

Lesotho Council of Non-Governmental Organisations (LCN)

Joint UPR submission

Lesotho- November 2009

I. Methodology:

1. This report has been prepared by civil society organisations in Lesotho, namely, the Lesotho Council of NGOs, Women and Law in Southern Africa, Development for Peace Education, Transformation Resource Centre and Media Institute of Southern Africa. This report aims at reporting on the human rights situation that has prevailed in Lesotho within a period of four years to date. It mainly focuses on the compliance of Lesotho with its international obligations which it has assumed by its ratification of a series of United Nations Charters and Conventions. Areas of focus in the report have been on the following; Rights of detainees and prisoners, Rights of women, Rights of Children, Freedom of expression and the Workers' rights.

II. International Human Rights Obligations

2. Lesotho has ratified most of the Human Rights treaties including here the following: ICCPR, ICESCR, CAT, CRC, CEDAW and CERD. This it has done with some reservations on some. Lesotho has also ratified some Conventions of the ILO. Lesotho has also however not domesticated most of these international instruments with the result that their application cannot become a reality.

Domestic Law

3. Lesotho has a constitution that was adopted in 1993 and this is the supreme law of the land. Any law that is inconsistent with the constitution shall be null and void to the extent of its inconsistency. The constitution provides for the fundamental human rights and freedoms in its chapter two. However, these rights that are justiciable are only civil and political. The socio-economic and cultural rights are merely stated in the constitution as state policies and are therefore clearly not justiciable in the courts of law.

Institutional structure for protection of Human Rights

The Parliament

4. Lesotho has a parliament which is made up of both the Senate and the National Assembly. Both Houses of Parliament are responsible for enacting laws that are subject to the Constitution.

The Judiciary

5. Lesotho has a judicial system with the court of appeal being the highest court of the land. The different courts in the country are responsible for the enforcement of the fundamental human rights. The judiciary is supposed to be the most independent arm of government. However, the independence of the judiciary in Lesotho is potentially questionable regard being had to the fact that the appointment of the Chief Justice of the High Court is done by the Prime Minister. The appointment of the other judges is done by the Judicial Service Commission, whose members are composed of members that are mostly appointed by the Prime Minister. Of great importance is the fact that important

stakeholders like the Law Society of Lesotho are not represented in the Judicial Service Commission.

The police

6. The police service in Lesotho is the unit within the executive arm of government that is responsible for the investigation of criminal cases and arrest of suspects. This unit has some shortcomings such as lack of capacity and allegations of malpractice. These therefore weaken it. In an endeavour to address challenges of malpractice, the Police Complaints Authority was established and its main role was to deal with complaints laid against the police. However, the Authority has not made much progress as one of its procedural requirements is that the complainant should first lodge their complaint with the Minister before such can be referred to the Authority.

7. Another challenge faced by the police service is that the army sometimes interfere with the discharge of their duties by taking over particularly on matters that are political. This was experienced in Lesotho in the Post elections disputes of 2007 where the army abducted people that were alleged to be suspects and tortured them.

The Ombudsman

8. The Office of the Ombudsman is one of the structures established to address the complaints on human rights abuses laid mainly against the civil servants. The challenge that faces the office of the Ombudsman is that it does not address grievances that relate to human rights abuses that occur in the private sector. Another challenge is that the office does not have enforcement powers at all and as a result, some of the recommendations that it makes regarding reparations can easily be ignored.

The Human Rights Commission

9. The establishment of the human rights commission is still outstanding in Lesotho though it is long overdue. The absence of this commission highly compromises the enjoyment of peoples' rights in the country. In the absence of this Commission, there is therefore no particular office that fully monitors respect for and enjoyment of human rights in Lesotho.

III. Promotion and protection of human rights on the ground

Detainees' and prisoners' Rights.

10. Use of force and physical assaults against detainees by police appear to be common in Lesotho in order to extract confessions. This goes into the face of Article 8 Of the Constitution of Lesotho stipulates that: 'No person shall be subjected to torture or to inhuman or degrading punishment or other treatment'. However, the Constitution goes further to provide under subsection 2 that any illtreatment done under the authority of any law shall not be held to be inconsistent with or in contravention of this section to extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of the Constitution.

Many detainees confirmed being beaten by the police during an arrest, while others said they were not ill-treated in anyway whatsoever.

Prohibition and definition of torture in Lesotho

11. Lesotho has not enacted any legislation specifically implementing the UN Convention against Torture. Torture is expressly prohibited under Section 8 of the Constitution. However, torture is not expressly defined in statutory law. There is no specific offence of torture in criminal law, and the courts have not defined torture in their jurisprudence. This constitutes a continuing failure of Lesotho to implement its international obligations relating to the prohibition of torture, in particular Article 4 (1) of the UN Convention against Torture, according to which: *“Every State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”*

12. Successive governments in Lesotho have also failed to fulfill their constitutional duty to enact a “law [that] shall provide for penal and civil sanctions for violations of this section” (i.e. for the prohibition of torture) as stipulated in Article III.

13. Living conditions in the prisons are appalling. They are damaging to the physical and mental well-being of inmates and in many cases constitute clear threats to health. Conditions such as poor sanitation, lack of nutritious food and medicines fall short of UN standards for the treatment of prisoners. The worst conditions constitute ill-treatment or torture by some police officials during the interrogation stage. In the visited prisons so far, suspects revealed that they sleep on very thin mattresses or on the floor in filthy cells. Toilet or so called ‘*poho*’ is kept in the in the cell where inmates live. As a result, disease is likely to be widespread within inmates.

14. The Lesotho government has, on numerous occasions, stated its willingness to reform the criminal justice system, acknowledging its role in creating a situation of prolonged detention and overcrowding. During the visits, we have noted the positive miles. This shows an implementation of some of the recommendations made by the Ombudsman and Civil Society Organisations, in the previous reports.

Recommendations

15. Communities and relevant stakeholders need to be sensitised on issues of torture and other forms of ill-treatment, this will enable communities to identify acts of torture and prevent it as and when it arises.

16. there must be enactment of implementing legislation to incorporate the UN Convention against Torture and the Optional Protocol to the Convention Against Torture and Other Cruel treatment into domestic legislation; ensuring that the proposed law on torture reflects international standards, in particular that the definition of torture therein

covers all elements contained in Article 1 of the UN Convention against Torture and that the act legislates for universal jurisdiction and effective remedies and reparation in torture cases;

Reporting on Torture and ill-treatment in Lesotho

17. The government of Lesotho must report on torture in Lesotho in implementing its obligations under the above-mentioned international agreements, noting any deficiencies, as the case may be. This will continually draw attention to progress and setbacks to prevention of torture and ill-treatment in Lesotho. The intention of this type of reports will be to describe the practice of Lesotho government.

Rights of women

18. : Lesotho signed and ratified *Convention on the Elimination of all Forms of Discrimination against Women (1979)* in 1995 with the reservation that the convention will only be applicable if it is not inconsistent with the constitution which in itself has a distinctive non-discrimination clause. When the reservation is read in conjunction with the constitution, there is a clear indication that Lesotho is not ready to remove all discrimination against women and to create equality for women.

19. *Customary Law: (Code of Lerotholi 1903)* It undermines ethos of equality yet marriage as a concept is supposed to be 'a union of love'. Customary law treats women as minors and as such renders them incompetent to enjoy certain rights such as the right to inherit

20. *Marriage Act, 1974:* The Marriage Act encourages early marriages among girl children as it legalizes marriage of a girl aged sixteen years whilst a boy is eighteen, Analytically therefore, the law opens up vulnerabilities as against girl children and potentially exposes them to diseases such as HIV and AIDS as this can lead to young women marrying older men who have longer sexual experiences.

21. *Lesotho Constitution, 1993:* The Constitution prohibits discrimination of any kind and unfair treatment except where customary law is applicable – Sec. 18 (4) (c). This article in the constitution encourages the discrimination of women which is done customarily.

22. Article 40(1) of the Constitution also discriminates against women in that it provides that a foreigner who marries a Mosotho man qualifies by application for the citizenship of Lesotho. However, this is not the case to the Mosotho woman who marries the foreigner even if they choose to reside in Lesotho. Basotho women are therefore being discriminated in this regard.

23. Recommendations

1. Spouses of Basotho females should be given similar citizenship rights to their male counterparts.

2. The Constitution of Lesotho should do away with all forms of discrimination against women, whether customary or otherwise.

3. Lesotho should remove the reservations it has made to CEDAW.

Freedom of expression in Lesotho

24. The constitution of Lesotho has Bill of Rights contained in Chapter II of the constitution and in particular section 14 guarantees Right to Freedom of Expression. Further the section guarantees the following rights:

- Holding opinion without interference
- Receiving ideas and information
- Communicating ideas and information either to public, person or class of persons without interference

25. In the event that the rights are restricted for the purposes of defence, public safety, public order, public morality, public health protecting reputation of others, protecting private lives, preventing disclosure of information received in confidence, maintaining the authority and independence of the courts or for any technical administration or operation of telephony, telegraphy, posts, wireless broadcasting or television , restricting public officers, which the law permits, it would have to be justified that such does not abridge freedom guaranteed by the constitution to a greater extent than is necessary in practical sense in a democratic society. Despite this wonderful provision:

(i) There is no enabling legislation that codifies these rights and ensures that they are practically protected.

(ii) On the basis many newspapers reporting on political leaders in and outside government have been subjected to courts of law on defamation. As a result, this inhibits free reporting in fear of circumstances under which irregularities are handled in this sector. This amounts to self censorship whose effects are even worse than the one imposed.

(iii) The economic suffocation done to the private media houses deemed not to be towing the government line. Where government feels discontent about line of reportage of a certain media house, the government advertising jobs to that media house are withdrawn. The effects of this are the same as the above.

26. The (ii) and (iii) above could be easily avoided by the establishment of the long awaited media council provided in the media policy which has not yet been adopted by the government after twelve years of delaying tactics played by the government.

The Monopolisation of State Media

27. Despite the call and campaign by the media and the civil society fraternity for the transformation of state broadcasting into public broadcast, the government continues to own and dominate news content of the state controlled media; print and electronic. As a result:

(i) Only political rallies of the ruling party are broadcast on television and state radio. Moreover there is also a special TV programme providing full reportage of rallies

of the leader of the ruling party alone. This gives unfair advantage of political views of one party to the detriment of Opposition parties.

(ii) The content of the news going to media broadcast is censored and that which is regarded as not worthy for public consumption by government is curtailed.

Public Processions and Meetings Regulation

28. The government seeks to amend the Internal Security Act which provides that a person organising a public gathering, rally or procession should notify police of such intention at least three days before the event into something that would make it mandatory for the organisers to seek permission from the police. The danger here is that people's right to assemble and express themselves will be curtailed, limited to and, put at the mercy of the police and other official with authority.

Recommendations

29. Adopt the Media Policy that shall provide all the necessary remedies to the irregularities in the media sector that are amenable to the principles of democratic dispensation. This shall be in line with the UN Nations Universal Declaration of Human Rights, *Article 19*.

30. Transform Radio Lesotho, Ultimate FM, Television Lesotho, Lentsoe la Basotho/Lesotho Today and the Lesotho News Agency, from direct government control to the non state controlled authority. This shall be compliance to the African Charter on Broadcasting and the Windhoek Declaration.

31. Do not pass into a law, the Public Processions & Meetings Bill

Rights of Children

32. By definition Lesotho recognises anyone below the age of 18 as a child. The Constitution of Lesotho in Section 32 allows for the adoption of policies that protect children, but child exploitation and abuse has manifested in the country with 2 of 3 children exposed to human rights violation. Lesotho has taken steps to sign and ratify International Conventions that protect the rights of children, (1) Convention on the Rights of the Child (1989), (2) Amendment to article 43 (2) of the Convention on the Rights of the Child (1995), (3) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000), (4) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000). At national level the Government of Lesotho has passed the Sexual Offences Act (2003), Children's Protection Act 1980 and the Education Bill. But it is important to note that Lesotho highly relies on customary law when it comes to children's rights and protection which does not recognise the rights of children.

Children's Protection and Welfare Bill (2004)

33. This Bill consolidates and reforms the laws relating to the protection and welfare of children and to provide for incidental matters. It further makes an attempt to reinforce

the enjoyment of the rights of children in a very extensive manner. The Bill stipulates that any person under the age of eighteen years is considered a child and shall be protected by this law by all means. The Bill has been tabled in parliament since 2004 but to date it has not seen the light of day through enactment.

Education Bill 2009

34. This Bill is designed to put compulsory education at primary level into law in Lesotho. The Bill clarifies the roles and responsibilities of persons and institutions tasked with the administration of the education system. Most importantly, it foresees the welfare of children in schools and abolishes corporal punishment in schools.

Right to Education

35. The Government of Lesotho has put in place a system that allows all people to attend primary education for free and this has seen most children attending school. Though such a system does exist, 20% of the rural children are seen not attending school, as a result of early marriage (a system where girls are forced to marry older men by the family), boys work as head-boys for a cow at the end of the year and the presence of child headed family due to the HIV/AIDS pandemic.

Sexual abuse

36. A recent study carried out by the Transformation Resource Centre (TRC) reveals that 1 out of 3 girls in Lesotho have experienced sexual abuse. Though sexual offences are prohibited by law in Lesotho, such cases seem to be escalating. Some of these cases are not brought before the police for fear by the victims that they can be re-victimised or looked at as immoral by the society. Many girls are sexually abused by friends, lovers, teachers and relatives and these cases are not reported to the police in the fear of victimisation by society.

Participation

37. Child participation in Lesotho is limited if not non-existent. There is very little effort being put to allow children to be involved in national issues or even consultation of children in issues that concern them for instance, very little was done to consult children on the Education Bill. This might be so because Lesotho is a cultural state and upholds its cultural values and some of these values prohibit the participation of children in very important matters.

Physical and emotional abuse

38. Domestic abuse on children seems to be escalating in Lesotho from threats and verbal abuse to physical violence. In extreme cases, the abuse results in physical injury, the emotional and psychological consequences of domestic abuse are also severe. Domestic abuse on children has been accepted by communities as a form of discipline. In schools, corporal punishment is a concern as many children are left with scars and

trauma. Though the Education Bill tries to abolish corporal punishment, but resistance is being faced.

Child trafficking

39. Available data show that the hosting of the World Cup by South Africa has escalated trafficking of children for sexual exploitation from Lesotho into South Africa. Mafeteng has come out as the RED zone for this practise as children are promised scholarships to study in South Africa and only to realise that there is no school on the other side. Travelling documents are taken away and they are forced to work as prostitute and some are forced into manual work.

Child headed families

40. There are an estimated 180,000 orphans in Lesotho, most of those orphans' parents died of AIDS – one out of four adults is reported HIV positive. Poverty, the HIV/AIDS pandemic and food insecurity are interlinked and combine to form the biggest threats to child safety in Lesotho. The government of Lesotho neglects its responsibilities of ensuring at these children are well fed and protected, children in rural Lesotho suffer doubt tragedy of neglect and discrimination by society and government.

Recommendations

- I. There is need for government and non-governmental organisation to consider the establishment of a Childrens'court which will timeously address cases involving children.
- II. There is need to put in place specific child legislation that protect the rights of children.
- III. There is need for civil society to educate children of their rights and responsibility in society as many children are not aware of their rights and don't know what to do when violated.
- IV. Government needs to realise and fulfil its social responsibility towards children.

41. Rights of factory workers in Lesotho

Lesotho has its constitution as the supreme law of the land which provides for the fundamental rights and freedoms which are basically the civil and political rights. The socio-economic rights, under which the rights of workers fall are simply stated as state policies and are therefore not justiciable in the courts of law. Lesotho relies on the Labour Code Order 1992 for the protection of workers' rights which code is indeed not very comprehensive. In many respects, the factory workers in Lesotho do not work under conducive conditions. This happens despite Lesotho being a member of the International Labour Organisation and having ratified a number of the Conventions. Even those that have been ratified have not been domesticated.

The following recommendations are therefore made:

1. Lesotho ratifies all the ILO Conventions and sees to their domestication.
2. Lesotho makes the socio-economic rights basic human rights justiciable in the courts of law.