

**NGO Joint Parallel Report on the Government of Lesotho's
Fifth to Seventh Combined Periodic Reports on the Implementation of the
Convention on the Elimination of All Forms of Discrimination against Women**

Submitted to the

*UN Committee on the Convention on the Elimination of All Forms of Discrimination against Women
for consideration in the formulation of the
List of Issues during the 91st Pre-Sessional Working Group*

by:

Science for Democracy

Rue Ducale 41,
1000 Bruxelles, Belgium

Contact: Dr. Laura Convertino
laura.errans@gmail.com

*International Human Rights Center
Loyola Law School, Los Angeles*

919 Albany Street
90015, Los Angeles, CA, USA

Contact: Prof. Cesare Romano
cesare.romano@lls.edu

and

Seabata Makoae
Lesotho

Contact: sabyza@yahoo.co.uk

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PURPOSE OF THIS PARALLEL REPORT

(1) The purpose of this parallel report is to assist the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in the formulation of the List of Issues during the 91st Pre-Sessional Working Group, leading to the discussion of the Government of Lesotho’s combined Fifth to Seventh Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW” or “Convention”). Lesotho ratified CEDAW on 22 August 1995.¹

(2) Currently, the law in Lesotho only allows for abortion in very limited circumstances. In all other instances, it is a crime. The criminalization of abortion is problematic on its own, but, when paired with the high rates of gender-based violence (GBV) plaguing Lesotho, it is even more destructive. In Lesotho, there are both legal and practical barriers to accessing abortion that the government must address if it is to fulfill its obligations under CEDAW.

(3) This report urges the CEDAW Committee to recommend Lesotho to commit to the recognition and advancement of women and girls’ sexual and reproductive health and rights in the State. This should include amending the Penal Code and decriminalizing abortion. At the very least, Lesotho should make it possible for woman or girls who were raped and ended up pregnant to obtain an abortion.

(4) This report addresses two further problems regarding sexual and reproductive rights in Lesotho: the conscientious objection of doctors and magistrates, and Lesotho’s high rates of sterilization without informed consent.

¹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=97 [last accessed 11 June 2024].

ABOUT THE AUTHORS OF THIS REPORT AND SOURCES

(5) This report has been prepared by Megan Mars, of Science for Democracy, working under the supervision of Professor Cesare Romano, of the International Human Rights Center of Loyola Law School, Los Angeles, and in collaboration with Seabata Makoae.

(6) Science for Democracy is a Brussels-based NGO that promotes the right to science as a structural component of liberal democracies through dialogue between the scientific community and decision-makers all over the world.²

(7) The International Human Rights Center of Loyola Law School, Los Angeles is committed to achieving the full exercise of human rights by all persons and seeks to maximize the use of international and regional political, judicial, and quasi-judicial bodies through litigation, advocacy, and capacity-building.³ Loyola Law School, Los Angeles is the school of law of Loyola Marymount University, a Jesuit university.

(8) Seabata Makoae is a social worker and gender equality activist, with particular interest in the prevention of violence against women and girls. He has worked for the Christian Council of Lesotho, Management Sciences for Health, Lesotho National Association of the Physically Disabled, SheHive Association among others. Seabata is currently the Gender and GBV Prevention Technical Advisor at GIZ South Africa, Lesotho & eSwatini. He has recently been awarded a Certificate in Feminist Leadership for Equity, Justice and Ecology by Coady International Institute at St. Francis Xavier University in Nova Scotia Canada and Certificate in Critical Investigations in Humanitarianism in Africa (CIHA) by University of California Irvin Campus. He is the Founder and Chairperson of Leseli Savings and Credit Cooperative Society, which has over 95% women representation. In 2024, Seabata began a Master of Social Transformation Programme with the Pacific School of Religion in Berkely California.

BACKGROUND

(9) In Lesotho, gender inequality and discrimination drive many unfortunate patterns affecting women, ranging from gender-based violence (GBV) and child marriage to high rates of maternal mortality and morbidity.⁴

(10) According to the World Health Organization (WHO), the maternal mortality rate in Lesotho remains high, at 566/100,000 live births.⁵ It should be noted that Lesotho's maternal mortality ratio is higher than the regional

² <https://sciencefordemocracy.org/> [last accessed 17 April 2024].

³ <https://www.lls.edu/academics/centers/internationalhumanrightscenter/> [last accessed 17 April 2024].

⁴ In Lesotho, 16% of girls are married before the age of 18. , Bureau of Statistics under the Ministry of Development Planning, *Lesotho: Multiple Indicator Cluster Survey*, 2018, p. 54; Girls Not Brides, *Lesotho*, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/lesotho/#:~:text=16%25%20of%20girls%20in%20Lesotho,married%20before%20their%2018th%20birthday.> [last accessed 5 Aug. 2024].

average.⁶

(11) Maternal mortality is not the only challenging outcome of laws prohibiting abortion. Maternal morbidity is also a common consequence, especially in Lesotho.⁷ A 2022 report from the Lesotho Bureau of Statistics found that the main reason for hospital admissions among women in the State is abortion complications.⁸ The report found that 24.3% of hospitalized female patients were seeking care following “incomplete abortions.”⁹

(12) GBV is a significant human rights violation that affects one in three women across the globe in their lifetime.¹⁰ GBV, including domestic violence and sexual assault, is common in Lesotho. For example, amongst the Basotho,¹¹ 86% of women and girls have experienced GBV in their lives.¹² Lesotho ranks third globally for rape instances per capita.¹³ In fact, Lesotho’s government describes in its periodic report cases of GBV in the state to be “rampant.”¹⁴

(13) Lesotho has taken some steps towards advancing women’s rights and addressing discrimination.¹⁵ We also commend the government of Lesotho for running campaigns on GBV prevention and human rights in partnership with civil society organizations and for passing the Counter Domestic Violence Act 2022.¹⁶ The Ministry of Gender is also sharing “the importance of reporting abuse and violence” with communities.¹⁷ However, immediate action must be taken to address the high rates of GBV that persists and measures must be adopted to prevent reporting

⁵ WHO, *Addressing High Maternal Mortality and Newborn Deaths in Lesotho*, 20 Dec. 2023, <https://www.afro.who.int/countries/lesotho/news/addressing-high-maternal-mortality-and-newborn-deaths-lesotho> [last accessed 11 July 2024].

⁶ World Bank Group, *Gender Data Portal: Lesotho*, <https://genderdata.worldbank.org/en/economies/lesotho#:~:text=566%20women%20die%20per%20100%2C000,higher%20than%20its%20regional%20average>. [last accessed 11 July 2024].

⁷ WHO, *Maternal morbidity and well-being*, <https://www.who.int/teams/maternal-newborn-child-adolescent-health-and-ageing/maternal-health/maternal-morbidity-and-well-being> [last accessed 15 Aug. 2024]; Rachel C. Vanderkruik, Ozge Tuncalp, Doris Chou & Lale Say, *Framing maternal morbidity: WHO scoping exercise*, BMC Pregnancy and Childbirth, 13 Article 213, 19 Nov. 2023, <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/1471-2393-13-213> [last accessed 26 Aug. 2024].

⁸ Bureau of Statistics, *Health Statistics Report 2022*, p. 11, <https://www.bos.gov.ls/Publications.htm> [last accessed 11 July 2024].

⁹ *Ibid.*

¹⁰ Sumbal Javed & Vijay Kumar Chattu, *Patriarchy at the helm of gender-based violence during COVID-19*, AIMS Public Health, doi: [10.3934/publichealth.2021003](https://doi.org/10.3934/publichealth.2021003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7870387/> [last accessed 26 Aug. 2024].

¹¹ The Sotho, also known as the Basotho, are a Sotho-Tswana ethnic group native to Southern Africa. They primarily inhabit the regions of Lesotho and South Africa. See *Lesotho: Explore the Kingdom in the Sky*, 2016, <https://seelesotho.com/basotho/> [last accessed 31 Aug. 2024].

¹² Reitumetse Russell, *Ending Gender-Based Violence in Lesotho and Beyond*, United Nations Lesotho, 20 Oct. 2023, <https://lesotho.un.org/en/250010-ending-gender-based-violence-lesotho-and-beyond#:~:text=GBV%20is%20tearing%20apart%20the,or%20another%20in%20their%20lives> [last accessed 11 July 2024].

¹³ Office of the Resident Coordinator, *United to end Gender Based Violence in Lesotho*, UN Newsletter, Issue 2, 2022, p. 2, <https://lesotho.un.org/sites/default/files/2022-08/UN%20Newsletter%20August%202022.pdf> [last accessed 5 Aug. 2024].

¹⁴ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, CEDAW/C/LSO/5-7, 8 Jan. 2024, para. 159.

¹⁵ 2006 Legal Capacity of Married Persons Act removed the minority status of married women and lifting certain restrictions that the marital power had placed on the legal capacity of the wife. Lesotho Government Gazette Extraordinary, *Legal Capacity of Married Persons*, 6 Dec. 2006, <https://gender.gov.ls/wp-content/uploads/2020/11/Legal-Capacity-of-Married-Persons-Act.pdf> [last accessed 5 Aug. 2024].

¹⁶ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 76.

¹⁷ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 75.

procedures being a deterrent for women seeking justice or an abortion.

(14) In its periodic report, Lesotho lists the international and regional legal instruments it has adopted, including “the International Conference on Population Development Plan of Action; Sustainable Development Goals; The Roadmap for Accelerating Reduction of Maternal and Newborn Morbidity and Mortality in Lesotho (2007-2015); National Health Strategic Plan 2013 – 2017; National Health Sector Policy 2011; Primary Health Care Revitalisation Action Plan (2011 – 2017) (2017-2022); National Adolescent Health Policy 2006; National Sexual and Reproductive Health Strategic Plan 2015-2020; National family Planning Guidelines 2012 and Planned Parenthood Association Strategic Plan 2010-2014.”¹⁸ Yet, despite accepting these commitments, sexual violence is still rampant and maternal mortality rates remain high, with unsafe, clandestine abortions significantly contributing to the crisis.

(15) The following sections explain how Lesotho is failing to fulfill its duties and obligations under CEDAW due to barriers to obtaining safe and legal abortions, the difficulty of securing an abortion following a rape, the possibility for doctors and magistrates to invoke conscientious objections, and, finally, high rates of sterilization without informed consent. These issues come under the purview of articles 2, 10 12, 14 and 16 of CEDAW.

LESOTHO FAILS TO FULFIL ITS INTERNATIONAL OBLIGATIONS UNDER CEDAW CONCERNING SEXUAL AND REPRODUCTIVE HEALTH

1) The criminalization of abortion violates women’s human rights and contributes to substantial health risks

(16) In Lesotho, the Penal Code criminalizes abortion, subjecting women to the possibility of imprisonment up to three years.¹⁹ Abortion is a crime unless it is carried out to preserve health of the mother, in case of rape or incest, or in case of diagnosis that the resulting child will be seriously physically or mentally handicapped.²⁰

“(1) A person who does any act bringing about the premature termination of pregnancy in a female person with the intention of procuring a miscarriage, commits the offence of abortion.

(2) It shall be a defence to a charge under this section that the act intended to terminate pregnancy was performed by a registered medical practitioner -

(a) in order to prevent significant harm to the health of the pregnant female person, and the person performing the act has obtained a written opinion from another registered medical practitioner to the effect that the termination of pregnancy is necessary to avoid significant harm to the health of the pregnant female person;

¹⁸ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 110.

¹⁹ *Lesotho Government Gazette*, Penal Code Act, 2010, Vol. 57, Section 46. Abortion, <https://www.wipo.int/wipolex/en/legislation/details/15318> [last accessed 26 Aug. 2024].

²⁰ *Lesotho Government Gazette*, Penal Code Act, *supra* note 19 at Section 45; See also Center for Reproductive Rights, *The World’s Abortion Laws*, <https://reproductiverights.org/maps/worlds-abortion-laws/?country=LSO> [last accessed 10 July 2024].

(b) in order to prevent the birth of a child who will be seriously physically or mentally handicapped, and the person performing the act has obtained in advance from another registered medical practitioner a certificate to the effect that the termination of the pregnancy is necessary to avoid the birth of a seriously physically or mentally handicapped child; or

(c) in order to terminate the pregnancy of a female person who is pregnant as a result of incestuous relationship or victim of rape.”²¹

(17) Lesotho’s responsibilities under CEDAW that are implicated when abortion is criminalized include the right to healthcare free from discrimination (Art. 12); the right for women to be free from discrimination in all its forms (Art. 2); and the right to decide freely the number and spacing of children (Art. 16), which includes having access to information to make the decision (Art. 10).²² The CEDAW Committee, along with other human rights bodies and mechanisms, have repeatedly called for laws criminalizing abortion to be repealed or eliminated.²³

(18) The criminalization of abortion targets and punishes women specifically for their reproductive health decisions, obstructs the enjoyment of their human rights, and is a form of “violence against women.”²⁴ Because of that, in General Recommendation No. 24 (Article 12 of the Convention: Women and Health), the CEDAW Committee stated: “When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.”²⁵ General Recommendation No. 35 recommends States party to CEDAW to repeal provisions that criminalize abortion.²⁶

(19) Importantly, denying women abortions is a violation of the right to healthcare services free from gender discrimination. Article 12(1) of CEDAW provides: “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to healthcare services, *including those related to family planning.*”²⁷ Prohibiting abortions, a form of care solely used by pregnant women, is acutely discriminatory and leads to harmful health outcomes for women. Strict abortion prohibitions correlate with higher maternal mortality and morbidity rates.²⁸

(20) The CEDAW Committee has recognized that criminal laws limiting abortion services serve “no known

²¹ *Lesotho Government Gazette*, Penal Code Act, *supra* note 19 at Section 45.

²² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 2, Art. 12, Art. 16, Art. 10.

²³ CESCR, *General Comment No. 22 on the right to sexual and reproductive health*, 2 May 2016, E/C.12/GC/22, para. 49(a); CEDAW, *General Recommendation No. 33 (2015) on women’s access to justice*, 3 Aug. 2015, CEDAW/C/GC/33, para. 51(I); CRC, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 Dec. 2016, CRC/C/GC/20, para. 60.

²⁴ In 2018, the CEDAW Committee released a report concerning an inquiry about restrictions on abortion in Northern Ireland. In it, it found the UK violated CEDAW because abortion restrictions that force women to carry their pregnancies to full term, resulting in mental and physical suffering, constitute “violence against women.” The CEDAW Committee urged the UK to repeal sections of the law criminalizing abortion “so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion.” CEDAW Committee, *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 2018, CEDAW/C/OP.8/GBR/1, para. 65 & 85.

²⁵ CEDAW, *General Recommendation No. 24: Art. 12 of the Convention (Women and Health)*, 1999, A/54/38/Rev.1, para. 31.

²⁶ *Ibid.*, para. 29.

²⁷ CEDAW, Article 12(1). Emphasis added.

²⁸ WHO, *Abortion*, 17 May 2024, <https://www.who.int/news-room/fact-sheets/detail/abortion> [last accessed 24 July 2024]. Morbidity refers to the state of having a disease, illness, or medical condition, while mortality refers to the number of deaths caused by a specific illness or health condition.

deterrent value.”²⁹ Instead, women often engage in clandestine abortions when denied abortion access. This puts their life and health at significant risk. The CEDAW Committee has also acknowledged the causal link between the unavailability of safe and legal abortion services and high rates of maternal mortality.³⁰ Lesotho’s reported mortality rate of 566 per 100,000 births, double the world average, is unacceptably high.³¹ Unfortunately, in its report, the government of Lesotho does not connect improving maternal mortality rates with decriminalizing abortion.

(21) WHO includes abortion care in its list of “essential healthcare services.”³² When quality medication or surgical procedures are available, and women have access to information and assistance from trained healthcare workers, when necessary, abortions are safe and effective health interventions.

(22) Common complications from abortion in Lesotho include excessive bleeding, extreme pain, and loss of consciousness.³³ Some pregnant women find people claiming to be doctors on the internet, often on Facebook, and buy pills from them without knowing what exactly is being given.³⁴ When seeking care following complications, because abortion is a crime, most women and girls do not inform healthcare workers that they received or attempted an abortion, thus limiting the quality of treatment they can receive.³⁵

(23) Article 2 of CEDAW requires States Parties to condemn discrimination against women in all its forms.³⁶ Denying women safe and legal access to abortions results in less economic and educational opportunities and can trap women in unsafe relationships.³⁷ This is especially problematic given the high rates of domestic violence in Lesotho³⁸ and the cultural practice of girls being married to their perpetrators following sexual violence after a “lobola payment”³⁹ is made to the parents.⁴⁰ This outcome further exacerbates the inequality as child marriage often results in social isolation and interrupts schooling and opportunities for career and vocational advancements.⁴¹

²⁹ CEDAW, *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, *supra* note 24 at para. 59.

³⁰ CEDAW, Report of the Committee on the Elimination of Discrimination against Women (Part I), 4 May 1999, A/54/38, para. 323; CEDAW, Report of the Committee on the Elimination of Discrimination against Women, 1998, A/53/38/Rev.1, para. 337.

³¹ WHO, *Addressing High Maternal Mortality and Newborn Deaths in Lesotho*, *supra* note 5; WHO, *Maternal Mortality*, <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality#:~:text=The%20global%20MMR%20in%202020,to%20prevent%20most%20maternal%20deaths>. [last accessed 27 Aug. 2024].

³² WHO, *Abortion*, *supra* note 28.

³³ Rossalyn Warren, *In Lesotho, women say they’re finding their abortions on Facebook*, CNN, 2018, <https://www.cnn.com/2018/03/07/health/lesotho-abortions-asequals-intl/index.html> [last accessed 31 July 2024].

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ CEDAW, Art. 2.

³⁷ WHO, *Abortion*, *supra* note 28; Eirliani Abdul Rahman, *Abortion bans trap victims in a cycle of domestic violence*, Harvard Public Health, 22 July 2022, <https://harvardpublichealth.org/equity/how-abortion-bans-trap-victims/> [last accessed 18 Apr. 2024].

³⁸ Office of the Resident Coordinator, *United to end Gender Based Violence in Lesotho*, *supra* note 13.

³⁹ Lobola is paid to “marry underage children,” Gender Links for Equality and Justice, *Lesotho: Fight to End Child Marriages Rages On*, 24 May 2019, <https://genderlinks.org.za/news/lesotho-fight-to-end-child-marriages-rages-on/> [last accessed 5 Aug. 2024].

⁴⁰ Girls Not Brides, *Lesotho*, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/lesotho/#:~:text=16%25%20of%20girls%20in%20Lesotho,married%20before%20their%2018th%20birthday>. [last accessed 5 Aug. 2024].

⁴¹ Bureau of Statistics under the Ministry of Development Planning, *Lesotho: Multiple Indicator Cluster Survey*, 2018, p. 68.

(24) Young girls are especially experiencing the consequences from restrictive abortion laws. According to the data collected on a hospital in Lesotho, 35.7% of admissions in that hospital were due to obstetric and gynecological reasons, and were girls aged 10-14.⁴²

(25) As the CEDAW Committee declared, “pregnancies place girls at physical, emotional and socio-economic risk. The higher the legal, social and economic barriers to abortion are, the greater the risk.”⁴³ The Committee continued by urging States to decriminalize abortion and ensure that “the regulation of abortion does not force girls to resort to unsafe abortions...”⁴⁴

(26) Finally, women living in rural areas are particularly likely to resort to unsafe abortion methods, and, therefore, their lives and health are at greater risk.⁴⁵ In States where abortion is illegal, the health impact is even more evident.⁴⁶ Under Article 14 of CEDAW, State parties must consider “the particular problems faced by rural women.”⁴⁷ At least 70% of Lesotho’s population live in rural areas.⁴⁸ Lesotho is failing to provide adequate health services to rural women through its restrictive abortion laws and complex process to receive an abortion when a pregnancy is the result of rape.

II) The narrow exceptions deter women from accessing safe and legal abortions, particularly in the case of rape

(27) Considering Lesotho’s high GBV rates, its criminalization of abortion is particularly problematic. This Committee has made clear that violence against women is a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms, as enshrined in the Convention.⁴⁹

(28) While Lesotho’s combined fifth to seventh periodic report, submitted in November 2023, recognizes that the current abortion law challenges women’s “right to choose and plan her family and future”⁵⁰ and outlines a plan to destigmatize victims of GBV, it does not address the barriers women and girls face when seeking an abortion under the rape exception.⁵¹

⁴² UNFPA, *Young People Bear the Brunt of Unintended Pregnancies*, 20 May 2022, <https://lesotho.unfpa.org/en/news/young-people-bear-brunt-unintended-pregnancies> [last accessed 11 July 2024].

⁴³ CEDAW, *Statement by the Committee on the Elimination of All Forms of Discrimination against Women: Safeguarding girls’ lives, health and future through minimizing unwanted pregnancies and guaranteeing access to safe abortion*, 11 Oct. 2023, <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/statements/CEDAW-Statement-International-Day-Girl-Child%202023.pdf> [last accessed 26 Aug. 2024].

⁴⁴ *Ibid.*

⁴⁵ CEDAW, *General Recommendation No. 34 on the Rights of Rural Women*, CEDAW/C/GC/34 (2016), para. 38.

⁴⁶ *Ibid.*

⁴⁷ CEDAW, Art. 14.

⁴⁸ World Bank Group, *Rural Population (% of total population) – Lesotho, 2023*, <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=LS> [last accessed 14 July 2024].

⁴⁹ CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, 26 July 2017, CEDAW/C/GC/35, para. 10.

⁵⁰ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 117.

(29) The process to get an abortion in Lesotho following a rape is unnecessarily complex. First, the woman must report the sexual assault to the police.⁵² A magistrate must then review the information about the claim and approve the abortion.⁵³ However, the magistrate may use a conscientious objection and refuse to consider the case.⁵⁴ Next, if approval is provided, the woman can seek the abortion from a doctor. The doctor must get the opinion of another doctor before performing the procedure, but may ultimately refuse to perform the abortion due to conscientious objection.⁵⁵ Because many hospitals and health centers are run or under the proprietorship of churches, according to which abortion is a sin, conscientious objection is a major obstacle to obtain an abortion, even when the pregnancy is the result of rape.⁵⁶

(30) There are various reasons why women might be deterred from seeking abortion after rape. They may not want to go to the authorities following a rape because of, for instance, victim blaming, powerlessness, stigmatization or out of fear of punishment.⁵⁷ Some women do not know how to report a sexual assault because the information is not widely shared or effectively being disseminated to reach all women, especially adolescent girls. Besides, it is unfortunately common for the perpetrator to be the victim's father or the woman's intimate partner, contributing to an additional layer of complexity to the matter.⁵⁸ A medical facility where there is a doctor willing to perform abortion might not be within reasonable travel distance. Because of these factors, it is likely that a woman or girl will continue the pregnancy against her will, or seek an illegal, unsafe abortion outside of a healthcare setting.

(31) Lesotho's criminalization of abortion has discriminatory effects for women, particularly during a vulnerable, traumatic time when they have been victims of rape. States party to CEDAW must condemn

⁵¹ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 75.

⁵² Lesotho Government Gazette Extraordinary, *Counter Domestic Violence Act (2022)*, Vol. 67, No. 72, 31 Aug. 2022, p. 1183, para 14(4), https://lesotho.unfpa.org/sites/default/files/pub-pdf/act_no_14_of_2022_counter_domestic_violence_act.pdf [last accessed 5 Aug. 2024]; ⁵³ Sunday Express, *Judge urges abortion for minor*, 13 Feb. 2010, <https://sundayexpress.co.ls/judge-urges-abortion-for-minor/> [last accessed 31 Aug. 2024].

⁵⁴ Sunday Express, *Judge urges abortion for minor*, 13 Feb. 2010, <https://sundayexpress.co.ls/judge-urges-abortion-for-minor/> [last accessed 31 Aug. 2024]; The Reporter, *Fierce Storm Brews Over Abortion*, 5 May 2022, <https://www.thereporter.co.ls/2022/05/05/fierce-storm-brews-over-abortion/> [last accessed 31 Aug. 2024].

⁵⁵ Interview with GBV expert, July 2024. Literature on conscientious objections is limited given the religious and cultural influences in Lesotho.

⁵⁶ "The person performing the abortion needs to have obtained a 'written opinion from another registered medical practitioner is required' in case of abortion to prevent significant harm to the health of the pregnant woman or to prevent the birth of a child who will be seriously physically or mentally handicapped." *Lesotho Penal Code*, Government Gazette, vol. 57, 2012, p. 24; See also WHO, *Global Abortion Policies Database, Country Profile: Lesotho*, <https://abortion-policies.srhr.org/country/lesotho/> [last accessed 31 Aug. 2024].

⁵⁷ Interview with GBV expert, July 2024.

⁵⁸ Victim blaming, shaming and lack of faith in the criminal justice system act as deterrents to vulnerable victims. See Jemma Crew & Sam Hancock, *Why do rape and sexual assault victims find it hard to go straight to police?*, BBC, 19 Sep. 2023, <https://www.bbc.com/news/uk-66843086> [last accessed 5 Aug. 2024]; National Child Traumatic Stress Network, *Why Don't They Tell? Teens and Sexual Assault Disclosure*, https://www.nctsn.org/sites/default/files/resources/fact-sheet/why_dont_they_tell_teens_and_sexual_assault_disclosure.pdf [last accessed 5 Aug. 2024]; Measure Evaluation Project, Tulane University, Sechaba Consultants, Lesotho CARE, Lesotho, *Sexual violence against women in Lesotho*, https://pdf.usaid.gov/pdf_docs/Pnadc519.pdf [last accessed 31 Aug. 2024].

⁵⁹ Interview with GBV expert, June 2024; Measure Evaluation Project, Tulane University, Sechaba Consultants, Lesotho CARE, Lesotho, *Sexual violence against women in Lesotho*, https://pdf.usaid.gov/pdf_docs/Pnadc519.pdf [last accessed 31 Aug. 2024].

discrimination against women in all its forms, which includes taking “all appropriate measures, including legislation to modify existing laws, regulations, customs and practices which constitute discrimination against women.”⁵⁹

(32) As this Committee stated, “States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.”⁶⁰ WHO has expressed the importance of abortion in instances of pregnancy resulting from sexual violence and indicated that there should not be “unnecessary administrative or judicial procedures such as requiring women to press charges or to identify the rapist.”⁶¹ Similar procedures cause unnecessary delays, may subject women to victimization, and may cause incidents of sexual violence to go unreported. Lesotho’s abortion law does not only conflict with this Committee’s guidance, but it causes dangerous and deadly outcomes for women.

(33) Article 16 requires States to ensure that women can freely and responsibly decide on the number and spacing of children.⁶² Yet, Lesotho’s criminalization of abortion and complicated process to obtain an abortion following a rape coerces women and girls into having a child. Moreover, because the government of Lesotho does not effectively disseminate information about how to safely and legally obtain abortion when a woman or girl gets pregnant from rape, it denies women access to “specific educational information to ensure the health and well-being of families, including information and advice on family planning.”⁶³ When women seek an abortion in Lesotho, they put their health and life at risk. This falls tragically short of the CEDAW requirement that women have access to healthcare services, “including those related to family planning.”⁶⁴

(34) Lastly, if the government of Lesotho is to abide by its international obligations as well as follow its own domestic laws, it must ensure that information is available for all girls subjected to abuse. Lesotho’s Children’s Protection and Welfare Act of 2011 states, “No person shall refuse to provide reproductive health information to a child who has been a subject of any form of abuse.”⁶⁵

III) Conscientious objections pose an obstacle to women seeking abortions

(35) Lesotho allows conscientious objections for medical personnel performing abortions, as well as for magistrates who must approve the procedure in the case of rape.⁶⁶

(36) Conscientious objections permit healthcare professionals to refuse providing abortion care, or magistrates

⁵⁹ CEDAW, Art. 2.

⁶⁰ CEDAW, *General Recommendation No. 19 (eleventh session): Violence against women*, 1992, A/47/38, para 24.

⁶¹ WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed., 2012, p. 76, https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=7D7261384A06937FFF02CB773EEB6FBE?sequence=1 [last accessed 30 Aug. 2024].

⁶² CEDAW, Art. 16.

⁶³ CEDAW, Art. 10.

⁶⁴ CEDAW, Art. 12.

⁶⁵ Lesotho, *Children’s Protection and Welfare Act (2011)*, 31 March 2011, para. 234, <https://media.lesotholii.org/files/legislation/akn-ls-act-2011-7-eng-2011-03-31.pdf> [last accessed 5 Aug. 2024].

⁶⁶ Interview with GBV expert, July 2024. Literature on conscientious objections is limited given the religious and cultural influences in Lesotho.

to refuse to grant authorization, based on their personal viewpoints or religious beliefs.⁶⁷ The possibility of invoking the “conscientious objection” to performing or assisting an abortion is a major problem limiting the enjoyment of the right to healthcare free from discrimination. Lesotho may have “developed policies and adopted a number of international and regional instruments aimed at improving the health of women,”⁶⁸ but conscientious objections negatively impact the accessibility of critical healthcare. Lesotho’s periodic report fails to recognize that it is a significant barrier to care.⁶⁹

(37) The CEDAW Committee has expressed its concern about excessively burdensome conditions to access abortions and has specifically recommended that States ensure conscientious objections do not “impede the effective access of women to reproductive healthcare services, including abortion,” and emphasized the need to respect women’s autonomy.⁷⁰

(38) In the Concluding Observations on the ninth periodic report of Mexico, the CEDAW Committee expressed concern over Mexico’s amendment allowing medical personnel’s conscientious objection as it “may constitute barriers for women in gaining access to safe abortion... especially in rural and remote areas.”⁷¹ Similarly, Canada was encouraged to ensure that the invocation of conscientious objections by physicians “does not impede women’s access to legal abortion services.”⁷²

(39) Where conscientious objector laws are not repealed, national standards and guidelines can still mitigate harm caused by its use. WHO recommends that in the case of a conscientious objector, a provider must refer the woman to a readily available medical professional to provide an abortion, and where a referral is not possible and the woman's life or health is at risk, the healthcare provider should provide the abortion.⁷³ WHO acknowledges that failing to assure a referral after a conscientious objection is a significant barrier to safe abortion access and can delay care for women and girls seeking safe abortions, putting their life and health at risk.⁷⁴ Women must have adequate alternatives, but that can be hard to provide when many hospitals are religiously-affiliated.

(40) The CEDAW Committee recommended that Argentina “apply strict justification requirements to prevent the blanket use of conscientious objection by doctors refusing to perform abortions.”⁷⁵ It also recommended Mexico to ensure that the life of the mother is not put at risk as a result of conscientious objections and that women and girls

⁶⁷ WHO, *Abortion Care Guideline*, 2022, p. 60, <https://iris.who.int/bitstream/handle/10665/349316/9789240039483-eng.pdf?sequence=1> [last accessed 30 Aug. 2024].

⁶⁸ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 110.

⁶⁹ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14.

⁷⁰ CEDAW, *Concluding observations on the combined eighth and ninth periodic reports of Portugal*, 24 Nov. 2015, CEDAW/C/PRT/CO/8-9, para. 36-37.

⁷¹ CEDAW, *Concluding observations on the ninth periodic report of Mexico*, 25 July 2018, CEDAW/C/MEX/CO/9, para. 41.

⁷² CEDAW, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, 25 Nov. 2016, CEDAW/C/CAN/CO/8-9, para. 41.

⁷³ WHO, *Abortion Care Guideline*, *supra* note 67; WHO, *Safe abortion: technical and policy guidance for health systems*, 2015, https://iris.who.int/bitstream/handle/10665/173586/WHO_RHR_15.04_eng.pdf?sequence=1 [last accessed 31 Aug. 2024].

⁷⁴ *Ibid.*, Section 4.2.2 & 4.2.2.4.

⁷⁵ CEDAW, *Concluding observations on the seventh periodic report of Argentina*, 25 Nov. 2016, CEDAW/C/ARG/CO/7, para. 33.

are not prevented from accessing legal abortion, which includes ensuring that women and girls are “referred to another appropriate provider.”⁷⁶ Additionally, the CEDAW Committee urged Hungary to establish a process to monitor conscientious objections by providers and guarantee women are offered “information about existing alternatives” and that it “remains a personal decision.”⁷⁷ Lesotho must ensure that this information sharing is available to women.

(41) The CEDAW Committee has also highlighted the need for legal frameworks to “include a mechanism for rapid decision-making, with a view to limiting to the extent possible risks to the health of the pregnant mother, [and] that her opinion be taken into account,” for abortion access to be meaningful.⁷⁸ Conscientious objections obscure the process to obtain an abortion in an environment that is already hard to navigate for most women and girls by rejecting their personal healthcare decisions and ignoring the sense of urgency that is often necessary when a life-saving abortion procedure is required.

IV) High rates of sterilization without knowledge of its permanent effects violates women’s rights

(42) The United Nations Population Fund (UNFPA) has reported that Lesotho has an alarmingly high rate of women who have been sterilized without being informed that the procedure is permanent.⁷⁹ Out of 40 countries surveyed, Lesotho topped the list, with 28% of women who were sterilized without informed consent prior to the procedure.⁸⁰ An example of this problem is depicted in reports of a woman who gave birth at Queen Mamohato Memorial Hospital in 2017 and had her womb removed without her consent or knowledge while having an emergency cesarian section.⁸¹ This blatantly violates the right to healthcare services, specifically relating to pregnancy and post-natal care, reflected in Article 12 of CEDAW,⁸² as well as the right to decide on the number and spacing of children.⁸³

(43) In its periodic report, Lesotho acknowledges that “legal provision on free and informed consent are not widely known” and thus results in women taking “medical advice and recommendations as mandatory.”⁸⁴ This is unfortunate given this Committee found in *A.S. v. Hungary*, that the victim’s rights had been violated after a doctor performed a sterilization procedure without obtaining victim’s free and informed consent and failing to provide

⁷⁶ CEDAW, *Concluding observations on the ninth periodic report of Mexico*, *supra* note 71 at para. 42.

⁷⁷ CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of Hungary*, 26 March 2023, CEDAW/C/HUN/CO/7-8, para. 31.

⁷⁸ *L.C. v. Peru*, from *Tysiac v. Poland*, European Court of Human Rights, para. 8.17.

⁷⁹ UNFPA, *Seeing the Unseen: The case for action in the neglected crisis of unintended pregnancy*, March 2022, p. 103, https://esaro.unfpa.org/sites/default/files/pub-pdf/en_swp22_report_0_0.pdf [last accessed 11 July 2024].

⁸⁰ *Ibid.*

⁸¹ Pascalinah Kabi, *Government Tactic to Silence Key Witness in Forced Sterilisation*, International Women’s Media Foundation, 20 Sept. 2023, <https://www.iwmf.org/reporting/government-tactic-to-silence-key-witness-in-forced-sterilisation/> [last accessed 5 Aug. 2024].

⁸² CEDAW, Art. 12.

⁸³ CEDAW, Art. 16.

⁸⁴ CEDAW, *Combined fifth to seventh periodic reports, submitted by Lesotho under article 18 of the Convention, due in 2015*, *supra* note 14 at para. 109.

adequate information regarding the procedure.⁸⁵ Additionally, WHO has indicated that “sterilization should only be provided with the full, free and informed consent of the individual” and procedures resulting in sterilization should only occur when the person concerned is duly informed and discrimination, coercion and violence is not present.⁸⁶ In other words, the right to health includes the right to information about health and healthcare treatments, sterilization being no exception.

(44) CEDAW General Comment No. 19 acknowledges that the definition of discrimination includes GBV which includes “acts that inflict physical, mental or sexual harm or suffering...”⁸⁷ Removing a woman’s ability to carry children in their future can be an infliction of extreme suffering and harm. Further, as this Committee stated in General Recommendation No. 35, “[v]iolations of women’s sexual and reproductive health and rights, such as *forced sterilization* [emphasis added], forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”

RECOMMENDATIONS

(45) We respectfully recommend this Honorable Committee include at least one of the following questions in the List of Issues it will prepare for Lesotho.

1. Please explain what steps Lesotho intends to take to ensure women and girls who are raped have immediate access to abortion and do not face procedural barriers to accessing care.

2. Please explain what steps Lesotho intends to take to lower the rates of unintended pregnancies due to gender-based violence.

3. Please provide the most up-to-date data on unintended pregnancies, legal abortions, hospital admittance following “illegal” abortions, and number of women and doctors who have been prosecuted under the penal code.

4. Please explain what steps Lesotho intends to take to address the high rates of maternal mortality and morbidity caused by unsafe abortions.

5. Please explain what steps Lesotho intends to take to ensure adolescent girls have information and access to timely abortion services, especially in the case of rape or incest.

6. Please explain what reporting processes are in place for women who have been sterilized without informed consent and what measures healthcare facilities have in place to ensure women receive the information they need to make a free and informed decision about sterilization.

⁸⁵ CEDAW, *A.S. v. Hungary*, Communication No. 4/2004, 29 Aug. 2006, CEDAW/36/D/4/2004.

⁸⁶ WHO, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 3 May 2014, p. 1-2.

⁸⁷ CEDAW, *General Recommendation No. 19: Violence against Women*, *supra* note 60 at para. 6.