

**Submission by the United Nations High Commissioner for Refugees (UNHCR)
For the Office of the High Commissioner for Human Rights Compilation Report**

Universal Periodic Review:

LESOTHO

I. BACKGROUND INFORMATION

The Kingdom of Lesotho (Lesotho) is a State party to the *1951 Convention relating to the Status of Refugees*, the *1967 Protocol relating to the Status of Refugees* (hereinafter jointly referred to as the *1951 Convention*) (acceded on 14 May 1981) and the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (acceded on 10 September 1969). Lesotho is also party to the *1954 Convention relating to the Status of Stateless Persons* (4 November 1974), and to the *1961 Convention on the Reduction of Statelessness* (24 September 2004). In January 2012, Lesotho ratified the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*. Lesotho is also State party to several international human rights and humanitarian law instruments.¹

Lesotho currently hosts thirty-seven asylum seekers and refugees, most of whom are self-reliant. UNHCR has requested Lesotho to grant unconditional citizenship to the refugees who have been in the country for five years or more, in accordance with the existing national legislation.² The Government of Lesotho cooperates with UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum-seekers, stateless persons, and other persons of concern. It also fully cooperates with the UN Development Programme (UNDP), the agency representing UNHCR on the ground, in providing documentation and assistance to refugees. UNHCR withdrew from Lesotho in the mid-1990s, and there are currently no assistance programmes in the country. The Lesotho National Commissioner of Refugees manages refugee issues in consultation with UNDP and UNHCR Regional Office for Southern Africa.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends the Government of Lesotho for cooperating with the office and other humanitarian organizations in providing protection and assistance to refugees, asylum-seekers, stateless persons, and other persons of concern.

¹ Lesotho is party to the *Convention on the Elimination of All Forms of Racial Discrimination* (4 November 1971); *International Covenant on Economic, Social and Cultural Rights* (9 September 1992), *Convention on the Elimination of all Forms of Discrimination against Women* (22 August 1995); *Convention on the Rights of the Child* (10 March 1992); *Convention on the Rights of Persons with Disabilities* (2 December 2008); and the *United Nations Convention against Transnational Organized Crime* (14 Dec 2008), amongst others.

² 2014 UNHCR regional operations profile – Southern Africa, available at <http://www.unhcr.org/pages/49e485586.html>.

Lesotho allows domestic and international human rights groups to operate within its borders without government restriction.

UNHCR recognises strides towards ensuring proper protection of refugees in Lesotho. The enactment of the *Lesotho Refugee Act, 1983*, ensures standards for protection of refugee rights.

III. CHALLENGES, CONSTRAINTS AND RECOMMENDATIONS

Issue 1: Trafficking in persons

Lesotho is a source, transit, and destination country for trafficking in persons including men, women and children. Women and children are subjected to conditions of domestic servitude, forced labour, and commercial sexual exploitation.³

Lesotho enacted the *Anti-Trafficking in Persons Act* in 2011 to implement the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons* (24 September 2003). In 2012, Lesotho enacted the *2010 Penal Code Act*, which provides against abduction (s 46) and unlawful sexual acts with children (s 49). The Multi-Sectorial Committee on Combating Trafficking in Persons is responsible for providing recommendations on legislation and policies to prevent trafficking.

However, the state lacks a comprehensive program to curb trafficking and provide support to victims. In 2012, Lesotho saw a trend of acquittals of alleged trafficking offenders. There are no assistance programs for victims of trafficking except those provided by NGOs.

Recommendation:

- Ensure effective implementation of the new legislation on trafficking and access of victims of trafficking with international protection needs to RSD procedures and assistance.

Issue 2: Prevention of Statelessness and Protection of Stateless Persons

While the nationality legislation of Lesotho is to a large extent in compliance with international standards on prevention of statelessness, a few gaps remain. There is no provision for grant of nationality for foundlings, which may render children stateless. Furthermore, Basotho citizens who were themselves born abroad cannot pass on their Lesotho nationality to their children born abroad, which may lead to statelessness.⁴ The nationality legislation also contains some gender discriminative elements. Under *Citizenship*

³ *Ibid.*

⁴ Section 39 of the Constitution, Persons born outside Lesotho after the coming into operation of the Constitution: *A person born outside Lesotho after the coming into 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*, and UN High Commissioner for Refugees (UNHCR), *Statelessness & Nationality in South Africa*, March 2013, page 23, available at <http://www.refworld.org/docid/519df3594.html>.

Order 1971 and the 1993 *Constitution*, Basotho women cannot pass their nationality to their foreign spouses, unlike Basotho men who have such right.

Lesotho does not have a statelessness determination procedure and data on stateless persons in Lesotho is currently not available.

Recommendations:

- Amend nationality legislation with regard to foundlings and children born abroad to parents who were themselves born abroad in order to bring the legislation into full compliance with the *1961 Convention*; and
- Establish a statelessness determination procedure and a domestic legal framework for protection of stateless persons in line with the standards set out in the 1954 Convention in order to ensure that stateless persons are able to enjoy their human rights.

Issue 3: Societal violence and discrimination of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons

In Lesotho, although sodomy is prohibited as a common law offence, same sex relations between women are not overtly proscribed under the current legislation. The prohibition on male homosexuality in Lesotho has also been given a statutory flavor by Section 187 (5) of the *Criminal Procedure and Evidence Act*. Under Schedule 1 part II of the same Act, sodomy has been listed as one of the offences in respect of which arrests may be made without a warrant. However, the above-mentioned common law and statutory offense has not been routinely enforced by the authorities, excepting in situations involving non-consensual relations. Furthermore, although *Section 52 of the 2010 Penal Code Act*⁵ brought about the implied legalization of same sex relations between persons of the same sex in Lesotho, the *2003 Sexual Offences Act* also did not explicitly repeal the common law offence of sodomy.⁶ The ambiguity surrounding the legality and illegality of homosexual relations in Lesotho negatively affects the economic, social and cultural rights of LGBTI citizens of Lesotho.

In relation to the economic, social and cultural rights of LGBTI persons, the marriage institution in Lesotho is governed by customary law and the common law. The common law aspect of marriage, also known as a civil marriage is governed by the *1974 Marriage Act*.⁷ The common law definition of marriage is “a union of one man with one woman, to the exclusion, while it lasts, of all others.”⁸ This remains the definition of marriage as understood in the civil marriage sphere in Lesotho. This shows that marriage is an exclusive domain of heterosexuals in Lesotho. Moreover, although no mention of homosexuals is made anywhere in the Adoption Proclamation, homosexuals may not adopt as a couple because they are not allowed to enter into the institution of marriage, and because of the criminalization of male homosexuality. The above-mentioned restrictions place LGBTI individuals on an unequal basis in comparison to heterosexual citizens.

⁵ <http://www.lesotholii.org/ls/legislation/act/2012/6>.

⁶ See Article 37.

⁷ <http://www.lesotholii.org/ls/legislation/act/1974/10>.

⁸ *Id.*

Finally, although Lesotho has put in place a practice of protection and assistance to the LBGTI community, in close collaboration with MATRIX Support Group⁹ (a Non-Profit Organization recognized by the Lesotho Law Office in November 2010), significant protection gaps remain.¹⁰ LGBTI individuals often face daily discrimination by private individuals, lack of access to basic health services, religious activities, and exclusion from the labour market.¹¹ Violence against LGBTI persons often go unreported due to the fear of victims being identified publicly as LGBTI.¹² A 2011 study also found that homosexuals in Lesotho are at a high risk of contracting HIV Aids, with stigma against the latter remaining widespread.¹³ The Constitution of Lesotho does not explicitly address the protection and rights of LGBTI persons. However, the equal treatment of such individuals is implied under Lesotho's Bill of Rights, including the following: section 19 and the right to equality before the law; section 8 and the respect of one's dignity; and section 18 and the right to freedom from discrimination. Lesotho should pass specific legislation or administrative regulations on protection of the rights of this minority group.

Recommendations:

- Enact positive laws and legislation that explicitly address discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons;
- Repeal legislation criminalizing male homosexuality; and
- Increase LGBTI individual access to basic social services, including health, education, HIV Aids care, and employment, through the engagement of civil society and the creation of organizations exclusively focused on the protection of LGBTI persons.

Issue 4: Sexual and Gender Based Violence (SGBV)

Lesotho has high prevalence of violence against women. Domestic and sexual violence, remains, in many cases, underreported. While welcoming the enactment in 2003 of the Sexual Offences Act, which recognizes marital rape as an offence, and the 2010 Penal Code which prohibits forced prostitution, UNHCR notes that there is no specific legislation to eliminate violence against women, including domestic violence and the use of mediation in cases of violence, which can lead to re-victimization of women who have suffered from violence. While noting the establishment of the roving legal aid clinics and the launch of the pilot project at Lapeng Care Centre, there is a concern that this is the only center in the country providing services to victims of violence, and that it provides only "day service" and is not exclusively for women victims of domestic violence.

Recommendation:

- Prioritize the enactment of the draft Domestic Violence Bill; and put in place comprehensive measures to prevent and address violence on the basis of sex.

⁹ <http://www.osisa.org/lgbti/lesotho/matrix-support-group>

¹⁰ http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf

¹¹ <http://lestimes.com/?p=6102>

¹² <http://refworld.org/cgi->

[bin/texis/vtx/rwmain?page=search&docid=517e6e1518&skip=0&query=lgbt%20lesotho](http://refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=517e6e1518&skip=0&query=lgbt%20lesotho)

¹³ <http://www.ncbi.nlm.nih.gov/pubmed/21726457>

**Human Rights Liaison Unit
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UNHCR
June 2014**

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

LESOTHO

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Lesotho.

Committee on the Elimination of Discrimination against Women

CEDAW/C/LSO/CO/1-4, 50th Session

8 November 2011

Positive Aspects

4. The Committee welcomes the progress achieved since the ratification of the Convention by the State party in 1995, including the legislative reforms that have been undertaken and the adoption of a range of legislative measures. Specific reference is made to: a) The Sexual Offence Act (2003), recognizing marital rape as an offence; b) The Legal Capacity of Married Persons Act (2006); c) The Labour Code Wage Amendment Act (2009); d) The Education Act (2010), which provides for free and compulsory primary education; e) The Anti-Trafficking in Persons Act (2011), which criminalizes all forms of slavery and provides for harsh penalties for the perpetrators; and f) The Children's Protection and Welfare Act (2011).

Trafficking

24. While welcoming the enactment of the Anti-Trafficking in Persons Act (2011) to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the enactment of the Children's Protection and Welfare Act (2011) and the Memorandum of Understanding with the South African police, the Committee remains concerned at the continuing prevalence of trafficking in women and girls in the country, as well as at the low reporting rate. The Committee is also concerned at the lack of shelters and counselling services in the State party for victims of trafficking and prostitution.

The Committee calls on the State party to fully implement article 6 of the Convention, including through: (a) Effective implementation of the new legislation on trafficking, ensuring that perpetrators are prosecuted and punished and that victims are adequately protected and assisted; (b) Addressing root causes of trafficking and prostitution, including poverty, in order to eliminate vulnerability of girls and women to sexual exploitation and trafficking, and undertaking efforts for the recovery and social integration of the victims; (c) Providing training on how to identify and deal with victims of trafficking and on the provisions of the anti-trafficking legislation to the

judiciary, law enforcement officials, border guards and social workers in all parts of the country, especially in rural and remote areas;

(d) Ensuring systematic monitoring and periodic evaluation, including the collection and analysis of data, of trafficking and exploitation of women in prostitution, and to include such data in its next periodic report; (e) Increasing efforts for international, regional and bilateral cooperation with countries of origin, transit and destination in order to prevent trafficking through information exchange, and harmonize legal procedures aiming at prosecution of traffickers; (f) Taking necessary steps to ensure that trafficked women and girls have access to quality medical care, counselling, financial support, adequate housing and training opportunities, as well as free legal services.

Nationality

26. The Committee is concerned that the Citizenship Order 1971 does not provide Mosotho women with the same rights as men to acquire or transmit their nationality. In particular, the Committee is concerned that Mosotho women cannot pass their nationality to their foreign spouses, unlike Mosotho men who have such right by marriage. The Committee regrets the absence of political will on the part of the State party to change the situation. The Committee is further concerned at the difficulties encountered by the population of the State party, especially in rural and remote areas, to obtain passports.

The Committee urges the State party to: (a) Amend its legislation on citizenship in order to bring it into full compliance with article 9 of the Convention; (b) Ensure access to passports by the whole population, including in rural and remote areas.

Violence against Women

22. The Committee expresses concern at the high prevalence of violence against women in the State party, in particular domestic and sexual violence, which remains, in many cases, underreported, as well as at the absence of an expressed political will to place high priority on the elimination of violence against women. While welcoming the enactment in 2003 of the Sexual Offences Act which recognizes marital rape as an offence, the Committee is deeply concerned at the absence of specific legislation to eliminate violence against women, including domestic violence, and at the use of mediation in cases of violence, which can lead to re-victimization of women who have suffered from violence. While noting the establishment of the roving legal aid clinics and the launch of the pilot project at Lapeng Care Centre, the Committee is concerned that this is the only center in the country providing services to victims of violence, and that it provides only “day service” and is not exclusively for women victims of domestic violence.

The Committee urges the State party to: (a) Give high priority to the enactment of the draft Domestic Violence Bill; put in place comprehensive measures to prevent and address violence against women and girls, recognizing that such violence is a form of discrimination against women and constitutes a violation of their human rights under the Convention and a criminal offence; and ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that

perpetrators are prosecuted and punished, in accordance with the Committee's general recommendation No. 19; (b) Provide mandatory training for judges, prosecutors and the police, especially those who conduct mediation in cases of domestic violence, on the strict application of legal provisions dealing with violence against women; and train police officers on procedures to deal with women victims of violence;

(c) Encourage women to report incidents of domestic and sexual violence, by destigmatizing victims and raising awareness about the criminal nature of such acts.