



Lesotho's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. This report addresses Lesotho's compliance with its human rights obligations with regard to the death penalty. Although the last known execution was in 1995, Lesotho has not abolished the death penalty and has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. Lesotho retains the death penalty for crimes other than the most serious, and Lesotho also imposes a mandatory death sentence. Additionally, fair trial violations and poor conditions of detention raise concerns.

Lesotho fails to uphold its obligations under the International Covenant on Civil and Political Rights

- I. Lesotho's death penalty practices are not in compliance with Articles 6, 7, 10, 14, 21, and 24 of the Covenant. (List of Issues Paragraphs 11)**
 - a. *Lesotho retains the death penalty for crimes other than the most serious and has not acceded to the Second Optional Protocol to the Covenant.*
2. In its List of Issues Prior to Reporting, the Committee requested information on the measures Lesotho has taken toward removing legal provisions authorizing the death penalty.¹ Lesotho in its Second State Party Report responding to the LOIPR outlined legal safeguards already in place to prevent executions, consisting of appeal courts, the Pardons Committee, and the King's authority to issue mercy.² Lesotho also contended that abolition will depend on public opinion³ and the country will include the death penalty in its National Reform Process.⁴ It is unclear to what extent authorities have included the death penalty in the National Reform Process, because to date the government has not announced any reforms or relevant legislation dedicated to the death penalty.⁵
3. Lesotho is considered a "retentionist" African country with respect to the death penalty.⁶ The last reported execution was in November 1995.⁷ The death penalty remains an available sentence, however, and Lesotho is not a party to the Second Optional Protocol.⁸ Lesotho has abstained from or voted no on the UN General Assembly resolution calling for a global moratorium on the use of the death penalty.⁹

¹ Human Rights Committee, *List of issues prior to submission of the second periodic report of Lesotho, Advance Unedited Version*, (Apr. 2, 2019), U.N. Doc. CCPR/C/LSO/QPR/2.

² Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 89-90.

³ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 91-92.

⁴ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (April 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 93.

⁵ Government of the Kingdom of Lesotho, "Reforms," Accessed May 24, 2023, Available at: <https://www.gov.ls/reforms/>.

⁶ The Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, 3.

⁷ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, U.N. Doc. CCPR/C/LSO/2, ¶ 89.

⁸ United Nations Human Rights Treaty Bodies, (Lesotho), UN Treaty Body Database, last visited May 10, 2023. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspxCountryID=97&Lang=en.

⁹ Triggers for the Abolition of the Death Penalty in Africa: A Southern African Perspective (Oct. 2017), 25.

4. The Human Rights Act of 1983 recognizes the right to life, except in the execution of a sentence of a court for a criminal offense.¹⁰ The Constitution of Lesotho,¹¹ adopted in 1993 and amended in 2018, includes a provision that states that a person’s death resulting from a lawful act of war or in execution of the sentence of death imposed by a court shall not be considered as a deprivation of life.
5. Lesotho reports in its Second State Party report that murder, treason, and statutory rape carry the death penalty.¹² Section 297 of the Criminal Procedure and Evidence Act¹³ provides for the mandatory imposition of the death penalty for murder in the absence of extenuating circumstances, treason, and rape. In addition to these mandatory sentences, the Lesotho Defence Force Act of 1996¹⁴ also allows the death penalty as a non-mandatory punishment for certain military crimes: aiding the enemy, communication with the enemy, cowardly behavior, mutiny, failure to suppress mutiny with the intention to assist the enemy, and for treason and murder in civil cases.
6. In October 2020, the High Court ruled that that section 32(a)(vii) of the Sexual Offences Act was unconstitutional,¹⁵ therefore eliminating the mandatory death sentence for persons convicted of rape who were aware that they carried HIV. Section 32(a)(vii) imposed the mandatory death penalty for any person convicted of rape who knowingly committed the crime knowing that or having reasonable suspicion to believe that they were living with HIV.¹⁶
7. The Criminal Procedure and Evidence Act expressly forbids the execution of children under the age of 18, women who caused the death of their children under 12 months of age and meet requirements of having “the balance of her mind . . . disturbed” from childbirth, and pregnant women.¹⁷ Other categories of people excluded from the death penalty are women with small children, people living with psychosocial disabilities, and people living with intellectual disabilities.¹⁸
8. Lesotho trial courts take into consideration numerous “extenuating circumstances” when determining whether the death penalty should be applied.¹⁹ These circumstances include: “youth, liquor, emotional conflict, the nature of motive, provocation, sub-normal intelligence, general background, impulsiveness, a lesser part in the commission of the murder, the absence of *dolus directus*, belief in witchcraft, absence of premeditation or

¹⁰ Labour Standards, International Labour Organization, last visited May 10, 2023 (PDF), 2. Available at: http://www.ilo.org/dyn/natlex/natlex4.detailp_lang=&p_isn=101100&p_classification=01.05.

¹¹ Constitution of Lesotho adopted 1993, § 5, Available at: https://www.constituteproject.org/constitution/Lesotho_2018.pdf?lang=en.

¹² Cornell Law School, Kingdom of Lesotho (Lesotho), last visited May 10, 2023, Available at: <https://deathpenaltyworldwide.org/database/#/results/country?id=91>.

¹³ Criminal Procedure and Evidence Act (Lesotho), (1981) § 297, Available at: <https://media.lesotholii.org/files/legislation/akn-ls-act-1981-9-eng-1600-01-01.pdf>.

¹⁴ Defence Force Act (Lesotho), 1996, Available at: <https://lesotholii.org/ls/legislation/num-act/1996/4>.

¹⁵ HIV Justice Network, Lesotho high court finds imposition of death sentence solely on the basis of HIV status unconstitutional, Oct. 27, 2022, Available at: <https://www.hivjustice.net/news/lesotho-high-court/>.

¹⁶ Sexual Offences Act (Lesotho), 2003, Act No. 3 §32 (a)(vii), Available at: https://lesotholii.org/ls/legislation/act/2003/3/lesotho_sexual_offences_act_2003_pdf_14292.pdf.

¹⁷ ICC Legal Tools Database, last visited May 10, 2023, 2. Available at: <https://www.legaltools.org/doc/22f77b/pdf>.

¹⁸ Cornell Law School, Kingdom of Lesotho (Lesotho), last visited May 10, 2023, Available at: <https://deathpenaltyworldwide.org/database/#/results/country?id=91>.

¹⁹ Moses O. A. Owori, The Death Penalty in Lesotho: The Law and Practice, British Institute of International and Comparative Law, 2, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

planning, ‘heavy confrontation’ between the accused and the deceased before the murder, the rage of the accused.”²⁰

9. Extenuating circumstances have a significant impact on whether the death penalty is ultimately applied in Lesotho.²¹ The High Court has occasionally sentenced people to death, but on appeal courts found extenuating circumstances and therefore set aside these sentences and substituted the penalty with life in prison.²² At the end of 2018, there were two individuals under sentence of death in Lesotho.²³ There were zero executions in 2019, 2020, 2021, and 2022.²⁴ While the *de facto* moratorium on executions may sound promising, the reasons behind it include budgetary and personnel constraints.²⁵ Lesotho has been unable to meet required standards of forensic testing, including DNA testing, which can be critical to ensure compliance with fair trial provisions.²⁶
10. The King must also approve executions, and the Pardons Committee may pardon people under sentence of death. The Defence Force Act stipulates that “A sentence of death shall not be carried into effect unless it has been approved by the King on the advice of Pardons Committee as provided for in the Constitution of Lesotho.”²⁷ The Criminal Procedure and Evidence Act also states that “No sentence of death shall be carried into effect except upon a special warrant signed by the King and sealed with the public seal.”²⁸ Parties must submit petitions for pardon to the Pardons Committee, which consists of a Chairperson and two other people appointed by the King. They review the submissions from the accused and others. The King will exercise mercy “in accordance with the advice of the Committee.”²⁹ It is unclear if the King has, in practice, issued recent pardons for people under sentence of death.
11. Lesotho does not employ a “professional executioner,” but instead will sometimes bring in an executioner from another country,³⁰ As it did in 1996.³¹ Lesotho uses hanging to carry out death sentences.³²

b. Lesotho has not made adequate efforts to generate support to abolish the death penalty.

²⁰ Moses O. A. Owori, The Death Penalty in Lesotho: The Law and Practice, British Institute of International and Comparative Law, 2, https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

²¹ Moses O. A. Owori, The Death Penalty in Lesotho: The Law and Practice, British Institute of International and Comparative Law, 2, https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

²² Moses O. A. Owori, The Death Penalty in Lesotho: The Law and Practice, British Institute of International and Comparative Law, 2, https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

²³ Cornell Law School, Kingdom of Lesotho (Lesotho), last visited May 10, 2023, <https://deathpenaltyworldwide.org/database/#/results/country?id=91>.

²⁴ World Coalition Against the Death Penalty, last visited May 10, 2023, <https://worldcoalition.org/pays/lesotho/>; Amnesty International, Death sentences and executions 2022 (2023) at 33, <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

²⁵ Triggers for Abolition of the Death Penalty in Africa: A Southern African Perspective, (Oct. 2017), 21.

²⁶ Triggers for Abolition of the Death Penalty in Africa: A Southern African Perspective, (Oct. 2017), 21.

²⁷ Defence Force Act (Lesotho), 1996, § 112. <https://lesotholii.org/ls/legislation/num-act/1996/4>.

²⁸ Criminal Procedure and Evidence Act (Lesotho), (1981) § 300, 2, Available at: <https://media.lesotholii.org/files/legislation/akn-ls-act-1981-9-eng-1600-01-01.pdf>.

²⁹ Cornell Law School, Kingdom of Lesotho (Lesotho), last visited May 10, 2023, Available at: <https://deathpenaltyworldwide.org/database/#/results/country?id=91>

³⁰ Moses O. A. Owori, The Death Penalty in Lesotho: The Law and Practice, British Institute of International and Comparative Law, 7, https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

³¹ ICC Legal Tools Database, last visited May 10, 2023, 2, <https://www.legal-tools.org/doc/22f77b/pdf>.

³² Moses O. A. Owori, The Death Penalty in Lesotho: The Law and Practice, British Institute of International and Comparative Law, 7, https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

12. The Committee also requested “information on measures taken to generate support for a move away from the death penalty.”³³ There is little evidence of any effort to garner public and political support. If anything, it appears there is a greater interest in resuming executions.
13. In its Second State Party Report, Lesotho reported that it may become party to the Second Optional Protocol depending on the results of a public referendum.³⁴ This is concerning considering that Lesotho has not made known efforts to engage the public on the topic of the death penalty, including its standing in international human rights law or its lack of deterrent effect.
14. The general public and political leaders seem to express a common sentiment that the death penalty is a necessary deterrent due to high murder rates.³⁵ Anger over rampant killings, particularly murders of women,³⁶ have “prompted widespread calls for Lesotho to dust off its dormant death penalty and resume executions of convicted criminals.”³⁷
15. “[Former] Deputy Prime Minister and Democratic Congress (DC) leader, Mathibeli Mokhothu, is among those who believe there must be zero tolerance and swift action against the killers. His DC predecessor and former Prime Minister Pakalitha Mosisili and former attorney General, Haae Phoofolo, are also convinced that executions are the only way to punish the criminals and deter like-minded people.”³⁸
16. Human rights activist Ray Mungoshi has responded to such justifications by stating that “there was no empirical evidence to support the effectiveness of the death penalty.”³⁹ And, “[l]ooking at the United States of America (US), you will reali[z]e that high murder rates persist in the very states that insist on the death penalty. There is no evidence that the death penalty will be effective in preventing murders in Lesotho.”⁴⁰

II. Lesotho violates rights to due process and fair trial, including in capital cases. (List of Issues paragraphs 21 and 16)

a. Issues with the capacity of the criminal justice system impede the right to fair trial.

17. In its List of Issues Prior to Reporting, the Committee requested information on efforts to increase the capacity of the judicial system, including increasing the number of judges and

³³ Human Rights Committee, *List of issues prior to submission of the second periodic report of Lesotho*, (Apr. 2, 2019), U.N. Doc. CCPR/C/LSO/QPR/2, ¶ 11.

³⁴ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure*, (April 22, 2020), *due in 2020*, U.N. Doc. CCPR/C/LSO/2, ¶92.

³⁵ Lesotho Times, See Search Results For “Death Penalty”, “Women Demand Death Penalty”, last visited May 10, 2023, Available at: <https://lestimes.com/?s=death+penalty>.

³⁶ Lesotho Times, See Search Results For “Death Penalty”, “Women Demand Death Penalty”, last visited May 10, 2023, Available at: <https://lestimes.com/?s=death+penalty>.

³⁷ Lesotho Times, See Search Results For “Death Penalty”, “Death Penalty Won’t Solve Lesotho’s Problem: Analysts”, last visited May 10, 2023, Available at: <https://lestimes.com/?s=death+penalty>.

³⁸ Lesotho Times, See Search Results For “Death Penalty”, “Death Penalty Won’t Solve Lesotho’s Problem: Analysts”, last visited May 10, 2023, Available at: <https://lestimes.com/?s=death+penalty>.

³⁹ Lesotho Times, See Search Results For “Death Penalty”, “Death Penalty Won’t Solve Lesotho’s Problem: Analysts”, last visited May 10, 2023, Available at: <https://lestimes.com/?s=death+penalty>.

⁴⁰ Lesotho Times, See Search Results For “Death Penalty”, “Death Penalty Won’t Solve Lesotho’s Problem: Analysts”, last visited May 10, 2023, Available at: <https://lestimes.com/?s=death+penalty>.

- reducing the backlog of cases.⁴¹ Lesotho replied that the judicial system is hampered by a “shoe-string” budget and a lack of a judicial training institute.⁴²
18. There is a significant need for qualified professionals in Lesotho’s criminal legal system.⁴³ For example, there is only one ballistics expert and only two forensic pathologists.⁴⁴ Authorities sometimes need to send DNA samples to Pretoria, South Africa for analysis, which can take several months.⁴⁵ Police and prosecutors need further resources related to forensic investigations, including qualified staff, equipment, and training.⁴⁶
 19. If defendants in capital cases in the High Court are unable to hire a private attorney, the Registrar may appoint an attorney. The appointed attorneys may lack experience in capital cases, however.⁴⁷
 20. Defendants also experience trial delays. The High Court has only 9⁴⁸ or 12⁴⁹ judges, and, in practice, attorneys may be scheduled for multiple hearings at once, causing continuances and further delays.⁵⁰ If a trial does not conclude in the allotted time, the court postpones it until the next available slot on the judge’s schedule, which may be eighteen months in the future. Defendants also wait a long time for the court to render a decision.⁵¹
 - (i) *Torture by law enforcement for purposes of forced confessions and excessive use of force violate rights of due process.*
 21. The Committee requested that Lesotho respond to “the allegations that torture and other cruel, inhumane or degrading treatment remain a widespread practice among law enforcement officers, in particular by police members, Lesotho Defence Force (LDF) and Lesotho Mounted Police Service (LMPS) members, notably for the purpose of interrogation and extraction of forced confessions.”⁵² The Committee has expressed

⁴¹ Human Rights Committee, *List of issues prior to submission of the second periodic report of Lesotho*, (Apr. 2, 2019), U.N. Doc. CCPR/C/LSO/QPR/2, ¶ 21.

⁴² Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (April 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶¶ 151-152.

⁴³ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, 3, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁴⁴ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, 3, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁴⁵ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, 3, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁴⁶ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, 3, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁴⁷ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁴⁸ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁴⁹ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (April 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 152.

⁵⁰ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, Available at: [tps://www.biicl.org/files/2197_country_report_lesotho_owori.pdf](https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf).

⁵¹ Moses O. A. Owori, *The Death Penalty in Lesotho: The Law and Practice*, British Institute of International and Comparative Law, Available at: https://www.biicl.org/files/2197_country_report_lesotho_owori.pdf.

⁵² Human Rights Committee, *List of issues prior to the submission of the second periodic report of Lesotho due in 2023*, (Apr. 2, 2019), U.N. Doc. CCPR/C/LSO/QPR/2, ¶ 16.

concern since its 1999 report about “excessive use of force by the police and security forces.”⁵³

22. In its Second State Party report, Lesotho asserts that although there is no law that criminalizes torture, it complies with the prevention of torture since section 228 of the Criminal Procedure and Evidence Act of 1981 “rejects the use of evidence that was obtained through the use of torture in judicial proceedings. Only a confession given freely, voluntarily by the accused and reduced in writing by a magistrate is admissible in the courts of law.”⁵⁴ It further points to the Lesotho Court of Appeal case of *Mabophe and Others v. Rex 1993/1994 Lesotho Law Reports 154*, where the court held “that a pointing out, done consequent to torture of the person who makes it, is not free and voluntary and therefore inadmissible as evidence to prove commission of a criminal offense.”⁵⁵
23. The Human Rights Act of 1983 provides the right to be free from “inhuman or degrading punishment or other treatment” unless the punishment is otherwise authorized by law.⁵⁶
24. The Constitution provides for freedom from inhuman treatment, stating that “[n]o person shall be subjected to torture or to inhuman or degrading punishment or other treatment.” It also states, however, that “[n]othing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution.”⁵⁷
25. Despite Lesotho’s assertions, Amnesty International has documented cases of torture by security forces. Specifically, on January 13, 2022, the Lesotho Mounted Police Service arrested human rights lawyer, Napo Mafaesa, on allegations of concealing a gun belonging to his client.⁵⁸ According to Amnesty International, police officers took Mafaesa to the Ha Mabote Police Station and subjected him to torture in order to extract a confession from him, even though he told officers he knew nothing about the gun.⁵⁹ Police shackled Mafaesa’s legs and bound his hands before putting a deflated tire against his face, causing him to struggle to breathe through his nose and mouth, and repeatedly poured cold water on his face while assaulting him.⁶⁰

⁵³ Human Rights Committee, *Concluding Observations at its 1747th and 1748th Meetings*, (April 8, 1999), U.N. Doc. CCPR/C/79/Add.106, ¶ 17.

⁵⁴ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 115.

⁵⁵ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 116.

⁵⁶ International Labour Organization, *Labour Standards*, last visited May 10, 2023 (PDF), 3. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=101100&p_classification=01.05.

⁵⁷ *Constitute*, last visited May 10, 2023, (PDF Version), 9. Available at: <https://constituteproject.org/countries/Africa/Lesotho?lang=en>.

⁵⁸ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022). Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁵⁹ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, [REDACTED]. Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁶⁰ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

26. Amnesty International also reported a case in which authorities arrested Mateboho Matekane from Ha Pita in Maseru in November 2021, and accused her of stealing group savings funds.⁶¹ Matekane told Amnesty International that authorities took her to Lithoteng Police Station, where they beat her with a spade until she urinated on herself and passed out.⁶² The pain from the torture she experienced was so significant that she lost her job for being unable to work.⁶³
27. In September 2021, police officers in Maseru arrested and detained Tseliso Sekonyela for allegedly stealing liquor.⁶⁴ The next day, Sekonyela's mother visited her son and her son reported that the police had beaten him.⁶⁵ She also reported that the police threatened to break Sekonyela's ribs in her presence.⁶⁶ Two days later, Sekonyela's body was delivered to a morgue without explanation.⁶⁷ The autopsy showed that Sekonyela's ribs and a leg were broken, he had strangulation marks on his neck, and he had internal bleeding.⁶⁸ Three police were suspended for the killing of Sekonyela.⁶⁹ Others, however, remain in their posts.⁷⁰

III. Lesotho fails to ensure prompt and impartial investigations and prosecutions into torture and excessive force by State actors. (List of Issues paragraph 16)

28. The Committee also requested that Lesotho respond to “the allegations of a low rate of prompt and impartial criminal investigations, prosecutions, convictions.”⁷¹ These concerns are long-standing, as the Committee had urged the State Party in its 1999 Concluding

⁶¹ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022). Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁶² Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁶³ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁶⁴ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁶⁵ United States Department of State, *Lesotho 2021 Human Rights Report*, (2021), 2, Available at: https://www.state.gov/wp-content/uploads/2022/02/313615_LESOTHO-2021-HUMAN-RIGHTS-REPORT.pdf.

⁶⁶ United States Department of State, *Lesotho 2021 Human Rights Report*, (2021), 2, Available at: https://www.state.gov/wp-content/uploads/2022/02/313615_LESOTHO-2021-HUMAN-RIGHTS-REPORT.pdf.

⁶⁷ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>; United States Department of State, *Lesotho 2021 Human Rights Report*, (2021), 2, https://www.state.gov/wp-content/uploads/2022/02/313615_LESOTHO-2021-HUMAN-RIGHTS-REPORT.pdf.

⁶⁸ United States Department of State, *Lesotho 2021 Human Rights Report*, (2021), 2, Available at: https://www.state.gov/wp-content/uploads/2022/02/313615_LESOTHO-2021-HUMAN-RIGHTS-REPORT.pdf.

⁶⁹ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁷⁰ Amnesty International, *Lesotho: Authorities must tackle police brutality torture and unlawful killings before and after election*, Amnesty International Press Office, (Sept. 28, 2022), Available at: <https://www.amnesty.org/en/latest/news/2022/09/lesotho-authorities-must-tackle-police-brutality/>.

⁷¹ Human Rights Committee, *List of issues prior to the submission of the second periodic report of Lesotho due in 2023*, (Apr. 2, 2019), U.N. Doc. CCPR/C/LSO/QPR/2, ¶ 16.

Observations to investigate such cases and ensure the prosecution and punishment of those responsible for excessive use of force.⁷²

29. In its Second State Party report, Lesotho concedes that, due to the fact that the Penal Code does not prohibit torture as a distinct crime, acts of police violence, which amount to torture, are absorbed into other criminal offenses, such as assault, aggravated assault, murder, culpable homicide, and indecent assault.⁷³
30. Lesotho has criticized its own approach toward torture, admitting “charging perpetrators of torture with other offenses other than torture as being inconsistent with Lesotho’s obligation to take legislative measures against torture.”⁷⁴ Charging only other offenses fails to highlight the gravity of the offence of torture and consequently perpetrators are not held accountable and victims do not receive an appropriate remedy.⁷⁵
31. Lesotho concedes that this gap in the law makes it “very difficult for the State to respond effectively to incidences of torture”⁷⁶ and results in “little information given on actions taken against such officers [of torture offences].”⁷⁷
32. Lesotho’s Second Periodic Report states that “up to August 2019, there were 11 cases pending before courts and 10 others recommended for inquiry, while 39 police officers were to appear for criminal prosecutions or disciplinary hearing, and it is not clear whether the said cases were just for 2019 or for years prior and what the outcome of each case is.”⁷⁸
33. Lesotho’s lack of prompt and impartial criminal investigations into allegations of torture is further evidenced with the establishment of the Police Complaints Authority (PCA), which is a statutory body established pursuant to Section 22 of the Police Service Act of 1998.⁷⁹ The PCA is a civilian body with a mandate to oversee policing, and its mandate includes: “the responsibility for investigating and reporting to the Police Authority (whom in terms of the Act is the Minister) on any complaint referred to it by the Police Authority or the Commissioner, which is a complaint from the members of the public about the conduct of a member of the police service.”⁸⁰ The PCA has no geographical restrictions and its officers travel to other districts as necessary to carry out the work.⁸¹ Regardless of the mandate, though, the PCA is established under the Police Service Act, which makes

⁷² Human Rights Committee, *Concluding Observations at its 1747th and 1748th Meetings*, (April 8, 1999), U.N. Doc. CCPR/C/79/Add.106, ¶ 17.

⁷³ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 117.

⁷⁴ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 118.

⁷⁵ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 118.

⁷⁶ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 118.

⁷⁷ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 119.

⁷⁸ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 119.

⁷⁹ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 119.

⁸⁰ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 121.

⁸¹ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 121.

the PCA responsible to the Minister of Police, compromising the PCA's "independence and ability to embark on independent investigations."⁸²

34. Furthermore, even though the PCA was established pursuant to a mandate to oversee policing, "members of the public do not have direct access to the PCA but must either go through the Commissioner of Police or the Police Authority who then forward such complaints to the PCA."⁸³ The PCA "only investigates cases referred to it by the Minister of Police,"⁸⁴ and if the PCA does receive a report from the public, "they record the complaint's statement and submit it to the Minister for referral."⁸⁵ This arrangement is problematic since "not all cases taken to the Minister are referred back to the PCA for investigation, and the law does not require the Minister to justify failure to refer such cases."⁸⁶
35. Lesotho's Second State Party Report adds that the "majority of people do not know the PCA."⁸⁷
36. Amnesty International has expressed concern about the "lack of prompt, effective and independent investigations into the death of Lieutenant-General Maaparankoe Mahao."⁸⁸ Lieutenant-General Maaparankoe Mahao was killed on 25 June 25, 2015 allegedly by members of LDF who claimed that he had resisted arrest and was alleged to have led a mutiny plot, which also led to the arrest of 23 members of the LDF.⁸⁹ A report by the Southern Africa Development Community (SADC) "found no evidence that Mahao had planned a mutiny and concluded that his killing was unjustified."⁹⁰ While some steps have been taken to investigate the killing, "concerns remain regarding the impartiality and delay of the investigation process."⁹¹ "Almost two years since his killing, Mahao's family are still waiting for justice while the suspected perpetrators are enjoying impunity."⁹²

IV. Conditions of detention in Lesotho violate the Covenant. (List of Issues paragraph 17)

37. The Committee requested that Lesotho respond to allegations of "harsh and life threatening conditions in prisons including overcrowding, inmate violence, rape, physical abuse from officers, inadequate access to medical care, lack of special facilities for incarcerated

⁸² Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 122.

⁸³ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 123.

⁸⁴ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 123.

⁸⁵ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 123.

⁸⁶ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 124.

⁸⁷ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Convent pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 124.

⁸⁸ Amnesty International, *A Human Rights Agenda for the New Lesotho Government. Amnesty Public Statement*, Amnesty International Public Statement, (Jun. 14, 2017).

⁸⁹ Amnesty International, *A Human Rights Agenda for the New Lesotho Government. Amnesty Public Statement*, Amnesty International Public Statement, (Jun. 14, 2017).

⁹⁰ Amnesty International, *A Human Rights Agenda for the New Lesotho Government. Amnesty Public Statement*, Amnesty International Public Statement, (Jun. 14, 2017).

⁹¹ Amnesty International, *A Human Rights Agenda for the New Lesotho Government. Amnesty Public Statement*, Amnesty International Public Statement, (Jun. 14, 2017).

⁹² Amnesty International, *A Human Rights Agenda for the New Lesotho Government. Amnesty Public Statement*, Amnesty International Public Statement, (Jun. 14, 2017).

persons with disabilities, and inadequate sanitary conditions.”⁹³ These concerns are ongoing; in its 1999 Concluding Observations the Committee expressed concern that authorities’ treatment of detainees is in contravention of articles 7 and 10 of the Covenant,⁹⁴ and the Committee urged the State Party to take necessary measures to improve prison conditions.⁹⁵

38. In its Second State Party Report, Lesotho highlights many programs and initiatives to address prison conditions, such as (i) establishing a restorative justice system and diversion programs for minor and non-violent offences and imposing non-custodial sentences such as community service to address overcrowding⁹⁶; (ii) educational programs to promote literacy and numeracy⁹⁷; and (iii) an HIV and AIDS Policy and Strategic Plan to improve the general health of inmates and to fight the spread of infectious diseases.⁹⁸
39. Despite these improvements, the U.S. State Department reported in 2022 that prison conditions were “harsh and life threatening due to overcrowding; deteriorating infrastructure; physical abuse and inmate-on-inmate violence, including rape; and poor food quality, clothing, sanitary conditions, medical care, ventilation, lighting, and heat.”⁹⁹ According to the State Department report, “LCS Commissioner Mating Nkakala acknowledged infrastructure deterioration rendered men’s prison facilities in Qacha’s Nek, Quthing, and Berea Districts, and women’s and juvenile facilities uninhabitable.”¹⁰⁰
40. On October 7, the *Newsday* newspaper interviewed people living at the Maseru Central Prison, and people there “reported limited access to health care, an unbalanced diet, and a shortage of prison uniforms and blankets. Inmate Motlalentoa Matelo stated prison officials deliberately delayed sending sick inmates to the hospital, unless critically or severely injured.”¹⁰¹ Furthermore, it was reported that prisons “generally lacked bedding, lighting, and proper ventilation; heating and cooling systems did not exist.”¹⁰²
41. Lastly, U.S. State Department reports that prison buildings lacked ramps, railings, and other features facilitating physical access for people with disabilities.¹⁰³

⁹³ Human Rights Committee, *List of issues prior to the submission of the second periodic report of Lesotho due in 2023*, (Apr. 2, 2019), U.N. Doc. CCPR/C/LSO/QPR/2, ¶ 17.

⁹⁴ Human Rights Committee, *Concluding Observations at its 1747th and 1748th Meetings*, (April 8, 1999), U.N. Doc. CCPR/C/79/Add.106, ¶ 20.

⁹⁵ Human Rights Committee, *Concluding Observations at its 1747th and 1748th Meetings*, (April 8, 1999), U.N. Doc. CCPR/C/79/Add.106, ¶ 20.

⁹⁶ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 126.

⁹⁷ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 127.

⁹⁸ Human Rights Committee, *Second periodic report submitted by Lesotho under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Apr. 22, 2020), U.N. Doc. CCPR/C/LSO/2, ¶ 128.

⁹⁹ United States Department of State, *Lesotho 2022 Human Rights Report*, (2022), 4, Available at: https://www.state.gov/wp-content/uploads/2023/02/415610_LESOTHO-2022-HUMAN-RIGHTS-REPORT.pdf.

¹⁰⁰ United States Department of State, *Lesotho 2022 Human Rights Report*, (2022), 4, Available at: https://www.state.gov/wp-content/uploads/2023/02/415610_LESOTHO-2022-HUMAN-RIGHTS-REPORT.pdf.

¹⁰¹ United States Department of State, *Lesotho 2022 Human Rights Report*, (2022), 5, Available at: https://www.state.gov/wp-content/uploads/2023/02/415610_LESOTHO-2022-HUMAN-RIGHTS-REPORT.pdf.

¹⁰² United States Department of State, *Lesotho 2022 Human Rights Report*, (2022), 4, Available at: https://www.state.gov/wp-content/uploads/2023/02/415610_LESOTHO-2022-HUMAN-RIGHTS-REPORT.pdf.

¹⁰³ United States Department of State, *Lesotho 2022 Human Rights Report*, (2022), 5, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_LESOTHO-2022-HUMAN-RIGHTS-REPORT.pdf.

V. Suggested Recommendations for the Government of Lesotho:

42. The coauthors suggest the following recommendations for the Government of Lesotho:

- Abolish the death penalty and replace it with a fair and proportionate sentence in accordance with international human rights standards;
- In the meantime, impose an official moratorium on executions;
- In the meantime, amend the Criminal Procedure and Evidence Act to limit the death penalty to the most serious crimes in which the defendant had the intent to kill and did in fact kill;
- Collect and regularly publish, on at least an annual basis, disaggregated data on the current number of persons on death row, including gender, age, ethnicity, nationality, crime of conviction, dates of arrest and conviction, relationship to any codenfednant, relationship (if any) to the victim, status of any appeals or petitions for pardon or mercy, and current location;
- Provide funding for additional independent ballistics and forensics specialists;
- Ratify the Second Optional Protocol to the ICCPR and pass enabling legislation;
- As part of the National Reform Process, dedicate reforms specific to the death penalty and the necessary amendments to the Criminal Procedure and Evidence Act and Defence Force Act ;
- Implement workshops and educational campaigns with the public regarding the death penalty in international human rights law and its lack of deterrent effect;
- Collect and regularly publish data about all complaints received alleging torture or other ill-treatment during investigation of crimes, in police custody, and in detention facilities, including the nature of the complaint, the authority receiving the complaint, investigative measures taken, results of the investigation, accountability measures pursued, and remedies, if any, provided to the victim. The data provided should include all complaints received alleging torture or other ill-treatment in the following circumstances: during investigation of an alleged crime; during the period in which a person is on trial for a criminal offense; while a person is held in pre-trial detention; while a person is detained after conviction while any appeals are pending; and while a person is detained after conviction after the exhaustion of any appeals;
- Implement measures to ensure impartial, thorough, and transparent investigations into cases of torture perpetrated by state actors and regulate interrogation methods and their procedures, duration, and location;
- Require investigators and law enforcement to record all interrogations;
- Obtain resources related to forensic investigation, including qualified staff, equipment, and training;
- Adopt within the Criminal Procedure and Evidence Act definitions of torture and ill-treatment in line with international standards;
- Take necessary action against those responsible for torture in forced confessions;

- Explicitly prohibit torture as a distinct crime;
- Undertake a comprehensive program of judicial and prosecutorial education regarding the prohibition against consideration of evidence obtained under torture in section 228 of the Criminal Procedure and Evidence Act;
- Educate the public about the existence of the PCA and its role as a civilian body to oversee policing, including reports of torture by the police;
- Implement measures to allow the PCA to act as a civilian body to oversee policing without a reporting line to the Minister; and
- Reform the treatment of prison detainees to be in compliance with articles 7 and 10 of the Covenant and the Nelson Mandela Rules.