

**REPORT
OF THE
PROMOTIONAL MISSION
TO THE
KINGDOM OF LESOTHO**

3-7 April 2006

I. INTRODUCTION

1. The African Charter on Human and Peoples' Rights (African Charter) provides for the establishment of the African Commission on Human and Peoples' Rights (African Commission). The 18th OAU Summit of Heads of State and Government meeting in Nairobi, Kenya on 26th June 1981 adopted the African Charter. The African Charter came into force on 21st October 1986 upon ratification by the requisite number of Member States. The first members of the African Commission were elected at the 23rd OAU Assembly of Heads of State and Government in July 1987 and the inaugural session of the African Commission took place in November 1987.
2. Under the African Charter, the African Commission is mandated to promote the rights and freedoms set out in the African Charter and ensure their protection across the continent, monitor and advise on the implementation of the African Charter and interpret its provisions.
3. The Promotional function of the African Commission mandates Members of the African Commission to undertake promotional missions to States Party to the African Charter. Promotional missions are an important aspect of the African Commission's activities as they enable it to establish communication and links with Member States.
4. The Kingdom of Lesotho is party to the African Charter which it ratified on 9th April 1991.

A Brief Political Background of Lesotho

5. Around 1818, Basotho emerged as a nation, following King Moshoeshoe's formation of alliances with a combination of clans and chiefdoms of southern Sotho people who occupied the area which is presently the Northern and Eastern Free State and Western Lesotho. In 1820, Moshoeshoe moved to Butha-Buthe Mountain with his followers and became chief in his own right. At around the same time, the whole of southern Africa saw the beginning of what was later to become a period of turmoil which affected the economic and political lives of virtually all the people in the region. This period was followed in the late 1820s with the arrival of missionaries and in the mid 1830s with the arrival of white settlers. With the arrival of the white settlers, for the next thirty years, the nation's existence was threatened but was saved from extinction by the statesmanship and diplomacy of Moshoeshoe, especially as hostilities relating to the definition of the boundaries of the nation became prevalent.
6. Moshoeshoe sought British protection, and on 12th March 1868, by virtue of a proclamation of Sir Philip Wodehouse, the then British High Commissioner, Lesotho became a British territory and was later annexed to the Cape Colony which, in 1872 was granted internal self-government by London. The Cape Colony began to apply to Lesotho the same laws and methods which it found convenient for administering other areas already annexed by force. However, when the 'Peace

Preservation Act', by which all fire-arms were to be surrendered was imposed on Lesotho, the country rebelled and between 1880 and 1881 became involved in what was termed the 'Gun War of 1880-1881'. As a direct consequence of the Gun War, in 1884, the British resumed direct rule over Lesotho, a step that triggered a sequence of events that led to Lesotho being granted independence by Britain.

Post-Independent Lesotho

7. On 4th October 1966, Lesotho gained independence from Britain under the leadership of the Basutoland National Party (BNP). The country became a constitutional monarchy with Moshoeshoe II the king and the political power vested in an elected parliament. The Basuto National Party won the first elections, and chief Leabua Jonathan became Prime Minister. However during its five year term, the people of Lesotho were disillusioned by the BNP and consequently, when elections were held in January 1970 the ruling BNP lost to the Basotho Congress Party (BCP). The then Prime Minister refused to cede power to BCP, annulled the election and imprisoned its leadership and the King. BNP proceeded to rule by decree until January 1986 when they were ousted by a military coup led by Major-General Lekhanya. The Military Council that came into power and ruled the country for the period 1986-1993. King Moshoeshoe II who was until then a ceremonial monarch was granted executive powers and political powers were banned.
8. In 1990, the King was forced into exile and dethroned, and his son was installed as King Letsie III. In 1991 however, Major General Lekhanya, was ousted and replaced by Major General Phisoane Ramaema, who handed over power to a democratically elected government of the BCP in 1993. The BCP was faced with several crises during its first year in office and in August 1994 King Letsie III staged a Palace Coup and deposed the BCP government. However, the new government did not receive full support from the nation, and from several states in the Southern African Development Community (SADC), who proceeded to enter into negotiations aimed at reinstating the BCP government. After protracted negotiations, the BCP government was reinstated and King Moshoeshoe II was reinstated as King of Lesotho in 1995. However, in 1996, King Moshoeshoe II died in a car accident and was again succeeded by his son, Letsie III.
8. Throughout the 1990s Lesotho was deeply affected by economic difficulties and this in turn had an effect on the politics in the country. The ruling BCP split over leadership disputes and this resulted in the formation of a new party, the Lesotho Congress for Democracy (LCD), led by Ntsu Mokhehle. Majority of the BCP members joined the LCD and in 1998, the LCD won an overwhelming victory in the elections. Despite the elections being pronounced free and fair by local and international observers, the opposition political parties rejected the results. Opposition protests in the country intensified causing significant economic disruption and damage to commercial infrastructure.
9. Pakalitha Mosisili who had replaced Ntsu Mokhehle as prime minister soon after the 1998 elections, appealed to SADC to assist the government maintain order in the

country. Subsequently, the ruling LCD met with the opposition parties to negotiate the implementation of new elections. An agreement was made to establish an Interim Political Authority (IPA) made up of two delegates from each political party and charged with responsibility of reviewing the electoral structure in the country and organising new elections within 18 months. The IPA took power in early December 1998 and devised a proportional electoral system that would ensure participation of the opposition in the National Assembly. Elections were held under this new system in May 2002, and the **Prime Minister Pakalitha Mosisili**, the leader of the LCD party, was re-elected in free and fair elections in which the opposition political parties also won a significant numbers of seats in the National Assembly. Although its elected members participate in the National Assembly, the BNP has launched several legal challenges to the elections, including a recount; none has been successful.

Current structure of government

Executive

10. Lesotho is a constitutional monarchy and under the Constitution, the King is the Head of State and as such, the executive authority of Lesotho is vested in him and exercised by His Majesty through officers or authorities of the Government of Lesotho, subject to the provisions of the constitution. The King fills a ceremonial role and is prohibited from actively taking part in politics.
11. The Constitution establishes a Council of State to assist the King in the discharge of his functions and to exercise such other functions as are conferred by the Constitution. The Council of State consists of, the Prime Minister; the Speaker of the National Assembly; two judges or former judges of the High Court or Court of Appeal who shall be appointed by the King on the advice of the Chief Justice; the Attorney-General; the Commander of the Defence Force; the Commissioner of Police; a Principal Chief who shall be nominated by the College of Chiefs; two members of the National Assembly appointed by the Speaker from among the members of the opposition party or parties; not more than three persons who shall be appointed by the King on the advice of the Prime Minister, by virtue of their special expertise, skill or experience; and a member of the legal profession in private practice who shall be nominated by the Law Society.

Legislature

12. The Parliament of Lesotho consists of the King, a Senate and a National Assembly. The Senate is comprised of 22 Principal Chiefs and eleven other Senators nominated by the King on the advice of the Council of State, while the National Assembly is composed of 120 elected members, of whom 80 are directly elected from constituencies and the other 40 elected through proportional representation. Minorities are not represented in the 120 member legislature or the cabinet.

Judiciary

13. The Constitution provides for an independent Judiciary which consists of a Court of Appeal (which meets semi-annually), a High Court, Subordinate Courts, Courts-martial and any tribunals that may be established by Parliaments. The Court of Appeal is a superior court of record and is composed of the President of the Court, Justices of Appeal, with the Chief Justice and the Puisne judges of the High Court as ex officio members. The High Court is composed of a Chief Justice and Puisne Judges. It has unlimited original jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or proceedings of any subordinate or inferior court, court-martial, tribunal, board or officer exercising judicial, quasi-judicial or public administrative functions. Customary or traditional courts, which are regarded as subordinate courts exist largely in rural areas and administer customary law. There are 10 High Court judges, 68 local courts and 10 magisterial courts.
14. Military tribunals have jurisdiction over military cases only and their decisions can be appealed only to a special court-martial appeal court. The special court-martial appeal court is composed of two judges from the High Court, one retired military officer with a legal background, and the registrar of the High Court.

Security Forces

15. The security forces in Lesotho consist of the Lesotho Defense Force (LDF), the Lesotho Mounted Police Service (LMPS), and the National Security Service (NSS). The Prime Minister is the Minister of Defense and National Security, with direct authority over the LDF and the NSS. The Police Force is under the authority of the Minister of Home Affairs and Public Safety.

General Information about Lesotho

The Land and People

16. The country, which has a population of approximately 2 million, is landlocked and surrounded by South Africa. More than 99% of Lesotho's population is ethnically Basotho; other ethnic groups include Europeans and Asians. The country's population is mainly Christian and with Islam, Hindu, and indigenous beliefs being practised. The official languages of Lesotho are Sesotho and English. Lesotho is an exporter of labour to neighbouring states. Its natural resources comprise of water, agricultural and grazing land, some diamonds and other minerals. The rate of HIV/AIDS rate is fairly high and life expectancy is estimated at less than 37 years.

II. THE TERMS OF REFERENCE

17. Ms Sanji Mmasenono Monageng is the Commissioner responsible for promotional activities in the Kingdom of Lesotho. The promotional mission to Lesotho was undertaken from 3rd to 7th April 2006. Ms. Fiona Adolu, Legal Officer at the Secretariat of the African Commission assisted Commissioner Monageng on this

mission. The Ministry of Foreign Affairs of Lesotho coordinated the arrangements for the mission on behalf of the government and was in contact with the Secretariat of the African Commission.

18. During the various meetings the African Commission delegation had with various stakeholders, Commissioner Monageng outlined the objectives of the mission to Lesotho as follows -:
 - a) To promote the African Charter and exchange views and information on its implementation;
 - b) To raise awareness of and visibility of the African Commission and its functions especially among the relevant government departments and institutions, and in civil society;
 - c) To follow up on recommendations arising from the Concluding Observations adopted by the African Commission following its examination of Lesotho's initial report submitted in accordance with its obligations under Article 62 of the African Charter;
 - d) To encourage Lesotho to establish a national human rights institution;
 - e) To encourage Lesotho to submit its 1st Periodic Report in accordance with its obligations under Article 62 of the African Charter;
 - f) To encourage a closer relationship between the African Commission and the Kingdom of Lesotho and between the African Commission and the civil society human rights NGOs in Lesotho.
19. Ms Lineo Mosala, the Director, Legal Affairs in the Ministry of Foreign Affairs, Ms Polo Chabane, Principle Legal Officer in from the Ministry of Foreign Affairs, Ms Leomile E. Mojaki from the Ministry of Justice and Mr Matete 'Nena, First Secretary at the Embassy of the Kingdom of Lesotho in Addis Ababa, Ethiopia assisted and accompanied the delegation to all the meetings.
20. Although the Mission programme was somewhat disrupted due to an urgent meeting that was called by His Excellency the King of the Kingdom of Lesotho, the government officials assigned to assist the mission endeavoured to reschedule the meetings and as such the delegation was able to meet all the authorities that they had requested to meet. The delegation of the African Commission would like to express their sincere appreciation to the abovementioned persons for facilitating the Mission.
21. The delegation would also like to express its profound appreciation to the Government of Lesotho for authorising the Mission and for the excellent facilities placed at the disposal of the delegation during the Mission.

III. MEETINGS HELD

Acting Permanent Secretary, Ministry of Foreign Affairs

22. The delegation's first meeting was with the Acting Permanent Secretary to the Ministry of Foreign Affairs, Honourable Balilakoama Mokhele. Following introductions, Commissioner Monageng expressed gratitude to the Ministry of Foreign Affairs for accepting the delegation of the African Commission to undertake the mission and for suggesting a comprehensive mission programme. She informed the Acting Permanent Secretary about the African Commission and the objectives of the mission. She explained that since this was a promotional mission, it should be distinguished from a fact-finding or investigative mission which would normally be undertaken as a response to allegations of serious and massive human rights violations. Commissioner Monageng alerted the Acting Permanent Secretary to the fact that besides the meetings indicated on the programme, the delegation may, during the mission request for additional meetings with various authorities and organisations in a bid to address issues that may arise during the course of mission.
23. The Commissioner informed the Acting Permanent Secretary that Lesotho is one of the Member States for which she is responsible for promotional activities, the other States being Mozambique, Liberia and Mauritius. The Mission to Lesotho she noted, was the first promotional mission she was undertaking since her election as a Member of the African Commission in 2003. She explained that many factors contribute to the African Commission's inability to undertake promotional missions as often as they would wish. These include lack of funds, delay or failure on part of Member States to respond positively to requests by the African Commission to undertake the promotional missions and in some cases Members of the African Commission may not be available to undertake the mission since they serve the African Commission on a part time basis.
24. In response to the Acting Permanent Secretary's question as to when the report of the Promotional Mission would be considered, Commissioner Monageng noted that it would be probably be considered and adopted by the African Commission at its 40th Ordinary Session since the 39th Ordinary Session was only a month away and it was not likely that the report would be ready before then. Commissioner Monageng went on to explain that following adoption of the report, it would be transmitted to Lesotho for its observations which should be transmitted within a specific period stipulated, which is normally 3 months. The Secretariat of the African Commission will publish the Promotional Mission Report with the Member States' observations if they are received within the stipulated time.

Minister of Foreign Affairs

25. In the meeting with the Minister of Foreign Affairs, Honourable Monyane Moleleki, Commissioner Monageng informed the Minister about the African Commission, its Special Mechanisms and their activities. She talked about the purpose of the promotional mission, stating that promotional missions provide the African Commission with the opportunity to promote the African Charter and also publicise the African Commission and its work. She also underscored the fact that the African Commission finds promotional missions a very useful means by which it can discuss with Member States the state of human rights in their jurisdictions without being confrontational.
26. While commending Lesotho for ratifying all the relevant regional human rights instruments and for endeavouring to meet its obligations under Article 62 of the African Charter, Commissioner Monageng however informed the Honourable Minister that Lesotho currently owes the African Commission 2 State reports. She underlined the importance of submitting State Reports noting that through the State reporting mechanism, the African Commission is able to keep an eye on the human rights situation in Member States and the Member States on the other hand are able to take stock of the human rights situations in their countries.
27. The Minister informed the delegation that he is personally committed to advancing women's rights. He stated that women in Lesotho occupy positions of responsibility, for instance, the Speaker of the National Assembly is female and there are 4 female judges of the High Court. He reported that during the local government elections, women were able to vote and 54 percent were voted into local government, which is more than the 30 percent recommended by SADC.
28. On the issue of the death penalty, the Honourable Minister speaking in his personal capacity, clearly stated that he was not in support of abolishing the death penalty. He expressed the view that government should not spend resources on persons serving life sentences, but that such resources should be put to better use through the provision of better education and health facilities. He noted that the situation currently prevailing where accused persons' rights are more protected at the expense of the victims was unfortunate.
29. The Minister also informed the delegation that unlike other jurisdictions where the girl is disadvantaged when it comes to access to education, in Lesotho it is the boy child who is disadvantaged. This is because families in Lesotho prefer to keep the boys at home to herd cattle and goats. As a result, girls in Lesotho form the greater percentage of school going children. Consequently, the men in Lesotho are less educated and this state of affairs has contributed to an increase in violent behaviour on part of the men in Lesotho.

Minister of Justice Human Rights and Rehabilitation, and of Law and Constitutional Affairs

30. Commissioner Monageng informed the Honourable Minister of Justice, Human Rights and Rehabilitation, and of Law and Constitutional Affairs, Honourable Refiloe Moses Masemene that although Lesotho's efforts to submit reports to the

African Commission are commendable, nonetheless, Lesotho needs to submit its 2 outstanding reports. The delegation sought to know whether Lesotho involves the civil society NGOs when preparing such reports.

31. The Honourable Minister informed the delegation of the African Commission that an Inter-sectoral Human Rights Committee (ISHR) composed of the relevant ministries and representatives of NGOs and the Media had been established. Among other issues, this Committee is charged with the mandate to prepare State reports for submission to the treaty bodies that Lesotho is party to.
32. Ms Mosala, the Director of Legal Affairs in the Ministry of Foreign Affairs, informed the delegation that NGOs are consulted and their input sought whenever Lesotho prepares reports for submission to treaty bodies.
33. The Minister informed the delegation that in 1995, Lesotho established a Law Reform Commission (LRC) and presently, efforts are being made to establish a National Human Rights Institution (NHRI). As such, the ISHR is also charged with the responsibility of looking into the feasibility of establishing a NHRI in Lesotho. The Minister was of the view that in order to create an institution that would meet the needs of the Basotho people, it is necessary that Lesotho studies how other NHRIs were established and how they are operating with a view to learning their best practices. That notwithstanding, he informed the delegation of the African Commission that the Ministry of Justice has a small human rights unit which handles human rights issues.
34. The Minister of Justice informed the delegation that human rights are entrenched in the Constitution of Lesotho. He stated however, that under the Constitution of Lesotho, economic, social and cultural rights are non-justiciable because they are only principles of State policies. Nonetheless, he informed the delegation that the vision of the government of Lesotho is to ensure that economic, social and cultural rights are enjoyed and implemented through various measures adopted by the government. For instance, he indicated that government awards bursaries to the youth as a target group, so that they can acquire education as a means of enabling them to enjoy economic, social and cultural rights. Additionally, the government of Lesotho offers free primary education and although it is not compulsory, efforts are underway to ensure that it is. The government of Lesotho is also trying to industrialise the economy and it is expected that such efforts will create employment and therefore contribute to the enjoyment of economic and social rights. The Minister stated that there is a need to ensure accountability, democracy and transparency when dealing with human rights issues since they are now topical.
35. The Minister talked about some of the human rights problems Lesotho has to deal with. For instance, the problem of Basotho men migrating to South Africa in search of work. As a result, he reported that families in Lesotho were mostly female headed and this has created an imbalance in the society which the government is trying to address. He added that the question of the role of the elderly in promoting human rights, especially since they are the custodians of culture, should be tackled as a pertinent issue when discussing matters relating to human rights. The problem of

- HIV/AIDS and the stigmatisation attached to persons suffering from HIV/AIDS also needs to be addressed, as well as issues relating to providing support to women especially since they bear the burden of providing care to persons living with HIV/AIDS.
36. Making reference to the 2005 Ombudsman report and the ICRC report in respect of prisons in Lesotho, Commissioner Monageng enquired about the extent of implementation of the recommendations made in those reports. The Minister stated that the findings in those reports particularly as they related to the appalling conditions within the prisons in Lesotho are indisputable. He reported that although implementation of the recommendations has been slow because of budgetary constraints on the part of government, efforts are however being made to implement the said recommendations. For instance, there has been considerable improvement in the prison diet, some prison buildings are being renovated and electrification of some prisons in the rural areas ongoing.
 37. Regarding the issue of the tension between the Chinese and the Basotho, the Minister stated that Lesotho is a haven for refugees. Consequently, the Chinese come into the country and because they are robust and pro-active go into the rural areas where they integrate themselves and set up businesses on land leased to them by the rural people. Unfortunately, once the Chinese businesses become successful, the rural people then turn around and blame the government for permitting the Chinese to establish businesses in Lesotho. On the other hand, the government is also faced with the problem of some of the Chinese in the rural areas not renewing their permits upon expiry and as such continue to operate their businesses illegally. The Minister noted that although there is a need to tap from Chinese expertise, government needs to ensure that such business persons obtain the required permits and pay their taxes. This would eliminate any unfair business practices. The Minister recalled the 1991 incidents when there were clashes between the Chinese and Basotho business communities and reported that nowadays the Chinese are well integrated within the communities where they live and work. He informed the delegation that in 2005, the Race Relations Amendment Act was passed in order to address the problem of xenophobia. It also introduced human rights education in the school curricula starting at the level of primary education.
 38. The Minister informed the delegation that the problem of case backlog in the judicial system is major and noted that a well functioning justice system is key to economic development, peace and stability in any country. He reported that efforts are being undertaken at all levels and various strategies are being employed to address the problem of case backlog. He said the Judicial Service Commission is trying to address the problem as well as the Justice Sector Development programme under which police are trained to investigate matters properly and expeditiously and further carry out effective prosecutions. It has become apparent that there is a nexus between investigations, prosecutions and adjudication of matters. A Speedy Court Trial Act was enacted and it permits judges to speedily deal with cases that have been delayed due to administrative hindrances and in those cases where investigations are ongoing limit the time taken for such investigations or release the accused on bail pending trial.

39. Commenting on the relationship between the government and NGOs, the Minister informed the delegation of the African Commission that before joining government, he was part of the NGO community and as such he works closely with NGOs especially through the Lesotho Council of NGOs (LCN) which is their umbrella body. He reported that although the relationship between government and NGOs is healthy, there is a need to clarify the roles of government and that of NGOs in this relationship.
40. Regarding the issue of corruption, the Minister stated, that besides government, NGOs too should also be held accountable for corrupt practices. In this respect, Lesotho is drafting a bill to address corruption in all sectors and at all levels of society.
41. Regarding the issue of promotion and protection of women's human rights, Commissioner Monageng enquired about efforts undertaken by government to ensure that the rights of women are protected in law and in practice. The Minister informed the delegation that the Married Persons Equality bill had been drafted and it deals with issues relating to unfair practices before the traditional courts. The bill also opens avenues for women to enjoy certain economic rights that they were previously denied. The Minister indicated that all legislation relating to domestic relations will have to be reviewed in view of the Married Persons Equality bill. He recommended that because this issue is delicate, there is a need to sensitise Members of the National Assembly before the bill is placed before them for debate. He noted that although he expects attitudes to the Married Persons Equality bill to be varied, he suggested that Members of the National Assembly should be informed of the importance of enacting the bill into law.
42. Regarding the issue of provision of legal aid particularly to the indigent, the Minister informed the delegation that as per the Constitution of Lesotho, legal aid is supposed to be provided in all civil and criminal matters. The government of Lesotho offers legal aid but this service needs to be strengthened so that all indigent persons can benefit from this service and furthermore, the provision of legal aid should be decentralised. The Minister noted that some NGOs like FIDA support government's efforts in this area by offering legal aid. He added that perhaps the proposed NHRI of Lesotho should envisage providing legal aid.
43. Regarding the death penalty, the Minister stated that this form of punishment is still on the statute books of Lesotho but was quick to add that there has been no execution in the last 10 years.
44. At the end of the meeting, Commissioner Monageng stated that Lesotho should consider hosting an ordinary session of the African Commission. In response, the Minister noted that since this would have financial implications on the government of Lesotho, the proposal would have to be fully considered bearing in mind the resources and facilities that the country has.

The Police Complaints Authority

45. The delegation of the African Commission met with the Chairperson of the Police Complaints Authority (PCA), Ms Chimombe. Other members of the PCA were also present at the meeting.
46. Commissioner Monageng informed the members present about the African Commission and its activities, including the work of its special mechanisms and in particular about the Follow-Up Committee on the Robben Island Guidelines, its mandate and its proposed activities. She recommended the Robben Island Guidelines noting that they were pertinent to the work of the PCA.
47. The Chairperson informed the delegation of the African Commission that following the suspension of the Constitution of Lesotho in 1994, human rights violations were committed and the Human Rights Act was insufficient to address some of these violations. Additionally, following the suspension of the Constitution the police forces were not clear as to where they derived their powers from.
48. In 1993 a new Constitution was adopted which guaranteed the promotion and protection of human rights. With this new Constitution, the police had to receive training about their new constitutional responsibilities particularly respect for human rights in the course of carrying out their work. It was no longer acceptable for the police force to violate human rights in the name of discharging their duties and as such government saw the need to create a PCA to address complaints relating to misconduct of police.
49. The PCA was consequently established in 1998 but due to budgetary constraints, it only became operational in 2005. It is composed of 4 members drawn from police, private law practice and the Judiciary. The secretariat of the PCA has 34 members of staff including investigators and it is anticipated that the number of staff members will be increased to 54.
50. The Chairperson of the PCA noted that no machinery can operate without oversight and the PCA is a civilian body which was established to oversee the police. The mandate of the PCA is to investigate reports brought by members of the public in respect of police conduct. For instance, the PCA may investigate violations of procedures of arrests as this may lead to wrongful detentions or disappearances. Under the statute establishing the PCA such complaints should be directed through the Commissioner of Police or the Minister of Home Affairs. The Chairperson of the PCA informed the delegation of the African Commission that it is important for a country to have a good and clear policy dealing with police misconduct as this will encourage people to invest in the country because they are aware that the police is responsible.
51. The Chairperson of the PCA however pointed that the PCA is faced with several challenges. These include -:
 - Failure of the legislation establishing the PCA to permit members of the public to approach the PCA directly with their complaints. Complaints from

the public to the PCA have to be submitted through the Commissioner of Police or the Minister of Home Affairs;

- Perceptions within the police that they are being investigated by a civilian body. The PCA has had to address this challenge by interfacing and working with the police to make them understand the mandate of the PCA. However in order to deal appropriately with this problem, there is need to build the capacity of the staff members of the PCA so that they can be able to deal with police;
- The police are in reality faced with lack of facilities and other logistical problems leading them to inadvertently violate human rights. For instance, in some districts there are no police cells and police detain suspects by tying them to vehicle tyres.

52. The Chairperson of the PCA was of the view that the current Police Act needs to be amended and harmonised with other Southern African Development Community (SADC) laws. This should be done in consultation not only with the police but also with the PCA. This proposal has been put to the Lesotho Law Reform Commission to look at comprehensively.
53. Members of the PCA expressed interest in being acquainted with how persons are elected to sit on the African Commission and in particular sought to know why Lesotho was not represented on the African Commission. The Director of Legal Affairs at the Ministry of Foreign Affairs, Ms Mosala explained that Member States are normally informed about vacancies on the African Commission or any other international body and asked to submit candidates. In the case of Lesotho, following in-country nominations, the nominated persons' names are submitted to the SADC which agrees on which candidates to forward to the AU AHSG or the relevant electing body in the case of other international bodies.
54. On the issue of whether decisions of the African Commission are legally binding, the Commissioner explained that technically the African Commission issues recommendations, which by their very nature, are not legally binding. However, she added that the newly established African Court on Human and Peoples' Rights will issue legally binding decisions as provided by the Protocol that establishes it.
55. In conclusion, the Chairperson of the PCA requested for support from the African Commission particularly in terms of technical assistance or documentation, as the Secretariat of the PCA was trying to establish a resource centre. Commissioner Monageng noted that as the Chairperson of the Follow Up Committee she would look into carrying out some of the activities of the Follow Up Committee in Lesotho. The Chairperson welcomed this proposal. Commissioner Monageng also suggested to the PCA that it should endeavour to work with other international organisations that are working in the areas of interest of the PCA.

The Judiciary

56. Following introduction of the African Commission and its activities, Commissioner Monageng informed the members of the Judiciary that of particular interest to them would be the protection mandate of the African Commission and specifically the quasi-judicial function of examining communications brought against Member States.
57. The judges enquired about the method of appointing members to sit on the African Commission and about the transparency of the process. The Director of Legal Affairs at the Ministry of Foreign Affairs, Ms Mosala explained the process and also informed them that AHSG had taken a decision not to elect ambassadors and senior government officials to sit on the African Commission and other bodies of the AU which are meant to be independent.
58. With regard to the question about the status of the African Commission, Commissioner Monageng informed the judges that the African Commission is a treaty body with quasi-judicial functions. She stated that the decisions that are issued by the African Commission are mere recommendations. She informed them that the decisions of the newly established African Court on Human and Peoples' Rights would, on the other hand, be legally binding and cannot be appealed.
59. As to how easy it is for an ordinary person to lodge a communication with the African Commission, the Commissioner noted that anyone can lodge a communication with the African Communication. There is no need for legal representation and for physical appearance. In those instances where a Complainant is not well versed with the African Commission's procedures, they will often be referred to NGOs to assist them draft and process their complaint.
60. Members of the Judiciary were interested in knowing how the African Commission reaches its recommendations and decisions. The Commissioner informed the members of the Judiciary that recommendations and decisions of the African Commission are reached by consensus and as such dissenting opinions are uncommon. So far, she said, a dissenting opinion has been given on only one occasion.
61. In response to what happens when Member States fail to abide by the recommendations of the African Commission, Commissioner Monageng stated that the African Commission has no powers to sanction Member States, however, such failure can be reported to the AHSG and possibly to the Peace and Security Council which may impose whatever measures they deem fit.
62. Commissioner Monageng also informed the Judges that through the State reporting procedure provided for under the African Charter, Member States can report on the extent to which they have implemented recommendations or decisions of the African Commission. This procedure also provides the African Commission with the opportunity to follow up on their recommendations or decisions in respect of the reporting State party.

63. The Judges noted that it was necessary to have an NHRI and suggested that the delegation of the African Commission should recommend to the government of Lesotho to establish such a body. Commissioner Monageng informed the members of the Judiciary that the delegation of the African Commission had already been informed by the Minister of Justice that government was in the process of consulting on the establishment of a NHRI.
64. The Honourable Chief Justice, Justice Lehohla informed the delegation of the African Commission that Lesotho had offered to host the seat of the African Court on Human and Peoples' Rights. However, because of the principle established by the AU AHSG that regional bodies should be distributed among the 5 sub-regions, it was not possible for Lesotho to host the Court since South Africa which belongs to the same region is hosting the Pan African Parliament.

Lesotho Federation of Women Lawyers (FIDA)

65. In the meeting held with the President of FIDA, Ms Pholo, Commissioner Monageng explained about the African Commission, its functions and the purpose of the mission. She informed the President of FIDA about the special mechanisms of the African Commission and in particular that relating to the protection of the rights of women in Africa. She stated that as an NGO established to protect the rights of women in Africa, FIDA should consider developing a relationship with the African Commission and the Special Rapporteur on the Rights of Women in Africa. As such, Commissioner Monageng encouraged FIDA to apply for observer status with the African Commission. In this regard, Commissioner Monageng seized the opportunity to enquire about the only NGO in Lesotho with observer status – the Community Legal Resource and Advice Centre (CLAC). The President of FIDA informed the delegation that CLAC had closed down mainly due to lack of funds to run its activities.
66. In response to the Commissioner's question on how FIDA is working to promote the Protocol on the Rights of Women in Africa, the President of FIDA stated that the organisation has been working mainly with UN instruments especially the Convention on the Elimination of all forms of Discrimination Against Women. She however undertook to start activities touching on the Women's Protocol. The Commissioner restated the need for African organisations to internalise African human rights instruments.
67. The President of FIDA informed the delegation of the African Commission that she is also a Member of the African Committee on the Rights and Welfare of the Child. She stated that FIDA was established in 1988 to promote and protect the legal rights of women and children. The organisation has 31 members, 3 of whom are male. All the members are lawyers and offer their services to the organisation on a part-time voluntary basis. The Executive Committee of FIDA is composed of 7 members, 4 of whom must be female lawyers. The organisation has 4 members of staff.
68. In pursuit of their main objective of promoting and protecting the rights of women and children, the organisation deals with issues of economic and political

empowerment as well as issues relating to HIV/AIDS and how it affects the rights of women and children. For instance, in terms of protecting the economic rights of women and children, FIDA lobbies to ensure that non-discriminatory criteria are developed especially when privatisation of industries and parastatals take place. FIDA also carries out legal awareness, lobbies for reform of laws and development of policies that are friendly to women and children, simplifies legislation and produces publications in Sesotho and English. The organisation is also involved in amicable settlement of disputes particularly relating to maintenance of families by husbands. Where agreements are reached, FIDA is able to approach the police for assistance where parties to these agreements default. She also reported that FIDA assists and often represents children who are found to be in conflict with the law or at the very least ensures that legal procedures relating to them are complied with.

69. Under a project funded by the Australian government, FIDA will be able to carry out training for officials from the local government councils in Lesotho. One such training has already been undertaken and 6 more are scheduled to be carried out in 2006. Besides training on rights issues, the training offers topics like book-keeping and management of offices.
70. The President of FIDA informed the delegation that HIV/AIDS is a major problem in Lesotho. She reported that Lesotho has recently established a National AIDS Commission. FIDA assists children whose parents have died from HIV/AIDS by ensuring that property bequeathed to them is secure. She stated that one other organisation working specifically on HIV/AIDS related issues is Lesotho AIDS Programme Coordinating Authority (LAPCA).
71. With funding from the Global Fund, FIDA has also been able to lobby for the enactment of legislation aimed at protecting the rights of children, like the Children's Protection and Welfare Bill which will modify the present Children's Protection Act by including welfare issues. Noting that the process of enacting the Children's Protection and Welfare Bill is taking long, the President of FIDA disclosed that FIDA has already started implementing sections of the Children's Protection and Welfare Bill even though it has not yet been passed into law.
72. Commissioner Monageng enquired about how FIDA deals with the problem of the boy children in Lesotho who do not attend school because their parents need them to stay at home and herd the livestock. The President of FIDA informed the delegation that literacy programmes aimed at such male youth are being carried out in the communities and they are encouraged to attend.
73. In conclusion, the President of FIDA informed the delegation that it is faced with a problem of lack of funding which obviously affects its ability to carry on activities that will benefit the women and children.

Non-Governmental Organisations

74. The meeting with NGOs was facilitated by the Lesotho Council of NGOs (LCN). Commissioner Monageng gave a brief about the African Commission, its special

- mechanisms and its activities. She encouraged all the NGOs to apply for observer status with the African Commission as this would enable them to play a greater role in the activities of the African Commission.
75. The delegation of the African Commission was informed that LCN member organisations deal with various human rights issues including rights of detainees, workers' rights, rights of persons with disabilities, rights of the youth and gender related issues. LCN only plays the role of coordinating its members' activities. The LCN also studies the domestic legislation in Lesotho to ensure that they conform to and meet the standards of regional and international instruments. LCN reported that there are 4 NGOs presently collecting data in this area. This data will be analysed and the relevant information will be transmitted to NGOs, AU, UN and other relevant international bodies. LCN promised to avail the African Commission with any relevant information arising from this study.
 76. A representative from the Lesotho Clothing and Allied Workers Union, informed the delegation of the African Commission that the organisation has received information to the effect that the armed forces have indicated that they would not recruit any person found to be HIV positive. The representative of the organisation stated that besides being a human rights issue, such a decision would affect so many families since the armed force of Lesotho is a major employment institution. The representative of the Lesotho Youth Federation also raised various concerns particularly as they relate to the problem of HIV/AIDS and unemployment among the youth in Lesotho.
 77. The representative of the South African Ex-miners and Allied Workers requested to meet with the delegation of the African Commission in private. They informed the delegation that they had recently learnt that the Republic of South Africa (RSA) had disclosed that they had found monies that they believed belonged to ex-miners from Zambia, Malawi, Mozambique, Namibia, Botswana and Swaziland. The representative of the South African Ex-miners reported that they were concerned that they would not be able to access the relevant authorities so as to benefit from these funds. This is mainly because when their mining contracts came to an end, most of the miners did not retain their identity cards and yet they have been told that they need these cards to prove that they were miners working in South Africa before they can benefit from the funds. The representative of the South African Ex Miners stated that TEBA offices in Maseru can provide them with their identity card numbers. However, the TEBA officials have declined to furnish the organisation which is working on behalf of its members with this information, stating that each member of the organisation should collect their identity card numbers from the TEBA offices in Maseru. The representative of the South African Ex-miners informed the delegation that this would have been possible if the TEBA offices in the rural areas had not been closed down but asking the ex-miners living in far off rural areas to collect this information from the TEBA offices in Maseru is unrealistic.
 78. The representative of the South African Ex-miners informed the delegation that they approached the Ministry of Labour requesting them to assist them with their grievances but they were informed that since they were neither employers nor

employees, the Ministry was unable to assist them. The representative of the South African Ex-miners therefore requested the delegation to enquire from the Lesotho government officials to advise them on which office would be best suited to take up their matter. Commissioner Monageng undertook to raise the matter on their behalf with the relevant authorities.

Commissioner of Police

79. The Commissioner of Police, Ms Evelyn 'Malejaka Letoane is the first female ever to hold such a position in Lesotho. She informed the delegation that she is aware that as an institution, the police force is vital in ensuring that human rights are protected. Consequently, human rights is a core subject in the syllabus of the police training college and other organisations like the ICRC are often invited to offer training on human rights issues. Nonetheless, the reality is that there are still complaints about human rights abuses particularly, torture, that are brought against members of the police force but these are now limited as indicated by the reduction in the number of civil claims brought against the police force.
80. In response to Commissioner Monageng question about whether torture is a criminal offence, the Commissioner of Police stated that there was no criminal prohibition of torture in Lesotho. However, police officers accused of committing torture can be penalised under the offences of common assault or causing grievous bodily harm. Disciplinary action could also be taken against the police officers concerned or civil claims brought against the police force. As a result of civil claims, the police force has in the past paid very heavily from its meagre budget and as such, the police officers are constantly warned about the strain that cases of torture place on the police budget.
81. The Commissioner of Police informed the delegation that procedures have been put in place to minimise incidences of torture. For instance the accused is permitted to make a declaration on a detention form issued to him or her indicating that s/he has not been tortured or his/her belongings taken. This form is issued by the desk office at all the detention centres. She reported that they were unaware of the Robben Island Guidelines but would use the copies of the guidelines given them by the delegation during their trainings.
82. The officer in charge of administration added that the administration office operates under the international code of conduct and the Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO) code of conduct. These standards have also been incorporated into the police training.
83. The delegation of the African Commission was however informed that knowledge of the African human rights system is very limited because it has not formed part of the training modules for the police force. The Commissioner of Police stated that training in human rights concentrated on the Universal Declaration of Human Rights and other UN instruments that deal with human rights and humanitarian law. She made a request to the African Commission to assist in the provision of training in

this area and any other technical assistance in respect of the African human rights system. The Director of Legal Affairs in the Ministry of Foreign Affairs, Ms Mosala also informed the Commissioner of Police of the availability of the Ministry of Foreign Affairs and Ministry of Justice to carry out training on the African human rights system within the training college of the police force.

84. The Deputy Commissioner of Police provided the delegation with information relating to the operational side of the police. He reported that the police force is undergoing reform especially as regards its operations. Where before the police was once highly politicised, presently this is being addressed and some success has been registered in terms of depoliticising the police. Emphasis is being placed on human rights and this has also been included in the strategy plan. For instance, members of the police force are only permitted to carry batons and are therefore not allowed to carry big rifles during operations. The disadvantage of this is that the police are placed at risk when dealing with a society which is as violent as that in Lesotho. The attitudes and mentality of the people have been so affected that they believe that power is synonymous with violence and those police officers who endeavour to carry out their work in accordance with human rights standards are accused by the society of being social workers. Such attitudes make it difficult for the police force to carry out its functions effectively without violating rights particularly when dealing with public protests, public disturbances and riots. The Deputy Commissioner therefore recommended that it is necessary for society to be sensitised and trained on human rights issues in order to change such attitudes.
85. The Deputy Commissioner also reported that their requests for support from government for facilities like water tankers, water cannons and rubber bullets that will assist the police force restore public order in the face of riots and protests have not borne any fruit. Consequently when situations spin out of control, the police force is forced to use excessive force and sometimes live ammunition on crowds.
86. Regarding the issue of backlog of cases, the Commissioner of Police reported that they have introduced the concept of community policing and citizens are encouraged to report crime and testify in cases. Additionally, the police force is closely involved in the ongoing justice sector reform process which is tackling the problem of backlog of cases.
87. With respect to the tension that exists between customary law and the protection of the rights of women and children, the Commissioner of Police informed the delegation that police officers are sensitised about issues relating to the promotion and protection of the rights of women and children. She reported that a Gender and Child Protection Unit has been established within the police service and equipped with personnel including counsellors trained to deal with matters relating to children and women.
88. Commissioner Monageng brought to the attention of the Commissioner of Police concerns raised by the Chairperson of the PCA regarding the working relationship between the 2 institutions. The Commissioner of Police acknowledged that tension between the two institutions was mainly because of a confusion of roles. The PCA is

- mandated to investigate complaints brought against the police, while the police are mandated to investigate criminal complaints. This has now been resolved and the 2 institutions agree that they need to develop a good working relationship. The work of the PCA is important to the work of the police as they add value to the services of the police. Consequently, the police force is presently working with the PCA to develop standard operational procedures and on developing harmonious working relations between the 2 institutions.
89. The Commissioner of Police noted however that the requirement that complaints against the police can only be made to the police or Minister of Internal Affairs who would then refer them to the PCA is quite problematic. She recommended that therefore that the public should be able to access the PCA directly.
 90. Regarding the amendments of provisions of the Police Act, the Commissioner of Police reported that although plans to restructure the police have been in the pipeline since 1997, not much has been achieved in terms of amending the Police Act. This is the same situation regarding the amendments to the Internal Security Act.
 91. In conclusion, Commissioner Monageng recommended that the police should consider partnering and working with human rights NGOs.

Office of the Ombudsman

92. The Ombudsman, Mr Mafisa informed the delegation of the African Commission that his office receives and investigates complaints by individuals and groups against the government. Such complaints relate to human rights issues, corruption or maladministration within government. He explained the procedures followed when a complaint is lodged with his office. On receiving a complaint the office of the Ombudsman may involve the parties in an informal negotiation process and recommend a corrective measure. If the corrective measure is not accepted by the complaining party then a determination will be made where the facts of the matter would be summarised, findings made and recommendations suggested. The other procedure is through a formal public enquiry which could be made following a complaint made to the office of the Ombudsman. The office of the Ombudsman will then make a determination and suggest recommendations. In most cases, timelines are set within which recommendations should be implemented. However, if the recommendations are not implemented, the office of the Ombudsman will submit a special report to the National Assembly and the matter will be left with them to handle.
93. The delegation was also informed that the office of the Ombudsman is also mandated to inspect hospitals, prisons, police cells etc. The Ombudsman reported that in 2003 his office inspected two prisons and in 2004 they inspected police cells and hospitals.
94. Regarding the conditions of the prisons so far visited, the Ombudsman reported that they were horrendous. The prison buildings were small, old and dilapidated and

- therefore overcrowded. The ablution facilities of the prisons were very poor; prisoners were undernourished due to lack of a balanced diet, they were poorly clothed and they had no beddings. Sick prisoners are kept with the healthy. Although there is evidence of the spread of HIV/AIDS in prisons, there is a failure to accept the existence of sexual relations amongst men and though there is still some resistance to it, they have started distributing condoms in prisons.
95. With respect to police cells, the Ombudsman informed the delegation that the conditions of detention are not fit for human beings as they are terribly overcrowded. There is no ventilation, ablution facilities are very poor, detainees have no sleeping facilities and they are underfed. In some rural areas, there are no police cells and prisoners are kept at the reception, while in other areas, prisoners are visibly shackled onto a chair, table, post or truck wheel. The Ombudsman stated that terrible violations take place at police stations. In 2005 soon after inspecting the police cells, the office of the Ombudsman issued an advance report expressing concern over the conditions of detention. The Ombudsman reported that he did not know if anything had been done to redress the situation as he had not yet undertaken a re-inspection tour.
96. The Ombudsman reported that in 2006, his office would endeavour to go around the country to inspect the level of compliance with the recommendations. He acknowledged that given the economy of the Lesotho it may be unrealistic to expect the government to build new prisons immediately but other measures can be instituted to tackle the problem of overcrowding in places of detention. The Ombudsman noted that the Speedy Trials Act which was conceived to deal with the problem of overcrowding is not being properly applied. For instance, pre-detention is still being practiced and persons who have committed minor offences are being held in detention.
97. The Ombudsman informed the delegation of the African Commission that his office has noted that crime in Lesotho is on the rise and most criminal cases relate to murder and sexual offences.
98. On a positive note, the Ombudsman reported that since issuing his report on the conditions of detention, the diet of prisoners has improved and prisoners are better clothed. This indicates that some effort is being made by the government to address the recommendations contained in the report. Additionally, there appears to be a real drive to reform the justice sector and there are signs of reforms on the way.
99. About alternative forms of sentencing, the Ombudsman stated that he had made recommendations to the effect that community service, caution or discharge should be utilised instead of prison sentencing. Consequently, a Committee was established to review cases of convicts with a view to, for instance, discharge those that are eligible and releasing the terminally ill.
100. In conclusion, the Ombudsman noted that whereas the establishment of a NHRI is a welcome suggestion, he cautioned that with the scarcity of resources, Lesotho should desist from creating many institutions as it will be difficult to provide

them with adequate finances to enable them to function effectively. Government should consider in some cases extending the mandate of existing institutions to cover what would have been done by the NHRI.

Law Reform Commission

101. The delegation of the African Commission met with a Researcher at the Law Reform Commission (LRC), Ms. 'Noko Masupha. She stated that the LRC was established under the Law Reform Commission Act of 1993 but only became operational in 1997. The LRC is comprised of 7 members who are all part-time. Of the 7 members of the LRC, five are lawyers, one is a medical doctor and one is a non-lawyer but she specialises in criminology. The mandate of the LRC is to review and reform laws at the request of a government institution or on its own initiative. In the course of carrying out its functions, the LRC sometimes conducts consultative meetings. Such meetings are carried out with the assistance of a technical advisers' team which involves relevant stakeholders from government and carry out research and hold public gatherings. The LRC may also study laws from other jurisdictions when drafting a law.
102. The Researcher reported that as a result of a review undertaken in respect of the 1980 Children's Act, it was revealed that the Act was inadequate in terms of addressing issues that affect children in Lesotho. Consequently, the LRC decided to establish the Children Protection and Welfare project. As a result of this project, a new bill has been drafted and incorporates issues that were lacking in the 1980 Children's Act, including, issues of child welfare, juvenile justice, child labour and children in conflict with the law. The new bill also introduces best practices and principles like, taking into consideration the child's best interests when dealing with children. She stated that the LRC had finalised drafting the bill and had submitted it to the legislative drafting section of the Ministry of Justice which is presently reviewing it.
103. She also informed the delegation that the LRC also carried out a project which resulted in the enactment of the current Sexual Offences Act which, for instance, expanded the definition of rape beyond the traditional definition given of penetration by a male sexual organ. The LRC also drafted the Married Persons Equality bill. It deals with all aspects of women's rights and issues relating to women and as such is meant to protect the rights of women. It seeks to prohibit the application of cultures, customs and traditions that undermine the status of women in society or violate the dignity, welfare or interest of women. The Married Persons Equality bill was transferred to the Ministry of Gender from the LRC.
104. Regarding the issue of rights of victims of crime, the Researcher informed the delegation of the African Commission that the LRC had come up with a Paper on this issue. She acknowledged that victims of crime are often ignored by the justice system and focus is often placed on offenders. She reported that a Victims' Office has now been established at the magistrates' courts. This has been done administratively as the law does not provide for this. The Victims' Office assists in the provision of finances and counselling to victims and works in collaboration with

the probation department. The LRC Researcher informed the African Commission delegation that the issue of rights of victims of crime will be taken up in a prospective project of the LRC. It is intended that this project will also address issues of restorative justice.

105. For the period 2006-2007, the delegation of the African Commission was told that the LRC will endeavour to review obsolete laws.

106. In conclusion, the LRC Researcher informed the delegation of the African Commission the challenges faced by the LRC. She stated the secretariat of the LRC is responsible for carrying out all the projects of the LRC, however, there are only 2 personnel responsible for activities covering the whole country.

Ministry of Gender and Youth

107. In the meeting convened by the Director of Gender, Ms. 'Matau Futho-Letsatsi, Commissioner Monageng informed the Ministry officials present about the African Commission, its mandate and activities. She also informed them about the mandate and activities of the Special Rapporteur on the Rights of Women in Africa.

108. Commissioner Monageng sought to know what was being done by the Ministry of Gender and Youth to alleviate poverty amongst women and children. The Director noted that poverty in Lesotho is exacerbated by the inferior legal status of women in the country. However, the Director reported that the Ministry has trained the youth, provided them with equipment and materials to facilitate self employment and in some instances provided them with capital to enable them to start small businesses. Furthermore, in October 2005, the Ministry launched a Commonwealth funded project which provides seed capital to youth. Additionally, with assistance from the International Labour Organisation and UNDP, the Ministry is implementing a 2 year project which assists out of school children. Officials from the Directorate of Gender work with communities to identify the needs of women and the society in general and try to assist them and empower them economically. These communities are also sensitised on how best to enhance their economic capacity. The Director stated that there were no specific projects aimed at women but the activities carried out in the communities generally empower them as well.

109. Regarding the issue of whether education is compulsory and the ratio of girls to boys attending school, the Director informed the delegation of the African Commission that in the past there were more school going girls than boys. However, more girls are now dropping out of school to assist ailing parents so the ratio of girls to boys is now dropping and soon it is going to be 50:50. Education is free but not yet compulsory therefore some children in the communities do not feel obliged to attend school, which is a loss to both government and the community. The government of Lesotho has therefore embarked on the process of making education compulsory. Nonetheless, the Ministry has identified children that are not going to school and placed them in schools. In those instances where the parents are genuinely unable to meet school related expenses, the Ministry has tried to secure sponsorship for them.

110. The Director also reported that through the Gender Technical Committee, the Ministry of Education as well as other ministries are advised on gender aspects of education. When meetings and discussions are held in the communities by the Directorate, women are encouraged to bring along girls to attend and participate in these discussions. Similarly, the Department of Youth holds meetings in communities where they encourage the men to bring along the boys to attend and participate in such meetings and discussions.
111. The Director also reported that the Ministry of Education has programmes which target herds-boys for education and economic empowerment. In the rural areas, families rely on the herds-boys to provide for them and as such they are sometimes exploited and this is a problem. She stated that the Ministry of Education will soon be undertaking a two year project with UNFPA that will focus on herds-boys only and provide them with economic empowerment. Most of the projects unfortunately target youth of 15 years and above and as such not much work has been done with children under the age of 15 years.
112. Regarding the problem of HIV/AIDS particularly among women and the youth, the Director of Youth Affairs reported that there is an officer in each of the 10 districts who mobilises and educates youth on HIV/AIDS. Voluntary testing and counselling among the youth and women is encouraged. It has been noted that girls and young women are the ones most affected by HIV/AIDS. For example, in one district, of the 31 people tested, 29 were found to be HIV positive. The Ministry has begun drawing up a policy relating to sports and HIV/AIDS. It is also carrying out various projects and facilitating educative activities aimed at delivering information about HIV/AIDS. These include the Sports for Life project which is implemented in collaboration with the Ministry of Sports. Road Shows are held throughout the country during which career guidance will be offered, as well as voluntary counselling and testing of HIV/AIDS. The testing is carried out by young people for young people. The project of Road Shows is implemented by the Ministry of Health and so far they have covered about 5 to 6 districts. The Director of Youth Affairs noted that in terms of activities around HIV/AIDS, focus is placed on testing and providing support to the victims of HIV/AIDS. He acknowledged that there is need to start addressing the needs of those who care for the sick.
113. Regarding the issue of youth development, the Director of Youth Affairs reported that the Ministry does not have the capacity to establish programmes through out the country. He reported that they have submitted a draft for a bill that will establish a National Youth Council which will assist in this area. However, the process of enacting the bill into law is slow and as such, they have decided to establish the National Youth Council and it is hoped that it will be functioning before the end of 2006.
114. With respect to the status of the Marriage of Persons and Equality Bill, the Director of Gender informed the delegation of the African Commission that a stakeholders meeting will be convened to discuss the bill and thereafter will be submitted to cabinet for consideration. The Director expressed hope that the Act would be enacted before the end of 2006. The Director stated that the Gender

- Directorate intends to undertake programmes aimed at raising awareness about the Act when it is enacted. It is also expected that the Protocol on the Rights of Women in Africa will be widely disseminated during this exercise as plans are underway to translate the Protocol into Sesotho.
115. The legal officer within the Gender Directorate informed the meeting that the Marriage of Persons and Equality bill aims at abolishing the absolute marital power that husbands have over their wives and property. As such, it is hoped that enactment of this legislation will have an impact on the alleviation of poverty. Women will be enabled to achieve economic empowerment and their human rights will be better protected. A proposal has also been made for a Gender Equality Commission.
116. The legal officer also informed the delegation of the African Commission that a domestic violence task force was established to draft a domestic violence bill that will suit Lesotho and it is hoped that this bill be ready before the end of 2006. There is also a proposal for a one stop centre for gender based violence which is to be supported by UNDP.
117. Commissioner Monageng enquired about the impact of the general backlog of cases on women and children's cases. The Director of Gender stated that in separation, divorce and criminal cases women suffer the emotional burden of having to wait for the completion of their cases. This affects women and children emotionally and recommended that the Ministry of Justice needs to address the problem urgently.
118. Regarding the relationship between the Ministry of Gender and Youth and NGOs, the Director recognised the importance of creating partnerships with NGOs. She stated that NGOs provide the necessary criticism and act as checks and balances especially in respect of activities of governments. The Director reported that the ministry relates well with NGOs and in particular with FIDA and Women in Law in Southern Africa. It was noted however, that due to lack of funding, some NGOs have had to close down, for instance, CLAC and SEDIBENG and as such recommended that there is need to provide NGOs in Lesotho with support.
119. With respect to the conditions of women's and children's detention centres, the Director reported that though her office had not undertaken any visits to the prisons, the understanding was that congestion is mainly in men's detention sections rather than women's sections.
120. In conclusion, the Director of Gender noted that there is need to provide support and assistance to female victims of offences. In addition, female spouses of offenders should be supported because in most cases their sole breadwinner may be held in detention. The government needs to address these issues through various programmes.

121. In the meeting with the President of the Law Society of Lesotho (LSL) Mr Zwelake Mda and the Deputy President, Sakoane Sakoane, Commissioner Monageng informed them about the communication procedures of the African Commission. She stated that lawyers have the responsibility to argue cases at the domestic level taking into consideration the jurisprudence of international bodies such as the African Commission. She further stated that lawyers need to be reminded that lawyering is a public service.
122. The President of the LSL informed the delegation of the African Commission that the Society is a statutory body established by virtue of the Law Society Act of 1981. The membership of the LSL currently stands at 150 members. The LSL has an Executive Council which is composed of 5 members, namely the President, the Deputy President, the Secretary, the Treasurer and one member. In order to discharge its functions, the LSL has established Committees in the following thematic areas - human rights, anti-corruption, HIV/AIDS and ethics/disciplinary. Funding for the activities of the LSL come from member subscriptions and from donors.
123. The President of the LSL explained that since there is no NHRI in Lesotho, the LSL has become quite relevant in terms of ensuring that the rule of law is maintained in the country. Consequently, the LSL has invited members of the public whose rights have been violated to bring their matters to the LSL. The LSL intends to bring these cases before the courts and has offered to represent indigent persons.
124. On the issue of the relationship between the LSL and government agencies, the LSL officials noted that the government always involves the LSL when they draft legislation. However, the LSL officials reported that one of the problems that the LSL is faced with is that the Ministry of Justice often employs *pro-deo* and *pro-bono* lawyers who are mainly white South Africans to supplement the State attorneys. These lawyers are then paid exorbitantly and yet the same services could be offered by Basotho lawyers if they are paid that well.
125. Regarding the issue of recruitment of judges, the President and his Deputy reported that the Judicial Service Commission (JSC) is responsible for nominating persons eligible to serve on the bench. However, they stated that the LSL is not represented on the JSC. The JSC is composed of the Chief Justice, Attorney General, Public Service Commission and one judge. As such, the LSL does not participate in the process of selecting who is appointed to the bench and they argued that the process as such is not transparent. The President and the Deputy President of the LSL suggested that an interview system similar to that adopted in South Africa should be introduced in respect of appointments to the bench rather than the system currently obtaining, as this would facilitate transparency in the appointments to the Judiciary. They informed the delegation of the African Commission that whereas in the past, the LSL was always consulted, today positions on the bench are filled without consulting the LSL.
126. The President of the LSL and his Deputy also reported that they have discerned from media reports that members of the public have lost confidence in the

High Court. They noted that the Judiciary sometimes makes political statements in court, they fraternise with the executive and yet this should be avoided. The LSL officials stated that when the Directorate of Public Prosecutions (DPP) has cases in courts, they use judges perceived to be partial to government and the LSL has issued a resolution condemning this practice. Judges should be seen to be independent and they need to also assert their independence. As a result, the LSL is proposing to conduct public hearings during which they will gather information and evidence from the members of the public indicating the reasons for their lack of confidence in the Judiciary.

127. It was further suggested by the LSL officials that the Chief Justice should hear cases, particularly high profile cases, as this will assist in clearing the backlog. They noted that the previous Chief Justices used to sit on matters but the present one does not.

128. In conclusion, the LSL officials stated that the relationship between the LSL and the Judiciary is uneasy. They informed the delegation of the African Commission that the LSL had approached the Chief Justice with some of their concerns and in 2005 a meeting was held between the LSL and the Judiciary, Attorney General and the DPP. It was suggested in that meeting that a committee be established to deal with these concerns and the Chief Justice was requested to follow up on this process. However, nothing has been done in this respect so far and as such no headway has been made in that direction.

Inter-sectoral Committee for Human Rights

129. Commissioner Monageng informed the members of the Inter-sectoral Committee for Human Rights (ICHR) present about the African Commission, its mandate, activities and about the special mechanisms of the African Commission. She reminded the ICHR that Lesotho's first periodic report to the African Commission was overdue.

130. The members of the ICHR were interested in knowing how the African Commission enforces its decisions and recommendations to Member States. Commissioner Monageng informed them there was no enforcement mechanism within the African Commission and that in any case it is often difficult to enforce decisions against States. As such, much reliance is placed on bringing political pressure to bear upon Member States with the hope that this would bear fruit.

131. The delegation of the African Commission was informed that the ICHR which was established in 2003, is comprised of different ministries which nominate persons to sit on it. The ICHR is not an inter-ministerial committee because representatives from civil society also sit on the committee. Members of the ICHR reported that they had received training aimed at assisting them understand their role and mandate from the Southern African Human Rights Trust (SAHRIT).

132. Members of the ICHR noted that the mandate of the ICHR is wide and some of the activities aimed at furthering this mandate include, publicising human

rights in the country and promoting their recognition within the ministries. For instance, the ICHR had so far carried out advocacy campaigns and information campaigns on how to access justice and facilitated human rights education in 4 districts. The ICHR is also compiling a booklet on pertinent human rights issues in the country. Human rights education has been introduced in the school curricula and the ICHR has mandated the Ministry of Education to implement this activity. The ICHR has established a sub-committee to carry out work relating to the backlog of cases.

133. The ICHR is also responsible for preparing State reports to be submitted by the government of Lesotho to various UN and African treaty bodies. The ICHR has so far drafted reports for submission to the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW), UN Human Rights Committee and the UN Committee on Economic Social and Cultural Rights. Members of the ICHR stated that they were aware that Lesotho's first periodic report to the African Commission is overdue but made an undertaking to draft the report.

134. Members of the ICHR sought to know whether the African Commission is able to provide technical assistance in the area of State reporting. In response, Commissioner Monageng informed them that in principle this should be possible but due to budgetary constraints, the African Commission has not been able to offer technical assistance to Member States in this respect. It was therefore recommended that the AU should look into providing the African Commission with funding to carry out such activities for the benefit of Member States.

135. The members of the ICHR further reported that the ICHR is presently working on the proposal for the establishment of a NHRI in Lesotho and are due to hold a consultative workshop and a study tour to countries that have established NHRIs in order to learn from those countries' their experiences in establishing the such institutions.

136. In response to Commissioner Monageng's question about what the ICHR is doing to promote the African Charter and other African regional instruments, the ICHR conceded that they had so far concentrated on activities aimed at promoting UN human rights instruments. The ICHR promised to undertake activities aimed at promoting the instruments of the African regional human rights system.

Faculty of Law

137. In the meeting with the Dean of the Faculty of Law, Ms. Matsoana Commissioner Monageng informed the Dean about the African Commission, particularly its special mechanisms. She urged the Faculty of Law and indeed other academic institutions to ensure that they participate in the drafting process of State reports for submission to treaty bodies. In this regard, the Faculty of Law was encouraged to seek membership on the ICHR which is the main body responsible for drafting reports to treaty bodies.

138. Regarding the issue of the tension between the Bar and the Judiciary, the Dean of the Faculty of Law noted that the entire legal fraternity is aware of the tension between these 2 institutions. Commissioner Monageng proposed to the Dean that she should consider lobbying for the Faculty of Law to sit on the JSC or for the Faculty to be consulted on issues that are pertinent to the work of the JSC.
139. Concern was expressed about the independence of the African Commission, particularly since some of its members hold certain high level executive positions within their governments. Commissioner Monageng stated that the African Charter clearly provides that Members of the African Commission serve in their personal capacity and not as representatives of their governments. Additionally, in April 2004, the AU elaborated and adopted principles and guidelines relating to the election of qualified and suitable persons to serve on its human rights bodies. These guidelines basically prohibit senior officials, members of the government of a member state or diplomatic representatives to serve on such bodies.
140. On whether there is close collaboration between the African Commission and the AU particularly the newly established organs and other relevant directorates within the Commission of the AU, Commissioner Monageng reported that the African Commission had realised that developing such a relationship was vital. Consequently, the African Commission established a Working Group on Specific Issues Relevant to the Work of the African Commission whose mandate includes looking into such issues.
141. The meeting concluded with an encouragement from the Dean of the Faculty of Law to the African Commission to assert itself and continue carrying out its mandate. The Dean also suggested that in future the delegation of the African Commission should consider giving lectures on the African Commission and the African Charter to University law students wherever they undertake promotional missions.

Press Conference

142. The press conference which was attended by members from both print and electronic media took place before the end of the promotional mission. Commissioner Monageng explained to the members of the press present about the African Commission, how it was established, its mandate of promoting and protecting human rights and the various activities the African Commission undertakes in furtherance of its mandate. She also explained the purpose of the promotional mission and the circumstances under which such mission may be undertaken. She noted that Lesotho's acceptance of the promotional mission is an indication of their availability to work with the African Commission to promote and protect human rights. She informed the press that in the meetings so far held with the various authorities from both government and human rights organisations, they had discussed issues and exchanged views relating to implementation of human rights guaranteed under the African Charter in the country.

143. Regarding the question of whether there was any NGO from Lesotho with observer status with the African Commission, the Commissioner informed the media that she had learnt during the promotional mission that the only NGO that had been granted observer status – the CLAC had closed down due to lack of funding to sustain its activities. She had therefore been encouraging all the NGOs met during the promotional mission to apply for observer status with the African Commission adding that the application procedure was not cumbersome. She also urged the media to work with NGOs in Lesotho to promote human rights.
144. The Commissioner drew the attention of the media present to the Declaration on Freedom of Expression which was adopted by the African Commission to expound on Article 9 of the African Charter which protects the right to free expression. She urged the media to familiarise themselves with it and popularise it as well as the African Charter. Additionally she encouraged the media to assist the government of Lesotho discharge its obligations under the African Charter and other international instruments.

Lesotho Correctional Services

145. In the meeting with officials from the Lesotho Correctional Services (LCS), the Commissioner for the LCS, Commissioner Mojalefa Thulo informed the delegation of the African Commission that the LCS was aware of the African Charter and the African Commission. He stated that the LCS is a member of the Conference of Eastern, Southern African and Central African Correctional Services (CESCA) and as such, they have participated in the various meetings and conferences organised by CESCA. He stated that he was aware of the Kampala Declaration which relates to Prison Conditions in Africa, the Kadoma Declaration on Community Services in Africa, the Arusha Declaration on Good Prison Practices, the Ouagadougou Declaration on Prisons and Penal Reform in Africa. He noted that the Kampala and Ouagadougou Declarations call upon African Member States to institute penal reforms but regretted the fact that Lesotho is unable to meet the standards required due to scarce resources.
146. The Commissioner informed the delegation that the LCS had developed a national and regional strategy for the Justice Sector which has 9 goals namely – Security and Safety, Delivery of Justice, Access to Justice, Restorative Justice, Human Rights, Penal Reform, HIV/AIDS, Combating Corruption and Human Resource Management. Different committees had also been established to address the different goals. Additionally, the LCS has developed a strategic plan to address matters pertaining to penal reform.
147. The Commissioner noted that most of the prisons in Africa are faced with similar problems and Lesotho is no exception. Such problems include, old buildings, poor sanitary facilities, over-crowding and the attendant problems for instance, the prevalence and spread of infectious diseases. He reported that Department for International Development (DFID) is supporting the Lesotho Justice Sector Development Programme and they are assisting in the refurbishment of prisons, facilitating skills training and agricultural schemes within the prisons.

148. With respect to the women's and juvenile sections in prisons, the Commissioner reported that they are not overcrowded. He also informed the delegation that female prisoners are permitted to keep their very young children until they attain a certain age before they are placed in an institution working with the prisons to take care of them.
149. With regard to efforts undertaken by the LCS to implement the recommendations contained in the Ombudsman's report on Prisons, the Commissioner stated the government on its part had provided some funds aimed at improving sanitation in prisons, refurbishing the Central Prison and to address matters relating to penal reform and staff matters. He informed the delegation that the Visiting Committee that had been redundant for the past 6 years has now been revived. The Visiting Committee is composed of an Adults Visiting Committee and the Juveniles Visiting Committee and is charged with overseeing the conditions within prisons.
150. Regarding the question raised by the delegation about whether there is a problem of HIV/AIDS in prisons, the Commissioner of the LCS admitted that HIV/AIDS as well as other sexually transmitted infections are a problem in the prisons. He reported that in 2004 the prisons carried out a programme of voluntary training and testing of prison inmates and it was found that 26 percent of those tested were HIV positive. He noted that this problem is made worse by the poor prison conditions. He stated that although there was some resistance to it, the LCS has introduced the distribution of condoms within the prisons.
151. Regarding the quality of the meals offered to the inmates, the Chief Officer of Health, Phoka Scout, reported that prisoners are given 3 meals a day, however the quality of the food is not satisfactory and as such efforts are being made to improve the diet. In this respect, the LCS is working with the Ministry of Agriculture and Nutrition to come up with a menu that is appropriate for the inmates. For instance, in the last 4 months, the LCS introduced 2 different menus for the general inmates and for the mentally disabled.
152. In terms of health facilities, the Chief Officer of Health reported that these are inadequate. For instance, only 2 prisons in Lesotho have separate facilities for the sick. There are only 3 health officials and there is no doctor based at the prison facilities. So the LCS relies heavily on the services of the Ministry of Health which sends a doctor once a month. The doctor may succeed in seeing only a few sick inmates during such visits. However, a nursing officer is stationed at the prisons and s/he consults and prescribes medicines and can refer the more complicated cases to the main hospital for treatment. The LCS is trying to attract more health professionals to work with the institution and to this end they will be advertising 23 positions before the end of the year.
153. Commissioner Monageng informed the LCS officials present about the Robben Island Guidelines and enquired whether there are cases of torture reported in prisons. The Commissioner of the LSC admitted that cases of torture are sometimes reported. However, he stated that the LCS is trying to address this

- problem by instilling a human rights culture especially through training. The LCS has also established a unit which handles issues relating to human rights.
154. About alternative forms of punishment, the Commissioner of the LCS reported that community service has been introduced as a form of punishment but its administration falls under the portfolio of Probation Services.
155. The Chief Rehabilitation Officer informed the delegation that although there are few rehabilitation officers when compared to the prison population, there are rehabilitation officers in almost all the prison centres.
156. In terms of programmes carried out by the Rehabilitation Section, she reported that they offer counselling services and undertake home visits which may facilitate offender/victim reconciliation. They are also responsible for the parole programme. She informed the delegation of the African Commission that inmates only become eligible for parole after serving half of their sentence and the community and the victim are involved in the decision making process of whether or not an inmate is suitable for parole. Besides other criteria, the behaviour of the inmate while in incarceration is taken into consideration during the decision making process. There is regular supervision of the inmate who is on parole and visits are also made to the community where s/he is released on parole. The Chief Rehabilitation Officer reported that this assessment system works well.
157. The delegation of the African Commission was also informed that in order to equip inmates with skills that can be utilised on completion of serving their sentences, inmates are permitted to participate in projects that offer them vocational skills. Such vocational skills include bricklaying, carpentry, horticulture and dressmaking. Where vocational skills are provided, the prisoners' skills are tested in the technical schools. Literacy and numeracy is also provided for inmates as majority of the inmates do not read or write. The prisons also permit the prisoners to study by correspondence.
158. On whether ex-prisoners are stigmatised as a result of serving prison sentences, which in some cases may make it difficult for them to find employment, the delegation was informed that this was the case in the past. However, the Commissioner of Police noted that since the number of persons being convicted and imprisoned has increased, there is not much stigma related to being an ex-prisoner. The LCS has sometimes given former inmates references when they find employment. Attempts are also being made to sensitise the population not to stigmatise ex-prisoners.
159. In conclusion, the Commissioner of the LCS requested the African Commission to assist in building the capacity of the LCS by providing it with literature, linking them to relevant institutions and NGOs and where possible provide human rights training for the LCS.

Visit to Lesotho Central Prison

160. The Commanding Officer and his Deputy of the Central Prison accompanied the delegation during the tour around the Central Prison. However, the tour of the prison facilities was short and therefore cursory because the delegation had to meet with the Acting Attorney General as the meeting earlier scheduled had to be postponed as a result of the aforementioned meeting with the King.
161. The delegation learnt that Lesotho Central Prison was built in 1946 and is a maximum security prison. At the time of the visit, there were 917 inmates. 752 had been convicted, 41 were still on trial, and 80 were on remand for murder and 44 on remand for other ordinary crimes. The delegation was informed that the ratio of prison officers to prisoners is one officer for every 10 prisoners. There is overcrowding in the prison and due to inadequate space, remand and convicted prisoners are held in the same quarters. The prison facilities are poorly secured with fencing. The only prison cell visited by the delegation of the African Commission had no beds. Inmates sleep on the floor on blankets and foam mattresses. Between 8am and 4pm all the inmates are out of their cells.
162. At the time of the visit there was ongoing construction of the kitchen and the prison chapel. The Prison has a carpentry and cobbler project which is operated with funding from the government. The delegation visited the carpentry workshop where the prisoners had made various leather products including bags, belts and wallets. The delegation was informed that the leather products made by the prisoners are sold and the money is ploughed back into the carpentry and cobbler project.

Acting Attorney General

163. The Acting Attorney General, Mr. Tsokolo Makhetha informed the delegation that his office plays a pivotal role in ensuring good governance, adherence to rule of law and promoting a culture of human rights. He indicated that the government of Lesotho takes a rights based approach in respect of all its activities and legislation. He confirmed that Lesotho was in the process of establishing a NHRI.
164. Commissioner Monageng informed the Acting Attorney General about the African Commission and particularly about the communications procedure. She drew his attention to the fact that Lesotho's periodic report to the African Commission was overdue and that the delegation had been informed by the ICHR that it would be drafted and submitted to the African Commission as soon as possible.
165. Commissioner Monageng reported about the concerns raised about the process of the public accessing the PCA, noting that the procedure does not permit the public to access the PCA directly with their complaints against the police. She also presented the complaints raised by the ex-miners to the Acting Attorney General and requested that the matter be addressed particularly, as regards advising the ex-miners about which government ministry or department to approach with their concerns and the appropriate channels to follow in order to recover their monies. In response, the Acting Attorney General noted the concerns and requested

the Director of Legal Affairs Ms Mosala, in the Ministry of Foreign Affairs to follow up on the matter.

166. Commissioner Monageng also informed the Acting Attorney General about a letter that had been addressed to the African Commission concerning a complaint of torture. A copy of the letter was availed to the officials from the Ministry of Justice and Foreign Affairs present so as to enable them follow up on the matter.
167. On the relationship between the Judiciary and the Bar, the Acting Attorney General noted that he was aware of the tension between them but stated that there have been attempts to resolve this.
168. Regarding representation of the LSL on the JSC, the Acting Attorney General agreed that ideally the LSL should be represented on the JSC. However, he reminded the delegation of the African Commission that the Constitutional provisions relating to the JSC are fully entrenched and this would make it somewhat difficult for an amendment to be effected in respect of the provisions relating to the composition of the JSC.

Speaker of the National Assembly

169. In the meeting with the Speaker of the National Assembly, Honourable Ntlhoi Motsamai, Commissioner Monageng talked about the African Commission, its mandate and the activities.
170. The Speaker informed the delegation of the African Commission that there are 17 females in parliament and 6 female cabinet members out of a total of 17 cabinet members. There are no special interest groups and no specially appointed members except in the Senate. She stated that previously the system that obtained in the National Assembly was that of first past the post but indicated that this had been changed to a mixed system which includes a proportional representation system. She informed the delegation that the mixed system has been quite successful in Lesotho and as such, the Southern African Development Community (SADC) Parliamentary Committee has begun encouraging other SADC Member States to adopt it. The downside however, is that rather than lead to an increment in the number of women in the Lesotho parliament, this system has brought in more political groups instead. She stated that if more women are to join parliament, then the national executive committees of the various political parties should have more women sitting on them. In this regard, she reported that one of the amendments within the legislation relating to the national executive committee structure of the present ruling party is that there should be 30 percent female representation within its national executive committee. This practice is yet to be adopted by the other political parties.
171. With respect to the length of time taken for bills to be discussed and enacted into law, the Speaker reported that normally the process of discussing the bill would take about 3 days or even less before it is enacted into law. However, she indicated the length of time also depends on the issues raised by the bill, how controversial

they may be, the interest of the legislature in the issues and whether the proposed legislation is extensive.

172. The Honourable Speaker informed the delegation that the National Assembly meets everyday except on Tuesdays because some members would be attending cabinet meetings. However, she reported that the National Assembly is currently embarking on reform. Parliamentary Committees will meet during the morning hours in order to carry out their business and the National Assembly will sit in the afternoons only.

173. At the time the delegation met with the Speaker, the National Assembly was not in session. She noted however, that she would have been pleased to invite the Commissioner to address an informal sitting of the National Assembly about the African Commission and the African Charter if they had been in session. After the meeting, the Speaker took the delegation of the African Commission on a tour of the National Assembly.

Judicial Service Commission (JSC)

174. The delegation of the African Commission requested for a meeting with the JSC particularly to inform them about the concerns raised by the Law Society of Lesotho (LSL) and hear their views. At the time, the delegation met with the LSL, they had already held meetings with members of the Judiciary who had not raised any issue about their relationship with members of the Bar.

175. Only 2 members of the JSC out of 4, that is, the Chief Justice, Justice Lehohla and Justice Molai were able to attend the meeting which had been arranged at short notice.

176. The JSC members expressed displeasure at the short notice given for the meeting. Commissioner Monageng explained the reason for the short notice, stating that having been informed by the LSL about the problems existing between the Judiciary and the Bar, she thought it prudent and professional that she should draw the attention of the JSC to these concerns and also hear from them their views about the issues raised by the LSL. She stated that she felt it would be discourteous to report a one-sided story and appealed to the JSC members to view the request for the meeting at such short notice in this light.

177. Commissioner Monageng informed the JSC members about the concerns of the LSL, namely, the existing tension between the LSL and the Judiciary; the issue of a huge backlog of cases, the suggestion that the Chief Justice sit on some cases particularly the high profile ones and the issue of the establishment of the proposed Committee that would assist to resolve the tension between the Bar and the Judiciary. She also told the JSC that the LSL had indicated that the Society needs to be represented on the JSC because they felt that this would ensure transparency especially with regard to how appointments to the bench are handled. Commissioner Monageng also reported that the LSL had made serious allegations against the judges

relating to corruption and the fact that some of the judges tended to hand down judgements in favour of government - i.e. that they are government judges.

178. The Chief Justice stated that contrary to what is claimed by the LSL, he does sit on cases and indicated that he had about 50 cases to handle. He informed the delegation that as the chief administrator of the Judiciary, he has a lot of administrative work to take care of and this has to be taken into consideration when such allegations are being made.
179. As per the issue of LSL's representation on the JSC, the members of the JSC informed the delegation that the provisions relating to the JSC and its composition are doubly entrenched in the Constitution of Lesotho and as such, a referendum would be required for those provisions to be amended. They advised that the LSL should lobby government and parliament to amend the provisions of the Constitution relating to the composition of the JSC. The members of the JSC stated clearly that they would be happy to see the composition of the JSC expanded to include the LSL and the Faculty of Law.
180. The Registrar of the Courts who was also present at the meeting reported that in order to address the issue of case backlog, the Chief Justice had agreed to a system where advocates are appointed to sit on the bench on a temporary basis to handle cases. She noted that this system had been quite successful in easing some of the case backlog. She confirmed that the relationship between the Judiciary and the Bar was strained and stated that the problem stems from both parties. This has not been helped by the fact that there have been some negative press and media reports about some of these problems. The Registrar decried the negative statements made in the media by the officials of the LSL stating that this was not good for the image of the profession. She regretted though that both the LSL and the Judiciary have no forum where they could sit and discuss their issues and concerns and together try to resolve them. She noted however that the Chief Justice is still willing to work with the LSL to resolve the problems affecting the Bar and the Judiciary.

Conclusion

181. During the week that the delegation met and discussed with officials from the government and NGOs in Lesotho, the delegation indicated that the African Commission was willing, through the Commissioner responsible for Lesotho to cooperate, assist and participate in their activities.
182. The delegation of the African Commission appreciated the level of frankness that characterised the discussions particularly, on part of the government authorities.
183. The delegation of the African Commission would like to commend the government of Lesotho for its efforts in the promotion and protection of human rights through -:
- The establishment of the ICHR whose composition encompasses all the relevant sectors;

- The enactment of the Race Relations Amendment Act aimed at addressing the problem of xenophobia in the country;
- The introduction of human rights education in the school curricula starting at the level of primary education;
- The introduction of free primary education and the efforts being made to make such education compulsory;
- Efforts undertaken towards addressing some of the recommendations made by the Ombudsman and the ICRC in their reports in respect of prison conditions and the situation of prisoners, for instance, better clothing and an improved diet for the prisoners, distribution of condoms in prisons, revival of Visiting Committees for prisons and detention centres to oversee conditions of detention and the establishment of a Committee charged with the duty to suggest alternative forms of sentencing for convicted persons as a measure for dealing with the problem of overcrowding in prisons;
- The establishment of a Victims Office at the magistrates' courts to assist in the provision of finances and counselling to victims of crimes;
- The enactment of a Speedy Court Trial Act to enable judges to speedily deal with pending or overdue court cases.

IV. OBSERVATIONS

184. It appears that there is very little presence of civil society NGOs and this is mainly attributed to lack of funding to facilitate the establishment of such NGOs. Some NGOs were in fact forced to close down as a result of lack of funds for instance, CLAC and SEDIBENG.

185. During discussions held with the various authorities it became apparent that there were lengthy delays in relation to adopting and enacting legislation. Consequently, provisions of bills were being implemented before being enacted into law. For instance, FIDA revealed that it had already started implementing sections of the Children's Protection and Welfare bill, while the Youth Department within the Ministry of Gender had decided to establish a National Youth Council pending the enactment of legislation that will establish it. Such practices may create problems regarding the legal basis for implementing bills that are not yet law.

V. RECOMMENDATIONS

The African Commission recommends to the government of Lesotho to -:

186. Continue to undertake aggressive HIV/AIDS campaigns within the population in order to combat the spread of HIV/AIDS in the country taking into account International Guidelines on HIV/AIDS and Human Rights, which campaigns should not discriminate against people living with HIV/AIDS. HIV/AIDS support programs should not only target people living with HIV/AIDS but also target the care givers who also need support and assistance.

187. Ensure that Economic, Social and Cultural Rights are rendered justiciable.
188. Ensure that the process of making primary education compulsory is finalised and the policy implemented.
189. Ensure that Chinese business persons acquire the permits required for them to live and work in Lesotho and in addition pay the relevant taxes as this would assist in eliminating unfair business practices, and consequently reduce the tensions that may exist between the local business persons and the Chinese business persons and therefore avoiding instances of xenophobia.
190. Accelerate the process of enacting into law the following bills which have already been drafted -:
- Children’s Protection and Welfare Bill
 - Married Persons and Equality Bill
 - National Youth Council Bill
191. Undertake, through its relevant government institutions, awareness and sensitisation campaigns about the Married Persons and Equality bill aimed at informing the Members of the National Assembly of the importance of enacting it into law.
192. Strengthen the provision of legal aid services so that all indigent persons can benefit from these services.
193. Consider abolishing the death penalty since Lesotho has in practice not carried out executions in the last 10 years. This would be in line with the African Commission’s Resolution Urging States to envisage a Moratorium on the Death Penalty and the Resolution on the Composition and Operationalization of the Working Group on the Death Penalty.
194. Amend the Statute establishing the PCA to provide for the public to address their complaints directly to the PCA.
195. Build the capacity of the PCA members of staff in order to enable them handle police officers against whom complaints have been brought.
196. Provide the police force with adequate resources that will enable them meet their logistical demands, as this would facilitate them to carry out their functions without inadvertently violating people’s human rights.
197. Carry out consultations with the police force, the PCA and other relevant institutions with view to amending the Police Act to reflect the restructuring within the police force and in order to bring it also in line with other relevant

SADC legislation. In this respect, the process of amending the Police Act and the Internal Security Act should be accelerated.

198. Ensure basic education of all children, regardless of sex and facilitate human rights education and training on the African regional human rights system among all the government institutions that deal with human rights issues.
199. Ensure the speedy establishment of the National Human Rights Institution in accordance with the Paris Principles in order to promote and protect human rights issues in the country.
200. Ensure the proper application of the Speedy Trials Act which was enacted to deal with the problem of prison congestion in order to implement the recommendations of the Ombudsman, in respect of the conditions of prisons in Lesotho.
201. Ensure the separation of prisoners held on remand from convicted prisoners in prisons.
202. Ensure adequate and necessary medical services for people held in places of detention.
203. Authorise a mission to be undertaken by the Special Rapporteur on Prisons and conditions of detention in Africa to the Kingdom of Lesotho.
204. Maintain its good representation of women in local government and encourage equal representation across other government departments, agencies and in all decision making bodies.
205. Submit its First Periodic Report under Article 62 of the African Charter on Human and Peoples' Rights, which is overdue.
206. Establish a forum through which the Judiciary and the Law Society of Lesotho can amicably resolve the issues that have led to the tensions currently existing between them.
207. Ensure that the Bar and the Faculty of Law are involved in the process of appointments to the Bench.
208. Ensure that the judicial appointments are opened and fair.
209. Ensure the integrity and the preservation of independence of the Courts.

210. Consider expanding the composition of the Judicial Services Commission to include representatives from the Bar and the Faculty of Law.
211. Consider appointing local lawyers more on pro-deo and pro-bono work to avoid tensions that seem to be evident mainly because of appointment of white South African lawyers to do such work.

The African Commission recommends to Political Parties to -:

212. Adopt laws that provide for equal representation of women and men in their executive committee structures and all other structures.

The African Commission recommends to the Media to -:

213. Familiarise themselves with the African human rights system, particularly the Declaration of Principles on Freedom of Expression in Africa.
214. Assist the government of Lesotho to sensitise the general public about human and peoples' rights.

The African Commission recommends to NGOs to -:

215. Undertake sensitisation campaigns in order to create awareness about human and peoples' rights among the people of Lesotho.
216. Consider applying for Observer Status at the African Commission on Human and Peoples' Rights.

The African Commission recommends to Donor agencies and institutions to -:

217. Provide material and financial resources to NGOs in Lesotho to facilitate them carry out activities aimed at promoting and protecting human rights.

Officials Met by the delegation

Ministry of Foreign Affairs

- Minister of Foreign Affairs, Hon. Monyane Moleleki
- Acting Permanent Secretary to the Ministry of Foreign Affairs, Mr. Balilakoama Mokhele

Ministry of Justice, Human Rights and Rehabilitation, and of Law and Constitutional Affairs

- Minister of Justice, Human Rights and Rehabilitation, and of Law and Constitutional Affairs, Hon. Refiloe Moses Masemene
- Acting Attorney General, Mr. Tsokolo Makhetha
- Deputy Principal Secretary, Dr. M.L. Mophethe

National Assembly of Lesotho

- The Speaker, Ms Ntlhoi Motsamai

The Judiciary

- The Chief Justice, Justice Lehohla
- Justice B.K. Molai
- Justice W.C.M. Maqutu
- Justice T. Monapath
- Justice G.N. Mofolo
- Justice K.J Guni
- Justice S.N. Peete
- Justice A.M. Hlajoane
- Justice T. Nomngcongong
- Justice N. Majara
- Acting Justice M. Mahase
- Registrar of the High Court and Court of Appeal, Ms Chaka-Makhooane

Judicial Service Commission

- The Chief Justice, Justice Lehohla

- Justice B.K. Molai

Ministry of Gender, Youth and Sports

- Director of Gender, Ms. 'Matau Futho-Letsatsi
- Director, Youth Affairs, Maile Masoebe
- Legal Officer, Limpho Shale
- Human Resources, Malimakatso Maphotsa
- Sports Department, Letsolakobo Lephoto

Lesotho Mounted Police Service

- Commissioner of Police, Ms Evelyn Malejaka Letooane
- Deputy Commissioner of Police - Operations, Mr Kizito Mhlakaza
- Deputy Commissioner of Police - Administration, Bernard Ntaote

Lesotho Correctional Services

- Commissioner, Mr. Mojalefa Thulo
- Deputy Commissioner, Mr. Malefetsane
- Chief Officer Health Services, Phoka Scout
- Chief Rehabilitation Officer, Mamontseng Pita Motinyane
- Chief Rehabilitation Officer, Matseliso Lephoto
- Chief Officer Security, Refuoe Mokoaleli
- ASP – Security, Mosheoane Tsolo

Office of the Ombudsman

- The Ombudsman, Mr Mafisa

Law Reform Commission

- Researcher at the Law Reform Commission, Ms. 'Noko Masopha

Police Complaints Authority (PCA)

- The Chairperson, Ms. Chimombe
- Member, Police Complaints Authority, Molise-Ramakoe
- Investigation Officer, Ms Mahomed
- Investigation Officer, Mr. Moilwa
- Legal Officer, Mrs Mokwana

Inter-sectoral Committee for Human Rights

Representatives from the following institutions -:

- Ministry of Planning
- Ministry of Gender and Youth
- Ministry of Foreign Affairs

- Ministry of Justice, Human Rights and Rehabilitation, and of Law and Constitutional Affairs
- Ministry of Home Affairs
- Ministry of Labour
- Ministry of Finance
- Ministry of Health
- Judiciary
- Justice and Peace
- Office of Master of High Court
- Lesotho Mounted Police Service
- Correctional Services
- Probation Unit
- NGOs

Faculty of Law

- Dean of the Faculty, Ms Fanana Matsoana
- Lecturer of Human Rights and International Humanitarian Law, Mr. Mohau

Law Society of Lesotho

- President, Mr Zwelake Mda
- Deputy President, Mr. Sakoane Sakoane

FIDA

- President, Ms Pholo

NGOs

- Lesotho Council of NGOs (LCN)
- FIDA
- LYFE
- Justice and Peace
- MKK
- Lesotho Women Institute
- South African Ex-miners and Allied Workers
- LECAWU
- CAWULE
- LANFE

Press Conference

- Information Division, Ministry of Foreign Affairs
- Lesotho Television
- Radio Lesotho
- LENA
- *Moelebi oa Basotho*

- Information Press
- Public Eye
- Lesotho Today