

AFRICAN UNION

**African Committee of Experts on the
Rights and Welfare of the Child**



UNION AFRICAINE

**Comité Africain d'Experts sur les Droits et
le Bien-être de l'Enfant**

الاتحاد الأفريقي

*"An Africa Fit for
Children"*

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**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS OF THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD TO
THE GOVERNMENT OF LESOTHO ON ITS INITIAL REPORT ON THE
IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE
OF THE CHILD**

I. Introduction

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of Lesotho for submitting its initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter).
2. During its 26th Ordinary Session which was held on 16-19 November 2015, the Committee considered the initial report of the Kingdom of Lesotho that was submitted in compliance with State Parties obligation under Article 43 of the Charter.
3. The Committee congratulates the Kingdom of Lesotho for its delegation led by Mr Molahlehi Letlotlo, Minister of Social Development and for the productive discussion it had with the Committee. The discussion informed the Committee the measures the State Party has taken towards the implementation of the Charter as well as the challenges it is facing. After the consideration of the report, the Committee has adopted the following concluding observations and recommendations.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

4. The Committee would like to congratulate the Kingdom of Lesotho for taking the following measures to give effect to the provisions of the African Children's Charter:
 - a. the enactment of Child Protection and Welfare Act (CPWA);
 - b. the establishment of child protection units;
 - c. setting the minimum age of marriage at 18 years of age;
 - d. the adoption of a Reproductive Health Policy and Immunization Policy;
 - e. the establishment of Restorative Justice Committees for juvenile offenders; and
 - f. the establishment of residential care facilities.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. General measures of implementation

5. The Committee notes with appreciation the adoption of new laws and policies as well as the revision of laws that is taking place to ensure compliance with the African Children's Charter. In this regard, the Committee encourages the Government of Lesotho to expedite the harmonization process and to give due consideration to the principles and standards of the Charter in harmonizing and revising laws.
6. The Committee commends the adoption of the CPWA and the measures taken by the Government to implement the Act. The State Party is encouraged to institutionalize the implementation of the act to assert that an appropriate monitoring and evaluation is undertaken on the implementation. In this regard, the Committee highly recommends for the State Party to strengthen the Directorate of Children's Services in terms of human resource, budget and institutional setup. Furthermore,

the Committee urges the State Party to speed up the establishment of the National Human Rights Commission and to provide a child sub-committee therein.

7. The State Party's replies to the List of Issues indicate the various measures taken to support the National Orphans and Vulnerable Children Coordinating Committee (NOCC) and District Child Protection Teams (DCPT). However, there are reports that indicate the Government has not accorded legal standing to the NOCC and DCPT which in effect results in low budgetary allocation and lack of defined mandate. The Committee therefore recommends that the State Party takes necessary steps to clearly stipulate the mandate of the two organs; to allocate sufficient budget for their works; and to enhance their efficiency and independence.
8. The State Party Report states that ratified international and regional treaties and conventions are not binding unless they are domesticated by a national legislation. Considering this, the Committee encourages to domesticate all the international and regional instruments the State Party has ratified; and to enforce and give effect to the same.
9. The Committee notes with appreciation the measures the State Party is undertaking to overcome the difficulty in monitoring and evaluation of delivery of services and data management. The Committee further encourages the State Party to fortify its efforts in training human resource; allocating sufficient budget for monitoring and evaluation; and in looking assistance in this regard from non-governmental and UN agencies.
10. Moreover, the Committee encourages the Government of Lesotho to strengthen the collaboration and cooperation among various ministries and government organs working for children. The Committee also encourages the State Party to create an auspicious environment and to engage them in the implementation of the African Children's Charter, the CPWA, as well as other legislations and policies for the realization of children's rights.
11. While appreciating the efforts of the Government of Lesotho in distributing the CPWA and providing a child friendly version of the Act, the Committee recommends that the State Party translates the full text of the CPWA in Sesotho language; widely disseminates the African Children's Charter and creates awareness on the Charter.

B. Definition of a child

12. The Committee commends the State Party for adopting definition of the child consistent with the African Children's Charter. The Committee also notes with concern that children aged 13 and above can engage in light works due to the increasing number of child headed families. It is the Committee's recommendation that the State Party complies with international standard and raise the minimum age of employment. The State Party should devise other schemes such as grants and free services provisions for child headed families to support them.

C. General principles

Non-discrimination

13. The Committee appreciates that the principle of non-discrimination is enshrined in the Constitution and the CPWA. The Committee recommends that the State party makes non-discrimination a justiciable right in a way that sanction is attached against those who commit discriminations. In the replies to the list of issues, the State Party mentioned that the CPWA will be revised to make discrimination a justiciable offence. The Committee encourages the State Party to fast-track the revision process.
14. While commending the measures the Government is undertaking to build clinics and schools in rural areas, the Committee is concerned that there is a high level of urban-rural disparity in the provision of services. The Committee therefore urges the Government to increase its investment in rural areas in terms of budget, human resource, and infrastructure to avert the urban-rural disparity.
15. In addition, the Committee notes that the child grants programme does not operate in all local councils. The Committee recommends that the State Party extends the grant in all local councils to make sure that all children in the State Party benefit from the grant programme.
16. The Committee notes with appreciation that the Constitution; the CPWA and the Education Act ensure non-discrimination in all situations; and that the Legal Capacity of Married Persons Act provides equal inheritance right to women. However, the Committee is concerned that there are reports which indicate that pregnant girls are excluded from education; orphan children are discriminated in schools; children with disabilities and children with albinism are ostracized; and girls are discriminated at the time of succession in practice. Therefore the Committee calls upon the State Party to implement the laws; sensitize the society about non-discrimination of all children; and take measures against those who pose discrimination against girls, children with disabilities, and children with albinism.

Best interest of the child

17. The Committee commends the State Party for the efforts it has employed to ensure that the best interest of the child is a paramount consideration. However, the Committee notes with concern that societal attitudes, cultures and custom do not promote the best interest of the child. Therefore, the Committee recommends that the State Party engages in sensitization of the society to inform them about the importance of making the best interest of the child a primary concern. Furthermore, the State Party should give training to the legislature, the executive and the judiciary on systems and mechanisms of ensuring the best interest of the child.

The right to life, survival and development

18. The Committee notes with appreciation the steps it has taken to promote the right to life and survival including the establishment of 18 nutrition corners; providing complementary feeding and so forth. In order to fully realize the right to life, survival and development of all children, it is the Committee's recommendation that the State Party adopts a national nutrition programme; integrates nutrition with other programmes; promotes exclusive breastfeeding for the first six months after birth and healthy nutrition for pregnant women and children under the age of 5 years; and works in collaboration with donors and UN agencies to solicit fund and expertise. The Committee also encourages that the State Party continues its efforts in providing complementary vitamins, minerals, and balanced food especially in rural and poorest areas of the Country.
19. The Committee commends that the Government is trying to supply clean water through the rural water supply department. The Committee calls upon the State Party to strengthen this department and provide it with necessary budget to ensure that communities in rural areas have access to clean drinking water.

Participation of the child

20. As the participation of children in all matters that concern them is a general principle of the African Children's Charter, the Committee recommends for the State Party to empower and educate children aiming at their effective participation in law and policy making procedures; child concerned events and discussions; judiciary proceedings; and community based programmes. The Committee encourages the State Party to work towards changing the societal attitudes of the community that devalues the participation of children particularly in rural areas of the Kingdom.

D. Civil rights and freedoms

Name, nationality, and registration at birth

21. The Committee urges the State Party to provide for an immediate free birth registration for all children. The State Party is also encouraged to make birth certificates available immediately after registration free from any charges. Even though immediate registration systems are available in hospitals, the Committee is concerned about children residing in rural and remote areas. Therefore, the Committee recommends that the State Party provides mobile registration centers in remote areas; establishes permanent registration centers in all districts; educates and trains human resource working in the civil registration for an effective, a more functional and universal registration.
22. There are indications that children born out of wedlock are being given derogatory and embarrassing names. The Committee recommends that the State Party

prohibits such names during registration of birth; and sensitizes the society to avert giving derogatory names to children born out of wedlock.

23. Moreover, the Committee calls upon the State Party to take commitment to eliminate statelessness by giving recognition and nationality to abandoned children within the territory of the State Party.
24. The Committee also recommends that the State Party takes into consideration its General Comment No. 2 on Article 6 of the African Children's Charter for the implementation of the right to name, nationality and birth registration of children.

Freedom of expression, conscience, thought, religion, assembly, and protection of privacy

25. The Committee notes with appreciation the legislative and administrative measures indicated in the State Party report to ensure the freedom of expression, religion and association of children. In relation to freedom of expression, the Committee encourages the Government to facilitate platforms and forums through which children can express their views. It is also important to sensitize communities so that children enjoy their freedom of expression in the family settings and at community levels.
26. With regard to freedom of thought and religion, the State Party should protect children from any abuse they encounter for following a different religious belief than that of their parents. However, the Committee notes from the State Party report that some religious beliefs are being used to defend criminal offenses such as committing bodily injury for muti or luck. The Committee recommends for the State Party to balance between freedom of religion and the right to life and bodily integrity of other children. In addition to prosecuting those who commit such kinds of ritual offences, it is imperative to educate the society and work on prevention.

Protection against abuse and torture

27. The Committee commends that the Education Act proscribes corporal punishment in schools. The Committee further encourages the State Party to legislatively ban corporal punishment in all settings including home. Additionally, the State Party should sensitize children, parents and teachers on positive disciplining mechanisms that do not involve physical or verbal punishments.
28. The establishment of residential care facilities for victims of abuse is commendable. The Committee recommends for the State Party to provide trained and skilled expertise in such facilities to help children recover from the physical and psychological effects of abuse. In addition, the Committee encourages the Government to expedite the establishment of such facilities in ThabaTseka to make them accessible by all children.

E. Family environment and foster parentage

29. The Committee notes with satisfaction the financial assistance provided to poor families through cash grants, food packages, and bursaries. The Committee encourages the State Party to strengthen these support mechanisms and make them accessible to all children and families who are vulnerable including child headed families. However, the Committee urges the State Party to address the causes of vulnerability including unemployment of parents; and HIV/AIDS leading to orphan hood.
30. The Committee also notes that there are privately run Residential Care Facilities for abandoned children. The Committee recommends that such facilities are also established in Thaba Tseka and Qacha's Nek. In addition, the Committee recommends that the Government undertakes continuous monitoring and evaluation to assess if these facilities are complying with the Standards of Care Guidelines. Moreover, the Committee recommends for the State Party to devise mechanisms such as referral systems through which separated children are put in the Residential Care Facilities. As the facilities are run by private proprietors, it is also important for the State Party to closely collaborate with them and assist them in keeping records ad tracks of children put in the facilities
31. While commending the provision of maintenance of children born out of wedlock at the Victims Office, the Committee recommends for the State Party to oblige non-custodial parents to maintain children; and to work towards changing the societal attitude towards children born out of wedlock. It is the Committee's view that the best environment for children to grow up is a healthy family; hence the Committee encourages the State Party to ensure that parents maintain their children unless separation is in the best interest of the child. However, in the event that parents are abusing or exploiting their children for economic or cultural reasons, the Committee recommends that the State Party holds such parents accountable and place children in alternative care centers or preferably in a family setting.
32. Furthermore, the Committee encourages the State Party to strengthen family reunification programs and strategies to reunify children who are separated but whose parents are alive.
33. The Committee commends that the State Party has adopted the Foster Care and Adoption Policy and Adoptions Practice Guidelines; and applies the subsidiarity principle of international adoptions. Nevertheless, the local community has negative perception about adoptions. Therefore, the Committee recommends that the State Party promotes domestic adoptions through sensitization of the society. The Committee also recommends that the State Party takes necessary measures to deinstitutionalize children put in Residential Care Facilities by making sufficient investigation of those children whose parents are alive; who have close relatives to take care of them; and those who are eligible to adoption.

F. Basic health and welfare

34. The Committee appreciates the measures the State Party has taken to reduce maternal and child mortality as well as to improve health care facilities. It is commendable that infant mortality rate has dropped significantly between 2009 and 2014. Despite these efforts, the Committee notes that under five mortality remains high; access to health care services is limited; and immunization is not fully realized to prevent deadly diseases. Acute malnutrition, lack of sanitation, lack of clean drinking water particularly in rural areas, and unattended birth account for the high under five mortality rate. The Committee urges the State Party among others to:
- a. Improve the infrastructure and accessibility of health care services and build more hospitals, clinics and health centers in remote areas;
 - b. Vastly reach all communities with immunization programs and provide sufficient vaccination to all children to prevent diseases;
 - c. Promote sanitation and provide sanitary facilities to poor communities;
 - d. Launch programs and strategies to increase access to clean drinking water in rural areas;
 - e. Prevent malnutrition and provide nutritious foods with extra minerals for children affected by malnutrition; and
 - f. Increase the budgetary allocation for the health sector to increase the accessibility and quality of the health care offered by the Government.
35. With regard to children with disabilities, the Committee regrets that most health care centers do not have facilities to cater for the special needs of children with disabilities. The Committee recommends that the State Party improves the infrastructure of all health centers to make them accessible by children with disabilities. In addition, the Committee recommends for the State Party to fortify its efforts in early identification and treatment to prevent disabilities.
36. The Committee also recommends that the State Party expedites the adoption of the Disability Equity Bill which still appears as a draft.

G. Education, leisure and cultural activities

37. The Committee appreciates that the State Party provides free and compulsory education for children in accordance with the Constitution and the CPW Act. However, the Committee notes that the Free Primary Education Act (FPE) makes education free and compulsory for children between the ages of 6 and 13. The FPE may result in the exclusion of children who may start primary education lately as the age limit will exclude such children from a free and compulsory primary education once they attain the age of 13 years of age. Therefore, the Committee recommends that the State Party harmonizes its laws and provides free and compulsory education to all children below the ages of 18 in all its laws and policies in

compliance with the African Children's Charter and the Constitution of the Kingdom of Lesotho.

38. The Committee commends the adoption of the Early Childhood Care and Development (ECCD) Policy and the efforts that have been exerted to implement the policy including the expansion of preschools. However, there is lack of monitoring and regulating such ECCD centers. The Committee recommends that the State Party adopts a comprehensive rules and regulations to set minimum standards for the centers. The Government should also enhance training for ECCD workers. Additionally, the State Party is encouraged to closely monitor and evaluate both governmental and private ECCD centers and institutionalize the registration and formation of such centers.
39. The Committee notes with appreciation the increasing school enrollment rate at primary education. Yet, the school enrollment rate in rural areas is low with a greater number of boys. Furthermore, children with disabilities and orphan children have difficulty in accessing schools. The Committee is of the view that physical and economical accessibility of education is one element of the right to education of children. Hence, the Committee recommends for the State Party to build more accessible schools in rural areas; to build ramps and provide other important disability friendly infrastructure and teaching materials in existing and new schools to ensure inclusive education; and support orphan and vulnerable children to attend school through grants or schools feeding programs.
40. Moreover, the education offered by the State Party should be a quality education. In this regard, the Committee recommends that the State Party gives training and appropriate education to teachers at all levels; to reduce the teacher student ratio; and make available the necessary teaching materials.
41. Even though the aspiration of the State Party is for an inclusive education as provided in the Education Act, there are 8 specialized schools for children with disabilities. Nevertheless, these schools lack materials and infrastructure and reports indicate that the trained teachers are leaving the schools due to administrative problems. The Committee primarily recommends that the State Party realizes an inclusive education by mainstreaming children with disabilities in the regular education. Until this is fully realized, it is the Committee's recommendation that the specialized schools be provided with necessary budget, human resource; and teaching materials for their proper operation.
42. The Committee recommends that the State Party integrates adolescent reproductive health education in the education system to prevent early pregnancy and sexually transmitted diseases.
43. In relation to the right of children to play and leisure, the Committee commends that the government has established youth centers in each districts. However, the Committee is concerned that the centers are all located in the cities and towns which

leave out numerous rural children. Besides, the directive issued by the Ministry of Education and Training (MOET) which indicates that all sports should be scheduled for Saturdays in schools will hamper the right to play of children as students and teachers are not required to attend school on Saturdays. It is the Committees recommendation that the State Party establishes youth and recreational centers in rural areas and schools; and that the Government revises the directive issued by the MOET to integrate sports and play in the education system.

H. Special protection measures

Refugee and displaced Children

44. The Committee notes that there are a number of legislative measures taken including the Constitution, the Aliens Control Act, and the Refugee Act that provide protection for refugee and displaced children. However, the Committee is concerned about the implementation of these legislative frameworks. The Committee calls upon the State Party to devise child friendly systems and mechanisms in which the normative framework will be implemented.
45. The State Party accommodates refugee and displaced children in Mohalalitoe in Maseru. The Committee recommends that the State Party makes an effort to establish more centers like this; and to raise the standard of the living condition of the center. The Committee recommends that the State Party puts an effort to ensure access of refugee and displaced children to the domestic child wellbeing and protection services such as access to food, regular education, and health services.
46. Moreover, the Committee recommends for the State Party to give access to birth registration of refugee children. The State Party shall strive towards strengthening the family reunification programme and develop an efficient mechanism to identify and reunify refugee and displaced children.
47. The Committee encourages the State Party to work in collaboration with civil society organizations and UN agencies in this regard.

Children in conflict with the law

48. The Committee commends the establishment of children's court in Maseru. However, the State Party indicated that children's courts could not be established in all districts due to budgetary constraints. The Committee recommends that the State Party allocated sufficient budget to the Ministry of Justice, Human Rights and Correctional Services so that children's benches are established in all districts and the restorative justice programme is fully implemented. In the meantime, the Committee recommends that personnel at subordinate courts are well trained on children's rights and procedures stipulated in the law for children's courts.
49. It is the Committee's recommendation that the State Party opts for diversion of juvenile from the regular justice system; applies non-custodial penalties; separates

juvenile from adult offenders in all districts; trains judges, prosecutors and police; rehabilitates and reintegrates juvenile offenders.

50. Concerning minimum age of criminal responsibility, the Committee learned from the replies to the list of issues that children between the ages of 10 and 14 years are presumed to lack criminal capacity; however this can be rebutted during prosecution and hence these children could be prosecuted. The Committee recommends that the State Party complies with international standard of minimum age of criminal responsibility and raise it to the age of 12.
51. The establishment of Juvenile Training Center (JTC) for young offenders is commendable. However, the Center is only located in Maseru and cannot accommodate girls due to lack of appropriate facilities. As a result girls are being imprisoned with adults. The Committee urges the State Party to take prompt action to establish JTCs in all districts and provide the necessary infrastructure and facilities in the JTC in order to accommodate the girl child. Additionally, the JTC should be provided with enough funding and skilled human resource so that it can deliver a proper rehabilitation and reintegration of juvenile delinquents.

Children in armed conflict

52. Even though the State Party report mentions that Lesotho is not involved in armed conflict, reports indicate that there is an armed conflict in the southern region of the State Party, Mafeteng. The Committee recommends that the State Party undertakes all the necessary measures to ensure that children are not being involved or recruited in the conflict; to provide protection and care for children affected by the conflict; and to ensure that schools are not used as military objects in the conflict.

Children of imprisoned caregivers

53. The Committee noted that there is no legislative or policy framework to protect children of imprisoned mothers. Therefore it recommends that the State Party adopts a comprehensive legislation to protect the rights of children as well as to provide rules and regulations about children's stay with their parents in the prison and their separation at 2 years of age.
54. The Committee recommends for the State Party to provide nutritious food; health care; and child friendly environment for children staying with their parents in the prison. As children who attained the age of 2 years will be separated from their parents, the Committee recommends that the State Party gives psychosocial support for the children. In case where there are no extended families and the children are placed in residential care facilities, the Committee encourages the State Party to ensure that children receive education, health care, and other social welfare services. Family reunification programmes should also be accompanied by psychosocial support.

55. For further recommendations, the Committee makes reference to its General Comment No. 1 on Article 30 of the African Children's Charter.

Sexual abuse and exploitation and trafficking of children

56. The Committee commends the establishment of Child and Gender Protection Units (CGPU) to provide care and services for children who have been neglected, exploited, or victims of violence. The Committee further encourages the State Party to provide skilled human resource; sufficient funding and necessary facilities the will enable to the CGPUs to discharge care and rehabilitation for the children.

57. The Committee recommends that the State Party reviews its Sexual Offences Act which makes a distinction between children below and above the ages of 16 years in cases of child molestation. The Committee is concerned that Section 8 of the Sexual offence act does not proscribe child molestation against children between the ages of 16 and 18 years. The Committee recommends that child molestation is proscribed against all children below the ages of 18 years in accordance with the definition of the child under the African Children's Charter.

58. The Committee is also concerned that much of the sexual violence is not reported especially when the perpetrator is a family member or a relative. Sometimes, such cases will be dealt at village level without putting proportional punishment on the perpetrator. The Committee recommends that the Government strives towards investigation and prosecution of perpetrators of sexual violence when they are family members. The Committee encourages the State Party to bring all perpetrators of sexual violence to the formal justice system and to ensure that conviction is effected appropriately to ensure deterrence. To this end, the Government should work hand in hand with traditional and religious leaders at grassroots levels.

59. The Committee commends the joint corss-border forum on human trafficking undertaken with South Africa. Taking the grave trafficking problems of the southern Africa region, the Committee recommends that the State Party collaborates with other countries in the region to prevent child trafficking.

Child labour

60. The Committee notes that the minimum age of employment is 13 years of age. The Committee encourages the State Party to raise the minimum age of employment to 14 years to comply with international standards. In addition, reports show that there are tenth of thousands of children below the minimum age of employment who are being involved in the labour force in various sectors including domestic work. The Committee calls upon the State Party to implement the Labour Code and to ensure the prosecution of employees who employ children below the minimum age. The Committee also calls upon the State Party to make sure that the Labour Officers undertake frequent visits both to the formal and informal sector to impede the

increasing number of children employed below the minimum age and children working in hazardous conditions.

61. The Committee notes with appreciation the adoption of the guideline for employment of herd boys. However, the Committee is concerned that parents force their boys to work on the farm and to herd cattle which expose children to extreme weather conditions, dropout from schools, attacks by animals and gangsters. The Committee recommends that the State Party implements the guideline and sensitizes the society about the negative consequences of herding by children. Apart from sensitization, the State Party should also take necessary measures against parents who send their children for herding. The Committee recommends that the State Party provides necessary support for children who are engaged in herding including providing them with education, shelter, food, and health care.

Harmful traditional practice

62. The Committee appreciates the legal framework that sets the minimum age of marriage at 18 years of age. Nevertheless, the Committee is concerned that child marriage is highly prevalent in the State Party. Therefore, the Committee urges the State Party to conduct an aggressive sensitization of parents, traditional and religious leaders about child marriage; and to sanction those who marry away children. The Committee further encourages the Government to prevent forced marriage after sexual violence by ensuring prosecution of perpetrators.
63. In general, the Committee calls upon the State Party to take legislative and administrative measures to combat all forms of harmful traditional practices including herding, traditional male circumcision and witchcraft.

I. Responsibility of the child

64. The Committee notes that the Ministry of Social Development is formulating a regulation to facilitate the implementation of section 21 of the CPW Act on the responsibilities of the child. The Committee encourages the State Party to fast-track the adoption of the regulation and to include in it measures that should be taken to ensure that responsibilities of children do not compromise their rights enshrined in the African Children's Charter. The Committee further encourages the Government to empower and educate children to make them aware about their duties and to enable them fulfill their duties.

J. Conclusion

65. The African Committee of Experts on the Rights and Welfare of the Child commends the efforts invested by the Government of Lesotho and aspires to the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to assess the implementation of these recommendations in the foreseeable future. The Committee would also like to invite

the State Party to submit its first periodic report in 2019 and to include in it measures adopted to implement these recommendations.

66. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Kingdom of Lesotho the assurances of its highest consideration.