

**International Covenant on
Civil and Political Rights**

Distr.
GENERAL

CCPR/ C/ SR. 1744
4 December 2000

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixty-fifth session

SUMMARY RECORD OF THE 1744th MEETING

Held at Headquarters, New York,
on Thursday, 1 April 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

CONTENTS

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

Initial report of Lesotho (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.10 p.m

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

Initial report of Lesotho (continued) (CCPR/ C/ 81/ Add.14; HRI / CORE/ 1/ Add.98)

1. At the invitation of the Chairperson, Mr. Mtanyane, Mr. Mngoaela, Mr. Kasozi, Mr. Mfolo, Mr. Mchochoko, Ms. Chabane and Ms. Mteetee took places at the Committee table.

2. The CHAIRPERSON invited the members of the delegation of Lesotho to answer questions raised at the morning meeting.

3. Mr. MANGOAELE (Lesotho) said that no statistics concerning the employment of women existed. It was known, however, that most workers in the informal sector were women, especially in textiles, electronics and footwear. Nearly all primary school teachers were women; in the secondary schools, some teachers were men. Men and women participated in the medical profession in about equal numbers. More precise figures could be provided subsequently if the Committee so wished.

4. The Government of Lesotho had been held hostage by the country's security forces and had passed through a difficult period in recent years. In 1970 the security forces had declared null and void the national elections and had suspended the Constitution. Massive human rights violations had been committed. In 1986 the army had staged a coup d'état, and had made no effort to observe human rights standards. Not until 1993 had Lesotho achieved a democratically elected Government. From 1970 to 1986 the police and security forces had taken care to recruit new members loyal to the regime; problems therefore persisted. The initial report had been submitted late not because it had been considered unimportant, but because the Government had been obliged to devote its attention to the urgent matter of survival.

5. With regard to whether the amnesty had given rise to an atmosphere of impunity, most human rights violations in Lesotho had been perpetrated not by the Government, but against it. Members of the Government had been murdered, abducted and tortured.

6. Lesotho had sought bilateral assistance with a view to improving the human rights situation, and progress had gradually been made, although many cases of human rights violations were as yet unresolved. Only now were proceedings being instituted against those who had committed crimes under former regimes, and 50 members of the security forces had recently been court-martialled. The Government had not been unaware of human rights violations; it had simply been unfeasible to redress them.

7. Various actions had been taken to resolve the problem of gender inequality. A Law Reform Commission had been established to review domestic legislation and the Constitution with a view to removing provisions that discriminated against women. The Government had also created the Ministry of Women, Youth and the

/...

Environment. Admittedly, too few women held public office: there were only three women senators. All women who had stood during recent elections had won seats.

8. Mr. MOCHOCHOKO (Lesotho) said that customary law formed part of domestic legislation, and discrimination did in fact result from entrenched customary practices. Yet, although customary laws remained on the books, many were no longer followed. For example, even though customary law established that only men should be heirs, women and girls in fact received inheritances. Similarly, women could open bank accounts, procure loans, enter into contracts and obtain passports without their husbands' permission. The main task of the Law Reform Commission was to bring legislation into conformity with accepted practice.

9. Torture was not now committed in Lesotho. A memorandum was circulating among members of the Cabinet requesting their consent to begin the process of ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The same procedure had recently been initiated for ratification of the Optional Protocol.

10. Mr. MOFOLO (Lesotho) said that members of the new Police Complaints Authority would be civilians, not police. It would conduct investigations and submit reports to the Ministry for Home Affairs. The delegation welcomed the Committee's suggestion that the Authority should also be empowered to give effect to its findings.

11. The Government was aware that the Criminal Procedure and Evidence Act contained a section which appeared to justify killings committed by police officers in cases where a culprit attempted to evade arrest. In fact, however, criminal charges were currently brought for such crimes: again, legislation lagged behind practice.

12. It was not true that following the Butabute incident ambulances had refused to carry injured protesters to hospitals. It was the case, however, that the protesters had been armed with heavy-calibre weapons and hand-grenades, which they had fortunately not used.

13. The normal period of pre-trial detention could be extended only once, for a period of 48 hours, and then only by permission of a judicial officer, who was not permitted to grant the extension unless he had visited the prisoner and observed his physical condition. New police policy in effect since mid-1998 provided that members of the police should work in partnership with the community. Strict disciplinary measures were taken against any police officer contravening that policy. Police conduct had not, however, been high on the agenda in Lesotho. The Government would welcome suggestions from the Committee with regard to ways of improving police conduct.

14. Mr. KASOZI (Lesotho) said that international norms were not self-executing. All such instruments, the Covenant among them, must be translated into national legislation. The delegation would request the Government to consider enacting legislation that would implement the terms of the Covenant; he hoped that in its next report Lesotho would report that that step had been taken.

15. The Lesotho Human Rights Commission would not be subordinate to the Human Rights Unit of the Ministry of Justice and Human Rights but would work in harmony with it. Composed of independent experts, and in particular of members of non-governmental organizations, the Commission would be charged with investigating human rights violations. Although it would be financed with government funds, it would not take instructions from the Government. In the view of the Government, however, it should be empowered both to investigate and to take action, including instituting judicial proceedings and awarding compensation, for example.

16. He drew the Committee's attention to the core document (HRI/CORE/1/Add.1), which discussed the role of the Government Ombudsman.

17. Many courses and programmes had been offered to prison staff as well as to members of the police and the army to sensitize them to human rights issues. One such training programme had been conducted in a prison for the criminally insane.

18. Abortion was illegal in Lesotho, despite the absence of statutory legislation to that effect. In that regard, the Government drew its authority from Roman Dutch Law. Abortion was nevertheless permitted in cases where the pregnancy resulted from incest or rape, or if the mother was of unsound mind. Capital punishment was still on the books; the law did not, however, allow pregnant women or children to be sentenced to death. The Criminal Procedure and Evidence Act prohibited corporal punishment; in addition, the new prisons bill would ban that practice.

19. He assured the Committee that the findings of the court on the mutiny were independent, impartial and fair. No officials of the court had had any involvement in the incident.

20. Ms. CHABANE (Lesotho) said that the delegation noted the Committee's concern with regard to the practice of genital mutilation, and would request the Government to look into the matter. Suggestions as to how to eradicate it would be welcome.

21. Mr. MOTANYANE (Lesotho) said that the Interim Political Authority was composed of all the parties that had taken part in the May 1998 general elections. However, any other parties established since then together with their candidates would be allowed to take part in the forthcoming elections. The Authority's main goal was to ensure, in conjunction with the Independent Electoral Commission, that elections were organized smoothly and efficiently. In his view it was feasible to organize fresh elections within the 18-month deadline set by the October 1998 agreement. However, in order to achieve that goal the existing electoral system needed review. In that regard, the Interim Political Authority was expected to recommend the most suitable electoral model to the Government so that it could initiate the necessary amendments.

22. Mr. SOLARI YRI GOYEN said that he welcomed the delegation's readiness to try to overcome the human rights problems in the country. While in most cases the general questions had been dealt with, the more specific questions raised by the Committee had still not been addressed. One such case was the 1996 labour

conflict at the hydro-electric camp at Butabute. Nothing had been said by the delegation about the five deaths that had occurred or about whether or not those responsible for the deaths had been brought to court. He wondered whether any action had been taken against the policeman who had opened fire on the demonstrators. As far as he was aware, the workers had not made use of the firearms in their possession and no policemen had died. The report written on the incident by the Minister of Justice had stated that the police had prevented ambulances from assisting the workers injured during the clashes in a timely fashion, and that the police had acted with excessive force. There was nothing in the delegation's replies to refute those statements.

23. There were other specific questions to which the Committee had not received satisfactory replies. He would therefore urge the authorities of Lesotho to carry out the necessary enquiries with regard to the cases in question and to initiate proceedings against those persons responsible for torture and the maltreatment of prisoners, and not to act as if nothing had happened. The present attitude of the Kingdom of Lesotho with respect to human rights made it incumbent upon the authorities to initiate proceedings against those responsible for such acts and to sentence them.

24. Mr. BHAGWATI, referring to paragraph 58 of the report, asked whether the Internal Security Act of 1984 was still in force or had been repealed.

25. Mr. MOFOLO (Lesotho) said that the incident that had occurred at Butabute was under investigation. The use of excessive force by the police had been in reaction to being fired upon by the demonstrators. A number of policemen had been wounded. Appropriate action would be taken against those who had fired the shots that had led to the deaths, whether they were policemen or demonstrators.

26. Mr. MOTANYANE said that certain sections of the Internal Security Act had been repealed.

Right to a fair trial (article 14 of the Covenant)

27. The CHAIRPERSON read out the questions relating to article 14 of the Covenant: whether convictions of military tribunals were subject to appeal; measures taken by the State party to strengthen the independence of the judiciary; the availability of legal aid in the light of section 12 (13) of the Constitution.

28. Ms. MOTETEETEE (Lesotho) said that convictions of military tribunals were subject to appeal. The Defence Force Act No. 4 of 1996 provided for appeals in court martial. Section 118, subsection 2, of the Constitution guaranteed the independence of the judiciary. A law designed to improve the working conditions of judges was currently being debated in Parliament.

29. A Legal Aid Office had been established in Lesotho pursuant to the Legal Aid Act No. 19 of 1978. The Office was supposed to provide legal assistance to the poor, represent them in court and give them advice in chambers. Lesotho had thus complied with the provisions of the Covenant.

Non-retroactivity of criminal offences (article 15 of the Covenant)

30. The CHAIRPERSON read out the questions relating to article 15 of the Covenant: measures being taken to implement the last sentence of article 15, paragraph 1, of the Covenant.

31. Mr. MANGOAELE (Lesotho) said that, while no measures were currently being taken to implement the provisions of the last sentence of article 15, paragraph 1, of the Covenant, his delegation was now aware of the need to address that issue and it would recommend that the Government should seriously consider bringing all legislation in line with the provisions of the Covenant.

Right to non-arbitrary interference with privacy, family, home or correspondence (article 17 of the Covenant)

32. The CHAIRPERSON read out the questions relating to article 17 of the Covenant: the circumstances and safeguards governing the power of police authorities to search persons and vehicles and to enter premises without a warrant; restrictions and safeguards on telephone tapping by the National Security Service and other security agencies.

33. Mr. MOFOLO (Lesotho) said that the police were authorized to effect a search without a warrant. Section 47 of the Criminal Procedure and Evidence Act of 1981 limited the authority of a police officer to search without a warrant where there were reasonable grounds that the delay in obtaining the warrant would defeat the object of the search to commissioned officers only. However, the search might only be done during the day and in the presence of at least two respectable persons of the locality in question. In his view that was a fair safeguard to ensure that authority was not misused.

34. Mr. KASOZI (Lesotho) said that telephone tapping could only be done if the National Security Service suspected that issues of State security and public defence were involved. However, he was not aware of any safeguards in that regard. Therefore, any suggestions or recommendations would be welcome.

Freedom of expression (article 19 of the Covenant)

35. The CHAIRPERSON read out the questions relating to article 19 of the Covenant: the legal provision entitling a citizen to obtain information from the Government pursuant to section 14 (1) of the Constitution; any proposed legislation by the State party for that purpose; the compatibility of section 14 (2) (c) of the Constitution with article 19 of the Covenant; steps for bringing section 14 (2) in line with article 19 of the Covenant.

36. Mr. KASOZI (Lesotho) said that under the Official Secrets Act No. 36 of 1967, the unauthorized publication of any information which might be prejudicial to the interests of Lesotho in respect of defence, public order or public safety was prohibited. However, Lesotho did not have any legislation which enjoined the Government to give information to members of the public. Only the King, under section 92 of the Constitution, might claim the right to be informed by the Prime Minister. His Government would study any recommendation by the Committee to enhance the enjoyment of human rights in Lesotho.

37. Mr. MANGOAELE (Lesotho) said that, strictly speaking, the constitutional provision restricting the right of public officers to make public pronouncements which might indicate their political affiliations was not compatible with the Covenant. Its intention was to guarantee the neutrality of the civil service and to ensure that a properly constituted civil service would serve any government regardless of the political views of the civil servants.

Freedom of association (article 22 of the Covenant)

38. The CHAIRPERSON read out the questions relating to article 22 of the Covenant: the compatibility of the provisions in the Legal Code of 1992, prohibiting public servants from joining trade unions, with article 22; and restrictions on the right to collective bargaining of legally recognized trade unions.

39. Mr. MANGOAELE (Lesotho) said that the right of public servants to join trade unions was deliberately restricted because it was considered that they should not be permitted to go on strike. There was no provision for collective bargaining on the part of civil servants. However, in the past, there had been civil servants' associations which had intervened to protect the interests of civil servants.

40. There were no restrictions imposed on regularly established trade unions. The only restrictions that applied were those that prevented them from causing harm to public safety or public order, engaging in criminal activities and violating the rights of other people.

Right to participate in the conduct of public affairs (article 25 of the Covenant)

41. The CHAIRPERSON read out the questions relating to article 25 of the Covenant: measures being taken by the State party to increase the participation of women in the Senate.

42. Mr. MOTANYANE (Lesotho) said that one of the tasks of the Interim Political Authority was to review the electoral system and to possibly recommend a more representative and democratic system. Indeed, the Senate as currently constituted was not representative because 22 out of 33 seats were reserved for principal chiefs while only 11 seats were filled in accordance with the advice of the Council of State. The need for a small country like Lesotho to have a dual parliament was being questioned and it had been stated that even members of the Senate must be elected on a proportional basis.

Equality before the law and equal protection of the law (article 26 of the Covenant)

43. The CHAIRPERSON read out the questions relating to article 26 of the Covenant: measures the State party proposed to take to eliminate discrimination against physically disabled persons in employment, education and in public and government services.

44. Ms. CHABANE (Lesotho) said that the Ministry of Social Welfare, in collaboration with the Lesotho National Federation of the Disabled, had drafted legislation, currently before Parliament, to address all situations in that regard.

Dissemination of information about the Covenant (article 2 of the Covenant)

45. The CHAIRPERSON read out the questions relating to article 2 of the Covenant: steps taken to disseminate information on the submission of the report and its consideration by the Committee; information on education and training on the Covenant and its Optional Protocol provided to government officials, school teachers, judges, lawyers and police officials.

46. Mr. KASOZI (Lesotho) said that 58 individuals and groups had attended a workshop that had discussed the draft report prior to its submission to the Committee. Upon its return his delegation would convene another workshop to inform those concerned of the Committee's concluding comments. Another meeting would also be held exclusively for judges to brief them on the Committee's opinions on the implementation of human rights standards. The Covenant had been translated into Sesotho and was being widely disseminated throughout the country.

47. Mr. SCHEININ said that he would like to have more specific information with respect to the conduct of public affairs. He wondered whether the Kingdom of Lesotho planned to either restrict the constitutional powers of the King or to allow females to become head of State. Noting that there was support for the idea that the Westminster model was not suitable for Lesotho, he asked whether there were plans to maintain that model. Parliament needed to be a body that was representative of different opinions in order to promote public discussion on the future of the nation and to prevent unrest. However, in a situation where Parliament was composed almost exclusively of members of one party, it became more a part of the Government than a real forum for political discussion. In that regard, he wondered whether the proposals for a constitutional amendment also related to the composition of the Assembly. While reference had been made to the possibility of introducing proportional representation in the Senate, it was not clear whether that was also applicable to the Assembly.

48. Referring to sections 55, 57 and 85 of the Constitution, he said that if there was any intention to comply with the 18-month time limit for the holding of fresh elections, and if all parts of the electoral system were subject to review, more information should already have been available than just a reference to a general discussion on various models. He therefore hoped that the Committee would be given more information on the consultative forum held in February 1999. He wanted to know how the principles enshrined in article 25 of the Covenant were going to be reflected in the future models to be considered through the procedure required by section 85 of the Constitution.

49. Referring to court martial proceedings, he asked the delegation to comment on the allegation that some journalists had been prevented from attending hearings before a court martial and on allegations that journalists had been harassed by the authorities.

50. Mr. YALDEN, referring to article 17 of the Covenant, asked for information on the situation relating to homosexual relations between consenting adults in Lesotho and on any law governing discrimination on the ground of sexual orientation. Referring to article 26 of the Covenant, he said that there were a number of extraordinary exceptions in section 18, subsections 4 (a) through (e), which did not seem to be compatible with the Covenant. Section 40, subparagraphs 1 and 2, appeared to be discriminatory against women. As far as the matter of the Ombudsman was concerned, he wished to know who and what was included under the exceptions mentioned in section 135, subparagraph 5, of the Constitution. It would be interesting to know whether the Ombudsman's jurisdiction extended to the military and the police.

51. There were many areas where details were lacking. Specific statistics requested by various members of the Committee had not been provided. If those data were not available, the Committee would appreciate having them in due time when the delegation could supply them. He would welcome further detail about the Ombudsman's activities. With respect to discrimination against women and to equality of opportunity, he wondered whether there was an independent statutory agency that monitored the situation with respect to women.

52. Mr. POCAR said he was deeply concerned that the State party had not incorporated into section 12 of the Constitution, which related to the right to a fair trial, all the guarantees set forth in article 14 of the Covenant. Thus, there was no reference in subsection (2) (c), on preparation of defence, to the right of a person charged with a criminal offence to communicate with counsel of his own choosing; there were no provisions on the right to a public hearing, except in the case of civil proceedings; according to subsection (3), court records would be made available to an accused person only upon payment of a fee; and under subsection (2) (a), an accused person would be presumed innocent only until he had pleaded guilty, which was an unacceptable limitation of the principle of the presumption of innocence. Moreover, it was unclear whether defendants were entitled to legal aid. He would like to know what measures the State party intended to take to bring the provisions of section 12 into line with the Covenant.

53. Lord COLVILLE, noting that women accounted for a large proportion of the workforce in heavy industry and that many workers from neighbouring countries were employed on major projects, such as dams, asked how labour disputes, particularly those concerning discrimination on grounds of gender or ethnicity, were resolved. He wondered whether the Government had considered establishing specialized industrial tribunals to have jurisdiction in such cases.

54. Mr. SOLARI YRI GOYEN said that it would be helpful to have more information on the laws on freedom of the media referred to in paragraph 123 of the report. He would like to know, in particular, whether journalists enjoyed access to public information in all cases. He wondered what the reasons for the registration of journalists were, and whether there were any guarantees to ensure that such registration did not constitute a limitation of their freedom. He was deeply concerned at the situation of three journalists critical of the Government, who, it was claimed, had been threatened, harassed and restricted in the exercise of their profession.

55. Mr. KLEIN expressed satisfaction that a law was soon to be adopted with a view to bringing Lesotho's domestic legislation into line with the Covenant.

56. He said that telephone tapping, which constituted a serious violation of the right to privacy, must be subject to certain restrictions. The law must specify very precisely in what circumstances the practice was permissible, and the person whose telephone was tapped must be able, once the tapping had ceased, to challenge its legality in court.

57. He noted that he had not yet received an answer to his question regarding the minimum age of criminal responsibility.

58. Mr. ZAKHIA said that he welcomed the frankness of the replies by the delegation of Lesotho.

59. He was deeply concerned, however, at the vagueness of some of the terms used in the Kingdom's Constitution and domestic laws. The provision in section 11 of the Constitution to the effect that the National Security Service might interfere with a person's privacy if such interference was in the interests of the State gave excessive licence to the security forces, while the very broad definition of seditious acts, which ranged from bringing into hatred or contempt the person of the King to raising discontent among the people, was inconsistent with the right to freedom of expression and with the State party's commitment to establishing genuine democracy.

60. The low status of women in Lesotho was another cause for concern. It was unacceptable that, in a country in which 30 per cent of all households were headed by women, divorced or separated mothers were required to get their husbands' consent with regard to decisions affecting their children. He noted that, in many traditional societies, parity had proven to be an effective means of strengthening the position of women.

61. Mr. ANDO said that he wished to associate himself with the concerns expressed by Mr. Solari Yrigoyen regarding the harassment of certain journalists. He would like to know whether it was correct that journalists working for the State press who had participated in opposition demonstrations had been instructed by the Minister of Information and Broadcasting to resign or face dismissal. With regard to the licensing of the broadcast and print media, he wondered on what basis the decision to grant or withhold a licence was made.

62. He would like to know what the role and composition of the development councils referred to in paragraph 149 of the report were, and the reason for the fear with which they had been regarded by certain sections of the population.

63. In accordance with the Constitution of Lesotho, public servants were subject to a number of restrictions. He wondered to what extent their enjoyment of the right to freedom of expression and the right to peaceful assembly was affected.

64. Ms. EVATT said that she would be interested to learn whether women could succeed to the throne or attain the position of Chief.

65. She understood that, under the Children's Protection Act No. 6 of 1980, a magistrate might order the detention of a child at the request of his or her parents, if they testified that he or she was acquiring delinquent tendencies. She wondered what safeguards there were to ensure that such orders were not abused by parents and what remedies were available to children deprived of their liberty. She noted that the provision in section 6, subsection (3), of the Constitution to the effect that any person detained must be brought before a court within 48 hours of his or her arrest did not apply to minors.

66. Mr. BHAGWATI thanked the delegation of Lesotho for its frank and forthright replies. Referring to paragraph 103 of the report, he asked why legal aid was only made available to accused persons after their committal for trial, rather than at the committal proceedings or upon arrest. With regard to the Printing and Publishing Act No. 10 of 1967, he wondered whether journalists whose applications for registration were refused had the right to appeal, and what might constitute grounds for refusal. He would also like to know whether it was correct that the Government had banned State companies from advertising in the newspaper, MbAfrica, because of its critical attitude towards the authorities. He wished to associate himself with the concerns expressed by Mr. Zakhia at the broadness of the definition of sedition, which appeared to prohibit even peaceful protest.

67. Mr. AMOR said that he would appreciate additional information on the codification of customary law. He would like to know, in particular, what the place of customary law was in the hierarchy of laws and whether it would have precedence over the Constitution in case of a conflict. He also wondered whether the Covenant could be invoked in the courts. It would be useful to learn what measures the Government of Lesotho had taken to ensure that members of the public were aware of their rights under the Covenant. The delegation should indicate whether the Covenant had been published in the official Gazette and whether civil and political rights had been incorporated in school curricula.

68. Mr. MOTANYANE (Lesotho) acknowledged that the political system in force could indeed produce a minority Government, as it had done in 1965, as well as a one-party Government, as it had done in 1993. However, the public had welcomed the establishment of the 1993 Administration after decades during which the Constitution had been suspended and political arrests had been common. His Government was aware that the current system was not ideal, but believed that a Parliament elected on the basis of a combination of the proportional system and the first-past-the-post system was the best. In any case, any change had to be gradual, for the people must be able to understand electoral developments.

69. Regarding the entrenchment of the constitutional provisions to which members had referred, a two-thirds majority was required for most constitutional amendments, although certain clauses required a referendum as well.

70. Regarding the alleged harassment of journalists, the Committee must realize that the MbAfrica reporters barred from the court martial were irresponsible journalists who had not observed their profession's code of conduct and had publicly insulted the judge in the case in question. He himself was involved in three pending cases against those same reporters for defamation, as was the

Prime Minister; and a court order had had to be issued against abusive reporting.

71. Mr. MANGOAELE (Lesotho) said that Lesotho had maintained the Westminster type of electoral system, as had several other Commonwealth countries, because it had advantages in practice over proportional representation. The Constitution did not prescribe any particular system, and the whole question was the subject of an ongoing public debate. It should be noted, however, that a country like Lesotho depended on external assistance even to hold elections, so that they could not be called too frequently.

72. Concerning the journalists who claimed to have been harassed, one of them had been reliably reported to have later recanted most of his own allegations. While the statements of such journalists could not be accepted at face value, his delegation would nonetheless appreciate receiving from the Committee the specific details of any allegations so that the Government could look into them.

73. Mr. MOFOLO (Lesotho) said that the selection of the King fell under customary law, which made it a hereditary office open only to males, and it was not within the power of the Interim Political Authority as now constituted to seek to amend the Constitution to remedy those restrictive provisions. Since the adoption in 1903-1905, during the colonial era, of the Laws of Lerothodi, which had sought to clarify customary law, there had been no codification as such of customary law. Most customary laws were not in fact applied, even though they were technically regarded as the law of the land, existing side by side with common law, and could be invoked in the High Court as well as the customary courts. Conflicts between the two legal systems would be very difficult to resolve because both were considered on a par.

74. Mr. MANGOAELE (Lesotho) observed that the 1903 codification, carried out by an Advisory Council composed of chiefs and citizens, had had quasi-legal status.

75. Mr. MDCHOCHOKO (Lesotho) said that there was no discrimination in the country against homosexuals, even though consensual sex between them was classified as sodomy under the common law. Such provisions had become obsolete, and no one was ever taken to court on those grounds.

76. Regarding the minimum age of criminal responsibility, children from birth to the age of 7 were considered innocent and incapable of crime; those from 7 to 14 years could be presumed guilty of crime, but the presumption was subject to challenge; and those from the age of 14 on were held responsible.

77. Efforts would certainly be made to incorporate the Committee's recommendations regarding telephone tapping into Lesotho's domestic law.

78. Mr. KASOZI (Lesotho), referring to paragraph 103 of the report, said that legal aid was, in practice, mandatory only at trials, although no law forbade an indigent detainee from seeking the assistance of a legal aid counsel if he had access to a legal aid office at the time of arrest. In some cases the courts themselves contacted a legal aid counsel on behalf of a detainee.

79. Journalists who had been refused registration could challenge the decision in court. As a late Chief Justice had ruled, a right was always available under common law even when it was denied by a positive law.

80. Mr. MANGOAELE (Lesotho) said that the delegation was unaware of any incident in which the Ministry of Communications had demanded the resignation of civil servants. The Government's general opinion, however, was that the 1998 demonstration by civil servants outside the palace had been in clear violation of the prohibition against public manifestation of political affiliation by civil servants.

81. Welcoming the very useful exchange with the members of the Committee even where some of its recommendations could not be immediately applied because of financial and historical restraints, he said that Lesotho was making gradual progress in furthering human rights, as evidenced by the new development of independent private newspapers and broadcasting stations.

82. The CHAIRPERSON, expressing great sympathy for Lesotho's difficult financial and political situation, said that she hoped nonetheless that the Committee's recommendations would give impetus to the determination to effect far-ranging changes. One of the main problems was the status of the Covenant under domestic law. While it would soon be incorporated into national law, it still could not be invoked in the courts, and there were still many domestic laws that contradicted it. In particular, there were constitutional provisions that allowed restrictions on human rights in violation of the Covenant. Another major problem was discrimination, especially against women, and section 18, paragraph 4, of the Constitution needed to be completely overhauled to eliminate discriminatory provisions.

83. There had also been police abuses, thus pointing to the need for independent oversight, legal penalties in such instances, and international standards on the use of force and the treatment of prisoners. Above all, there had to be a well-trained, independent judiciary to apply the law. The core document (HRI/CORE/1/98) seemed to indicate, moreover, a troubling confusion between the separate branches of government, with High Court judges sitting on an executive council.

84. Various sections of the Constitution raised issues of non-compliance with the Covenant, particularly section 12 on the conduct of trials, section 21 on states of emergency and section 25 on political rights.

85. Lesotho was urged to establish an independent human rights body and ensure that in a democracy no one would be above the law. It might be useful to distribute the Committee's recommendations to the judiciary and to all departments of the Government that were responsible for enforcing the Covenant.

86. Mr. MOTANYANE (Lesotho) said that his Government planned to review each article of the Constitution vis-à-vis the Covenant. Although Lesotho was still a poor and struggling country, it would do everything in its power to abide by the international conventions to which it was a party.

The meeting rose at 6 p.m.