

BRIEFING FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 138TH SESSION (26 JUNE 2023 - 28 JULY 2023), WITH RESPECT TO VIOLENCE AGAINST WOMEN IN: Lesotho *Submitted by Strategic Advocacy for Human Rights (SAHR), May 2023*



Strategic Advocacy
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This thematic report¹ considers the legality of violence against women in Lesotho, in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Human Rights Committee of the United Nation (the “Committee”) to Lesotho, and the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Lesotho during the Universal Periodic Review in 2020, it is our hope that the Committee will:

- **raise the issue of violence against women in its List of Issues Prior to Reporting for Lesotho, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings; and**
- **in its concluding observations on Lesotho’s State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings.**

¹ This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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1 INTRODUCTION

Strategic Advocacy for Human Rights (SAHR)² is a peer-led non-governmental organization by and for human right defenders, working to equip a movement of human rights defenders with the knowledge and tools to end gender-based violence through litigation, policy, and law reform.

We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 138th Session (26 June 2023 - 28 July 2023).

This report highlights key legal inequalities that women face in Lesotho in relation to violence against women, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices against the UN Model Law on Rape³, published by the former UN Special Rapporteur on Violence Against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

2 KEY ISSUES OF CONCERN

2.1 Discrimination Against Women Under Customary Law (1999 Concluding Observations Paragraph 10)

2.1.1 *Overview of customary laws:* In 1999, the Committee noted that it was gravely concerned that customary law in Lesotho permits discrimination against women by treating them as minors.⁴ Under customary law, women's rights to inheritance and property ownership were severely restricted such that they could not enter into contracts, open bank accounts, obtain loans or apply for passports without the permission of their husbands.⁵ Such discriminatory laws are in violation of articles 3 and 26 of the International Covenant on Civil and Political Rights (the "Covenant"), which provide that men and women should enjoy equal civil and political rights and that all persons should be equal before the law without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶

Suggested List of Questions for the State

- *Please provide statistics on prosecution of discriminatory offences.*
- *Please elaborate on steps that the State is taking to eliminate the practice of customary laws.*

² Website: <https://www.sa-hr.org/>. Email: connect@sa-hr.org

³ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 5 May 2023] [A/HRC/47/26/Add.1](#)

⁴ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant – Concluding observations of the Human Rights Committee*, 8 April 1999, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F79%2FAdd.106&Lang=en [accessed 5 May 2023]

⁵ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant – Concluding observations of the Human Rights Committee*, 8 April 1999, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F79%2FAdd.106&Lang=en [accessed 5 May 2023]

⁶ United Nations, 1976 International Covenant on Civil and Political Rights, available at <https://www.ohchr.org/sites/default/files/ccpr.pdf> [accessed 6 May 2023]

- *Please describe the recourse available to victims of discrimination and highlight any noteworthy case laws or prosecutions.*
- *Please explain whether there are any plans to adopt a specific body of law prohibiting discrimination.*

2.2 The Right to Abortion (1999 Concluding Observations Paragraph 11, 2019 List of Issues Prior to Submission of the Second Periodic Report Paragraph 10)

2.2.1 **Summary of current legislation of the State:** Currently abortion is still generally criminalized under the statutory law of Lesotho. Pursuant to section 45(1) of the Lesotho Penal Code Act of 2010, which took effective on 9 March 2012, abortion is an offence in Lesotho save for instances where termination of pregnancy is conducted to prevent significant harm to the health of the pregnant female or to avoid giving birth to a child who will be seriously physically or mentally handicapped, or when a pregnancy results from rape or incest.⁷ In addition, under such exceptional cases, additional requirements are imposed for the termination of pregnancy to be legally allowed, which includes, termination of pregnancy shall always be performed by a registered medical practitioner, and in cases of pregnancies resulting from rape or incest or to prevent harm to the women, a written opinion or certificate from a registered medical practitioner shall be obtained in advance to evidence such situations.⁸

2.2.2 **Right to safe and legal abortion:** The Committee states in its General Comments on article 6 of the Covenant that “State parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable”, and that the State “should not take measures such as criminalizing pregnancy of unmarried women or applying criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them in doing”.⁹ Paragraph 33 of the UN Model Rape Law states that “women should not be criminalized and imprisoned for obtaining abortions, especially in cases of rape, incest or severe foetal impairment”, “all victims who claim that they are made pregnant through rape, or where there is a reasonable suspicion that the pregnancy is a result of rape or incest, should have access to a safe and legal abortion”, and that “states should repeal laws that prohibit abortions, including in case of rape, and enact laws that give victims the right to access...safe and legal abortion”.¹⁰

2.2.3 **Right to choose and refuse sterilization:** The right to liberty and security of person, guaranteed under the Covenant (article 9.1),¹¹ includes the right to determine what happens to one’s body, including one’s decision to choose and refuse sterilization. Coerced and forced sterilization is

⁷ Parliament of Lesotho, *Penal Code Act*, 9 March 2012, available at <https://media.lesotholii.org/files/legislation/akn-ls-act-2012-6-eng-2012-03-09.pdf>, Section 45(1) [accessed 6 May 2023]

⁸ Parliament of Lesotho, *Penal Code Act*, 9 March 2012, available at <https://media.lesotholii.org/files/legislation/akn-ls-act-2012-6-eng-2012-03-09.pdf>, Section 45(2) [accessed 6 May 2023]

⁹ Human Rights Committee, *General Comment No. 36*, 3 September 2019, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement> [accessed 8 May 2023]

¹⁰ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055>, paragraph 33 [accessed 13 May 2023]

¹¹ United Nations, *1976 International Covenant on Civil and Political Rights*, available at <https://www.ohchr.org/sites/default/files/ccpr.pdf> [accessed 6 May 2023]

also a clear violation of the right to be free from cruel, inhuman, and degrading treatment protected by the Covenant (article 7).¹²

Suggested List of Questions for the State

- *Please indicate whether the State intends to legalize abortion or loosen the restrictions on abortion and advise what steps that the State has taken for making this decision.*
- *Please detail efforts that the State has made to offer safe and affordable abortion.*
- *Please provide the conclusion that the consultant engaged by the State has made on the prevalence of abortion in Lesotho.*
- *Please indicate whether the State intends to include women’s right to post-abortion healthcare service in its legislation, and detail efforts that the State has made and intends to make to increase women and girls’ access to quality prenatal and post-abortion healthcare services.*

2.3 Harmful Practices (1999 Concluding Observations Paragraph 12, 2019 List of Issues Prior to Submission of the Second Periodic Report Paragraph 19)

2.3.1 ***Abduction (Forced Elopement) or Rape of Girls Resulting in Force Marriages:*** Abduction is criminalized in Lesotho. Under Lesotho’s Penal Code Act, “A person who unlawfully takes or entices a child or any person of unsound mind out of the custody of the lawful guardian of such person, with or without the consent of such guardian, for the purpose of marriage, sexual intercourse, or commercial and labour exploitation, commits the offence of abduction,” and a guardian consent so commits the offence of constructive abduction.¹³

Forced elopement is a customary practice whereby men abduct and rape girls or women with the intention of forcing them into marriage.¹⁴ Despite the enactment of the CPWA, in its 2022 Country Reports on Human Rights Practices for Lesotho, the U.S. Department of Labour noted reports of forced elopement in Lesotho and that the survivor’s parents often reached a financial settlement rather than report the incident to police or proceed to trial if a perpetrator’s family is wealthy.¹⁵

2.3.2 ***Child Marriage:*** In its 2022 report for Lesotho, Freedom House held the view that forced, and child marriages remain an ongoing problem in Lesotho and noted that its Parliament dissolved in July before it could consider proposed amendments to the Child Protection and Welfare Act of 2011 that would criminalize child marriages and introduce stiff penalties.¹⁶

¹² United Nations, *1976 International Covenant on Civil and Political Rights*, available at <https://www.ohchr.org/sites/default/files/ccpr.pdf> [accessed 6 May 2023]

¹³ LesLii, *Penal Code Act, 2012*. Available at: <https://lesotholii.org/ls/legislation/num-act/6>. [Accessed 19 May 2023]

¹⁴ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Lesotho*. Available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/lesotho/>. [Accessed 7 May 2023]

¹⁵ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Lesotho*. Available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/lesotho/>. [Accessed 7 May 2023]

¹⁶ Freedom House, *Report on Lesotho 2022, 2022*, available at: <https://freedomhouse.org/country/lesotho/freedom-world/2023> [accessed 7 May 2023]

As discussed under Section **¡Error! No se encuentra el origen de la referencia.** above, Lesotho adopts a dual legal system, which creates loopholes that permit child marriages. While the CPWA states that marriage before the age of 18 is unlawful, a girl may marry at the age of 16 provided there is parental consent under the Marriage Act, 1974 and customary law allows a child to marry as long as they have reached puberty.¹⁷ These contradictions in legislation enable practices like marrying sexual abuse victims to their perpetrator.¹⁸ According to the United Nations International Children's Emergency (UNICEF), although illegal, such marriages are negotiated according to custom and not reported to the authorities.¹⁹

2.3.3 **Sexual Assault/Rape:** Rape is criminalized in Lesotho, including spousal rape. The minimum sentence of rape convictions is 10 years.²⁰ According to the Second Periodic Report, Sexual Offences Act 2003 recognizes 'rape' within a marriage setting.²¹

However, the commentary on "consent" to sexual act in the Penal Code Act of Lesotho provides a subjective mistake of act defence: the accused must know that the victim does not consent or at least must be reckless as to the possibility that he or she does not consent, even if a reasonable person would have known or would have ignored this possibility.²² This could directly contradict to the Model Rape Law Article 2 under certain circumstances, which provides that consent cannot be inferred by (a) silence by the victim; (b) non-resistance, verbal or physical, by the victim; (c) the victim's past sexual behaviour, or (d) the victim's status, occupation or relationship to the accused. There are also some deviations on issue of consent between the Lesotho law and the Model Rape Law. For example, no provision similar to the Model Rape Law Article 4(b) can be found, which provides that a person is considered incapable of giving genuine consent when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation,²³ and there is no discussion on the validity of consent regarding circumstances where the perpetrator is in a position of power, trust, influence or dependency over the victim and may have taken advantage of that position to force participation, which were discussed under Model Rape Law Article 6.²⁴

¹⁷ UNICEF, *Case study on delaying adolescent pregnancy and child marriage in the Kingdom of Lesotho*, May 2021, available at: <https://www.unicef.org/esa/media/8951/file/Lesotho-Case-Study-Child-Marriage-2021-rev.pdf> [accessed 7 May 2023]

¹⁸ UNICEF, *Case study on delaying adolescent pregnancy and child marriage in the Kingdom of Lesotho*, May 2021, available at: <https://www.unicef.org/esa/media/8951/file/Lesotho-Case-Study-Child-Marriage-2021-rev.pdf> [accessed 7 May 2023]

¹⁹ UNICEF, *Case study on delaying adolescent pregnancy and child marriage in the Kingdom of Lesotho*, May 2021, available at: <https://www.unicef.org/esa/media/8951/file/Lesotho-Case-Study-Child-Marriage-2021-rev.pdf> [accessed 7 May 2023]

²⁰ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Lesotho*. Available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/lesotho/>. [Accessed 2 May 2023]

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<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhshIm43xrngtfZ4DjpX%2F0kGLCKq5obVlrgCMsXxGn8YTXtlwM%2FnIviXesVITD0wHsiPpi8ofPcjC5dx%2BWjZBOFX3INGL2Mlr1Q9IJQDxNFSrc>

²² LesLii, *Penal Code Act, 2012*. Available at: <https://lesotholii.org/ls/legislation/num-act/6>. [Accessed 19 May 2023]

²³ LesLii, *Penal Code Act, 2012*. Available at: <https://lesotholii.org/ls/legislation/num-act/6>. [Accessed 19 May 2023]

²⁴ LesLii, *Penal Code Act, 2012*. Available at: <https://lesotholii.org/ls/legislation/num-act/6>. [Accessed 19 May 2023]

In addition, sexual assault and rape are commonplace in Lesotho, and most incidents went unreported according to local and international NGOs.²⁵ While police believe sexual harassment to be widespread in the workplace and elsewhere and generally enforces the law promptly and effectively when informed, the prosecution of those indicted and tried tending to proceed slowly.²⁶

Suggested List of Questions for the State

- *While Lesotho has made progress in putting in place protective legal frameworks such as enacting the Domestic Violence Act, 2022, to address GBV, to facilitate the implementation of these laws, please provide information on measures taken to reconcile these laws with discriminatory customary laws, reshape patriarchal culture, address systematic deficiencies in policing and the judiciary and improve accessibility to justice, especially in rural areas. Please also provide other measures to facilitate the effective implementation of these laws.*
- *While Lesotho has taken various measures to support GBV victims and eliminate child marriage, please provide information on the effectiveness of these measures (including the current GBV incident statistics) and other measures the State has taken since the Second Periodic Report.*
- *Please comment on how the determination of consent could reconcile with the Model Rape Law. Specifically, the Model Rape Law provides that consent cannot be inferred, and that consent is presumed invalid when the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.*
- *Please comment on the allegation that certain traditional harmful practices such as forced elopement, virginity testing and labia elongation are still practiced. Please provide measures taken to facilitate the reporting of these cases and eradicate these practices.*
- *Please comment on the allegation that labia elongation is legal and provide measures taken to annul relevant laws.*
- *Please provide current status of the CPW Amendment Bill and the Welfare Amendment Bill 2019, timeline for its adoption, measure to ensure proper implementation and its relationship with customary law.*

2.4 Sex Trafficking and Child Labor (2019 List of Issues Prior to Submission of the Second Periodic Report Paragraph 18 - 19)

2.4.1 ***Summary of the Committee's relevant concluding observations and list of issues:*** In the Committee's list of issues prior to submission of the Second Periodic Report, the Committee asked the State to clarify whether all forms of trafficking, including sex trafficking and child sex trafficking, are criminalized, and enhanced with penalties commensurate with the gravity of the crime. The Committee also asked the State to provide information about any efforts to effectively detect, prevent and investigate cases of trafficking and punish the perpetrators of trafficking. The Committee was also concerned by the subjection of children to the worst forms

²⁵ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Lesotho*. Available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/lesotho/>. [Accessed 2 May 2023]

²⁶ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Lesotho*. Available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/lesotho/>. [Accessed 2 May 2023]

of child labor, especially agricultural work and forced domestic work of girls which commonly leads to sexual abuses.²⁷

- 2.4.2 ***Freedom from slavery and servitude:*** Article 8 of the Covenant states that no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.²⁸ Having regard to the State parties' obligation under article 8, the Committee states in its General Comments that States parties should inform the Committee of measures taken to eliminate trafficking of women and children, within the country or across borders, and forced prostitution.²⁹

Suggested List of Questions for the State

- *Please report on the implementation of the Anti-Trafficking in Persons Act and Children's Protection and Welfare Act on sex trafficking and children sex trafficking cases. Please also detail efforts that the government made to prevent and combat sex trafficking, and to protect, assist and provide redress to victims.*
- *Please report on the efforts that the government made to identify trafficked persons and traffickers, to increase public understanding of the trafficking issue, reduce the demand for commercial sex acts.*
- *Please provide update on the establishment of the department or unit that will deal specifically with the issue of trafficking. Please report what trainings have been provided or are planned to be provided to law enforcement personnel in the investigation and prosecution of cases of sex trafficking.*
- *Please report whether the State has implemented or intend to implement any protection program to protect and support sex trafficked persons during the investigation and trial process and any subsequent period when necessary.*
- *Please report on what special measures that the State has adopted for the protection and support of child victims of sex trafficking.*
- *Please report on the legal and other material assistance and support provided to sex trafficked persons for them to obtain adequate and appropriate remedies.*
- *Please provide the operation and effect of the pilot project "Counter Trafficking and Addressing Irregular Migration Through Strengthening Border and Migration Management, Sensitisation on Trafficking in Persons and Building Capacity of Law Enforcement and Border Officials in Lesotho" and indicate whether the State intend to adopt any official similar project.*
- *Please provide statistics on any labour law or criminal law inspections and prosecutions of child labour in the last 5 years and provide a breakdown in relation to any child labour cases related to forced domestic work of girls or sex trafficking.*

²⁷ Human Rights Committee, *List of Issues Prior to Submission of the Second Periodic Report of Lesotho*, UN Doc. CCPR/C/LSO/QPR/2, 2 April 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FLSO%2FQPR%2F2&Lang=en [accessed 3 May 2023].

²⁸ United Nations, *1976 International Covenant on Civil and Political Rights*, available at <https://www.ohchr.org/sites/default/files/ccpr.pdf> [accessed 6 May 2023]

²⁹ Human Rights Committee, *General Comment No. 28*, 29 March 2000, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.10&Lang=en, Paragraph 12 [accessed 6 May 2023]

ANNEX – COMPARISON: UN MODEL LAW ON RAPE AND STATE LEGISLATIVE FRAMEWORK

In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape. This table demonstrates the extent to which the State's law complies with internationally accepted standards and the articles of the ICCPR as above-mentioned.

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
A. Criminalization of rape		
<p>Article 1. Definition of rape</p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p>	<p>Sexual Offences Act 2003</p> <p><u>Part I – Preliminary</u></p> <p><u>Interpretation</u></p> <p>2.</p> <p>“coercive circumstances” include but are not limited to any circumstance where-</p> <p>(a) there is an application of force, whether explicit or implicit, direct, or indirect, physical, or psychological against any person or animal;</p> <p>(b) there are threats, whether verbal or through conduct, of the application of physical force to the complainant or to a person other than the complainant;</p> <p>“sexual act” means-</p> <p>(a) direct or indirect contact with the anus, breasts, penis, buttocks, thighs, or vagina of one person and any other part of the body of another person; or</p> <p>(b) exposure or display of the genital organs of one person to another person;</p>	<p>We note that under Sexual Offences Act 2003, there is no discussion on “consent”, instead, whether a sexual act is prima facie unlawful depends on whether the sexual act takes place under “coercive circumstances”, which could impose a higher bar compared to “non-consensual”.</p> <p>However, the Penal Code Act has the “consent” element in place, which largely aligns with the Model Rape Law.</p>

	<p>(c) the insertion of any part of the body of a person or of any part of the body of an animal or any object into the vagina or penis or anus of another person, or</p> <p>(d) cunnilingus, fellatio or any other form of genital stimulation;</p> <p>but does not include contact, exposure, insertion, or genital stimulation done by a hand or any unharmed object —</p> <p>(a) for sound health practices or proper medical purposes;</p> <p>(b) for reasonably necessary body search by law enforcement agencies-</p> <p style="padding-left: 40px;">(i) done for lawful purposes without putting in jeopardy the health and safety of the arrestee, suspect or person being searched and</p> <p style="padding-left: 40px;">(ii) not carried out abusively or for humiliating or punishing an arrestee, suspect or any person who is being searched.</p> <p><u>Part II – Sexual Offences</u></p> <p>Unlawful sexual act</p> <p>3. (l) For the purposes of this Act, a sexual act is prima facie unlawful if it takes place in any coercive circumstances.</p> <p>Penal Code Act, 2012</p> <p>Unlawful sexual act</p> <p>52.</p>	
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	<p>(1) A person who has unlawful sexual act with another person or causes another person to commit an unlawful sexual act, commits an offence.</p> <p>(2) A sexual act is unlawful if committed under the following circumstances -</p> <p>(a) there is an application of force, whether explicit or implicit, direct, or indirect, physical, or psychological against any person or animal;</p> <p>(b) there are threats, whether verbal or through conduct, of the application of physical force to the complainant or to a person other than the complainant;</p> <p>(c) there are threats, whether verbal or through conduct, to cause harm other than bodily harm, or mental harassment to, or public humiliation or disgrace of, or to use extortion against, the complainant or any person other than the complainant;</p> <p>(d) the complainant is below the age of 12 years;</p> <p>(e) the complainant is unlawfully detained;</p> <p>(f) the complainant is affected by -</p> <p style="padding-left: 40px;">(i) physical disability, mental incapacity, sensory disability, medical disability, intellectual disability, or other disability, whether permanent or temporary; or</p> <p style="padding-left: 40px;">(ii) intoxicating liquor or any drug or other substance which mentally or physically incapacitates the complainant; or</p> <p style="padding-left: 40px;">(iii) sleep, to such an extent that he or she is rendered incapable of understanding the nature of the sexual act or deprived of the opportunity to</p>	
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	<p>communicate unwillingness to submit to or to commit the sexual act;</p> <p>(g) the complainant submits to or commits the sexual act by reason of having been induced, whether verbally or through conduct, by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed is some other person;</p> <p>(h) as a result of the fraudulent misrepresentation of some fact by or any fraudulent conduct on the part of the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator;</p> <p>(i) a perpetrator, knowing or having reasonable grounds to believe that he or she is infected with a sexually transmissible disease, the human immuno-deficiency virus or other life-threatening disease, does not, before committing the sexual act, disclose to the complainant that he or she is so infected.</p>	
<p>Article 2. On consent</p> <p>17. Consent must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p> <p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim's past sexual behavior; or</p> <p>(d) the victim's status, occupation, or relationship to the accused.</p>	<p>Penal Code Act, 2012</p> <p>Unlawful sexual act</p> <p>52.</p> <p>A person does not consent to sexual intercourse if -</p> <p>(a) his or her submission has been obtained by force or by threats of whatever nature;</p> <p>(b) his or her submission has been obtained by a fraudulent representation by the accused that he or she is her husband or wife;</p> <p>(c) the person having sexual intercourse with him or her has made a fraudulent representation to him or her as to the</p>	<p>The Penal Code Act included no discussion on whether consent can be inferred, and the commentary on consent provides a mistake of act defence, even if the mistake was not one which a reasonable person would have made. This could directly contradict to the Model Rape Law under certain circumstances.</p>

	<p>nature of the act of intercourse, and the affected person has acted on this misrepresentation; or</p> <p>(d) he or she is asleep or otherwise unconscious at the time at which the sexual intercourse takes place, and the accused has no reasonable grounds for assuming that he or she would on awakening or gaining consciousness consent to the fact that intercourse has taken place;</p> <p>(e) he or she is under the age of eighteen years; or</p> <p>(f) he or she is so intoxicated at the time at which sexual intercourse takes place as to be incapable of giving or withholding consent;</p> <p>(g) the accused person, with the intention of overcoming his or her resistance, has administered to him or her any sub-stance, the nature of which is concealed from him or her, which has the effect of rendering him or her incapable of expressing his or her lack of consent to the act of sexual intercourse; or</p> <p>(h) he or she withholds consent from an act of sexual intercourse with a person to whom he or she is currently married, and one of the following conditions is satisfied -</p> <ul style="list-style-type: none">(i) he or she is sick;(ii) the husband or wife uses abusive language, violence or threats in order to have sexual intercourse;(iii) he or she has obtained a judicial order of restraint in respect of the husband or wife; or(iv) he or she has been separated from the husband or wife by judicial order.	
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	<p>Commentary: section 53:</p> <p>Unlawful sexual act is committed where there are coercive circumstances, or the sexual act takes place without the consent of the victim. The accused must know that the victim does not consent or at least must be reckless as to the possibility that he or she does not consent. A mistake on accused's part as to consent would be a defence, even if the mistake was not one which a reasonable person would have made. This conclusion is derived from the general provisions in the Act on the defence of mistake of fact.</p> <p>Coercive circumstances and recklessness in relation to consent will exist only where there was some reason for the accused to have been aware of the possibility that the woman was not consenting. There must therefore be something in the situation which should make him ask himself whether she is consenting. If, in such circumstances, the accused fails to take reasonable steps to ascertain whether or not the victim consents, the recklessness manifest in the accused's attitude justifies a finding of criminal guilt.</p>	
<p>Article 3. Age of consent</p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p> <p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p>	<p>Penal Code Act, 2012</p> <p>Unlawful sexual intercourse with children</p> <p>49.</p> <p>(1) An adult who has sexual intercourse with a child commits an offence, and the consent of the child is irrelevant.</p> <p>(2) It shall be a defence for a person charged with this offence to prove that he or she had reasonable grounds to believe, and did so believe, that the child had attained an age of eighteen years.</p> <p>Sexual molestation of minors</p>	<p>Penal Code Act provides that consent is not given from a child under 18, it also noted that consent does not a defence when a child is under certain age, which is largely consistent with the Model Rape Law. While section 49 of the Penal Code Act provides that if the accused was of the belief that the child had in fact reached the age of 18, this is an objective standard.</p> <p>However, the Sexual Offences Act provides that it is an offence for a child who is 13 years of age or above but below the age of 16 years to commits a sexual act with a child</p>

	<p>50. An adult who has sexual act with a child under the age of twelve years, whether or not such child consents, commits the offence of sexual molestation.</p> <p>Unlawful sexual act</p> <p>52.</p> <p>A person does not consent to sexual intercourse if -</p> <p>(e) he or she is under the age of eighteen years</p> <p>Commentary: sections 49 and 50</p> <p>All young persons under the age of eighteen are protected by these provisions against any form of sexual interference. The consent of such children is irrelevant to guilt.</p> <p>It is an offence for any adult to have sexual intercourse with a child. In some jurisdictions this may be an offence of strict liability in certain circumstances, with no defence open to the man. Section 51 allows an accused person a defence if he or she was of the belief that the child had in fact reached the age of eighteen. This belief must be one which a reasonable person could have held in the circumstances. This is an objective requirement, the justification of which is that it is important that people are put on enquiry in relation to the age of younger sexual partners.</p> <p>Sexual Offences Act 2003</p> <p>Child molestation</p> <p>8. (5) (b) a child who is 13 years of age or above but below the age of 16 years, who commits a sexual act with a child who is below the age of 12 years, commits an offence.</p>	<p>below the age of 12 years, though not a criminal liability.</p>
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<p>Article 4. On the incapability of giving genuine consent</p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p>	<p>Penal Code Act, 2012</p> <p>Unlawful sexual act</p> <p>52.</p> <p>A person does not consent to sexual intercourse if -</p> <p>(d) he or she is asleep or otherwise unconscious at the time at which the sexual intercourse takes place, and the accused has no reasonable grounds for assuming that he or she would on awakening or gaining consciousness consent to the fact that intercourse has taken place;</p> <p>(f) he or she is so intoxicated at the time at which sexual intercourse takes place as to be incapable of giving or withholding consent;</p> <p>(g) the accused person, with the intention of overcoming his or her resistance, has administered to him or her any sub-stance, the nature of which is concealed from him or her, which has the effect of rendering him or her incapable of expressing his or her lack of consent to the act of sexual intercourse</p>	<p>The Penal Code Act provides certain circumstances under which consent was not given that are largely align with the Model Rape Law Article 4. (a). However, we also noted that it provides a defence when the accused has reasonable grounds for assuming consent has been given.</p> <p>No provision similar to the Model Rape Law Article 4(b) is found.</p>
<p>Article 5. Use of force, threat, or coercion</p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which:</p> <p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim’s subjugation or acquiescence; or</p>	<p>Penal Code Act, 2012</p> <p>Unlawful sexual act</p> <p>52.</p> <p>(2) A sexual act is unlawful if committed under the following circumstances -</p> <p>(a) there is an application of force, whether explicit or implicit, direct, or indirect, physical, or psychological against any person or animal;</p>	<p>The Penal Code Act has provided that a sexual act is unlawful under force or threat and that consent cannot be obtained by force or threat, which is largely consistent with the Model Rape Law.</p>

<p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p>	<p>(b) there are threats, whether verbal or through conduct, of the application of physical force to the complainant or to a person other than the complainant;</p> <p>(c) there are threats, whether verbal or through conduct, to cause harm other than bodily harm, or mental harassment to, or public humiliation or disgrace of, or to use extortion against, the complainant or any person other than the complainant;</p> <p>A person does not consent to sexual intercourse if -</p> <p>(a) his or her submission has been obtained by force or by threats of whatever nature;</p>	
<p>Article 6. On presumed lack of consent</p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim's ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence, or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p>	<p>Penal Code Act, 2012</p> <p>Unlawful sexual act</p> <p>52.</p> <p>(2) A sexual act is unlawful if committed under the following circumstances -</p> <p>(f) the complainant is affected by -</p> <p>(i) physical disability, mental incapacity, sensory disability, medical disability, intellectual disability, or other disability, whether permanent or temporary; or</p> <p>(ii) intoxicating liquor or any drug or other substance which mentally or physically incapacitates the complainant; or</p> <p>(iii) sleep, to such an extent that he or she is rendered incapable of understanding the nature of the sexual act or deprived of the opportunity to</p>	<p>While Penal Code Act provides that consent is not given under the circumstance of intoxication and illness, there is no discussion on the circumstances when the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.</p>

<p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home, or orphanage;</p> <p>(d) in the context of providing the victim medical, psychological, or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p> <p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> <p>(g) by otherwise being generally involved and responsible for the care, training, or supervision of the victim.</p>	<p>communicate unwillingness to submit to or to commit the sexual act;</p> <p>A person does not consent to sexual intercourse if -</p> <p>(f) he or she is so intoxicated at the time at which sexual intercourse takes place as to be incapable of giving or withholding consent; or</p> <p>(g) the accused person, with the intention of overcoming his or her resistance, has administered to him or her any substance, the nature of which is concealed from him or her, which has the effect of rendering him or her incapable of expressing his or her lack of consent to the act of sexual intercourse;</p>	
B. Sentencing, aggravating and mitigating circumstances		
<p>Article 7. Sentencing</p> <p>(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive, and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p> <p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p> <p>(d) The death penalty should never be imposed for rape.</p>	<p>Sexual Offences Act 2003</p> <p>Part VIII – Penalties</p> <p>Enforcement Of penalties</p> <p>31.</p> <p>(1) Save for the Central and Local Courts, the sentences under section 32 Shall apply and be enforced by all courts unless extenuating circumstances or the proper consideration of the individual circumstances of the accused or lawful intimate relations between the perpetrator and the victim dictate otherwise.</p> <p>(2) Where the appropriate penalty is beyond the ceiling of penal powers of the trial Court, it shall, after conviction, send the case to the High for Sentence.</p>	<p>While death penalty is imposed where a person is infected with the human immunodeficiency virus and at the time of the commission of the offence the person had knowledge or reasonable suspicion of the infection, this could be viewed as not just rape, so this may not be a contradiction to the Model Rape Law.</p>

	<p>First and second or subsequent conviction (<i>specifies penalty for each type of conviction for the first time and second/subsequent conviction</i>)</p> <p>A person who is convicted of an offence of a sexual nature shall, subject to the provisions of section 31, be liable -</p> <p>(a) In the case of first conviction</p> <p>(vii) where a person is infected with the human immunodeficiency virus and at the time of the commission of the offence the person had knowledge or reasonable suspicion of the infection, to the death penalty;</p>	
<p>Article 8. Aggravating circumstances</p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p> <p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <p>(i.) the offence was committed against a former or current spouse or partner;</p> <p>(ii.) the offence was committed by a member of the family or a person cohabiting with the victim;</p> <p>(iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim;</p>	<p>Sexual Offences Act 2003</p> <p>Interpretation</p> <p>2. In this Act, unless the context otherwise requires-</p> <p>... “coercive circumstances” include but are not limited to any circumstance where-</p> <p>(a) there is an application of force, whether explicit or implicit, direct, or indirect, physical, or psychological against any person or animal;</p> <p>(b) there are threats, whether verbal or through conduct, of the application of physical force to the complainant or to a person other than the complainant;</p> <p>(c) there are threats, whether verbal or through conduct, to cause harm other than bodily harm to, or to use extortion against, or public humiliation or disgrace or mental harassment, of the complainant or any person other than the complainant;</p> <p>(d) the complainant is below the age of 12 years;</p>	<p>Section 2 and Section 32 of the Sexual Offences Act 2003 of Lesotho includes a list of aggravating circumstances which are factored into penalties.</p>

<p>(iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State;</p> <p>(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:</p> <p>(i.) the offence was committed against a victim who for any reason is imprisoned or detained;</p> <p>(ii.) the offence was committed against a child or against an older person;</p> <p>(iii.) the offence was committed against or in the presence of relatives of the victim or any child;</p> <p>(iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political violence, or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation, or natural disasters;</p> <p>(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;</p> <p>(vi.) the offence was committed against a pregnant person;</p> <p>(c) the ways in which the offence is carried out:</p> <p>(i.) the offence was committed by two or more people acting together;</p> <p>(ii.) the offence, or related offences, were committed repeatedly;</p>	<p>(e) the complainant is unlawfully detained;</p> <p>(f) the complainant is affected by-</p> <p>(i) physical disability, mental incapacity, sensory disability, medical disability, intellectual disability, or other disability, whether permanent or temporary; or</p> <p>(ii) intoxicating liquor or any drug or other substance which mentally or physically incapacitates the complainant; or</p> <p>(iii) sleep,</p> <p>To such an extent that he/she is rendered incapable of understanding the nature of the sexual act or deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;</p> <p>(i) a perpetrator knowing or having reasonable grounds to believe that he/she is infected with a sexually transmissible disease, the human immunodeficiency virus or other life-threatening disease does not, before committing the sexual act, disclose to the complainant that he/she is so infected; ...</p> <p>First and second or subsequent conviction</p> <p>32. A person who is convicted of an offence of a sexual nature shall, subject to the provisions of section 31, be liable –</p> <p>(a) in a case of first conviction –</p> <p>(i) where the offence committed is exposure or display of genital organs by one person to another, the court may impose any appropriate sentence;</p>	
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<p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol, or other intoxicating substances to maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p> <p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p>	<p>(ii) where the offence is committed under other coercive circumstances not referred to under section 2, to imprisonment for a period of not less than eight years;</p> <p>(iii) where the offence is committed under section 3 and the circumstances are as described in the definition of coercive circumstances in paragraph (a), (b), (d), (e), (f) or (i) of section 2, to imprisonment for a period of not less than ten years;</p> <p>(iv) where the convicted person is infected with human immunodeficiency virus or other life-threatening disease but at the time of the commission of the offence had no knowledge or reasonable suspicion of the infection, to imprisonment for a period of not less than ten years;</p> <p>(v) where the offence is committed under section 9, to minimum imprisonment of fifteen years;</p> <p>(vi) where the offence is committed under Parts III, IV and V by a person who is 18 years or above, to imprisonment for a period of not less than 10 years;</p> <p>(vii) where a person is infected with the human immunodeficiency virus and at the time of the commission of the offence the person had knowledge or reasonable suspicion of the infection, to the death penalty;</p> <p>(viii) where –</p> <p>(aa) the complainant has suffered grievous bodily or mental harm as a result of the offence;</p> <p>(bb) the complainant-</p> <p>(A) is under the age of 12 years; or</p> <p>(B) is by reason of disability exceptionally vulnerable;</p>	
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	<p>(cc) the convicted person has a sexually transmissible disease and at the time of the commission of the offence was aware of the sexually transmissible disease;</p> <p>(dd) the convicted person is one of a group of two or more persons participating as an actual perpetrator or accessory in the commission of the offence; or</p> <p>(ee) the convicted person uses a firearm or any other weapon or harmful instrument for the purpose of or in connection with the commission of the offence, to imprisonment for a period of not less than fifteen years;</p>	
<p>Article 9. Mitigating circumstances</p> <p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions, or so-called honour that are contrary to international human rights law in cases of rape.</p> <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim’s family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p> <p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator’s family or community, to compensate for the harm.</p>		<p>Based on research conducted for this report, the legislation does not include the mitigating circumstances that should be prohibited from inclusion in cases of rape.</p>

<p>© character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p>		
<p>Article 10. Withdrawal of parental rights</p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p> <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child’s right to enjoy any benefit accruing from their paternity.</p>		<p>Based on research conducted for this report, legislation specifically addressing withdrawal of parental rights was not identified.</p>
<p>C. Investigation, prosecution, and trial</p>		
<p>Article 11. Victim-centred approach</p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are</p>	<p>Sexual Offences Act 2003</p> <p>Right of complainant in bail application</p> <p>28. (1) A complainant shall have a right to –</p>	<p>Section 28 of the Sexual Offences Act 2003 of Lesotho states the right of a complainant in the case of rape. No particular legislation on minimizing the number of interviews and examinations to collect medico-legal</p>

<p>supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p> <p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p> <p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice unless a reasoned decision has been made to the contrary.</p>	<p>(a) attend any proceedings where the question considered is whether an accused who is in custody is to be released on bail or, if bail has been granted to the accused, whether any further condition of bail is to be imposed or whether any such condition of bail is to be amended or supplemented; and</p> <p>(b) request the prosecutor in the proceedings to present any information or evidence to the court that may be relevant to any question under consideration by the court in the proceedings.</p> <p>(2) If an accused is in custody, the investigating officer or prosecutor shall, as soon as possible, inform the complainant of –</p> <p>(a) the place, date, and time of the first appearance of the accused in court; and</p> <p>(b) the rights of the complainant under subsection (1).</p>	<p>evidence or provision of free legal aid was identified.</p>
<p>Article 12 – Child victims and witnesses of rape</p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p>(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p>(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure</p>	<p>Sexual Offences Act 2003</p> <p>Proceedings held in camera.</p> <p>23(3) Where the complainant is a child, the court shall take into consideration, and act in accordance with, the best interests of the child.</p>	<p>Section 23 of the Sexual Offences Act 2003 of Lesotho states that the court shall take into consideration and act in accordance with the best interest of the child complainant. Based on research conducted for this report, legislation specifically addressing the treatment witness of rape was not identified.</p>

<p>high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.</p> <p>(v.) A child victim or witness shall have the right to express his or her views, opinions, and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.</p> <p>(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:</p> <p>(i.) At his or her request;</p> <p>(ii.) At the request of his or her parents or guardian;</p> <p>(iii.) At the request of the support person, if one has been designated;</p> <p>(iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child.</p> <p>(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:</p> <p>(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;</p>		
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<ul style="list-style-type: none"> (ii.) Requesting restraining orders from a competent court; (iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions; (iv.) Requesting an order from a competent court to place the accused under house arrest; (v.) Requesting protection for a child victim or witness by the police or other relevant agencies: (vi.) Making or requesting from competent authorities’ other protective measures that may be deemed appropriate 		
<p>Article 13. Investigation</p> <ul style="list-style-type: none"> (a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime; (b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint; (c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases; (d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services; (e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy. (f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to 	<p>Sexual Offences Act 2003</p> <p>Special duties of prosecutor</p> <p>29. In criminal proceedings where an accused is charged with an offence of a sexual nature, the prosecutor shall consult with the complainant in the proceedings in order to –</p> <ul style="list-style-type: none"> (a) ensure that any information relevant to the trial is obtained from the complainant, including information relevant to the question whether the accused is to be released on bail and, if the accused were so released, whether any conditions of bail are to be imposed; (b) orientate the complainant with the court structure and procedures; and (c) provide any information to the complainant necessary to lessen the impact of the trial on the complainant. 	<p>Section 23 of the Sexual Offences Act 2003 of Lesotho sets forth special duties of prosecutor on the complainant in the proceedings of a rape case. Based on research conducted for this report, legislation specifically addressing the other investigation aspect of rape was not identified.</p>

<p>the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;</p> <p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p>		
<p>Article 14. Ex officio prosecution</p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p> <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p>		<p>Based on research conducted for this report, legislation specifically addressing ex officio prosecution was not identified.</p>
<p>Article 15. Timely and without undue delay</p> <p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly, and impartially;</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p>		<p>Based on research conducted for this report, legislation specifically addressing Article 15 was not identified.</p>

<p>Article 16. Evidentiary requirements, rape shield provisions</p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim’s past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable, and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p> <p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p>	<p>Sexual Offences Act 2003</p> <p>Evidence of sexual experience, activity, or reputation</p> <p>26. (1) Evidence of a complainant’s sexual experience, activity or reputation with any other person other than the accused may not be admissible in criminal proceedings unless – (a) the identity of the accused is in issue; (b) the complainant is concealing the identity of the real perpetrator; (c) the evidence is relevant to explain the presence of semen, vaginal fluid, injury or pregnancy of the complainant; or (d) the evidence is relevant to show that the complainant was not a virgin before the sexual act in issue.</p> <p>Cross-examination of sexual experience, activity, or reputation</p> <p>27. Cross-examination of complainant’s sexual experience, activity or reputation shall not be allowed in criminal proceedings unless – (a) the identity of the accused is in issue; (b) the complainant is concealing the identity of the real perpetrator; (c) the evidence is relevant to explain the presence of semen, vaginal fluid, injury or pregnancy of the complainant; or (d) the evidence is relevant to show that the complainant was not a virgin before the sexual act in issue.</p> <p>Sexual Offences Act 2003</p> <p>Delay between commission of sexual act and laying of complaint.</p> <p>20. In criminal proceedings at which an accused is charged with an offence of a sexual nature, the court shall not draw any adverse inference only from the length of the delay between the commission of the sexual act and the laying of a complaint.</p>	<p>Sections 20, 26-27 of the Sexual Offences Act 2003 of Lesotho set out the treatment of evidence in rape cases. However, there are no specific provisions on Article 16(b), (c) and (d).</p>
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<p>Article 17. Statutory Limitations</p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p>	<p>No equivalent provisions.</p>	<p>Based on research conducted for this report, the legislation does not include any statutory limitations on the prosecution of rape.</p>
<p>Article 18. Jurisdiction and Cooperation between States</p> <p>States should:</p> <ul style="list-style-type: none"> i. Establish jurisdiction over offences of rape when the offence is committed: <ul style="list-style-type: none"> ii. in their territory; or iii. on board a ship flying their flag; or iv. on board an aircraft registered under their laws; or v. by one of their nationals. <p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances, or humanitarian crises.</p> <p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating, and prosecuting all rape cases, protecting, and providing assistance</p>	<p>Sexual Offences Act 2003</p> <p>Extra-territorial jurisdiction</p> <p>35. A person who, while being a citizen or a resident of Lesotho, commits an unlawful sexual act outside Lesotho in relation to another citizen or resident of Lesotho commits an offence and is triable in the courts of Lesotho.</p>	<p>Section 35 of the Sexual Offences Act 2003 of Lesotho sets out the extra-territorial jurisdiction of the State in the prosecution of unlawful sexual acts. However, there are no specific provisions on inter-state cooperation or rape committed in the context of conflict or humanitarian crises.</p>

<p>to victims and providing mutual legal and other necessary assistance in criminal matters, extradition, and enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.</p>		
<p>Article 19. Prohibition of mandatory reconciliation or mediation</p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p>	<p>No equivalent provision for Article 19, though there is a similar provision as Article 19(b) set out below:</p> <p>Sexual Offences Act 2003</p> <p>Suspension of sentence</p> <p>34. (1) If a minimum sentence referred to under section 32 is applicable in respect of a convicted person, the court shall not suspend, wholly or in part, the operation of the sentence: Provided that, if the sentence imposed upon the convicted person exceeds the minimum sentence, the court may suspend, wholly or in part, the excess of the minimum sentence.</p>	<p>Based on research conducted for this report, the legislation does not include any prohibition of mandatory reconciliation or mediation for rape, or provisions on plea bargain.</p>
<p>Article 20. Victim-centred protection measures</p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members and witnesses from intimidation, retaliation, and secondary victimization, including through physical protection of victims and their family members where necessary;</p> <p>(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by</p>	<p>Sexual Offences Act 2003</p> <p>Proceedings held in camera.</p> <p>23. (1) In criminal proceedings under this Act, the court before which such proceedings are held shall, to the extent authorised by the provisions of section 12 of the Constitution, direct that any person whose presence is not necessary at such proceedings, not be present, unless the complainant and the accused otherwise request.</p> <p>(3) Where the complainant is a child, the court shall take into consideration, and act in accordance with, the best interests of the child.</p> <p>Cross-examination through the court</p> <p>24. Notwithstanding the provisions of any other law to the contrary, the cross examination of any witness under the age</p>	<p>Sections 23 to 29 of the Sexual Offences Act 2003 of Lesotho set forth some victim-centred protection measures in the proceedings of a rape case. However, the protection offered by the laws of Lesotho is not as comprehensive as Article 20: there are no equivalent provisions to Article 20(b), (e), (f)(i), (f)(iii), (f)(vi), (f)(vii).</p>

<p>utilizing witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);</p> <p>(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;</p> <p>(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;</p> <p>(e) Enabling victims to exercise their right to legal aid, interpretation, and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.</p> <p>(f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:</p> <p style="padding-left: 40px;">(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</p> <p style="padding-left: 40px;">(ii.) ensuring the presence of parents or a person trusted by the child while recording a child's testimony, which could include representatives from specialist civil society</p>	<p>of 18 years shall take place only through the judicial officer, who shall restate the questions put to such witness or, in the judicial officer's discretion, simplify or rephrase such questions.</p> <p>Prohibition of publication of information</p> <p>25. (1) Where a court directs under section 23 that any person or class of persons shall not be present at criminal proceedings, no person shall publish any information which may reveal the identity of a complainant or accused in the proceedings.</p> <p>(2) Subject to subsection (1), a judicial officer may authorise the publication of the information if the judicial officer is of the opinion that – (a) the publication is just and equitable; or (b) the complainant or accused is 18 years of age or above the age of 18 years.</p> <p>(3) No person shall, at any stage from the time of the commission of the offence to the appearance of an accused in a court upon any charge or at any stage after such appearance but before the accused has pleaded to the charge, publish any information which may reveal the identity of the complainant with or in relation to whom the offence is alleged to have been committed.</p> <p>(4) A person who publishes any information in contravention of this section, commits an offence and is liable on conviction to a fine not less than M1000 or to imprisonment for a period not less than three months or both.</p> <p>Rights of complainant in bail application</p> <p>28. (9) If an accused who is in custody is released on bail, the court may add further conditions of bail to ensure that the accused does not make contact with the complainant.</p>	
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<p>organizations working to address or support victims of rape; and</p> <p>(iii.) in the case of victims with physical, psychological, mental, or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist, or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support and covering travel expenses incurred.</p> <p>(vii) Ensuring that protection orders are efficient, available, and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p>	<p>Special duties of prosecutor</p> <p>29. In criminal proceedings where an accused is charged with an offence of a sexual nature, the prosecutor shall consult with the complainant in the proceedings in order to – (a) ensure that any information relevant to the trial is obtained from the complainant, including information relevant to the question whether the accused is to be released on bail and, if the accused were so released, whether any conditions of bail are to be imposed; (b) orientate the complainant with the court structure and procedures; and (c) provide any information to the complainant necessary to lessen the impact of the trial on the complainant.</p>	
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