

NAME OF COUNTRY: LESOTHO

NAME OF ORGANISATION: MATRIX SUPPORT GROUP ASSOCIATION

REPORT PREPARED BY MATRIX

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INTRODUCTION

This report has been prepared by Matrix Support Group (MSG), a non-governmental organization focusing on promoting human rights related to sexual orientation and gender identity and expression, including for lesbian, gay, bisexual, transgender, intersex, men having sex with men (MSM) and women having sex with other women (WSW) in Lesotho through capacity building and advocacy. The objective of this report and the submissions contained therein are meant to be submitted to the Office of the United Nations High Commissioner for Human Rights as part of the Universal Periodic Review of Lesotho. In this Report, we outline the methodology and process used to prepare the Report, the legal framework of Lesotho, social context, violations and discrimination based on sexual orientation and gender identity and expression and recommendations from last cycle and new recommendations.

1. METHODOLOGY

This report has been prepared by Matrix Support Group (MSG), a non-governmental organization focusing on promoting human rights for Lesbian, Gay, Bisexual, Transgender, Intersex, men having sex with men (MSM) and women having sex with women (WSW) in Lesotho through capacity building and advocacy.

The report has been compiled using available research material and consultations with Coalition of African Lesbians, United Nations Development Program in Lesotho.

2. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The government of Lesotho has shown commitment and willingness to establish a vibrant human rights environment where the people of Lesotho irrespective of any factor equally enjoy the fundamental precepts of human rights, freedoms and the rule of law. This has been done through ratification of most of the human rights treaties. Lesotho has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of a Child (CRC), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Inhuman and Degrading Treatment (CAT) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and challenge that still stands is that these international conventions

have to be domesticated into national laws and the process of domestication has been slow. Conventions have not been domesticated wholly. Elements of CEDAW have been domesticated piecemeal. This limits the enjoyment of the International legal frameworks by the people of Lesotho.

3. DOMESTIC LAW

Lesotho has a constitution which is the supreme law of the land. This Constitution was adopted in 1993. The supremacy of the constitution means that all laws and regulations that are inconsistent with the constitution are voidable initio to the extent of their inconsistency. This constitution enshrines fundamental human rights and freedoms with only the civil and political rights under Chapter Two justiciable in the courts of law. Amongst the rights and freedoms guaranteed as basic is the freedom from discrimination on the basis of sex, gender, race, color, language, political, religion or other opinion.

On the other hand, the socio-economic and cultural rights are state policies which cannot be claimed in the courts of law. Included here are the rights to health, education and opportunity to work.

4. SOCIETAL ATTITUDES

Generally speaking, Lesotho society views diverse sexual orientation, gender identity and gender expression in a negative manner. The practice of same sex relationships is regarded as being against Sesotho culture and principles of morality. This attitude is so strongly woven into the so called fabric of society that it exposes people who are non-conforming in terms of sexual orientation and gender identity and expression to marginalization, exclusion and gender based violence. The state and other political forces continue to ignore the fact that this part of the Lesotho community deserves the same recognition and protection of their rights, including their rights to peace and to non-discrimination and other fundamental rights and freedoms.

The role of Christianity and Traditions in Lesotho remains key in the Basotho Society and its position is that same sex relationships are evil and foreign. For this reason, some churches do not accommodate their members who are perceived as or non-conforming in terms of their sexual orientation and gender identity and expression.

5. HUMAN RIGHTS VIOLATIONS AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

5.1 The Lesotho National Commitments and Policies report of 2012 shows that people who are non-conforming in terms of their sexual orientation and gender identity and expression in Lesotho continue to feel the impact of discrimination, marginalization and abuse both verbal and physical in their homes, families, communities and in public in general. A study commissioned in 2014 by the United Nations Development Program found that major human rights violations are still faced by the LGBTIs and further that there is widespread violence and societal discrimination on the basis of sexual orientation and gender identity and expression. This happens notwithstanding that Lesotho has a liberal constitution that seeks to protect the rights of all its citizens without discrimination on the basis of factors like sex, gender, race, color, language, political, religion or other opinion.

5.2 Lesotho continues to maintain laws that are unconstitutional and not in line with its international obligations as they perpetrate discrimination against the sexual orientation,

gender identity, gender expression and intersex individuals. These laws are discussed here below.

5.2.1. Criminal procedure act of 2003

The received common law as well as the 1993 Criminal Procedure Act criminalizes sexual act between men. Even though this law is in place, the Sexual Offences Act of 2003 legalizes sexual act between two consenting adults. This contradiction of the laws of Lesotho brings a confusion in implementation of national laws and policies. People who are non-conforming in terms of their sexual orientation, gender identity and expression face legal limitations in the name of keeping societal fabric intact, a clear violation of the right to freedom from discrimination found in the Lesotho Constitution and various instruments and standards of non-discrimination within the United Nations.

5.2.2. The Sexual Offences Act 2003

The Sexual Offences Act 2003 may have rendered the sodomy law useless as it does not prohibit consensual sex between men. It has however not repealed the sodomy law and this therefore means that the sodomy law is still applicable until repealed.

5.2.3. Customary law and civil rights law of marriage

Both the customary Law as well as the civil rights Law perceives marriage to be a union between people of the opposite sexes i.e. male and female. The marriage between same sexes is regarded as wrongful and therefore cannot be entered into. It means that Lesbians, Gays, Bisexuals, Transgendered and Intersexual people are not free to marry people of their own choice but those that fit the description of the law. This clearly is unconstitutional as it violates the right to choice, right to respect for private and family life as well as the freedom of association. It is also against the spirit of the international instruments on human rights which have re-emphasized the right to freedom from discrimination.

5.3. Health rights issues

In a study commissioned by MATRIX, a finding was made that in some instances, people who are non-conforming in terms of their sexual orientation and gender identity and expression cannot easily access medical care and treatment to HIV and AIDS or other sexual health services at health centers due to the discrimination by health care providers. This is a violation of their right to live. This also represents a failure to align health service provision

and the National Health Strategic Plan that targets “sexual minorities” like “LGBTI” people as one of the key populations at a high risk of HIV infections. The National Strategic Plan make provision for free HIV Testing and Counseling, Primary Mother to child treatment (PMTCT) and Voluntary Male Circumcision services for the key affected populations.

5.4 Access to other public services

People who are non-conforming in terms of their sexual orientation and gender identity face discrimination when they approach public offices like the Chiefs’ offices to access services. They are often turned away by the chiefs who demand that they should come dressed in dresses “like proper women and men”. This discriminatory practice affects their right to freedom of movement as they cannot apply for travel documents and Identification documents without letters from the chiefs. It also limits the right to freedom of expression as their gender presentation and expression is used as the basis to exclude them from accessing these services which they are entitled to within the Lesotho law and policy framework.

5.5 Legal Documents

6. Even though the government of Lesotho has introduced the new legal documents in Lesotho, gender mark has not changed as requested by Matrix Support Group in 2012 to the new collation government during the submission to the government after he elections. **PROGRESS AND GAPS IN IMPLEMENTATION OF RECOMMENDATIONS FROM PREVIOUS CYCLE.**

Among the recommendations that Lesotho did not support during the 2010 review was the recommendation to repeal all legislation criminalizing male homosexuality and to introduce policies and laws aimed at ending discrimination against and protecting the rights of lesbians, gays, bisexuals, trans sexual and intersex people. To date, Lesotho has not made any effort to implement the recommendation either through enactment of a new law or a revision or repeal of an existing law or through the formulation of policies or the design of any relevant programmes. The rights of LGBTI’s continue to be violated as a result of these laws and the social attitudes within social, economic and political systems.

7. RECOMMENDATIONS

1. Lesotho should repeal all laws that criminalize and discriminate against people on the grounds of their sexual orientation and gender identity and expression
2. Lesotho should develop and implement national policies and action plans to afford people who are non-conforming in terms of their sexual orientation and gender identity due recognition as human beings.
3. Lesotho should establish and implement protective measures for the enjoyment of the rights of people who are non-conforming in terms of their sexual orientation and gender identity
4. Lesotho should speed up the establishment of Human Rights Commission as the human rights watch entity that will monitor among others, the rights of people on the grounds of their sexual orientation and gender identity and expression.
5. Lesotho should provide important guidance in its interpretation of its own human rights standards in the context of safeguarding the rights of people on the grounds of their sexual orientation and gender identity and expression

These recs will have to be completely revised.

They need to be concrete, clear and practical.

As they stand, most of them are fuzzy and they do not describe what the state should be doing. I suggest maybe four linked to the challenges listed above

1. HEALTH POLICES AND people who are non-conforming in terms of their sexual orientation and gender identity PLANS. The government of Lesotho must implement its current plans on key affected population and again make available the resources to respond to the needs

FORCING OUT [linked to the loss of home, school, community, church, workplace etc – education and public awareness – insert a clear sentence Lesotho should develop action plans aimed at creating awareness on the rights of the intersex people and people with diverse sexual orientation, gender identity and gender expression and to foster greater harmony and tolerance. PROTECTION the government of Lesotho must develop specific laws to protect rights of people on the grounds of their sexual orientation and

gender identity and expression RECOGNITION the government of Lesotho must support the programs of Matrix support group on recognition of people on the grounds of their sexual orientation and gender identity and expression