

ACCESS TO JUSTICE FOR CHILDREN: LESOTHO

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Lesotho ratified the CRC on 16 September 2005¹ and is also a party to the Optional Protocol on the involvement of children in armed conflict² and the Optional Protocol on the sale of children, child prostitution, and child pornography,³ but it has not signed or ratified the third Optional Protocol on a communications procedure.

Lesotho's legal tradition is dualist, therefore, ratified international treaties are not considered to be part of national law until they have been domesticated by an Act of Parliament.⁴ Research did not identify any national legislation which domesticates the CRC. Therefore, it can be presumed the Convention does not form part of national law.

B. Does the CRC take precedence over national law?

No, the CRC does not take precedence.

C. Has the CRC been incorporated into national law?

International conventions must be domesticated into national law in order to be enforceable.⁵ Although the CRC has not been enacted as a freestanding law in Lesotho, the Parliament of Lesotho passed the Children's Protection and Welfare Act 2011, which is considered to incorporate many of the provisions of the Convention.⁶

The Children's Protection and Welfare Act⁷ states that its purpose is "to consolidate and reform the laws relating to the protection and welfare of children and to provide for incidental matters" and "to extend, promote and protect the

¹ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

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https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁴ Tebeloo Thabane, *UPDATE: The Law and Legal Research in Lesotho*, GlobaLex (June 2012), available at: <http://www.nyulawglobal.org/Globalex/Lesotho1.htm>.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Available at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/lesotho/lesotho_children_2011_en.pdf.

rights of children as defined in the 1989 United Nations Convention on the Rights of the Child, the 1990 African Charter on the Rights and Welfare of the Child and other international instruments, protocols, standards and rules on the protection and welfare of children to which Lesotho is a signatory.”⁸ It also provides that it “shall be administered and enforced so as to enhance the promotion, protection and realisation of the rights and welfare of children.”⁹

While the Act has been recognised as historic, comprehensive, and covering a wide range of child protection issues, it has also reported that there have been severe operational delays and challenges, including a lack of (a) public awareness and scrutiny due to non-availability of public copies, (b) subsidiary regulations, and (c) a costed implementation plan.¹⁰

There is other domestic legislation in Lesotho which addresses the rights of children. For instance, article 32 of the 1993 Constitution¹¹ states that “Lesotho shall adopt policies designed to provide that - (a) protection and assistance is given to all children and young persons without any discrimination for reasons of parentage or other conditions; (b) children and young persons are protected from economic and social exploitation; (c) the employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is punishable by law; and (d) there are age limits below which the paid employment of children and young persons is prohibited and punishable by law.”¹²

Notably, however, this article is contained in Chapter 3 of the 1993 Constitution, which addresses principles of state policy that “shall not be enforceable by any court”.¹³ These principles are instead meant to guide authorities and agencies in Lesotho “with a view to achieving progressively, by legislation or otherwise, the full realisation of these principles”, though this aim is “subject to the limits of the economic capacity and development of Lesotho.”¹⁴

Other provisions relevant to children are interspersed throughout the 1993 Constitution, including:

- Chapter 2 (Articles 4-24) – relating to the protection of fundamental human rights and freedoms;
- Art. 6(1)(f) – allowing arrest and detainment of children “for the purpose of his education or welfare”;
- Art. 12(10) – allowing an adjudicatory authority to exclude persons from proceedings, where publicity would prejudice “the welfare of persons under the age of eighteen years”;
- Art. 27 – policy regarding health, including for the “healthy development of

⁸ Children’s Protection and Welfare Act, Section 2(1).

⁹ Children’s Protection and Welfare Act, Section 2(2).

¹⁰ Stephanie Weber, *National Response Efforts to Address Sexual Violence and Exploitation Against Children in Lesotho: A Desktop Study*, p. 18, AIDSTAR-One (May 2013), available at http://www.aidstar-one.com/sites/default/files/AIDSTAROne_Report_PRC-Lesotho_LR_web.pdf.

¹¹ Constitution of Lesotho, available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126743.pdf.

¹² Constitution, Article 32.

¹³ Constitution, Article 25.

¹⁴ *Ibid.*

- the child”; and
- Art. 28 – policy regarding education.

D. Can the CRC be directly enforced in the courts?

Given that Lesotho is a dualist state, it appears that the CRC can not be enforced directly, but rather applicants can rely on the laws enacted to domesticate the Convention, such as the Children’s Protection and Welfare Act.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There is at least one case in which a national court has referred to the CRC as a guiding instrument. For example, regarding the Children’s Protection and Welfare Act, the High Court of Lesotho recently noted that the “content and form of the CPWA should be perceived against the background of The 1989 United Nations Convention on the Rights of the Child (CRC), the 1990 African Charter on the Rights & Welfare of the Child (ACRWC), other international instruments, protocols, standards and rules on the protection and welfare of children to which Lesotho is a signatory.”¹⁵ In relation to 2(1) of the Act, the High Court held that the “section is indicative of the legislature’s contextual intention to domesticate the aforesaid international instruments in addressing the social welfare sphere of the child in the administration of justice where a child is alleged to have been in conflict with the law or convicted for any offense.”¹⁶ The High Court also found that a “further contextual indication by Parliament is that the international instruments referred to in the section, should provide a philosophical and inspirational guidance in the background. This is to be so whenever the welfare or the justice of the child is to be considered.”¹⁷

II. **What is the legal status of the child?**

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children’s rights?

According to the Children’s Protection and Welfare Act, children may apply to a Children’s Court for modification or revocation of an order by the Children’s Court related to the child’s care and protection.¹⁸ Children may also make an application for admission into a place of safety to the Department of Social Welfare, chief or police officer on their own if they are in need of urgent protection and in a specified vulnerable situation specified by law.¹⁹

In civil actions, if the defendant is a minor, summons will be served to their guardian, tutor or curator.²⁰ Based on this provision, it appears likely that

¹⁵ *Rex v. Malefetsane Mohlomi et al.* [2013] LSCH 27, para. 22, available at: <http://www.lesotholii.org/ls/judgment/high-court/2013/27>. CRIN summary available at: www.crin.org/en/node/40847.

¹⁶ *Id.*, para. 23.

¹⁷ *Id.*, para. 24.

¹⁸ Children’s Protection and Welfare Act, Section 37(12).

¹⁹ Children’s Protection and Welfare Act, Section 76(2).

²⁰ Subordinate Court Rules, rule 9(2), available at: <http://www.lesotholii.org/ls/legislation/sl/1996/132>.

children would have to be represented in the civil court, however, beyond what is set forth above, we were unable to find any legislation or other source which govern children's civil capacity and ability to initiate civil or criminal proceedings.

- B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

In the Children's Courts, children have a right to legal representation of their own choice and at their own cost in any legal proceedings.²¹ Based on the language of this provision, legal representation does not appear to be compulsory.

The Children's Protection and Welfare Act provides that minors under 18 years old²² must be assisted by a parent or guardian in criminal proceedings, unless efforts to locate such a person are causing delay which is prejudicial to the best interests of the child or the child is charged with an offence for which a sentence of imprisonment is likely to be imposed.²³ If a child is prosecuted, parent or guardian must be present during the proceeding, unless exempt by the court.²⁴

Beyond what is set forth above, we were unable to find a definitive answer to this question.

- C. In the case of infants and young children, how would cases typically be brought?

Beyond what is set forth above, we were unable to find a definitive answer to this question.

- D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Lesotho has a legal aid programme pursuant to the Legal Aid Act No. 19 of 1979, which established the Office of the Chief Legal Aid Counsel under the Ministry of Justice.²⁵ However, because this office is located in the capital city, the service is not easily accessible to a large part of the population.²⁶

Applications are subject to a means test as legal aid is provided only to individuals who are deemed by law to be indigent.²⁷ The Legal Aid Act allows the Chief Legal Aid Counsel²⁸ to instruct a legal practitioner to act on behalf of

²¹ Children's Protection and Welfare Act, Section 147(1) and 148(1).

²² The age of majority in Lesotho is 21.

²³ Children's Protection and Welfare Act, Section 135(2).

²⁴ Children's Protection and Welfare Act, Section 136(1).

²⁵ Legal Aid and Dispute Resolution, Standard Operation Procedure 3.0, p. 34, available at: <http://www.mca.org.ls/documents/SOP%203%2000%20-%20Legal%20Aid%20and%20Dispute%20Resolution.pdf>

²⁶ AfriMAP and the Open Society Initiative for Southern Africa, *Lesotho: Justice Sector and the Rule of Law*, March 2013, p. 101, available at: <http://www.afriMAP.org/english/images/report/AfriMAP%20Lesotho%20Justice%20Main%20web-FINAL.pdf>

²⁷ *Legal Aid and Dispute Resolution, Standard Operation Procedure 3.0*, p. 34.

²⁸ Legal Aid Counsel, 1st Floor Old Agric Bank Building, Kingsway, PO Box 33, Maseru, Tel: 22313023.

an applicant and to pay the legal practitioner prescribed fees.²⁹ Research did not identify any source specifically examining children's eligibility for state legal aid.

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Though none of the sources we reviewed discussed any further limitations, we were unable to find a definitive answer to this question due to lack of primary source material.

III. **How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Lawsuits seeking cessation of human rights violations and recovery of damages may be filed in the courts.³⁰ The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings as well as the power to review the decisions or proceedings of any subordinate or inferior court.³¹ The High Court hears cases concerning violations of constitutional rights³² and questions of interpretation of the Constitution.³³

The Children's Protection and Welfare Act calls for the establishment of Children's Courts, with jurisdiction to hear cases of children in need of care and protection, as well as rehabilitation and certain criminal charges.³⁴

The Office of the Ombudsman in Lesotho³⁵ accepts complaints in relation to acts or failures to act by government officials that could violate fundamental rights and freedoms. The powers of the Ombudsman are limited: he has no jurisdiction to investigate certain public bodies (such as the King, Parliament, Cabinet, courts of law and others) and, in addition, he may only investigate and make recommendations which are not binding.³⁶ Complaints to the Ombudsman must be made in writing and must state the name and address of the complainant, the name of the institution against which a complaint is made and the date the act took place.³⁷ All other internal remedies must be exhausted in order for the complaint to be admissible. A complaint may be made by any person, including non-citizens, however we could not locate any provision that allows or prohibits children from acting without legal representation.

²⁹ *Legal Aid and Dispute Resolution, Standard Operation Procedure 3.0*, p. 35.

³⁰ United States Department of State, Bureau of Democracy, Human Rights and Labor, *2013 Country Reports on Human Rights Practices: Lesotho*, p. 8, available at: <http://www.state.gov/documents/organization/220338.pdf>.

³¹ Constitution of Lesotho, Article 119.

³² Constitution, Article 22.

³³ Constitution, Article 128.

³⁴ Children's Protection and Welfare Act, Section 133.

³⁵ Constitution, Articles 134-135. Official website: <http://www.ombudsman.org.ls/>.

³⁶ *Lesotho: Justice Sector and the Rule of Law*, p. 118.

³⁷ Ombudsman Act 1996, Section 8.

Individuals, including child victims, their parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).³⁸ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁹ The complaint must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.⁴⁰ The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.⁴¹

Finally, individuals, groups or NGOs may also submit communications to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).⁴² All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴³ The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.⁴⁴ The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.⁴⁵ If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples’ Rights.⁴⁶

³⁸ African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at:

<http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acrwc-charter-full-text/>. For more information about communications, see:

<http://acerwc.org/the-committees-work/communications/>.

³⁹ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

<http://acerwc.org/the-committees-work/communications/>.

⁴⁰ War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

⁴¹ Ibid.

⁴² African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

<http://www.achpr.org/instruments/achpr>.

⁴³ Ibid., Article 56(5).

⁴⁴ Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

⁴⁵ War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Commission on Human and Peoples’ Rights: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁴⁶ Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, Article 5, available at:

B. What powers would courts have to review these violations, and what remedies could they offer?

Compensation for victims of crime available under Section 321 of the Criminal Procedure and Evidence Act 1981⁴⁷.

The High Court has the power to review the proceedings of all subordinate courts and, where it deems necessary, to set aside or correct the same.⁴⁸ It may vary all judgements of the subordinate courts from civil and criminal cases, to order a new trial in the subordinate court or in the High Court itself, to impose any punishment which it considers ought to have been imposed by the subordinate court or to set aside a sentence or conviction in cases of miscarriages of justice.⁴⁹

Beyond what is set forth above, we were unable to find information about other remedies available to plaintiffs.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

In order to initiate a civil case, the plaintiff is required to submit summons which must include the full name of the plaintiff,⁵⁰ therefore it appears that the victim must be named. We were unable to locate any other legal provision addressing this issue.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

We were unable to locate a code of civil procedure or rules of court addressing this issue. We note that the concept of a representative action does exist in the law of Lesotho at least in connection with derivative actions brought by corporate shareholders.⁵¹ Thus, it seems as though a collective action may be possible.

In cases before the High Court, it is possible for one plaintiff to join several causes of actions as well as for several plaintiffs to join in one action against the same defendant.⁵² Alternatively, the court may order for several actions to be consolidated.⁵³ There appear to be no other provisions to specifically allow

<http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010, Rules 84(2) and 118, available at:

<http://www.achpr.org/instruments/rules-of-procedure-2010>.

⁴⁷ *Lesotho: Justice Sector and the Rule of Law*, p. 106.

⁴⁸ High Court Act 1967, Section 7, available at: <http://www.lesotholii.org/ls/legislation/act/1967/4>.

⁴⁹ High Court Act, Section 8.

⁵⁰ High Court Rules 1981, rule 18(8), available at:

http://www.lesotholii.org/files/high_court_rules_basicOCR.pdf and Subordinate Court Rules 1996, rule 6, available at: <http://www.lesotholii.org/ls/legislation/sl/1996/132>.

⁵¹ Companies Act 2011, Section 81.

⁵² High Court Rules, rule 10,

⁵³ High Court Rules, rule 11.

group or public interest litigation.

- E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Research could not locate a code of civil procedure or rules of court addressing this issue, nor was it addressed in any of the secondary sources we reviewed.

- IV. **Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Before the courts, cases are commenced by filing a summons which must be drafted by the plaintiff.⁵⁴ It appears that filing fees must be paid when the draft summons is presented to the court.⁵⁵

Children's courts must be established in every subordinate court to hear and determine cases of children in need of care, protection and rehabilitation and must be staffed, as far as possible by specially trained personnel.⁵⁶ All proceedings in such courts are conducted in camera, and the privacy of the victim child and any child witnesses is to be protected at all times.⁵⁷ In addition, a court room, where practicable, shall be located and designed in a way which is conducive to the dignity and protection of children and that the proceedings shall be informal, child-friendly and allow the active participation of all persons who need to be involved in the proceedings.⁵⁸ However, we were not able to find any sources detailing how successfully these provisions have been implemented.

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

In general, court costs are typically paid by the losing party to a case.⁵⁹ Although the court fees in Lesotho are relatively low due to the fact that they have not been reviewed in 20 years, the cost might still be prohibitive for some of the population, keeping in mind the high percentage of people living below the poverty line.⁶⁰ We were not able to find any provision that automatically waives court costs in cases brought by or on behalf of a child.

⁵⁴ Subordinate Court Rules, rule 5 and High Court Rules, rule 18. Lesotho Judiciary, Rules for Civil Proceedings, Compendium for Learning, Training and Review, pp. 13-14, available at http://www.minfosys.com/LS_Rules110801.pdf.

⁵⁵ *Rules for Civil Proceedings*, pp. 13-14.

⁵⁶ Children's Protection and Welfare Act, Section 133(1)-(2).

⁵⁷ Children's Protection and Welfare Act, Section 138(2) and 145.

⁵⁸ Children's Protection and Welfare Act, Section 133(3).

⁵⁹ *Rules for Civil Proceedings*, p. 56.

⁶⁰ *Lesotho: Justice Sector and the Rule of Law*, p. 112.

At the High Court, *in forma pauperis* proceedings are possible, subject to the approval of the court. This means that a plaintiff can be allowed to bring a case without paying court fees, subject to a means test.⁶¹ However, if upon the conclusion of the proceedings, the costs are awarded to the *in forma pauperis* litigant, the court fees will be deducted from any settlement.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Some NGOs provide legal aid services and operate legal aid⁶² systems, including the Federation of Women Lawyers (or Federation Internationale de Abogadas (FIDA))⁶³ and Women in Law in Southern Africa (WILSA)⁶⁴ who provide legal representation at minimal cost or free of charge where the case involves issue of gender equality or women's rights.⁶⁵ These are all located in the capital and might be difficult to access for a large part of the population.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

We were unable to locate any code of civil procedure, rules of court, primary source material or secondary source material that addressed this issue.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Children have the right to express their opinion freely and to have that opinion taken into account in any matter or procedure affecting the child and such opinion must be given due weight in accordance with the age and maturity of the child.⁶⁶

As a general rule, every person, including a child, is competent and compellable to testify in court, however, evidence given by children must be corroborated.⁶⁷

In the Children's Court, a presiding officer shall protect a child offender and other child witnesses from hostile or intimidating cross-examination where such cross-examination is regarded by the presiding officer as being prejudicial to the

⁶¹ High Court Rules, rule 16.

⁶² *Legal Aid and Dispute Resolution, Standard Operation Procedure 3.0*, p. 36.

⁶³ FIDA, No. 544 Hoohlo Extension, PO Box 105, Maseru, Tel: 22325466, Email: fidales@leo.co.ls.

⁶⁴ WILSA, Dolphin House 23, Motsoene Road, Industrial Area, PO Box 0961, Maseru West, Maseru, Tel: 22313123.

⁶⁵ *Lesotho: Justice Sector and the Rule of Law*, p. 15.

⁶⁶ Children's Protection and Welfare Act, Section 14.

⁶⁷ *Initial report of Lesotho to the UN Committee on the Rights of the Child*, CRC/C/11/Add.20, 20 July 1998, para. 40, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.20&Lang=en.

well-being of the child or the fairness of the proceedings.⁶⁸

If proceedings involving children are pending in any court, that court could order that a child gives evidence through an intermediary appointed by the court if it is established that giving evidence in person would cause undue mental stress or suffering.⁶⁹

We were otherwise unable to locate any code of civil procedure, rules of court, primary source material or secondary source material which addressed this issue.

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

It has been reported that Lesotho's judicial system faces serious problems of backlogs and delays,⁷⁰ however, research could not determine with any precision what would be the typical duration of a court case.

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

The High Court has jurisdiction over appeals from any subordinate courts and tribunals.⁷¹ The Court of Appeal is the supreme court of the land⁷² and hears appeals from the High Court as to interpretation of the Constitution and violations of constitutional rights.⁷³ Appeals must be filed within six weeks from the date of delivery of the original judgement.⁷⁴

The right to appeal is explicitly granted to children in relation to criminal charges proved in the Children's Court⁷⁵ and in certain cases the review is automatic.⁷⁶

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Research did not locate any sources providing specific information regarding this issue. However, it has been reported that the independence of the judiciary is generally respected by the government.⁷⁷ Domestic and international human rights groups generally operate without interference and government officials are often cooperative and responsive to their views.⁷⁸

⁶⁸ Children's Protection and Welfare Act, Section 138(12).

⁶⁹ Children's Protection and Welfare Act, Section 146(1).

⁷⁰ *Lesotho: Justice Sector and the Rule of Law*, pp. 103, 114-115.

⁷¹ Constitution, Article 130.

⁷² *Id.*, Article 123.

⁷³ *Id.*, Article 129.

⁷⁴ Court of Appeal Rules, Section 4(1).

⁷⁵ Children's Protection and Welfare Act, Section 168.

⁷⁶ *Id.*, Section 169.

⁷⁷ United States Department of State, Bureau of Democracy, Human Rights and Labor, *2012 Country Reports on Human Rights Practices: Lesotho*, p. 8, available at: <http://www.state.gov/documents/organization/160128.pdf>.

⁷⁸ *Id.*, p. 18.

Lesotho abides by the doctrine of precedent with decisions from similar legal systems, such as South Africa, are considered highly persuasive sources.⁷⁹ Therefore, while decisions enhancing the right of the child will bind lower courts, negative decisions which undermine the protection for children will also be binding until reversed by a higher court.

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

According to one source, court orders are generally respected and those who fail to obey them are held in contempt of court.⁸⁰ However, it has also been reported that the government has failed to comply with a civil court decision pertaining to an award of damages in relation to torture.⁸¹

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Lesotho has a dual legal system in which customary law operates alongside a mix of Roman-Dutch and English law (the common law). Customary law governs areas of marriage, divorce, inheritance, custody, adoption and maintenance. Roman-Dutch law also covers these areas and this causes considerable problems in determining the law to be applied in cases of adoption of children, custody in cases of divorce, succession and inheritance.⁸² This report only examines the common law legal system, as far as such information is available.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁷⁹ UPDATE: *The Law and Legal Research in Lesotho*.

⁸⁰ *Lesotho: Justice Sector and the Rule of Law*, p. 116.

⁸¹ *2013 Country Reports on Human Rights Practices: Lesotho*, p. 8.

⁸² *Initial report of Lesotho to the UN Committee on the Rights of the Child*, para. 12.