

**UNITED NATIONS COMMITTEE ON THE RIGHTS OF  
PERSONS WITH DISABILITIES**

**34<sup>th</sup> Session of the UN CRPD Committee  
9-27 March 2026**

**ICJ SUBMISSION TO THE COMMITTEE ON THE  
RIGHTS OF PERSONS WITH DISABILITIES  
IN VIEW OF THE COMMITTEE'S EXAMINATION OF LESOTHO'S INITIAL REPORT  
UNDER ARTICLE 35 OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH  
DISABILITIES**

Submitted by the International Commission of Jurists (ICJ) on 9 February 2026

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## A. INTRODUCTION

1. During its 34<sup>th</sup> session, from 9 March to 27 March 2026, the Committee on the Rights of Persons with Disabilities (“the Committee”) will examine Lesotho’s implementation of and compliance with the provisions of the Convention on the Rights of Persons with Disabilities (“CRPD” or “Convention”), in light of Lesotho’s initial report<sup>1</sup> under article 35 of the CRPD.
2. The International Commission of Jurists (ICJ) wishes to draw the Committee’s attention to significant concerns arising from Lesotho’s failure to comply with its obligations under the CRPD, and to highlight, in turn, the consequences of such a failure for the protection of certain Convention rights. In particular, this submission addresses:
  - Articles 1-4: General Obligations;
  - Article 5: Equality and non-discrimination;
  - Article 12: Equality recognition and legal capacity;
  - Article 13: Access to justice;
  - Article 14: Liberty and security of person;
  - Article 24: Inclusive Education;
  - Article 25: Health; and
  - Article 29: Participation in Political and Public Life.

## B. ARTICLES 1-4: GENERAL OBLIGATIONS

3. In order to give effect to the Lesotho Persons with Disability Equity Act, 2021, the Act itself establishes the Persons with Disability Advisory Council as an “autonomous” advisory body to the Lesotho government on “issues of disability”.<sup>1</sup> The Act gives the Council broad powers including to: “monitor the implementation and ensure compliance of this Act”; “investigate and refer violations of human rights of a person with disability”; “advise the Minister to ratify and domesticate the international and regional disability rights instruments”; “issue out adjustment orders for compliance with the Act”; and generally to “undertake any other activity or responsibility that is consistent with the spirit of promotion and protection of the rights of persons with disability”.<sup>2</sup>
4. In 2023, Lesotho authorities published a legal notice through which the Council was established and members duly appointed,<sup>3</sup> and the Council held an official public launch in 2025.<sup>4</sup> Despite this progress, serious concerns remain about the ability of the Council to perform its extensive statutory mandate. In particular, the Council is severely underfunded.
5. The Council’s budget, in practice, appears to be determined by the Ministry of Gender, Youth and Social Development. While section 50 of the Act does indicate that the Council’s budget should include “funds appropriated by Parliament”, the processes by which budgets are determined must also be consistent with the autonomy and independence afforded to the Council and its ability to execute its mandate.

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<sup>1</sup> Persons with Disability Equity Act No.2 of 2021, Section 4.

<sup>2</sup> Section 6.

<sup>3</sup> [http://www.infod.org.ls/uploads/1/2/2/5/12251792/members\\_of\\_the\\_disability\\_advisory\\_council.pdf](http://www.infod.org.ls/uploads/1/2/2/5/12251792/members_of_the_disability_advisory_council.pdf);  
<https://www.thereporter.co.ls/2023/07/29/disability-advisory-council-appointed/>. Website of the Council: <https://pwdac.org.ls/>.

<sup>4</sup> <https://lesotho.co.ls/2025/08/lesotho-launches-persons-with-disabilities-advisory-council-to-promote-inclusion/>.

6. In 2025, the African Commission on Human and Peoples' Rights recommended that Lesotho "ensure prompt allocation of human and financial resources to the Persons with Disability Advisory Council in order to facilitate its effective functioning".<sup>5</sup>
7. The ICJ is also concerned that Lesotho's initial report makes no reference to either the Optional Protocol to the CRPD or the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Africa Disability Protocol). Lesotho has not ratified the Optional Protocol, and while it signed the Africa Disability Protocol in 2024, it has yet to ratify it.<sup>6</sup> In this regard, the ICJ emphasizes the critical role allocated to the Disability Advisory Council by the Persons with Disability Equity Act in advising Lesotho authorities regarding the ratification and domestication of such international and regional disability rights instruments.<sup>7</sup>

## Recommendations:

In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:

- i. Review and reform the practice by which the Persons with Disability Advisory Council's budget is determined, allowing for the Council to develop its own budget based on its operational needs;
- ii. Take all necessary measures to ensure that the Persons with Disability Advisory Council has adequate human and financial resources to fulfil its extensive legislative mandate;
- iii. In consultation with the Persons with Disability Advisory Council and with organizations of persons with disabilities (OPDs) in Lesotho, ensure that the Council can operate independently, free from political or other influence or pressure.
- iv. Take all necessary measures, in consultation with the Disability Advisory Council and OPDs, to ensure the ratification and implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa; and
- v. Take all necessary measures, in consultation with the Disability Advisory Council and OPDs, to ensure ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

## C. ARTICLE 5: EQUALITY AND NON-DISCRIMINATION

8. Lesotho's Constitution prohibits discrimination based on a range of listed grounds but fails to explicitly include disability among them. Despite this, drawing on the CRPD, Lesotho courts have interpreted the prohibition of discrimination based on "other status" to include disability-based discrimination.<sup>8</sup>
9. The Lesotho Persons with Disability Equity Act, 2021 ("the Act") builds on this constitutional prohibition on discrimination against persons with disabilities and provides a definition of discrimination which is, to some extent, consistent with the CRPD.<sup>9</sup> However, while defining both "discrimination" and "reasonable accommodation",<sup>10</sup> the Act fails to reference denial of

<sup>5</sup> <https://achpr.au.int/en/documents/2025-02-23/promotion-mission-lesotho>, p 31.

<sup>6</sup> African Commission on Human and Peoples' Rights, 'Report of the Promotion Mission to the Kingdom of Lesotho,' 29 February 2024, available at: <https://achpr.au.int/en/documents/2025-02-23/promotion-mission-lesotho>, § 21; Masenono Letsie, 'Signing of the African Disability Protocol: Rescue for Women and Girls with Disabilities in Lesotho?' Disability Lesotho E-newsletter, Issue 21 Vol 9, February 2024, available at: [http://www.infod.org.ls/uploads/1/2/2/5/12251792/disability\\_lesotho\\_issue\\_21\\_vol\\_9\\_feb\\_2024.pdf](http://www.infod.org.ls/uploads/1/2/2/5/12251792/disability_lesotho_issue_21_vol_9_feb_2024.pdf).

<sup>7</sup> Section 6.

<sup>8</sup> Thabo Fuma v Lesotho Defence Force and Others, CONST/8/2011 [2013] LSHC 68, paras 22, 40.

<sup>9</sup> It defines discrimination as:

"means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

<sup>10</sup> Reasonable accommodation is defined as:

reasonable accommodation within the definition of discrimination. This falls short of the requirements of the CRPD.

10. Furthermore, as the Act refers to reasonable accommodation only in respect of “employment”,<sup>11</sup> it is unclear whether the Act provides for adequate protection for persons with disabilities’ entitlement to the provision of reasonable accommodation to guarantee the enjoyment of all rights within the Act. This too falls short of the requirements of the CRPD.

#### **Recommendations:**

**In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:**

- i. **Amend the Constitution of Lesotho so that disability be explicitly included as a prohibited ground of discrimination in addition to those grounds listed under Section 18 of the Constitution.**
- ii. **Amend the Lesotho Persons with Disability Equity Act, 2021, to:**
  - a. **include the denial of reasonable accommodations within the definition of discrimination based on disability; and**
  - b. **to clarify the application of the reasonable accommodation standard in connection with the enjoyment of all rights guaranteed under the Act.**

#### **D. ARTICLE 12: EQUAL RECOGNITION AND LEGAL CAPACITY**

11. The Persons with Disability Equity Act does not include a provision guaranteeing the right to legal capacity of persons with disabilities explicitly. ICJ’s research reveals that this omission occurred despite efforts of organizations of persons with disabilities to advocate for the explicit inclusion of such a right to legal capacity in the Act.<sup>12</sup>
12. ICJ’s research has found that this omission can most likely be attributed to “the limited understanding of government representatives during the drafting process of the Disability Equity Act”, which “led to disagreements with organizations of persons with disabilities on some key points, leading to the exclusion of some critical provisions, including one on legal capacity, from the final law”. Representatives of OPDs report that government representatives “did not believe that persons with mental disabilities can stand trial” or that “their evidence is credible”.<sup>13</sup>
13. The absence of such a provision is particularly notable as the adoption of the Act came after the handing down of a decision of the High Court of Lesotho holding that section 219 of the Criminal Procedure and Evidence Act of Lesotho was unconstitutional to the extent that it prevented persons with disabilities from testifying as witnesses in Court.<sup>14</sup> Indeed, the Government of Lesotho recognizes as much in its initial report, when it notes that legal developments stemming from the *Koali Moshoeshoe* judgment “need to be harmonised with other existing laws and be

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“means necessary and appropriate modification and adjustments to such places which provide a service to the members of the public which do not impose a disproportionate or undue burden when needed in a particular case, to ensure to a person with disability, the enjoyment or exercise of all human rights and fundamental freedoms on an equal basis”.

<sup>11</sup> Section 22(5).

<sup>12</sup> <https://www.ici.org/wp-content/uploads/2025/09/Disability-Report.pdf>, p 33-36.

<sup>13</sup> Ibid.

<sup>14</sup> *Koali Moshoeshoe and Others vs DPP and Others*, in the High Court of Lesotho, Constitutional Case 14/2017, judgement of 16 May 2019.

disseminated.”<sup>15</sup> The failure to explicitly guarantee the right to legal capacity for persons with disabilities in the then newly enacted Persons with Disability Equity Act, therefore, represents a missed opportunity.

#### **Recommendations:**

**In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:**

- i. Following full and meaningful consultations with OPDs and persons with disabilities, amend the Persons with Disability Equity Act to include a provision explicitly guaranteeing the right to legal capacity of persons with disabilities in all aspects of life.**

#### The Criminal Procedure and Evidence Amendment Act

14. Section 219 of the Criminal Procedure and Evidence Act<sup>16</sup> states that, “no person appearing or proved to be afflicted with idiocy, lunacy or inability or labouring under any imbecility of mind arising from intoxication or otherwise whereby he is deprived of the proper use of reason, shall be competent to give evidence while so afflicted or disabled.”

15. In *Koali Moshoeshoe and Others v The DPP and Other* (CC 14/2017), the High Court (Constitutional Division)<sup>17</sup> of Lesotho declared this specific provision of the Act unconstitutional to the effect that it prevented persons with disabilities from testifying as witnesses in court. It concluded that:

“The effect of section 219 of the Criminal Procedure and Evidence Act is to render a victim of abuse, exploitation, humiliation and exploitation to all kinds of vulnerable treatment, the worst kinds being sexual, financial and through other obnoxious methods. The victims of all these are human beings and deserve all protection and equality under the law. Even if the insolent or disrespectful words are removed from section 219, the negative effect to the disabled remains poignant and this is quite obnoxious and must be removed from our statute books”.

16. The Court therefore declared the provision “null and void”. Despite this, seven years later, the Act has not been amended, and many of the same difficulties persist in practice. There is a need both to repeal this provision and to enact a new provision, consistent with Lesotho’s CRPD obligations to ensure that persons with disabilities may be considered competent to give evidence.

#### **Recommendations:**

**In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:**

- i. Expeditiously repeal section 219 of the Criminal Procedure and Evidence Act, pursuant to the High Court’s judgment in *Koali Moshoeshoe and Others v The DPP and Other* (CC 14/2017) declaring the section unconstitutional.**
- ii. Amend the Criminal Procedure and Evidence Act to ensure that persons with disabilities be recognized to be fully and equally competent to give evidence in all legal processes. Such an amendment should:**

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<sup>15</sup> Government of Lesotho report, para 46.

<sup>16</sup> Act 9 of 1981, <https://media.lesotholii.org/files/legislation/akn-ls-act-1981-9-eng-1600-01-01.pdf>.

<sup>17</sup> *Koali Moshoeshoe and Others v The DPP and Other* (CC 14/2017), <https://drive.google.com/drive/folders/1f6ddpbh4dPO8hQix7EopmEySil9LUSDZ>.

- a. Follow a thorough process that includes the full and meaningful participation of the judiciary, other justice actors, civil society organizations, OPDs and persons with disabilities; and
- b. Be in full compliance with standards set out in the CRPD, including the requirement that procedural and other accommodations be provided to ensure supported decision-making.

#### E. ARTICLE 13: ACCESS TO JUSTICE

17. Section 32 of the Persons with Disability Equity Act obliges the Chief Justice of Lesotho to “make rules for the provision of accessible format methods and any other legal services and procedures which take into account the needs of a person with disability who attends court proceedings”.<sup>18</sup> After submissions from Lesotho National Federation of Organization of the Disabled (LNFOD) and the ICJ, on 26 May 2023, these rules were officially enacted as the “Disability and Equity (Procedure) Rules, 2023”.<sup>19</sup>

18. The Rules, if implemented fully, could make a significant improvement in the access to justice of persons with disabilities in Lesotho. The Rules explicitly seek to ensure compliance with Lesotho’s international obligations under the CRPD,<sup>20</sup> and aim to be informed by a perspective through which “the provision of procedural ... accommodations” will facilitate the effective participation of persons with disabilities in the justice system.<sup>21</sup>

19. Implementing the Rules effectively will require the government to provide resources – human, financial and other – to the full range of justice actors, including judicial officers, to facilitate the guarantee of such accommodations. For example, the Rules contemplate an extensive role for “intermediaries”, who are essential in providing various supports for persons with disabilities’ participation, positions which the government will have to create, define and budget for. This is because the rules adopt a human rights-based approach consistent with the CRPD in a number of respects:

- The Rules require that the needs of each individual with a disability be identified and addressed on an individualized, case-by-case basis.
- The Rules approach the entire individual assessment as aimed at providing appropriate support and accommodation, not as a test for determining legal capacity to participate or a basis for exclusion from participation.
- The Rules directly contemplate the provision of support to a person with a disability

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<sup>18</sup> Section 32 reads in full:

“32. Access to justice

(1) The Chief Justice shall make rules for the provision of accessible format methods and any other legal services and procedures which take into account the needs of a person with disability who attends court proceedings.

(2) A person with disability, who is denied bail shall be held in custody in a facility which is modified in accordance with the rules made by the Chief Justice or any other relevant law.

(3) A person with disability shall be competent and compellable to give evidence in a criminal and civil case in any court in Lesotho or before a magistrate on a preparatory examination.

(4) A person with disability shall be assisted in every possible manner to effectively, directly and indirectly participate in all legal proceedings and other preliminary stages of administration of the judicial justice process.”

<sup>19</sup> Chief Justice of Lesotho, Disability and Equity (Procedure) Rules, 2023, Legal Notice No.55 of 2023, <https://lesotholii.org/akn/ls/officialGazette/government-gazette/2023-05-26/39/eng@2023-05-26>

<sup>20</sup> Rule 2(b).

<sup>21</sup> Rule 2(a).

during the process of making an assessment.

- The Rules center an individual's own input in the process of determining their support needs and do not privilege medical assessments, which too often become the exclusive basis for such assessment.
- The Rules clarify that the responsibility to both make such assessments and ensure the provision of such support lies with judicial officers, an important clarification to secure the protection of the rights of persons with disabilities.

20. After the adoption of the Rules, in 2025, the ICJ conducted research involving interviews with a range of stakeholders including judicial officers and other justice actors, as well as OPDs, regarding the implementation of the Rules. The research identified the following critical concerns limiting the effectiveness of the Rules in ensuring access to justice for persons with disabilities:<sup>22</sup>

- **Lack of adequate funding:** The judiciary faces chronic underfunding<sup>23</sup> that has created challenges that affect the administration of justice across the country, and with implications on its ability to provide accommodations and support, such as intermediaries, sign language interpretation, training for justice personnel, and necessary infrastructure and facilities.
- **Shortage of human resources:** No justice intermediaries or sign language interpreters have been formally appointed under the Procedure Rules, leaving OPDs to fill the gap on a voluntary basis.
- **Unavailability of alternative communication methods:** Courts lack the capacity to make available accessible formats, such as Braille, screen readers, and video-based communications, as well as protective measures like CCTV or one-way mirrors.
- **Physical inaccessibility of court premises:** Many courts remain physically inaccessible to persons with disabilities, for example, due to dysfunctional or absent lifts, and no adaptations have been made to courtrooms.
- **Low awareness and lack of training among justice actors:** Judicial officers, court staff, police, and prosecutors have not received systematic training on the rights of persons with disabilities or the Procedure Rules. Limited awareness-raising efforts and trainings have been led almost entirely by OPDs.

## Recommendations:

In light of the foregoing, the CRPD Committee should recommend that, in consultation with the judiciary, other justice actors, civil society organizations, OPDs, and persons with disabilities, the Government of Lesotho take all necessary measures to ensure that the judiciary and all justice actors be fully equipped to implement the Disability and Equity (Procedure) Rules. Such measures should include:

- i. The provision of funds necessary to ensure the full implementation of the Disability and Equity (Procedure) Rules; and
- ii. Allocating sufficient and sustained budgetary resources to support the recruitment, training, and appointment of, as examples, qualified intermediaries and sign language interpreters for the courts.

<sup>22</sup> <https://www.ici.org/wp-content/uploads/2025/09/Disability-Report.pdf>, p 6.

<sup>23</sup> Remarks by His Lordship the Honourable Chief Justice Sakoane Peter Sakoane, at the Ceremonial Opening of the High Court on 1st February 2024," available at: <http://www.judiciary.gov.ls/wpcontent/uploads/2024/02/High-Court-Official-Opening-Speech-2024.docx>. Also see, "Root of Courts' Failure Exposed," Public Eye, 03 April 2024, available at: <https://publiceyenews.com/2024/03/04/rootof-courts-failure-exposed/>; and Chris Himsworth, "The Cost of Separating Powers," AfricLaw, 1 June 2021, available at: <https://africlaw.com/2021/06/01/the-cost-of-separating-powers/>.



- iii. **Allocating sufficient and sustained budgetary resources to support the procurement and maintenance of assistive technologies and special measures across the justice system.**
- iv. **Allocating sufficient and sustained budgetary resources to support infrastructure upgrades and maintenance to ensure all court facilities be fully physically accessible to all persons with disabilities.**
- v. **Allocating adequate budgetary resources to support the judiciary to conduct capacity-building training effectively. Such training measures should be designed in full consultation with the judiciary and should include workshops and seminars for all justice actors, including court personnel, on the CRPD, the Disability Equity Act and the Disability and Equity (Procedure) Rules.**

## **F. ARTICLE 14: LIBERTY AND SECURITY OF PERSON**

21. Section 172 of the Criminal Procedure and Evidence Act (headed “trial of an insane person”) allows for what is commonly referred to as institutionalization at “the King’s pleasure”.<sup>131</sup> Section 172(2) reads:

“If the court finds the person charged with an offence insane or mentally incapacitated pursuant to sub-section (1), the judicial officer presiding at the trial or preparatory examination shall record such verdict or finding and shall issue an order committing such person to some prison pending the satisfaction of the King’s pleasure or the court may make any order which it deems fit.”

22. Section 172 of the Act has had the effect of permitting persons who are determined to be “insane” or “mentally incapacitated” to be indefinitely institutionalized. Instead of allowing the determination and provision of the support required by persons with disabilities to participate in criminal proceedings on an equal basis with others, the approach of section 172 results directly both forced institutionalization and determinations of incapacity in contravention of the CRPD. In practice, individuals are routinely institutionalized in poor and overcrowded conditions at Mohlomi Mental Hospital for long periods of time while awaiting the “King’s Pleasure”.<sup>24</sup> The lengthy durations of institutionalization, often exceeding the maximum sentence for crimes individuals are alleged to have committed, as well as the deplorable conditions at Mohlomi Hospital have been described in a report of Lesotho’s Ombudsman in October 2023.<sup>25</sup>

23. Section 36 of the Persons with Disability Equity Act is also of concern regarding the institutionalization of persons with disabilities in Lesotho. Entitled the “right of a person with a disability to reside at a residential care facility”, the provision, albeit purportedly intended to be protective of the rights of persons with disabilities, risks being interpreted as supporting institutionalization of persons with disabilities.

24. This Committee has made it clear in its *Guidelines on deinstitutionalization, including in emergencies*<sup>26</sup> that, “States parties should abolish all forms of institutionalization, end new placements in institutions

<sup>24</sup> Public Eye, Inside the anguished mind of a mental health sufferer, <https://publiceyenews.com/inside-the-anguished-mind-ofmental-health-sufferer/>

<sup>25</sup> <https://www.icj.org/lesotho-ombudsmans-report-reveals-need-for-immediate-action-to-deinstitutionalize-persons-with-intellectual-and-psychosocial-disabilities/>; <https://drive.google.com/file/d/1hadV9xxdGlyS7qDsmZ7CBs9lQhbEsdHC/view>

<sup>26</sup> Committee on the Rights of Persons with Disabilities, Guidelines on deinstitutionalization, including in emergencies, UN Doc. CRPD/C/5, 10 October 2022



and refrain from investing in institutions” and that, “there is no justification to perpetuate institutionalization”. In parallel with the deinstitutionalization process, States are required to “reform legislation on legal capacity”, and “all legislative provisions that authorize the deprivation of liberty or other restrictions on liberty and security of person based on impairment, including involuntary commitment or treatment based on ‘mental illness or disorder’, should be repealed.”

#### **Recommendations:**

**In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:**

- i. Expediently repeal section 172 of the Criminal Procedure and Evidence Act in its entirety.**
- ii. Conduct a comprehensive and independent inquiry into the conditions at Mohlomi Mental Hospital and act on the findings of such an inquiry in order to improve the conditions faced by those who are treated at the hospital.**
- iii. Conduct a comprehensive review of all laws and policies to ensure compliance with the CRPD requirements in relation to legal capacity and Lesotho’s obligation to abolish all forms of institutionalization.**
- iv. Develop and implement comprehensive action for deinstitutionalization, including timelines and benchmarks, and making provision for necessary human, technical and financial resources.**

#### **G. ARTICLE 24: INCLUSIVE EDUCATION**

25. The Disability Equity Act protects a wide range of rights of persons with disabilities, including the right to “inclusive education”.<sup>27</sup> Section 23 of the Act, headed “education,” contemplates an extensive role for the Disability Advisory Council in the provision and roll out of inclusive education.<sup>28</sup>

26. Research published by the ICJ in April 2023<sup>29</sup> documents a range of discriminatory aspects of the current education system, including the continued segregation of children with disabilities into special schools and the dramatically inadequate financial and human resourcing provided by the government for the execution of its international and domestic legal obligations.<sup>30</sup> Such segregation is also perpetuated by provisions of the Education Act,<sup>31</sup> which appear to permit a learner’s non-enrolment in school, or discontinuation of their attendance at school, on the basis of a disability.<sup>32</sup>

<sup>27</sup> Inclusive education is defined by the Act to mean that:

“the general education system which provides age appropriate accessible instruction, assessment, intervention, accommodation, modification, support service, adaptation, physical learning environment and any other relevant additional resources to a learner with disability, in order to help them realize their full potential on an equal basis with other”.

<sup>28</sup> See also, section 24.

<sup>29</sup> *Lesotho: Children with disabilities excluded from equal access to education*: Briefing Paper, INT’L COMM’N OF JURISTS, 20 April 2023, <https://www.icj.org/lesotho-children-with-disabilities-excluded-from-equal-access-to-education-new-icj-briefing-paper/>.

<sup>30</sup> CRPD, art.24. See also, Lesotho’s Inclusive Education Policy (2018), <https://planipolis.iiep.unesco.org/sites/default/files/ressources/approved-inclusive-education-policy-2018.pdf>.

<sup>31</sup> Act 3 of 2010, [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=110075&p\\_count=2&p\\_classification=09#:~:text=Name%3A-Education%20Act%20\(No,3%20of%202010\).&text=the%20administration%20of%20education,.%22%20\(Article%206\)](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110075&p_count=2&p_classification=09#:~:text=Name%3A-Education%20Act%20(No,3%20of%202010).&text=the%20administration%20of%20education,.%22%20(Article%206).).

<sup>32</sup> See *supra* note 25, p 43. Section 6(3)(c) of the Education Act states that the provision under section 6(2) of the Act which states that “where a learner is enrolled at a school, the learner shall attend that school on each day, and for such parts of each day, as instruction is provided at the school for the learner” does not apply to a learner “suffering from a disability or disease which prevents him or her from attending.”

27. The failure to ensure inclusive education for children with disabilities violates their right under article 24 of the Convention to protection measures, and their rights to non-discrimination and equality before the law and equal protection of the law without discrimination, as well as a range of CRPD rights.<sup>143</sup>

#### **Recommendations:**

**In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:**

- i. Take all necessary measures to ensure equal access to quality, inclusive education to all children with disabilities. This requires, among others, measures to:**
  - a. Desegregate the education system in Lesotho to ensure that children with disabilities can attend schools in the general education system and in the communities in which they live;**
  - b. Expeditiously repeal section 6(3)(c) of the Education Act;**
  - c. Plan for and provide human, financial, and other resources necessary for the implementation of Lesotho's Inclusive Education Policy; and**
  - d. Ensure the full functioning and adequate resourcing of Disability Advisory Council to perform all its contemplated functions in respect of education as set out in section 23 of the Disability Equity Act.**

#### **H. ARTICLE 25: HEALTH**

28. The Government of Lesotho's initial report under consideration by this Committee refers to several measures undertaken to secure sexual and reproductive health, purportedly in accordance with Article 25 of the CRPD. It is notable that none of these measures is disability-specific or geared towards the sexual and reproductive health of persons with disabilities. This is the case despite Lesotho's report to this Committee repeatedly referring to Lesotho's Sexual Offences Act, in one instance noting that the Act "protects people with disabilities from sexual abuse".<sup>33</sup>
29. The Sexual Offences Act was enacted in 2003,<sup>34</sup> prior to the enactment of the Disability Equity Act and Lesotho's ratification of the CRPD. The Sexual Offences Act contains various provisions that discriminate against persons with disabilities, with an impact on various CRPD rights, including the right to health.
30. The ICJ's *8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty* emphasize that, international human rights law requires that criminal laws pay due regard to, among others: "the legal capacity of people with disabilities to consent, including through supported decision-making"; and "non-discrimination and equality with respect to sex, sexual orientation, gender identity, gender expression, race, disability and other protected fundamental characteristics".<sup>35</sup> The provisions of the Sexual Offences Act and Counter Domestic Violence Act discussed below are in contravention of the requirements of international human rights law that the 8 March Principles emphasize.

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<sup>33</sup> UN Human Rights Committee, Second periodic report submitted by Lesotho under Article 40 of the Covenant pursuant to the optional reporting procedure, UN Doc. CCPR/C/LSO/2, 22 April 2020.

<sup>34</sup> Act 3 of 2003, <https://gender.gov.ls/wp-content/uploads/2020/11/Lesotho-Sexual-Violence-Act-2003.pdf>.

<sup>35</sup> [https://www.ici.org/wp-content/uploads/2023/03/Principles-Report\\_English.pdf](https://www.ici.org/wp-content/uploads/2023/03/Principles-Report_English.pdf), Preamble.

31. In terms of section 3 of the Sexual Offences Act, any “sexual act” is regarded as “prima facie unlawful” if it takes place under “coercive circumstances”. Coercive circumstances are defined to include situations in which a complainant is affected by “physical disability, mental incapacity, sensory disability, medical disability, intellectual disability, or other disability, whether permanent or temporary”. It is notable that the definition of “coercive circumstances” merely requires an individual complainant to be a person with a disability and does not require any consideration of whether such a person consented or had the knowledge or capacity to consent.
32. Moreover, section 15 of the Sexual Offences Act deals directly with “sexual offences against disabled persons”. This provision prohibits any person from committing a “sexual act” either “in relation to” or “in the presence of” a person with a disability. It also further criminalizes committing “an act with the intent to invite or persuade a disabled person to allow any person to commit a sexual act in relation to that disabled person”.
33. This formulation is repeated in the much more recent Counter Domestic Violence Act, enacted in 2022.<sup>36</sup> The latter Act includes within its definition of domestic violence “abuse perpetrated by virtue of ... disability”,<sup>37</sup> but then also defines “sexual abuse in marriage, relationship or otherwise” as including engaging in a sexual act with a “victim” who is “affected by physical disability, mental incapacity, sensory disability, intellectual disability or any other disability whether permanent or temporary.”<sup>38</sup>
34. The provisions of both laws, therefore, appear to render any sexual act with a person with a disability either presumptively or automatically unlawful, irrespective of whether that person has consented to such an act.<sup>39</sup> This is discriminatory, in a clear violation of a wide range of CRPD rights and strips persons with disabilities of sexual autonomy almost entirely.
35. Furthermore, the Sexual Offences Act does not make any provision for procedural or other accommodations for persons with disabilities who are complainants in cases relating to sexual offences. The Counter Domestic Violence Act similarly does not make any provision for procedural or other accommodation for persons with disabilities who are complainants in cases relating to domestic violence.

## **Recommendations:**

**In light of the foregoing, the CRPD Committee should recommend that the Government of Lesotho:**

- i. Amend the Sexual Offences Act to ensure that:**
  - a. Section 3 of the Act, relating to “coercive circumstances”, is amended to remove the presumption of unlawfulness where a complainant is a person with a disability.**
  - b. Section 15 of the Act titled “sexual offences against disabled persons” is removed in its entirety.**
  - c. A section is added to the Act to provide reasonable and procedural**

<sup>36</sup> Act 14 of 2022, <https://www.webbernew.com/uploads/GG%20No.%2072%20of%202022.pdf>.

<sup>37</sup> *Ibid*, s.3(j).

<sup>38</sup> *Ibid*, s 2.

<sup>39</sup> See: UN COMM. ON RIGHTS OF PERSONS WITH DISABILITIES, [General Comment No. 1 \(2014\) on Article 12: Equal recognition before the law](#), UN Doc. CRPD/C/GC/1, 19 May 2014, paras 4, 33.

accommodations for persons with disabilities in all processes set out in the Act, including those relating to complainants who are persons with disabilities.

ii. Amend the Counter Domestic Violence Act to ensure that:

- a. The definition of “sexual abuse in marriage, relationship or otherwise” in section 2 of the Act no longer features item (c) in its entirety.
- b. A section is added to the Act to provide reasonable and procedural accommodations for persons with disabilities in all processes set out in the Act, including those relating to complainants who are persons with disabilities.

**I. ARTICLE 29: PARTICIPATION IN POLITICAL AND PUBLIC LIFE**

36. Section 5 of Lesotho’s National Assembly Electoral Act<sup>40</sup> specifically excludes a person who “is declared to be of unsound mind”<sup>41</sup> from those who may qualify to register to vote and, therefore, denies such individuals the right to vote.

37. This provision is clearly discriminatory and in contravention of the International Covenant on Civil and Political Rights (ICCPR) and the CRPD; it falls short of article 25 of the ICCPR and the political rights entrenched in the CRPD in Article 29. It also strips persons with disabilities of the right to “enjoy legal capacity on an equal basis with others in all aspects of life”, protected by Article 12 of the CRPD.

38. More generally, ICJ’s activities and research in Lesotho, some of which are highlighted in this submission, reveal that persons with disabilities often enjoy limited participation in decision-making, law-making and policy-making processes in Lesotho. Where consultation with OPDs and persons with disabilities does occur -- through the representation of the Lesotho National Federation of Organizations of the Disabled --<sup>42</sup> their views are often not given sufficient weight and, therefore, are not reflected adequately in resulting decisions, laws and policies.

**Recommendations:**

In light of the foregoing, the CRPD should recommend that the Government of Lesotho:

- i. Expeditiously amend section 5 of the National Assembly Electoral Act to remove section 5(2)(d) of the Act in its entirety.
- ii. Amend the National Assembly Electoral Act to provide for reasonable accommodation for persons with disabilities so as to enable them to fully exercise their right to participation in all electoral processes.
- iii. Ensure the full and meaningful participation of OPDs and persons with disabilities in all decision-making, law-making and policy-making processes on the basis of equality with all others.

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<sup>40</sup> Act 14 of 2011, <https://aceproject.org/ero-en/regions/africa/LS/lesotho-national-assembly-electoral-act-2011/view>.

<sup>41</sup> *Ibid*, s. 5(2)(d).

<sup>42</sup> <http://www.infod.org.ls/>