommend that Lesotho introduce legislation as a matter of urgency to prohibit all corporal punishment of children in the home and all other settings.<sup>38</sup> LCN reported similar information.<sup>39</sup>

20. LCN reported that child exploitation and abuse occur in the country with 2 out of 3 children exposed to human rights violations.<sup>40</sup> LCN reported that sexual offences are criminalised by law in Lesotho but that such cases seem to be escalating. Some of these cases are not reported to the police due to fear of victimisation by society.<sup>41</sup>

21. LCN reported that available data show that the hosting of the 2010 World Cup soccer championship has escalated trafficking of children for sexual exploitation from Lesotho.<sup>42</sup> WV made similar comments.<sup>43</sup>

22. WV stated that, although the law prohibits the employment of children under the age of 15, and places restrictions on the employment of children under 18, child labour remains a serious concern. Child labour laws do not cover the informal and agricultural sectors. In addition, poverty and the HIV/AIDS epidemic have resulted in an increased rate of child labour.<sup>44</sup> WV indicated that boys tend to work as shepherds and girls as domestic workers. WV described the difficult working conditions of shepherd boys and explained that they are considered to be a feature of local culture and a pre-requisite to manhood.<sup>45</sup>

### **3. Administration of justice and the rule of law**

23. LCN reported that the independence of the judiciary in Lesotho is questionable, as the appointment of the Chief Justice of the High Court is made by the Prime Minister and the appointment of the other judges is made by the Judicial Service Commission, whose members are mostly appointed by the Prime Minister. The Law Society of Lesotho is not represented in the Judicial Service Commission.<sup>46</sup>

24. LCN recommended that Lesotho consider establishing a children's court to address cases involving children.<sup>47</sup>

### **4. Right to privacy, marriage and family life**

25. WV reported that, although the Government has taken steps towards universal birth registration, there are still significant barriers to, particularly in remote areas, and in general awareness of, the importance of birth registration. It is estimated that only 26 per cent of births are registered.<sup>48</sup> WV recommended that Lesotho guarantees the right to be registered as soon as possible after birth, through a simplified procedure, which is both free and available without discrimination.<sup>49</sup>

### **5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

26. LCN reported that freedom of expression is guaranteed by the Constitution. Restrictions to this freedom, which the law permits, would have to be justified and should not abridge this freedom to a greater extent than is necessary in a practical sense in a democratic society.<sup>50</sup> LCN reported that there is no legislation that codifies these rights and ensures that they are practically protected. Therefore, many newspapers reporting on political leaders have been subjected to claims of defamation in courts of law. This has led to self censorship. LCN indicated that, when the Government feels discontent about issues or opinions covered by a media organization, it will withdraw the right for it to advertise government jobs.<sup>51</sup> LCN reported that this could be avoided by the establishment of the long-awaited media council, as provided for in the Media Policy, which has not yet been adopted by the government after twelve years of delaying tactics.<sup>52</sup> LCN recommended that Lesotho adopt the Media Policy.<sup>53</sup>

27. LCN reported that the Government continues to own and dominate the news content of the state-controlled print and electronic media.<sup>54</sup> LCN indicated that, for example, only political rallies of the ruling party are broadcast on television and state radio.<sup>55</sup> LCN recommended that control of the media be revised in compliance with the African Charter on Broadcasting and the Windhoek Declaration.<sup>56</sup>

28. LCN reported that the Government is seeking to amend the Internal Security Act, which provides that a person organising a public gathering, rally or procession should notify police of such intention at least three days before the event, into a regulation that would make it mandatory for the organisers to seek permission from the police.<sup>57</sup>

29. LCN reported that child participation is limited if not non-existent. There is very little effort made to allow children to be involved in national issues or even to consult children on issues that concern them.<sup>58</sup>

### **6. Right to work and to just and favourable conditions of work**

30. LCN reported that Lesotho relies on the 1992 Labour Code Order for the protection of workers' rights, which is not very comprehensive. In many respects, the factory workers work under substandard conditions.<sup>59</sup>

**7. Right to social security and to an adequate standard of living**

31. WV reported that poverty is a major factor in most Basotho children's lives and the greatest threat to the full realisation of their rights, as 58 per cent of Lesotho's population live below the poverty line.<sup>60</sup>

32. LCN reported that there are an estimated 180,000 orphans in Lesotho, most of whose parents died of AIDS. Poverty, HIV/AIDS and food insecurity are interlinked and form the biggest threats to child safety in Lesotho.<sup>61</sup> WV also underlined this situation.<sup>62</sup> WV reported that Lesotho has now adopted its own programme of action to scale up the response against HIV/AIDS. However, despite high-level support, the response has been slow and the ministerial capacity is lacking to implement the programme of action.<sup>63</sup>

33. WV indicated that access to basic health services remains difficult for many poor and rural people due to the location of these services and costs involved in accessing them. Maternal and child mortality rates are high.<sup>64</sup> WV recommended that Lesotho, in conjunction with development partners, provide basic health services to all sectors of the population, including those living in remote areas. Child survival, health and nutrition must feature prominently in national and district level health policies.<sup>65</sup>

**8. Right to education and to participate in the cultural life of the community**

34. LCN referred to the 2009 Education Bill, which provides for compulsory primary education and clarifies the roles and responsibilities of persons and institutions involved in education.<sup>66</sup> LCN also indicated that Lesotho established a system that provides for free primary education; however 20 per cent of rural children do not attend school as a result of early marriage, child labour or the HIV/AIDS pandemic.<sup>67</sup> WV added that poverty is another factor, with families unable to afford the fees for uniforms, books and school materials, and children are needed to help support their families.<sup>68</sup>

35. WV reported that more girls than boys attend primary school in rural areas, as boys work as shepherd boys from a very young age. Although there is a programme of non-formal education targeting these children, it might not be reaching all parts of the country and benefiting all shepherd boys.<sup>69</sup> WV recommended that Lesotho take measures to redress the imbalance between boys' and girls' enrolment and attendance at primary school, work to increase shepherd boys' access to education, and reverse this traditional practice of child labour.<sup>70</sup>

36. WV reported that Lesotho also has one of the highest levels of adult literacy on the African continent.<sup>71</sup>

**III. Achievements, best practices, challenges and constraints**

37. WV reported that declining harvests, periodic droughts, erratic rainfall and severe storms in late 2007, combined with an increase in the cost of seeds and fertilizers, have led to a situation of significant food insecurity for Lesotho. Almost one quarter of the population will require humanitarian assistance before the next harvest in April 2010.<sup>72</sup> WV recommended that Lesotho take steps towards long-term solutions to its food security situation by adopting a livelihoods approach and encouraging community participation.<sup>73</sup>

38. WV reported that HIV/AIDS is considered the single most important threat to development in Lesotho. Almost one quarter of the adult population and 12,000 children under the age of 14 are living with HIV. 110,000 children have been orphaned by the HIV/AIDS epidemic.<sup>74</sup>

#### IV. Key national priorities, initiatives and commitments

N/A

#### V. Capacity-building and technical assistance

N/A

#### Notes

- <sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council).

##### *Civil society*

GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom;
LCN	Lesotho Council of Non-Governmental Organisations, Women and Law in Southern Africa, Development for Peace Education, Transformation Resource Centre and Media Institute of Southern Africa; Lesotho; joint submission;
MSG	Matrix Support Group, Lesotho;
WV	World Vision International*, World Vision Lesotho, Switzerland and Lesotho, joint submission.

- <sup>2</sup> LCN, para. 18.  
<sup>3</sup> LCN, para. 23.  
<sup>4</sup> LCN, para.2.  
<sup>5</sup> WV, p. 1.  
<sup>6</sup> LCN, para. 3.  
<sup>7</sup> LCN, para. 41.  
<sup>8</sup> LCN, para. 33.  
<sup>9</sup> LCN, para. 40.  
<sup>10</sup> LCN, para. 8.  
<sup>11</sup> LCN, para. 9.  
<sup>12</sup> WV, p. 3.  
<sup>13</sup> LCN, para, 17.  
<sup>14</sup> LCN, para. 21.  
<sup>15</sup> LCN, para. 23.  
<sup>16</sup> LCN, para. 22.  
<sup>17</sup> LCN, para. 23.  
<sup>18</sup> LCN, para. 19.  
<sup>19</sup> WV, p. 3.  
<sup>20</sup> LCN, para. 20.  
<sup>21</sup> LCN, para. 40.  
<sup>22</sup> WV, p. 4.  
<sup>23</sup> MSG, p. 1.  
<sup>24</sup> MSG, p. 2.  
<sup>25</sup> MSG, p. 3.  
<sup>26</sup> MSG, p. 3.  
<sup>27</sup> MSG, p. 4.  
<sup>28</sup> MSG, p. 5.  
<sup>29</sup> MSG, pp. 5–6.  
<sup>30</sup> LCN, para. 10.  
<sup>31</sup> LCN, para. 11.  
<sup>32</sup> LCN, para. 15.  
<sup>33</sup> LCN, para. 16.

- 34 LCN, para. 7.
- 35 LCN, para. 13.
- 36 LCN, para. 14.
- 37 GIEACPC, p. 2.
- 38 GIEACPC, p. 1.
- 39 LCN, para. 38.
- 40 LCN, para. 32.
- 41 LCN, para. 36.
- 42 LCN, para. 39.
- 43 WV, p. 3.
- 44 WV, p. 3.
- 45 WV, p. 3.
- 46 LCN, para. 5.
- 47 LCN, para. 40.
- 48 WV, p. 3.
- 49 WV, p. 4.
- 50 LCN, paras. 24–25.
- 51 LCN, para. 25.
- 52 LCN, para. 26.
- 53 LCN, para. 29.
- 54 LCN, para. 27.
- 55 LCN, para. 27.
- 56 LCN, para. 30.
- 57 LCN, para. 28.
- 58 LCN, para. 37.
- 59 LCN, para. 41.
- 60 WV, p. 1.
- 61 LCN, para. 40.
- 62 WV, p. 2.
- 63 WV, p. 2.
- 64 WV, p. 2.
- 65 WV, p. 4.
- 66 LCN, para. 34.
- 67 LCN, para. 35.
- 68 WV, p. 2.
- 69 WV, p. 1–2.
- 70 WV, p. 4.
- 71 WV, p. 1.
- 72 WV, p. 2.
- 73 WV, p. 4.
- 74 WV, p. 2.