



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**

**Consideration of reports submitted by States
parties under article 73 of the Convention
pursuant to the simplified reporting procedure**

Initial reports of States parties due in 2007

Lesotho*

[Date received: 1 December 2015]

* The present document is being issued without formal editing.



Part I

A. General information

1. Domestic Legal Framework Regarding the Convention

(a) Rank of the Convention in Domestic Law

1. In Lesotho, treaties are not invoked directly in domestic courts, that is, they are not self-executing. They have to be domesticated into national laws and administrative regulations in order to be enforced with the exception of International Labour Organization agreements.

(b) Description of the national legislation under the Convention regarding the protection of migrant workers and members of their families

2. Although Lesotho has ratified the Convention, there is no comprehensive implementing legislation as yet. A number of various laws enacted before ratification of the Convention and post-ratification, do address issues of migrant workers and members of their families as covered by the Convention.

3. The Constitution of Lesotho, 1993 provides for equal rights between all people without any form of discrimination. Section 4 stipulates that “every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms”. Sections 6 and 7 emphasize the right to personal liberty and the freedom of movement. Section 8 stresses freedom from inhuman treatment. Section 9 provides for freedom from slavery and forced labour. Sections 12 and 19 provide for the right to fair trial and the right to equality before the law and the protection of the law. Sections 13, 14, 15 and 16 recognize that every person shall have freedom of conscience, freedom of expression, freedom of peaceful assembly and freedom of assembly. Section 18 recognizes the freedom from discrimination.

4. Section 29 protects the right to work by providing that “Lesotho shall endeavor to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts”. Sections 30 and 31 provide for adoption of policies aimed at securing just and favourable conditions of work and development of appropriate steps in the formulation of independent trade unions to protect workers’ rights and interests and to promote sound labour relations and fair employment practices for all workers including migrant workers. Section 32 provides for protection of children and young persons from economic and social exploitation by stating that:

“Lesotho shall adopt policies designed to provide that- a) protection and assistance is given to all children and young persons without any discrimination for reasons of percentage or other conditions; (b) children and young persons are protected from economic and social exploitation. (c) the employment of children and young persons in work harmful to their morals or health or dangerous to life likely to hamper their normal development is punishable by law; and (d) there are age limits which the paid employment of children and young persons is prohibited and punishable by law”.

5. Chapter III of the Constitution stipulates Principles of State Policy which provide for the development of policies addressing protection of health, provision of education policies and opportunities to work. These principles are dependent on the economic capacity and

development of Lesotho. By their nature, these principles are not justiciable in the Courts of Law. These State Policies apply to migrant workers and members of their families in the same way they apply to citizens.

6. Limitations imposed by the Constitution affect all persons in Lesotho including migrant workers and members of their families in the enjoyment of their fundamental human rights and freedoms.

7. Aliens Control Act 1966 makes provision for restriction and regulation of the movement of non-citizens into and out of Lesotho, for their sojourn therein and for related and connected matters. The Act sets out a procedure for persons who want to enter, stay in Lesotho whether temporarily or permanently, expulsion and deportations. The Act further covers two main categories of permits for an indefinite and temporary sojourn to be issued by the Minister or an authorized officer in terms of Sections 6 and 7 which state that, a non-citizen including migrant workers and members of their families may apply for these permits before entry into Lesotho in the form prescribed by the Minister.

8. Sections 6(3) and 7(2) uphold the right to family reunification by providing for issuance of similar residence permits to wives and children of migrant workers who have been granted residence permits.

9. Section 10 empowers the Minister with the discretion to cancel any permit if it appears that false information was given during application, reasons of public safety security among others as stipulated in the first Schedule of the Act.

10. Section 19(1) and (2) impose a duty on non-citizens to register on entry in Lesotho.

11. Section 25 prescribes the Minister and courts of law as the competent authorities to issue deportation or expulsion orders. Below is a table illustrating migrant workers deported from 2006 to date:

Table 1
Migrant workers deported from 2006 to 2015

<i>Nationality</i>	<i>Number</i>	<i>Reasons for deportation</i>
China	9	Hijacked other Chinese; found guilty of Murder; Influenced violence at village
Uganda	2	Illegal stay
Zambia	1	Illegal stay
Nigeria	1	Illegal stay
India	7	Illegal stay
Sri Lanka	1	Illegal stay
Malawi	5	Illegal stay
Ethiopia	1	Illegal stay
Democratic republic of Congo	3	Illegal stay

12. Lesotho Citizenship Order, 1971 makes provision for citizenship of Lesotho, for the acquisition, deprivation and renunciation of citizenship, and for related and connected matters. Section 10 of the Order reaffirms the right to nationality if a migrant child or a child of a Lesotho migrant worker abroad has returned to Lesotho and stayed there as a stateless person for a period of three years and that such a child has attained eighteen years; the Minister may order that such a person be registered as citizen of Lesotho.

13. Sections 9, 11, 12 and 13 of the 1971 Lesotho Citizenship Order set out procedures to be followed when applying for Lesotho citizenship thus enabling a migrant worker and members of his family to apply for citizenship of Lesotho if they have decided to settle in Lesotho permanently provided they have sojourned continuously in Lesotho for a period of five years. Table 2 below shows migrant workers and members of their families who have been granted citizenship from 2007 to date:

Table 2

<i>Year</i>	<i>Number of persons granted citizenship</i>
2007	nil
2008	nil
2009	64
2010	08
2011	40
2012	18
2013	nil
2014	93
2015	120
Total	343

14. Section 25 of the Order provides for restoration of citizenship to a person who has lost his or her citizenship voluntarily by a declaration or renunciations of citizenship or involuntarily by reasons of dual citizenship. This Section empowers the Minister with the authority to restore lost citizenship. Examples of restored citizenship from 2007 to date:

- A Mosotho woman was granted British citizenship upon marriage to British man, and after divorce she applied for restoration of Lesotho citizenship and it was granted.
- A Mosotho migrant who had acquired Namibian citizenship and thus lost his Lesotho citizenship was restored Lesotho citizenship in 2015.

15. Labour Code 1992 applies to private sector where most of migrant workers are engaged. It is under review to bring it into harmony with the provisions of the Convention and other international instruments.

16. Section 5(1) protects workers against “any distinction, exclusion or preference made on the basis of race, colour, sex, marital status, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”.

17. Section 5(2) of the Order prohibits sexual harassment at the workplace.

18. Section 7 of the Code prohibits forced labour.

19. Section 48 (1) establishes the Minimum Wage Advisory Board which has annually meetings aimed at determining and revising minimum wages. The minimum wages apply to the following sectors: clothing, leather and manufacturing, construction, wholesale and retail, hospitality, service sector comprising of security, funeral parlour, cleaning services, transport sector, small business and domestic work.

20. Section 66 provides that workers may only be dismissed for misconduct and incapacity.

21. Section 118 and Section 120 set out maximum hours of work and leave or rest days. According to Section 122, employees have a right to technical and vocational training. Sections 138-152 provide for regulation of Private Recruitment Agencies. Section 150 provides payment of transport expenses by employers for employees during recruitment process. Section 168 gives workers the right to join trade unions. Section 196 prohibits discrimination against Union members and employers.
22. Labour Code (Amendment) Act, 2000 provides for collective bargaining between employers and employees.
23. Workmen's Compensation Act, 1977 mandates employers to insure themselves and the workers against occupational injuries and/or diseases.
24. Anti-Trafficking in Persons Act, 2011 and its 2015 Anti-Trafficking in Persons Regulations provide for protection of the rights of victims of trafficking. The Act prohibits all forms of exploitation. Sections 30 and 31 provide for regularization of victims of trafficking through issuance of special residence permits. Section 32 provides for repatriation of victims from Lesotho. The Act requires provision of safety of migrant children who are victims of trafficking in persons from harm or being killed or being trafficked again before repatriation.
25. Children's Protection and Welfare Act, 2011 prohibits employment of children in exploitative labour. Sections 44 and 67 create offences in relation to health and welfare of children. Section 226 sets the minimum age of employment as 15 years old.
26. Registration of Births and Deaths Act, 1973 and its 1974 Regulations provide for registration of births in Lesotho or those occurring to Basotho migrants abroad. Section 3 provides for compulsory registration of births. The Section applies equally to children of migrant workers who are born in Lesotho.
27. Education Act, 2010 protects the right to education for all children which include those of migrant workers by providing for free and compulsory access to education for all children of school going age.
28. Sexual Offences Act, 2003 criminalises sexual exploitation of all persons including migrant workers and members of their families.
29. Police Service Act, 1998 establishes Police Complaints Authority which deals with complaints against abuse or inefficiency of the Police Service. The institution is accessible to all persons including migrant workers.
30. Provisions of the Penal Code, 2010, the Criminal Procedure and Evidence Act, 1981 guarantee without any discrimination the protection of rights of all persons including migrant workers and members of their families as recognised by the Constitution and other international legal instruments related to human rights.
31. Human Rights Commission Bill, 2015 establishes the Human Rights Commission which will complement the primary role of Government as an independent and responsible agency for the promotion, protection and reporting of human rights.
32. Between 2013 and 2014, Lesotho drafted two major migration policies under the Convention namely: the draft Lesotho National Migration and Development Policy 2013 which stresses the importance of aligning migration-related policy, legislative and institutional interventions to achieve developmental outcomes with international and regional standards and comparative benchmarks. It calls for development of measures aimed at supporting Basotho migrant workers abroad. The Policy further recommends the removal of discriminatory provisions and practices and negotiations of labour agreements with destination countries with the aim of facilitating cross-border movement, the collection and sharing of data, protection and provision of equal treatment with citizens of

host countries and the accessibility of benefits. Further, the policy proposes a creation of effective and accessible remittance channels for migrant workers abroad and those left behind in Lesotho. With regard to irregular migration, the draft policy recommends the adoption of a framework aimed at managing irregular migration. This includes the development of border management policies and a policy framework addressing human trafficking and smuggling of persons through strengthening the criminal justice system and the establishment of the victim support system.

33. The Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016 is aimed at eradicating all forms of trafficking in persons in Lesotho, protecting victims of trafficking in persons, arresting and successfully prosecuting offenders and putting in place preventive measures. The draft policy is based on the following guiding principles: government ownership, sustainability, coordinated and multi-sectoral approach, human rights and victim centered approach, child rights centered approach and participation, the principle of non-discrimination, gender-sensitive approach and evidence-based approach. The draft policy further provides for statistical data of rescued victims of trafficking in persons between the period 2012-2013, status of cases of trafficking in persons during that period as well as challenges attached to investigation and prosecution of cases of trafficking in persons.

34. The Ministry of Law and Constitutional Affairs and Human Rights is working on the plan to develop a National Human Rights Policy which will serve as a guiding tool for a coherent and coordinated fulfillment of human rights obligations in the country.

35. The Ministry of Labour with the financial and technical support from ILO has initiated the drafting of Labour Migration Policy.

Challenges

36. As noted above, our legal system is dualistic in nature and although a Convention can be invoked in courts it is only persuasive and not binding.

37. There is no comprehensive law domesticating the Convention. The Aliens Control Act, 1966 is outdated and does not take into consideration the new developments in international law. The Act is, however, under review to domesticate provisions of the Convention and other international instruments which have a bearing on migrant workers and members of their families and to address other shortcomings of the law.

38. Police Service Act, 1998 establishes a Police Complaints Authority which deals with public complaints against Police, however, complainants do not go straight to the Authority but via the Commissioner of Police and Minister responsible for Police and therefore this leads to lack of transparency, abuse of power and unnecessary delays. The Act is being amended to strengthen the PCA to the effect that it will undertake investigations without seeking the approval of the Commissioner of Police or the Minister.

39. Some Basotho migrant workers and members of their families do not consult Ministry of Foreign Affairs before they leave for employment abroad, and some do not update the Ministry of their whereabouts, therefore, Foreign Affairs does not have proper records of Basotho migrant workers abroad or have the opportunity to intervene whenever they face problems.

(c) Measures taken by Lesotho to harmonize its legislation with the provisions of the Convention

40. In terms of Section 70 of the Constitution, the legislative power in Lesotho is vested in Parliament. Since ratification of the Convention, Lesotho has embarked on a number of measures aimed at bringing its legislation in conformity with the Convention.

41. The Government has enacted the Anti-Trafficking in Persons Act, 2011 and gazetted its enabling Regulations titled Anti-Trafficking in Persons Regulations, 2015. The Act reaffirms Article 68 of the Convention by criminalizing trafficking in persons and providing for prevention and elimination of trafficking in persons and smuggling of migrant workers for purposes of trafficking. The Act also provides for regularization of victims of trafficking. The Act prohibits summary deportation of victims of trafficking in persons.

42. The Government has also enacted Children Protection and Welfare Act, 2011 which protects rights of children in general, including children of migrant workers. The Act also established a Children's Court where all cases involving children in conflict with the law are heard and tried. There is also the Department of Probation Unit within the Ministry of Justice which assists the Court with compiling an assessment report for pre-trial and pre-sentencing in cases of all children in conflict of the law and those affected by the law. The children of migrant workers are no exception in this regard.

43. Further, the Ministry of Home Affairs is currently undertaking a review of the Aliens Control Act, 1966 in order to align it with the provisions of the Convention. The proposed new immigration law is intended to comply with the Convention by amongst others providing for prohibition of collective deportation, establishment of measures aimed at addressing irregular migration and the prohibition of expelling migrant workers or depriving them of their authorization of residence merely on the ground of failure to fulfill an obligation arising out of a work contract unless fulfillment of that obligation constitutes a condition for such authority or permit as well as provide for the right to family reunification.

44. The Lesotho Law Reform Commission in collaboration with the Ministry of Gender and Youth, Sports and Recreation is working on a document that will inform instructions to draft a Domestic Violence Bill which will address issues of domestic violence holistically.

45. Some provisions of the Labour Code have been amended and is currently under review while the Citizenship Order, 1971 has not undergone any reforms.

46. The Government has also undertaken the following policy measures in line with the provisions of the Convention:

- Establishment of the National Consultative Committee on Migration coordinates migration plans and programmes in the country.
- Assessment Study on civil registration in Lesotho which is intended to inform the review of the Registration of Births and Deaths Act, 1973.
- There is a plan to develop the National Human Rights Policy.
- Draft Lesotho National Migration and Development Policy 2013. The overall objective of this draft policy is to indicate the core areas of policy intervention and to provide a framework for the implementation of migration and development strategies and actions for the benefit of the nationals.
- Action Programme for the Elimination of Child Labour 2013-2017 which aim at ensuring that children are not involved in activities that are detrimental to their physical, social or psychological wellbeing.
- National Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016 which was launched in 2014 reflects the Government's strong commitment to fulfil its international obligations assumed under relevant instruments to combat trafficking in persons. The plan set out time bound and specific activities aimed at combating trafficking in persons in Lesotho.

(d) **Bilateral and multilateral agreements with other countries pertaining to the rights of migrant workers and members of their families under the Convention**

47. The Government through the Ministry of Home Affairs has entered into a Declaration of Intent between the Ministries of Home Affairs of the Kingdom of Lesotho and the Republic of South Africa in September, 2015. The parties herein have agreed on the issuance of Lesotho Special permit which is intended to regularize the stay of Lesotho nationals currently residing illegally in South Africa. The special dispensation is for Lesotho nationals who are working, studying or operating businesses in South Africa without appropriate documentation, and have been in South Africa in such capacity before 30 September, 2015. The rationale behind the agreement is to protect Basotho migrants from unlawful labour practices, fraud and corruption. The issuance of these permits is to kick start on the 1st February, 2016 and shall be valid for four years from 1st May, 2016-30th April, 2020. The parties have also agreed on a Moratorium on deportation until 31st December, 2016. In addition, South Africa will grant an amnesty on Lesotho nationals who voluntarily surrender fraudulently permits or South African travel and identity documents.

48. The Government has also entered into Visa abolition agreements with SADC, Commonwealth Countries and some of the European Countries.

49. By virtue of being a member state of SADC, Lesotho is a State party to the SADC Treaty, 1992. Article 5(2) (d) of this Treaty requires SADC to formulate policies aimed at progressive elimination of obstacles to the free movement of labour, and of the people of the region generally. In order to fulfil this objective of the SADC Treaty, SADC has adopted the following treaties:

- SADC Charter of Fundamental Social Rights, 2003: the Charter sets out the foundation for ensuring that the basic human rights of migrant workers and their rights to freedom of association, collective bargaining, and access to social security and decent work are guaranteed.
- SADC Protocol on Facilitation of Free Movement, 2005: the aim of the Protocol is to facilitate entry, with lawful purpose without a visa into the territory of another member state for a maximum of 90 days, permanent and temporary residence in the territory of another member state and establishing oneself and working in the territory of another member state.
- SADC Code on Social Security, 2007 which addresses irregular migrants in Article 17(3). Others include SADC Labour Migration Policy Framework, 2013; SADC Regional Action Plan on Labour Migration 2013-2015; SADC Protocol on Employment and Labour, 2014.

50. At the regional level, Lesotho has an obligation under the African Union as a member state as follows:

- African Union Common Position on Migration and Development, 2006. The document sets out key migration priority policy areas in the region which include migration and development, human resource and the brain drain, labour migration, remittances, African diaspora, migration and human rights, migration and gender, children and youth, elderly, health and access to social services. The Policy urge Member States to address these policies at the national level, continental level as well as at the international level. At the national level, Member States are urged to adopt policies on migration, to carry out preventive awareness and sensitization campaigns on all aspects of migration as well as to improve conditions of youth employment.
- The Migration Policy Framework for Africa. The Policy sets out recommended strategies on migration issues including labour migration, regional cooperation and

harmonization of labour migration, labour movement and regional economic integration, border management, irregular migration including migrant smuggling and human trafficking as well as return and re-admission of migrants.

- Africa-EU Joint Declaration on Migration and Development.
- Bilateral Labour Agreement between Lesotho and Republic of South Africa, 1973.
- Decent Work Programme for Africa 2007-2015.
- Extradition Treaty between Lesotho and South Africa. This Treaty provides agreement between Lesotho and South Africa to extradite to the other country, persons who are wanted for prosecution or the imposition or enforcement of a sentence in the requesting state for an extraditable offence. This also applies to migrant workers or members of their families that either country can request another to extradite its migrant workers to be prosecuted in their own country if they have committed an extraditable offence as defined by the Treaty.

2. Policies and strategies relating to migrant workers and members of their families

51. The following documents dealing with migration, including migrant workers and members of their families are still in a draft form:

Draft Lesotho National Migration and Development Policy 2013

52. The overall objective of this draft policy is to indicate the core areas of policy intervention and to provide a framework for the implementation of migration and development strategies and actions for the benefit of the nationals. It seeks to ensure that the migration and development nexus is mainstreamed in the policy, legal and institutional domains. It also serves to ensure that, there is coordination and coherence across policies, laws and institutions. The policy does not set out time-bound and measurable goals. However, it highlights critical issues that need to be addressed in the protection of the rights of migrant workers such as development of sectoral and inter-sectoral policies, legislative review and the establishment of a dedicated Ministry to deal with migration and development issues.

53. The draft policy further proposes an establishment of a reliable migration data on labour migration, an improved streamlining of the issuance of work permits and visas, develop responses for skilled migration to and from Lesotho as well as enter into bilateral agreements to facilitate and streamline the cross-border flow of migrants between Lesotho and other countries.

Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016

54. The plan sets out specific time-bound and measurable goals in order to combat trafficking in persons including migrant workers and members of their families.

Action Programme for the Elimination of Child Labour 2013-2017

55. It aims at ensuring that children are not involved in activities that are detrimental to their physical, social or psychological wellbeing.

56. Regarding strategies invoked by the Government, they include acquisition of scarce skills from other countries on deployment of health practitioners, teachers, and migrant workers in manufacturing and textile sectors in Lesotho. In addition, the conditions imposed on the residence permit give workers the right to change an employer and residence during the validity of their permits.

3. Intergovernmental coordination on implementation of the Convention

57. There is no single Government Ministry or institution responsible for intergovernmental coordination of the implementation of the Convention in Lesotho. Various Ministries have their specific forums at which they report, for example, the Ministry of Labour and Employment has its own reporting mechanisms at its forums while Home Affairs also has its own forums. However, under the Joint Bilateral Commission of Cooperation, migration issues are all under the social cluster which is chaired by the Ministry of Home Affairs. The Cluster composes of all institutions dealing with migration issues including issues related to migrant workers and members of their families. Hence, the two Ministries are able to work together. The Ministry of Law, Constitutional Affairs and Human Rights in collaboration with Ministry of Foreign Affairs oversee compilation of state party reports of international and regional human rights instruments to which Lesotho is a state party.

Challenges

58. Due to the fact that there is no government Ministry or institution responsible for intergovernmental coordination of the Convention in Lesotho, implementation of the Convention amongst government ministries is not easily monitored. There is no Ministry which is making follow-ups to see to it that migrant workers and members of their families are protected.

59. However, we should note that, Ministries individually implement some of the provisions of the Convention, for example, the Ministry of Labour has a specific desk for migrant workers.

4. Labour migration flows

60. The Government does not as yet have the financial and human resources to carry out statistical data in the format required by the Committee, However, a survey done by SAMP in 2005 concluded that 99.8% of Basotho migrants were working in South Africa. The World Bank in 2010 concluded that there were 208 226 Basotho migrants in South Africa.

61. A study undertaken by Ratha (2011), highlighted that in 2010, there were 427 500 Basotho migrants abroad.

5. Measures taken by state party to create an independent mechanism to have an explicit mandate of independently monitoring human rights; information on complaint mechanism services; financial resources and awareness raising activities

62. The Government established the Human Rights Unit (the Unit) in 1995 with a three pronged mandate of protection, promotion and monitoring of human rights in the country. The objective of the Unit is to inculcate a culture of observance and respect for human rights which further enhances the pillars of democratic dispensation, which are peace, observance of the rule of law and good governance. The Unit receives complaints from the public and undertakes investigations of alleged violations of human rights and makes referrals, where necessary. It undertakes human rights awareness raising activities for the general public and reviews legislation and policies for compatibility with developments in the international sphere. The Unit has facilitated human rights trainings for law enforcement agencies, members of Parliament, the Judiciary, teachers and Inter Sectoral Committee on Human Rights and commemorates international human rights day annually. These activities are carried out in collaboration with the Civil Society Organizations and support of the Development Partners.

63. Plans to set up a Human Rights Commission which will complement the primary role of Government as an independent and responsible agency for the promotion, protection

and reporting of human rights are underway. In 2011, the 6th Amendment of the Constitution which enshrines the establishment of the Human Rights Commission was passed by Parliament. A Human Rights Commission Bill which will operationalize the Commission is before Parliament for deliberations. The Bill makes provision for the administration and regulation of the activities of the Commission. It shall be mandated to investigate complaints of violations and abuses of human rights and make binding decisions and recommendations which the current national human rights institutions are lacking. The Bill most of all complies with the United Nations Paris Principles which relate to establishment, status and functioning of national institutions mandated with the promotion and protection of human rights. The Commission shall be home for human rights.

64. In collaboration with the Transformation Resource Center, the Unit held workshops for law enforcement agencies, the media, some Portfolio Committees of Parliament, youth, inmates and the Correctional Service staff in order to sensitize them on the work of the envisaged Commission. These efforts were held with the support by Development Partners such as UNDP.

65. All migrant workers in Lesotho are eligible to be offered assistance by the Office of the Ombudsman on every complaint they have against Government and government parastatals, but the Ombudsman does not offer assistance on matters from private sector.

66. The Office of Ombudsman further offers financial assistance to migrant workers by attending the complaint of a migrant worker lodged at its offices; at any district in the country. Thus, the office uses its funds or expenses in order to offer this service.

67. Numerous awareness raising activities are held by the Ombudsman and they are always inclusive to both migrant workers and Basotho. That is to say; campaigns held by the Ombudsman also cater or take into consideration the need for migrant workers in the country to have knowledge about the activities undertaken by the office. For example, the education material about the ombudsman office is written in both English and Sesotho, so as to enable the non-Sesotho speaking community to appreciate and understand how the office operates.

68. In a nutshell, non-citizens who are migrant workers and members of their families are offered the same assistance by the office of the Ombudsman, so long, as their complaint is against the Government.

6. Steps taken to promote and publicize the Convention

69. Although there is no lead Ministry on the implementation of the Convention, the following Ministries implement the Convention individually.

70. During the review of the Aliens Control Act 1966, the Legal Section of the Ministry of Home Affairs held a two day workshop for thirty Immigration Officials whereupon they were sensitized on the international legal framework including the convention on migrant workers. In 2014, the then Prime Minister of Lesotho met with the Lesotho Diaspora in London, United Kingdom on the 5th April whereupon one of the issues was to sensitize the Lesotho diaspora with their rights enshrined in the Convention.

7. Cooperation and interaction between government and civil society in implementation of the Convention and methodology for report preparation

71. The Ministry of Labour in collaboration with Monna-ka-Khomo, a non-governmental organization, sensitizes herd boys of their rights and responsibilities which are guaranteed by the laws of the country and enunciated in the Convention. World Vision has an advocacy section which focuses on the family and the home. These projects help in

educating the parents on the problems of not sending the children to school and the effects that abuse can have on children as well as promoting child protection policies.

72. Preparation of this report was both highly participatory and fully inclusive. The report was drafted by the Ministry of Home Affairs (Legal Department and Immigration) in collaboration with the Human Rights Unit. The report was circulated among the Coordinating Committee and the Inter-Sectoral Committee on Human Rights for further deliberations and comments. A Validation Stakeholders` Workshop was held which included Government Line Ministries, Non-Governmental Organizations, Civil Society Organizations and Development Partners in the country. It is worth mentioning that the report was deliberated upon in an open and free atmosphere. The dialogue was characterized by constructive spirit which contributed towards the report`s contents.

8. Information on private employment agencies recruiting migrant workers to work abroad and the laws, rules and regulations pertaining to private recruitment

73. There are recruitment agencies which recruit Basotho for work outside the country. These are both companies and individually owned recruitment agencies. Labour Code Order No. 24 of 1992 Part X (138-152) stipulates regulations should be adhered to by the private recruitment agencies.

(a) Information and training to migrant workers on their rights and obligations

74. Migrant workers are provided with information concerning their rights and obligations in three stages. These are (i) Pre-departure (ii) During Employment. This is done through visits to the work places. The Ministry has on several occasions visited the mineworkers and seasonal workers in their work places. (iii) Post employment. This is done through road-shows in the communities which the migrant workers come from. The Ministry also uses wide variety of media available in the country.

(b) Whether recruiters assume joint liability with employer for claims and liabilities arising under employment contract

75. Private recruitment agencies acting on behalf of the employers are liable for all matters that may arise in the implementation of employment contract. Labour Code Order section 150 (1 and 2) outlines that that all transport expenses should be incurred by the employer.

(c) Issuance and renewal of licenses of employment agencies and condition for renewal

76. According Labour Code a recruiting agency licence is renewed at the discretion of the Labour Commissioner under the following the conditions:

- If the recruiting agency is not guilty of conduct which manifests to engage or assist in operations as a labour agent.
- The recruitments agents have not been convicted of an offence against the provision of Labour Code.
- They comply with all of condition of the licence.

(d) Complaints against agencies and inspections including penalties and sanctions for non-compliance

77. Some of the complains against the private recruitment agencies include :

- Recruitment agencies on behalf of the employers sometimes do not report work related injuries particularly those of farm workers.

- Some of the private recruitment agencies require to have service level agreement with companies responsible for payment of social security benefits of the migrant workers. If such agreement does not exist between the private recruitment agencies and the companies, migrant workers do not easily get assistance to access their social security benefits.
- Some employees complain that recruitment agencies jointly with the employers do not transport the remains of an employer who has passed away.

78. Penalties for non-compliance range from cancellation or suspension of the licence.

(e) Measures taken to strengthen migration regulation and control mechanisms to ensure that private recruitment agencies abstain from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters

79. Sections 138-152 of the Labour Code provide for regulation of Private Recruitment Agencies. Section 150 provides payment of transport expenses by employers for employees during recruitment process. The sections impose a shared responsibility on private recruitment agencies acting on behalf of employers. The Republic of South Africa and the Government have signed the 1973 Bilateral Labour Agreement which governs the labour migration issues in the mining sector. Private Recruitment Agencies such as TEBA implement this agreement by recruiting Basotho to the South African mining sector. Therefore Lesotho migrant workers in the mining are not charged excessive fees for employment services and TEBA acts as an intermediary against abusive foreign employment recruiters. All employment charges are incurred by the employers. The costs incurred include, among others, permit application fees to work in South Africa, recruitment licence fee, transportation charges to and from work, accommodation and medical expenses.

80. However there are other private employment agencies that recruit professionals to work in South Africa as well as in other countries. Some of these agencies have registered with the Ministry, while others have not.

B. Information relating to the articles of the convention

General Principles

9. Administrative application of the Convention and direct invokement by the Courts

81. The role of international instruments in domestic law is relatively settled and it is the responsibility of the Courts at least where international instruments deal with human rights to realize in domestic law the obligation and principles undertaken. Even though the Convention has not been fully domesticated, it is persuasive in courts of law.

82. Before ratification of the Convention, migrant workers awaiting deportation were not given time to sell their properties; but since there has been awareness and educational campaigns to the Department of Immigration on the Convention, migrants are given an opportunity to sell their belongings before deportation.

Part II of the Convention

Article 7

10. Description of measures undertaken by Lesotho to ensure non-discrimination to migrant workers and members of their families in law and in practice

83. The Constitution guarantees the principle of non-discrimination in Section 4 which provides that every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms. The principle of non-discrimination is defined in Section 18 (3) which provides that:

“the expression ‘discrimination’ means affording different treatment to different persons attributable wholly or mainly to their respective description by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or accorded privileges or advantages which are not accorded to persons of another such description.”

84. Section 18(2) further prohibits treatment of other persons in a “discriminatory manner by any person acting by virtue of any written law or in performance of the functions of any public office or any public authority”.

85. Section 18(1) read with 18 (4) (a) allows for the application of legislation and laws, including customary laws, which are discriminatory in nature. Section (4)(1) specifies that “discrimination” shall not apply to any law to the extent that the law makes provision with respect to persons who are not citizens of Lesotho.

86. With regard to section 18(4) (a), the distinction that the Constitution makes shall not be regarded as discrimination, as matters of control of non-citizens. Their entry and sojourn into any country are subject to the fulfillment of procedures set in the country’s internal procedures.

87. Section 26 provides for the enhancement of the foregoing principles of state policy without discrimination as follows:

“(1) Lesotho shall adopt policies aimed at promoting a society based on equality and justice for all its citizens regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

(2) In particular, the state shall take appropriate measures in order to promote equality of opportunity for the disadvantaged groups in the society to enable them to participate fully in all spheres of public life”.

88. The Labour Code, which is under review to incorporate some of the provisions of the Convention, prohibits any form of discrimination at the work place (Section 5). Section 5 (1) protects workers against “any distinction, exclusion or preference made on the basis of race, colour, sex, marital status, religion, political opinion, national extraction or social origin, which have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. Section 5(3) prohibits discrimination on remuneration between men and women for work of equal value.

89. The Ministry of Health is in charge of making health services available and accessible to everyone. Every person resident in Lesotho enjoys the right to access to health care. There are policy guidelines to almost all areas of health but most of them are still in

draft form such as. Migrant workers and members of their families are not excluded in anyway; they have equal access to health care services.

90. There are many policies which have been put in place to ease the accessibility of health care services for Lesotho residents. The National Adolescent Health Policy aims at reducing the levels of unwanted teenage pregnancies, even migrant workers and members of their families are sensitised on issues of safe sex, prevention of STDS, unwanted pregnancies and HIV/AIDS.

91. Migrant workers and their families are also catered for in National HIV/AIDS Policy which aims at providing for universal access to all on the HIV/Aids treatment. There is a Counseling Policy which is in place to provide HIV testing to pregnant women. The cost of health care services offered at the clinics is free and 15 Maloti (approximately \$1) at the Hospitals. This also applies to migrant workers and members of their families.

92. With regard to access to education for children of migrant workers, the Education Act, 2010 provides for universal education in that every child of school going age shall have a right to free and compulsory access to education. The Act applies to both nationals of Lesotho and migrant children in Lesotho; by so doing prohibiting discrimination. The Act imposes a penalty for its contravention.

Challenges

93. Children including those of migrant workers are entitled to free education without discrimination. However, currently there are no mechanisms to enforce or compel migrant parents to send their children to these schools. Most of migrant workers opt to take their children to private schools because they can afford to pay the fees and they believe that those schools offer best education as compared to government schools, thus low levels of attendance are seen among children of migrant workers in government free education schools. Despite this issue, migrant workers and members of their families are sensitized with free primary education therefore they are aware of it.

94. Secondary, higher, vocational and tertiary is generally available to all children, however those of migrant workers are not sponsored by Government. Secondary Education and Higher education are generally available and accessible to all, and equally accessible to all on the basis of capacity by every appropriate means and in particular, by the progressive introduction of free education. Fundamental Education is encouraged or intensified as far as possible for those who have received a completed their primary education.

Part III of the Convention

Articles 8 to 15

11. Measures taken to bring national legislation into compliance with ILO Conventions to combat labour exploitation, forced and compulsory labour for regular and irregular migrant workers and members of their families in the agricultural, mining and domestic sectors.

95. Lesotho has taken the following measures in order to bring the national legislation into compliance with ILO Fundamental Convention No. 29 concerning Forced and Compulsory Labour (1930) and ILO Fundamental Convention No. 105 concerning Abolition of forced Labour (1957).

96. Section 9 of the Constitution guarantees freedom from slavery and forced labour. Section 7 of the Labour Code prohibits forced labour by stating that:

“(1) Any person who exacts or imposes forced labour, as defined in the Code, or causes or permits forced labour to be exacted or imposed for his or her own benefit or for the benefit of any other private individual, association or other such body shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment”.

97. The provisions of the Children Protection and Welfare Act, 2011, Anti-Trafficking in Persons Act, 2011, the Anti-Trafficking in Persons Regulations, 2015 and Penal Code Act, 2010 reaffirm the Convention by providing for protection of persons against exploitation and forced and compulsory labour.

98. Lesotho has undertaken the following administrative measures in order to address forced and compulsory labour:

- Sensitization of employers and migrant workers and members of their families by Immigration Officials during the annual national inspections and various ongoing district inspections.
- Establishment of the Child and Gender Protection Unit within the Police Service which deals with gender based violence and trafficking in persons issues.
- Establishment of the child-help-line toll-free number where children may report cases of abuse and exploitation.
- Establishment of the National Consultative Committee on Migration which oversees migration issues in the country by developing policies and programmes on migration and overseeing their implementation.

12. Measures taken to investigate allegations of harassment, corruption and abuse of authority by laws enforcement agencies including extortion and arbitrary detention

99. Labour Code 1992 prohibits sexual harassment at the work place in section 5(2). Public Service Act, 2005 and Police Service Act, 1998 provide for procedures for disciplinary measures to be taken against civil servants and police officers respectively for allegations of harassment, corruption and abuse of authority including allegations of extortion and arbitrary detention with regard to migrant workers and members of their families.

100. There are no reported cases and documented data on the number of law enforcement officials that have been investigated, prosecuted and convicted in this regard however disciplinary actions against officers have been taken to either transfer to other duty station, surcharge, interdiction and suspension and dismissal. For example, 2 magistrates who were accused of corruption were tried and convicted although on appeal one of them was discharged while the other prison term. An immigration officer was discharged from duty for fraudulent issuance of residence permit.

Articles 16 to 22

13. Measures taken to ensure due process safeguards, access to legal assistance, interpretation and adequate access to medical care during investigation, arrests, detentions and expulsions

101. In terms of the Constitution and the 1981 Criminal Procedure and Evidence Act, migrant workers and members of their families have a right to legal representation and

access to medical health care. Migrant workers and members of their families are treated equally with Lesotho nationals without any discrimination with regard to arrest, detention and access to medical health care while in detention or arrested. The Police have developed internal controlling instruments in ensuring the safeguard during investigations, arrests and detention. These instruments include Cell Register, Detention form and Occurrence Book that entail information pertaining to the health, personal information and the belongings of the detainees.

102. Generally, non-citizens who happen to appear before courts of law are afforded interpreters where they do not understand the local language or the courts do not understand their language at the expense of courts. In the High Court, migrant workers are no exception as they are assisted with legal representation paid for by Government.

103. Speedy Trial Act 2002 stipulates due process and fair trial as enunciated in the Constitution by providing in Section 4 that accused persons should not be remanded in custody for more than 60 days. This means that a case has to proceed within those days or the accused be released from custody if there are no compelling reasons for further detention which reasons must be recorded in writing. This Act applies even to non-citizens.

Challenges

104. Legal Aid which is a creature of statute, only offers legal representation to indigent Basotho nationals and this means the migrant workers or their family members do not enjoy this support. However, at High Court they also get pro bono and pro deo assistance.

14. Information on detention centres

105. Lesotho has detention centres at police facilities and correctional services. However, there are no detention centers specific or separate for migrant workers. When deportations and expulsions are being processed, Police and Correctional Service detention facilities are used as detention centres. The Police temporarily detain all persons for a period not exceeding 48 hours, as prescribed by the Criminal Procedure and Evidence Act 1981, while investigations and legal procedures are being employed and migrant workers are not an exception. Migrants who are found guilty and convicted and are liable for deportation are detained until logistics for transfers are finalized. While they are kept in these detention centres, they are provided with meals and are not treated as criminals. They are still entitled to legal representation and are kept in separate cells by gender and age which means men, women, children (Juvenile Centre) and nursing mothers are kept separately. The envisaged Immigration Law which will be repealing the Aliens Control Act, 1966 is to establish immigration related detention centres amongst others.

106. The Government of Lesotho is steadily improving the Correctional institutions to bring them up to international standards ongoing improvements are being made; for example, the bucket system are being replaced by use of toilet systems to afford humane living conditions to inmates. Currently, such improvements have been effected in the Central and Maximum correctional institutions while those in Leribe and Thaba – Tseka districts are still ongoing. Mokhotlong district correctional institution has been renovated however bucket systems have not been phased out due to the fact that the institution might be relocated on account of the Lesotho Highlands Development Authority dam construction in that area.

107. To address the spread of HIV/AIDS in the Correctional Institutions, a full time HIV/AIDS Coordinator is employed. Voluntary HIV testing, counseling and treatment are provided on a full time basis. In all adult and juvenile facilities condoms are provided freely. All Institutions have a nurse and a dispensary to attend to minor illnesses. At some

Institutions, there are ambulances to transport inmates for emergency medical care. All inmates receive free medical care in Government hospitals regardless of their nationality.

108. Lesotho has demonstrated a commendable level of cooperation with human rights systems' special procedures both at the international and regional levels. In 2012, she welcomed the Special Rapporteurs on Freedom of Expression and Access to Information in Africa and on Prisons and Places of Detention in Africa to undertake a promotional mission in the country. The Special Rapporteurs were allowed visits to the places of detention to assess the human rights situation in general.

109. All children are given access to education while in Juvenile Correctional Centres. This is so in order to implement the Education Act 2010 and also the fact that currently such institutions are rehabilitation centres unlike in the past when they were punishment centres.

110. Migrant workers and members of their families also enjoy equal treatment in terms of the right to legal representation, access to medical health care, visitation, food and water and communication with members of their families whilst in detention awaiting trial, deportation or expulsion. Complaint procedures are available and accessible by all those detained at these facilities without exceptions.

111. The Government occasionally grants amnesties and early releases for detainees in general including migrant workers and members of their families. These usually take place during Moshoeshoe's day, the King's Birthday, Independence Day or Christmas Day.

15. Expulsion of migrant workers and members of their families pursuant to a decision taken by a competent authority

112. Migrant workers and members of their families are expelled from Lesotho pursuant to a decision taken by the Minister responsible for Home Affairs or a decision taken by the Courts of law. The Aliens Control Act, 1966 does not set out any appeal procedures for the Minister's decision to deport or expel migrant workers and members of their families. However, the decisions by the Courts are appealable in terms of the law.

16. Statistical data on undocumented and irregular migrant workers and members of their families who have been expelled or are awaiting expulsion

113. There is no comprehensive data on undocumented and irregular migrant workers and members of their families who have been expelled or are subject to expulsion proceedings. However, records from the Department of Immigration depicts statistics of some of the migrant workers who have been expelled due to various reasons as shown in Table 1.

114. The Aliens Control Act, 1966 which governs deportations in Lesotho is silent on the issues of collective expulsion; however, the Act is currently being reviewed in order to provide for amongst others the prohibition of collective expulsion. The Act does not provide for appeal procedures against expulsion orders issued to migrant workers and members of their families. However, the Courts have entertained appeal against expulsion orders.

17. The role of government, labour attaches, embassies and consulates in assisting and protecting Basotho migrant workers abroad

115. Embassies and Consulate offices facilitate the verification of identity of Basotho migrant workers working abroad as well as the issuance of their travel documents and their repatriation to Lesotho. Detainees are visited regularly by the staff of the Embassies, Consulates and various government officials. Legal assistance is provided by the Government in the cases of detention or expulsion. In October 2015, the governments of

Lesotho and the Republic of South Africa have entered into a Declaration of Intent which aims at providing general amnesty of suspending detention and expulsion of Basotho Migrant workers. The Department of Labour visits Basotho migrant workers in South Africa with a view to sensitize them on their rights and also to mediate whenever there is a dispute regarding the rights recognized by the Convention.

18. Recourse to the protection and assistance of the consular and diplomatic authorities countries of origins of migrant workers and members of their families

116. Migrant workers and members of their families residing in Lesotho have recourse to the protection and assistance of their consular or diplomatic authorities of their State of origin whenever the rights recognized in the Convention are impaired, particularly in cases of arrest, detention and expulsion.

Articles 25 to 30

19. Information on national laws and regulations relating to remunerations and conditions of work and whether in compliance with ILO conventions, whether rights enjoyed by nationals apply equally to migrant workers both in regular and irregular situations regarding protection from dismissal, unemployment benefits, access to public work schemes for combating unemployment and access to alternative employment in the event of loss of work or termination of other remunerated activity.

117. Section 29 of the Constitution protects the right to work in that it states “Lesotho shall endeavour to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts”. Section 29 (b) further mentions that Lesotho should adopt policies aimed at “providing technical and vocational guidance and training programmes”.

118. The legislative measures taken include the Labour Code Order of 1992. Section 166 provides that non- citizens may take up employment in the country if issued with a valid work-permit and have special skills which nationals do not have. The work-permit may only be granted for a maximum period of two year.

119. The law provides that it applies to workplaces which have employed more than two people. As far as social protection is concerned section 2 (2) of the Workmen’s Compensation Act provides that the law is not applicable to domestic workers, herd-boys and workers who are paid in kind according to custom. Pursuant to the fourth schedule of the Labour Code order 1992 every employer who employs more than one (1) employee is requested to keep a register of employees as well as a wages record. This is meant to ensure that workers are timeously paid, and that overtime work is paid. It therefore stands to reason that the majority of informal sector workers are excluded from this form of protection as in most cases only one (1) worker is employed.

120. Pursuant to Section 6 of the Labour Code Order 1992 workers may only be dismissed for misconduct, incapacity including but not limited to the capacity of the worker to perform his duties and for operational requirements. Any other dismissal is regarded as an unfair dismissal. The law further provides that employees should be given a fair hearing before they can be dismissed.

121. Lesotho is a State Party to the ILO Conventions including Discrimination (Employment and Occupation) Convention 1958 (No. 111), the Employment Policy Convention 1964 (No. 122), and the Forced Labour Convention 1930 (No. 29). Corresponding state party reports on the implementation of such Conventions have been submitted by the Ministry of Labour and Employment to the ILO. Lesotho is party to the following ILO Conventions: Weekly Rest Industry Convention of 1921 (No. 14); Minimum

Wage-Fixing Machinery Convention 1928; Labour Inspection of 1947 (No. 81); Equal Remuneration Convention of 1951 (No. 100); Safety and Health in construction of 1988; and, Occupational Safety and Health of 1981 (No. 155). Corresponding reports have been submitted by the Ministry of Labour and Employment to relevant treaty monitoring body.

122. At regional level Lesotho is a State Party to the African Charter on Human and Peoples' Rights; Article 15 of which protects the right to work under equitable conditions by providing for equal pay for work of equal value and this does not exclude migrant workers.

123. The National Employment Service (NES) is a unit within the Labour Department that has been established in terms of Section 20 of the Labour Code. This unit is responsible for collecting information relating to vacancies for employment, facilitating the placement of unemployed persons, collecting information and statistics regarding the labour market including information on labour requirements and labour supply in order to forward it to the Labour Commissioner.

124. The primary mandate of the unit is to promote employment within the country. One of the functions of the unit is to canvass jobs within workplaces. By so doing the staff of the NES visit workplaces with the purpose of enquiring about job vacancies so as to place citizens of the country who have registered with their office as job seekers. As a result one of the functions of NES is to register job seekers and to place them where there are vacancies at workplaces. NES also undertakes research and compiles labour market information bulletin, employment and earning surveys so that proper policies can be put in place pertaining to the labour market.

125. The Lesotho National Development Cooperation (LNDC) is a parastatal that has been established to create employment in the country by attracting foreign direct investment. This is mainly achieved through engaging in trade promotion investment missions outside the country. Through the initiatives of this organization the textile industry presently employs more than 40 000 people in the country who are mostly women.

126. The Directorate of Dispute Prevention and Resolution (DDPR) has been set up to hear cases relating to labour practices. An arbitration award made from such cases are enforced by the Labour Court and also hears cases of unfair dismissals by way of review. The Labour Appeal Court hears cases of unfair dismissal from the Labour Court which may be referred to by a dissatisfied party (employer or worker). The DDPR, the Labour Court and the Labour Appeal Court have the power to order reinstatement of an unfairly dismissed worker or to award him the appropriate compensation.

127. As far as the Public Service is concerned there are no specific provisions of the law (Public Service Act 2005) which deals with unfair dismissals. Public servants may be dismissed by the Principal Secretaries for breaching their contracts of employment after following a prescribed procedure. Dismissed workers may appeal to the public service tribunal and ultimately to the High Court and Court of Appeal. Recently the Court of Appeal has ruled that all workers irrespective of whether they are employed in the private or public sector should have access to the Court of Appeal to lodge their cases. In other words the Labour Appeal Court no longer has exclusive civil jurisdiction to hear cases of unfair dismissal on appeal from the Labour Appeal Court. Dismissal of a worker who is on maternity leave is automatically an unfair dismissal.

128. The garment industry in the manufacturing sector is another big employer for Lesotho. Since the year 2000, the garment industry surpassed Government as the biggest employer in Lesotho, employing approximately 55 000 people. The garment industry like most of the manufacturing firms in Lesotho is mostly foreign owned. Of the 112 000 private sector jobs in Lesotho, approximately ¼ of these come from the foreign affiliates.

129. The Constitution through Section 9 guarantees freedom from slavery and forced labour which all persons in Lesotho enjoy including migrant workers. There are exceptions to Section 9, which inter alia, refer to the sentences imposed to convicted persons and work required of those that are members of a disciplined force in pursuance of their duties.

130. Further, Section 7 of the Labour Code also prohibits forced labour, it states:

“(1) Any person who exacts or imposes forced labour, as defined in the Code, or causes or permits forced labour to be exacted or imposed for his or her own benefit or for the benefit of any other private individual, association or other such body shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.”

131. The Constitution under Section 29 (2)(b) provides that Lesotho shall adopt policies in providing technical and vocational training programmes. The 1992 Labour Code further discusses technical and vocational training. In Section 5 (5), the Labour Code specifies that the terms “employment and occupation” include access to vocational and other occupationally related training to ensure that no person should experience discrimination in relation to these activities.

132. The laws on rest, leisure, working hours, periodic holidays with pay and remuneration for public holidays are covered under Part VIII of the Labour Code Order. Pursuant to the provisions of Section 118 of the Labour Code Order 1992, the maximum hours of work are 45 hours per week which may be worked from Monday to Friday or from Monday to Saturday. Section 117 provides that in every week, workers must be given a full day rest. Workers are also entitled to a minimum of 12 working days leave on full pay per annum, per year which may be taken at such times as may be agreed upon between the employer and the employee.

133. Section 120 subsection (2) of the Labour Code goes on to provide that workers should take at least six (6) working days leave in a continuous period during the calendar year. Employees are supposed to be paid at double their daily rate if they work on their rest days or if they work on public holiday. Overtime work is paid at 1 ¼ of the hourly rate. The permission may only be sought to undertake temporary work such as stocktaking, or unforeseen circumstances in order to prevent the loss of perishable goods.

134. In terms of Section 117 subsection (1) every employee must be allowed to rest for at least 24 continuous hours weekly. However, for night watchmen the law is different in the sense that they have to rest for 48 continuous hours per week. This means that their minimum period of rest is two full days. This is so because the normal maximum hours for which night watchmen are allowed to work are 12 hours per day and sixty hours per week, which is longer than other job categories. The law that covers hours of work for night watchmen is Section 3 of the 1992 Labour Code (Exemption) Regulations 1995 Legal Notice No. 108 of 1995.

135. In terms of Section 118 subsection (2), employees are entitled to rest for a full hour after working for five continuous hours. This hour is normally known as lunch hour. An employer who fails to comply with the above provisions of the law commits a criminal offence. However, persons who are employed in positions of management or employed in a confidential capacity are not entitled to payment for working overtime. The same applies to undertakings in which only members of the employer’s family up to a total of five including the employer are employed. The Labour Commissioner is also permitted to give written permission of temporary exemptions for specific types of work. However, he or she has to consult employers and employees organizations.

136. Employers are prohibited to request to work overtime to pregnant employees or those who are nursing their children during the six months period immediately following their return to work, after statutory maternity leave. In terms of Section 120 subsection (1), employees are entitled to a minimum of one working day's holiday on full pay per month. An employee is obliged to take at least six working days holidays in a continuous period during the calendar year that the holiday is due, and may receive cash in lieu of leave for the other days beyond the six to be taken continuously. In terms of Section 120 subsection (6), any agreement by which an employer and an employee agree that the latter shall relinquish his or her right to the statutory minimum working days of holiday shall be null and void. Failure of the employer to permit his employee to take his leave days is a criminal offence.

137. Public servants are entitled to annual leave and the minimum leave days allowed are 12 days while the maximum are 24 days per annum. The most senior employees are entitled to more leave days, whereas the junior employees are entitled to lesser leave days. However, Public Servants are not entitled to overtime payment. In terms of Public Service Act No. 1 of 2005, all public officers are expected to place the whole of their time at the disposal of the Government. In accordance with the same law, no public officer may claim as of right additional remuneration in respect of any official duty or work any proper authority may require him to do.

138. Although no specific measures have been taken to reconcile professional, family and personal life, the Labour Court enforced the ILO Convention No. 156 on Workers with family responsibilities. In the case of Peko vs NUL LC 33/95 (unreported) the Court ruled that an employer is bound to recognize a sick leave certificate issued by a Doctor to enable a worker to take care of immediate members of the family when they are sick. The judgement would equally apply to migrant workers.

139. Compliance with the statutory minimum wage is generally good in the urban areas whereas the same cannot be said of the rural areas. The informal sector, which is more prevalent in the rural areas, is not subject to such laws and orders. In the rural areas, employers and employees usually agree on wages that are far below the minimum wage and often employers fail to pay even the wages agreed upon. Some reasons advanced include turnovers of employees which do not enable the employer to pay the wages agreed upon in their contracts, that the employer cannot afford to pay, and that the employees are relatives of the employer who are being supported by him thus he does not feel obliged to pay the employee according to the minimum wage.

140. The greatest difficulty in Lesotho for fully realizing the right to adequate rest and working hours is the lack of resources in the Ministry of Labour and Employment to inspect the various places of employment, especially in the rural areas. In addition, the lack of resources limits the dissemination of information to employees to know their rights and proper avenues of recourse when they are being exploited. The informal sector in Lesotho is not adequately regulated due to lack of resources both financial and human. Due to the unregulated nature of the informal sector, the Labour Code does not protect the workers in this sector. Job categories found in the informal sector include, inter alia, taxi drivers, herd boys, street vendors and domestic workers. However the Ministry of Labour train them on their rights and obligations before and while in employment. Some of the workers in these sectors are non-citizens although there are no records of their numbers.

Challenges

141. Although it is a criminal offence for a non-citizen to work in this country without a work permit, public prosecutors usually lose cases in court as they often fail to prove beyond reasonable doubt that the accused was found working. For instance, presiding officers in criminal courts often dismiss the evidence given that an accused person was

found behind a till or that they were supervising employees in a workplace. They request tangible evidence, for example, that the accused person's name should appear in the register of employees. This type of evidence is difficult to acquire since no employer will incriminate themselves by entering the name of a person whom he has employed illegally in the register to which he knows Labour Inspectors have access.

20. Right of migrant workers to be treated equally especially in the agricultural, manufacturing and domestic sectors; information on monitoring of their conditions of employment; legal and labour protection and enforcement mechanisms

142. Compliance with the statutory minimum wage is generally good in the urban areas whereas the same cannot be said of the rural areas. The informal sector, which is more prevalent in the rural areas, is not subject to such laws and orders. In the rural areas, employers and employees usually agree on wages that are far below the minimum wage and often employers fail to pay even the wages agreed upon. Some reasons advanced include turnovers of employees which do not enable the employer to pay the wages agreed upon in their contracts, that the employer cannot afford to pay, and that the employees are relatives of the employer who are being supported by him thus he does not feel obliged to pay the employee according to the minimum wage.

21. Measures taken in law and practice to ensure migrant workers and members of their families have adequate access to basic services such as urgent medical care

143. The Constitution provides for enjoyment of equal rights and freedoms without discrimination to all persons in the country and this includes migrant workers and members of their families. This means access to basic services and urgent medical care are enjoyed by all persons in Lesotho including migrant workers and members of their families. Also the Government works in collaboration with other Non-Governmental Organization such as Lesotho Planned Parenthood Association (LPPA) to offer medical care without distinction. However, migrant workers can afford and choose private medical services when in need of urgency.

22. Measures taken to ensure the rights of children of migrant worker including those undocumented/ irregular situation to be registered at birth and to have their nationality of origin ensured in law and practice

144. Lesotho has undertaken the following measures in order to ensure the right of children of migrant workers abroad to be registered at birth is protected and to ensure the registration of births of foreign migrant children as follows:

- Section 39 of the Constitution provides that a person born outside Lesotho after coming into the operation of this constitution shall become a citizen of Lesotho at the date of his birth, if at that date either of his parents is a citizen of Lesotho otherwise than by descent.
- Registration of Births and Deaths Act, 1973 provides for compulsory registration of births of Basotho children born within and outside Lesotho and migrant children born in Lesotho. Section 43 sets out the procedure for registration of births of Basotho children born abroad; and upon registration, birth certificates are issued. The Act is under review with a view to shorten the compulsory registration period from one year to three months, amongst others. Failure to comply with the provisions of the Act will attract penalties.

23. Measures taken to ensure that children of migrant workers have full access to education regardless of their migration status

145. The Government is taken aback by the report that there are low levels of attendance in schools among children of migrant workers for fear of being denounced, early marriage and child labour as the following measures have been put in place to strengthen the enjoyment of the right to education which is provided for in the Constitution.

146. With a view to attain universal education which is one of the pillars of the Millennium Development Goals the Government enacted the Education Act, 2010. The Act provides that, every children of school going age shall have a right to free and compulsory access to education. The Act applies equally to both nationals and migrant children in Lesotho. Enrolment of children in schools requires birth certificates; hence undocumented or irregular migrant workers can access the education system in enrolling their children. The Act further provides that it is an offence to keep a child of school going age at home.

147. With regard to sustaining enrolment and prevention of the deterioration of the attendance of children in free primary education including those of migrant workers, Ministry of Education has sustained among others, provision of adequate facilities, education materials and qualified teachers. Migrant workers children with disabilities also have access to schools which cater for their needs just as other Basotho children with disabilities. This is done under the Special Education Unit which was established in 1991 with the objective of including pupils with special education needs into the regular school system. Further, in addressing poverty crisis that hinders effective and efficient schooling, the free primary education package includes government sponsored school feeding programme that caters for pupils nutritional needs.

148. In order to ensure that children attend school and not engaged in child labour, the Government through the Ministry of Labour with the support of ILO has developed Action Programme for the Elimination of Child Labour 2013-2017. The Programme aims at ensuring that children are not involved in activities that are detrimental to their physical, social and psychological wellbeing. The Ministry has already undertaken educational and sensitization campaigns for the chiefs in some parts of the country. The Government is also supported by Non-Governmental Organizations such as World Vision which has established a programme that donates a monthly stipend to families while the child is sent to school to replace the lost income the child would have earned from either herding or domestic work.

149. Curriculum and Assessment Policy was developed in 2006 and it states that mother tongue be used as medium of instruction up to class 3 while English is taught as a subject at this level and other levels. However, due to unavailability of skilled teachers in various languages, it is a challenge to fully implement this policy.

150. With a view to address early child marriage, the Ministry of Law, Constitutional Affairs and Human Rights continues to hold sensitization workshops for Marriage Officers and the public on the Children's Protection and Welfare Act 2011 which provides that a child is a person under the age of 18 years and thus may not enter into a valid marriage.

Article 31 to 33

24. Measures taken to ensure migrant workers have access to clear information on immigration procedures and conditions applicable to their admission, stay and remunerated activities; information on pre-departure programmes for nationals considering emigration; information on government institution responsible for providing such information and whether policies, programmes or legislation have been developed to ensure transparency and accountability.

151. Lesotho Embassies, Consular Offices and line Ministries provide information regarding immigration procedures, including full information on the conditions applicable to their admission, stay and remunerated activities. In addition, migrant workers and members of their families can access information through Lesotho Trade Portal which is also accessible online.

152. Regarding pre-departure programmes, the Ministry of Labour often holds awareness raising campaigns for the public on the procedures to be followed by those considering emigration to verify authenticity and accreditation of job offers abroad. This is also with a view to implement the Anti-Trafficking in Persons Act 2011.

153. Intending emigrants are also free to visit the Ministry of Foreign Affairs for advice and clarity on pre-departure procedures. An example would be that in early 2014 about 5 new grandaunts from tertiary institutions applied through internet abroad for various jobs only to find that such job offers did not exist. These were intercepted by the Ministry of Labour in collaboration with the Ministry of Foreign Affairs and INTERPOL.

154. Reference is made to question 8 on Labour programmes for further information.

25. Measures taken to conduct specific information and training programmes on the convention for relevant public officials

155. Various line Ministries hold trainings for members of the public, law enforcement officials, prosecutors, and government officials. For instance, the Ministry of Labour holds educational campaigns on prohibition of child labour, rights and obligations of migrant workers in the state of employment; Ministry of Home Affairs in collaboration with the Police, Justice, Education and Labour or separately holds regular educational and awareness trainings on trafficking issues which implement the Anti-Trafficking in Persons Act 2011 and other related laws and policies and programmes.

156. The Ministry of Home Affairs has held sensitization workshops on the Convention for the Immigration Department. The Ministry of Law through the Human Rights Unit regularly holds general human rights awareness raising campaigns on the international and regional instruments to which Lesotho is a State Party. These include the Convention under discussion. These trainings have been held for members of the Judiciary, Members of Parliament, some portfolio committees of Parliament, teachers and the youth in collaboration with civil society organizations such as Transformation Resource Centre (TRC) with the support of UNDP, Irish Aid and European Union and some of the Embassies like the American Embassy.

Part IV of the Convention

Article 43

26. Measures taken including legislation, effective remedies and recourse mechanisms to ensure that migrant workers enjoy equality of treatment with nationals in relation access to educational and/ vocational institutions and services as well as housing and cultural life.

157. The Constitution in Section 4 guarantees the fundamental human rights and freedoms for every person in Lesotho regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Section 18 (2) provides that no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public or any public authority. Further, sub-section (7) states that no person shall be treated

in a discriminatory manner in respect of access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public. Although Section 27 provides for protection of health for the citizens of Lesotho, in practice there is no discrimination regarding the health services provided at health centres across the country; as even the non-citizens are free to access such health services. Section 28 mandates Lesotho to endeavor to make education available to all and to adopt policies aimed at securing that technical and vocational education is made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education. Even though migrant workers and members of their families have access to technical and vocational education, they are not eligible for loan bursaries provided by the Government which are granted only to Basotho nationals.

158. Section 29 (2) provides that Lesotho shall adopt policies aimed at providing technical and vocational guidance and training programmes amongst others. Further, Section 34 provides for economic opportunities in that Lesotho shall adopt policies which encourage citizen to acquire property including land and houses. The section also provides that Lesotho shall take other economic measures as the state shall consider affordable.

159. Moreover, Section 35 provides for participation in cultural activities. The non-citizens are free to found and form their associations and celebrate their countries independence as well as carry out their cultural activities and beliefs. Each year, the Government commemorates the international human rights day on 10 December. For example, the Government celebrated the 2009 international human rights day theme “Embrace Diversity: End Discrimination” on two aspects namely: religion and culture. At that occasion, the Chinese were given a platform to perform their religion.

160. Moreover, there is a draft State Party report on the International Convention on the Elimination of Racial Discrimination which is awaiting stakeholders’ validation before onward submission to the relevant treaty monitoring body. The report was compiled in collaboration with Civil Society Organizations with the assistance and support of UNDP and Irish Aid under the Consolidation of Democracy and Good Governance Programme.

Articles 46 to 48

27. Information on policies and mechanisms to facilitate remittances; applicable legal framework to ensure the right of migrant workers to transfer their earnings and savings from state of employment to state of origin.

161. Remittances transactions in the country are subject to the Deferred Pay Act, Foreign Exchange Controls. The institutions providing remittances transfer have to comply with Financial Institutions (Ancillary Financial Service Providers) (Licensing Requirements) Regulations 2003; Know your Customer (Financial Institutions) (Anti-Laundering) Guidelines 2000; Money Laundering and Proceeds of Crime Act 2008. Some of these laws and or regulations directly influence the volume of remittance flows.

162. The Government acknowledges the fact that most of Lesotho migrant workers abroad are in South Africa working in the mines, farms and in domestic work. In this regard, The Employment Bureau of Africa (TEBA) assists mine workers with the remittances while those in other sectors use avenues available at their disposal. This is perhaps due to the fact that they are in an irregular setting.

163. The Government through the Postal Services provide for Electronic Money Transfer and receivers of money sent this way are not charged a fee. In addition, the existing banking institutions in the country also offer remittance transfer services for migrant

workers both in the country and abroad. With a view to put in place mechanisms to facilitate remittances, the Government is currently working on the following draft policies to address the high transfer costs and double taxation amongst others: these include Remittances Framework for Lesotho; Mainstreaming Migration into Development Framework and Migration and Development Policy. Further, the following new mechanisms offered by the private mobile network providers for remittance transfers are available: Mpesa, EcoCash and Shoprite cross-border facility.

Part VI of the Convention

Article 64

- 28. Measure taken to prevent irregular migration of Lesotho nationals in Particular women and unaccompanied children including through multilateral and bilateral agreements, policies and programmes aimed at enhancing legal migration channels and whether measurable results on irregular migrants has been ascertained.**

164. The Government is astonished by the concern of the Committee in this regard. Measures are being undertaken to address domestic violence: the Law Reform Commission in collaboration with the Ministry of Gender is working on a document to inform the drafting of the envisaged Domestic Violence Bill. There are campaigns held by the Ministry of Gender in Collaboration with the Civil Society Organization such as Women and Law in Southern Africa (WLSA), Catholic Commission for Justice and Peace. The Government has also established the Lapeng Care Centre for survivors of domestic violence as a temporary measure, at which they are empowered with income generating skills. To reduce irregular migration, Lesotho and South Africa have signed a Declaration of Intent for introduction of the following measures: integrated border system, community crossing, and facilitation of easy movement for nationals of both countries and amnesty those who have overstayed and deportees. Further, through decentralization of services, the Government has intensified availability and accessibility of travel documents. Moreover, awareness campaigns carried out at the border towns on the Anti-Trafficking in Persons Act, 2011 and its 2015 Regulations reduce irregular migration. The Immigration Bill is going to criminalize the issue of runners on the no-man's-land and smuggling among its provisions.

165. In addition, Lesotho has entered into the following bilateral agreements with the Republic of South Africa to address human trafficking and introduce work permits for unskilled labour: Declaration of Intent between the Ministries of Gender, Declaration of Intent between the Ministries of Home Affairs and the Memorandum of Understanding between the Ministries of Social Development mentioned in Part 1 question 1 (d) above.

Article 67

- 29. Measures taken to ensure the rights of migrant children and their protection from economic exploitation, particularly unaccompanied or in irregular situation, in or in transit including allocation of sufficient resources to the effective enforcement of labour laws, information on steps taken to protect children from hazardous work including through implementation ILO Conventions.**

166. The Anti-Trafficking in Persons Act, 2011, Children's Protection and Welfare Act, 2011 and the Labour Code (Amendment) 2000 make some provisions for protection of migrant children unaccompanied and / or in an irregular situation from economic exploitation. With regard to herd boys, Lesotho Association of Non-Formal Education

(LANFE) undertakes Programmes in collaboration with UNICEF in literacy projects as a strategy to reduce exploitative child labour in the country. Sentebale is another organization that has educational programmes targeting herd boys. Education Act, 2010 which provides for free and compulsory education ensures protection of all children from work as it makes it an offence to keep a school going child from school. The Childrens' Protection and Welfare Act 2011 also prohibits engagement of children from hazardous work as it defines the minimum age for employment at 15 years or 18 years for hazardous work and sets out the guidelines for work in which children may be engaged in which should not interfere with the development of the child. Any employer who breaches these provisions is liable to a fine, imprisonment or both. The Ministry of Labour periodically prepares reports on ILO Conventions and that includes the ILO Fundamental Convention 182. The Ministry of Labour has a challenge of tracking child labour related cases due limited number of labour inspectors and scarce resources. However, with the intention of intensifying efforts against child labour, the Government revised the implementation strategy for the national Action Programme on the Elimination of Child Labour (APEC) by mainstreaming APEC action items instead of financing them as projects. The Government also established a Child Labour Unit within the Ministry of Labour which is responsible for monitoring implementation of APEC. Further, there are guidelines on the Elimination of Child Labour in agricultural sector with special attention to herd boys.

Article 68

30. Measures taken to intensify and allocate adequate financial and other resources to prevention campaigns aimed at countering misleading information relating to Emigration and awareness raising among Lesotho nationals including children about the dangers of irregular migration; corporate efforts with countries of transit and destination.

167. Lesotho Embassies, Consular Offices and line Ministries provide information regarding emigration procedures, including full information on dangers of irregular migration.

168. Regarding pre-departure programmes, the Ministry of Labour often holds awareness raising campaigns for the public on the procedures to be followed by those considering emigration to verify authenticity and accreditation of job offers abroad. This is also with a view to implement the Anti-Trafficking in Persons Act 2011.

169. Intending emigrants are also free to visit the Ministry of Foreign Affairs for advice and clarity on pre-departure procedures.

170. Furthermore, Lesotho has cooperative efforts with other countries to verify the authenticity and accreditation of the jobs in such countries. An example would be that in early 2013 about 5 new grandaunts from tertiary institutions applied through internet for various jobs abroad only to find that such job offers did not exist. These were intercepted by the Ministry of Labour in collaboration with the Ministry of Foreign Affairs and INTERPOL and the country of destination.

171. In addition, as a cooperative effort with South Africa, it is a requirement for every child whether accompanied or not to be in possession of parental consent letters, birth certificates and valid passport when crossing borders. This ensures their safety and reduces the incidences of child trafficking. The two countries have established bilateral forums where they share information and ideas to overcome cross border related issues.

31. Measures taken to prevent trafficking through information exchange and harmonization of legal procedures aimed at investigating and prosecuting trafficker through international, regional and bilateral cooperation with countries of origin, transit and destination.

172. Lesotho has established the Trafficking in Persons Data Collection System which is a national data base for trafficking in persons cases in the country.

173. On the bi-lateral sphere, Lesotho has entered into the Memorandum of Understanding with the South African Police, Extradition Treaty, Memorandum of Understanding on Mutual Legal Assistance, Declaration of Intent between the Ministries of Gender, Declaration of Intent between the Ministries of Home Affairs and the Memorandum of Understanding between the Ministries of Social Development; as measures aimed at combating trafficking in persons.

174. At national level, Lesotho has enacted the Anti-Trafficking in Persons Act, 2011, the 2015 Anti-Trafficking in Persons Regulations and the Children's Protection and Welfare Act, 2011 which criminalise trafficking in persons and provides for penalties.

175. Administratively, the Ministry of Home Affairs has established a Multi-Sectoral Committee on trafficking which amongst others assists in facilitating regularization of victims through the Department of Immigration.

176. One case involved a Chinese woman brought into the country for forced labour and forced prostitution by Chinese men. One of the perpetrators was arrested and sentenced to 15 years imprisonment without the option of a fine while others had disappeared. However, on appeal, the decision was overturned on procedural irregularities. The migrant workers who are victims of trafficking are protected from prosecution whether citizen or not by the laws; namely the Anti-Trafficking in Persons Act, The Children's Protection Act to mention but a few. To illustrate this, the woman in the above case was repatriated to her country of origin - China.

32. Measures taken to prevent and eliminate trafficking and smuggling of migrants especially women and children through addressing the root causes; training for judiciary, law enforcement officials, border guards and social workers; systematic monitoring and periodic evaluation to detect illegal and clandestine movement of migrant workers and members of their families.

177. The 6th Amendment to the Constitution 2011 established the Victims of Crime Support Office which had been operational since 2006. The Office provides practical and emotional support to victims of crime in general. It also informs victims of their rights; and their role in the criminal justice process. It further provides counseling and referrals, information regarding the mechanisms of the criminal justice process including the status of their cases. It provides information on redress through formal and informal justice procedures and protects victims from intimidation and further victimization.

178. The Government has also developed the following measures aimed at ensuring systematic monitoring and periodic evaluation of collection and analysis of data related to trafficking and exploitation of persons:

- Framework for Mainstreaming Migration into National Development Plans
- Framework for Negotiating Bilateral Labour Agreements
- Framework for Collecting Migration Data
- Establishment of the National Consultative Committee on Migration and Development

- National Consultative Committee on Migration and Development Strategic Plan 2013-15
- Trafficking in Persons Data Collection System

179. With a view to address trafficking and smuggling of persons, Home Affairs facilitated training of trainers for 50 criminal justice practitioners which comprised of 5 Prosecutors and members of the Judiciary, 10 Immigration Officials, 10 Labour Inspectors, 15 Police Officers (CGPU), 2 Legal Officers from Home Affairs, and Commissioner for Refugees Officer working as the Secretariat of trafficking in persons issues.

180. Ministry of Home Affairs in collaboration with the Police, Justice, Education and Labour or separately holds regular educational and awareness trainings on trafficking issues which implement the Anti-Trafficking in Persons Act 2011, other related laws, policies and programmes. The Ministry of Home Affairs has held sensitization workshops on some of the provisions of the Convention for the Immigration Department.

181. Further the Ministry of Home Affairs partnered with the same ministry from South Africa to hold sensitization campaigns annually on the issues of human trafficking at porous borders being Maseru Bridge and Maputsoe. These were held in collaboration with civil society organizations such as Women and Law in Southern Africa. In August 2015 one week was dedicated to focus on the fight against human trafficking of women and children as well as labour exploitation of women from neighbouring countries with specific focus on Lesotho women. The following activities were carried out: symposium focusing on labour exploitation and related issues; a symbolic march at the Maseru bridge where both South African and Lesotho women gave their memorandum of demands to authorities representing their countries. The march called for an end to human trafficking and request more stringent measures of combating trafficking of women and children. The march culminated in a rally on a farm where the leadership of both countries had an opportunity to address women. That rally was held at Mooderport farm.

182. Another measure undertaken in this regard is that World Vision, Development for Peace Education (DPE) and others have held youth parliament forums mostly at remote rural areas at which one of the issues under discussion was trafficking in persons. With the support of World Vision Lesotho and the United States Embassy, brochures, billboards, posters and pamphlets have been produced and disseminated across the country. The Media has also played a major role in sensitization campaigns through the production and show of films on national television and play on various radio stations.

183. The country led by the Ministry of Gender also commemorates the 16 days of activism against gender based violence at which human trafficking is one of the sensitization issues.

184. Victims of trafficking reported in between the period 2012-2013, as shown in table 3 below as per the National Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016; were primarily Lesotho nationals, although Indian, Zimbabwean, South African, Ethiopian and Pakistani nationals who were trafficked primarily for purposes of forced labour were also rescued and repatriated.

Table 3

<i>Gender</i>	<i>2012</i>	<i>2013</i>
Male	4	1
Female	6	1
Minor male	1	2
Minor female	4	0

185. The Government has committed itself on reducing poverty by developing an integrated programme to address poverty in the country. To implement this, in 2014, the King was named the African Nutrition Champion at the African Union Heads of States and Governments. His Majesty urged his Government to give nutrition priority every time the budget is allocated in an effort to invest in increased food production. The Government subsidizes the subsistence farmers with fertilizers and seeds for ploughing for improved food production. There is also the Office of the First Lady which caters for nutritional needs of vulnerable children and disabled persons. Regarding empowerment of women, the office creates economic opportunities by training them on small scale business entrepreneurship.

186. Reference is made to 32 above for further information and cases of human trafficking.

33. Steps taken to establish and operationalize victim care centres, information on programmes aimed at identifying, assisting, reintegrating and or repatriating victims of trafficking, steps taken to ensure that victims of trafficking especially women and children have access to shelter, quality medical care, counseling, financial support, adequate housing, training opportunities and free legal services.

187. Although the Government has not yet established a centre for victims of trafficking as the law requires, the existing private safe homes for vulnerable children are being used to accommodate victims of trafficking in persons. There are also foster homes and centres dedicated for gender based violence where victims of trafficking are referred. While victims are at these homes, they are provided with counseling, support and care including quality medical care and free legal services regardless of their nationalities. Additionally, they are empowered with training on economic opportunities and life skills as another way to reduce their vulnerability. The Anti-Trafficking in Persons Act establishes a fund for victims of human trafficking. However, the Government is still working on the modalities of putting it in place.

188. Lesotho has developed a formal mechanism to refer victims to care centres and service providers through the gazettelement of the Anti-Trafficking in Persons Regulations, 2015. The national action plan to implement the Act was launched in July 2014 and the activities mentioned above are being carried out by various stakeholders.

Article 69

34. Measures taken to ensure that migrant workers and members of their families in an irregular situation are offered possibility of regularization in compliance with the Convention; Actions taken to improve the protection and assistance afforded to nationals abroad and efforts to promote regularization of their situation.

189. Aliens Control Act, 1966 provides for payment of penalties for migrant workers and members of their families who are in an irregular situation. To implement this provision, there are joint inspections by the Department of Immigration, Ministry of Labour and the Police whereby those in conflict with the law are brought to book. There are also awareness campaigns through various media houses as a result of which some migrant workers present themselves to Immigration offices to have their situations regularized by payment of penalties or being granted waiver of payment of accumulated penalties.

190. In addition the courts of law impose sentences mandating department of Immigration to regularize migrant workers who are in irregular situation. In this avenue there cannot be a waiver, failure of payment of the penalty results in deportation.

191. Furthermore, as Lesotho is in a unique situation with South Africa by being completely surrounded by South Africa, most Lesotho nationals are migrant workers there. As a result the two countries have signed declarations of intent aimed at addressing migration issues. To this effect, South Africa grants amnesty to Basotho migrant workers who are found to be in an irregular situation instead of huge fines and declaring them as undesirable persons to enter South Africa even while on transit. The cases of those abroad are dealt with in consultation in Lesotho Embassies and Consular Offices abroad. There is also the Anti-Trafficking in Persons Act which provides for regularization of victims of trafficking in persons by issuing them with special residence permits.

Part II

Brief information regarding the protection of migrant workers and members of their families:

(a) Laws, Bills and their respective regulations

192. Lesotho has enacted the following laws and Regulations regarding the protection of Migrant workers and members of their families:

- Lesotho Constitution 1993 guarantees the protection of fundamental human rights and freedoms. Section 4 stipulates that “every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms”.
- Aliens Control Act 1966 regulates entry, sojourn and departure of every person in the country.
- Lesotho Citizenship Order 1971 governs and reaffirms the right to nationality.
- Anti-Trafficking in Persons Act 2011 and combats trafficking in persons by providing for prevention, protection and prosecution measures and makes provision for cooperation with other countries in this regard.
- Children’s Protection and Welfare Act 2011 makes provision for protection of the rights and interest of children in conflict with the law and those affected by the law.
- Registration of Births and Deaths Act 1973 provides for registration of births of children born in the country including those of migrant workers and members of their families. The Act also provides for registration of births of Basotho migrant workers children born abroad.
- Registration of Births and Deaths Bill 2015 is to shorten the period of compulsory registration of births from one year to three months, amongst others.
- Labour Code 1992 governs the rights of workers in the private sector. It also safeguards the rights of children by prohibiting child labour and exploitation.
- Education Act 2010 upholds the right to education by providing for free and compulsory education for all children in Lesotho.
- Sexual Offences Act 2003 criminalizes marital rape and protects all persons from sexual exploitation.
- Speedy courts Trial Act 2001.

- Criminal Procedure and Evidence Act 1981 reaffirms the Constitutional guarantee to right to fair trial and equality before the law for all persons in Lesotho.
- Human Rights Commission Bill 2015 which is to operationalize the Commission as established by the 6th Amendment to the Constitution 2011 makes provision for the administration and regulation of the activities of the Commission. which the current national human rights institutions are lacking.

(b) Institutions (and their mandates) responsible for protection of migrant workers and members of their families

Office of Ombudsman

193. The Office of the Ombudsman was established in terms of Section 134 of the Constitution. The Ombudsman is viewed as complementing the work of the Judiciary. It provides very authoritative albeit informal and speedy procedures that render quick complaints and settling disputes.

194. The Ombudsman has a constitutional and legal mandate which emanates from the Ombudsman Act 1996 to investigate actions of maladministration by administrative officers and also protects the rights of individuals who believe to be victims of unjust acts by Statutory Corporations.

195. It has also undertaken awareness raising activities through public gatherings and radio programmes on issues of human rights and maladministration.

196. The Ombudsman has, pursuant to the provisions of Section 10 (b) of the Ombudsman Act, carried out inspections of police and military cells, all Correctional Institutions and establishments as well as Government hospitals and on that basis made appropriate recommendations though such recommendation are not binding as it has no enforcement powers.

Police Complaints Authority

197. The Police Complaints Authority (PCA) is one of the institutions that promotes and protects human rights in Lesotho. It is established under Police Service Act 1998. PCA has authority to investigate and report to the Police Authority or the Commissioner in respect of any complaint from a member of the public about the conduct of a member of the Police Service with regard to corruption and human rights. The Aim of the authority is to assist in effective policing and observance of human rights by the police service.

198. To facilitate accessibility of services, the Authority has signed Standard Operating Procedures which assist to circumvent the problems associated with lodging of complaints against the police with the Minister or the Commissioner. These procedures allow submission of complaints to police offices in the districts who then forward the complaints to PCA for investigation. PCA works in close collaboration with the police and has held training workshops on human rights protection, stock theft and customer care. Their success is dependent on reports that reflect compliance of human rights by the police service.

Directorate on Corruption and Economic Offence

199. The Directorate on Corruption and Economic Offences (DCEO) has been established by Prevention of Corruption and Economic Offences Act 1999. It is a body whose core business is to fight corruption and economic offences. The mandate of DCEO entails public education, prevention and investigations. DCEO educates the public against the consequences of corruption and thereby solicits and fosters public support in the fight

against corruption. The prevention aspect entails examining practices and procedures of public bodies with a view to strengthen operational systems so as to reduce the opportunities of corruption. DCEO is responsible for investigating complaints or allegations of corruption and economic offences and refers matters that warrant prosecution to the Director of Public Prosecutions for directives.

Human Rights Unit

200. Human Rights Unit was established in 1995. The objective of the Unit is to inculcate a culture of observance and respect for human rights. The Unit receives complaints from the public and undertakes investigations of alleged violations of human rights. It undertakes awareness raising campaigns and reviews legislation and policies for compatibility with developments in the international sphere. The Unit has facilitated human rights trainings for law enforcement agencies, members of Parliament, members of the Judiciary, primary school teachers, youth and Inter Sectoral Committee on Human Rights and commemorates international human rights day annually. It is also responsible for compilation, submission and presentation of international and regional State Party Reports.

Gender Department

201. The Department of Gender is under the Ministry of Gender and Youth, Sports and Recreation and is tasked to advocate, promote and nurture for gender equality. The Department has already achieved the following inter alia: an outreach center for abused women and children – which provides a short term refuge for abused women and children by providing basic medical, counseling and psychiatric services; advocacy programmes so as to curb gender based violence and with the support of Millennium Challenge Account-Lesotho, advocates for reform of existing laws to remove discrimination and for the enactment of laws to end gender based violence.

Child and Gender Protection Unit

202. The Child and Gender Protection Unit (CGPU) was established in 2002 as a specialized unit within the Lesotho Mounted Police Service (LMPS) to respond to the increasing violence against women and children. The Unit provides user-friendly reporting environment that ensures confidentiality between victims of crime and police; responds and investigates promptly all cases involving vulnerable groups including children as well as victims of gender-based violence and trafficking in persons.

203. The Unit is operational in all 11 police districts. CGPU raises awareness through media, public gatherings, church and school visits on the rights and responsibilities of children and women and safeguards their rights.

204. The Unit is keeping a profile of children in need of care countrywide. Through the assistance of UNICEF, the Unit is currently developing database which will help generate meaningful reports. In an attempt to provide user- friendly reporting environment, the Unit has been assisted by Global Fund with prefabricated mobile offices in some of the districts, where office space compromised victims' confidentiality.

Victims of Crime Support Office

205. Victims of Crime Support Office was set up within the Maseru Magistrates Court in 2006. The Office provides practical and emotional support to victims. It informs victims of their rights and of their role in the criminal justice process, it provides counseling and referrals, information regarding the mechanisms of the criminal justice process including the status of their cases. It also provides information on redress through formal and

informal justice procedures and protects the victim from intimidation and further victimization.

206. The office has managed to reach the central region of the country in an effort to inform the public about its services through public gatherings with the assistance of the police.

Ministry of Home Affairs

207. Its mandate is to strive for a stable, prosperous and peaceful Lesotho by providing the best immigration, safety and security services.

208. Ministry of Labour which mandated to adhere to International Labour Standards by promoting and facilitating employment opportunities, skills development required by labour market, sound labour relations management, tripartism, social dialogue, social justice, healthy and safe working conditions, and accessible and timely dispute resolution for all stakeholders.

209. Ministry of Foreign Affairs has the mandate to establish, promote and maintain good relations between Lesotho and the International Community for the advancement and enhancement of Lesotho's prosperity and for the protection of her sovereignty, independence and territorial integrity.

210. Ministry of Social Development is mandated to lead and facilitate the provision of sustainable social development services that is universally accessible to all groups in Lesotho in collaboration with other key stakeholders.

211. Ministry of Police and Public Safety has the mandate to provide safety and security to all persons in the country.

212. Ministry of Law, Constitutional Affairs and Human Rights, whose mandate is to provide prompt and efficient legal services with the aim of upholding the Constitution, rule of law and promoting democracy and good governance.

213. Ministry of Gender whose mandate is to ensure equality of all opportunities between women, men, girls and boys, so that development efforts have an equal impact on all gender issues.

214. Ministry of Planning whose mandate is to strive to achieve high, shared and sustainable employment creating economic growth and development through results oriented national development plans, policy advice to Government, mobilization and coordination of resources.

215. Ministry of Justice is charged with the dispensation and administration of justice and the rehabilitation of offenders.

216. Ministry of Health whose mandate is to provide an efficient and compassionate health care and social welfare system, with particular emphasis on the prevention and eradication of priority health and social welfare problems that are amenable to cost-effective interventions.

217. Ministry of Education whose mandate is to develop and implement policies which ensure acquisition of functional literacy among all Basotho and development of a productive, quality human resource base through education and training.

218. The Human rights Commission which is yet to be operational shall be mandated to investigate complaints of violations and abuses of human rights and make binding decisions and recommendations.

(c) **Policies, programmes and action plans covering migration, their scope and financing**

National Vision 2020

219. The Lesotho National Vision establishes a long term vision for Lesotho by looking beyond the short and medium term plans and macro-economic adjustment programmes. It explores options for achieving economic, social, political and human development progress to the year 2020. It identifies alternative development strategies suitable for Lesotho's situation, which yield: a stable democracy, peace and security, stability domestically and regionally, a healthy and well developed human resource base, a sound economy with decent standard of living, a well-managed environment and advanced technology and good governance, considerable progress on the human development front (as broadly defined) among other things. The Vision is based on the principles of democracy, good governance and human rights.

Poverty Reduction Strategy Paper

220. To achieve some of the goals and priorities outlined in the Vision 2020, the Government adopted the three year PRSP in 2004, whose aim was to provide development efforts on the fight and alleviation of poverty. At the expiration of PRSP in April 2008, the Interim National Development Framework (INDF) was established to serve as an interim bridge guiding development process (planning and resource allocation) between the end of PRSP and the publication of National Growth Strategy (NGS) which will facilitate the implementation of Vision 2020.

221. The INDF will operate until 2011/12 before the operation of NGS which will cover a period of five years. The objectives of INDF are to promote good governance, improve public service delivery, accountability and poverty reduction.

222. PRSP was highly credible in terms of addressing the priorities for Lesotho. However it had some shortcomings. On hindsight it became obvious that it did not give adequate attention to other government components that are equally important but do not directly reduce poverty. Examples are safety and security, environmental and land reclamation issues.

Justice Sector Vision and Strategy

223. In an effort to strengthen public confidence in the justice sector, the Government developed a National Vision and Strategy for the Justice Sector in 2005. The Vision and Strategy strives to have a justice sector committed to providing a professional service in safety and security, accessible and efficient delivery of justice, improved rehabilitation of offenders, effective human rights protection system for all and promotion of zero tolerance to corruption.

224. The strategy envisaged the following human rights goals: amendment of the Criminal Procedure and Evidence Act to provide for protection of the rights of victims of crime; withdrawal of Lesotho's reservation to CEDAW; ratification of the two Optional Protocols to ICCPR; amendment of section 18 of the Constitution, justiciability of Economic, Social and Cultural Rights; establishment of a National Human Rights Commission and establishment of witness protection system and declaration under CAT facilitating submission of complaints. Although the implementation of the strategy has not been fully achieved, a Victims of Crime Support Office has been set up, Lesotho has acceded to the Optional Protocol to ICCPR and established the Human Rights Commission in 2011 which is yet to be operational.

225. The formal criminal justice system is further supported by the informal criminal justice system which involves the communities in settlement of minor disputes through the use of restorative justice process and community service.

Curriculum and Assessment Policy

226. Curriculum and Assessment Policy provides that education should strive for developing appreciation and acceptance of national culture and cultural diversity, history, values and norms basic for national unity and development, promoting basic understanding of democratic principles, human rights and responsibilities for effective participation and contribution to the life of society.

National Youth Policy

227. National Youth Policy aims at promoting dignity and self esteem of all Lesotho youth; ensuring their physical, intellectual and moral being. It calls for government to take all measures to accelerate their full participation in the socio-economic, cultural and political spheres of life. The Government works towards safeguarding young peoples' means of subsistence and their right to work by ensuring equal opportunities for the youth including young persons with special needs. Youth enterprise development programme is ongoing. More programmes aimed at the socio – economic empowerment of the youth are afoot.

- Draft Lesotho National Migration and Development Policy 2013
- Draft Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016
- Framework for Mainstreaming Migration into National Development Plans
- Framework for Negotiating Bilateral Labour Agreements
- Framework for Collecting Migration Data
- National Consultative Committee on Migration and Development Strategic Plan 2013-15

(d) Recent ratification of human rights instruments

- Convention on the Rights of Persons with Disabilities which was ratified in 2008
- International Convention for the Protection of All Persons from Enforced Disappearance, 2013

(e) Declarations on inter-state and individual complaint procedures

228. The Government is still considering ratifying interstate and individual complaint procedures; However, Lesotho has ratified the Optional Protocol to International Convention on Civil Political Rights regarding these procedures. This is due to the fact that the Government considers it important for exhaustion of all local remedies and invitation of fact finding missions before individuals can use these mechanisms.

(f) Studies on the situation of migrant workers and members of their families

- The Government has undertaken research by inspection and head count throughout the country in 2015. The finding showed that there are approximately 2080 non-citizens in the country although this did not cover all those in the textile and manufacturing industries.
- With the support of UNDP, the Government undertook rapid assessment study on trafficking in persons 2009. It shows that women and children are mostly vulnerable

to trafficking although it did not disaggregate by nationality, therefore not clear how many migrants in the country fall prey to this crime.

- With the support of Southern African Migration Programme (SAMP), African Caribbean Pacific Observatory on Migration, European Union and UNFPA amongst others, the Government undertook a study on Remittances Framework in Lesotho: Assessment of policies and programmes promoting multiplier effect.

Part III

1. Statistical data and qualitative information for the past three years

(a) Volume and nature of migration flows

229. The Department of Immigration does not keep any comprehensive records of migration flows in or from Lesotho; hence there is no data for the any period. However studies by independent researchers such as Jonathan Crush show that Lesotho is experiencing a change migration flows in that it no longer men who migrate to South African mines but also unskilled labour force and skilled labour force such as health practitioners, engineers and other professionals who do migrate to South Africa and other countries.

(b) Statistics of migrant workers in detentions centres

230. Currently, there are no migrant workers in detention centres in Lesotho. We do not have any report of Basotho national in detentions in other countries.

(c) Statistics of migrant workers and members of their families who have been deported

231. There no comprehensive data on the number of migrant workers and members of their families that have been expelled/deported from Lesotho; however, the immigration records highlights that from 2006 to November, 2015 nine Chinese, two Ugandans, one Zambian, one Nigerian, seven Indians, one Sri Lanka national, five Malawians, one Ethiopian and three national of the Democratic Republic of Congo who were migrant workers have been deported. However, the records do not depict any information on any deportation of any member of families of the migrant workers in Lesotho who have been subjected to deportation.

232. Reference is made to Table 1 in Part 1 for more information.

(d) Number of non-accompanied migrant children separated from their parents

233. The migrant children are not separated from their parents.

(e) Remittances received from Basotho working abroad; legislation and policies relating to those transfers

234. Remittances transactions in the country are subject to the Deferred Pay Act, Foreign Exchange Controls. The institutions providing remittances transfer have to comply with Financial Institutions (Ancillary Financial Service Providers) (Licensing Requirements) Regulations 2003; Know your Customer (Financial Institutions) (Anti-Laundering) Guidelines 2000; Money Laundering and Proceeds of Crime Act 2008. Some of these laws and or regulations directly influence the volume of remittance flows.

Table 4
Mine migrant workers remittances by year, Lesotho

2005	237,872,510.00
2006	270,756,582.00
2007	296,684,892.09
2008	321,339,074.32
2009	331,572,797.56
2010	341,132,907.67
2011	345,927,403.61
2012	370,425,138.10

(f) Reported cases of trafficking and smuggling of migrants, investigations, prosecutions and sentences imposed on perpetrators

The table below shows victims of trafficking who were rescued in 2012-13.

<i>Gender</i>	<i>2012</i>	<i>2013</i>
Male	4	1
Female	6	1
Minor male	1	2
Minor female	4	0

235. According to Anti-Trafficking in Persons strategic framework and action plan 2014 - 16 there were seven cases reported since the enactment of the Act. Of those, only one case was completed and conviction secured although on appeal sentence was overturned.

(g) Legal assistance services provided to migrant workers and Basotho working abroad

236. Embassies and Consulate offices facilitate the verification of identity of Basotho migrant workers working abroad as well as the issuance of their travel documents and their repatriation to Lesotho. Detainees are visited regularly by the staff of the Embassies, Consulates and various government officials. Legal assistance is provided by the Government in the cases of detention or expulsion. Reference is made to Part III question 17.

2. Additional information relating to the Convention

237. All information has been provided throughout this report.