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Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Lesotho*

The present report is a summary of 7 stakeholders' submissions¹ to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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

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Information provided by stakeholders

A. Background and framework

1. Scope of international obligations

1. Commonwealth Human Rights initiative (CHRI) stated that since the universal periodic review of Lesotho on 5 May 2010 (2010 review)², the Government of Lesotho has ratified the International Convention for the Protection of All Persons from Enforced Disappearance. However, Lesotho was yet to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2).³

2. International Commission of Jurists (ICJ) stated that Lesotho should become party to OP-CAT. Lesotho should also consider ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; ICCPR-OP2; the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.⁴

3. ICJ stated that Lesotho should, without delay, lift its reservation to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.⁵

2. Constitutional and legislative framework

4. Development for Peace Education (DPE) stated that the Constitution of Lesotho (Constitution) provides for fundamental human rights and freedoms. However, only civil and political rights are justiciable. Socio-economic and cultural rights are not justiciable and appear in the Constitution as principles of state policies.⁶

5. Lesotho National Federation of Organisations of the Disabled (LNFOD) stated that while the Constitution makes provision for freedom from discrimination, it does not specifically provide for disability as a ground for discrimination. It recommended that provision be made in the Constitution for disability as a specific ground of discrimination.⁷

6. LNFOD stated that the protection of the rights of persons with disabilities is required in the form of a disability equity law which will bring the provisions of the Convention on the Rights of Persons with Disabilities into national law, thus ensuring that Lesotho lives up to its obligations under international law.⁸

7. CHRI recommended that the Government of Lesotho enact a Right to Information Act, compatible with internationally recognised best practices. This will ensure the right of every citizen to access government records, and will enable effective public oversight of public authorities.⁹

3. Institutional and human rights infrastructure and policy measures

8. DPE stated that the mandate of the Ombudsman is limited and excludes decisions of the Cabinet; thus offering no protection against any arbitrary actions of the State.¹⁰

9. ICJ stated that Lesotho should expedite the establishment of a national human rights commission to assist and strengthen the investigation of allegations of torture.¹¹ Lesotho

should also establish a national preventive mechanism, as recommended by the Committee against Torture.¹²

10. ICJ stated that Lesotho should include international human rights training as a module in training of police and prison officers.¹³

B. Cooperation with human rights mechanisms

1. Cooperation with treaty bodies

11. CHRI stated that Lesotho accepted the recommendation made during the 2010 review to intensify efforts to submit all overdue reports.¹⁴ However, Lesotho remains in breach of its reporting obligations to the Human Rights Committee, the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Racial Discrimination.¹⁵

12. ICJ stated that Lesotho should comply with its reporting obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁶

2. Cooperation with special procedures

13. CHRI stated that Lesotho has not issued a standing invitation to the Special Procedures Mandate Holders.¹⁷ It also stated that the request for a visit by the Special Rapporteur on extreme poverty and human rights made in 2012 remains pending.¹⁸

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

14. CHRI stated that during the 2010 review, Lesotho rejected recommendations with regard to the elimination of gender-based discrimination. It stated that the validity of the discriminatory provisions of customary law was confirmed by a decision of the Constitutional Court in the case of Masupha vs The Senior Resident Magistrate for the Subordinate Court of Berea and Others. In that case, the Constitutional Court upheld section 10 of the Chieftainship Act which prohibits first-born daughters from inheriting chieftainship. Similar provisions also remain in force in relation to inheritance of property.¹⁹ CHRI recommended that the Government of Lesotho incorporate the principle of equality between men and women into domestic law and enact law prohibiting discrimination based on gender.²⁰

15. Matrix Support Group Association (MSGGA) stated that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons face discrimination from health care providers when accessing medical care for HIV and AIDS and other sexual health services.²¹ They also face discrimination when accessing services from public offices, such as the Chief's Office.²²

2 Right to life, liberty and security of the person

16. CHRI stated that Lesotho rejected the 10 recommendations made during the 2010 review on the abolition of the death penalty.²³

17. ICJ stated that there were widespread acts of torture and cruel, inhuman or degrading treatment by members of the security services. Police and prison officers who committed acts of torture have not been discharged from service or subjected to disciplinary sanction. Although some victims were able to obtain some redress through the award of monetary damages, the Government of Lesotho has failed to take the measures necessary to prevent torture and to hold the perpetrators accountable.²⁴ Lesotho has also failed to enact specific legislation criminalising torture and inhuman and degrading treatment.²⁵ ICJ stated that Lesotho should criminalize acts of torture and ensure that perpetrators are held accountable through criminal investigations, prosecution and, where appropriate, criminal sanctions.²⁶

18. DPE stated that there were reported cases of torture of women and children by the police during anti-crime operations. Some family members were reportedly tortured because the suspect was not found during the raids.²⁷

19. CHRI stated that domestic and sexual violence against women was widespread, with high rates of death amongst women as a result of violence by their partners. However, police data on the prevalence of such incidents remained insufficient. In 2011, Parliament discussed a domestic violence bill, intended to tackle the issue in a more formalised and effective manner, but there is no available information regarding the status of this bill.²⁸ CHRI recommended that the Government of Lesotho improve the existing response to domestic violence by ensuring that all allegations of domestic violence are appropriately investigated; and undertake awareness raising campaigns on domestic abuse for law enforcement personnel and the general public.²⁹

20. Global Initiative to End All Corporal Punishment of Children stated that corporal punishment is unlawful in the penal system but is not prohibited in the home, alternative care settings, day care facilities and schools. It also stated that Article 16 of the Children's Protection and Welfare Act 2011 provides for justifiable discipline of children.³⁰

3. Administration of justice, including impunity, and the rule of law

21. DPE stated that the independence of the judiciary is questionable given that the Chief Justice is appointed by the King, acting on the advice of the Prime Minister. The appointment of the other judges is done by the Judicial Commission Service Commission whose members are appointed by the Prime Minister. The exclusion of important stakeholders in this process, such as the Law Society of Lesotho, is a cause of concern.³¹

22. ICJ stated that the Constitution does not explicitly identify either the President of the Court of Appeal or the Chief Justice as head of the Judiciary. This lack of clarity has led to a crisis that had paralysed the proper administration of justice.³² ICJ stated that Lesotho must clarify who is the head of the Judiciary in order to ensure the independence of the judiciary and the fair and effective administration of justice.³³

23. ICJ stated that the ad hoc nature of the Court of Appeal erodes judicial independence. Judges appointed to the Court of Appeal are drawn from outside Lesotho and are hence foreign nationals. The Government of Lesotho should ensure that suitably qualified nationals are among those appointed to the Court of Appeal. The President of the Court of Appeal should be a member of the Judicial Services Commission. The Judicial Services Commission should have a broad representation, including members of academia, law society and civil society. This will enhance competence, independence and increase public confidence in the judiciary.³⁴

24. LNFOD stated that there was a lack of supportive services to assist persons with disabilities to effectively access the court system. Sign language interpreters and psychologist to support such persons are not easily accessible.³⁵

25. LNFOD stated that the provisions of section 219 of the Criminal Procedure and Evidence Act 1981 discriminate against persons with mental disability by not requiring an evaluation of mental capacity before their evidence is taken to be inadmissible. This violates the right to access justice and equality before the law of persons with mental disability.³⁶

26. During its fact-finding mission to Lesotho, ICJ noted complaints about delays in the delivery of judgments and sentences. Judges have attributed the backlog to inadequate resources and facilities, as well as the high volume of cases.³⁷ ICJ stated that Lesotho should take steps to ensure full respect for the right to fair trial in accordance with international standards by inter alia preventing backlogs and delays in the judicial proceedings.³⁸

4. Right to privacy, marriage and family life

27. CHRI noted that the Government of Lesotho rejected all the recommendations in relation to same-sex sexual conduct, received during the 2010 review.³⁹ It stated that in 2012, a new penal code was introduced which does not address sexual orientation, but overrides the previous common law provisions which criminalised same-sex sexual conduct.⁴⁰ Also, national legislation does not specifically address discrimination based on sexual orientation and gender identity. CHRI recommended that the Government of Lesotho hold a constructive dialogue on sexual orientation and gender identity with all relevant stakeholders, including government ministries, civil society and religious leaders; introduce targeted policies to eradicate discrimination based on sexual orientation and gender identity; and provide appropriate training to law enforcement officials in accordance with the Yogyakarta Principles.⁴¹

28. MSGA stated that diverse sexual orientation, gender identity and gender expression are negatively viewed by society. The practice of same-sex relationships is regarded as being against Sesotho culture and principles of morality. This attitude is strongly woven into the fabric of society and people are exposed to marginalization, exclusion and gender-based violence.⁴²

29. MSGA stated that the role of Christianity and traditions in Lesotho remain key elements in the Basotho Society and the position of Christianity and traditions is that same sex relationships are evil and foreign. For this reason, some churches do not accommodate members who are perceived as non-conforming in terms of their sexual orientation, gender identity and expression.⁴³

30. MSGA stated that both the customary law as well as the civil rights law perceives marriage to be a union between people of the opposite sexes, which is male and female. Marriage between persons of the same sex is regarded as wrongful and therefore cannot be entered into. MSGA stated that this is unconstitutional as it violates the right to choice, the right to privacy and family life as well as the freedom of association.⁴⁴

5. Freedom of expression, association and peaceful assembly

31. CHRI stated that freedom of expression was enshrined in the Constitution. However, the absence of clear, pragmatic and rights-based media legislation prevents the realisation of this constitutional guarantee.⁴⁵

32. CHRI stated since the 2010 review, there has been a decline in the overall number of cases involving alleged infringements of media freedom. However, there were several

reported cases of ad hoc Government intervention in media coverage, police harassment of investigative journalists and judicial decisions that have a damaging and limiting effect on the freedom of expression.⁴⁶ CHRI recommended that the Government of Lesotho adopt a clear, up-to-date, human rights based media policy aligned with internationally recognised best practices.⁴⁷

33. CHRI stated that although freedom of assembly and association were generally respected, there were reported bouts of pre-electoral violence in 2012, as well as a few specific cases of police brutality against protesters.⁴⁸ It recommended that the Government of Lesotho ensure that the freedom of assembly is accorded adequate protection, and ensure that all allegations of excessive use of force by law enforcement officials against peaceful protesters are properly investigated by an independent and impartial body.⁴⁹

6. Right to social security and to an adequate standard of living

34. World Vision Lesotho (WV) stated that during the 2010 review, the Government of Lesotho received recommendations to enact the Children's Protection and Welfare Bill, which was enacted in 2011.⁵⁰

35. WV stated that the Children's Protection and Welfare Act represents the national efforts to address the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. It seeks to ensure that children's rights are respected, promoted and protected, particularly in relation to the social and economic well-being of children, including vulnerable children. WV recommended that the Government of Lesotho fully implement the Children's Protection and Welfare Act; ensure that the allocation of sufficient budget for the needs of vulnerable children and their families; and ensure the provision of quality support to vulnerable children and their families.⁵¹

36. WV stated that as of December 2013, 45 percent of births were registered. The impact of a lack of registration of births includes a lack of access to essential services such as public assistance, child grants and educational assistance, and difficulties in securing any inheritance.⁵²

37. WV stated that the National Identity and Civil Registration Department under the ministry of Home Affairs has intensified campaigns and outreach programmes in the communities to accelerate and promote birth registration country wide. However, particular challenges remain such as the lack of knowledge on the documentation required for birth registration, the lack of supporting documentation needed for registration, and in the case of the registration of orphaned children, guardians and relatives do not have the required information in relation to the child's birth.⁵³ WV recommended that the Government of Lesotho take the necessary steps to ensure that birth registration is effectively implemented and enforced; and seek financial and technical capacity to fully equip the National Identity and Civil Registry Department so as to promote the effectiveness of birth registration systems and processes.⁵⁴

7. Rights to health

38. WV stated that there are significant inequities in access to health care among different groups, with women and children in rural areas being the most disadvantaged. Norms and cultural practices grant women fewer decision-making powers. Access to healthcare and the quality of the care is limited due to low funding, lack of equipment and medication at health centres and the lack of skilled staff. In addition, geographic, financial and cultural barriers often prevent people from seeking care.⁵⁵

39. WV stated that despite health care services being free at the access point, people's access to such services is limited because of long geographic distances to health care

facilities, the mountainous terrain, combined with bad roads and expensive public transport. Community health campaigns involving door-to-door and school visits from health workers have been halted due to shortages of staff.⁵⁶

40. WV stated that the Government of Lesotho has developed a range of policies and plans aimed at improving maternal and child health and nutritional services, including the National Health Sector Policy and Strategic Plan, and the Infant and Young Child Feeding Policy.⁵⁷ WV recommended that the Government of Lesotho ensure equitable access and utilization of quality health services to effectively address maternal, new-born and child health.⁵⁸

41. WV stated that reforms in the structure of primary health care services together with the introduction of subsidized fees and free maternal and child health services at health-centre level are aimed at improving the availability of and access to health services. Most of the health centres have been renovated, salaries for health personnel working in hard-to-reach health centres have been increased, and curriculum and training materials for village health workers have been provided.⁵⁹ WV recommended that the Government of Lesotho ensure that the new initiatives are extended to reach all ten districts of Lesotho.⁶⁰

42. WV stated that many communities show poor understanding about health issues and therefore many people refuse to be tested or treated for HIV.⁶¹ DPE stated that HIV testing is mandatory for prenatal services and pregnant women were often subjected to HIV testing without consent.⁶²

43. WV stated that under the Every Woman Every Child initiative the Government of Lesotho had committed to meet the target of allocating 15 percent of government expenditure to health, as agreed in the Abuja Declaration. However, in 2011, health spending was 7.5 percent according to a budget speech by the Minister of Finance, thus remaining far from the target set in the Abuja Declaration. Even though the health sector is underfunded, the existing health budget is not spent, due to lack of human resources and poor planning.⁶³ WV recommended that the Government of Lesotho act on its commitment to increase the allocation of resources to the health sector to at least 15 percent of the total national budget and ensure effective utilization and accountability, in line with its commitments under the Abuja Declaration and the Every Woman, Every Child initiative.⁶⁴

8. Right to education

44. WV stated that in 2010, the Government of Lesotho adopted the Education Act, which provides for free and compulsory primary education. The Government has also developed a child-friendly school policy. However, there are a limited number of schools, especially secondary schools, in some of the rural areas, which resulted in children having to walk long distances to go to school. There is a lack of qualified teachers for children with special needs and inadequate monitoring of pupil and teacher ratios. WV stated that some children, particularly those from poor families, drop out of school due to lack of resources to meet other school requirements such as uniforms.⁶⁵ WV recommended that the Government of Lesotho take the necessary steps to ensure that community members are adequately sensitized on the importance of education for both boys and girls; enforce the Education Act 2010 and the child friendly school policy, to ensure that all children go to school; allocate more resources to the Ministry of Education to ensure that all education standards are met, particularly the pupil-teacher ratio.⁶⁶

45. WV recommended that the Government of Lesotho allocate more resources to the Ministry of Education to ensure inter alia adequate infrastructure conducive for all children, especially those with disabilities.⁶⁷

46. WV stated that Lesotho has a system of “Initiation schools” – a cultural practice which boys are expected to attend to be groomed to become strong men. Boys thereafter

immediately consider themselves to be men and therefore refuse to go back to school, which limits their access to education.⁶⁸ WV recommended that the Government of Lesotho ensure that the initiation schools do not open at the same time as the primary and secondary schools and also ensure that only youth over the age of 18 years are allowed to attend initiation schools.⁶⁹

9. Persons with disabilities

47. LNFOD stated that Lesotho adopted the National Disability and Rehabilitation Policy in 2011 with the aim of ensuring the meaningful inclusion of persons with disabilities in mainstream society. However, there are no directives and guidelines on the implementation of this Policy, and there is also no budget for its implementation.⁷⁰

48. LNFOD stated that the Labour Code, 1992, and employment policies provide no specific reference to the employment of persons with disabilities. There were also no strategies in this regard. LNFOD urged the Government of Lesotho to adopt a national code of good practices for the employment of persons with disabilities, to amend the labour code to reflect the rights of persons with disabilities to employment and to adopt mechanisms to promote the employment of persons with disabilities.⁷¹

49. LNFOD stated that there was no social protection provision for persons with disabilities as a vulnerable group. It urged the Government of Lesotho to establish a grant for severely disabled persons.⁷²

50. LNFOD stated that supportive services were needed to ensure that persons with disabilities were able to access education. It urged the Government of Lesotho to ensure the employment of sign language interpreters, the brailing of relevant reading material for students with visual disabilities and the provision of technologies to further support students.⁷³

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions

CHRI	Commonwealth Human Rights Initiative, New Delhi, India;
DPE	Development for Peace Education, Maseru, Lesotho;
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom of Great Britain and Northern Ireland;
ICJ	International Commission of Jurists, Geneva, Switzerland;
LNFOOD	Lesotho National Federation of Organizations of the Disabled, Maseru, Lesotho;
MSGGA	Matrix Support Group Association, Maseru, Lesotho;
WV	World Vision Lesotho, Geneva, Switzerland.

² A/HRC/15/7.

³ CHRI, p. 1.

⁴ ICJ, p. 5, para. (k).

⁵ ICJ, p. 5, para. (l).

⁶ DPE, p. 2. See also MSGA, para. 3.

⁷ LNFOOD, Section 2.

⁸ LNFOOD, Section 2.

⁹ CHRI, para 10 (1).

¹⁰ DPE, p. 4, para. 3.3.

¹¹ ICJ, p. 5, para. 21 (1). See also MSGA, para. 7 (4).

¹² ICJ, p. 5, para. 21 (h).

¹³ ICJ, p. 5, para. 21 (g).

¹⁴ See A/HRC/15/7, p. 16, para. 96.31.

¹⁵ CHRI, para. 2.

¹⁶ ICJ, p. 5, para. (m).

¹⁷ CHRI, para 4.

¹⁸ CHRI, para. 3.

¹⁹ CHRI, para. 15.

²⁰ CHRI, para. 16 (1).

²¹ MSGA, para. 5.3.

²² MSGA, para. 5.4.

²³ CHRI, para. 5.

²⁴ ICJ, p. 3, para. 17.

²⁵ ICJ, p. 4, para. 18.

²⁶ ICJ, p. 4, para. 21 (f).

²⁷ DPE, p. 4.

²⁸ CHRI, para. 16.

²⁹ CHRI, paras. 16 (2) and (3).

³⁰ GIEACPC, p. 2, paras. 2.1 and 2.2.

³¹ DPE, p. 4.

³² ICJ, p. 1, paras. 4 – 6.

³³ ICJ, p. 4, para. 21(a).

³⁴ ICJ, p. 4, para 21 (b).

³⁵ LNFOOD, Sub-section 3.1.

³⁶ LNFOOD, Sub-section 2.1.

³⁷ ICJ, p. 2, para. 7.

³⁸ ICJ, p. 4, para. 21(d).

³⁹ See A/HRC/15/7, p. 20, para. 98.

⁴⁰ CHRI, para. 13.

⁴¹ CHRI, paras 15 (1) and (2).

⁴² MSGA, para. 4.

- 43 MSGA, para. 4.
- 44 MSGA, para. 5.2.3.
- 45 CHRI, para. 8.
- 46 CHRI, para. 9.
- 47 CHRI, para. 10 (2).
- 48 CHRI, para. 11.
- 49 CHRI, para. 12 (1).
- 50 WV, p. 3. See also A/HRC/15/7, pp. 14-23.
- 51 WV, p. 4.
- 52 WV, p. 3.
- 53 WV, p. 3.
- 54 WV, p. 3.
- 55 WV, pp. 1-2.
- 56 WV, p. 2.
- 57 WV, p. 2.
- 58 WV, p. 2.
- 59 WV, p. 2.
- 60 WV, p. 2.
- 61 WV, p. 2.
- 62 DPE, p. 5, para. 3.4.3.
- 63 WV, p. 2.
- 64 WV, p. 2.
- 65 WV, p. 4.
- 66 WV, p. 5.
- 67 WV, p. 5.
- 68 WV, p. 4.
- 69 WV, p. 5.
- 70 LNFOD, Sub-section 2.1.
- 71 LNFOD, Sub-section 4.2.1.
- 72 LNFOD, Sub-section 4.2.2.
- 73 LNFOD, Subsection, 4.2.3.
