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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO UNIVERSAL PERIODIC REVIEW OF LESOTHO**

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*Composed of 60 eminent jurists and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

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## Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Lesotho.
2. In this submission, the ICJ raises concerns and makes recommendations about the following issues:
  - a. access to education for children with disabilities;
  - b. revocation of practising certificates of legal practitioners working for non-governmental organization (NGOs);
  - c. the right to equality and non-discrimination for lesbian, gay, transgender, intersex and queer (LGBTIQ+) persons.

### I. **The right to education for children with disabilities**

- a. Failure to fully implement the Inclusive Education Policy
3. During its third UPR cycle, Lesotho accepted four recommendations relating to ensuring access to inclusive education for all children.<sup>1</sup> Despite the enactment of disability-specific legislation in 2021, and given the limited progress in implementing the Lesotho Inclusive Education Policy (LIEP) of 2018 through a dedicated strategic plan, the third UPR cycle recommendations are still in the process of being implemented.
4. The Persons with Disability Equity Act (PDEA)<sup>2</sup> of 2021 domesticates Lesotho's legal obligations under the Convention on the Rights of Persons with Disabilities (CRPD) and protects a wide range of rights of persons with disabilities, including the right to "inclusive education" under section 23. The PDEA also aims to establish the Persons with Disability Advisory Council (the Council) and provides "for equal opportunities and recognition of rights of persons with disabilities".
5. The Committee on the Rights of the Child has expressed concern about "limited access for children with disabilities to inclusive education," noting the lack of assistive devices and a dearth of specialized teachers.<sup>3</sup> Additionally, the Special Education Unit within the Ministry of Education and Training does not have adequate human and financial resources to effectively implement the LIEP.<sup>4</sup>
6. In April 2023, the ICJ published a research paper expressing concern that the abovementioned challenges persisted alongside other obstacles, including:
  - absence of a coordinated plan to implement the LIEP;
  - unsafe and inaccessible schools' infrastructure;
  - inadequate funding and inappropriate fees levied on parents;
  - inadequate and insufficiently frequent pre- and in-service training of teachers;
  - persisting legislative gaps and inconsistencies, especially in regard to hostel/boarding facilities and private schools;
  - stigma and social exclusion; and

- limited access to learning materials.<sup>5</sup>
7. Many children with disabilities are also segregated from their peers into special schools, including special boarding schools,<sup>6</sup> which the CRPD Committee has explicitly recognized as a form of “institutionalization” that “undermines community inclusion and leads to increased pressure to place children in institutional settings”.<sup>7</sup>
  8. The failure to ensure inclusive education for children with disabilities violates their right to education under article 24 of the CRPD, and their rights to non-discrimination and equality before the law.

## **Recommendations**

9. In light of the foregoing, the ICJ calls upon the HRC and the Working Group on the UPR to recommend to the Lesotho authorities:
  - Invest in and carry out regular pre- and continual in-service training for teachers on inclusive education.
  - Accelerate the finalization of the implementation plan for the LIEP to ensure that the Ministry of Education and Training is comprehensively equipped to implement the Policy.
  - Scale up the Special Education Unit’s capacity to monitor the quality of inclusive education through quarterly school visits.
  - Desegregate the education system in Lesotho to ensure that children with disabilities can attend mainstream schools in and the communities in which they live.

### b. Delays in the full operationalization of the Disability Advisory Council

10. The Disability Advisory Council is an autonomous multi-stakeholder body,<sup>8</sup> that is crucial for implementing the PDEA.<sup>9</sup> Since the enactment of the PDEA, it has taken three years to establish the Council.<sup>10</sup> However, the Council has yet to appoint a Director General to manage it, as sections 13 and 14 of the PDEA require.
11. The delays in the Council’s establishment and in appointing a Director General have delayed the effective monitoring of the realization of the rights of persons with disabilities, including to inclusive education. The Lesotho National Federation of Organizations of the Disabled (LNFOD) has also cautioned that the Council, despite being an oversight body, “is accountable to the Minister of Social Development as it is appointed by the Minister and should on annual basis submit a progress and financial report” to the Minister. Furthermore, instead of being appointed by Council members, the Director General is also appointed by the Minister on the Council’s behalf.<sup>11</sup>

## **Recommendations**

12. In light of the foregoing, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:

- Expeditiously, and in full and meaningful consultation with civil society organizations (CSOs) and persons with disabilities, fully operationalize the Persons with Disability Advisory Council by swiftly appointing a Director General.

## II. **The revocation of practising certificates for NGOs and its impact on the administration of justice**

13. On 29 May 2024, the Law Society of Lesotho issued a general directive to the effect that all NGOs in Lesotho should cease offering legal aid services. Furthermore, on 3 June 2024, the Law Society issued letters to Women In Law Southern Africa (WILSA) and the Federation of Women Lawyers (FIDA), directing them to stop representing clients and to hand over clients' files to the Law Society within 48 hours of receiving the letter.<sup>12</sup> In a press statement released on 12 June 2024, the Law Society announced plans to establish an in-house legal aid unit to "provide legal assistance and representation to disadvantaged and vulnerable populations in Lesotho."<sup>13</sup>
14. The Law Society has seemingly based this decision on its resolution to comply strictly with section 7 of the Law Society Act,<sup>14</sup> which governs the issuance of practising certificates.<sup>15</sup> Under section 7(1), only "legal practitioners who are duly admitted by the High Court of Lesotho to practice as advocates, attorneys, notaries or conveyancers" can be admitted to membership of Law Society as "practicing" or "non-practicing" members.
15. Section 12 of Lesotho Constitution guarantees the right to a fair trial, including the right to legal representation in the context of criminal law proceedings,<sup>16</sup> but does not specifically provide for legal aid. Long before the enactment of the Constitution, Lesotho established a legal aid system through the introduction of the Legal Aid Act of 1978, which provides for the "granting of legal aid to the poor persons and for connected purposes" in both criminal and civil law contexts in specific circumstances.<sup>17</sup> However, many enduring challenges have hindered the provision of State legal aid services.<sup>18</sup> Challenges include: a large backlog of cases,<sup>19</sup> limited reach of services beyond the capital city, "the low capacity of the legal aid system" and its inability to deal generally with cases involving socio-economic and environmental rights as well as persons with disabilities and juveniles."<sup>20</sup> Lesotho's National Strategic Development Plan II 2022/2023<sup>21</sup> also underscored the importance of bolstering the legal aid system and decentralizing the provision of such aid beyond the capital city and urban areas.<sup>22</sup>
16. Although the Legal Aid Act does not envisage legal aid services provided by entities other than the Legal Aid Office, some private entities, including NGOs, provide some legal aid services to people experiencing poverty and other marginalized groups to supplement State-provided legal aid and plug some of the gaps left by the failure to fully implement the Legal Aid Act.<sup>23</sup> The scope of legal aid provided by NGOs, such as Seinoli Legal Centre, WLSA and FIDA, is, however, limited by the specific mandates of these organizations and thus may not supplement State-provided legal aid substantially.<sup>24</sup>
17. Section 7(1) of the Law Society Act does not specifically mention registration of entities, such as not-for-profit legal centres or law clinics. Section 7(2)(c) explicitly

allows for practising members who “though they are not resident nor maintain chambers or offices in Lesotho in the opinion of the Council practice their profession on a regular basis in Lesotho, participating actively in the administration of justice in Lesotho”.<sup>25</sup> This provision appears to indicate that individual accreditation for individual legal practitioners is contingent on such lawyers being members of a registered “chambers”.

18. While the section does not mention other entities and refers only to individual “legal practitioners”, it does not appear to distinguish between legal practitioners who are based at law firms, for example, and those working for NGOs. Through the issuance of the general directive mentioned above, the Law Society has seemingly limited the scope of the provision, excluding NGO-affiliated lawyers from practising, and thus potentially leaving marginalized persons who are reliant on free NGO-provided legal assistance, without access to legal support. As a result, the ICJ is concerned about access to justice in Lesotho and the ability of NGOs to assist Lesotho in fulfilling its international and domestic human rights obligations with respect to the provision of legal aid.
19. The proposed Lesotho Legal Practice Bill, 2023 allows the admission of registered individuals as legal practitioners, public notaries, or conveyancers while the High Court retains the authority to register individuals in these roles.<sup>26</sup> The Bill, under section 57, removes the categorization of practising and non-practising members found in the Law Society Act and the associated criteria. However, it affirms the Law Society’s authority to issue, renew, and refuse practising certificates to registered individuals.<sup>27</sup> Section 85 of the Bill also acknowledges the provision of legal services by “incorporated bodies,” including corporate entities, voluntary associations, or partnerships but it does not include legal practice and services by NGOs.
20. While Lesotho therefore lacks legislation explicitly permitting NGOs to engage in legal practice, existing laws do not explicitly prohibit NGOs from doing so. The provisions of the Law Society Act are unclear regarding the position of NGOs providing legal assistance, including legal representation, to those in need. The Law Society’s decision to revoke practising certificates of lawyers in NGOs appears to be ultra vires and arbitrary; it also seems to have selectively targeted certain NGOs without a clear legal basis.

## **Recommendations**

21. In light of the foregoing, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:
  - The Law Society should affirm and ensure the application of section 7(2)(c) of the Law Society Act and desist from applying any procedure or process that insists that lawyers attempting to provide pro-bono legal services be members of chambers in order received accreditation.
  - Work closely with NGOs to jointly map out and resolve the challenges in the provision of State legal aid.

- Produce, publicize and implement a timebound plan to fully implement the Legal Aid Act and commit to allocating resources from the national budget to establish multiple legal aid offices across the country to ensure wider accessibility of such services, beyond urban centres.
- Explicitly include a provision in the proposed Lesotho Legal Practice Bill that recognizes and governs the involvement of NGOs in legal practice.

### III. The right of LGBTIQ+ persons to equal protection before the law

#### a. Inadequate laws and policies protecting LGBTIQ+ persons from discrimination and violence

22. Despite Lesotho accepting three recommendations during its third UPR cycle — and noting two additional ones — to adopt laws ensuring the right to equality for LGBTIQ+ persons and combat discrimination and gender-based violence (GBV),<sup>28</sup> there has been no meaningful progress to implement these recommendations.
23. As a party to the International Covenant on Civil and Political Rights (ICCPR),<sup>29</sup> Lesotho has undertaken to adopt effective legislative or other measures to give effect to the rights guaranteed in the ICCPR, which are applicable to all individuals, regardless of their sexual orientation, gender identity, gender expression or sex characteristics (SOGIE-SC).<sup>30</sup>
24. Section 4(1) of Lesotho’s Constitution states that every person in Lesotho is entitled to the human rights and freedoms contained therein.<sup>31</sup> Section 18 of the Constitution prohibits discrimination based on a range of grounds listed in its subsection (3), including “sex” and “other status”.<sup>32</sup>
25. In the case of *Thabo Fuma v Commander Lesotho Defence Force and Others*,<sup>33</sup> the Lesotho High Court, noted that the specified grounds under section 18(3) are “not exhaustive”, and that the grounds laid out in article 26 of the ICCPR are a “reverberation of the grounds” listed under section 18(3) in the Constitution.<sup>34</sup> Furthermore, in *Ralekoala v Minister of Human Rights, Justice and Constitution Affairs*,<sup>35</sup> the High Court also underscored that, “every person in Lesotho is entitled to fundamental human rights which include freedom from discrimination”, and that Section 18(3) does not contain an exhaustive list of grounds for discrimination.<sup>36</sup> On this basis, while section 18(3) does not explicitly mention SOGIE-SC as prohibited grounds of discrimination, it does refer to both “sex” and “other status”, both of which may be interpreted to include “sexual orientation” and “gender identity”.
26. Notwithstanding the constitutional guarantee of the right to equality, LGBTIQ+ persons in Lesotho continue to face discrimination,<sup>37</sup> and the country’s legislative and policy framework fails to explicitly protect LGBTIQ+ individuals from discrimination. With respect to employment, the 2024 Labour Code includes “sexual orientation” and “gender” as one of several grounds for “unfair discrimination.”<sup>38</sup>
27. In the context of combatting GBV, the Lesotho Gender & Development Policy 2018-2030 acknowledges the disproportionate impact of GBV on marginalized groups,

including LGBTIQ+ individuals, and outlines the government's policy commitment to "promote an environment of zero tolerance" to GBV to ensure that "women, men, the elderly, girls, boys, LGBTI, and people with disabilities [live] a life free from violence."<sup>39</sup> It is commendable that the 2022 Counter Domestic Violence Act<sup>40</sup> includes within its definition of domestic violence: "abuse perpetrated by virtue of age of a victim, disability, sexual orientation, gender identity, gender expression...or other status of a victim," among other grounds.<sup>41</sup> Moreover, section 28(2)(s)(iii) provides that, "a person who abuses another person by virtue of their sexual orientation, gender identity or gender expression or any other status," commits an offence and is liable for a conviction not exceeding Ten Thousand Maloti<sup>42</sup> or imprisonment not exceeding 7 years or both. The Sexual Offences Act criminalizes all forms of non-consensual sexual penetration of all orifices.<sup>43</sup> Sexual assault crimes within the Act are also gender-neutral.<sup>44</sup>

28. Nevertheless, there are still no specific laws and policies that combat discrimination and violence on the basis of SOGIE-SC outside of domestic and workplace settings. The plight of LGBTIQ+ persons is exacerbated not only by inadequate legal protections but also by fear of seeking justice for human rights violations. Many LGBTIQ+ persons do not report violations due to fear of being exposed as an LGBTIQ+ person, fear of retaliation, potential further victimization, and a feeling on the part of survivors that perpetrators will not be brought to justice.<sup>45</sup> This has been a major hurdle to exposing and eliminating discrimination and violence against LGBTIQ+ persons in Lesotho.

## Recommendations

29. In light of the foregoing, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:

- The Lesotho government must acknowledge and affirm the constitutional protections afforded to LGBTIQ+ persons.
- Explicitly include sexual orientation, gender identity, gender expression and sex characteristics as prohibited grounds for discrimination under section 18 of the Constitution.
- Conduct a comprehensive review of all laws and policies in the country to ensure that they explicitly affirm and protect the human rights of LGBTIQ+ persons, including the right to equality and equal protection before the law. The legislature and relevant government departments must conduct this review in consultation with CSOs, lawyers, LGBTIQ+ persons and other relevant stakeholders.

b. The decriminalization of consensual same sex sexual activity

30. Following its last UPR, Lesotho noted six recommendations relating to the decriminalization of consensual same-sex sexual conduct.<sup>46</sup> These have been partially implemented in so far as Lesotho decriminalized consensual same-sex sexual activity in 2012.<sup>47</sup> However, some confusion persists, specifically regarding the common law offence of sodomy. The Sexual Offences Act of 2003 does not criminalize consensual same-sex sexual activity, but it does not specifically repeal the common law offence of sodomy either.<sup>48</sup> Schedule 1, Part II of the Criminal Procedure and Evidence Act of

1981 still lists sodomy as an offence for which an arrest may be made without a warrant.<sup>49</sup>

31. In the context of social stigma and continued discrimination against LGBTIQ+ persons, the existence of such laws may lead to their discriminatory application and reinforce harmful stereotypes.<sup>50</sup> Merely omitting references to sodomy in newer legislation, as is the case with the Sexual Offences Act, is insufficient since the common law retains sodomy as an offence.

32. The criminalization of sexual practices between consenting individuals of the same or opposite sex violates international human rights law and standards, including the rights to privacy, freedom from discrimination and to equality before the law.<sup>51</sup>

## Recommendations

33. In light of the foregoing, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:

- Amend section 37 of the Sexual Offences Act to expressly repeal the common law offence of sodomy.
- Repeal the provision in Schedule I, Part II of the Criminal Procedure and Evidence Act listing sodomy as an offence.

## ENDNOTES

<sup>1</sup> United Nations Human Rights Council *Report of the Working Group on the Universal Periodic Review – Lesotho* A/HRC/44/8, 18 March 2020, [https://upr-info.org/sites/default/files/documents/2020-06/report\\_of\\_the\\_working\\_group\\_lesotho\\_english.pdf](https://upr-info.org/sites/default/files/documents/2020-06/report_of_the_working_group_lesotho_english.pdf) at paras. 110.11, 110.12, 110.43 and 110.58: “Ensure progress in the preparation of legal and administrative measures that will ensure full access to education for persons with disabilities and continue legislative measures aimed at ensuring quality and inclusive education” (Libya); “Continue its measure to effectively implement the Inclusive Education Policy, and allocate sufficient funds in this regard” (Myanmar), “Continue to take steps with a view to the creation of the National Human Rights Committee in compliance with the Paris Principles, the adoption of the implementation plan for inclusive education and the adoption by Parliament of the draft legislation on equality for persons with disabilities (Benin)” and “Continue to evaluate and refine the policies and strategies that have been put in place in order to implement free, compulsory and inclusive education for children (Barbados)”.

<sup>2</sup> Act No. 2 of 2021, <https://lesotholii.org/akn/ls/act/2021/2/eng@2021-03-12>.

<sup>3</sup> Committee on the Rights of the Child, Concluding observations on the second periodic report of Lesotho, CRC/C/LSO/CO/2, 25 June 2018, para. 41.

<sup>4</sup> ICJ, *Failed Implementation: Lesotho’s Inclusive Education Policy and the continued exclusion of children with disabilities*, (April 2023) pp. 58-59, <https://www.icj.org/wp-content/uploads/2023/04/Lesotho-Inclusive-Education-Briefing-Paper-April-2023-FINAL.pdf>.

<sup>5</sup> ICJ, “Lesotho: Children with disabilities excluded from equal access to education – New ICJ Briefing Paper”, April 2023, <https://www.icj.org/resource/lesotho-children-with-disabilities-excluded-from-equal-access-to-education-new-icj-briefing-paper/>.

<sup>6</sup> *Supra* note 4, p. 43; See also Education Act No. 3 of 2010, Section 6(3)(c) states that the provision under section 6(2) of the Act which states that “where a learner is enrolled at a school, the learner shall attend that school on each day, and for such parts of each day, as instruction is provided at the school for the learner” does not apply to a learner “suffering from a disability or disease which prevents him or her from attending.”

<sup>7</sup> CRPD Committee, “Guidelines on deinstitutionalization, including in emergencies”, CRPD/C/5 (September 2022), paras. 15 & 50, <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including>

<sup>8</sup> As per section 5 of the PDEA: the composition of Council includes, among others, governmental, legal profession, private sector and civil society representatives. Crucially, it consists, in particular, of “one representative of each category of the disabled people”, who shall be nominated by the Lesotho National Federation of Organisations of the Disabled.



<sup>9</sup> Such segregation is also perpetuated by section 6(3) of the Education Act, which appears to permit a learner's non-enrolment in school, or discontinuation of their attendance at school, on the basis of a disability.

<sup>10</sup> Lesotho National Federation of Organisations of the Disabled, *January 2024 Newsletter*, [http://www.infod.org.ls/uploads/1/2/2/5/12251792/disability\\_lesotho\\_issue20\\_vol9\\_january\\_2024.pdf](http://www.infod.org.ls/uploads/1/2/2/5/12251792/disability_lesotho_issue20_vol9_january_2024.pdf).

<sup>11</sup> Lesotho National Federation of Organisations of the Disabled, *February 2024 Newsletter*, [http://www.infod.org.ls/uploads/1/2/2/5/12251792/disability\\_lesotho\\_issue\\_21\\_vol\\_9\\_feb\\_2024.pdf](http://www.infod.org.ls/uploads/1/2/2/5/12251792/disability_lesotho_issue_21_vol_9_feb_2024.pdf).

<sup>12</sup> Law Society of Lesotho's letter to FIDA, dated 3<sup>rd</sup> June 2024: [https://drive.google.com/file/d/1XLviWVPaa5ulvTdhTWOiS05N6xhD2fH\\_/view?usp=sharing](https://drive.google.com/file/d/1XLviWVPaa5ulvTdhTWOiS05N6xhD2fH_/view?usp=sharing).

<sup>13</sup> Law Society of Lesotho, "The Establishment of the Legal Aid Unit", 12 June 2024; See also Public Eye, "Law Society sets up unit to assist the poor", 26 June 2024, <https://publiceyenews.com/2024/06/26/law-society-sets-up-unit-to-assist-the-poor/> (accessed 4 October 2024).

<sup>14</sup> Law Society Act No. 13 of 1983, [https://drive.google.com/file/d/1qISjs-wCpO5S1RZaIc15TxSh3G1P\\_xi/view?usp=sharing](https://drive.google.com/file/d/1qISjs-wCpO5S1RZaIc15TxSh3G1P_xi/view?usp=sharing) (accessed 20 February 2024).

<sup>15</sup> Section 7 partly reads as follows:

- (1) *Membership of the Society is open to all legal practitioners duly admitted by the High Court of Lesotho to practice as advocates, attorneys, notaries, or conveyancers hereinafter referred to as "members, and shall consist of the following classes—*
  - a) *Practicing members; and*
  - b) *Non-practicing members.*
- (2) *Practicing members shall comprise those members who —*
  - a) *are resident and maintain chambers or offices in Lesotho;*
  - b) *though not resident in Lesotho, participate actively in the administration of justice by reason of their having established chambers or offices in Lesotho, which are fully serviced and are under the constant supervision of (b) such members;*
  - c) *though they are not resident nor maintain chambers or offices in Lesotho in the opinion of the Council practice their profession on a regular basis in Lesotho, participating actively in the administration of justice in Lesotho;*
- (3) *Non-practicing members shall comprise all legal practitioners who in the opinion of the Council do not fall within the scope of the foregoing definitions and shall further include all such legal practitioners as are not in private practice.*

<sup>16</sup> Section 12(2)(c) and (d) of the Constitution of Lesotho, 1993 provides that, "Every person who is charged with a criminal offence c. shall be given adequate time and facilities for the preparation of his defence; d. shall be permitted to defend himself before the court in person or by a legal representative of his own choice."

<sup>17</sup> Legal Aid Act No. 10 of 1978, [https://drive.google.com/drive/folders/1UarvDmO40oiUmkFemWq\\_XWAz63RH1qLR?usp=sharing](https://drive.google.com/drive/folders/1UarvDmO40oiUmkFemWq_XWAz63RH1qLR?usp=sharing) (accessed 20 February 2024).

<sup>18</sup> UN Human Rights Committee, Second periodic report submitted by Lesotho under Article 40 of the Covenant pursuant to the optional reporting procedure, UN Doc. CCPR/C/LSO/2, 22 April 2020, para. 155.

<sup>19</sup> ICJ, The People's Matrix Association, Seinoli Legal Centre and the LNFOD, *Joint Submission to the UN Human Rights Committee in view of the Committee's examination of Lesotho's Second Periodic Report under Article 40 of the International Covenant on Civil and Political Rights* (19 June 2023), para 34.

<sup>20</sup> Id. para. 34; see also Government of Lesotho, *National Strategic Development Plan II 2018/19- 2022/23*, <https://www.undp.org/sites/g/files/zskgke326/files/2022-10/national-strategic-development-plan-ii-2018-19-2022-23.pdf>: under the Strategic Objectives and Interventions, Strategic Objective 1, entitled "Improve Access to Justice", the Government of Lesotho has listed that one of the necessary interventions entails strengthening the legal aid system and decentralize to district level.

<sup>21</sup> The justice system and justice institutions remains a key investment area under the National Strategic Development Plan II Strategic Focus for 2023/24 -2027/28.

<sup>22</sup> *Supra* note 18.

<sup>23</sup> Itumeleng Shale "The Law and Legal Research in Lesotho" (2019), available at: [https://www.nyulawglobal.org/globalx/Lesotho1.html#\\_edn77](https://www.nyulawglobal.org/globalx/Lesotho1.html#_edn77).

<sup>24</sup> *Supra* note 19, paras. 31-38.

<sup>25</sup> *Supra* note 19, paras. 37-38.

<sup>26</sup> See Legal Practice Bill, 2023, <https://drive.google.com/file/d/1jbfjhikCMTLOA4THytFLY6zRe80pN27U/view?usp=sharing>, Sections 4 and 5.

Section 4(1) states that, "Any person who is eligible for admission under this Act and who wishes to be registered, whether as a legal practitioner, a notary public or a conveyancer shall make application therefor to the High Court in the form and manner prescribed in the regulations." Section 5 sets out the admission requirements.

<sup>27</sup> See sections 79 and 80.

<sup>28</sup> *Supra* note 1 at paras. 110.53, 110.119, 111.24 and 111.28: "Adopt norms that will guarantee to lesbian, gay, bisexual, transgender and intersex persons the full enjoyment of their rights on the basis of equality in all spheres, combating discrimination and negative stereotypes that still exist in the society (Argentina)", "Adopt the 2018 Domestic Violence Bill into law and continue efforts to combat gender-based violence in Lesotho (Ireland) and para. "Take the necessary steps to combat discrimination on grounds of sexual orientation and gender identity and discrimination against persons with disabilities (Costa Rica). See also the recommendation from the Netherlands and Honduras as noted by Lesotho: "Review and amend the legislative framework to ensure that sexual orientation

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and gender identity are included as protected grounds for non-discrimination (Netherlands)” and “Criminalize homophobia and transphobia to prevent violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons (Honduras).”

<sup>29</sup> Lesotho became a party to the International Covenant on Civil and Political Rights (ICCPR) on 9 September 1992.

<sup>30</sup> Article 2(1) of the ICCPR provides: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>31</sup> Constitution of Lesotho, 1993.

<sup>32</sup> Section 18(1) provides that subject to limitations set out in subsections (4) and (5), “no law shall make any provision that is discriminatory either of itself or in its effect.” Section 18(2) similarly provides that “[s]ubject to the provisions of subsection (6), 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 office or any public authority.”

<sup>33</sup> *Thabo Fuma v The Commander, Lesotho Defence Force and Others* (CONST/8/2011) [2013] LSHC 68 (10 October 2013), available at: <https://lesotholii.org/akn/ls/judgment/lshc/2013/68/eng@2013-10-10>.

<sup>34</sup> *Ibid*, paras. 10 & 56.

<sup>35</sup> *Ralekoala v Minister of Human Rights, Justice and Constitution Affairs and Others* [2012] LSHC 8 (30 March 2012), <https://lesotholii.org/akn/ls/judgment/lshc/2012/8/eng@2012-03-30>.

<sup>36</sup> *Ibid*, paras. 52, 53 and 55.

<sup>37</sup> See ICJ, “Lesotho: Chief Justice Sakoane Sakoane calls for the “cultivation of an LGBTIQ sensitive culture” in Lesotho”, 18 October 2022, <https://www.icj.org/lesotho-chief-justice-sakoane-sakoane-calls-for-the-cultivation-of-an-lgbtiq-sensitive-culture-in-lesotho/>; ICJ “Lesotho: activists call for increased sensitization of key stakeholders on human rights of LGBTIQ+ people”, 21 April 2023, available at: <https://www.icj.org/lesotho-activists-call-for-increased-sensitization-of-key-stakeholders-on-human-rights-of-lgbtiq-people/>; Chimaraoke Izugbara, Seun Bakare, Meroji Sebany, Boniface Ushie, Frederick Wekesah & Joan Njagi (2020) *Regional legal and policy instruments for addressing LGBT exclusion in Africa, Sexual and Reproductive Health Matters*, 28:1, <https://www.tandfonline.com/doi/pdf/10.1080/26410397.2019.1698905?needAccess=true>.

<sup>38</sup> Labour Code (Act No. 3 of 2024), section 6(1), <https://lesotholii.org/akn/ls/act/2024/3/eng@2024-04-02>: “A person who makes an application of any distinction, exclusion or preference on the following basis, constitutes an act of unfair discrimination: (a) race; (b) colour; (c) gender; (d) disability; (e) sexual orientation; (f) pregnancy; (g) marital status; (h) HIV and AIDS status; (i) religion; (j) political affiliation or opinion; (k) national extraction; (l) social origin; (m) age; or (n) on any other ground which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

<sup>39</sup> Gender & Development Policy 2018-2030, pp. 56 & 59.

<sup>40</sup> Act No. 14 of 2022, [https://lesotho.unfpa.org/sites/default/files/pub-pdf/act\\_no\\_14\\_of\\_2022\\_counter\\_domestic\\_violence\\_act.pdf](https://lesotho.unfpa.org/sites/default/files/pub-pdf/act_no_14_of_2022_counter_domestic_violence_act.pdf)

<sup>41</sup> *Ibid*, section 3(j).

<sup>42</sup> See XE Currency Converter,

<https://www.xe.com/currencyconverter/convert/?Amount=10000&From=LSL&To=USD> (accessed 11 October 2024): M10,000.00 is the equivalent of US\$ 571.27.

<sup>43</sup> Section 3; see also Section 51 of the Penal Code, 2010 (Act No. 6 of 2012).

<sup>44</sup> The Human Dignity Trust, *Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation*, (2020) pp. 69-71, <https://www.humandignitytrust.org/wp-content/uploads/resources/2020-Next-Steps-Africa.pdf>

<sup>45</sup> Carmen Logie, Amaya Perez-Brumer, Tampose Mothopeng Maya Latif, Amelia Ranotsi & Stefan D. Baral “Conceptualizing LGBT Stigma and Associated HIV Vulnerabilities Among LGBT Persons in Lesotho” in *AIDS Behav* 24, 3462–3472 (2020), <https://doi.org/10.1007/s10461-020-02917-y>.

<sup>46</sup> *Supra* note 1 at paras. 111.24, 111.25, 111.27, 111.29, 111.30, 111.31: “Criminalize homophobia and transphobia to prevent violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons (Honduras), “Decriminalize consensual sexual relations between adults of the same sex and expand its anti-discrimination legislation to include a prohibition on discrimination on the basis of sexual orientation and gender identity (Iceland)”, “Include in the legislation a provision prohibiting discrimination based on sexual orientation or gender identity, and reform laws that criminalize consensual sexual relations between same-sex persons, such as the Penal Code of 2010, and the Criminal Procedure and Evidence Act, section 187 (5) (Mexico)”, “Repeal provisions in the Penal Code that criminalize same-sex relations between consenting adults, and amend relevant legislation to ensure discrimination based on sexual orientation and gender identity is explicitly prohibited (Australia)”, “Implement legal reforms to protect the human rights of all persons irrespective of their sexual orientation and gender identity (Germany)”, Decriminalize consensual same-sex relationships between adults, and introduce comprehensive anti-discrimination laws that include sexual orientation and gender identity (New Zealand).

<sup>47</sup> The Penal Code, 2010 (Act No. 6 of 2012) decriminalized homosexuality.

<sup>48</sup> UN Human Rights Committee, Second periodic report submitted by Lesotho under Article 40 of the Covenant pursuant to the optional reporting procedure, *UN Doc. CCPR/C/LSO/2, 22 April 2020* , para 52.

<sup>49</sup> See section 187(5).

<sup>50</sup> *Supra* note 19, para. 10.

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<sup>51</sup> See ICJ 8 March *Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*, 8 March 2023, [https://icj2.wpenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report\\_final\\_print-version.pdf](https://icj2.wpenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report_final_print-version.pdf); See also: UN Human Rights Office of the High Commissioner, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, HR/PUB/12/06, at p.36.