

JUSTICE REFORMS

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Justice Sector Reforms.

Executive Summary

Over the past eleven months, the Kingdom of Lesotho has held an inclusive national dialogue aimed at transforming the country into a stable, prosperous and united nation. Under the leadership of the National Leaders' Forum (NLF¹), the National Dialogue Planning Committee (NDPC) has ensured that the reforms articulated through the Multi-Stakeholders National Dialogue (MNSD), are nationally owned, inclusive with the participation of different segments of society in line with the National Reforms Act 2018 and guided by the notion of "leaving no one behind". The NDPC compiled the inputs from the: written submissions from Basotho, consultations with the diaspora, nationwide in-district consultations, and the report of the Multi-Stakeholders Forum distilling them into relevant reforms sectors. Reports that were also formed part of this exercise included those from; Development for Peace Education (DPE), Lesotho National Federation of Organisations of the Disabled (LNFOD), Transformation Resource Centre (TRC), Lesotho Council of NGOs (LCN) and The Lesotho Youth Compact.

This chapter focuses on the Justice Sector. It reviews the context within which the Sector operates and how it has evolved over the years; the achievements and challenges highlighted by Basotho and prospects for the future. It further outlines possible options for reforms to be carried out in the short, medium and long-term, and presents the management arrangements, presents risks and mitigation measures necessary for a successful reforms agenda.

Although the reforms focus on the Justice Sector as a whole, the majority of the inputs and recommendations from the consultations were directed at the Judiciary. In light of this, the chapter also benefits from an examination of the broader administration

of justice, as well as law and order challenges that underpin justice delivery. A system wide approach can be more impactful in increasing public confidence in the delivery of justice, while being instrumental in fostering peace, stability and observance of human rights which are all necessary for inclusive economic growth.

Issues that feature dominantly in this report amongst others are; rights of people with disability ,doctrine of public interest, bail, death penalty ,delay in the administration of justice(backlog of cases),independence of judiciary(appointments, impeachments)restructuring of the judicial institutions ,independence of oversight state institutions such as the DCEO, Police Complaints Authority ,Ombudsman and the recommended Judicial Complaints Authority.

Background

In a democratic setting, the institution of the Judiciary is recognized as one of the three arms of government; the others being the Executive and the Legislature. The Judiciary must enjoy independence. Judicial independence, which connotes the absence of undue influence can ensure justice, impartiality, due process, rule of law and legality, respect and observance of fundamental human rights and freedoms under a democratic constitution. Like the other state organs and institutions, the judiciary must be accountable under the constitution of Lesotho.

However, inadequate provisions for judicial independence and other structural systemic deficiencies in the justice system have undermined the rule of law and denied the people of Lesotho from having equal access to justice with fair outcomes. In order to address these challenges, Lesotho with support of the international community reformed laws to create an enabling environment for justice some such as the Anti-Corruption Act, the Penal Code, the incorporation of the "Bill of Rights" into the National Constitution , and put in place measures that are critical to improving access to justice such as the Small Claims Court and Legal Aid, as well as establishing institutions e.g. the Ombudsman and the Human Rights Commission (not yet

operational) as part of the efforts to address the external accountability of the Justice system

In the recent years, the cyclical political instability in Lesotho brought the long-standing concerns about the administration of justice to the public debate. Most Justice institutions, due to lack of basic infrastructure and material resources are centralized in the capital city, Maseru. The net result is a slow output of cases, long trials and high backlog of cases and overcrowding of prisons, sometimes with pretrial detainees making the majority of those who remain incarcerated for long periods of time without trial.

Public perception and confidence in the justice system is low. Coupled with low levels of public knowledge about their rights, the costly legal services and long distances to access services, most Basotho especially those in the rural areas opt instead to rely on the lay-manned Central and Local Courts. While these mechanisms offer an accessible, affordable and efficient means of resolving disputes, they often fail to follow due process or comply with human rights standards thus undermining the quality of justice they dispense.

There have been reports of human rights violations committed by officials of the justice system during the discharge of their duties. The culture of non-observance of human rights and fundamental freedoms is exacerbated by the country's non fulfillment of its international obligation including the domestication of the international human rights treaties/protocols. The National Human Rights Commission is not yet in place and creates a vacuum in national efforts to protect and promote human rights.

Thus, the national reforms agenda has provided a platform to address these challenges. By so doing, Lesotho has successfully adopted a people-centered approach to justice reforms in which the country understands the people's justice needs and are involved in designing solutions to respond to them. Drawing on the consultations, this report provides insights of the national justice gap. It makes the case for shifting

from a model that provides justice for the few, to delivering quality justice for all. As such, it proposes a reform oriented approach in delivering justice by placing people at the heart of the justice system and consequently, justice at the heart of sustainable peace and development. To this end, the chapter examines:

- a) The development of a holistic sector-wide framework for strengthening the rule of law, justice and human rights
- b) The implementation of innovative strategies to increase equal access to justice for all, especially the marginalised and vulnerable groups
- c) Facilitation and the identification of and consensus on issues relating to the rule of law, Justice and human rights for consideration through the constitutional making/review process, mainstreaming of human rights standards and principles within the national reform and development processes
- d) Consolidation of past gains and expansion of legal empowerment reforms

Results

1. Short Term

ISSUES/ CHALLENGES	STATUS QUO	POSSIBLE SOLUTION(S)	TYPE OF ACTION	IMPLEMENTING AGENCY
<p>1.Delay in the administration of justice:</p> <ul style="list-style-type: none"> • Backlog of cases • Pre-trial prisoners subjected to long periods of incarceration before prosecution 	<ul style="list-style-type: none"> • Mediation and arbitration not preemptive. • Unreasonable, unregulated and multiple postponements of cases in courts. • Unavailability of lawyers or judicial officers. • Disappearance of files, exhibits and witnesses. • Delays in the delivery of judgments • Long periods and inefficiencies of committal proceedings in criminal trials 	<ul style="list-style-type: none"> • Establish a justice sector coordination mechanism to champion reforms aimed at improving the administration of justice • Introduce proactive alternative resolution of disputes (arbitration and mediation and Se-Moshoeshoe. • Abolish the long recesses of the High Court (observe holidays only). • Increase the number of roving courts around the country • Set time frames for the disposal of cases and establish strong monitoring mechanisms • Introduce and implement a performance appraisal system for judicial officers and officers of the courts 	<p>Administrative And Legislative (amendment of the Subordinates' Court Act 1998)</p>	<p>Judiciary Ministry of Justice Ministry of Law Law Society of Lesotho</p>

	<ul style="list-style-type: none"> • Weak communication and coordination across the justice chain. 	<ul style="list-style-type: none"> • Enhance criminal and civil jurisdiction of the Magistrate’s courts. • Carry out committal reforms. 		
<p>1.1 The High Court and specialized courts are centralized.</p> <p>1.1.1. Inadequate sittings of the Court of Appeal.</p>	<ul style="list-style-type: none"> • High Court and Specialized courts are situated in Maseru only. • The Court of Appeal holds two sessions per year. 	<ul style="list-style-type: none"> • Introduce periodic roving courts in the districts, per quarter pending decentralization of the High Court and specialized courts. • The Court of Appeal should sit through out the year pending its abolishment and replacement by the Supreme Court of Appeal. 	Administrative	Ministry of Justice And Ministry of Law
<p>1.2 Violations of human rights, police torture and brutality, and extra-judicial killings in the security sector.</p> <p>-overcrowding</p>	<ul style="list-style-type: none"> • Non-observance of laws including human rights of suspects by the police in the execution of their duties. • Police lack adequate training and use old equipment and 	<ul style="list-style-type: none"> • Establish an oversight body to ensure accountability and observance of Human Rights by the police in the execution of their duties. • Strengthen the investigative capacity of the police ensuring it is gender responsive. 	Administrative	Ministry of Police And Ministry of Justice

<ul style="list-style-type: none"> -food shortages -lack of medicines -lack of capacity to rehabilitate inmates. 	<p>outdated technologies to investigate cases.</p>	<ul style="list-style-type: none"> • Increase the police strength through phased recruitment and deployment of trained officers as well as provision of modern investigation equipment. 		
<p>1.3 Rampant corruption in the police service.</p>	<ul style="list-style-type: none"> • Police are notorious for receiving and/or demanding bribes. 	<ul style="list-style-type: none"> • Develop an anti-corruption policy for the police. • Improve conditions of employment of police. 	<p>Administrative</p>	<p>Ministry of Police</p>
<p>1.4 Conferment of King's Counsel title not transparent.</p>	<ul style="list-style-type: none"> • There is no clear policy for conferment of the King's Counsel title. 	<ul style="list-style-type: none"> • Develop a clear policy for conferment of King's Counsel title that shall give the mandate to the JSC to make the call to the Law Society to submit names for consideration by the JSC which shall make the final decision on conferment. 	<p>Administration</p>	<p>Ministry of Justice</p>

	<p>bail to the accused. E.g sexual offences cases.</p> <ul style="list-style-type: none"> • The principle of bail is based upon securing the presence of the accused at his trial and interest of society and victim. • Section 109 of the CP&E Act provide for the granting of bail by the High Court in serious crimes. • The CP&E Amendment Act No 10 of 2002 provides for an accused to adduce evidence that exceptional circumstances exist before granted bail. Thus making it difficult for accused person to get bail. 	<p>the circumstances of the accused and the victim/complainant and the seriousness of the crime.</p> <ul style="list-style-type: none"> • Adopt a victim sensitive approach and not only securing the presence of the accused to stand trial. • Capacitate the Justice system with training, resources and infrastructure so that cases do not take too long to be finalized. This will go a long way in relieving the courts from having to grant an undeserving accused person bail due to delay in prosecuting his/her case to finality. 	<p>Administrative</p>	<p>Ministry of Justice Ministry of Finance</p>
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1.10 Crown witnesses are not given their entitlements.	Crown witnesses are not given their allowances and/or refunded.	Ensure that there are safeguards in the management of the witnesses' fund.	Administrative	Ministry of Law
1.11.1 Ratio of judges is not proportional to the population 1.11.2 Court of Appeal manned by foreign judges and foreign lawyers imported to handle high profile cases	2 Judges recruitment is not in line with the needed quota. 3 Court of Appeal judges are foreigners mostly imported from South Africa. 4 Office of the DPP favours the recruitment of foreign lawyers.	<ul style="list-style-type: none"> • Increase the number of presiding officers so as to be proportional to the population • Cease the practice/custom of staffing the Court of Appeal with retired or old aged judges from South Africa as well as importing lawyers for high profile cases. • Prioritise the training of aspiring judicial officers to cut on the inexperience and lack of competent judicial officers. 	<ul style="list-style-type: none"> • Administrative • Administrative 	Justice and the Judiciary Justice and Judiciary, Attorney General, Director of Public Prosecutions

<p>1.12 Legal services are not available to the marginalized and poor.</p>	<ul style="list-style-type: none"> • The poor and vulnerable do not have access to justice. 	<p>Increase access to justice for all, particularly for vulnerable and marginalized groups who are at risk of being left behind.</p> <ul style="list-style-type: none"> • Ensure rationalized decentralization of justice institutions and services to make them available; • Expand legal aid service provision covering both civil and criminal cases; • Promote alternative dispute resolution approaches and alternative sentencing including community service; • Carry out sustained legal and civic education on justice covering both substantive and procedural law issues; • Establish and ensure gender responsive specialized units and services to meet justice needs of women and girls. 	<p>Administrative</p>	<p>Ministry of Justice And Ministry of Law</p>
<p>1.13 It is not easy for</p>	<ul style="list-style-type: none"> • The Judiciary do not provide for 	<p>Domesticate CRPD, especially Article 13 by:</p>	<p>Administrative</p>	<p>Ministry of Law and Constitutional Affairs</p>

2. Medium Term

ISSUES/ CHALLENGES	STATUS QUO	SOLUTIONS	TYPE OF ACTION	IMPLEMENTING AGENCY
<p>2.1 The oversight bodies of the LMPS are part of the police.</p>	<ul style="list-style-type: none"> The Police Complaints Authority (PCA) is responsible to the Commissioner of Police. 	<ul style="list-style-type: none"> The PCA must be autonomous and independent. The PCA must have the power to initiate investigations on its own. The PCA must be created by its own statute outside of the Police Act. The PCA must operate as an external civilian control oversight mechanism. Members of the public must have direct access to the PCA. 	<ul style="list-style-type: none"> Legislative 	<ul style="list-style-type: none"> Ministry of Police <p>and</p> <ul style="list-style-type: none"> Ministry of Law

<p>2.2 The courts lack updated supporting legislation to function.</p>	<ul style="list-style-type: none"> • The High Court Act, 1978, has not been updated to include the Land court and the other specialized courts (commercial court). 	<ul style="list-style-type: none"> • Update various Acts to support the courts in their operations. • Strengthen the law making process and ensure it is participatory 	<p>Legislative</p>	<p>Ministry of Justice And Ministry of Law</p>
<p>2.3 There is lack of financial autonomy of the Judiciary.</p>	<ul style="list-style-type: none"> • Funding of the Judiciary is not clearly defined. 	<ul style="list-style-type: none"> • Enact a Judiciary Funding Act, which will stipulate how government should fund the Judiciary and stipulate its budgeting mechanism. 	<p>Legislative</p>	<p>Ministry of Justice And Ministry of Law</p>
<p>2.4 The High Court and specialized courts are centralized.</p>	<ul style="list-style-type: none"> • The High Court and specialized courts are situated in Maseru. 	<ul style="list-style-type: none"> • Decentralize the High Court; Children’s Court, Labour court; Land court and Commercial court to cover the North, Central and Southern Regions of Lesotho. 	<p>Legislative</p>	<p>Ministry of Justice And Ministry of Law</p>

2.5 Local and Central courts duplicate proceedings.	<ul style="list-style-type: none"> Both courts deal with customary laws issues and are only separated by the ceiling of amounts of money and severity of punishments awarded. 	<ul style="list-style-type: none"> Combine both courts to form one court. Replace the Proclamation under which these courts were established. 	Legislative And Administration	Ministry of Justice And Ministry of Law
2.6 There are no specialized courts to deal with and enforce traditional matters	<ul style="list-style-type: none"> Currently there are traditional committees to deal with traditional matters such as initiation and local or central courts deal with disputes therein. 	<ul style="list-style-type: none"> Establish traditional courts or tribunals which are empowered to deal with the traditional matters. 	Legislative And Administration	Ministry of Justice And Ministry of Law
.7 Legal Practitioners:	<ul style="list-style-type: none"> In terms of the Legal Practitioners Act 1983, only Attorneys can 	<ul style="list-style-type: none"> Amend the Law to allow the Advocates to consult with clients. 	<ul style="list-style-type: none"> Legislative 	Ministry of Law and Law Society

<p>.7.1 Advocates are not allowed to consult with clients.</p>	<p>consult with clients. There are few Attorneys as such this hinders administration of justice</p>	<ul style="list-style-type: none"> • Amend the law to allow Legal Practitioners to advertise their services 		
<p>.7.2 Legal Practitioners are not allowed to advertise their services</p>	<ul style="list-style-type: none"> • Legal practitioners are not allowed to advertise their services 	<ul style="list-style-type: none"> • Law Society to ensure that all practicing Lawyers are in possession of their practicing certificates. 	<ul style="list-style-type: none"> • Legislative 	<p>Ministry of Law and Law Society</p>
<p>.7.3 Some Legal Practitioners practice without practicing certificates</p>	<ul style="list-style-type: none"> • The Act requires the Legal Practitioners to possess a practicing certificate 	<ul style="list-style-type: none"> • Law Society must hold refresher courses for its members. 		
<p>.7.4 There are no refresher courses for Lawyers</p>	<ul style="list-style-type: none"> • Practicing certificates are renewed annually without the need for lawyers to undergo any minimum continuing education that equips them with tools for the 	<ul style="list-style-type: none"> • Expedite the introduction and adoption of the Ethics Code and the Code of Conduct for the members of the Society. 	<ul style="list-style-type: none"> • Administrative 	<p>Law Society</p>
<p>.7.5 Law Society does not have a guiding tool in terms of dealing with complaints brought about by the</p>				

<p>public against its members</p>	<p>changing legal landscape and the development in law.</p> <ul style="list-style-type: none"> • Law Society does not have an Ethics Code nor a Disciplinary Code. 		<p>Administrative</p>	
<p>2.8 Judicial Service Commission has no permanent office.</p> <p>2.9 Lack of continuous in-service training of judicial officers impact negatively on their confidence and performance.</p>	<ul style="list-style-type: none"> • Judicial Service Commission meets on an ad hoc basis. • There is no oversight body for the judicial officers. • The retirement age of Judges is 75 years. 	<ul style="list-style-type: none"> • Establish a permanent Secretariat for the JSC for its daily operations. • Judicial training is necessary for a strong judiciary. • Establish a Judicial Training Institute. 	<p>Legislative</p> <p>Legislative</p> <p>Legislative</p>	<p>Justice and Law</p> <p>Justice and Law</p> <p>Justice and Law</p>

<p>2.10 There is lack of accountability as far as judicial officers are concerned.</p> <p>2.11 Judges remain in office for a very long.</p>		<ul style="list-style-type: none"> • Establish a Judicial Complaints Authority and Inspectorate. • Judges should serve for a maximum period of fifteen years or up to age of 65. • The office of the Chief Justice be reserved for a Lesotho Citizen. 		
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- Long Term

ISSUES/ CHALLENGES	STATUS QUO	POSSIBLE SOLUTIONS	TYPE OF ACTION	IMPLEMENTING AGENCY
<p>Human Rights Commission is not yet constituted.</p> <p>3.1 Lesotho is behind with its reporting</p>	<ul style="list-style-type: none"> • Currently the Human Rights Commission has been established under the Constitution (chapter XIA) 	<p>Strengthen the national human rights system and institutions for effective human rights promotion and protection by:</p>	<p>Constitutional Amendment</p>	<p>Ministry of Justice and Ministry of Law</p>

<p>obligations to international treaty bodies.</p>	<p>and the Act but not yet operational.</p> <ul style="list-style-type: none"> • A significant number of reports are pending submission to the treaty bodies • Implementation of the recommendations of the UPR reports from the Human Rights Council and other reports to treaty bodies are not implemented systematically. 	<ul style="list-style-type: none"> • Depoliticizing the appointment of the Human Rights Commissioners. • Establishing a national human rights commission that is compliant with the Paris Principles. See Annex 'A' • Strengthening Lesotho's capacity to engage with and reporting to international and regional human rights mechanisms, e.g. The Universal Periodic Review and Treaty Bodies. • The commissioners be appointed by the King acting in accordance with the advice of the Prime Minister after the Prime Minister has consulted the Judicial Service Commission. • Strengthening Lesotho' capacity to engage with and reporting to 	<p>Ministry of Foreign Affairs and International Relations Civil Society Organizations</p>
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		<p>international and regional human rights mechanisms</p> <ul style="list-style-type: none"> • Establish an inter-ministerial mechanism for preparing reports and follow up action to recommendations. • Strengthen the capacity of the Human Rights Commission and civil society to prepare shadow reports and advocate for follow up to recommendations 		
3.2 There is no provision for guiding principles of the Judiciary in the Constitution.	<ul style="list-style-type: none"> • Guiding principles are not included in the Constitution. 	<ul style="list-style-type: none"> • Develop principles guiding the judiciary in the Constitution. See annex 'B' 	Constitutional Amendment	Ministry of Justice And Ministry of law
3.3 Provisions of the Constitution do not explicitly guarantee the independence of the Judiciary.	<ul style="list-style-type: none"> • Section 118(2) does not set out the principles that guarantee the independence of the Judiciary. 	<ul style="list-style-type: none"> • Develop a provision that sets out the principles that guarantees independence of the judiciary. See annex 'C' 	Constitutional Amendment	Ministry of Justice And Ministry of law

3.4 The present structure of the courts' present perennial problems.	<ul style="list-style-type: none"> The current structure of the courts dates back to pre-independence era. 	<ul style="list-style-type: none"> Change the courts structure to meet modern day needs of Basotho. Annex 'D' 	Constitutional Amendment	Ministry of Justice And Ministry of Law
3.5 The Judicial Service Commission (JSC) is skewed in favour of the Executive.	<ul style="list-style-type: none"> The JSC consists of four members; the Chief Justice, Attorney General, Chairman of the Public Service Commission and a Judge. 	<ul style="list-style-type: none"> Expand the JSC to be more representative by including the Law Society, academia and civil society. 	Constitutional Amendment	Ministry of Justice And Ministry of Law

<p>3.6 The office of the Ombudsman is politicized and ineffective.</p>	<ul style="list-style-type: none"> • Ombudsman is appointed by the King acting in accordance with the advice of the Prime Minister. (section 134 of the Constitution) • Constitution limits functions of the Ombudsman to making investigations. (section 135 of the Constitution) • Parliament rarely acts on recommendation of the Ombudsman. 	<ul style="list-style-type: none"> • Amend the Constitution such that Ombudsman is appointed by the King on the recommendation of the Prime Minister after consultation with the Judicial Service Commission. • Expand the functions of the Ombudsman to include remedial action. 	<p>Constitutional Amendment</p>	<p>The Ministry of Justice And Ministry of Law</p>
<p>3.7 Lack of confidence in the Judicial System as Judges are appointed by the Politicians.</p>	<p>The President of the Court of Appeal and the Chief Justice are appointed by the King in accordance with the advice of the Prime Minister.</p>	<p>Depoliticize the appointments of the President of the Court of Appeal and the Chief Justice such that the President of the Court of Appeal or Chief Justice shall be appointed by the King after the following events:</p>	<p>Constitutional Amendment</p>	<p>Ministry of Justice And Ministry of Law</p>

	<p>Judges are appointed by the King in accordance with the advice of the Judicial Service Commission</p>	<ul style="list-style-type: none"> a) Interviews conducted by the JSC and submission of names to Parliamentary Portfolio Committee on Justice. b) Consultation of the Parliamentary Portfolio Committee on Justice with the Prime Minister. c) Prime Minister advises the King on the appointment of the President of the Court of Appeal or the Chief Justice as the case may be. d) The Chief Justice shall be the head of the Judiciary and the courts. e) Puisne Judges shall be appointed by the King on advice of the JSC which shall 		
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		have advertised the vacancies and conducted open interviews		
3.8 Impeachment of the Judicial officers is arbitrary.	The Prime Minister may present to the King the issue of impeachment of the President of the Court of Appeal or the Chief Justice	<p>IMPEACHMENT OF THE PRESIDENT OF THE COURT OF APPEAL AND THE CHIEF JUSTICE:</p> <p>a) JSC shall set up a tribunal following receipt of a complaint or misconduct;</p> <p>b) JSC shall consider the report of the tribunal and forward its recommendations to the Parliamentary Portfolio Committee on Justice;</p> <p>c) The Parliamentary Portfolio Committee on Justice shall consider the report, make</p>	Constitutional Amendment	Ministry of Justice And Ministry of law

		<p>recommendations and forward its recommendations to the Prime Minister;</p> <p>d) The Prime Minister shall advise the King after consultation with the Parliamentary Portfolio Committee on Justice.</p>		
<p>3.9 The current Lesotho Constitution does not protect and/or promote rights of people with disability.</p> <p>3.10 The discrimination clause.</p> <p>3.11 The state is not doing enough to protect people with disability.</p>	<ul style="list-style-type: none"> • Currently there is no legislation that protects the rights of People with disability. • The ECSRs are not justiciable. • Parliament is only now in the process of enacting the disability law. 	<ul style="list-style-type: none"> • Full review of the Constitution to ensure that the interests of the people with disability are provided for. • Specifically the bill of rights must be reviewed, especially the discrimination clause. • The new discrimination clause should specifically mention disability as a prohibited ground of discrimination. 	Constitutional amendment	Ministry of Justice And Ministry of Law

<p>3.12 People with disability are discriminated at their place of employment and during recruitment.</p> <p>3.13 There is no provision for the sign language as official language in Lesotho.</p>	<ul style="list-style-type: none"> • There are a number of policy papers on the promotion of people with disability. • The Labour Code, 1992 and other labour laws of Lesotho do not favour people with disability. 	<ul style="list-style-type: none"> • This can be achieved by adopting a similar approach like that of Article 21 of the Ugandan Constitution of 1995. Annexed and Marked E • Domestication of the UN Convention on the Persons with Disabilities (CRPD) which Lesotho is a state party. 		
<p>3.14 Amend the discriminatory provisions of the Constitution and enabling laws.</p>	<ul style="list-style-type: none"> • Section 18(4) (c) of the Constitution is discriminatory towards women. • There are laws that are obsolete and discriminatory towards persons with disabilities and other groups that risk leaving them behind. 	<ul style="list-style-type: none"> • Amend the provision to be in line with international and regional human rights instruments. 	<p>Constitutional amendment. Legislative</p>	<p>Ministry of Justice And Ministry of Law</p>

<p>3.15 Re-introduction of the death penalty.</p>	<ul style="list-style-type: none"> • Death sentence is provided for in the Constitution and other laws: NATIONAL: • Section 5 (2) of the Constitution provides for death sentence. • Section 297 of the Criminal Procedure and Evidence Act (CP&E) provides for imposition of death sentence for certain crimes. • Section 32 (a) (vii) of the Sexual Offences Act 2003 	<ul style="list-style-type: none"> • Abolish Death penalty in line with the right to life. • The Second Protocol to the ICCPR enjoins all the state parties to take all necessary measures to abolish death penalty. • Lesotho is 'not' a signatory to this Protocol and even if it was it would need to amend the local laws to effect abolishing death penalty. • Lesotho needs to amend the local legislation including the Constitution to abolish the death penalty. 	<p>Constitutional amendment And Legislative amendment</p>	<p>Ministry of Justice And Ministry of Law</p>

	<p>provides for death sentence for persons who commits rape and knowingly infect the victim with HIV.</p> <ul style="list-style-type: none">• However, in imposing death penalty the courts have to satisfy themselves that there are no extenuating circumstances. <p>INTERNATIONAL:</p> <ul style="list-style-type: none">• Lesotho is a signatory to the UN Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights, and in particular International Covenant on Civil and Political Rights (ICCPR), all of which provide for			
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	<p>the sanctity of the right to life.</p> <ul style="list-style-type: none"> • These international instruments recognize however, that states signatory thereto may impose the death penalty. • ARTICLE 3 of the ICCPR provides that states that have not abolished death penalty may impose it only pursuant to a final judgment of rendered by a competent court. 			
<p>3.16 The DCEO is not independent and its integrity is compromised.</p>	<ul style="list-style-type: none"> • The DCEO is the creature of subordinate law. 	<ul style="list-style-type: none"> • The DCEO be a creature of the Constitution so as to safeguard its independence. 	<ul style="list-style-type: none"> • Constitutional amendment • Legislative 	<ul style="list-style-type: none"> • Ministry of Police and

	<ul style="list-style-type: none"> • And its Director General is appointed by the Prime minister and responsible to the minister. • It relies on the goodwill and discretion of the DPP. 	<ul style="list-style-type: none"> • The appointment of the Director General be made by an independent body, like the relevant Parliamentary portfolio committee. • The DCEO to report to the relevant Parliamentary portfolio committee. • DCEO be geared towards direct prosecution without seeking approval from the DPP. Or • The DCEO be given a leeway to prosecute directly if, after 30 days of receiving a request to prosecute, the DPP fails to prosecute without giving a reasonable explanation. 		<ul style="list-style-type: none"> • Ministry of Law • Ministry of Justice <p>And</p> <ul style="list-style-type: none"> • Ministry of Law
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<p>3.17 There is no public interest provision in the constitution.</p>	<ul style="list-style-type: none"> • Section 22 of the Constitution only permits persons who are directly affected by the threat or violation of human rights to approach the High Court. 	<ul style="list-style-type: none"> • Include a provision for public interest law to allow individuals and/or organizations to go to court on behalf of aggrieved parties. • SEE ANNEXED similar provision of SECTION 38 from the South African Constitution MARKED F 	<p>Constitutional Amendment</p>	<p>Ministry of Law and Constitutional Affairs</p>
<p>3.18 There is no specific provision to oblige state:</p> <ul style="list-style-type: none"> • To promote Human Rights. • To assist and protect the victims of Human Rights. 	<ul style="list-style-type: none"> • The specific sections pertaining to the Bill of Rights entail no penalties. • They do not state punishments for violations and make it difficult to seek remedies. 	<ul style="list-style-type: none"> • Amend the constitution to cater for the state promotion of human rights. • Enact laws that provide for penalties for the violation of the human and peoples' rights. • Enact laws that provide for the protection and compensation of victims of human rights violations. 	<ul style="list-style-type: none"> • Constitutional amendment. • Legislative • administrative 	<p>Ministry of Law and Constitutional affairs</p>

<p>3.19 There are hurdles in enforcing human rights through the courts.</p>	<ul style="list-style-type: none"> • The person or body that pursues enforcement of human rights in courts must establish direct injury and/or damage. (locus standi) 	<ul style="list-style-type: none"> • Enact law for public interest. • Make laws that promote the intervention of civic bodies in the protection of human rights. • Make policies that promote the enforcement of human rights. 	<p>Constitutional amendment</p> <p>Legislative</p> <p>Administrative</p>	<p>Ministry of Law and Constitutional Affairs</p>
<p>3.20 Economic, Social and Cultural rights (ESCRs) not justiciable.</p>	<ul style="list-style-type: none"> • They bind the state only when circumstances and resources permit. • They are classified as second generation rights. 	<ul style="list-style-type: none"> • Make provision in the Constitution to reclassify these rights on the same level as those that are in Chapter 2 of the Constitution. • Make policies that promote these ESCRs and enforce them. 	<p>Constitutional amendment</p>	<p>Ministry of Law and Constitutional Affairs</p>

<p>3.21 The Constitution lacks the following:</p> <ul style="list-style-type: none"> • No introductory preamble; and • A preface; and • Foreword remarks; or • A message statement stating its aims and objectives. 	<ul style="list-style-type: none"> • The Constitution is an assemblage of chapters with scattered sections. • No explanatory notes. • This makes it hard for the courts of law to interpret and enforce the constitution. 	<ul style="list-style-type: none"> • Overhaul the structural format of the Constitution. • Include the following in the set up of the Constitution: • An Introductory preamble; and • A preface; and • Foreword remarks; or A message statement stating its aims and objectives. 	<p>Constitutional amendment</p>	<p>Ministry of Law and constitutional affairs</p>
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Conclusion

The 2030 Agenda is creating new momentum for justice that helps national reforms. International human rights frameworks also support reform efforts by encouraging governments to get the basics right through the application of a rights-based approach. This approach can particularly help the most vulnerable and those who need justice most.

In charting a path to justice for all, an understanding of the barriers people face and opportunities contributes to better strategies for reform. This report does not list or mention all the justice challenges in Lesotho and suggestions coming through from the different dialogue platforms. Rather some challenges that were presented differently have been clustered in a manner that retains their essence. Some of the challenges merely reflect the anger and frustration among Basotho with the justice system, the recommendations made do not always comply with human rights. These include the suggestion that a person convicted of rape must be castrated or that if a person is convicted of theft, his/her hand must be chopped off for the first offence and if convicted for the second time for theft, the other hand must also be chopped off.

What was found lacking in the reports is the need for the development of a justice sector policy. This policy would provide the legal environment that:

- Strengthens the rule of law and human rights
- Strengthens the internal and external accountability mechanisms to monitor excesses, corruption, maladministration and poor service delivery by the justice institutions,
- Develops, harmonize and implement service delivery and performance standards
- Strengthens the independence of the judicial process and the judiciary in particular.
- Empower the Basotho as an important focus of the justice system with support from the top.

- Consider opening the justice system to innovation by making greater use of technology to streamline processes and increasing the resolution of cases and matters
- Implements strategies for smarter justice financing to incentivize reform and ensure that they are sustainable because increased expenditure is leading to measurable results

Across the world, justice systems are exploring new ways to put people and their needs first. By reflecting the views of the Basotho people in this report, it is therefore within sight of the Authorities to remedy the “ills” as represented in the “challenges” by concretizing the suggested solutions at the earliest opportunity.

Annexure 'A'

The Paris Principles, 1993

The United Nations Paris Principles provide the international benchmarks against which **National Human Rights Institutions** (NHRIs) can be accredited by the Global Alliance of National Human Rights Institutions (GANHRI).

Adopted in 1993 by the United Nations General Assembly, the Paris Principles require NHRIs to :-

- Protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- Promote human rights, through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government.

The Paris Principles set out six main criteria that NHRIs require to meet:

- Mandate and competence – a broad mandate, based on universal human rights norms and standards;
- Autonomy from Government
- Independence guaranteed by statute or Constitution;
- Pluralism
- Adequate resources; and
- Adequate powers of investigation.

Annexure 'B'

THE GUIDING PRINCIPLES OF THE JUDICIARY

(The spirit of the Constitution)

1. In exercising judicial power the courts of law shall be guided by the following fundamental principles:-
 - (a) Judicial authority is derived from the people and vests in and shall be exercised by the courts and tribunals established by or under this Constitution.
 - (b) Supremacy of the Constitution of Lesotho, rule of law and the separation of powers;
 - (c) Rectitude and integrity;
 - (d) Judicial independence and judicial accountability;
 - (e) Justice shall be done to all, impartially and without bias;
 - (f) Justice shall not be delayed;
 - (g) Sanctity of human rights and freedoms;
 - (h) Recognition of inherent dignity and worth of all human beings;
 - (i) Justice shall be administered without undue regard to procedural technicalities;
 - (j) Courtesy, decorum and civility;
 - (k) Purposive and benevolent interpretation of the Constitution and the laws;
 - (l) Compromise and reconciliation between parties shall be promoted at all times;
 - (m) Basotho values of humanity, peace, love and brotherhood;
(khotsokhaitseliea Moshoeshoe – morokhotla ha o okoloemafura – Basotho sechabanasakhomo – Toka ho sera le motsoalle.)

The list is not exhaustive

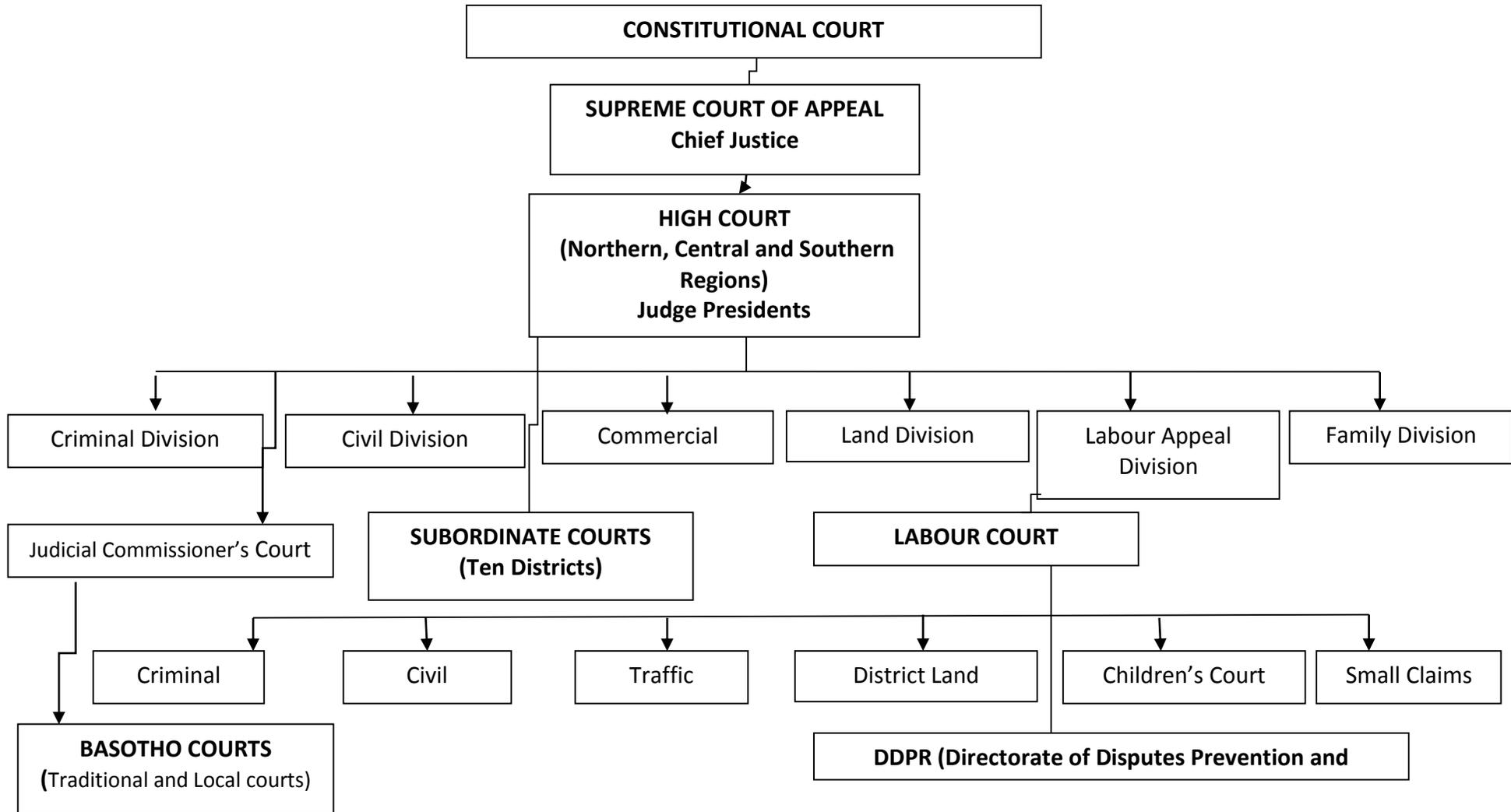
Annexure 'C'

SECTION 118 (2) OF THE CONSTITUTION 1993, be replaced with a similar clause of Section 165 of the Constitution of South Africa 1996:

"Judicial Authority

- (1) The judicial authority of the Kingdom of Lesotho is vested in the courts;
- (2) The courts are independent and subject only to the Constitution and the law which they must apply impartially and without fear, favour or prejudice;
- (3) No person or organ of state may interfere with the functioning of the courts;
- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts;
- (5) An order or decision issued by a court binds all persons to whom it applies, and to organs of state to which it applies.

Annexure 'D'



ANNEXURE 'E'

21. Equality and freedom from discrimination.

(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or **disability**.

(3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or **disability**.

(4) Nothing in this article shall prevent Parliament from enacting laws that are necessary for—

(a) Implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society; or

(b) Making such provision as is required or authorised to be made under this Constitution; or

(c) Providing for any matter acceptable and demonstrably justified in a free and democratic society.

ANNEXURE E CONTD

Affirmative action in favour of marginalised groups.

32 (1)Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

(2)Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article

ANNEXURE 'F' - PUBLIC INTEREST CLAUSE

38. Enforcement of rights.

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

The persons who may approach a court are-

- (a) Anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) Anyone acting in the public interest; and
- (e) An association acting in the interest of its members.