MISSION REPORT OF THE JOINT PROMOTION MISSION TO
THE
KINGDOM OF LESOTHO

By

Commissioner Pansy Tlakula
&
Commissioner Med S.K Kaggwa

3 – 7 September 2012
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The African Commission on Human and Peoples’ Rights (the Commission) would like to express its gratitude to the Government of the Kingdom of Lesotho (Lesotho) for authorizing this Promotion Mission, and for putting at the disposal of its delegation all the necessary facilities and personnel to ensure the success of the Mission.

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ACRONYMS AND ABBREVIATIONS

ABC : All Basotho Convention Party
ACC : Anti-Corruption Commission
ACSA : African Correctional Services Association
ARV : Anti Retroviral Drugs
ATI : Access to Information
AU : African Union
AUC : African Union Commission
BNP : Basutoland National Party
CD : Democratic Congress Party
CEDAW : Convention on the Elimination of All Forms of Discrimination Against Women
CJ : Chief Justice
CSOs : Civil Society Organizations
DCEO : Directorate on Corruption and Economic Offences
ICHR : Inter-Sectoral Committee for Human Rights
ICRC : International Committee of the Red Cross
IEC : Independent Electoral Commission
JSC : Judicial Services Commission
LCD : Lesotho Congress for Democracy Party
LCN : Lesotho Council of NGOs
LMM : Lekhotla la Mekhoa le Meetlo Party
MISA : Media Institute of Southern Africa
MOU : Memorandum of Understanding
MTCT : Mother to Child Transmission
NGOs : Non-Governmental Organisations
NIP : National Independence Party
NHRC : National Human Rights Commission
OAU : Organisation of African Unity
OPCAT : Optional Protocol to the Convention Against Torture
PCA : Police Complaints Authority
PFD : Popular Front for Democracy Party
PWD : People with Disabilities
RIG : Robben Island Guidelines
SADC : Southern African Development Community
TRC : Transformation Resource Centre
UNDP : United Nations Development Programme
UNFPA : United Nations Population Fund
WILSA : Women and Law in Southern Africa
WHP : White Horse Party
INTRODUCTION


2. Lesotho is a party to the African Charter which it ratified on 10 February 1992.

3. Under the African Charter, the Commission is specifically mandated to promote the observance of the rights guaranteed in the African Charter, to interpret and advise on its implementation, as well as ensure protection of the rights and freedoms set out in the African Charter.

4. Article 45 (1) of the African Charter in particular implores the Commission to promote human and peoples’ rights and specifically to carry out studies and research, to conduct visits to States Parties to the African Charter (States Parties), to gather information on human and peoples’ rights, and formulate rules and regulations that could be used by States Parties in their human rights policies and legislation.

5. The promotional function of the Commission mandates members of the Commission to undertake promotion missions to States Parties, as they enable it to establish communication and links with Member States.

6. It is on this basis that the second promotion mission was undertaken in Lesotho, at the invitation of the Government, from 3 to 7 September 2012. The first promotion mission in the country took place from 3 to 7 April 2006 by Commissioner Sanji Monageng.
7. The Terms of Reference of the mission were as follows:

- To promote the African Charter through the exchange of views and sharing of experiences with the Government of Lesotho and the main stakeholders working in the field of human rights, on how to improve the enjoyment of human rights in the country;

- To raise awareness about the importance of the right to freedom of expression and access to information generally, as well as before and after elections;

- To hold discussions with prison administrative officials and other stakeholders on all issues relating to detention and prisons, and on the work of the Commission on this specific theme;

- To visit prisons in Lesotho so as to assess the extent to which conditions of detention comply with regional and international standards;

- To raise awareness and visibility of the Commission in Lesotho, especially among the relevant Government departments and civil society;

- To encourage closer collaboration between the Commission and the Government of Lesotho on the one hand, and between the Commission and CSOs in the country on the other;

- To follow up on recommendations arising from the Concluding Observations adopted by the Commission following its examination of Lesotho’s initial Report submitted in accordance with the latter’s obligations under Article 62 of the African Charter in 2001;

- To encourage Lesotho to bring to date its Periodic Reports in accordance with Article 62 of the African Charter.
COMPOSITION OF THE DELEGATION

8. The delegation was composed of:

- Commissioner **Pansy Tlkula**, Commissioner responsible for monitoring human rights in Lesotho and Special Rapporteur on Freedom of Expression and Access to Information in Africa (head of the delegation);

- Commissioner **Med S K Kaggwa**, Special Rapporteur on Prisons and Conditions of Detention in Africa; and

- Ms. **Irene Desiree Mbengue Eleke**, Legal Officer at the Secretariat of the Commission in Banjul, The Gambia, who assisted the Commissioners.

GEOGRAPHICAL, HISTORICAL, POLITICAL, SOCIO-CULTURAL BACKGROUND AND REGULATORY AND INSTITUTIONAL FRAMEWORK OF LESOTHO

9. The previous Mission Report to Lesotho highlighted the above. In this regard, except for the political situation which has undergone a fundamental change, an in-depth consideration of the other aspects will therefore be omitted.

**Brief Political Background of Lesotho**

10. On 4 October 1966, Lesotho gained independence from Britain under the leadership of the Basutoland National Party (BNP), and became a constitutional monarchy with Moshoeshoe II the King. The BNP won the first elections, and Chief Leabua Jonathan became Prime Minister. In January 1970 the ruling BNP lost to the Basotho Congress Party (BCP). BNP proceeded to rule by decree until January 1986 when they were ousted by a military coup led by Major-General Lekhanya. The Military Council ruled the country for the period 1986-1993. King Moshoeshoe II, who was until then a ceremonial monarch, was granted executive powers. Political powers were banned.

11. In 1990, the King was forced into exile and dethroned, and his son was installed as King Letsie III. In 1991 Major General Lekhanya was ousted and replaced by Major General Phisoane Ramaema, who handed over power to the democratically elected government of the BCP in 1993. In August 1994

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1 See the report of the promotion mission to the Kingdom of Lesotho from 3 to 7 April 2006 by Commissioner Sanji Monageng in her capacity as the Commissioner responsible for human rights in Lesotho

King Letsie III staged a palace coup and deposed the BCP Government. However, the new Government did not receive full support from the nation, and from several states in the Southern African Development Community (SADC), who proceeded to enter into negotiations aimed at reinstating the BCP Government. After protracted negotiations, the BCP Government was reinstated and King Moshoeshoe II was reinstalled as King of Lesotho in 1995. However, in 1996, the King died. He was succeeded by his son, Letsie III.

12. Throughout the 1990s, the ruling BCP split over leadership disputes and this resulted in the formation of a new party, the Lesotho Congress for Democracy (LCD), led by Ntsu Mokhehle. The majority of the BCP members joined the LCD and, in 1998, the LCD won an overwhelming victory in the elections. Despite the elections being pronounced free and fair, the opposition political parties rejected the results. Subsequently, the LCD met with the opposition parties to negotiate the implementation of new elections. An agreement was made to establish an Interim Political Authority (IPA) which took power in early December 1998. It devised a proportional electoral system that would ensure participation of the opposition in the National Assembly. Elections were held under this new system in May 2002, and the Prime Minister, Pakalitha Mosisili, the leader of the LCD party, was re-elected. In the 2007 election, the LCD party retained a majority of seats in the legislature.

Current Political Situation

13. On 26 May 2012, general elections were held and the incumbent Prime Minister Pakalitha Mosisili’s newly formed Democratic Congress (CD) Party won a majority of single-member seats. However, a group of opposition Parties, led by opposition leader Mr. Thomas Thabane, formed Lesotho’s first Coalition Government on 29 May 2012 which unseated the ruling party. Mr. Thomas Thabane was sworn in as Lesotho’s new Prime Minister after defeating Mr. Pakalitha Mosisili, who had been Prime Minister for fourteen years. The Coalition Government consist of the following Parties: All Basotho Convention (ABC); LCD; the Popular Front for Democracy (PFD); the BNP; and Marematlou Freedom Party. Seven other parties support the ABC-led coalition.

CONDUCT OF THE MISSION

14. During the mission, the delegation met with various high-level stakeholders in Government, CSOs, and other actors involved in the protection and promotion of human rights in Lesotho.

Sources from
http://www.aljazeera.com/news/africa/2012/05/2012529134151693313.html;
COURTESY CALL TO THE PRIME MINISTER’S OFFICE

15. The mission started with a courtesy call to the Prime Minister of Lesotho, the Right Honourable Prime Minister, Mr. Thomas Thabane. In her introductory remarks, Commissioner Tlakula congratulated the Prime Minister and his Government for conducting elections that led to a peaceful change of government. After explaining the mandate of the Commission and the objectives of the mission, she mentioned Lesotho’s non-compliance with Article 62 of the African Charter and encouraged the country to submit its outstanding Reports.

16. The Prime Minister welcomed the delegation and noted that the mission is critical at this stage when the new Government has been formed, which will serve as a good ground for the Commission to carry on with the objectives of the Mission more appropriately. He invited the delegation to carry out a successful mission and committed himself to providing all the requisite support.

COURTESY CALL TO THE MINISTER OF FOREIGN AFFAIRS

17. The delegation also paid a courtesy call to the Minister of Foreign Affairs and International Relations, the Honourable Mohlabi Kenneth Tsekoa. The Minister welcomed the delegation and noted that it has come after a peaceful democratic transition in the country. He reiterated the commitment of the Government of Lesotho to upholding international and regional human rights instruments such as the African Charter. He explained that Lesotho is committed to the work of the Commission and hoped that the delegation would meet with all relevant government institutions and CSOs in order to understand the human rights issues in the country.

18. The delegation extended its gratitude to the Government for authorizing the mission. It also expressed appreciation for its consistent representation during the Sessions of the Commission. It recalled the promotion mission which took place in 2006, and expressed concern that Lesotho has not submitted any Report in compliance with Article 62 of the African Charter since 2001. The delegation indicated that it hoped after the Promotion Mission, Lesotho would submit its Report and also consider hosting an Ordinary Session of the Commission.

19. Commissioner Kaggwa indicated that as the Special Rapporteur on Prisons and Conditions of Detention in Africa, he was interested in ascertaining prison conditions in Lesotho. He stated that his areas of concern would be addressed with the relevant ministries.

20. In response to the delegation’s concern about the backlog in State Reports, the Minister informed the delegation that the Commission’s visit was a wake-up call and that there would be a follow-up on the issue. As regards hosting a Session of the Commission, the Minister
stated that Lesotho was willing to demonstrate its commitment in this regard.

**MEETING WITH THE MINISTER OF COMMUNICATION, SCIENCE AND TECHNOLOGY**

21. The delegation held its first meeting with the Minister of Communication, Science and Technology, the **Honourable Mr. Tšeliso Seth Mokhosi**, where it explained the mandate of the Commission and purpose of the mission. Commissioner Tlakula informed him that she is the Special Rapporteur on Freedom of Expression and Access to Information in Africa and is therefore particularly interested in the dialogue.

22. The delegation sought the following responses and clarifications from the Minister: implementation of the recommendations of the Commission in its 2006 Mission Report; implementation of the Commission’s Concluding Observations of Lesotho’s State Report submitted in 2001; situation of freedom of expression and access to information in Lesotho; Lesotho’s compliance with the Declaration on the Principles of Freedom of Expression (the Declaration); whether the print media is self-regulatory; the appointment of the Board of Directors in the public broadcaster; regulation of allocation of equitable time in the state broadcaster to contesting political parties during the campaigning period and the institution responsible for doing so; whether there are journalists in detention; whether there are official secrecy laws; whether the internet is being regulated and the issue of internet broadcasting.

23. Commissioner Tlakula informed the Minister about the Draft Model Law on Access to Information for Africa, which serves as a benchmark for countries to draft their Access to Information Laws (ATI laws). She expressed concern about the draft Access to Information Bill which has been pending for long and sought to know why the Bill had not yet been adopted. She also mentioned the project to decriminalize defamation and libel laws in Africa spearheaded by her mandate and informed the Minister about the scoping exercise to be undertaken on the continent. The aim of the scoping exercise, she explained, is to understand the status of criminal defamation and libel laws on the ground, lobby and open a dialogue between governments and the Commission on the repeal of these laws.

24. In response, the Minister noted that, with regard to criminal defamation laws, the Government was willing to abolish such laws, but is however cautious because the environment has to be favourable so that there are no regrets. He explained that the Government recognizes the importance of having laws that guarantee the right of freedom of expression and access to information and that this is an ongoing process.

25. Regarding freedom of expression, the delegation learnt that Lesotho is currently working on a Media Policy whose draft would be finalized by November 2012, and followed by other laws. The delegation was also informed that the Policy will address issues such as transformation of the
State Broadcaster into a Public Service Broadcaster, which is still under the department of communications, reform of media laws, which will include the repeal of the Official Secrecy Act and similar laws, and self regulation of print media. The delegation was also informed that there has not been any progress in the development of the ATI law and that the draft Model Law would assist the Government in this regard.

26. Regarding journalists in detention, the Minister said that journalists had not been detained for some time, especially for criminal defamation. However, that there are pending civil defamation cases against journalists.

27. As regards the regulation of the internet, the Minister informed the delegation that trying to regulate the internet was a “nightmare” and that currently the internet is not regulated and operates on open source. He informed the delegation that the legal department of the Ministry is in the process of regulating cyber security.

28. The delegation was also informed that most private radio stations cover Maseru and surrounding areas, except two Catholic radio stations that cover most parts of the country. However, the practice has been for the national broadcaster to enter into an agreement with private radio stations and that this facility sharing arrangement is addressed in the new Communications Act promulgated in April 2012. The delegation was also informed that there is one licensed community station in the country.

29. The delegation encouraged the Minister to continue its reforms and that in so doing, it should involve CSOs, especially the Media Institute for Southern Africa of Lesotho (MISA Lesotho).

MEETING WITH THE MINISTER OF JUSTICE

30. The delegation was received by the Minister of Justice, the Honourable Haae Phoofolo, who explained that he was new in office, barely two months since the establishment of the new Government. He informed the delegation that the Coalition Government is working very well because peace prevails in the country and there is no longer what he termed ‘jungle ruling,’ even though the new Government still has to exercise some caution. The Minister stated that the delegation would be briefed further about the achievements and shortcomings experienced by the Government so far in other meetings.

31. The delegation briefed the Minister about the Commission and the purpose of the mission.

32. The delegation stated that the Government of Lesotho has been consistent in its representation at Sessions of the Commission, but unfortunately had five outstanding Reports. It encouraged Lesotho to submit its Reports and to comply with the Concluding Observations made by the Commission in its initial Report submitted in 2001, as well
as the recommendations made by the Commission after the Promotion Mission in 2006.

33. The delegation commended Lesotho for ratifying the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples’ Rights (the Court Protocol) and other regional and international human rights instruments. It noted however that most countries, including Lesotho, had not signed the Declaration to Access the African Court on Human and Peoples’ Rights (the African Court) under Article 34(6) of the Court Protocol. It made an appeal for the Government to start the process of making this Declaration.

34. The following questions/clarifications were posed to the Minister: the establishment of a National Human Rights Commission (NHRC) – timeframe for its establishment and the method of appointing the Commissioners; whether the Ombudsman is independent; functions of the High Court, administration of judges; appointment of judges and magistrates; independence of the judiciary; appointment of foreign judges; situation of the death penalty in Lesotho and if a moratorium is applied; and how international norms and treaties are domesticated.

35. On the issue of outstanding Reports, the Minister expressed his regret about the delay. He informed the delegation about the agreement between the Ministry of Justice and Foreign Affairs to ensure that there is a draft Report by the end of 2012.

36. On the question of a NHRC, the Minister said that the 2011 6th amendment to the Constitution provides for the establishment of the NHRC. He explained that the Bill establishing the NHRC has been drafted and that it is undergoing the consultative and advocacy process with CSOs and the media.

37. With regard to the method of appointing Commissioners, the delegation learnt that appointments would be carried out by Parliament on the recommendation of the Prime Minister and that modalities for appointment were in the draft Bill. The NHRC will report to Parliament. With respect to the time-frame for establishing the NHRC, the Minister said that the delays in the establishment of the NHRC were occasioned by discussions to merge it with the Ombudsman and the Anti-Corruption Commission (ACC). However, it was finally agreed that the NHRC should stand alone and this has fast tracked the process.

38. On the question of domestication of international instruments the delegation was informed that these instruments are not self-executing, and must be domesticated by an act of Parliament. The Minister explained that courts make reference to international treaties and gave an example of a recent case where a woman, Princess Senate Masupha, of Teyateyaneng, the first-born daughter of the late chieftainess Masenate and her late husband, Principal Chief David Masupha who is fighting for the chieftaincy of Mamathe in the Berea district after the death of her mother in 2008. The Chieftaincy title is between Princess Senate Masupha and her uncle, Chief Sempe Masupha, and her half-brother Lepoqo.
Masupha, the son of her late father’s second wife. During the proceedings of the case, which is ongoing, the court made reference to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

39. As regards the death penalty, the Minister informed the delegation that this is a controversial issue in Lesotho. He stated that death penalty still exist in the country as a matter of law, especially in cases of rape, aggravated rape, and murder. The death penalty, he explained, has not been applied and that the last death penalty took place in 1995/1996. The Minister explained that there is no official moratorium in Lesotho and that the imposition of the death penalty has been avoided by the Court of Appeal. He informed the delegation that discussions about the death penalty are more geared towards implementing than abolishing it. According to him, it would be difficult to abolish the death penalty due to the crime rate in the country.

40. On the issue of appointment of judges and magistrates, the delegation was informed that the Judicial Services Commission (JSC), established by the Constitution is mandated to carry out such appointments. However he believed that the composition of the JSC could be improved by including members of the legal profession and lawyers in the civil service.

41. The Minister stated that the judiciary is independent. The delegation was further informed that, the Judiciary Act strengthens the autonomy of the Judiciary. It makes it a separate entity with its own budget and that there are plans to establish a fully fledged autonomous administrative structure of the judiciary.

42. Regarding the appointment of judges, the Minister informed the delegation that all judges of the High Court are Basotho. As far as the appointment of foreign judges is concerned, he explained that the Court of Appeal appointed former judges of the Supreme Court of South Africa on an ad hoc basis to work in the Court of Appeal. He stated that there is a Memorandum of Understanding (MOU) between the Government of Lesotho and South Africa, which relates to the exchange of judges in sensitive cases such as the case where all Basotho judges recused themselves.

43. Concerning gender representation in the department and terms of office of judges, the Minister informed the delegation that women make up 50% of employees in the Ministry and that two Principal Secretaries are women. Further that, in the Minister’s office, there are more women than men, justified by the fact that women are more educated than men in Lesotho. He also informed the delegation that the retirement age for judges is 75 years.

44. The delegation encouraged the Minister to attend the Sessions of the Commission, especially as Lesotho is preparing its overdue Reports, which are usually presented by the Minister of Justice.
45. The Minister agreed with the proposal to attend the Sessions of the Commission to familiarize himself with the work of the same and requested that invitations should be sent directly to his Ministry. The Minister also took note of the Commission’s recommendation for Lesotho to make a Declaration under Article 34(6) of the Court Protocol and said he would advise the Minister of Foreign Affairs accordingly.

MEETING WITH THE CHIEF JUSTICE

46. The delegation met with **His Lordship Chief Justice Mahapela Lehohla**. It gave a brief overview of the work of the Commission, its subsidiary mechanisms and its relationship with the African Court. With regard to the African Court, it commended Lesotho for ratifying the Court Protocol, and made an appeal for the country to make the Declaration under Article 34(6).

47. The delegation also sought to know about the independence of the judiciary; method of appointment of judges; training of judges and magistrates, backlog of cases, successes and challenges of the judiciary; gender representation on the Bench; and the composition of the JSC.

48. Regarding failure to make the Declaration under Article 34(6) of the Court Protocol, the Chief Justice (CJ) said that this was just an omission on the part of the Government and that he was going to follow up on the matter.

49. He stated that there had been challenges in the establishment of the Commercial Court and that a local Judge has been assigned to understudy the Australian Judge seconded by the Commonwealth to assist with the establishment of the Court. Furthermore, he explained that there are a number of Ugandan judges assisting in this area and the Central Bank of Lesotho has sponsored a number of Basotho judges to undergo training in Uganda on the Commercial Court. The Bank has also offered to sponsor a lawyer to undergo training in Ireland.

50. On decreasing the backlog, the delegation learnt that the Commonwealth sent an expert who recommended the introduction of individual docket system for judges in terms of which a case goes directly to a judge once it has been filed and registered. This system has decreased the backlog, addresses forum shopping and has also assisted with planning. Further he has signed an MOU with the Republic of South Africa which allows for the secondment of South African judges to Lesotho and vice versa.

51. The CJ also informed the delegation about the introduction of mediation services as a further mechanism to decrease the backlog. The staff of the CJ and legal practitioners are trained in mediation in order to attempt to settle some disputes through mediation. Alternative Dispute Resolution Mechanisms and the small claims procedure are also used to reduce the backlog.

52. The delegation learnt that out of eleven Judges, five are women.
53. The CJ agreed with the view of the Minister of Justice that the Judiciary is robustly independent and is respected in the country.

54. About the mandate of the JSC, he stated that the latter is doing a good job and should not be tampered with. He however indicated that in his view, the composition of the JSC, which is comprised of the CJ, the Chairperson of the Public Service Commission and the Attorney General should be expanded to include the Law Society and representatives of the academia.

MEETING WITH THE OMBUDSMAN

55. The delegation had a meeting with the Ombudsman of Lesotho the Honourable Mrs. Mats’oana Fanana.

56. The Delegation enquired about the following issues: The mandate of the Ombudsman and how she was appointed; the independence of her office, challenges encountered; whether its budget is appropriated directly by Parliament; whether its recommendations are implemented; power to enforce decisions; interface with the Ministry of Foreign Affairs, its relationship with the (ACC), and term of office.

57. The Ombudsman explained that the office was established to provide services to the population in relation to complaints and grievances against public agencies, statutory corporations and/or officials of such agencies and organizations. She added that the office also reviews or recommends changes in legislation among others. The Ombudsman explained that the Investigations Unit of the office receives and investigates complaints from aggrieved persons against Government agencies. The office also submits reports to Parliament on Cabinet Ministers who do not carry out their duties. She further informed the delegation that her office does not have jurisdiction over individuals and the private sector.

58. Mrs. Fafana told the delegation that she is appointed by the King who has to publish her appointment in the Government Gazette. The independence of the Ombudsman is entrenched in the Constitution and her office reports to Parliament directly. However the office does not enjoy complete independence since it does not employ its own staff who are public servants whose terms of service are governed by the Public Service Act. The budget of the office is not from the consolidated fund, but rather from the Minister of Finance, who is responsible for the presentation of the budget to Parliament.

59. Regarding the implementation of recommendations from the office, she noted that the rate of compliance is very low and that her recommendations are always challenged in court on procedural grounds.
60. The delegation learnt that the Ombudsman is a quasi judicial body and does not have the power to enforce its recommendations. She only reports non compliance with her recommendations to Parliament.

61. She explained that the budget allocated to her office is very low given the huge scope of her mandate which, in addition to investigating mal-administration, unlawfulness and injustice, also investigates cases related to the environment and human rights.

62. On the interface with the Minister of Justice, the Ombudsman explained that whenever there is anything that requires consultations with the Ombudsman, she is invited to make an input. She gave an example of discussions to establish a NHRC, where the Ombudsman had an opportunity to make comments on the draft law establishing the same.

63. She explained that the Ombudsman organizes joint training programmes with the ACC and also shares information about cases. However, when the matter is of a criminal nature, the ACC is fully responsible.

64. Her term of office is four years renewable and she can only be removed by the King on the recommendation of a tribunal after an investigation.

65. The Ombudsman informed the delegation of other challenges faced by her office which include the following: absence of law that protects whistle blowers in the country, lack of prosecutorial powers and attacks from politicians and the media. The prevalent cases she deals with include delays in processing pension benefits of persons who have left the public service and mal-administration against public servants.

MEETING WITH THE DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

66. The delegation met with the Deputy Speaker of the National Assembly, the Honourable Lekhetho Rakuoane, who apologized for the absence of the Speaker. He stated that the Commission had come at a time when successful elections in Lesotho had ushered in a new Government, and it was hoped that this Government would offer a more human rights friendly culture. He informed the delegation about the upcoming establishment of the NHRC and the reforms of Parliamentary standing orders which will allow public participation in politics, however that it is not clear at this point whether these reforms will allow the public to comment on the Bills before Parliament.

67. The Deputy Speaker stated that Lesotho has ratified the African Charter on Democracy, Elections and Governance (Charter on Democracy) and other human rights treaties and this creates a fertile ground for the country to comply with the legal frameworks that exist. He implored the Commission to assist with the development of the human rights culture in the country and hoped that its mission would assist Lesotho in realizing this objective.

68. The delegation emphasized the indispensable role the National Assembly, as the promulgator of laws, plays in a country. It further
indicated that the visit to the National Assembly was to understand the role of the institution in the promotion and protection of human rights.

69. The delegation wanted clarification from the Deputy Speaker on the following: the separation of powers as entrenched in the Constitution of Lesotho; floor crossing in parliament in line with parliamentary rules and regulations (Standing Orders) and whether there is a follow-up mechanism of reports submitted by institutions such as the Ombudsman and how such institutions, including the Independent Electoral Commission (the IEC) report to Parliament; status of annual Reports from ministries; type of Committees that exist in Parliament; treaties ratified by the country – its role and challenges in this regard; status of the draft ATI law, and the Parliament’s view on the death penalty.

70. On the issue of separation of powers, the Deputy Speaker explained that it is a difficult area, especially under the Westminster System where the whole Executive emanates from the ruling party. He noted that under the parliamentary system, there is no clear separation of powers between the Executive and the Legislature and it is also difficult for Parliament to ask the Executive to account and this results in a structural handicap. He further stated that a Bill is currently being drafted which will make Parliament independent with its own staff since at the moment its staff is appointed by the Public Service Commission.

71. With respect to improving the accountability of members of the Executive to Parliament, the Deputy Speaker informed the delegation that the new Standing Orders allow members of Parliament to put questions to members of the Executive every two weeks instead of once a month as was the position originally. The member of Executive will be given three opportunities to respond and if he/she fails to do so, the leader of Government in Parliament will be asked to appear before Parliament to explain.

72. Concerning accountability of the office of the Ombudsman, the delegation was informed that this office reports to Parliament and if its recommendations are not implemented, the office can file a special report with a select committee established for this purpose. The IEC also reports to Parliament, however that other than the election reports which are at times submitted late, the IEC has not submitted any other report in Parliament since 1998. The Deputy Speaker further explained that most annual reports from ministries are submitted late and there is no mechanism in Parliament to address this matter.

73. The Deputy Speaker explained that the types of committees that exist in the Parliament are categorized into three: Sessional, Portfolio and Ad Hoc Committees. There is also a Business Committee, appointed by the Speaker to establish other Committees and the Public Accounts Committee chaired by a member of the opposition.

74. On ratification of treaties, the delegation was informed that Parliament only receives information from Cabinet on instruments already ratified
and plays no part in the process. Parliament is trying to change this system which is also driven by officials in Cabinet. The current system impacts on the ownership and domestication of ratified treaties.

75. Concerning the adoption of an ATI law and its current status, the delegation was informed that the draft ATI law had stalled for almost ten years and that there would be a follow-up on the issue.

76. On the death penalty, he explained that it is not normally carried out because among other reasons, the majority of the judges come from South Africa where the death penalty has been abolished. He stated that there is a high demand for the death penalty to be imposed in Lesotho due to the crime rate and that the atmosphere is not favourable for abolition. He hoped however that the matter would be pursued with the Minister of Justice. He made a personal commitment to support the Commission’s stand in this regard.

MEETING WITH THE IEC

77. The delegation met with the one of the members of the IEC, Mr. Malefetsane Nkhahle, who indicated that since the country experienced a peaceful election, it makes them proud to receive the Commission.

78. During the meeting, issues bordering on the independence of the IEC and the appointment of Commissioners were raised, including allocation of its budget; whether it reports to the Parliament and the issue of delays; status of the draft IEC Act; voters’ roll; transfer of votes during the last elections; allocation of airtime to political parties; and incumbency during elections.

79. In response to the question about the independence of the IEC, Mr. Nkhahle stated that the IEC is constituted of the Chairperson and two Commissioners. It was established to entrench democracy by a Constitutional Amendment passed by Parliament in 1997. Members of the IEC are appointed by the King from a short list provided to him by the Council of State. They are appointed for a period of five years renewable once. Prior to that, there was only an Electoral Office and a government department tasked with conducting elections. He further stated that since the IEC was established by a Constitutional Amendment, it has been in limbo with respect to certain aspects of its independence, and that there is a need to improve the legislative environment for the IEC to make it truly independent. He further indicated that he hoped the new Bill which seeks to strengthen the independence of the IEC would be passed at the next session of Parliament.

80. On the financial independence of the IEC, Mr. Nkhahle informed the delegation that the Minister of Justice, Human Rights, Correctional Service, Law and Constitutional Affairs is the one who submits the budget of the IEC in Parliament and that unfortunately the new Bill does not change this situation. He however indicated that Parliament

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4 Sadly, Commissioner Nkhahle passed away on 6 January 2013.
provides the IEC with the budget it required for elections. He further stated that the IEC is going through transformation and in the near future it will be able to recruit its own staff. Currently staff of the IEC consists of the public servants.

81. Mr. Nkhahle informed the delegation that although the law provides that the IEC should submit its reports to Parliament, in practice, this has not happened since the mechanisms for this have not been put in place. He indicated that in 2007, the IEC submitted its election report to the Minister, who referred it to Cabinet. Cabinet referred the report back to the IEC because it was not happy with its contents.

82. On the issue of the credibility of the voters’ roll during the last election, Mr. Nkhahle informed the delegation that some people did not find their names in the voter’s roll. To avoid such problems in the future, the IEC decided to scrap the existing voters’ roll and compile a new one.

83. On the allocation of airtime to political parties for broadcasting campaigns, Mr. Nkhahle informed the delegation that during the last elections there was an internal media monitoring unit in the IEC which monitored the coverage of political parties in the media and that this practice would continue as a model.

84. The Chairperson admitted that incumbency was a serious problem in the previous elections because Government vehicles were used to transport Ministers and Permanent Secretaries to political rallies. He stated that the law regulates incumbencies, but it is not put into practice. Civil servants cannot stand as candidates if they have not resigned from their jobs. However they continue to stand as candidates without resigning because they have support from the Government.

MEETING WITH THE DIRECTOR OF GENDER IN THE MINISTRY OF GENDER, YOUTHS, SPORTS AND RECREATION

85. The delegation had a meeting with Mrs. Matau Futho Letsatsi, the Director of Gender in the Ministry of Gender, Youths, Sports and Recreation.

86. The delegation sought to understand the mandate of the Gender Directorate, its activities and the status of gender equality in Lesotho.

87. The Director informed the delegation that Lesotho is a patriarchal society which makes every step of gender mainstreaming, a challenge because this cannot be achieved unless the environment is conducive. She informed the delegation that the Ministry was established in 2000 and has developed a Gender and Development Policy. She stated however that the progress on the implementation of the Policy has been slow due to the practice of culture and tradition in the country.

88. She explained that the Gender Policy, which took into account the Maputo Protocol, CEDAW and other treaties related to women’s rights when it was developed, addresses challenges of gender inequities and
inequalities, issues related to HIV/AIDS, poverty, equal participation of women in development, non-discrimination and empowerment of people who are marginalized.

89. The Director also informed the delegation about other national laws that the Directorate advocated for namely: Legal Capacity of Married Persons Act of 2006, the Anti-trafficking Act of 2011, and Child Protection Welfare Act of 2011.

90. She pointed that the department has three divisions: Social Empowerment; Economic Empowerment and Political Empowerment divisions.


ii. The Economic Empowerment Division provides assistance to entrepreneurs regarding skills development and marketing, costing and pricing of their products.

iii. The Political Empowerment Division follows up on the implementation of treaties that Lesotho is signatory to, organizes advocacy and sensitization workshops about the Peace and Security Council, CEDAW and the role of women politicians on the implementation of protocols.

91. The Director informed the delegation that it also targets political parties and their youth leagues on their role in implementing treaties that have been ratified by Lesotho. Furthermore that the Directorate has been holding advocacy workshops on the implementation of the Millennium Development Goals, in particular Goal 3 without which none of the Goals can be achieved. In this regard, the delegation was informed that Lesotho was on track on the implementation of Goal 3 and the Goal on education.

92. The Directorate presented its first Report to the CEDAW Committee (a combination of four Reports) and they are discussing the implementation of concluding remarks by the different target groups, for instance, the issue of citizenship where women cannot pass their citizenship to their children and spouses. The department hopes to collaborate with Home Affairs on this issue. Another issue is the discriminatory nature of maternity leave for women working in the textile industry who are entitled to six weeks maternity leave in comparison to women in the public and private sectors who qualify for twelve months maternity leave. She stated that the Directorate must submit a progress report to the CEDAW Committee on these issues.

93. The Directorate also organises workshops with different interest groups, including workshops for the media on gender sensitive reporting of news, workshop for police, prosecutors and magistrates on the
management of cases of gender-based violence. It also works in collaboration with the Ministry of Education since culture and tradition is passed on to children through the curriculum. The Directorate also collaborates with the Ministry of Local Government to engender the latter, Councillors and also with local chiefs who are guardians of culture and tradition on gender sensitization, including the handling of gender based violence.

94. The Directorate works with faith-based organizations since gender discrimination is also perpetuated through religion. It works with Parliament to sensitize it on its oversight role in gender development and policy issues and also recommended the establishment of a gender caucus in Parliament to look at issues affecting women. The Directorate works with the Ministries of Justice and Foreign Affairs, especially in drafting Reports and also lobby the Minister of Justice to domesticate the protocols that have not been domesticated.

95. The delegation was informed that the 1-31 August has been declared the African Women’s Month in Lesotho and this period is used to promote women’s rights through a calendar of activities. The theme for this year was “Protection of Women’s Economy” and Ministers and Deputy Ministers took part in these activities. The Directorate also has projects for vulnerable groups such as female school drop-outs and herders who leave school to look after livestock at the expense of their education. The Directorate trains women on issues such as sexual reproductive health, income-generation projects and general well-being. Funding for these projects is provided by the United Nations Population Fund (UNFPA). The United Nations Development Programme (UNDP) has also promised funding.

96. Mrs. Letsatsi said that the Directorate is advocating for the upliftment of the reservation made by Lesotho during its ratification of CEDAW. She informed the delegation that the Minister of Gender was planning a retreat to discuss the implementation of the Concluding Observations of the CEDAW Report in collaboration with other departments with whom the department intends to enter into an MOU.

97. There are other issues that the country still has to pronounce itself on such as the rights of gays and lesbians, who exist in the country. The delegation was informed that the Lesotho Planned Parenthood Association has initiated a programme to protect lesbians from abuse. The inheritance rights of women is another emerging issue in the country. Daughters of the female relatives of a chief are agitating for the right to inherit chieftainship.

98. At the conclusion of the meeting, the delegation informed the Directorate about the Special Rapporteur on the Rights of Women in Africa.
MEETING WITH THE POLICE COMPLAINTS AUTHORITY

99. The delegation visited the Police Complaints Authority (PCA) where they were received by Mr. Mashenene Mankoe, Director of Investigations, and Ms. Ntebohlelang Lengoasa, the Principal Investigating Officer. Mr. Mankoe outlined the primary functions of the office. He explained that the PCA was established by the Police Service Act and comprise of four members who form the PCA: the Chairperson, and three members whose terms of office had expired. The PCA has eleven investigators.

100. The delegation sought to know more about the appointment of the Chairperson and the members of the PCA; accountability; modalities of investigation; follow-up mechanism on recommendations; whether police brutality/torture is investigated and the rate of such brutality/torture; attitude of politicians towards the PCA; challenges faced by the PCA and whether the Parliament is aware of these challenges.

101. Mr. Mankoe informed the delegation that after the departure of the last member, the PCA operates without a governance structure and that its decisions are therefore unlawful and can be challenged in court. This situation, he said, has been reported to the new Minister of Police and Public Safety (Minister of Police), but the appointment process is yet to be initiated.

102. The Director informed the delegation that before the elections, the PCA reported to the Minister of Home Affairs and now it reports to the Minister of Police. The accounting officer of the Authority is its Chairperson.

103. The Director informed the delegation that the PCA was a civilian structure responsible for investigating complaints of police misconduct from members of the public. These cases include police brutality, which may occur during the investigation of crimes, particularly in the rural areas and in places of detention during interrogation of suspects. The PCA cannot receive complaints directly from members of the public. It operates on a referral system with cases referred to it by the Minister or Commissioner of Police. As a result of this, since 2006, only five cases were referred to the PCA by the Commissioner of Police and four have been finalised. To address this problem, the PCA has initiated a system in terms of which they accept cases directly from the public, refer them to the Minister who must then refer them back to the PCA.

104. The delegation was informed that after an investigation, the PCA submits a report with recommendations to the Minister of Police who has the power to implement these recommendations. The delegation was also informed that lack of authority to enforce its recommendations has affected the credibility of the PCA.

105. Another challenge faced by the PCA is insufficient budget. The PCA operates with M4.2 million which has been cut from the M7.89 million it
was allocated before the new Government. Of this amount, M3 million is for salaries leaving only M1 million for investigations.

106. On whether the Parliament had been informed about the current situation of the PCA, Mr. Mankoe informed the delegation that attempts to meet with the Parliament and the Senate have not been successful.

MEETING WITH POLITICAL PARTY LEADERS

107. The delegation met with a cross-section of political party leaders, including the opposition. The delegation gave an overview of the work of the Commission. It emphasized the indispensable role political parties play in fostering democratic governance. The delegation expressed its gratitude for having leaders of political parties in the meeting to interact with the Commission and assist the latter in assessing the general state of political parties in Lesotho.

108. During the discussions, the delegation sought clarification on the following: whether there is free political activity in relation to elections in Lesotho; the role of the IEC during elections; whether the previous elections were free, fair and credible or whether there was room for improvement; gender parity in the various political parties especially at the leadership level; radio/media coverage of campaigns; and whether incumbency was a problem during campaigning.

109. The delegation was informed that, generally speaking, the elections were free and fair, except for a few shortcomings. Ahead of elections, some discussion forums were organized by the University of Lesotho and an NGO during which participants identified some parties as real contenders in the election and that this disadvantaged smaller parties. There was a view that some NGOs were using funds from development partners to promote certain political parties at the expense of others. The University was cited as an example in this regard.

110. According to the leader of the ABC, the elections were free, but not fair. He noted that laws are in place but there is serious violation of human rights and that in Lesotho, corruption is perpetuated by the ruling party and is not investigated. The leader of the White Horse Party (WHP) on his part stated that during the elections, the Government performed illegal acts and was fraudulent. The Lekhotla la Mekhoa le Meetlo (LMM) leader said that tradition and culture was not observed during the elections.

111. The leader of the Popular Front for Democracy (PFD) stated that Lesotho has ratified the Charter on Democracy, and sought to know whether there is no institution at the Commission or at the AU level which can engage with the Government of Lesotho on the implementation of the Charter during the electoral reforms process. He also wanted to know whether the AU can develop reporting guidelines for the Charter on Democracy.
In response to the representative from the PFD, the delegation said that there are various mechanisms that have been established by the African Union Commission (AUC) to provide Member States with technical assistance on election management. It explained that AUC is responsible for monitoring the implementation of the Charter on Democracy and that within the Department of Political Affairs the Electoral Assistant Unit has been established to assist Member States on issues related to elections. It also explained that the Commission also poses questions relating to the implementation of the Charter on Democracy when States present their Reports under Article 62 of the African Charter.

The delegation explained further that since the Commission works together with the AUC, it can recommend to the AUC to develop guidelines on the implementation of the Charter on Democracy.

As to whether the Government of Lesotho finances political parties and the criteria employed, the delegation learnt that previously, political parties received funding through the Danish National Dialogue. Further that in 2011, party funding was reformed and this resulted in parties that contested an election receiving party funding based on the number of votes they received in the previous election. Party agents are also given an allowance and parties who are represented in the Parliament receive funding annually. For campaign funding, political parties must account for these funds to the IEC within six months after the elections, and three months after the elections for Party funding.

On the question of private funding received by political parties, the delegation was informed that in terms of the 2011 Elections Act, any amount from M200, 000 must be declared to the IEC.

Regarding the incumbency factor, the LCD leader informed the delegation that the playing field was not level because Government vehicles and other resources were used by the ruling party during campaigns, and these resources were not available to other parties. According to the leader of the LCD, the use of Government resources three months before the general elections should be prohibited. He also noted that Principal Secretaries contested elections without resigning from their posts and when their bosses lost the elections, they returned to the public service and resumed their duties. There was a view by the leader of the DC that the law on incumbency should be improved.

Regarding challenges, the leader from the National Independence Party (NIP) stated that the Electoral Act of 2011 regulates coverage of parties in the state broadcaster however, that this law was not applied because the ruling party dominated the state broadcaster during campaigning. The NIP further stated that as long as the media is controlled by the State, these problems will remain unresolved.

The NIP leader also informed the delegation that even though the Electoral law gives expressive powers to the IEC to monitor coverage of political parties by the state broadcaster, it did not do so. A concern was
also expressed about the conduct of the IEC during elections. An example was given of a situation where students from Bloemfontein, South Africa were brought to be registered in some constituencies in Maseru. This was brought to the attention of the Chairperson of the IEC. The delegation learnt that the Chairperson did not take the complaints seriously and did not safeguard the credibility of the voters’ roll. At this point, the delegation informed the political parties that during its meeting with the IEC, it was explained that a decision has been taken by the IEC to scrap the existing voters’ roll and replace it with a new one.

119. In reaction to the allegation that the IEC did not play its role during the elections, the leader of the DC party stated that recognition should be given to the IEC for running the elections properly. He appreciated the fact that since 1993, Lesotho had gone a long way towards improving democratic principles and, according to him, a lot of progress had been made which was obvious from the way the last elections were held.

120. The problem however, he noted, is avoiding pitfalls in future, especially the issue of demarcations of constituencies. The DC leader also noted that the post-election issues infringed on human rights, including freedom of expression, discriminatory recruitment of political party members of the public service in exclusion of others and the dismissal of some civil servants, including Principal Secretaries who belonged to the former ruling party. The delegation learnt that the DC members were still being discriminated against and searched by armed forces, and police through Operation ‘Kobo.’

121. Concerning gender balance, the delegation learnt that even though there is a law that provides for this, it is not reflected in the composition of the Parliament.

MEETING WITH THE DIRECTORATE ON CORRUPTION AND ECONOMIC OFFENCES

122. The delegation met with Mr. Leshele Thoahlane, the Director General of the Directorate on Corruption and Economic Offences (DCEO). He explained that in August 1999, the Parliament passed the Prevention of Corruption and Economic Offences Act No. 5 of 1999. This Act intended to provide for the establishment of a DCEO to investigate complaints of corruption, prosecute perpetrators, subject to the directive of the Directorate of Public Prosecution, prevent corruption and educate against the evils of corruption. However, the Directorate became operational only in 2003.

123. The Director General stated that from 2003 to 2010, the total number of professional staff was about five Investigation Officers and five Intelligence Officers. In 2010 five more investigators and five more Intelligence Officers were appointed. He explained that initially most of the investigators were police officers and operated as a parallel police force. In 2010 however, staff that were recruited had no police background.
124. He informed the delegation that one of the main challenges faced by the Directorate is the huge backlog of cases in the courts and as a result cases that have been referred for prosecution take a long time to be heard. This creates a perception of impunity and gives the impression that the institution is not carrying out its mandate effectively.

125. Another challenge he explained is the fact that the Directorate has limited human resources and cannot cover a lot of cases. This creates an impression in the public that the office targets a particular group of persons or is used against a particular group. The delegation was informed that the draft Anti-Corruption Bill is still pending. This Bill is intended to transform the Directorate into a fully-fledged commission.

126. The delegation was informed that Lesotho was a member of the United Nations Convention Against Corruption (Convention) and that Lesotho is going to undergo a voluntary peer review process which will be conducted by Botswana and Gabon. The review assesses the level of compliance with the Convention and where shortcomings are found after the review, the country can be assisted with capacity building or expertise. The delegation was also informed that Lesotho has ratified the AU Convention on Preventing and Combating Corruption and that the shortcoming as far as this Convention is concerned is that although it has guidelines for implementation, it does not contain review mechanisms.

127. Concerning interface with the Ombudsman, the Director General pointed out that the two institutions collaborate even though the Ombudsman deals mostly with Complaints from public agencies. Interface is at the level of training of investigators and public education. He explained that the DCEO investigates and prosecutes, but needs the authorisation from the DDP and the prosecutorial authority to go to court.

128. The delegation was informed that there is a need to review the legislative mandate of the Ombudsman because at the moment the office deals with a mixture of issues such as fraud, cheating, tax evasion, money laundering and bribery and ideally the office should only deal with cases that have to do with corruption and leave all others to the police.

129. The Director General informed the delegation that there is no anti-corruption court in Lesotho and that the judiciary will not support the establishment of such a court, but is however prepared to give corruption cases preference. He informed the delegation that in future a Commercial Court will have a division which will deal with corruption cases.

130. The Director General also informed the delegation that the DCEO receives complaints from whistleblowers on the basis of confidentiality because there is no legislation to protect them. He also explained that he receives anonymous complaints from people who give detailed information about corruption cases and at times they are paid as motivation, albeit with caution.

131. In the past the Director General was appointed by the Prime Minister and staff of the DCEO were appointed by an Appointment and
Promotion Board established by law for this purpose. The new legislation will change this arrangement and after its adoption, the office will be called the Anti Corruption Commission. Currently the office consists of forty seven professionals and theoretically reports to Parliament since its reports are submitted to Parliament through the Minister of Justice. The DCEO receives its budget directly from the Central Government since 2011. It was given the autonomy to run its administrative and financial affairs and its accounting officer is the Director General.

MEETING WITH NGOS (LESOTHO COUNCIL OF NGOS)

132. The delegation was received by the Lesotho Council of NGOs (LCN) and sought to understand the mandate of the LCN and the work of the various NGOs present in the meeting.

133. The delegation was informed that the LCN has two hundred member organizations. Membership is grouped in terms of focus areas comprised of six Commissions namely: democracy and human rights; economic justice and environment; agriculture and natural resources; women and children; disaster management and humanitarian relief; health and social development.

134. Members are supposed to meet monthly which has not been possible due to lack of resources but meet at least five times a year. The organization consists of Commissioners, who are part time and full time Commission convenors. The Democracy and Human Rights Commission participated in the 2011 elections as observers and monitored violations of human rights in the run up to elections.

135. The delegation was informed that the organization is focused on the general human rights awareness at community level, promoting socio-economic rights, assisting the Government to compile reports to the Commission and other international bodies about its human rights compliance, visit prisons and make recommendations especially on cases of torture.

136. According to the Transformation Resource Centre (TRC), Lesotho does not experience gross human rights violations, however, challenges faced include poor prison conditions, including in pre trial detention centres, incidents of torture during investigation of cases of stock theft by the military and police and women’s rights. The delegation was also informed that there was a newly formed advocacy group for LGBTI rights known as Matrix Saboko Advocates for the rights of LGBTIs. The delegation was informed that the TRC submitted its application for Observer Status with the Commission two years ago and has not received any feedback.

137. The national coordinator for Women and Law in Southern Africa (WILSA) informed the delegation that the organization is involved in research and advocacy on women’s rights, awareness raising, providing legal aid to women, building capacity of women to occupy political
space, including advocating for 50% representation of women at national and local government levels and advocating for the right of women to inherit property and to succeed to chieftainship. In this regard, WILSA filed an *amicus* brief in a case involving the right of a woman to inherit chieftainship. The judgment in this case is still awaited. The coordinator further informed the delegation that Lesotho ratified CEDAW with reservations on succession and chieftaincy.

138. The delegation was also informed of other challenges faced by women, which include the following: the right of women to inherit property after the death of their husbands, and increase in gender based violence, especially of sex workers who are harassed by police. Due to the increase of these cases in the courts, the organisation has embarked on awareness raising programmes in the magistrate courts. Another challenge pertains to human trafficking. The delegation was informed that although there is legislation that outlaws human trafficking, upon arrest, the perpetrators of this offence are convicted for a lesser offence because the sentences prescribed in the legislation are beyond the sentences that can be imposed by a magistrate court. The delegation also learnt that the LGBTI community is not given enough space to raise their issues.

139. The delegation was informed that although in terms of legislation on gender equality, Lesotho occupies the 1st position in Africa and the 10th position at global level, the implementation of this legislation remains a challenge.

140. The representative of the NGO that deals with the rights of *people with disabilities (PWDs)* stated that the country is lagging behind in this area. He noted that the rights to freedom of speech and access to information of PWD are not respected. Laws and other reading materials are not provided in Braille and that sign language is not provided for even on the State television. He further stated that although Lesotho ratified the UN Convention on the Rights of Persons with Disabilities in 2008, this Convention has not been domesticated. There is no law or policy on this matter.

141. The delegation was informed that although the Building Controls Act of 2005, and the Sexual Offences Act of 2010, which are supposed to include the rights of PWDs were adopted, these laws do not generally protect PWDs because they were drafted without their involvement. He explained that laws that protect the general population cannot be used by PWDs because they have special needs. No other law in the country protects PWDs and there are no statistics on for instance, crimes committed by and against PWD’s. There is also lack of skills in the courts to deal with cases related to PWDs for instance, sign language to communicate with visually impaired people who have been physically or sexually abused and ways for them to indentify the perpetrators.

142. The representative of the NGO that deals with the *youth* informed the delegation that it mostly advocates for quality education and for interconnection between primary, secondary and tertiary education. He
informed the delegation of ongoing consultations to localize education which hitherto has been largely Cambridge based. Mother tongue instruction is now used in the first three years of school. The delegation was informed that there were no youth organisations for women and that the Gender Policy was not implemented due to the societal cultural and social constructs in the country.

143. The representative from Development for Peace and Education informed the delegation that his organisation deals with HIV/AIDS issues. He noted that most HIV/AIDS interventions are not human rights based. He gave an example of prevention of Mother to Child Transmission (MTCT) which makes it mandatory for a pregnant woman to do an HIV/AIDS test. If she fails to do so, she will not be entitled to anti natal care. His organisation has raised this concern with the Ministry of Health. The delegation was also informed that the Lesotho Defence force had a policy that required pre recruitment testing for HIV/AIDS and HIV positive candidates were not recruited. Although this is no longer the official policy, it is still applied by the department. The security sensitivity of the military makes it difficult for his organisation and even the National AIDS Council to monitor this matter.

144. The delegation was also informed that there were strong views amongst PWDs for legalisation of abortion in cases where the child will be born with serious disabilities, however, that the Government has not taken the matter on board.

145. Another issue that was raised was that of the link between the regional and international human rights systems and how these two systems interface at national level. In this regard, an example was given of the decision by the Government of Lesotho to support the suspension of the SADC Tribunal without canvassing the views of the people of Lesotho on the matter.

MEETING WITH THE DEAN OF THE FACULTY OF LAW

146. In the meeting with the Dean of the Faculty of Law, the delegation was received by Mr. Owori and some members of the Faculty. The delegation sought to know the following: The incorporation of human rights in general and the African Charter, in particular in the curriculum of the faculty of law; the extent to which the jurisprudence of the Commission is incorporated in the lectures; whether the Faculty influences human rights policies in Lesotho; feedback on how it perceives the Commission.

147. Regarding the curriculum and jurisprudence of the Commission, the delegation was informed that human rights and humanitarian law are part of the 4th and 5th years of the LLB programme. Specifically, that the curriculum includes human rights protection which delves into the African Human Rights System including the African Charter and other instruments. There is also an elective course in the 4th and 5th year on Gender and Law which makes reference to the African Charter and the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol).
Furthermore, the faculty takes part in all the African Human Rights Moot Court competitions organized by the Centre for Human Rights, University of Pretoria. The Faculty is also engaged in research where it looks at the application of the African Charter in domestic courts. A recent case study was Lesotho itself. The research shows that many courts do not apply the African Charter with the exception of the election case of *Molitsepe v IEC 2005* in which the African Charter and the Maputo Protocol were mentioned. This case showed that courts are beginning to apply these instruments, especially for interpretative purposes.

The delegation was also informed by Ms. Shale, who teaches Human Rights and Humanitarian Law that she represented Women and the Law in the case involving succession to chieftainship by a woman and made reference to the African Charter and the Maputo Protocol even if they were not domesticated. According to her, these instruments played an important role in Lesotho and the Courts cannot go against their purport.

Apart from teaching human rights, the Faculty is also involved in seminars/workshops/training programmes on human rights for communities and law enforcement agencies. They also empower CSOs on how to work effectively with the NHRC once it has been established. The Faculty also works together with the HIV Committee of the University to promote the human rights of LGBTI and organises forums about safe sex measures for LGBTI's. Furthermore, the Faculty is working with the Committee to integrate HIV into the curriculum in 2014.

The delegation learnt that the Faculty has a law clinic which has not properly taken shape because it does not yet offer *pro bono* work for the community. In 2012, an MOU was signed between the South African based organization called the Human Rights Development Initiative and the Faculty in terms of which students will be trained in human rights and HIV and work in the Law Clinic after the training.

Regarding influence in the development of policies, the faculty informed the delegation that this is done through training courses, workshops and seminars which help in changing attitudes and perceptions that impacts negatively on the drafting of laws.

On their view about the death penalty, the delegation was informed that a member of the Faculty participated in a research project by the British Institute of International Comparative Law as part of the Coalition for the Abolition of the Death Penalty. The result of the project is a recommendation made to the CJ and the Law Society of Maseru to hold workshops to sensitize the Bench on either abolishing the death penalty or officially declaring the moratorium. Since 1995, there have been no executions precisely because the courts already find extenuating circumstances and commute the death penalty to life imprisonment. Protest campaigns are being held to remove the death penalty from the statute books.
154. Concerning challenges, the delegation learnt that the Penal Code criminalizes sex work (prostitution), and also legitimizes abortion by providing for circumstances under which abortion will be allowed. The Faculty is working on the following projects: a law to decriminalize sex work and to protect sex workers from harassment; legalization of abortion and the development of a Charter for victims of crime.

155. In conclusion, the delegation encouraged the Faculty to attend the Sessions of the Commission so as to see its work in practice.

MEETING WITH MEDIA INSTITUTE OF SOUTHERN AFRICA (MISA) AND JOURNALISTS’ ASSOCIATIONS

156. The delegation met with MISA Lesotho and other Journalists’ Associations. After the usual courtesies, the delegation sought to know the situation of freedom of expression and access to information in Lesotho.

157. With regard to freedom of expression, the delegation was informed that the right to freedom of expression and opinion is entrenched in the Constitution and that Lesotho is ranked amongst countries that enjoy the right to freedom of expression and journalists do not experience problems. The delegation was however informed that the legal framework is not conducive because there are 15 insult laws dating back to 1912. Thus, while journalists enjoy freedom of expression, these laws, if used, take away this right. Furthermore, criminal defamation is still in the statute books and there is no law that defines the parameters of criminal defamation and this is left to the courts to do so. Lesotho does not have an institution such as the Press Ombudsman to deal with such matters.

158. On the right of access to information, the delegation was informed that in 2000, the Bill on Access to Information was read twice in Parliament and MISA is advocating for the retabling of this Bill. The delegation was informed that the Government was in the process of finalizing the Media Policy and the new Government has undertaken to adopt this Policy within 100 days of its term of office, which expires in October 2012.

159. The delegation also learnt that Lesotho is one of the countries that have signed the AU Platform of Action on Access to Information. The delegation was informed that there were about thirteen private radio stations on air and sixteen private papers and all have difficulty in obtaining information from the government because of the prevailing culture of secrecy. The delegation was informed that in the Public Service Act as amended in 2005, information held by Government is confidential/secret and any public officer who releases such information without authorization is punished under the law.

160. MISA informed the delegation that it is encouraged by the fact that the new Government has presented the draft Media Policy to the media practitioners for comments. The draft includes the following proposals: code of ethics for journalists, establishment of the media
ombudsman/council and the transformation of the State Broadcaster into a Public Service Broadcaster.

161. With respect to challenges, the delegation was informed that journalists are not well trained to practice their profession because the Department of Mass Communication at the University of Lesotho offers journalism on a part-time basis only and does not produce the calibre of journalists needed, while the Likoku University of Technology has a media section, but is led by people who are not well trained. The delegation was informed that UNESCO undertook a study to review media studies offered by the University of Lesotho and a report of this study is still awaited. The delegation was further informed that the adoption of a code of conduct for the media is likely to address the problems brought about by poorly trained journalists.

162. Other challenges that the delegation was informed about include the following: lack of transformation of the State media which serves narrow sectarian interest (interests of the ruling party) instead of the interests of the population as a whole; the withdrawal of advertisements by Government in publications deemed critical to it; the Public Service Act of 2005 which provides that no Government official can disseminate information held by Government without the permission of the relevant Minister. The application of this Act has resulted in inaccurate or speculative reporting by the media, which often results in the cases of defamation being instituted against the media; lack of in-house training in media houses; skills flight from journalism due to poor conditions of service; the introduction of community radio stations and citizen journalism on the internet have led to the practice of journalism by people who are not trained as journalists.

163. In conclusion, the delegation gave a detailed explanation about the Model Law project of the Commission aimed at assisting countries that are drafting ATI laws and the project to decriminalize defamation and libel in Africa. MISA as the focal point for Southern Africa was advised to be involved in the project and assist the Special Rapporteur in taking it forward.

MEETING WITH THE INTER-SECTORAL COMMITTEE FOR HUMAN RIGHTS

164. The Inter-sectoral Committee for Human Rights (ICHR) was established by Cabinet in 2003 to assist the human rights unit in the department of Justice to oversee human rights in the various Ministries and CSOs. The ICHR is comprised of different ministries which nominate focal persons to attend meetings. The Minister of Justice is the Coordinator of the ICHR, while the Ministry of Gender and Youth is the Secretariat.

165. The mandate of the ICHR is wide and some of the activities aimed at furthering this mandate include conducting human rights advocacy campaigns in the country, promoting human rights in all ministries and organizing public gatherings on human rights in various districts. The Committee is also responsible for the preparation of State Party Reports
and in this regard organizes retreats to draft these reports. The ICHR has so far drafted reports for submission to CEDAW, the UN Human Rights Committee and the UN Committee on Economic Social and Cultural Rights.

166. The delegation was informed that the ICHR has pushed for the appointment of a focal point in each Ministry and that this has to some extent improved its effectiveness. Members of the Committee identify human rights challenges in their departments and device strategies to deal with these challenges. The delegation was also informed of the challenges faced by the ICHR which include the following: that members no longer attend Sessions of the Commission; whereas in the past when the Committee met once a month, now it only meets when there is a report to draft and inconsistent membership. The Committee also lobbied for the establishment of the NHRC. Members from some of the Ministries represented explained their work as follows:

167. The Labour and Employment Ministry submits reports on compliance with international labour standards to the International Labour Organization. The report includes Occupational Health and Safety, which the delegation was informed, Lesotho has made strides on. The Ministry is also working on a Child Labour Policy and envisages establishing a Child Labour Ministry to address issues of child labour which is rampant amongst child herders who are often made to miss school. The Ministry also supports the implementation of the Education Act which provides for free and compulsory education for children between 6 to 12 years.

168. The Ministry is also responsible for the implementation of the Child Trafficking Law which was promulgated in 2011 and protects young women who are being trafficked out of the country and young sex workers. Within the Ministry, there is a National Employment Unit which finds employment for domestic workers and regulates their terms of employment. The delegation was also informed of an MOU between Lesotho and South Africa to regulate the conditions of service of farm workers working in the Western Cape.

169. The Probation Unit of the Ministry of Justice focuses on Juvenile offenders. The delegation was informed that most Magistrates are not trained in the application of the Children Protection and Welfare Act of 2011. In this regard, the delegation was informed that some Magistrates often impose sentences of five to eight years to juvenile offenders which is above the prescribed sentence. The delegation learnt that the Ministry was involved in the establishment of the Children’s Court, which is now fully functional and in the drafting of the report on the Convention of the Rights of the Child. The delegation further learnt that the country has not yet submitted a report under the African Charter on the Rights and Welfare of the Child. The representatives of the Ministry also informed the delegation of a pilot project they are conducting on restorative justice, meant to settle cases against children amicably.
170. The delegation was informed that the Ministry of Foreign Affairs deals with ratification of international and regional human rights instruments and has a joint mandate with the Ministry of Justice. The delegation learnt that since it became part of the ICHR, Lesotho has ratified the following instruments: the Charter on Democracy, the Court Protocol, the African Youth Charter, UN Convention on PWDs and the UN Convention Relating to the Status of Refugees.

171. The representative of the Ministry explained challenges faced by the Ministry including: lack of appreciation of the joint mandate with the Ministry of Justice which is burdened with drafting all State Reports, and the absence of budget in the Ministry for drafting these Reports. The delegation was also informed that the drafting of the periodic report under Article 62 of the African Charter will be drafted by the Ministry and presented to the ICHR for input.

172. In conclusion, the delegation noted that the ICHR has the potential of assisting the Government with a coherent human rights strategy. When the NHRC is established, it is imperative that the ICHR works together with the NHRC and learn from best practices of other countries.

MEETING WITH THE CORRECTIONAL SERVICES

173. The delegation met with the Commissioner of Correctional Services, Mr. Mojalefa Thulo, and his team. Mr. Thulo informed the delegation that the Lesotho Correctional Services is a member of the African Correctional Services Association (ACSA), which is a strategic framework for cooperation amongst Correctional Services in different parts of Africa, especially in the area of legal frameworks, legal assistance, human rights resources, education and training, data collection, research and awards for excellence.

174. The delegation was further informed that the Lesotho Correctional Services has established different sections, including a security department, rehabilitation, legal and human rights, health and HIV/AIDS and the Office of the HIV/AIDS Coordinator in 2011.

175. With respect to the legal and human rights section, he explained that the Correctional Services decided to employ officers with legal studies dealing with human rights issues so that they can advise officers in charge of prisons on how to treat inmates, educate inmates on arrival about consequences of crimes. Most of the officers are not qualified LLB holders, but a course has been designed by the Judiciary to benefit people who deal with the Basotho Courts (Paralegal) which have been placed in different districts in the region.
176. The Legal Aid section is established to assist inmates who cannot afford legal representation. However, since the section cannot assist all inmates in this situation, some inmates still await trial for 3 to 5 years without knowing their fate, and this also results in a backlog of cases and overcrowding in prisons. The Speedy Court Trial Act of 2002 and alternative sentences for petty crimes, he explained, has however contributed to a great extent, in resolving overcrowding in prisons.

177. In dealing with political prisoners, the delegation was informed that training sessions on humanitarian law were held for officers in the Central Prison of Lesotho to educate them on how to treat prisoners. The International Committee of the Red Cross (ICRC), which is responsible for political prisoners, visits prisons quarterly to assess the humanitarian situation of these prisoners.

178. With respect to ongoing projects, the delegation was informed that the Correctional Services is working on building new prisons and renovating the existing ones.

179. On whether members of the HIV/AIDS section are members of, or work in collaboration with the Partnership and Networking for HIV/AIDS, the representative pointed out that they are not members, but share information with the network on HIV/AIDS related issues and also exchange materials.

180. Mr. Thulo informed the delegation that his department is aware of the Robben Island Guidelines (RIG) against torture and applies these Guidelines in their work. Further that his department participated at a Conference that was held in Sandton, Johannesburg on “Transformation of Corrections and Prisons Legislation and Policies.” The Conference adopted the Johannesburg Declaration on Regional Correctional Cooperation. Mr. Thulo also informed the delegation about the establishment of an association of Chiefs of Corrections and Prisons in the SADC region which is going to be launched in October 2013. He also informed the delegation that in November 2010, his department attended a SADC regional meeting on existing guidelines on minimum standards on HIV/AIDS, Hepatitis B and Malaria with the aim of incorporating these guidelines into their practices.

181. On human rights education for officers, the delegation was informed that this was provided by officers with a certificate in local laws designed by judiciary. The delegation learnt that this initiative has contributed to changes in the institution and has also assisted officers responsible for rehabilitation programmes.

182. Regarding how they deal with gangsterism, the delegation learnt that it existed in the past, but this has decreased due to sensitization programmes for inmates. Further, drugs and weapons were common and disciplinary action was taken against inmates found in possession of these.
183. On the treatment for HIV/AIDS, the delegation was informed that inmates were provided with free Anti Retroviral Drugs (ARVs) and that condoms were also distributed to the inmates. The delegation was also informed that it is not possible to organize workshops for officers on how to treat inmates due to budget constraints.

184. On the issue of torture, the delegation learnt that officers who have committed torture have been dismissed after a disciplinary hearing although none have been prosecuted. The delegation was also informed that the Office of the Ombudsman is mandated to monitor protection of human rights in prisons and this has reduced ill-treatment of prisoners.

185. Concerning inmates on death row, there are none because the Court of Appeal commutes death sentences to life imprisonment.

186. The delegation was informed of the establishment of National Vision and Strategy for Justice which is meant to co-ordinate efforts of different stakeholders to address backlogs in courts. The judiciary, the prosecution services, correctional services, amongst others are members of this coordinating structure. This initiative has led to the adoption of the speedy court Trial Act in terms of which if there is no reasonable grounds for delays, the accused is released.

187. On the Penal Reform Initiatives to re-integrate offenders into society, the delegation was informed that Rehabilitation Officers conduct a social enquiry into circumstances surrounding the offence and make recommendations to the Minister for parole. The Rehabilitation Officer then supervises the inmates after release.

188. Pregnant and nursing women in prisons are treated like other inmates, except that they are given a special diet. In most cases, when a baby is 3 years old, the mother is requested to send the child home. However if nobody can take care of the child, the child remains in prison with the mother.

189. The delegation was also informed that the mentally disabled prisoners who until recently were kept in prison, were now transferred to Government hospitals.

190. Finally, the delegation was informed that the Correctional Services enjoy good relationship with NGOs, in particular, the TRC. The Commissioner of Correctional Services also informed the delegation of an association of Ex-Prisoners which was formed at his initiative.

191. Regarding challenges, human rights education for officers is a challenge due to lack of funds. There is a perception that human rights are being given to inmates, at the expense of victims of crime. There is also a perception by Prison Officers that the Commissioner focuses more on the rights of inmates and not on the rights of Officers who work in inhumane
and unhealthy environment. The delegation was informed that the human resources development tries to address this concern.

VISIT TO PLACES OF DETENTION

192. This section of the Report gives a brief description of the detention facilities visited by the delegation. These include: the Maseru Central Prison and the Female Correctional Institution.

The Maseru Central Prison

193. The delegation visited the Maseru Central Prison situated in the capital city. They were received by the Senior Rehabilitation Officer, Mr. Makoetje Makoetje, and a Superintendent at the Prison. Mr. Makoetje gave the delegation a brief description of the prison explaining that it is the main central correctional institution in Lesotho with a capacity of 3000 inmates.

194. The delegation noticed that the surroundings of the Prison were clean and had a section for political prisoners: 2 Zimbabweans, 2 South Africans, 2 Mozambicans and 3 inmates from Lesotho. The section for political prisoners had single rooms, which were clean with tiled floors and a common shower, one TV for all the inmates and jackets donated by ICRC.

195. The delegation also visited other inmates who explained that they were being well taken care of. The prisoners detained in the old wing used buckets instead of showers. They had warm water and reported that they were satisfied with the food. They were serving long sentences of 23 to 30 years because most of the crimes committed are murder and armed robbery.

196. The delegation visited the kitchen equipped with electric cookers (not used), taps with running water, cooking utensils, dishing pots etc.

197. The delegation was informed that HIV/AIDS inmates stay together with other inmates to avoid stigmatisation.

198. The delegation visited the prison clinic and met with 3 nurses. The clinic had a ward with 12 beds and 3 inmates were admitted at the time of the visit. The delegation was informed that serious cases are referred to the district hospital. A medical exam is obligatory for inmates on their arrival at the prison. Counselling is also done to inmates: Adherence counselling to medications, and general counselling regarding different health problems, especially HIV/AIDS and personal problems.

Female Correctional Institute

199. The delegation also visited the Female Correctional Institute in Maseru which is made up of women and female juvenile offenders. The juvenile offenders are housed separately from the women.
200. The Institute had 10 Correctional Staff, a Correctional Staff Training Centre, 4 Community Training Centres and a Juvenile Training Centre. The delegation was received in a hall where the inmates have meals and entertainment. At the time of the visit, there were 58 inmates.

201. During the inspection, the delegation observed that while some of the buildings looked dilapidated, others were renovated. The compound was neat and tidy with a beautiful garden. The rooms were neat and spacious with 5 beds per room.

202. The delegation visited a skills training centre within the Institute where inmates are trained in pedicure, manicure and hairdressing.

203. During an open discussion with the inmates about the conditions of detention, the delegation learnt that they mostly eat beans, peas and pap. There is no warming system; cooking conditions are poor with monotony in the meal served—no rice or meat. There is no television to keep them updated with what is happening outside the institution: Juvenile offenders indicated that they are not well educated because they do not spend enough time at school. Other inmates said that even though it is a Correctional Centre, it is still regarded as a prison.

**PRESS CONFERENCE**

204. The delegation held a press conference at the end of the mission, which was attended by journalists from both the print and electronic media. The delegation explained to the members of the press about the work of the Commission, special mechanisms of the Commission, countries of responsibility of Commissioners and the purpose of the mission. The delegation informed the press that in their meetings with the various authorities from both the government and human rights organizations, they discussed issues and exchanged views about the implementation of human rights under the African Charter in the country. They informed the press that they were able to follow up on various matters including Lesotho’s meeting its obligations in terms of submitting its report in accordance with Article 62 of the African Charter. The delegation informed the press that the Government facilitated its work and that frank and open discussions were held with the various Government authorities.
OBSERVATIONS AND ANALYSIS

205. This section of the Report provides the general observations and findings of the mission based on the visits and information gathered from the meetings and discussions with the different stakeholders.

206. The mission lasted for five days and due to time constraint, the delegation limited its visit to the capital of the country, Maseru. Notwithstanding this limitation, thanks to the collaboration of the Government, and in particular, the personnel of the Ministry of Foreign Affairs and the Ministry of Justice, the delegation had the opportunity to meet a cross-section of the relevant stakeholders working in the field of human rights. The mission took place under excellent conditions. It enjoyed the full support of the Ministry of Foreign Affairs which ensured that all the scheduled meetings and visits were carried out, to the satisfaction of the delegation.

207. The delegation is therefore satisfied that even though it did not have sufficient time to meet a wider segment of the stakeholders, the individuals and institutions met and visited gave it a general idea about the human rights situation in the country, which forms the basis of the following observations:

POSITIVE ASPECTS

208. The Commission notes and appreciates the following as positive factors in the promotion and protection of human rights in Lesotho:

i. The invitation extended to it by the Government of Lesotho, which is proof of the Government’s willingness to cooperate with the Commission in addressing human rights issues in the country;

ii. The spirit of transparency and cooperation which the authorities demonstrated during the visit;

iii. The holding of a successful and peaceful election which led to a coalition Government in Lesotho;

iv. The fact that Lesotho has signed and ratified most of the international and regional human rights instruments, including the African Charter on Democracy, the Maputo Protocol, the Court Protocol, the African Youth Charter, the UN Convention on Persons with Disabilities and the UN Convention Relating to the Status of Refugees;

v. Lesotho has implemented some of the recommendations of the Commission in its Concluding Observations of the 2001 initial Periodic Report, and 2006 Promotion Mission by improving the general human rights situation in the country and particularly
adopting the Children’s Protection and Welfare Act and the Legal Capacity of Married Persons Act which were pending;

vi. The legal framework aimed at guaranteeing human rights in Lesotho, including, the Gender and Development Policy, the Electoral Act, the Land Administration Act, the Building Controls Act, the Sexual Offences Act, the Anti-trafficking Act, and the Editor of Communications Act;

vii. The Government’s willingness to abolish criminal defamation laws;

viii. The general political will demonstrated by the Government to improve the standard of living of the people and the efforts made to promote and protect the human rights of its citizens;

ix. The Government’s efforts to improve prison conditions in Lesotho, in particular the initiative taken in building new wings in the Maseru Central Prison, building new prisons and renovations taking place in other prisons in the country;

x. The Draft Media Policy which, among other things, advocates the establishment of a Media Ombudsman, Media Council, and Code of Ethics for journalists and media practitioners;

xi. The programmes, activities and strategies put in place to realize gender equality and promote the rights of women and girls in Lesotho;

xii. The incorporation of human rights in the curriculum of the Faculty of Law, University of Lesotho, designed to provide educational and research opportunities in observance of and respect for international human rights and fundamental freedoms;

xiii. The inclusion of NGOs in the ICHR;

xiv. The ongoing processes in establishing a NHRC;

xv. The application of sub-regional, regional and international instruments in the work of the Lesotho Correctional Services;

xvi. The enactment of the Speedy Court Trial Act of 2002 and alternative sentences for petty crimes which has reduced overcrowding in prisons;

xvii. The establishment of the Children’s Court to deal with cases related to Juvenile Offenders;

xviii. The independence of the judiciary is respected;
xx. The work done by the Law Faculty of the University of Lesotho to popularise the African Charter and the Maputo Protocol.

**AREAS OF CONCERN**

i. Lesotho has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition of the Death Penalty; the Optional Protocol to the Convention Against Torture (OPCAT) and has not made the Declaration under Article 34(6) of the Court Protocol;

ii. The phenomenon of incumbency during elections;

iii. The non-compliance with Article 62 of the African Charter with five outstanding Reports;

iv. The existence of laws that criminalize freedom of expression such as criminal defamation and insult laws;

v. The draft Media Policy that has been pending for too long;

vi. The pending draft Anti-Corruption Bill which seeks to strengthen the independence of the IEC;

vii. Absence of an Access to Information Law and the existence of Secrecy laws;

viii. Absence of laws that protect the rights of PWDs;

ix. Absence of legislation to protect whistleblowers;

x. Lack of professional journalism training to journalists and media practitioners which affects their work;

xi. The overcrowded nature and conditions of the Maseru Central Prison and the Female Correctional Institute;

xii. The lack of adequate rehabilitation and reintegration centres;

xiii. The poor nutrition and heating systems in the Maseru Central Prison and the Female Correctional Institute;

xiv. Lack of adequate education for juvenile offenders;

xv. The continued application of customs and tradition that hamper the full enjoyment of human rights by women in Lesotho;
xvi. The discriminatory nature of the law that regulates maternity leave for women in textile industries/factories who are only entitled to six weeks of maternity leave, as opposed to twelve weeks given to employed women in the public and private sectors;

xvii. Women in Lesotho cannot pass citizenship to their children and spouses;

xviii. Gender-based violence and child abuse still exist in some parts of the country;

xix. No gender balance in the Parliament;

xx. Ratification of CEDAW with reservations on succession and chieftaincy rights;

xxi. The situation of child herders who are deprived of their right to education;

xxii. The delay in appointing members of the PCA, which negatively impacts on its mandate to deal with complaints against the conduct of the police force;

xxiii. Consideration is not given to PWDs with respect to their special needs such as sign language on television and training of magistrates to deal with cases concerning PWDs;

xxiv. The death penalty is still maintained in the Statute Books of Lesotho and the moratorium is not official.

xxv. Non-compliance with some of the recommendations of the Commission in its Concluding Observations of Lesotho’s Periodic Report of 2001, and Promotion Mission Report in 2006, such as: increasing the participation of women in the various sectors of the Government, ensuring proper application/implementation of the Speedy Trials Act enacted to solve overcrowding in prisons; and protecting women from biased customary laws and practices that impede their rights.

xxvi. International instruments have not been domesticated;

xxvii. The Ombudsman do not enjoy complete independence;

xxviii. There is no legislation to criminalise torture.
RECOMMENDATIONS

209. The above areas of concern are an indication that Lesotho still faces some challenges in promoting and protecting human rights in the country. These recommendations are reflective of the fact that as a State Party to the African Charter and other international human rights instruments, Lesotho has an obligation to respect and implement those instruments. It is on this premise that these recommendations are made, also taking into account some of the commitments made by various stakeholders during this mission.

210. In light of the above, the Commission makes the following specific recommendations to the Government of Lesotho:
General

i. To ratify the Second Optional Protocol to the ICCPR on the Abolition of the Death Penalty; and the OPCAT;

ii. To make a Declaration pursuant to Article 34(6) of the Court Protocol, to allow individuals and NGOs access to the African Court;

iii. To strengthen the independence of the IEC and set up an Anti-Corruption Commission;

iv. To expedite the adoption of the Anti-Corruption Bill to deal with the challenges of eliminating corruption;

v. To improve and regularize laws governing the incumbency factor and party funding during elections and establish enforcement mechanisms;

vi. To implement all the recommendations made by the Commission in its Concluding Observations of Lesotho’s 2001 initial Periodic Report and on the Promotion Mission to Lesotho in September 2006;

vii. To submit its outstanding Reports under Article 62 of the African Charter, and encourage the involvement of CSOs in the compilation of its Reports;

viii. To formulate strategies of domesticating instruments that have been ratified by Lesotho so as to ensure effective protection of human rights for its population;

ix. To accelerate the process of appointing members of the PCA;

x. To speed up the establishment of a NHRC in accordance with the Paris Principles so as to protect and promote human rights in the country;

xi. To work in collaboration with NGOs and CSOs in the promotion and protection of human rights in Lesotho;

xii. To pass a law that will criminalise torture;

xiii. To ensure that the right to education of child herders is not compromised.

In the Area of Freedom of Expression and Access to Information

i. To repeal criminal defamation, insult laws, secrecy laws and support the Special Rapporteur on Freedom of Expression and Access to Information in Africa in her campaign to decriminalize defamation and insult laws on the continent;

ii. To expedite the adoption of the draft Media Policy;
iii. To prioritize the adoption of an Access to Information Law on its reform Agenda and transform the state broadcaster into a public broadcaster with an independent board;

iv. To adopt legislation to protect the rights of whistleblowers;

v. To provide facilities and institutions for training journalists and media practitioners.

**Prisons**

i. To expedite the renovation of Wing B of the Maseru Central Prison;

ii. To expedite other renovations taking place in other prisons in the countryside;

iii. To establish rehabilitation and reintegration centres for detainees and former detainees in Lesotho;

iv. To improve the conditions of detention with respect to nutrition, heating systems in all the prisons and correctional centres as well as education for juvenile offenders.

**Women and Children**

i. To revise its position on citizenship rights in Lesotho to enable women to pass citizenship to their children;

ii. To review laws governing inheritance and succession to accommodate women and girls;

iii. To lift or withdraw its reservations on succession and chieftaincy rights made during ratification of CEDAW;

iv. To review its maternity laws related to women in textile industries to be on the same pedestal with women in other works of life;

v. To ensure representation and participation of women at local and government levels;

vi. To ensure gender equality in Parliament;

vii. To protect women and children from gender-based violence and child abuse, while ensuring investigation and punishment in reported cases.
PWDs

i. To provide training to magistrates and the judiciary in general on issues/cases related to PWDs and how to deal with them;

ii. To adopt national laws which take into account the special needs of PWDs and involve them in the drafting of such laws;

iii. To ensure the use of sign language on national television news reporting.

The Death Penalty

i. To remove the death penalty from its Statute Books;

ii. Parliament to pass a formal/official Resolution to observe the moratorium pending abolition of the death penalty.