



*Compilation of laws that provide **PROTECTION** against gender based violence in Lesotho*







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**COMPILATION OF LAWS  
THAT PROVIDE  
PROTECTION AGAINST  
GENDER BASED VIOLENCE  
IN LESOTHO**



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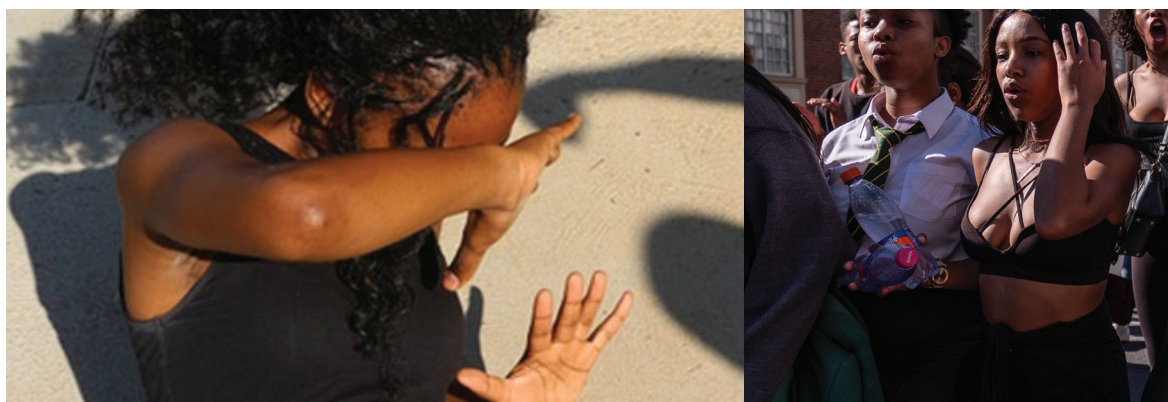




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*Compilation of laws that provide **PROTECTION** against gender based violence in Lesotho*

**COMPILATION OF  
SELECTED LAWS THAT  
PROVIDE PROTECTION  
AGAINST GENDER-BASED  
VIOLENCE.**

regulate the measures needed to effectively achieve the principle of gender equality in order to repress and make perpetrators accountable and guarantee support to victims.

## i. Introductions

~~***The phenomenon of gender-based violence is pervasive around the world, experienced by some one in three women in their lifetimes***~~

The elimination of such violence has been increasingly recognised as a priority for the international community; therefore, a number of international and regional conventions and protocols have been entered into in order to advance protection of women and girls against gender-based violence. These are the tools from which the laws of Lesotho that seek to protect the rights of women draw inspiration.

Any Legislation that criminalises violence against women codifies the rights of women to live free of violence. Laws can play an important symbolic role by indicating that such behaviour is socially unacceptable. The associated sanctions may serve a deterrence function and hence, reduce the incidence of violence. Legislation can also be responsive to victims by providing for protection and access to support services.

Lesotho has made some progress in addressing the GBV by enacting laws and policies to adhere to globally agreed guidance or standards such as the Sustainable Development Goals. The primary focus of these laws is to

## ii. Definition: Gender-based violence (GBV)

GBV is defined as “the general term used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between genders within the context of a specific society. Violence against women and girls is one of the most predominant forms of GBV in the world; hence, more attention to these groups is critically needed.

The *United Nations (UN) Declaration on the Elimination of Violence against Women (DEVAW* describes GBV as, “any act of GBV that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty whether occurring in public or private life.”

## iii. Forms of gender-based violence

GBV can be physical, sexual, emotional, financial, and it can be perpetrated by intimate partners, acquaintances, strangers and institutions. Most acts of interpersonal GBV are committed by men against women, and the man perpetrating the violence is often known by the woman, such as a partner or family member. However, men and



boys can also be subject to GBV, and women can be perpetrators.

This document presents a summary of laws and policies that address violence in its different forms both civilly and criminally. The laws discussed below do not define what GBV is but within their context, different forms of violence which fall within the definition of GBV have to a considerable extent been addressed.

**iv. Forms of GBV and the laws that provide protection**

PHYSICAL VIOLENCE	MOTIONAL VIOLENCE
Constitution	Constitution
Penal Code	Penal Code
Counter Domestic Violence Act	Counter Domestic Violence Act
SEXUAL VIOLENCE	ECONOMIC VIOLENCE
Sexual Offence Act	Constitution
Penal Code	Marriage Act
Anti-Human Trafficking Act	Legal Capacity of Married Person's Act
Children's protection and welfare act	Land Act
Laws of Lerotholi.	Administration of Estates
Labour Code Order	Children's Protection and welfare act
	Education Act
	Counter Domestic Violence Act

# OVERVIEW OF THE LEGAL FRAMEWORK AND POLICIES OF LESOTHO

## International and Regional Conventions

1. Universal Declaration on Human Rights 1948.
2. The United Nations (UN) Declaration on the Elimination of Violence against Women 1979.
3. Beijing Declaration and Platform of Action 1994.
4. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2005.
5. SADC Protocol on Gender Development 2008.

## National Legislation

1. Lesotho Constitution, 1993
2. Human Rights Act, 1983
3. Laws of Lerotoli, 1938
4. Marriage Act, 1974
5. Legal Capacity of Married Person Act, 2006
6. Administration of Estate Proclamation, 1935
7. Land Act, 2010
8. The Sexual Offences Act, 2003
9. Lesotho Penal Code Act, 2010
10. Counter Domestic Violence Law, 2022
11. Children's Protection and Welfare Act, 2011
12. Lesotho Anti-Trafficking in Person Act, 2011
13. Labour Code Order, 1992
14. Education Act, 2010

## Policies and Guidelines

1. Gender and Development Policy
2. National Guidelines for Medico-Legal Care for Survivors of Sexual Health, 2018

**INTERNATIONAL  
CONVENTIONS WHICH  
PROVIDE PROTECTION TO  
WOMEN AND GIRLS  
AGAINST GBV.**

## 1.1 Universal Declaration of Human Rights (UDHR), 1948

This is the first global expression of rights to which all human beings are *inherently entitled to*. It acknowledges that men and women are not the same, but they have the right to be treated equally and without discrimination.

### **Freedom from discrimination and right to recognition before the law:**

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and shall have the right to recognition everywhere as a person before the law.

**Right to own property:** Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his/her property including for people with disabilities and unmarried women (inheritance).

**Right to life:** Everyone has the right to life, liberty and security (Femicides and homicides, passion killings).

**Freedom from slavery and torture:** No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms (human

trafficking). No one shall be subjected to torture or to cruelty, inhuman or degrading treatment or punishment (assaults).

### **Access to justice and a fair trial:**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law (Socio-Cultural Barriers, resources).

**Right to a fair trial:** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.

### **Freedom of movement and assembly:**

Everyone has the right to freedom of movement within and outside the borders of their own country and residence within the borders of each State. Everyone has the right to freedom of peaceful assembly and association.

### **Right to privacy, to marriage and to find a family:**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honour and reputation. Men and women of full age without any limitation due to race, nationality or religion have the right to marry and to find a family. *They are entitled to equal rights as to marriage, during marriage and at its dissolution.* Marriage shall be entered into only with the free and full consent of the intending spouses

### **Right to work and to take part in public affairs:**

Everyone without discrimination has the right to work and equal pay, to free choice of employment, to just and favourable



conditions of work and to *protection against unemployment*.

Everyone has the right to take part in the government of his country, either directly or through freely chosen representatives.

**Article 26: Right to education:** Everyone has the right to education which shall be free and compulsory at least in the elementary and fundamental stages. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit

## 1.2 Convention on the Elimination of Discrimination Against Women (CEDAW), 1979

It defines discrimination against women as any distinction, exclusion, or restriction made on the basis of sex, with the purpose or effect of impairing the enjoyment by women of political, economic, social, cultural, or civil human rights on equal footing with men.

**Article 2 and 3:** Condemn discrimination against women and they undertake to pursue a policy of eliminating it in all its forms and to include the principles of equality of men and women in national constitutions, adopt legislation prohibiting all discrimination against women, ensure legal protection and effective remedy against discrimination, ensure that *no public authorities or institutions* engage in discrimination, take measures to modify or abolish

existing laws, customs and practices which constitute discrimination against women.

**Article 3:** States Parties shall take all appropriate measures especially in the political, social, economic and cultural fields to ensure the full development and advancement of women, for the purpose of guaranteeing them enjoyment of human rights on equal footing with men.

**Article 4:** Affirmative action measures shall not be considered as discrimination. Special measures protecting pregnancy shall not be considered discriminatory either.

**Article 5:** States Parties shall take all appropriate measures: to modify social and cultural patterns of conduct of men and women which are based on ideas of inferiority or superiority or on stereotyped roles for men and women to ensure that family education includes the recognition of the common responsibility of men and women in raising children.

**Article 6:** States Parties shall take all appropriate measures to suppress human trafficking in women and any form of exploitation.

**Article 7:** States Parties shall take all appropriate measures to eliminate discrimination against women in political and public life and shall ensure equal rights to vote and be eligible for election, to participate in forming government policy and to hold public office as well as to participate in NGOs.

**Article 8:** States Parties shall take all appropriate measures to ensure a woman's equal right to represent her government at the international level and participate in the work of international organizations.

**Article 9:** States Parties shall grant women equal rights to a nationality. Neither marriage nor change of nationality by the husband during marriage shall automatically change the nationality of the wife. Women shall have equal rights with men with respect to their children's nationality.

**Article 10:** States Parties shall ensure to women equal rights in the field of education and shall ensure the same conditions for career guidance, access to studies, the same teaching staff and equipment. Stereotyped roles of men and women are to be eliminated in all forms of education. States Parties shall ensure that women have the same opportunities to benefit from scholarships and the same access to continuing education. They shall ensure the reduction of female drop-out rates and shall ensure that women have access to educational information, to help ensure health and well-being of families including information on family planning.

**Article 11:** States Parties shall take all appropriate measures to eliminate discrimination against women in employment and shall ensure on the basis of equality of men and women, the same rights to work, to the same employment opportunities, to free choice of employment, to promotion, benefits, vocational training, equal remuneration, equal treatment in respect of work

of equal value, the right to social security, unemployment, and protection of health. States Parties shall prohibit dismissal on the grounds of pregnancy and discrimination in dismissals on the basis of marital status. States Parties shall take measures to introduce maternity leave with pay or social benefits.

**Article 12:** States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care and shall ensure women equal access to health care services and appropriate services in connection with pregnancy.

**Article 13:** States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life and shall ensure the same rights to family benefits, to bank loans, mortgages and other forms of credit.

**Article 14:** States Parties shall take into account the special problems of rural women and the significant roles they play in the economic survival of their families and shall ensure to them all rights in this convention. States Parties shall ensure equal rights of men and women to participate in and benefit from rural development, and shall ensure to rural women the rights to: participate in development planning, have access to adequate health care facilities and family planning, benefit from social security programs, receive training and education, have access to agricultural credit and loans, marketing, and appropriate technology, receive equal treatment in land reform, and have adequate living conditions;

particularly, in relation to housing, sanitation, electricity and water supply, transport and communications.

**Article 15:** Women shall have equality with men before the law. Women and men shall have the same rights regarding movement of persons and freedom to choose residence.

**Article 16:** States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure equal rights to enter marriage, to choose a spouse, to enter marriage only with full consent, the same rights and responsibilities within marriage and in divorce, the same rights and responsibilities as parents, the same rights to decide on the number and spacing of children, the same rights with regard to ownership of property. A minimum age shall be set for marriage.

## 1.3 Beijing Declaration and the Platform of Action, 1995

The global agenda for the achievement of gender equality and the empowerment of women and girls produced most comprehensive and progressive blueprint for advancing women's rights and sets strategic objectives and actions for advancement of women and achievement of Gender Equality (GE) in 12 critical areas.

**1. Women and poverty** - Persistent and increasing burden of poverty on women.

- a. Revise laws and administrative practices to ensure women's equal rights and access to economic resources.
- b. Provide women with access to savings and credit mechanisms and institutions.

**2. Education and Training of Women** - Inequalities and inadequacies in and unequal access to education and training.

- a. Ensuring equal access to education eradicates illiteracy among women; improves women's access to vocational training, science and technology, and continuing education; again, it develops non-discriminatory education and training.

**3. Women and health** - Inequalities and inadequacies in and unequal access to health care and related services.

- a. Increase women's access throughout the life cycle to appropriate, affordable and quality health care, information and related services.
- b. Strengthen preventive programmes that promote women's health, undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS, and sexual and reproductive health issues.

**4. Violence against women** - Take integrated measures to prevent and eliminate violence against women. Study the causes and consequences of violence against women and the effectiveness of preventive measures.

- a. Eliminate trafficking in women

and assist victims of violence due to prostitution and trafficking.

**5. Women and armed conflict** - Wars and armed conflict destroy families and societies and leave women and girls particularly vulnerable. Sexual violence is widespread and often used as a war tactic.

**6. Women and Economy** - Inequality in economic structures and policies in all forms of productive activities and in access to resources.

- a. Promote women's economic rights and independence including access to employment, appropriate working conditions and control over economic resources.
- b. Eliminate occupational segregation and all forms of employment discrimination. Promote harmonization of work and family responsibilities for women and men.

**7. Women in power and decision-making** - Inequality between men and women in the sharing of power and decision-making at all levels. Take measures to ensure women's equal access to and full participation in power structures and decision-making as well as in leadership.

**8. Institutional mechanisms** - Specialized institutions have played an important part in informing laws, policies and programmes and advancing gender equality. Robust laws and policies coupled with stronger mechanisms to coordinate various actors and ensure their effective enforcement and implementation can push the agenda.

**9. Human rights of women** - Lack of respect for and inadequate promotion and protection of the human rights of women. Promote and protect the human rights of women through the full implementation of all human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women.

- a. Ensure equality and non-discrimination under the law and in practice, achieve legal literacy.

**10. Women and the Media** - Media plays a significant role in perpetuating and challenging social norms that condone discrimination or violence against women. It can objectify women but also showcase strong women leaders and protagonists who can become role models for their audience

**11. Women and the Environment** - Women are among the most affected by climate change. They are often the ones gathering water, fishing or farming land affected by flooding. Meanwhile, their voices are often ignored in environmental planning and management. They also have less access to land and productive resources.

**12. The girl-child** - Persistent discrimination against and violation of the rights of the girl child eliminate all forms of discrimination against the girl child. Eliminate negative cultural attitudes and practices against girls, promote and protect the rights of the girl child and increase awareness of her needs and potential. Eliminate discrimination against girls in education, skills development and training. Eliminate discrimination against girls

in health and nutrition, the economic exploitation of child labour and protect young girls at work. Eradicate violence against the girl child and promote the girl child's awareness of and participation in social, economic and political life. Again, strengthen the role of the family in improving the status of the girl child.

## 1.4 Protocol to the African Charter on Human and People's rights on the rights of Women in Africa

### **Article 2 & 8- ACCESS TO JUSTICE, PROTECTION AND ELIMINATION OF DISCRIMINATION AGAINST WOMEN:**

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutionally corrective and positive actions and other measures. States Parties shall integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities which include supporting the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

### **Article 4 - THE RIGHTS TO LIFE, INTEGRITY, DIGNITY AND SECURITY OF THE PERSON:**

Every woman shall have the right to dignity inherent in a human

being and to the recognition, respect and protection of her human and legal rights including the free development of her personality and freedom from any exploitation, cruel, inhuman or degrading treatment of women.

States Parties shall:

- enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex in private or public places.
- Ensure the prevention, punishment of perpetrators and eradication of all forms of violence against women.
- Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence and implement programmes for the rehabilitation of women victims.
- Prevent, condemn and prosecute the perpetrators of trafficking in women, and protect those women most at risk.
- Take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

### **Article 5 - ELIMINATION OF HARMFUL PRACTICES:**

Take all necessary legislative and other measures to eliminate, prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards.



**Article 6 & 7 - MARRIAGE, SEPARATION, DIVORCE AND ANNULMENT OF MARRIAGE PROPERTY:**

No marriage shall take place without the free and full consent of both parties. The minimum age of marriage for women shall be 18 years. Women and men to enjoy equal rights and be regarded as equal partners in marriage and have equal rights in administration of the joint estate and in cases of separation, divorce or annulment of marriage, they shall be entitled to an equitable sharing of the joint property deriving from the marriage. Every marriage shall be recorded in writing and registered in accordance with national laws in order to be legally recognised.

A woman and a man shall jointly contribute to safeguarding the interests of the family - protect and educate their children. In accordance with the matrimonial regime during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

**Article 9 - RIGHT TO PARTICIPATION IN THE POLITICAL AND DECISION-MAKING PROCESS:**

Women are equal partners with men at all levels of development and implementation of State policies and development programmes. Take specific positive action to promote equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that women participate without any discrimination in all elections and are represented equally at all levels with men.

**Article 12 - RIGHT TO EDUCATION AND TRAINING:**

Eliminate all forms of dis-

crimination against women and guarantee equal opportunity and access in the sphere of education and training. Promote enrolment and retention in education and training for women at all levels and in all disciplines; particularly, in the fields of Science and Technology. Eliminate all stereotypes in textbooks, syllabuses and the media that perpetuate such discrimination. Protect women, especially the girl-child from all forms of abuse including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices.

**Article 13 - ECONOMIC AND SOCIAL WELFARE RIGHTS:**

Enforce legislative and other measures to guarantee women equal opportunities and freedom to choose their occupation in work, career advancement and equal remuneration for jobs of equal value for women and men. Ensure transparency in recruitment, promotion and dismissal of women as well as to combat and punish sexual harassments in the workplaces. Take the necessary measures to recognise the economic value of the work of women in the home.

**RIGHTS AND MAINTENANCE OF CHILDREN:**

Introduce a minimum age for work and prohibit the employment of children below that age. Prohibit, combat and punish all forms of exploitation of children, especially the girl-child. Recognise that both parents bear the primary responsibility for the upbringing and development of children.

**Article 14 - HEALTH AND REPRODUCTIVE RIGHTS:**

Ensure that the right to

health of all women, including sexual and reproductive health is respected and promoted. These include:

- a) The right to control their fertility and right to choose any method of contraception.
- b) The right to have family planning education and to decide whether to have children, their number and the spacing in between them.
- c) The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS.
- e) The right to be informed on one's health status and of one's partner; particularly, if affected with sexually transmitted infections.

#### **Article 20 & 21 - WIDOWS AND THE RIGHT TO INHERITANCE RIGHTS:**

Widows shall enjoy all human rights and shall not be subjected to; inhuman, humiliating, or degrading treatment. They shall automatically become the guardian and custodian of her children after the death of her husband unless this is contrary to the interests and the welfare of the children. A widow shall have the right to remarry the person of her choice and she shall have the right to an equitable share in the inheritance of the property of her husband and to continue to live in the matrimonial house.

*Women and men shall have the right to inherit equitable shares of their parents' properties.*

#### **Article 23 - SPECIAL PROTECTION OF WOMEN WITH DISABILITIES:**

Ensure the protection of women with disabilities and take specific measures to commensurate with their physical,

economic and social needs which facilitate their access to employment, professional and vocational training as well as their participation in the decision-making. Ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

## **1.5 SADC Protocol on Gender and Development**

The Objectives of the Protocol is to provide for the empowerment of women, eliminate discrimination and achieve gender equality and equity through the development and implementation of gender responsive legislation, policies, programmes and projects.

Below are the key priority areas to accelerate progress in the achievement of gender equality and women's empowerment:

#### **Elimination of Discrimination, GBV and Harmful Practices:**

Review, amend and/or repeal all laws that discriminate on the grounds of sex or gender by 2015 to ensure equal access to justice and protection before the law and abolish the minority status of women.

Eliminate GBV and practices which are detrimental to the achievement of the rights of women by prohibiting such practices and attaching deterrent sanctions thereto. Ensure that perpetrators

of GBV are tried by a court of competent jurisdiction.  
Enact and adopt specific legislative provisions to prevent human trafficking and provide holistic services to survivors with the aim of re-integrating them into society. Put in place mechanisms by which all relevant law enforcement authorities and institutions may eradicate national, regional and international human trafficking networks.

### **ACCESS TO PROPERTY AND RESOURCES:**

Review all policies and laws that determine access to, control of, and benefit from, productive resources by women in order to: (a) end all discrimination against women and girls with regard to water rights and property such as land and tenure thereof, (b) ensure that women have equal access and rights to credit, capital, mortgages, security and training as men, and (c) ensure that women and men have access to modern, appropriate and affordable technology and support services.

**ACCESS TO JUSTICE:** Eliminate gender bias - ensure justice and fairness are accorded to survivors of gender-based violence in a manner that ensures dignity, protection and respect. Ensure that cases of gender-based violence are conducted in a gender sensitive environment.

### **MARRIAGE AND FAMILY RIGHTS:**

Enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are re-

garded as equal partners in marriage by ensuring that no person under the age of 18 shall marry unless otherwise specified by law which takes into account the best interests and welfare of the child. Every marriage takes place with the free and full consent of both parties, and it is registered in accordance with national laws.

*Subject to the choice of any marriage regime or marriage contract have equitable share of property acquired during their relationship at the termination of the marriage.*

Ensure that during the subsistence of their marriage and where spouses separate, divorce, or have their marriage annulled, they shall have reciprocal rights and duties towards their children with the best interests of the children always being paramount.

### **WIDOWS' AND WIDOWERS' RIGHTS:**

Enact and enforce legislation to ensure that widows:

- a. Are not subjected to inhuman, humiliating, or degrading treatment and are protected against all forms of violence and discrimination based on her status.
- b. Automatically becomes the guardian and custodian of her children when her husband dies, unless otherwise determined by a competent court of law.
- c. Have the right to continue to live in the matrimonial house after her husband's death.
- d. Have access to employment and other opportunities to enable her to make a meaningful contribution to society.
- e. Have the right to an equitable share in the inheritance of the

property of her husband.

- f. A widow shall have the right to remarry any person of her choice.

**THE GIRL AND BOY CHILD:** Ensure the development and protection of the girl child by:

- (a) eliminating all forms of discrimination against the girl child in the family, community, institutions and at state levels,
- (b) ensuring that girls have equal access to education and health care, and are not subjected to any treatment which causes them to develop a negative self-image,
- (c) ensuring that girls enjoy the same rights as boys and are protected from harmful cultural attitudes and practices in accordance with the UNCRC and the African Charter on the Rights and Welfare of the Child,
- (d) protecting girls from economic exploitation, trafficking and all forms of violence including sexual abuse, and
- (e) ensuring that girl children have equal access to information, education, services and facilities on sexual and reproductive health and rights.

## **EQUAL ACCESS TO EMPLOYMENT**

**AND BENEFITS:** Review, amend and enact laws and policies that ensure women and men have equal access to wage employment in all sectors of the economy. Ensure: (a) equal pay and benefits for equal work for women and men, (b) the eradication of occupational segregation and all forms of employment discrimination, (c) the recognition

of the economic value and protection of persons engaged in agricultural and domestic work as well as to prohibit the dismissal or denial of recruitment on the grounds of pregnancy or maternity leave.

**SEXUAL HARASSMENT:** Enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres and provide deterrent sanctions for perpetrators of sexual harassment.

**SRHR: HEALTH AND HIV/AIDS:** Adopt and implement legislative frameworks, policies, programmes and services to enhance gender sensitive, appropriate and affordable quality health care, in particular, to:

- (a) reduce the maternal mortality ratio by 75% by 2015,
- (b) address the mental, sexual and reproductive health needs of women and men,
- (c) ensure the provision of hygiene and sanitary facilities and nutritional needs of women, including women in prison,
- (d) develop gender sensitive strategies to prevent new HIV/AIDS infections,
- (e) ensure universal access to HIV/AIDS treatment for infected women, men, girls and boys.







**NATIONAL FRAMEWORK THAT  
PROVIDES PROTECTION  
TO THE RIGHTS  
OF WOMEN**

## 2.1 The Constitution of Lesotho, 1993

The Constitution is the supreme law of Lesotho and if any other law is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency be void (no force and effect).

The Constitution of Lesotho is applicable to address GBV cases as it addresses the fundamental human rights that are guaranteed to every person and they include the following:

**Section 4 (1)** Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or *social origin*, property, birth or **other status** to fundamental human rights and freedoms-

- (a) the right to life,
- (b) the right to personal liberty,
- (c) freedom of movement and residence,
- (d) freedom from inhuman treatment,
- (e) freedom from slavery and forced labour,
- (f) freedom from arbitrary search or entry,
- (g) the right to respect for private and family life,
- (h) the right to a fair trial and to a fair determination of his civil rights and obligations,
- (i) freedom of conscience; freedom of expression,
- (j) freedom of peaceful assembly,
- (k) freedom of association,
- (l) freedom from discrimination,
- (m) the right to equality before the

- law and the equal protection of the law, and
- (n) the right to participate in government.

**Sections 18 and 19** provide for equality before the law, equal protection of the law and the enjoyment of the rights free from discrimination on any ground.

**Section 18 in subsections 1 and 2** provides that no law shall make any provision that is discriminatory either of itself or in its effect. It goes further to say that no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or authority.

### SECTION 25 - APPLICATION OF THE PRINCIPLES OF STATE POLICY

The principles form part of the public policy of Lesotho. They are not enforceable by any court but, subject to the limits of the economic capacity and development of Lesotho, they shall guide the authorities and agencies of Lesotho, as well as other public authorities in the performance of their functions with a view to achieving progressively, by legislation or otherwise, the full realisation of these principles:

- (a) Equality and justice
- (b) Protection of health
- (c) Provision for education
- (d) Opportunity to work
- (e) Just and favourable conditions of work
- (f) Protection of workers' rights and interests
- (g) Protection of children and young persons
- (h) Rehabilitation, training and

- social resettlement of disabled persons
- (i) Economic opportunities
- (j) Participation in cultural activities
- (k) Protection of the environment

*Most of the principles of state policy have been developed into laws as will be seen below including laws that provide for the advancement and non-discrimination of women and girls.*

## 2.2 Human Rights Act No 24 of 1983

The objective of the law is to guarantee and safeguard the rights of individuals and to ensure that conduct of persons administering the law of the country conform with the provisions of this Act.

**Section 2: Every individual** shall be entitled to enjoyment of the rights and freedoms recognised and guaranteed in this act without distinction of any kind such as race, ethnic groups, colour, sex, language, religion, political or their opinion, national and social origin, property, birth and other status.

They shall comprise of the right to:

- (a) Life and respect of human dignity of a person.
- (b) Liberty and security of a person.
- (c) The right to freedom of peaceful assembly and association.
- (d) Freedom of movement and residence.
- (e) Expression and disseminate opinions.
- (f) Seek and enjoy asylum from persecution in other countries.

- (g) Own property alone as well as in association.
- (h) Freedom of thought, conscience, profession and religion.
- (i) Work, to free choice of employment, to just and favourable conditions of work and equal pay for equal work without discrimination.
- (j) Equality before the law without discrimination; to equal protection of the law and equal protection against any discrimination in violation of this act.
- (k) An effective remedy by the competent national courts for acts violating the fundamental rights granted by this act.
- (l) Fair and public hearing by independent, impartial and competent national courts in the determination of the rights, obligations and criminal offences.
- (m) Be presumed innocent until proven guilty according to the law in a public trial at which all guarantees necessary for a defence have been provided.
- (n) Participate freely either directly or through freely chosen representatives in the government of the country.
- (o) Equal access to the public service and to public property and service in strict equality to all persons before the law.
- (p) Education and freely take part in the cultural life of the community.

**Section 17(3):** The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

**Section 17(4):** Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

## 2.3 The Laws of Lerotholi, 1938

The Laws of Lerotholi are a historic documentation which puts in authoritative form some of the customs of the Basuto that are enforced by the courts. It appears to have been compiled by the National Council of Basuto-land in about 1907.

Part 2 of *the laws* of Lerotholi *makes rules* and gives penalties for various instances of abduction and seduction.

### ***Abduction and seduction of mentally defective women and children under the age of 16 years, Section 2***

No person shall abduct or seduce or cause to be abducted or seduced any mentally defected or imbecile woman or girl over the apparent age of 16 years, or any girl under the apparent age of 16 years. Any person contravening this rule shall be liable to a conviction leading to a fine not exceeding 50 pounds or to imprisonment for a period not exceeding twelve months or both such fine and imprisonment. The court trying the case may in addition order the payment of compensation not exceeding ten head of cattle.

### **ABDUCTION OF UNMARRIED GIRLS, RULE 3 (1)**

No person shall abduct or cause to be abducted an unmarried girl over the apparent age of 16 years, or any girl under the apparent age of 16 years against her wish, whether with the concurrence of her parents otherwise. Any person contravening this rule shall be liable on conviction to a fine not exceeding 50 pounds or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

**3(3)** In cases where the abduction takes place at the instance of the parents, the court should not grant compensation to such parents.

### **SEDUCTION OF UNMARRIED GIRL WHILE ATTENDING SCHOOL OR CHURCH SERVICE, RULE 5**

Of any person who seduces or cause to be seduced any unmarried girl over the apparent age of 16 years while such girl is a resident at or proceeding to or returning from school or church service, he shall be liable on conviction to a fine not exceeding 25 pounds or to imprisonment for a period not exceeding 6 months or to both such fine and imprisonment, and in addition, the court may grant compensation not exceeding 6 head of cattle to the parents of such girl.

### **SEDUCTION OF UNMARRIED GIRL NOT COVERED BY RULE 5 and RULE 6**

In any case of unmarried girl over the apparent age of 16 years other than that referred to in rule 5, a claim for compensation by the parents of such

girl shall lie against the man, and the court hearing the case may award compensation not exceeding 6 head of cattle for the first seduction.

### **RULE 34: MARRIAGE**

A marriage by Basotho custom in Lesotho shall be deemed to be complete when:

- a) there is an agreement between the parties to the marriage,
- b) there is an agreement between the parents of the parties or between those who stand in loco parents to the parties as to the marriage and as to the amount of 'bohali.'

Rule 34(3): A form of marriage purporting to be entered into whereby a woman is married to a fictitious person (lebotla- or to a person already deceased (lebitla) or is expressly forbidden.

## **2.4 Marriage Act No 10 of 1974**

Marriage is a legal contract that confers special rights and responsibilities to the parties involved. Lesotho Law recognises civil and customary marriages. Civil marriage is regulated under the Marriage Act of 1974 and customary marriages are governed by the Laws of Lerotholi, 1903.

The Marriage Act makes provision for solemnization and registration of marriages.

### **SECTION 3 - NO PERSON MAY BE COMPELLED TO MARRY:**

No Person may be compelled to enter into a contract of marriage with any other person

or to marry against his or her wish.

### **SECTION 4 - REGISTRATION OF CUSTOMARY MARRIAGES:**

A marriage entered into according to customary law may be registered at the office of the District Administrator for the district in which such marriage was celebrated or where the parties reside.

### **SECTION 24 - REMARRIAGE OF WIDOW AND WIDOWER AND PROTECTION OF RIGHTS OF THE MINOR CHILDREN:**

No banns shall be published and no special licence issued under any of the provisions of this act with respect to or for the marriage of a widower or widow having minor children of a former marriage, unless a certificate shall be produced signed by the Master of High Court or an officer in the public service authorised thereto by him to the effect that the inheritances which have devolved upon such minors have been settled by payment to the master, or secured by the common law bond or obligation commonly called a kinderbewys duly registered at the Deeds Registry, or to the effect that the value of such inheritances was less than M200.

### **SECTION 25 - MARRIAGE OF MINORS:**

No marriage officer shall solemnize a marriage between parties of whom one or both are minors unless the consent of the party or parties which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing.

**SECTION 29 - IMPEDIMENT TO MARRIAGE:** No person may marry who has previously been married to any other person still living unless such previous marriage has been dissolved or annulled by the sentence of a competent court of law.

### **MARRIAGE UNDER COMMON LAW**

- No insane person who is not capable of giving consent to a marriage may marry.
- No person may intermarry who are related within the forbidden degree of relationship.
- Cohabitation even if it results in children being born out of it, does not raise the presumption of marriage.
- Cohabiting couples do not have the same property rights and legal protections as married couples.
- Spouses are protected based on their matrimonial regime where the other partner alienates without consent of the other the assets owned jointly by both partners.

administration of a joint estate, the common law, customary law and any other marriage rules in terms of which a husband acquired the marital power over the person and property of his wife are repealed.

3.(3) The following restrictions which the marital power places on the legal capacity of a wife are removed:

**The Government of Lesotho passed the Legal Capacity of Married Persons Act 9 of 2006 to eliminate inequality between married persons. Before the law was passed, married women were regarded as legal minors which limited their access to productive resources, credit and land titling and their rights to start businesses, hold directorship positions or pursue other legal and contractual obligations.**

Marital power also subjected women to range of human rights violation including loss of property. Under PART II, a number of actions can be executed without spouse's consent. No consent required means one spouse is allowed to act independently, performing transactions that bind the joint estate. Examples are:

- (a) entering into a contract;
- (b) suing or being sued;
- (c) registering immovable property in her name;
- (d) acting as an executrix of a deceased's estate;
- (e) acting as a trustee of an estate;
- (f) acting as a director of a company;
- (g) binding herself as surety; and

## **2.5 Legal Capacity of Married Persons Act No.9 of 2006**

This Act provides for the removal of minority status of married women and to provide for incidental matters.

**SECTION 3 REPEALS THE MARITAL POWER: 3.** (1) Subject to the provisions of this Act with regard to the



- (h) performing any other act which was restricted by any law due to the marital power before the commencement of this Act.

- Donating from the joint estate where the donation unreasonably prejudices the interests of the other spouse.

**PART III - Spouses married in community of property have equal capacity to do the following in consultation with one another:**

- (a) dispose of the assets of the joint estate;
- (b) contract debts of which the joint estate is liable; and
- (c) administer the joint estate.

According to the Act, spouses in both civil and customary marriages have equal power over guardianship of children of the marriage and have equal responsibilities.

## 3.6 Administration of Estate Proclamation 19 of 1935

### **Protection of Minor Children's inheritance rights upon remarriage of the surviving spouse:**

### **SPOUSE'S JURISTIC ACTS**

Section 7 of the Act specifies acts requiring another spouse's consent to include:

- Alienating or burdening assets of the joint estate;
- Alienating, ceding, or burdening insurance policies, mortgage bonds, fixed deposits, shares, stocks, or any of the other spouse's investments at any financial institution;
- Withdrawing money from any account held in the name of the other spouse;
- Alienating immovable property belonging to the joint estate;
- Entering a credit agreement in terms of the act;
- Entering into a contract to purchase immovable property;
- Receiving money that is due to the other spouse from any source;
- the alienation or burdening of common household furniture;

**Section 56:** Whenever any person who is a widower or widow and the parent of a minor child entitled to claim from that person any inheritance from the estate of that person's deceased spouse intends to marry again, that person shall obtain a certificate under the hand of the Master of High Court.

**Section 56(3):** Any such widow or widower who marries again without obtaining such a certificate as it is required under *Sub-section 1* shall forfeit for the benefit of such minor at the instance of the master or of any such minor when he/she attains majority, and a sum equal to one-fourth of such widower's or widow's share in the joint estate of him or herself and the pre-deceased spouse shall in addition be liable to a fine.



## 2.6 Law Inheritance

### Act 26 of 1873

**Section 5:** Every person competent to make a will shall have full power by any will executed after taking effect of this part to disinherit or omit to mention any child, parent, relative or descendant without assigning any reason for such disinheritance or omission, any law, usage or custom now or heretofore in force in Basutoland notwithstanding and no such will as aforesaid shall be liable to be set aside as invalid, either wholly or in part, by reason of such disinheritance or omission as aforesaid.

## 2.7 Land Act No. 8 of 2010

According to Lesotho Land Act 2010, both women and men have equal rights to own land and property, either as individuals or jointly with other people as opposed to the past where women were not allowed to own land. Both husbands and wives have the right to use and live on family land.

**Section 6 - Persons who may hold title to land:** The person who may hold the title to land is a citizen (regardless of gender) who is not less than 18 years except for cases;

- I) Where the person is married
- II) Where title is a result of a gift and
- III) Where title is a result of inheritance

**Section 10 - Presumption of joint title in marriages:** (1) Where persons are married in community of property, either under civil, customary, or any other law and irrespective of the date on which the marriage was entered into, any title to immovable property allocated to or acquired by anyone of them shall be deemed to be allocated to or acquired by both partners, and any title to such property shall be held jointly by both.

(2) **Subsection 1** shall apply in the same manner in the case of polygamous marriages as if each household was in a monogamous marriage.

(3) Transactions in relation to land shall be conducted by both spouses in monogamous marriages in community of property, jointly or with the consent of another spouse, and where any document requires a signature, the document shall be signed by both spouses unless they agree in writing that one spouse shall represent and sign on behalf of the other.

(4) **Subsection 3** shall apply in the same manner in polygamous marriages and each of the multiple wives shall be responsible for land matters relating to her household.

(5) Where any of the spouses is for any reason unable to sign or give consent or unreasonably withholds a signature or consent where such is required under this Act, the other spouse may apply to a District Land Court for leave to perform the act without the required consent or to sign alone.

## **Protection of rights of Children's inheritance rights upon remarriage of the surviving spouse:**

**Section 15(4):** In the case of spouses married in community of property and where there is a surviving spouse, upon remarriage of such spouse, the land shall not form part of any community of property of any subsequent marriage and upon the death of the surviving spouse.

**Section 15(5):** Notwithstanding Subsection 3, a minor child of a deceased allottee shall be entitled to remain in occupation of the land allocated to the deceased allottee under the assistance of a trustee or guardian until the minor attains majority age.

**Section 15(6):** Where the heir under Section 3(a) or (b) is a minor, a trustee or guardian shall be appointed in accordance with prevailing inheritance laws to represent the interests of the minor.

## **2.8 The Sexual Offences Act (SOA), 2003**

**This Act comprehensively addresses unlawful sexual acts in a broad spectrum and sexual gender-based violence is adequately addressed with the inclusion of sexual abuse within the marriage setting or where people have a relationship. The penalties are also high, and the minimum sentences prescribed by the Act cannot be suspended and no option of fine is given.**

## **Section 2 - Interpretation section defines sexual act as:**

- a) direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of the body of another person;
- b) exposure or display of the genital organs of one person to another person;
- c) the insertion of any part of the body of a person or of any part of the body of an animal or any object into the vagina or penis or anus of another person; or
- d) cunnilingus, fellatio or any other form of genital stimulation done for lawful purposes without putting in jeopardy the health and safety of the arrestee, suspect or the person who is being searched.

## **Section 3 - Unlawful Sexual Act: 3(1)**

...a sexual act is prima facie unlawful if it takes place in any coercive circumstance.

**3(3)** Marriage or any other relationship shall not be a defence against a charge of rape where it is shown that:

- he or she withholds a consent from an act of sexual intercourse with a person to whom he or she is currently married, and one of the following conditions is satisfied:
  - i) he or she is sick;
  - ii) the husband or wife uses abusive language, violence or threats in order to have sexual intercourse;
  - iii) he or she has obtained a judicial order of restraint in respect of the husband or wife; or
  - iv) he or she has been separated from the husband or wife by judicial order.

**For a sexual offence to occur Section 2 defines extensively what constitutes Coercive circumstance, this includes;**

- a. application of force, whether explicit or implicit, direct or indirect, physical or psychological against any person or animal;
- b. threats, whether verbal or through conduct, of the application of physical force to the complainant or a person other than the complainant;
- c. threats, whether verbal or through conduct, to cause harm other than bodily harm, or mental harassment to, or public humiliation or disgrace of, or to use extortion against, the
- d. complainant or any person other than the complainant;
- e. the complainant is below the age of 12 years;
- f. the complainant is unlawfully detained;
- g. the complainant is affected by - i) physical disability of any kind, whether permanent or temporary; or ii) intoxicating liquor or any drug or other substance which mentally or physically incapacitates the complainant; or iv) sleep, to such an extent that he or she is rendered incapable of understanding the nature of the sexual act or deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;
- h. induced, whether verbally or through conduct, by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed is some other person;
- i. as a result of the fraudulent misrepresentation of some fact by or any fraudulent conduct on the part of the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator;
- j. a perpetrator, knowing or having reasonable grounds to believe that he or she is infected with a sexually transmissible disease, the human immunodeficiency virus or other life-threatening diseases, does not, before committing the sexual act, disclose to the complainant that he or she is so infected.

**A person does not consent to sexual intercourse if -**

- (a) the submission has been obtained by force or by threats of whatever nature;
- (b) the submission has been obtained by a fraudulent representation by the accused that he or she is her husband or wife;
- (c) Fraudulent representation as to the nature of the act of intercourse, and the affected person has acted on this misrepresentation; or
- (d) The affected person is asleep or otherwise unconscious at the time at which the sexual intercourse takes place, and the accused has no reasonable grounds for assuming that he or she would on awakening or gaining consciousness consent to the fact that intercourse has taken place;
- (e) he or she is under the age of eighteen years; or
- (f) he or she is so intoxicated at the time at which sexual intercourse takes place as to be incapable of giving or withholding consent;
- (g) the accused person, to overcome his or her resistance, has administered to him or her any substance, the nature of which is concealed from him or her, which has the effect of rendering him or her incapable of expressing his or her lack of consent to the act of sexual intercourse; or

A photograph of a diverse crowd of people at what appears to be a protest or demonstration. In the foreground, a woman with a red bandana is looking towards the camera. To her right, a man wearing sunglasses and a black cap is also looking forward. A sign held up by someone in the crowd reads "MY BODY IS NOT YOUR CRIME SCENE" in bold, black, sans-serif capital letters. The background is slightly blurred, showing more people and a white van.

MY BODY IS  
NOT YOUR  
CRIME SCENE

“The **penalties** are also high,  
and the minimum sentences  
prescribed by the Act **cannot be**  
**suspended** and no option of  
fine is given.

”

**Inducement to allow Sexual Act - Section 5(1):** - a person who induces another person by false pretence or fraudulent means to allow another person to commit a sexual act with that other person commits an offence.

**Section 5(2):** - a person who induces another to submit to a sexual act through the use of his authority, status, power, privilege, or other undue influence commits an offence.

### **Part III - Section 8 and 9 provide for sexual offences against a child and persistent sexual abuse**

#### **Section 8**

- (1) a person who commits a sexual act with a child commits an offence.
- (2) a person who invites or persuades a child to engage in a sexual act with himself/herself or another person commits an offence.
- (3) a person who fails to report an unlawful sexual act against a child commits an offence.

**Section 9(3)** - a person shall be taken to have sexually abused a child persistently if that person has engaged in a sexual act in relation to a child on two or more occasions.

### **Part IV - Sections 10 to 14 provide for commercial exploitation of children**

The sections provide for incidences of child prostitution and make provision for those who may be involved including those who commit, invite to commit, agrees to commit, procures a child with the intention to commit, offers or receives a reward or any financial gain, favour for commission of a sexual act with a child.

A sexual act with a child for financial reward, and these sections cover those who are involved in the exploitation by offering, inviting or persuading, receiving the reward or facilitating the commission of the sexual act to the child.

*The law says that a person who conspires with another to aid or procure the commission of, incite, instigate, command or procure another to commit an unlawful act commits an offence and is equally liable on conviction to the penalty to punishment given to the other accused person.*



## 2.9 Lesotho Penal Code, 2010

The main source of Criminal Law in Lesotho is the Penal Code which sets out in straight forward terms the general and specific rules of Criminal Law. For purposes of responding to GBV, the Penal Code criminalizes physical violence including by intimate partners, provides for Sexual Violence, forced Marriages and crimes against the marriages.

### **Section 30 and 31 - Assault and Aggravated Assault**

**Section 30** - (1) A person who intentionally applies unlawful force to the person or another commits the offence of assault.

- (2) A spouse who intentionally applies force to another commits the offence of assault.

Also, it caters for the crime of assault and it reads, “a person or a spouse who intentionally applies unlawful force to the person or another commits the offence of assault.” This section equally applies to cases of GBV if the *act complained* about amounts to assault.

### **Section 34: Threats of violence**

(1) A person who communicates to another an unlawful threat of death or physical harm, either directly or indirectly, by gesture or words (written or spoken) commits an offence.

(2) It shall be a defence to a charge under *Subsection (1)* that the threat in question would not have caused fear or apprehension in any reasonable person.

### **Section 46: The crime of Abduction against children or persons of unsound mind is also provided under the Penal Code**

Any person who unlawfully takes or entices a child or a person of unsound mind out of custody of the lawful guardian of such person with or without the consent of such a guardian, for purposes of marriage, sexual intercourse, or commercial and exploitation commits an offence of abduction. This section protects abuse against children on a range of issues. It even criminalises cases where parents/guardians consent to the crime of abduction against children or persons of unsound mind.

### **Sexual Violence of Children**

**Section 49 (1):** an adult who has sexual intercourse with a child commits an offence, and the consent of the child is irrelevant.

### **Sexual Molestation**

**Section 50:** an adult who has sexual act with a child under the age of twelve years, whether or not such child consents, commits the offence of sexual molestation.

### **Unlawful Sexual Act**

**Section 52 (1):** a person who has unlawful sexual act with another person, or causes another person to commit an unlawful sexual act, commits an offence.

**(2)** Sexual act is unlawful when it is committed under the following circumstances:

- (a) application of force
- (b) there are threats
- (c) public humiliation or disgrace or

- use of extortion
- (d) the complainant is below the age of 12 years
- (e) the complainant is unlawfully detained
- (f) the complainant is affected by physical disability, mental incapacity, medical, intellectual or other forms of disability or intoxication, sleep etc.

### Crimes against the Marriage

**Section 107:** a person who unlawfully and intentionally enters what purports to be a lawful marriage ceremony with any person while lawfully married to another commits an offence of bigamy unless -

- a) The previous marriage is under customary law and the person is marrying another wife under customary law;
- b) The previous marriage has been dissolved or annulled by a competent court of law;
- c) The husband or wife has been continually absent from the person for a period of 7 years and has not been heard of by that person as being alive for that period.

habilitation and reintegration of victims of trafficking in persons, and for related matters.

**Trafficking in Persons (TIP)** is one of the worst forms of GBV. It is often preceded and caused by the inferior position of women and girls in families, communities and societies.

To combat trafficking as a form of violence, Lesotho has passed a comprehensive Anti-Trafficking Act and it encourages the development of strategies for the protection of victims of trafficking.

**Definition of Human Trafficking:** The Act defines Human Trafficking to include; recruitment, transportation, transfer, labouring, legal or illegal adoption, sale, supply or receipt of persons within and across the borders of Lesotho by means of threat, forced or other means of coercion, abduction, kidnapping, fraud or deception, the abuse of power, law or legal process or position of vulnerability or debt bondage or giving or receiving payment or benefit to obtain consent of a person having control over another person for purposes of exploitation.

**'Exploitation'** includes, at the minimum, induced prostitution and other forms of sexual exploitation, forced marriages, forced or bonded services, or practices similar to slavery, servitude or the removal of human organs.

## 3.10 Lesotho Anti-Trafficking in Persons Act No.1 of 2011

An act to provide for the prohibition, prevention of prosecution and punishment of perpetrators of the offence of trafficking in persons and other related offences; measures for protection, re-

*The penalties for Trafficking in person range up to M2 000 000.00 or life imprisonment, this is more so, where the trafficked person is a child or where the crime is considered as an aggravated form of trafficking which included adoption for purposes of prostitution, pornography, sexual exploitation, labour exploitation, forced labour, slavery, involuntary servitude or debt bondage, to curb abuse of court processes.*

Apart from criminal sanctions/punishments against the trafficker, the victim is entitled to compensation from the trafficker for pain and suffering.

The Act also mandates the temporary material support and care for any child victim; provision of accommodation, counselling, and rehabilitation services for victims and mandates attempted reintegration of adult victims into their families and communities.

### **Section 7(1) Aggravated forms of trafficking**

- a) An adoption is effected under any law of Lesotho and it is undertaken for the sole purpose of prostitution, pornography, sexual exploitation, labour exploitation, forced labour, slavery, involuntary servitude or debt bondage.
- b) The trafficker is a parent, sibling, guardian or relatives of the trafficked person or a person who exercises authority and control over the trafficking person.
- c) The trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies.

**Section 36 - Establishment of Centres for Victims:** The minister responsible for social welfare shall establish and operate centres for victims of trafficking from the money appropriated by Parliament for such purpose.

## **3.11 National Assembly Elections (Amendment) Act, 2011**

### **Gender discrimination**

The National Assembly Elections (Amendment) Act, 2011 repeals and replaces the National Assembly Elections Act of 1992. *Section 47(2)(b)* states that political parties shall, “arrange the candidates in order of preference from top to bottom, with a female or male candidate immediately followed by a candidate of the opposite sex” and (c) include equal numbers of “women and men.”

## **3.12 Companies Act, 2011**

### **Employment and Gender discrimination**

The Companies Act of 2011 enshrines in law the right of women to serve as directors of companies. According to the law, women are allowed to establish companies on their own, and the law removes the onus on women of securing spousal consent through *Section 5(2)*, which establishes that “anything contained in the customary or common

law” that prevents a married person from acting as promoter of a company “without his or her spouse’s consent” be disregarded and overridden.

### 3.13 Labour Code Order, 1992 and Labour Code Amendment Act, 2006

It is a requirement under international law to provide a healthy and safe workplace that is free from violence/abuse in all its forms. The Labour Code and its Amendment have distinct provisions on prevention of violence and harassment at work. The Constitution and the Labour Code both prohibit discrimination. The grounds for non-discrimination include race, colour, language, religion, political, or other opinion, national or social origin, property, and marital status. The Labour Code guarantees equal opportunities or treatment in employment or occupation.

In terms of the Labour Code, men and women are supposed to receive equal remuneration for work of equal value.

**Section 200 of the Labour Code** states that the Sexual Offences Act also apply on unlawful sexual act happening within the workplace.

#### Specific forms of GBV at workplaces include:

- Sexual coercion
- Gender-based workplace discrimination, stigmatization, and social exclusion

- Sexual harassment and intimidation
- Sexual exploitation and abuse
- Trafficking for forced labour and sex work within and across borders

The Law further prohibits child labour, though the description of child in this act means a person below the age of 15 years. Child labour is also an offence under this law. Sexual harassment at work is also prohibited and the laws reads as thus, ‘Any person who offers employment or threatens dismissal or the imposition of any penalty against another person in the course of employment, as a means of obtaining sexual favour or harasses workers sexually shall commit an unfair labour practice.’

## 3.14 Counter Domestic Violence Act No 14 of 2022

Counter Domestic Violence law is enacted to give survivors of violence maximum protection from domestic abuse. Women, who are mostly at the receiving end of domestic violence, now have a legal recourse that will ensure their protection.

It gives effect to certain rights which are enshrined in the Constitution of Lesotho, including the right to equal protection from the law, the right to privacy, non-discrimination, the right to protection from inhumane and degrading treatment amongst others.

The law introduces the first ever statutory Government definition of domestic abuse to include not only married couples but domestic relationships (intimate partners). In terms of this Law, Domestic relationship between a complainant and a respondent include the following:

- a) They are or not married to each other in terms of the law
- b) They live or lived together in an intimate relationship, although they are or were not married to each other
- c) They are parents of a child or are persons who have or had parental duties for that child
- d) They are family members related by blood, affinity, adoption or fostering
- e) They share or recently shared the same residence.

This landmark law will help transform the response to domestic abuse, helping to prevent offending, protect victims and ensure that they have all the support they need. Forms of abuse under this law include physical abuse, sexual abuse, economic abuse, stalking, malicious damage to complainant's property, unreasonable disposal of the household property in which the complainant has an interest, deprivation of food, water, clothing and shelter, forced and child marriages amongst others.

### The Law:

- Create a statutory definition of domestic abuse, emphasising that domestic abuse is not just physical violence, but can also be emotional, controlling, or coercive, and economic abuse, damage to property, sexual abuse and forced and child marriages among other things.
- Provide Domestic Abuse Protection Order which is more or less the same with common interdicts to prohibit the abuser/respondent from committing abusive acts complained off.
- Place a duty on local authorities in Lesotho to provide accommodation-based support to victims of domestic abuse and their children.
- Create special family court for prosecution of domestic violence cases for speedy disposal of cases.



## 3.15 Children's Protection and Welfare Act, 2011

The objectives of this act are to extend, promote and protect the rights of children as defined in the United Nations Convention (1989) on the rights of the child, the African Charter and the Rights and Welfare of the Child as well as other international instruments, protocols, standards and rules on the protection and welfare of children to which Lesotho is signatory.

According to the act, a child is someone who is under the age of 18 years. Best interests of a child:

### NON-DISCRIMINATION - SECTION 6

A child shall not be discriminated against on the grounds of gender, race, age, religion, disability, health status, language, custom, ethnic origin, rural or urban background, birth, socio-economic status, refugee status or other status.

### RIGHT TO EDUCATION AND HEALTH - SECTION 11

- 1) A child has a right to access education, adequate diet, clothing, shelter, medical attention, social services or any other services required for the child's development.
- 2) A child shall not be denied or hindered from medical treatment by reason of religious or other beliefs.
- 3) A child has a right to education regardless of the type or severity

of the disability he has.

- 4) No child shall be expelled or denied the right to education by any educational institution on account of pregnancy, initiation or other cultural rituals (read Section 17).
- 5) No child shall be compelled to undergo cultural rites and practices which may negatively affect his right to education.
- 6) A child has a right to sexual and reproductive health information and education appropriate to his age.

### RIGHTS OF CHILDREN WITH DISABILITIES

**Section 13:** A child with disability has a right to dignity, special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation, education and training to help him enjoy a full and decent life as well as to achieve the greatest degree of self-reliance and social integration.

### INHERITANCE RIGHTS ON PARENTAL PROPERTY

**Section 19:** A child has a right to the property of his parents but where the child is born out of wedlock, the child has a right to the property of his biological mother irrespective of the mother's marital status.

**Section 38:** The law states, 'where a parent is survived by minor children, the surviving parent, guardian, close relative, or any member of the community shall report the estate to the office of the Master of the High Court within two months of the death of the parent.

The rationale for this section is to prevent property grabbing by relatives. Alienation, disposal or selling of the children's property is only done through permission by the masters. Failure to seek permission is a criminal offence and the accused is liable for conviction. Where misuse of the property of the children occurs, any person can report such to the Master and the Master will confiscate and administer the property or delegate such powers to any person or institution as long as it is in the best interest of the child. All these rights are equally applicable to adopted children.

Children need special protection because they are the most vulnerable members of society. They are dependent on others - their parents and families, or the state for care and protection.

- 5) Protection from torture and degrading treatment
- 6) A child is not to be subjected to harmful cultural rites, customs and traditional practices.
- 7) Right to parental property

**ACCESS TO JUSTICE:** Have a legal practitioner assigned to the child by the state, and at the state's expense, in civil proceedings affecting the child. If substantial injustice would otherwise result, the child should not be detained except as a measure of last resort in which case, in addition, to the rights a child enjoys under Act. The child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years and is treated in a manner, and kept in conditions, which take account of the child's age. The Act provides means of restoring justice without necessarily detention.

The following sections are very critical for protection of children:

- 1) A name (identity) and a nationality from birth
- 2) Family care or parental care, or to appropriate alternative care when removed from the family environment, where a parent or guardian leaves a child without supervision and care for a period which is unreasonable commits offence and is liable for conviction
- 3) Children should be protected from maltreatment, neglect, discrimination, violence exploitation, abuse or degradation
- 4) Protection from exploitative labour

### **Ill-treatment, neglect, abandonment or exposure of children to abuse - Section 44**

A person who, being a person having to care for a child abuses, neglects, abandons or exposes the child in a manner likely to cause the child physical, psychological or emotional injury or cause or permits the child to be so abused, neglected, abandoned or exposed commits an offence and is liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding two months or both.

## UNLAWFUL TRANSFER OF POSSESSION, CUSTODY OR CONTROL OF A CHILD

**Section 66 (1):** A person who takes part in any transaction, the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently the possession, custody or control of a child for any valuable consideration commits an offence and is liable on conviction to a fine not exceeding M20, 000 or imprisonment for a period not exceeding 5 years or both.

**(2)** A person who without authority or excuse harbours or has in his possession, custody or control a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for a valuable consideration by any person within or outside of Lesotho commits an offence and is liable on conviction to a fine not exceeding M100, 000 or to imprisonment for a period not exceeding 5 years.

## 3.16 COMMON LAW PROTECTION AGAINST ACTS OF VIOLENCE

Apart from the protection given by the Legal Capacity of Married Persons and the Land Act, Sexual Offences Act and Penal Code, there are also common law remedies that protect spouses/children from abuse in marriage. These

include the following:

### Protection orders

Protection orders commonly known as an interdict/restraining orders in Lesotho. This order often applies to domestic abuse barring the abuser to stop the abuse and set certain conditions which prevent the abuser from harassing or abusing the victim again. Abuse in these cases includes situations whereby the spouse abuses or harasses the other party either by physical violence, threat, abusing of children, alienating the property of the joint estate without consent, or forcefully/unlawfully evict the other spouse from the matrimonial home. Where the parties have separated either by whatever reason, but not divorce, this order can be sought where the other spouse is carrying out abusive acts or actions against the other. The court can grant interdict to prevent the abuser from continuing doing such unlawful acts. Some of the remedies applicable under an interdict equally apply to intimate partner relationships even if not married though where parties are not legally married, it is hard to protect such parties against certain acts such as eviction unless such party can prove ownership of such to the satisfaction of the court.

Interdict against abuse is equally applicable to spouses married under customary law.

### Divorce

Divorce is the permanent ending of a marriage. It only applies to legally recognized marriages. The procedure for

divorce depends on the type of marriage the parties had. The proper legal procedures have to be followed for a divorce to be valid and for the marriage to be permanently dissolved. Leaving or chasing away a spouse does not amount to divorce or put a legal end to a marriage. A party filing for divorce must prove irretrievable breakdown of the marriage. This means that the couple can no longer live together as man and wife. Both partners or one partner must prove to the court that the marriage broke down so badly that there is no reasonable chance of getting back together. These are examples of the kind of evidence the court will accept as proof of irretrievable breakdown:

- The couple have not lived together like husband and wife for a period of time.
- One partner had sexual intercourse with somebody else and because of that; the other partner finds it impossible to continue living together as husband and wife.
- One partner deserted the other constructively or maliciously. In Lesotho, most cases filed under constructive desertion often relates to abuse in different forms. One partner abused the other, for example the husband keeps assaulting, insulting, beating or emotionally or economically abuse the wife or husband or children as the case may be.
- One partner is an alcoholic or a drug addict
- One of the partners finds it impossible to live together as husband and wife for any other reason.

Divorce is a permanent remedy to end abuse against the other party. Upon divorce, where parties are married in community of property or under customary law, each party is entitled to half of the joint estate and both parties are equally responsible to maintain their children; failure to do so entitles, the other party to sue for maintenance. Maintenance is a joint responsibility between two biological parents whether married or not or whether divorced or not, both under common and under the Children Protection and Welfare Act.

### **Judicial Separation**

Separation is a situation where a husband and wife stay away from each other for a given period either because they have agreed (Separation by Agreement) or because the court has ordered the separation. Separation does not end a marriage, but only suspends certain rights of the husband and the wife though the husband and wife are still considered to be married. When a couple cannot stand to be around each other for various reasons which include but not limited to abuse, they are often advised to file for divorce. But a divorce is not feasible in all cases. Reasons for filling for separation are the same as the reasons for filing for divorce. Legal separation can be a useful way to detach from each other without ending the marriage. Some couples use separation as a time to reflect on their marriage, repair the issues that drove them apart and find ways to be a successful couple. When couples are separated either through

Judicial Separation or otherwise, they are still regarded as legally married until they are divorced. For that reason, the rights that the parties have under COP remain. If one of the parties decides to act contrary to what the law demands under COP, then the other party has a recourse under the law. These include alienating the property belonging to the joint estate, bonding the property or failure to maintain the children. Separation in this instance refers to legally recognised marriages.



**NATIONAL POLICIES THAT  
PROVIDE PROTECTION OF  
WOMEN ON GENDER AND GBV  
PREVENTION**

# LOVE SHOULDN'T HURT

I WANT  
HELP TO  
STOP  
ARGUMENTS

I LET MY  
ANGER  
BUILD UP

## 3.1 Lesotho Gender & Development Policy (GAD), 2018-2030

This policy reinforces enacted legislation intended to promote gender equality and one of its priority areas is eradication of GBV. Policy commitment states that the government shall promote an environment of zero tolerance to all forms of gender-based violence at all levels in order for women, men, the elderly, girls, boys, LGBTI, and people with disabilities to live a life free from violence.

Policy objective under this priority area is to:

Prevent and reduce all forms of gender-based violence in the public and private spheres and to provide integrated services to GBV survivors and

perpetrators.

Strategic actions

To achieve this objective, the government of Lesotho undertakes to:

1. Advocate for the review and amendment of gender insensitive laws perpetuating GBV, formulate and enact legislation against all forms of gender-based violence including Counter domestic violence Act .
2. Promote and support broad-based and concerted efforts to change social norms, attitudes and practices that cause, perpetuate, and condone GBV in the private and public spheres.
3. Raise awareness on and address the underlying causes that contribute to early child and forced marriages, as well as human trafficking.
4. Mobilise technical and financial resources for the implementation of integrated approaches to com-



bat gender-based violence from governmental, non-governmental, private sector and international sectors.

5. Build and strengthen the capacity of service providers on advocacy and activism against gender-based violence including training on case management and standardised procedures.
6. Provide comprehensive counseling and support services for GBV management including services for key populations.
7. Mainstream gender in national statistical systems, strengthen data on the prevalence and cost of GBV and facilitate the establishment and operationalisation of a Gender and GBV information management system.
8. Promote equal access to justice for all GBV survivors.

9. Strengthen multi-stakeholder coordination and collaboration for the prevention of and response to GBV.

10. This policy serves as a guiding document/tool on how the Ministry of Gender and partners deal with all issues relating to GBV.

### **3.2 National Guidelines for Medio-Legal Care for Survivors of Sexual Health, 2018**

Health care for people subjected to intimate Partner Violence or Sexual Violence, A Clinical Handbook (2018) and Health care for people subjected to intimate Partner Violence or Sexual Violence: Job aids (2018).

These documents/tools are developed by Ministry of Health with the aim of effectively handling S/GBV cases.



Healthcare professionals including nurses and midwives work in diverse settings and can contribute by recognizing the manifestations and referring victims to appropriate sources of help and support.

They need to be able to provide empathetic and supportive care to those who may be experiencing abuse to enable them to seek help and support. Nurses and other healthcare professionals need appropriate knowledge and skills to enable this. Active listening, an empathetic and non-judgemental attitude and an awareness of one's own values and beliefs related to violence against women, prejudice and biases is necessary. To achieve this important mandate, the Ministry has contributed to the development and implementation of appropriate policies, guidelines and legislations. The above tools are used as guiding and training tools for health care providers to better assist survivors of sexual abuse and identify patients who may be subjected to violence. The tools help them to use

a human rights-based approach which is inclusive of woman/victim-centred care.

## **Anti-Trafficking in Persons Act, 2011**

### **Forced and Early Marriage, Sexual Violence and Rape, Statutory Rape or Defilement, Trafficking in persons**

This Act criminalizes slavery in all forms and provides protection and support for victims of trafficking. As defined by the Act, “exploitation includes, at the minimum, induced prostitution and other forms of sexual exploitation, forced marriage, forced or bonded services, or practices similar to slavery, servitude or the removal of human organs.” The definition of trafficking is comprehensive and defined in Part 2, Section 5(3) of the Act. The Act prescribes further that victims shall not be liable for crimes committed in connection to their own trafficking and that the past sexual behaviour of a victim of trafficking is irrelevant and in-