



Training Workshop on Human Rights Protection and Promotion in Lesotho

Maseru, 10-12 November 2004

Draft Workshop Report

Background and Objectives

The Government of Lesotho has been dealing with several important issues that impact on respecting, protecting, promoting and fulfilling human rights. Amongst these are issues relating to domestication and implementation of international human rights instruments, the establishment of a national human rights institution, and the challenges faced by HIV/AIDS.

In order to support the ongoing initiatives of the Government, the regional Office of the High Commissioner for Human Rights (OHCHR) for Southern Africa, in collaboration with the Ministry of Justice and UNDP Lesotho, which are committed to support the implementation of the Millennium Development Goals (MDGs) and to mitigating the impact of HIV and AIDS in the country, agreed to jointly organize and facilitate a human rights workshop for key members of the justice sector, other government officials and civil society. The workshop was developed to strengthen the ongoing process of human rights protection and promotion that has already started at national level.

The specific objectives of the workshop were to:

- Improve awareness of the main human rights principles and mechanisms;
- Strengthen understanding of the process of domesticating international instruments into the national legal framework;
- Examine the role of different stakeholders such as the Courts, Government, Ombudsman and Police Complaints Authority, and civil society in creating an environment conducive to human rights, and establishing and supporting a national human rights commission;
- Highlight the importance of, and the processes required to establish a national human rights commission;
- To examine and better understand the human rights dimension of HIV and AIDS.

Participants from Lesotho and Resource Persons

The regional office had put emphasis on participatory approach to ensure ownership of the workshop by the national partners. Thus, the concept paper and the programme were finalized in collaboration with UNDP Lesotho and the Lesotho Ministry of Justice and the Lesotho Justice Sector Development Programme (LJSDP). Also, participants were selected in collaboration with the UNDP, the LJSDP, and the Ministry of Justice. The Resource Persons for the workshop comprised national and international experts in the various themes.

Structure of the Workshop

The three-day workshop covered the following interrelated themes:

1. Human rights promotion and protection, treaty ratification and implementation, and reporting;

2. The establishment of a national human rights commission; and
3. HIV/AIDS and human rights, and legal protection of people affected and infected by HIV/AIDS.

I- WORKSHOP SUMMARY

DAY ONE

Opening Session:

Chair: Ms Pontso Lebotsa, Principal Secretary, Ministry of Justice and Human Rights

Mr. Sekhonyana Bereng, Governance Advisor of UNDP Lesotho, made Introductory Remarks on behalf of the UNDP-- Lesotho Resident Representative and UN Coordinator, Ms Scholastica Kimaryo. He stressed that respect for human rights was central to development and governance in Lesotho.

The Minister of Justice and Human Rights, Honourable Mr. Refiloe Masemene, officially opened the workshop. He made linkages to human development, human rights and democracy. Governments are custodians of human rights, and must try to make life better for all, especially those who are especially vulnerable including women, people living with HIV or AIDS (PLHAs), and people with disabilities.

Dr. Sihaka Tsemo, the Regional Representative of the OHCHR Southern Africa office, welcomed participants to the workshop and provided a brief overview of the objectives and expected outcomes of the workshop. She highlighted that the workshop was developed in broad consultation with Government, the UNDP and the OHCHR, in order to ensure that the themes covered the priority areas for Lesotho.

Participants made brief self-introductory statements and stated their expectations from the workshop. The expectations included:

- To gain a broader understanding of human rights issues and concepts;
- Exposure to new human rights concepts and issues including HIV/AIDS as a human rights issue;
- The roles and responsibilities of various sectors in society with respect to human rights, such as the media, Parliament, police services, the judiciary and other government departments;
- To learn about Parliament's role in ratification and domestication of human rights treaties;
- To learn new ways of engaging with the courts on human rights issues;
- To find out more about the conduct of police in Lesotho and their accountability; and
- To learn more on the establishment of national human rights institutions;

The Mandate and Programmes of the OHCHR Regional Office: Dr. Sihaka Tsemo, OHCHR Regional Representative

Ms Tsemo gave a brief background to the Regional Office of the OHCHR. The Regional Office was the first regional office of the OHCHR, and plays a significant role in the region, especially in relation to training, technical assistance and providing capacity building to national and regional partners. The role of the OHCHR is to provide these partners with technical advisory services on various issues such as developing national human rights action plans; establishing human rights institutions; ratification, implementation and domestication of human rights instruments; promotional activities; and follow up on recommendations of the treaty bodies. The

OHCHR also works with UN Country Teams to ensure that they are capacitated and have a human rights focus, and tries to involve various partners such as civil society in its work.

Discussion in Plenary:

Participants discussed the central role of human rights in Lesotho, indicating that much has been done to ensure that human rights are protected and promoted but that more can be done such as the establishment of a national human rights commission. Overall, Lesotho is recognized to believe in the rule of law and tries to adhere to human rights norms and standards.

In terms of receiving technical assistance from the OHCHR, requests can be channeled through the UNDP and the OHCHR will try to assist, if possible, or will be able to channel requests to the relevant institutions.

Session I - Human Rights: Principles and Mechanisms for Implementation

Chair: Dr. Mophethe, Deputy Principal Secretary, Ministry of Justice and Human Rights

Principles, Frameworks and Mechanisms of International Human Rights Instruments: A Global Overview: Dr. Sihaka Tsemo

Dr. Tsemo provided a background to the principles, frameworks and mechanisms of human rights. She emphasized that human rights are not a Western concept, but existed in Africa from time immemorial. Unfortunately, Africa has been subjected to the worst forms of oppression such as slavery and colonialization that have impacted on its ability to uphold human rights principles. After the two major World Wars and the creation of the United Nations, the Universal Declaration of Human Rights (UDHR) was adopted. The process of drafting the two covenants on civil, political and socio economic and cultural rights allowed the progressive involvement of former colonized countries, including African countries, and the broadening of human rights principles (first and second generation of rights). The Vienna Conference on Human Rights in 1993 recognised that all human rights were interconnected, indivisible and interrelated. Ratification of a treaty means that a country accepts that the instrument is relevant to its socio-political and economic situation and commits itself to delivering on the provisions in the treaty. Ratification entails several steps such as publicizing the provisions and getting ‘buy-in’ to the need to ratify the treaty at community and government levels.

Lesotho has ratified several of the major human rights treaties, but has not followed the necessary steps to enforce these instruments at national level. Therefore, the issue of domestication of the treaties needs to be addressed. The judiciary is encouraged to use the principles contained in the UN Charter and other international instruments, even if there is no formal domestication of the instruments. The regional human rights framework is also important to address regional specific issues.

Discussion in Plenary:

Developing nations are often pressurized into ratifying human rights instruments for various reasons without working on creating the necessary mechanisms for implementation. However, a country should never ratify a treaty until it is ready to implement its provisions, as ratification places obligations on the country.

Participants raised the issue that in the Constitution of Lesotho, socio-economic rights are principles of State policy only and section 25 states that the state cannot be taken to any court with respect to the enforcement of these rights. The need for Parliament to take an active role in amending this clause in the Constitution was noted, as well as the need to review the existing legislation in Lesotho that may go against the country’s international obligations under the human

rights treaties. The role of the judiciary in such a process was debated, with the majority of participants feeling that judges need to take a more proactive role.

Human Rights Challenges in Lesotho: Ratification and Domestication of International Human Rights Instruments: Ms Lineo Mosala, Director of Legal Affairs, Ministry of Foreign Affairs

The process for ratification of an international instrument was highlighted. Lesotho follows the British system and the common law with respect to ratification. Since 1998, executive power is vested in the head of government, the Prime Minister, who has power to enter into international treaties on behalf of Lesotho. A treaty is laid before Parliament as part of information dissemination, which has an important role for domestication, as Lesotho is a dualist state and an act of Parliament is required before a treaty is in effect in the country.

Implementation of the treaties is left to the relevant line ministries. There are several challenges with respect to domestication and implementation, including: lack of capacity; lack of knowledge or understanding of treaty obligations; lack of ownership; and, lack of appreciation of the concrete actions required for domestication. To address these issues, the Ministry of Foreign Affairs has undertaken, since 2001, a project in assisting line ministries with implementation and domestication.

Lesotho has ratified most of the international human rights instruments, and has ratified or is in the process of ratifying several of the optional protocols such as the:

- The Optional protocol to International Covenant on Civil and Political Rights (ICCPR) - in process of ratification;
- The Convention on the Rights of the Child (CRC), Optional Protocol on Armed Conflict – ratified
- Optional Protocol to the Convention on Elimination of Forms of Discrimination against Women (CEDAW) – ratified
- The Protocol on the African Charter on Human and People's Rights (ACHPR) on the Rights of Women in Africa – just ratified

Implementation of Human Rights Principles and Law Enforcement: Mr. Peter Sakoane, Director-General, Lesotho Justice Sector Development Programme

The only courts that can interpret or make pronouncements on the Bill of Rights, Chapter 2 of the Constitution, are the High Court and the Court of Appeal. Judges are not proactive enough in taking into account the international instruments to which Lesotho is a party, and Parliament and the judiciary should play a bigger role in ensuring that the instruments become part of the domestic law of Lesotho. In addition, there is a need to review access to justice for 'ordinary' Basotho as, to approach the High Court, a lawyer is required and the process is lengthy and costly. Thus, most ordinary people are denied access to justice in Lesotho and this is problematic. The narrow definition of locus standi must also be reviewed as it prohibits many people, mainly the poor and already marginalized, access to the courts.

Mr. Sakoane encouraged the judiciary to interpret the Constitution in a dynamic way in order to ensure that vulnerable groups have access to justice, using the Indian, and South African experiences as examples of judicial activism.

Discussion in Plenary:

Discussion focused on the need for a review of the current system of ratification of international instruments, including the role of Parliament in the process. As the elected representatives of the

people, and as the custodians of the Constitution and the laws that emanate from it, Parliamentarians should, it was recommended, play a more proactive role such as recommending that a treaty be adopted, debating the issues involved, voicing reservations, and domesticating the instruments through law rather than merely noting treaties ‘tabled’ before Parliament for information purposes only.

DAY TWO:

Session I – Cont’d: Human Rights: Principles and Mechanisms for Implementation

Chair: Mr. Peter Sakoane, Director-General, LJSDP

Socio-economic and cultural rights and gender equality: Judge Semapo Peete, Lesotho High Court, and Dr. Sihaka Tsemo

Judge Peete’s presentation stressed the importance of socio economic and cultural rights and highlighted the need to review the Constitution to bring in more in line with the current situation in Lesotho, including making socio-economic rights justiciable. Until this is done, judges can do little even if they want to as they are bound by the Constitution. He recommended that a constitutional committee be established to review and, if appropriate, change the Constitution.

Ms. Tsemo highlighted the linkages between socio-economic and cultural rights, and gender equality. International and regional instruments have laid down the standards with respect to socio-economic and cultural rights and gender equality. She stressed the relation between good governance, democracy and gender equality and also showed how human rights based approach could be used in developing poverty reduction strategies. In addition, the African Union has been instrumental in creating conditions conducive for gender equality, since the establishing of the commission with equal gender representation. To cite just a few measures, a specialized committee on gender has been created under article 14 of the AU Charter; the AU protocols on the establishment of the Peace and Security Council and the African Court of Justice, and the Pan-African Parliament, all took into account the issues of gender equality and representation. The time was opportune for Lesotho to review its own institutional framework to ensure that socio economic and cultural rights as well as gender equality and women’s empowerment were put high on the agenda.

Discussion in Plenary:

There was discussion about the need to link human rights with Lesotho’s Vision 2020 and also the Poverty Reduction Strategy Paper (PRSP). There was some disagreement about the role that judges can play in amending the Constitution, with some participants saying that they should play a more active role (through, for instance, a more progressive interpretation of the Constitution), rather than placing the matter with Parliament and with other participants saying that the judges could not act beyond the scope of the existing law (i.e. section 25 of the Constitution which states that socio-economic rights cannot be enforceable by any court in the country). It was recommended, however, that the judiciary be sensitized in terms of their role in the promotion and protection of human rights, and it was proposed that, before judges be appointed, a multi-disciplinary interview panel question them on their human rights experience and background.

With respect to the African Court of Justice, there has been a decision to merge this with the African Court on Human and Peoples’ Rights although Lesotho was among those who took the position that they should be kept separate. In any case, Lesotho will work with the court and has already prepared a list of proposed judges for the Court.

A discussion on gender equality noted that the terms ‘gender’ and ‘sex’ were often used interchangeably when they are not interchangeable terms. It was recommended that Lesotho continue to focus on gender equality, although women should not be discriminated against, especially relating to employment and participation in political life. All appointments, it was agreed, should be made on merit and not sex of applicants.

Human Rights Education: Ms Flora Makhitli, Curriculum Officer, National Curriculum Development Centre, Ministry of Education

The Ministry of Education views democracy and human rights as two sides of the same coin. Currently, only History as a school subject contains human rights education, and this is an elective at secondary school level. Thus, the Ministry is engaged with UNESCO in a small pilot project with one school in every district at primary level that is aimed at incorporating human rights and democracy into the curricula. The challenges for human rights mainstreaming in curricula are many: most teachers do not have a human rights background, as this is currently not offered at teacher training college; there has been a debate about whether to ‘mainstream’ human rights in particular subjects or create a special subject focusing specifically on human rights; debates about the already ‘overcrowded’ curricula; lack of sufficient training materials for teachers on human rights; and questions on how to reach parents and out-of-school youth. However, the Ministry is committed to ensuring that human rights is part of the schooling of children in Lesotho and the pilot has proved successful thus far.

Discussion in Plenary:

In terms of human rights in the curricula, it was recommended that teachers in teacher training colleges be provided with a background in human rights. Also, human rights can accompany career guidance at school level. There was recognition of the need to involve parents in human rights education, as parents often believe that children have too many rights. Dr. Tsemo, on behalf of the OHCHR, offered the regional office’s assistance and expertise to the Ministry to develop a human rights education policy for Lesotho.

It was also recommended that human rights for the general population focusing on advocacy so that people know their rights and responsibilities be developed and use local media such as radio, TV and newspapers. In addition, the need for members of Parliament to be capacitated with respect to human rights, in an effort to ensure that they are better informed with deliberating and passing laws, was emphasized.

Session II – The Role of National Human Rights Institutions in Human Rights Protection and Promotion

Current Trends in Human Rights Protection and Promotion in Lesotho: Why a National Human Rights Commission?

Presenters: Mr. J. M. Mashinini, Chief Legal Officer (Office of the Ombudsman), and Advocate P. Masoabi. (Police Complaints Authority) and Judge S Peete

Mr. Mashinini provided a background to the Ombudsman. The Ombudsman was established by the Constitution, and given certain powers of investigation i.e. to investigate actions taken by any officer or authority in exercise of administrative functions. These were broadened by the enabling legislation for the Ombudsman Office, which in section 7 included investigation of human rights issues, along with corruption and environmental issues. The Office has thus far addressed human rights issues in a very perfunctory manner. One issue that was uncovered by the Ombudsman was torture in prisons and a report was submitted to the Ministry of Justice. There have been some challenges in the functioning of the office including: staffing (only 23 staff

members) and other resources (only one vehicle, and no further resources forthcoming from the government); questions about the broadness of its mandate; and, the limitation of its jurisdiction to the public sector. There are also questions about how the Ombudsman would function if a national human rights commission were established in Lesotho, especially with overlapping responsibilities and jurisdiction.

Advocate Masoabi provided a background to the Police Complaints Authority (PCA), including its establishment, role and mandate. Since the police have such broad powers, a civilian complaints commission providing an oversight role was seen to be necessary in order to ensure that there is as little abuse as possible. Some of the challenges that exist for the PCA included: the fact that the police view human rights with suspicion and do not understand their role or the importance of upholding human rights in respect persons who have been arrested, detained or accused. Further, the enabling legislation does not provide the PCA with enough power to conduct investigations; and, there have been delays in appointing the chief executive for the PCA. The Lesotho PCA is also part of an Oversight Forum for Africa to promote the fair treatment of civilians by the police.

Judge Peete indicated that the establishment of a national human rights commission has been under discussion since the early 1990s and that it is long overdue, and that there is general consensus that one national human rights commission would be welcome and good for Lesotho. He recommended that the commission be included in the Constitution, with enabling legislation to further elaborate its establishment, powers and functions.

General Principles and Practical Steps for Establishing a National Human Rights Institution:

Presenter: Advocate Tseliso Thipanyane, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (South Africa)

Advocate Thipanyane stated that, although the Vienna Plan of Action recommended the establishment of national human rights commissions, very few African countries have done so to date. Using the South African experience as an example, he highlighted the general principles, challenges and practical steps in establishment of a national human rights institution. Important issues raised included: the need for a constitutional amendment that established the institution, and then enabling legislation outlining establishment, functions, roles and responsibilities; adequate staffing and funding; the need to rationalize the existing institutions such as the PCA and the Ombudsman to avoid overlap; and the need for oversight by civil society, NGOs and members of Parliament; and the nomination and selection of members of the commission.

Discussion in Plenary:

It was recommended that there be serious debate on the establishment of one national human rights institution. The issues that will require serious examination include:

- The integration or retention of the Office of the Ombudsman and the PCA;
- Need for resources on a sustained basis to support the work of the institution;
- Ensuring that the institution ‘has teeth’ and is sufficiently independent from the government;
- Ensuring that the commissioners are selected in a transparent process, that they are qualified and of high moral standing, have a background in human rights, and that there are provisions to hold commissioners accountable;
- Who the institution would be accountable to (for example, Parliament), and any other structures for accountability (for example, to civil society);

One of the problems identified in Lesotho is that of resources and also expertise in establishment of a national human rights institution. The OHCHR offered assistance in this regard. There was also acknowledgement of the need to bring civil society on board early on in the process, to ensure that there is ‘buy-in’ and ownership of the process.

One of the recommendations about appointment of staff, including the appointment of those in the judiciary and at the PCA and Ombudsman, was that this should be done in a transparent manner. Once the appointment is made, the person and the institutions should be able to perform their functions with no interference.

Session III – Developing a Human Rights Plan of Action: Small Group Exercise

Participants were divided into three groups to discuss and begin developing a human rights action plan. The recommendations of the groups were as follows:

ESTABLISHMENT OF A NATIONAL HUMAN RIGHTS INSTITUTION (NHRI)

The following recommendations were made:

- Need to first develop a paper on a three-year action plan, which includes the establishment of a National Human Rights institution. The Law Reform Commission would play a lead role in this process, with the Ministry of Justice and Human Rights, but it should have input from civil society and other stakeholders;
- This paper will be discussed at Cabinet level through a Cabinet Memorandum and approved and/or changed accordingly¹; The Ministry of Justice and Human Rights is to take the lead role in drafting and presenting the Memorandum;
- Need to then raise the issue at Parliament, to follow the normal processes related to policy;
- A three-year national plan to be developed, following the establishment of the NHRI;
- The National Plan that is to be developed should include all of the structures and mechanisms that are in place at present, and their roles and responsibilities in the process (e.g. the inter-sectoral committee, the Law Reform Commission etc.); clearly articulated deliverables but a certain time; and should take into consideration other ongoing processes such as Vision 2020 and the PRSP;
- The need to hold a national conference with as broad based representation as possible, to finalize all of the issues that follow:
 - Whether the NHRI should be the only institution in Lesotho dealing with human rights issues i.e. the Ombudsman and PCA be integrated into the institution. This will require a transitional strategy;
 - The Law Reform Commission should take the lead role in conducting research on the practical steps related to establishment such as size, mandate, functions, powers, monitoring/accountability of the NHRI, etc. looking at what would best suit Lesotho, using other countries for comparative purposes;
 - Initially, the NHRI would be a small institution with five commissioners and with a mandate to cover all spheres of human rights;
 - Other important issues that require consideration include appointment of personnel to the NHRI; how to ensure that funding is provided in a sustainable manner, and alternative sources of funding;
- Once the issues have been finalized and the establishment approved by Parliament, then preferably, the Constitution should be amended to establish the NHRI, and an enabling law passed outlining all the details.

¹ Cabinet agreed in 1995 to the establishment of a Human Rights Commission for Lesotho. It therefore follows that this aspect of the recommendation may not have to be acted upon.

HUMAN RIGHTS EDUCATION:

The following recommendations were made:

- The need to include all relevant ministries and other stakeholders such as: the Ministry of Education, Lesotho NGO Network, Ministry of Justice, Ministry of Health, Media Institute of Southern Africa (MISA), Ministry of Home Affairs etc.
- A general advocacy campaign for the general population should be conducted using local media such as newspapers, radios and television;
- Specialized campaigns be mounted for target groups such as Parliamentarians, trade unions, law enforcement officials, the judiciary, faith-based organizations, traditional leaders, the media, parents and out-of-school youth;
- When looking at a special campaign for law enforcement officials, this includes the police, army, correctional services etc. and should include an examination of existing training that they are provided to add to it;
- For teachers, human rights should be included in the curricula of teachers' training college, so that they are better able to teach it to their learners;
- All of the campaigns and specialized training courses should include information on what to do and where to go when rights are violated (i.e. 'how to make rights real')
- As funding for human rights education may be an issue, there will be a need to prioritize what rights should take precedence for campaign purposes. The focus could be selected to coincide with special dates or events;
- Consultation is very important throughout the process;
- Each ministry should be provided with guidelines on how, what and when to do certain activities;
- As a next step, the inter-sectoral committee should hold a workshop/consultation with all identified stakeholders to put together their guidelines and plans;
- The inter-sectoral committee would then have the duty to monitor whether the different stakeholders were implementing their plans.

RATIFICATION AND DOMESTICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS:

The following recommendations were made:

For ratification:

- Before any treaty is ratified, it should be taken to Parliament for debate and discussion;
- It should also be published to find out if there is an understanding and also 'buy-in' at community level for the ratification of the treaty, and whether it 'fits' in the context of Lesotho at present. The issue of consultation is very important;
- A White Paper should be produced on the proposed treaty, outlining the reasons for its implementation and the obligations that will be placed on Lesotho if it is ratified, the lead ministries involved and what would have to happen at national level to ensure that obligations were met (e.g. review and amendment of existing laws, capacities required to implement the treaty), timeframes for domestication; how much it will cost to fulfill the requirements etc.;
- A draft bill should be tabled and debated, following regular Parliamentary processes of debate;
- The need for engagement with international organizations such as the UN and with NGOs or other international agencies may be necessary;
- It is recommended that since Lesotho has already ratified most treaties, the country should now look into the steps toward disseminating the provisions of these treaties

among the government bodies in charge of implementation and monitoring and raising awareness on the obligations of the state as duty bearer.

For domestication:

- Relevant stakeholders and partners need to be lobbied about the necessity of domestication of the treaty;
- That there be ongoing interaction with the UN, including asking for technical assistance if required.

DAY THREE

Session IV – HIV/AIDS as a Human Rights Issue

Session Chair: Mr. Joseph Feeney, UNDP Lesotho

Challenges Posed by HIV/AIDS in Lesotho: Ms Puleng Letsie, UNDP Lesotho

Ms Letsie provided a background to the current HIV/AIDS pandemic in Lesotho and the Government response to the pandemic. The key strategic imperatives are that: all Basotho who are HIV negative should remain negative; those who are HIV positive should be enabled to live long and productive lives, and improving the quality of life of all Basotho. The challenges for Lesotho to achieve these goals are identified as: poverty, food insecurity, unemployment, low service delivery, gender-based violence and the status of women in society. The government recently launched a universal testing programme, indicating that the ‘right to know’ is a basic human right.

Stigma and Discrimination: Ms Farhana Zuberi, OHCHR

Until stigmatization is addressed, it will be difficult to ensure that the spread of HIV/AIDS is decreased. HIV/AIDS is a human rights issue, and there is a need for a rights-based approach to address the pandemic. This means that people living with HIV or AIDS are claims-holders and the states are duty bearers. PLHAs should be able to use the international normative framework to claim their rights. Ms Zuberi provided some examples of human rights issues that need to be addressed when dealing with HIV/AIDS such as anti-discrimination, criminalization of harmful behaviour, changes in terms of employment laws, right to health care services etc.

Mainstreaming Human Rights in HIV/AIDS Prevention Strategies and the Linkages to the MDGs: Ms Mary Crewe, Director of Centre for the Study of AIDS (South Africa)

Ms Crewe noted that the eradication of HIV/AIDS and other infectious diseases is Goal 6 of the Millennium Development Goals but that many of the MDGs were important for HIV/AIDS such as Goal 1 (eradicate extreme poverty) and Goal 2 (education, especially for girls). Africa has not reached its targets in the goals, and if it continues on this path, it will not reach the goals by 2015.

HIV/AIDS can be used as an ‘opportunity’ rather than a crisis, as has already been noted by the government of Lesotho. It can be used as a new way of organizing government, communities and families. Using the example of food, Ms Crewe provided input into the various roles that government ministries could play to respond to the HIV/AIDS epidemic in Lesotho.

Discussion in Plenary:

It was acknowledged that the Government of Lesotho has prioritized reducing HIV/AIDS, recognizing that the gains made in development would be lost if the pandemic was not addressed. The Government recognizes that ‘business as usual’ can no longer be an option and that there is a need for a different approach to fight HIV/AIDS.

Session IV Cont'd – HIV/AIDS as a Human Rights Issue: Small Group Exercise

Participants were divided into two groups to discuss various aspects of HIV/AIDS as a human rights issue. The recommendations of the groups were as follows:

LEGAL PROTECTION OF INFECTED AND AFFECTED PERSONS:

The following recommendations were made:

- An examination of existing legislation should be undertaken to see if it provides adequate protection to people infected and affected by HIV or AIDS;
- While section 18 of the Constitution, the anti-discrimination clause, lists several grounds, it does not include HIV/AIDS explicitly. Even though HIV/AIDS can be read into 'any other grounds', it is recommended instead that the section be amended to include HIV/AIDS as a ground of non-discrimination;
- Currently, the only Act that provides for HIV or AIDS is punitive, the Sexual Offences Act. There is a need to review all current legislation, as above, and that this review should involve civil society and identify all areas that need legislation (insurance, inheritance matters, HIV and employment, etc.)
- There is a need to look more closely at issues related to doctor-patient confidentiality, especially with respect to protecting those at risk of infection (e.g. the spouses or sexual partners of an infected person, or caregivers of an infected person);
- The labour code should be amended to integrate matters relating to HIV/AIDS;

HIV/AIDS PREVENTION STRATEGIES AND INTEGRATION OF HUMAN RIGHTS:

The group looked at three groups in society: those who are negative, and who should stay negative; those who are positive but healthy; and those requiring treatment.

The following recommendations were made:

- The need for public awareness and behaviour change campaigns for various sectors such as faith-based organizations and children and youth;
- The need to scale up counseling and VCT services, especially in the rural areas of the country. Lesotho should investigate both couple and group counseling;
- People have a right to privacy and should not be compelled to disclose their status, but that there is need for shared confidentiality for people who need to know (such as doctors, health care workers, and family members);
- Counseling is required to ensure that people have the support to disclose their status;
- There is a need to involve other sectors in society such as civil society organizations in the campaign on testing;
- There is a need to think of new strategies and creative ways of addressing HIV/AIDS. This may involve looking at best practice from other areas and regions of the world.
- There is a need to review and change the type of language that is used in relation to HIV/AIDS, especially language that contributes towards stigmatization;
- Include AIDS education in the curricula for school children;

Wrap-Up /Closing Session

Chair: Mr. Joe Feeney, UNDP Lesotho

Dr. Sihaka Tsemo thanked UNDP and LJS DP for the collaboration in the organization of the workshop, and participants for their active participation and the resource persons for the high quality of the presentations. She thanked the Government and the Ministry of Justice and Human Rights for the high priority it placed on human rights and indicated that the OHCHR looked

forward to working together with the Government and the UN agencies in Lesotho in the near future.

Ms Scholastica Kimaryo, UN Resident Coordinator and UNDP Resident Representative for Lesotho, thanked the Minister of Justice and Human Rights for attending and his active participation, and the participation of the others, in the workshop. She indicated that UNDP and OHCHR would continue to support the Government, especially to implement the recommendations from the workshop bringing other UN agencies on board as required. She especially highlighted the need to continue the fight on HIV/AIDS, looking at it from a human-rights perspective. Ms Kimaryo thanked her staff for supporting the organization of this important event and for participating in the workshop.

The Minister of Justice and Human Rights, Honourable Refiloe Masemane, closed the workshop by reviewing the themes of the three days, and thanking the organizers and resource persons. He indicated that the Government and the UN would work together to ensure that the recommendations from the workshop were implemented in the near future and indicated that the participants were 'leaving to come back'. He requested that the report of the workshop be forwarded to his Ministry for submission to the Cabinet as a working document.

II- SUMMARY OF RECOMMENDATIONS WITH PARTICULAR EMPHASIS ON FOLLOW UP ACTIONS BY THE GOVERNMENT OF LESOTHO

Out of the many recommendations that were made during the workshop, the following summarizes priorities actions are expected to be undertaken by the Government of Lesotho and initiated by the focal point ministry, which is the Ministry of Justice and Human Rights:

1) The establishment of a National Human Rights Commission

Considering that since 1995, the cabinet had agreed on the establishment of a Human Rights Commission, all the participants to the workshop felt that it was imperative that the implementation of this cabinet's decision be a priority during the year of 2005. The following steps could be envisaged in the process;

- Consultations between the Government, Parliament and civil society in view of the holding of a national conference during which the following issues would be debated and agreed upon:
 - The type of Commission to be created and the status of existing human rights type institution;
 - The mandate, functions, powers, size, and monitoring/accountability of the Commission,
 - The funding of the Commission and the profile of commissioners (criteria for appointment, representativity, etc.)

- Once the issues have been finalized and the establishment approved by Parliament, then preferably, the Constitution should be amended to establish the NHRI, and an enabling law passed outlining all the details.
- Once the Commission is established, a National Plan on Human Rights to be developed in conjunction with existing structures and mechanisms (the inter-sectoral committee, the Law Reform Commission). The plan will define their respective roles and responsibilities in the process and clearly articulate deliverables in a certain time, taking into account other ongoing processes such as Vision 2020, the Poverty Reduction Strategy and the MDGs.
- OHCHR will provide technical assistance and experts when requested, to ensure that the process in a manner that guarantee the respect for international standards and is based on national consensus and consultations.

2) Human Rights Education

- The above-mentioned National Plan on human Rights will help better develop a strategy for Human Rights Education, including general education programmes for the public and specialized campaigns for state officials who are mandated with implementation of human rights treaties.
- The Inter-sectoral Committee should hold a workshop/consultation with all stakeholders to put together specific guidelines and plans (3 or 5 year plan on human rights education).
- The committee would then take responsibility for monitoring the plan and mobilizing resources for its implementation in collaboration with the Ministry of Education and the Ministry of Justice and Human Rights
- OHCHR is committed to provide the Committee with the necessary tools and materials and will consult with UNESCO and other relevant UN agencies to ensure coordination in providing the technical assistance needed.

3) Ratification and domestication of international human rights instruments:

- The cabinet is requested to work close consultation with other government bodies to ensure that the recommended procedures for ratification and domesticated are followed and that the Constitution and the national legal framework are in line with the obligations contained in the human rights instruments that Lesotho is party to.
- The dissemination of the provisions of these treaties among the government bodies, which represent the state as duty bearer and are in charge of implementation and monitoring, should be done and awareness developed among the citizens who are claim holders.
- In both processes, OHCHR and relevant UN agencies will support the efforts with technical assistance

4) Mainstreaming Human Rights in HIV prevention strategies and in the protection of people infected/affected by HIV and AIDS

The Cabinet should:

- Lead the process of reviewing all current legislation, as above, and that this review should take stock of existing initiatives in the region and involve civil society in order to take into account the specific needs and context of Lesotho and identify all areas that need legislation (insurance, inheritance matters, amendment of the Constitution and the Labour code to ensure equality and non discrimination, etc.)
- Scale up counseling and VCT services, especially in rural areas and enhance public awareness and behaviour changes, particularly in relation to fighting stigmatization,
- Include AIDS education in the curricula for school children