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Sixty-fifth session

SUMMARY RECORD OF THE 1743RD MEETING

Held at Headquarters, New York,
on Thursday, 1 April 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. AMOR
(Vice-Chairperson)

later: Ms. MEDINA QUIROGA
(Chairperson)

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The meeting was called to order at 10.10 a.m

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Lesotho (CCPR/ C/ 81/ Add. 14)

1. At the invitation of the Chairperson, Ms. Chabane, Mr. Kasozi, Mr. Mingoela, Mr. Mchochoko, Mr. Mfolo, and Mr. Mtanyane took places at the Committee table.
2. Mr. MOTANYANE (Lesotho) said that his introductory statement was intended to complement the report by providing information on events which had occurred after it had been submitted and, in particular, after 23 May 1998.
3. First, however, he wished to inform the Committee that the provisions of the Covenant were not directly enforced by the courts, since Lesotho followed the English common law system, whereby international conventions and covenants were not self-executing. To be enforced, they had to be transformed into domestic laws by Parliament or into regulations by administrative bodies. A workshop organized by the Commonwealth Secretariat in August 1995 had recommended that the 1989 Harare Declaration of Human Rights, endorsing the Bangalore Principles, should be accepted as offering guidelines on domestic application of international human rights norms. The principles provided that national courts generally had regard to international human rights norms, whether or not incorporated into domestic law, to resolve ambiguity in national constitutions and legislation. Nevertheless, in the event of conflict with national law, the latter took precedence.
4. Although Lesotho did not have a specific code facilitating implementation of the Covenant, chapter II of the Constitution provided for the protection of the fundamental human rights and freedoms set forth in the Covenant and, accordingly, could be considered an implementation mechanism.
5. In recent events, Lesotho's fourth Parliament had been dissolved on 27 February 1998, in preparation for the May 1998 general elections. In early May, several parties had filed proceedings alleging irregularities. The High Court had found against the plaintiffs and the case had gone to the Court of Appeal which dismissed it. General elections, organized by the Independent Electoral Commission, had been held on 23 May, with the participation of 13 political parties and 11 independent candidates. The elections had been declared free and fair by national and international observers and resulted in the Lesotho Congress for Democracy being returned in 79 constituencies and the Basotho National Party in one. An alliance of opposition parties had alleged that there had been serious irregularities at various stages of the proceedings and had filed petitions in the Court of Disputed Returns with regard to 14 constituencies.
6. On 4 August 1998, the alliance had organized a protest march to the Royal Palace to ask the King to intervene by dissolving the Government and forming a government of national unity which would organize new elections. The protesters

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had remained in front of the palace gates for 42 days. During that time, there had been armed confrontations with the police resulting in deaths and injuries. Government offices had been closed, Parliament and the courts had stopped functioning and there had been a total breakdown of law and order; consequently, serious violations of human rights had occurred.

7. On 10 August, the opposition parties had invited the South African Deputy President to Lesotho to mediate the situation; he had suggested that there should be an independent audit of the election results. Subsequently, the Government and the opposition parties had reached an agreement to seek to normalize life in the capital, to allow humanitarian relief to reach those most affected and to commit themselves to the recommended election audit.

8. A commission of inquiry into the conduct and results of the May 1998 general elections (the Langa Commission) had been established, made up of experts from three Southern Africa Development Community (SADC) countries, Botswana, South Africa and Zimbabwe. Its terms of reference had been to examine all matters relating to the alleged irregularities and recommend to SADC possible solutions to the situation. The report, released on 17 September 1998, had found that there had been a number of irregularities; however, it had stopped short of declaring the elections invalid, as there was no conclusive proof that the results had been fraudulent or did not reflect the will of the electorate.

9. Meanwhile, the security situation had been further complicated by a mutiny of junior officers of the Lesotho Defence Force on 11 September 1998. The Government had invited the SADC countries to intervene to restore law and order, and SADC forces had entered Lesotho on 22 September. As a direct result of the conflict nearly 100 people had been killed, 200 had been injured, 1,000 had been displaced and over 4,000 had lost their employment. Moreover, the economic cost of damage caused during the intervention had been considerable, as government buildings and property, including part of the High Court building and the Civil Registry, had been destroyed. An agreement between the Government and the opposition parties, brokered by the SADC delegation, had finally been reached on 2 October. It had been agreed that new elections would be held within 15 to 18 months and that all parties would respect the results.

10. On 14 October 1998, it had been further agreed that a structure (the Interim Political Authority) would be established to facilitate the preparation and holding of elections; additional responsibilities were to be established by technical teams. A timetable for the implementation of the agreement had been agreed upon, and it had been established that general elections would be held within a period of 18 months from the date of the Interim Political Authority Act.

11. As a consequence of the situation he had described, Lesotho was faced with even greater challenges to ensure that its people could enjoy the rights and freedoms enshrined in the Constitution. His country remained committed to strengthening knowledge and understanding of human rights and related national and international legal instruments. For example, the Danish Centre for Human Rights was providing support for the promotion of human rights and the development of sustainable democracy through the consolidation of democratic

institutions. Furthermore, the Law Reform Commission had been mandated to examine issues where there were perceived discriminatory practices under customary law, which was the law of the country.

Constitutional and legal framework within which the Covenant is implemented (article 2 of the Covenant)

12. The CHAIRPERSON read out the questions relating to the issue: status of the Covenant in national law and instances of the Covenant being directly invoked in courts; compatibility of the Constitution and the Covenant in a state of emergency; implications of the 1994 Memorandum of Understanding between the King and the Prime Minister to restore constitutional order for the obligations of Lesotho under the Covenant; ratification of the Optional Protocol; compatibility of the Constitution with articles 3 and 26 of the Covenant, regarding discrimination under customary law and with article 26 of the Covenant regarding aliens; establishment of an independent statutory body to investigate complaints of human rights violations.

13. Mr. KASOZI (Lesotho) said that international human rights conventions and instruments were not enforced directly by the courts in Lesotho since, under the English common law system, they had to be transformed into domestic legislation by Parliament. The Covenant had not been directly invoked in courts; however, in the case of Mlapo versus the Director of Public Prosecutions, in his obiter dicta, the justice had referred to the bill of rights being entrenched in the Constitution of Lesotho, thereby making an indirect reference to the Covenant.

14. Mr. MOCHOCHOKO (Lesotho) said that section 21(1) of the Constitution sought to balance the protection of fundamental human rights and the interests of the community in situations of emergency or war. It could not be used as a pretext for imposing arbitrary limitations on the exercise of human rights and freedoms. Therefore, there was no incompatibility between the Constitution and the Covenant. The principle of legality presumed the obligation of all those holding State authority to administer justice in accordance with the law. The rule of law held that human rights and freedoms were absolute and limitations were exceptional. Consequently, Lesotho would apply a restrictive interpretation of any measure which sought to limit the enjoyment of human rights guaranteed by the Constitution. Lesotho believed in the supremacy of the courts and that they would protect human rights. The delegation was open to recommendations as to how the provisions of the Constitution could be brought more in line with the Covenant.

15. Mr. KASOZI (Lesotho) said that the Memorandum of Understanding concluded in 1994 between the King and Prime Minister provided that its foreign guarantors would remain directly involved in the process of restoring constitutional order; non-governmental religious and traditional bodies would be consulted; the Commission of Inquiry into the monarchy would be cancelled and King Mshoeshoe II would be reinstated; no action would be taken against King Letsie III; members of the August provisional council would be indemnified; the 1993 Constitution would be observed, especially in relation to human rights; laws and constitutional provisions regarding the public and security services would be respected; and all parties would respect the political neutrality and loyalty of the security forces and the judiciary. The Interim Political

Authority Act appeared not to affect Lesotho's obligations under the Covenant; however, the Committee should notify the delegation if it felt otherwise.

16. Mr. MOTANYANE (Lesotho) said that translation of the Covenant into the Sesotho language had taken longer than anticipated; however, steps would soon be taken to ratify the Optional Protocol.

17. Mr. MOCHOCHOKO (Lesotho) said that the principles of equality before the law and equal protection under the law remained the basic premises for the protection of human rights under the Constitution. Lesotho was a party to most of the basic United Nations instruments on the prevention of discrimination. Although customary law had had to be taken into account in drafting the Constitution, current practice was actually far ahead of that law. With regard to aliens, some distinctions were permitted in limited circumstances where certain legal provisions were not applicable to non-nationals; such distinctions could therefore not be viewed as discriminatory.

18. Mr. KASOZI (Lesotho) said that in September 1995 the Government had approved the establishment of a Human Rights Unit within the Ministry of Justice and Human Rights, as well as of a human rights commission. While the Government deemed such a commission to be a crucial body, its constitution had been delayed owing to the numerous problems faced by the Government in recent years, but would be accomplished in the near future.

Gender equality (article 3 of the Covenant)

19. The CHAIRPERSON read out the questions relating to the issue: programmes to stimulate gender equality, including public- and private-sector "equal pay for equal work" programmes; actions to eliminate violence against women; measures to eradicate female genital mutilation; legislation criminalizing domestic violence and marital rape; actions to redress severe restrictions on women's inheritance and property rights under customary law; actions to redress the consideration of women as minors under the Roman Dutch Law of Lesotho; and the participation of women in public life.

20. Ms. CHABANE (Lesotho) said that the Government had been concerned with gender issues for a long time. Gender awareness and sensitization had been recognized as critical elements of the Government's efforts to improve overall national efficiency and effectiveness. The Ministry of Environment, Gender and Youth Affairs had begun drafting a gender policy to enhance those efforts.

21. With regard to "equal pay for equal work" programmes, the 1992 Labour Code stated that men and women should receive equal remuneration for work of equal value. That stipulation was respected in both the public and private sectors.

22. Violence against women, particularly domestic violence, was one of the major challenges faced by the Government, and attempts to deal with it were being made by the Ministry of Environment, Gender and Youth Affairs. No measures had been taken against female genital mutilation, however, owing to the lack of evidence regarding the practice in Lesotho.

23. Mr. MOCHOCHOKO (Lesotho) said that even though customary law excluded women and girls from inheriting property, in practice all children could inherit property without regard to birth order or gender.

24. Furthermore, the high rate of male absenteeism prevalent in Lesotho had had the effect of opening more opportunities for women to play productive roles in rural development, agriculture and the public and private sectors. As a result, the Law Reform Commission had been asked to assign priority to the consideration of customary laws discriminating against women and was currently preparing its recommendation on ways to deal with those laws.

25. Mr. MANGOAELE (Lesotho) said that no statistics were available on the participation of women in the education sector, but in the judicial services, one female judge and eight male judges served in the High Court, six female and three male judges served in the Registrar's Court, 15 women and 21 men served in the Magistracy of the Ministry of Justice and Human Rights, and one woman and three men served as Judicial Commissioners. Three women and five men served in the Civil Section of the Law Office, four women and six men served in the Criminal Section of the Law Office, seven women and two men served in the Registrar General's Office, and four women and one man served in the Drafting Section. Women's general participation in public life had increased in recent years, with never fewer than three women serving simultaneously as permanent secretaries of government departments since 1993. Moreover, one of the 15 current Ministers was a woman, as was the Deputy Speaker of Parliament and three of the 80 parliamentarians.

Right to life (article 6 of the Covenant)

26. The CHAIRPERSON read out the questions relating to the right to life: capital punishment and its abolition, particularly for pregnant women and minors; immunity for members of the security forces for certain activities before 17 August 1994, prosecution of military and law enforcement officials for killings during the 1995 mutiny and implementation of the recommendations of the Commission of Inquiry; mechanisms to deal with complaints of torture and ill-treatment by police and security forces; grounds for and length of pre-trial detention and measures to deal with the case backlog; actions to secure minimum prison conditions; and disciplinary action against law enforcement agencies holding persons in pre-trial detention for more than 48 hours.

27. Mr. KASOZI (Lesotho) said that the crimes of murder, rape and treason carried the penalty of capital punishment under civilian law, and mutiny, cowardice, aiding the enemy and communication with the enemy carried that penalty under martial law. In practice, the death penalty was rarely applied and was usually commuted to life imprisonment.

28. Mr. MOFOLO (Lesotho) said that Order No. 2 of 1994 had sought to indemnify the perpetrators of the coup; however, the killing of Deputy Prime Minister Baholo during that coup was under police investigation, and the culprits involved would be punished. Approximately eight police officials responsible for killings during the 1995 mutiny were on remand awaiting trial, in accordance with the recommendations of the Commission of Inquiry appointed to investigate that incident. The recommendations of the Ramodibedi Commission had been or

were being implemented, in that a more intensely trained riot control unit had been constituted within the police force, and appropriate equipment was increasingly being provided to quell riot situations.

29. Section 22 of the Police Service Act of 1998 had established a Police Complaints Authority charged with investigating complaints against the police and reporting its findings to the Ministry for Home Affairs. The law courts had awarded compensation to proven victims of police misconduct, and the human rights commission currently being constituted was intended to complement the Police Complaints Authority in cases of torture and ill-treatment by the police. Furthermore, the authority to make arrests had been denied the national security forces since 1996, and had been made the exclusive province of the civilian police.

30. Mr. MOTANYANE (Lesotho) said that the period of pre-trial detention provided for under the Constitution was 48 hours but could be extended by court order if the authorities had reasonable suspicion that the detainee had committed or was about to commit a criminal offence.

31. Among other measures taken to reduce the case backlog since 1994, the Government had increased the number of High Court judges from four to nine, recruited more magistrates and prosecutors, provided new and improved court facilities, engaged specialized personnel to assist in the prosecution of serious economic crimes and proposed the establishment of a Commercial Crimes Court.

32. The Ministry of Justice and Human Rights had begun training programmes for prison warders on human rights and the administration of justice. Construction of modern prison facilities conforming to minimum requirement standards under the Covenant was also under way.

33. Mr. MFOLO (Lesotho) said that while no actions had been taken against police officials holding persons in pre-trial detention for more than 48 hours, the Ministry of Justice and Human Rights was taking steps to make police officers, especially at junior rank, aware of their duty to comply with the provisions of the law in that regard.

34. Mr. AMOR thanked the delegation for its report, and said that the report had raised a number of questions related to human rights, particularly that of the role of the national Constitution and the subordination of the military and of law enforcement officials to civilian authority. Regardless of its domestic difficulties, Lesotho remained bound by the commitments it had undertaken under the Covenant.

35. He had been struck by the tendency in the security forces to display insubordination towards political authority, a tendency which gave the impression that some members of the security forces enjoyed a kind of impunity for their actions. He had also been struck by the assertion by Justice Mqutu, quoted in the report, that "the police had turned into a bandit cooperative", subjecting the public to intolerable conditions.

36. Furthermore, while the status of women might reflect long-standing tradition, their status as minors could not be justified. It was incumbent on Lesotho to eliminate discrimination against women.

37. Mr. KLEIN thanked the delegation for the frankness and clarity of its report and underlined the need to rebuild civil society in Lesotho. He asked for confirmation that the general elections would be held within 18 months of November 1998 and that political parties of any type would be eligible to participate in those elections.

38. The constraints on the direct invocation of the Covenant under Lesotho law necessitated a closer look at the country's existing legal norms, particularly its Constitution. The question that arose concerned not so much the existence of rights, but the limitations that could be imposed on them under that Constitution. The ways in which the constitutional limits could be compared to those provided for under the Covenant could be divided into the following four broad categories:

39. First, constitutional limitations which, although applied as necessary in a practical sense in a democratic society, were so broad and unclear as to afford excessive discretion to authorities wishing to evade their responsibilities to respect the rights in question. As examples, he cited those contained in sections 7 (3)(a) on freedom of movement, 15 (3) on freedom of peaceful assembly, 16 (3) on freedom of association, and 21 (1) concerning derogation from fundamental human rights and freedoms.

40. The second category comprised limitations clearly unknown to the Covenant but associated in every case with references to customary law. Sections 7 (6) on freedom of movement, 8 (2) on freedom from inhuman treatment and 18 (4)(c) on freedom from discrimination were among several instances of such limitations, which gave the overall impression that customary law took precedence over written law and thus also over the rights guaranteed under the Covenant.

41. The third category comprised limitations not equivalent to those provided for in the Covenant. As an example of such discrepancies having the effect of removing protection from rights guaranteed under the Covenant, he compared the limitations in section 13 (5) of the Constitution, on freedom of conscience, with those in article 18 (3) of the Covenant limiting only the manifestation of religion or beliefs. Similar comparisons could be made between constitutional sections 15 (2) and (3) on freedom of peaceful assembly and 16 (2) and (3) on freedom of association and Covenant articles 21 and 22.

42. The fourth category comprised several formulations in the Constitution that had the effect of reversing the burden of argument found in the Covenant. While the Covenant held that a given right was protected but might be limited under certain circumstances, the Constitution's use of phrases like "nothing done under the authority of any law shall be held inconsistent with" a given right (to the extent that such law made certain specific provisions) constituted a very different approach to the relationship between rights and limitations.

43. In view of the fact that the protection of rights guaranteed under the Covenant depended on domestic law, and particularly on the Constitution, he

recommended that the Government of Lesotho should undertake a thorough survey of the compliance of its domestic law and Constitution with the provisions of the Covenant, and ensure the impact of international legal norms, especially the Covenant, on domestic law. It should also multiply its efforts to provide all the authorities with an adequate legal education, and establish the Human Rights Commission as soon as possible.

44. In conclusion, he noted that the provisions for corporal punishment outlined in paragraph 83 of the report did not conform to article 7 of the Covenant; he expressed strong dissatisfaction with the delegation's reply concerning female genital mutilation; and, in view of the mention of the detention of children in paragraph 86 of the report, he requested clarification of the age of criminal responsibility in Lesotho.

45. Mr. BUERGENTHAL also expressed his appreciation for the delegation's candour and the Government's apparent commitment to improving the human rights situation in Lesotho. However, he reiterated Mr. Amor's observation that Governments were responsible under international law for human rights violations committed on their territories by their security forces, police or military, and that Governments were obliged to do everything in their power to prevent such violations. He commended the Government for undertaking human rights training and sensitization programmes designed to reduce lawlessness on the part of the police, security forces and jail wardens; he noted, however, that such programmes alone could never achieve their desired purposes unless accompanied by exemplary punishment of those guilty of serious human rights violations, something which the report itself admitted had yet to be carried out in Lesotho. While the situation appeared to be improving, the report at times gave the impression of a country under the occupation of its own military and security forces.

46. He asked what role the courts played during states of emergency. Section 21 of the Constitution stipulated that persons detained under Acts of Parliament during such situations had a right to a hearing by tribunals appointed for the investigation of their cases; however, paragraph (3) of that section provided that the tribunal could only make non-binding recommendations. He wondered whether those tribunals could prevent the execution or torture of detainees and whether individuals could challenge in the courts the legality of the proclamation of a state of emergency.

47. While he understood that international instruments were not self-executing under Commonwealth systems and that not all of the provisions of the Covenant had been incorporated into the legislation of Lesotho, States had an obligation to bring domestic law into line with the Covenant; he wondered whether any effort had been made to take appropriate measures. Furthermore, he did not understand the principle of legality as it concerned Lesotho's obligation to comply with the provisions of the Covenant.

48. Lastly, he asked the delegation to provide information on the composition and powers of the Police Complaints Authority and to state whether it included any civilian members.

49. Lord COLVILLE said that although the legislation of Lesotho provided adequate protection, it was not always enforced and that the State party had a duty to provide victims of violations under the Covenant with appropriate remedies. In that regard, he paid tribute to the exceptionally high quality of the judiciary and to its success in dealing with some of the problems that had arisen.

50. There had been serious violations of the rights of the junior army officers court-martialled in connection with the September 1998 mutiny. It was not until November of that year that they had been given access to lawyers, charges had been brought against them and a timetable for the trial set. Moreover, the detainees had been imprisoned under conditions that had led Justice Cullian, former Chief Justice of Lesotho and adviser to the Court Martial, to complain. He wondered why it had taken so long to rectify the situation, whether the defendants could really receive a fair trial since the Court Martial was composed of five members of the very Defence Force against which they were accused of having mutinied and how such a situation could be considered compatible with article 14 (1) of the Covenant.

51. In 1996, a serious incident at a hydroelectric camp at Butabute had led to several deaths. An interim inquiry conducted in November 1996 had produced little in the way of results; only in January 1998 had recommendations been made and implemented. He asked why it had taken two years for the State to conclude that the police had overreacted and to take disciplinary action against some of the officers involved.

52. Like Mr. Buergethal, he wondered whether the new Police Complaints Authority had any civilian members. Furthermore, given that the Authority was responsible for investigating complaints against police officers and reporting thereon to the police authorities, he asked what action had been taken on such reports, noting that systems under which the police were responsible for investigating complaints against their own members had proved less than successful throughout the world.

53. Lastly, he asked the delegation to comment on section 42 of the 1981 Criminal Procedure and Evidence Act, which allowed any police officer or authorized private person not only to arrest, but to shoot to kill, persons suspected of committing a list of offences which included, inter alia, fraud, forgery, sodomy, indecent assault, breaking and entering at night and receiving stolen goods. Such a measure could not possibly be proportionate, even as a last resort, and constituted a serious violation of article 6 of the Covenant.

54. In the absence of the Chairperson, Mr. Amor (Vice-Chairperson) took the Chair.

55. Mr. BHAGWATI said that while the five-year delay in submission of the initial report of Lesotho could be explained in part by the political turmoil in that country prior to September 1994, there was no justification for the continued delay beyond that date. The Committee's consideration of the report was intended to initiate a constructive dialogue with a view to fuller compliance with the State party's obligations under the Covenant. Furthermore, some of the questions contained in the list of issues submitted to the

delegation (CCPR/ C/ 65/ Q/ LSO/ 1) had not received a satisfactory response, perhaps because of time constraints.

56. Section 18 (4) of the Constitution included a number of exceptions to the prohibition of discrimination which were not justified under the Covenant. Furthermore, the derogation from section 18 authorized under section 21 (1) of the Constitution was an express violation of article 4 of the Covenant, which stated that derogations from States parties' obligations under the Covenant during times of public emergency must not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.

57. He also wondered whether any legislation prohibited capital punishment in the case of pregnant women and minors.

58. He shared the concerns raised by Mr. Buergenthal and Lord Colville in relation to the new Police Complaints Authority and, in particular, he wondered whether it was independent or under the authority of a Minister. The delegation had mentioned the Bangalore Principles, of which he was an architect; he asked whether the courts had ever referred to those principles or to international human rights norms in interpreting domestic law. It would also be useful to know what stage had been reached in the proposal to establish a human rights commission and whether a bill was currently before Parliament.

59. Lastly, he had been surprised by the delegation's statement that it was unaware of any cases of female genital mutilation in Lesotho since the Government had informed the Special Rapporteur on violence against women during the latter's visit to Lesotho that such mutilation was still practised in places where girls and women were sent to initiation schools and was not carried out in sterile surroundings. He asked what steps the Government proposed to take to end that despicable practice.

60. Mr. YALDEN said that he agreed with Mr. Buergenthal's comment on the refreshing frankness of the report; he also agreed, however, with Mr. Bhagwati's statement that the delegation's replies to the questions contained in the list of issues had been somewhat brief.

61. The delegation had stated that a Human Rights Unit had been established within the Ministry of Justice and Human Rights. He asked the delegation to provide further information on the Unit's functions, jurisdiction and authority and wondered how effective its dissemination of human rights information to the police and security forces had been in helping them to improve their human rights record. He hoped that the constitution of an independent human rights commission would not be long delayed and wondered whether, in the meantime, any agency other than the courts was empowered to deal with human rights complaints.

62. According to the delegation, gender equality and the principle of equal pay for work of equal value were mandated by law. He wondered whether any governmental or independent agency was responsible for monitoring de facto implementation of those provisions and noted that States parties were asked to report not only on their legislation, but also on actual practice and on problems encountered.

He noted that very few women had been elected to public office and wondered how many women candidates there had been in the most recent elections. He also asked the delegation to discuss the consequences for women of the fact that 22 of the 33 seats in the Senate were reserved for tribal chiefs. Lastly, he called for an explanation of the delegation's surprising statement that it had no statistics on women's employment in the education sector.

63. Ms. EVATT said that since the Covenant had not been incorporated into domestic law, the Committee must look to the Constitution and the courts' interpretation thereof in determining to what extent the rights established in the Covenant were protected in Lesotho. It was disappointing that, despite the delegation's reference to the Bangalore Principles, the courts had shown little regard for international human rights principles in their interpretation of the Constitution; such an approach seemed necessary in certain areas, including, as Mr. Bhagwati had noted, the legislation concerning states of emergency.

64. The delegation had stated that one purpose of the Interim Political Authority was to create a level playing field. She wondered whether that implied the possible introduction of an electoral voting system that would give opposition parties a better chance of achieving representation, since they currently held only one of the 80 seats in Parliament.

65. The questions on women contained in the list of issues prepared by the Committee were broad in scope and included not only legislation, but also attitudes, traditions and cultural practices. It was difficult to detect in the delegation's replies any real commitment to reform in those areas, and the report showed little awareness of the need for change as a means of overcoming the long-standing disadvantages of women. The delegation had stated that the Law Reform Commission had been asked to consider certain gender-related issues; however, discrimination against women was permitted under the Constitution. For example, sections 37 and 40 (2) thereof limited women's rights with regard to citizenship and its transmission to their children. Moreover, paragraph 151 of the report stated that under Roman Dutch and customary law, women were relegated to perpetual minority, and thus, in her opinion, to second-class citizenship. She wondered what percentage of women were governed by customary law in Lesotho.

66. She asked whether it was true that abortion was illegal under common law, that advertising related to it was prohibited and that there were many illegal abortions and some prosecutions thereof, which contributed to a high maternal mortality rate. The delegation had stated that violence against women was embedded in culture and attitudes but had said little of the authorities' role in changing such attitudes. It was her understanding that marital rape had not been criminalized and that despite the high incidence of HIV/AIDS among men returning from long periods of work in the South African mines, married women were beaten by their husbands if they refused to engage in sexual relations or asked their husbands to use condoms.

67. It was intolerable that, in a country where equality was enshrined in the Constitution, the situation described in the questions on gender equality contained in the list of issues should continue to exist. She agreed with Mr. Yalden's remarks concerning the obstacles to women's election to the Senate and considered that there was a need for legislative change in order to increase

the number of women in Parliament. She wondered whether the monarchy could devolve upon women and whether women could become tribal chiefs.

68. With regard to Mr. Klein's question on corporal punishment, she asked whether it was still true that under the Criminal Procedure and Evidence Act, males under the age of 21 could be whipped while in custody and whether that meant that juveniles were subject to such treatment.

69. Lastly, with respect to article 9 of the Covenant, she noted that section 6 (1) of the Constitution allowed persons under age 18 or of unsound mind to be detained without the guarantee of access to the courts which was provided in the case of persons accused of criminal offences. Paragraph 68 of the report also suggested that children could be detained. She asked what protection such children received and whether they had a right to petition the courts for their release.

70. Ms. Medina Quiroga (Chairperson) resumed the Chair.

71. Mr. ANDO noted that the Land Amendment Order of 1986 introduced an element of discrimination in that a citizen of Lesotho who was not a Msotho could not hold title to land. He wondered whether the Government contemplated any measures to put an end to such discrimination.

72. With regard to equality between the sexes in civil affairs and matrimonial relations, he wished to know whether women were required to obtain permission from their husbands in order to apply for a passport to travel abroad. He would also welcome additional information on whether men and women received equal treatment in the areas of inheritance rights, matrimonial property and child custody rights.

73. The abuse of power by the police as described in paragraphs 32 to 35 of the report was deeply troubling, and the amnesty that had been granted to members of the defence forces and former members of the Lesotho Liberation Army who had killed and maimed persons demonstrating against the dissolution of the democratically elected Government merely fostered greater impunity. Not only was it essential to sensitize the security forces to the need to respect human rights but steps must also be taken to more strictly regulate their use of firearms. Lastly, he would welcome more specific information on the Government's stated intention to ratify the Convention against Torture in the not-too-distant future.

74. Ms. GAITAN DE POMBO stressed the importance of the rule of law to the protection of human rights under the Covenant. She had a number of concerns in that regard. It would be useful to know, for example, what measures had been taken to ensure that the timetable for the holding of general elections was respected. The legislative provisions governing the crime of treason should be reviewed to avoid such errors as the characterization of dissidence as treason. She regretted the delay in the establishment of a national human rights commission and wondered what connection, if any, there was between such a commission and the Lesotho Council of NGOs. She also wished to know when the Government intended to ratify the Convention against Torture. On the question of female genital mutilation, it was not enough to say in its defence that the

operation was performed clandestinely. Vigorous steps must also be taken to prevent and punish the practice. Lastly, she wondered whether international organizations, such as the Office of the United Nations High Commissioner for Refugees, were granted access to persons in detention.

75. Mr. SOLARI YRI GOYEN welcomed the announcement that the Government intended to ratify the Optional Protocol to the Covenant and to establish a national human rights commission. Nevertheless, it was clear from the report that human rights violations were still widespread in Lesotho. It was not enough to ratify the Covenant. Vigorous efforts must also be made to ensure that its provisions were respected.

76. He was deeply concerned at the discrimination to which women in Lesotho were subjected in all spheres of life. With regard to female genital mutilation, he wished to know what steps were being taken by the Government to put an end to that practice.

77. Other areas of concern included the impunity enjoyed by the security forces and the broad scope of crimes, including cowardice on the part of members of the military forces, for which capital punishment could be imposed. Charges of treason, for example, could be used as a weapon against political opponents. There had also been numerous reports of the widespread torture and ill-treatment of detainees and of extrajudicial killings. Referring to the case in which the police and security forces had fired on unarmed demonstrators and prevented ambulances from reaching the injured, he wished to know what steps had been taken to bring the guilty to justice. He would also welcome additional information on the functions of the Human Rights Unit within the Ministry of Justice and Human Rights, including whether citizens could have direct recourse to its services.

78. Mr. POCAR said that, while the report did not attempt to hide the deficiencies of the system for the protection of human rights in Lesotho and thus suggested a willingness on the part of the Government to take the Committee's recommendations into account, he would welcome more specific commitments to address the specific issues being raised by the Committee.

79. On the question of abuses and human rights violations committed by law enforcement agencies, there was need for clear and precise instructions on the use of firearms so that their use would not result in the arbitrary deprivation of life. Also, the report seemed to focus more on protecting detainees from torture rather than on suppressing and criminalizing the practice of torture. He wondered, in fact, whether national law characterized torture as a crime and, if so, how it was punished. It was not enough to ratify the Convention against Torture. Reports of acts of torture must be investigated and the perpetrators punished. In that connection, the effectiveness of the Human Rights Unit would be compromised if it were merely part of the Ministry of Justice and Human Rights. Such a body must be independent and have, inter alia, its own source of funding.

80. Lastly, it would be helpful to have some clarification of the practice of pre-trial detention, including whether the 48-hour time limit could be extended

by the court, whether the detainee was brought before the court at the time that decision was being made and whether there were limits to any extension that might be granted.

81. Mr. AMOR said that Internal Security Act No. 24 of 1984 appeared to condone extrajudicial killings and torture in certain cases. Moreover, rule 31 (1) of the Lesotho Prison Rules, by prohibiting the use of "unnecessary" force, seemed to suggest that prison officers were allowed to use "necessary" force when dealing with prisoners. Lastly, the corporal punishment provided for in the relevant national legislation was not consistent with article 7 of the Covenant, and steps should therefore be taken to bring the national legislation into line with the Covenant's provisions.

The meeting rose at 1 p.m.