

Country Report: Lesotho¹



I. Introduction

Country Overview

The Kingdom of Lesotho is a small, mountainous country completely landlocked by South Africa.² Its population is approximately 1.95 million, of which 99.7% is of Sotho ethnicity. Lesotho gained independence from the United Kingdom in 1966.³

Lesotho faces severe socioeconomic challenges, particularly with regard to poverty and the HIV/AIDS epidemic. Approximately 57% of the population lives below the poverty line,⁴ and the country's HIV/AIDS adult prevalence rate of 22.73% is the third highest in the world.⁵ The country's death rate, which averages at 14.9 deaths per 1000 people per year, is the highest in the world.⁶ The country's net migration rate of -7.1 (the difference between the number of persons entering and leaving a country during the year per 1,000 people) is among the lowest in the world.⁷

Trafficking in Persons ("TIP") Context

According to the U.S. Department of State's 2016 Trafficking in Persons Report (TIP Report), Lesotho is a "source, transit and destination country for women and children subjected to forced labor and sex trafficking, and for men subjected to forced labor."⁸ For this and other reasons, Lesotho has been classified by the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (J/TIP) as a Tier 2 country,

Despite not fully meeting the minimum standards for eliminating trafficking, the government is making significant efforts to do so. In recent years, the government has issued regulations implementing the Anti-Trafficking in Persons Act (Anti-TIP Act),⁹ which "outlines the roles and responsibilities of each ministry in combatting trafficking in persons and provide guidelines for police interviews with potential victims and screening procedures."¹⁰ Additionally, Lesotho successfully prosecuted its first TIP case against a Chinese national for the sex trafficking of a Chinese woman, and initiated five additional prosecutions that were pending at the end of the

¹ The statements and analysis contained within this report are the work of the American Bar Association Rule of Law Initiative, which is solely responsible for its content. The views expressed herein should not be construed as representing the policy of the ABA. This report was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State.

² *Lesotho*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/lt.html> (last visited Aug. 2, 2017) [hereinafter *Lesotho*, CIA WORLD FACTBOOK].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 243, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2016).

⁹ *Id.*

¹⁰ *Id.*

2016 reporting period.¹¹

However, the Anti-TIP Act has been criticized for allowing fines in lieu of imprisonment, and thus not providing sufficient deterrence to the crime.¹² Furthermore, TIP prosecutions have been hindered by jurisdictional issues. Specifically, the magistrate courts, which are the courts assigned to hear trafficking cases, lack authority to impose the maximum penalties allowed for trafficking.¹³ Lesotho has also not allocated funding to the Victims of Trafficking Trust Fund, or otherwise provided financial support for services protecting trafficking victims.¹⁴ Instead, it relies upon NGOs to provide these services.¹⁵ Law enforcement officials reportedly have limited understanding of trafficking and how to identify and protect victims.¹⁶ Nonetheless, the government has reportedly ramped up training and established an anti-TIP taskforce drawn from various law enforcement, justice and social development ministries to coordinate the investigation of trafficking cases.¹⁷

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 244.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

II. Institution Mapping

Government Structure

Executive

Lesotho is a parliamentary constitutional monarchy.¹⁸ The Office of the King of Lesotho is a “symbol of the unity of the Basotho nation,” and as such is not involved with the politics of the country, with any political party, or political group.¹⁹

The government is led by a Prime Minister, who is the leader of the Parliament’s majority party or coalition.²⁰ The Prime Minister is formally appointed by the King.²¹

Lesotho also has a Cabinet of Ministers, which consists of the Prime Ministers and a number of other ministers.²² The Cabinet advises the King, and is generally responsible for any business of the Government of Lesotho that is assigned to its respective members.²³

Finally, Lesotho’s Constitution establishes the Council of State, which is comprised of the Prime Minister, the Speaker of the National Assembly, two judges or former judges of the High Court or Court of Appeal, the Attorney-General, the Defense Force Commander, the Commissioner of Police, a Principal Chief nominated by the College of Chiefs, two National Assembly members who are of the opposition party or coalition, three special members, and a member of Lesotho’s private bar.²⁴ The Council of State is charged with “assist[ing] the King in the discharge of his functions and to exercise such other functions as are conferred by [the] Constitution.”²⁵

Legislative

Lesotho’s bicameral Parliament consists of the Senate and the National Assembly.²⁶

The Senate has 33 seats; 22 are reserved for principal chiefs, and the other 11 are appointed by the King upon the advice of the Council of State.²⁷ The National Assembly has 80 members elected by simple majority vote and 40 members elected by proportional representation vote.²⁸ All members serve five-year terms.²⁹ The President of the Senate is elected by the Senate body, but need not necessarily be a Senator themselves.³⁰ Senators serve five-year terms.³¹

¹⁸ *Lesotho*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/lt.html> (last visited Aug. 2, 2017) [hereinafter *Lesotho*, CIA WORLD FACTBOOK].

¹⁹ Lesotho, Constitution of 1993, Schedule 1, *available at* https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017) [hereinafter LESOTHO CONST.].

²⁰ *Id.* at § 87(2).

²¹ *Id.*

²² *Id.* at § 88.

²³ *Id.* at § 89.

²⁴ *Id.* at § 95(2).

²⁵ *Id.* at § 95(1).

²⁶ *Id.*

²⁷ *Lesotho*, CIA WORLD FACTBOOK, *supra* note 18.

²⁸ *Id.*

²⁹ *Id.*

³⁰ LESOTHO CONST., *supra* note 19, at § 61.

³¹ *Lesotho*, CIA WORLD FACTBOOK, *supra* note 18.

The National Assembly has 120 seats; 80 members are directly elected in single-seat constituencies by simple majority vote, and 40 are elected through a proportional representation system.³² As with the Senate, members of the National Assembly serve five-year terms.³³

Judicial

The Court of Appeal is the highest court in Lesotho's judicial system, and consists of the President, and a number of justices as set by Parliament.³⁴ The President of the Court of Appeal is appointed by the King, on the advice by the Prime Minister;³⁵ justices of the Court of Appeal are appointed by the King, upon the advice of the Judicial Service Commission.³⁶ The Court of Appeal is the country's highest appellate body, and has supervisory jurisdiction over all of Lesotho's other courts.³⁷

The High Court of Lesotho is comprised of the Chief Justice and any other judges (known as puisne judges) as the Parliament prescribes.³⁸ As with the President and justices of the Court of Appeal, the Chief Justice and puisne judges of the High Court are appointed by the King, acting upon the advice of the Prime Minister and the Judicial Service Commission, respectively.³⁹ The High Court exercises unlimited original jurisdiction to hear any civil and criminal proceedings; it also hears appeals from courts-martial and any other body that exercises judicial, quasi-judicial, or administrative decision-making power.⁴⁰ The High Court also has jurisdiction to hear cases that involve violations of fundamental human rights and freedoms, and proceedings relating to land.⁴¹

Lesotho has a number of specialist courts. For example, the Labor Court, established under the Lesotho Labour Code, "has jurisdiction over matters that touch on industrial relations, i.e. the employer-employee relationship."⁴² The Labor Court has appellate jurisdiction over cases from the Directorate of Dispute Prevention and Resolution, and its decisions are appealable to the Labour Appeal Court.⁴³

Lesotho finally has a number of subordinate courts, including the Magistrate Courts, the Local Courts, and the Customary Courts.⁴⁴ These courts are creature of statute, established under the Subordinate Courts Order (as amended) and the Local Courts Proclamation.⁴⁵ ABA ROLI has been located publicly-available copies of these laws in order to review their terms.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ LESOTHO CONST., *supra* note 19, at § 124.

³⁶ *Id.* at § 124(2).

³⁷ Itumeleng Shale, *UPDATE: The Law and Legal Research in Lesotho*, § 28, GlobaLex (Nov./Dec. 2014), <http://www.nyulawglobal.org/globalex/Lesotho1.html> (last visited Aug. 2, 2017).

³⁸ LESOTHO CONST., *supra* note 19, at § 119(2).

³⁹ *Id.* at §§ 120(1)-(2).

⁴⁰ Shale, *supra* note 37, at § 29.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See, e.g.*, Subordinate Courts (Amendment) Act, No. 6 of 1998, *available at* http://www.commonlii.org/ls/legis/num_act/sca308.pdf (last visited Aug. 2, 2017); *id.*

Criminal Justice

Lesotho's main security services are the Lesotho Defence Force (LDF), the National Security Service (NSS), and the Lesotho Mounted Police Service (LMPS).⁴⁶ The LDF is generally Lesotho's military and paramilitary wing, the NSS is the national security wing, and the LMPS is Lesotho's primary policing service. All three bodies are established under the Constitution.⁴⁷

The LMPS is assisted in its numerous public functions by the Police Complaints Authority, the Police Directorate and Inspectorate, and a number of civil society organizations.⁴⁸ The LMPS' Child and Gender Protection Unit (CGPU) is charged with actively combatting child abuse and domestic violence; it has branches in each of Lesotho's 10 districts, and deals with cases of sexual and physical abuse and neglected and abandoned children.⁴⁹ It appears that the CGPU is Lesotho's primary anti-TIP law enforcement body; in the reporting period for the U.S. Department of State's 2016 Trafficking in Person's Report (TIP Report), it had identified 18 potential trafficking victims, referred six to an NGO that provided relevant counseling and assistance, and referred once child victim to a charity that specialized in rehabilitation for abused and/or traumatized children.⁵⁰

Anti-Corruption and Ethics

Lesotho's Directorate on Corruption and Economic Offences (DCEO), established under the Prevention of Corruption and Economic Offences Act,⁵¹ works in coordination with the Directorate of Public Prosecutions (DPP) to investigate complaints and prosecute corruption in public bodies.⁵² The DCEO additionally is charged with examining the practices and procedures of public bodies in order to discover corrupt practices, and to help revise procedures that may create or increase corruption risks;⁵³ advising the heads of public bodies on procedures relating to reducing the likelihood of corrupt practices occurring;⁵⁴ and engaging in public information campaigns regarding corruption.⁵⁵

Regulatory Bodies

Lesotho has a number of growth industries that may pose specific TIP risks. These include the trout fishing industry in the Katse Dam area,⁵⁶ which is regulated by the Ministry of Agriculture

⁴⁶ MAMOSEBI PHOLO, LESOTHO: JUSTICE SECTOR AND THE RULE OF LAW 93 (Mar. 2013), *available at* http://www.osisa.org/sites/default/files/afriomap_lesotho_justice.pdf (last visited Aug. 2, 2017).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 95.

⁵⁰ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 244, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited Aug. 3, 2017) [hereinafter U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016].

⁵¹ Prevention of Corruption and Economic Offences Act, No. 5 of 1999 (*as amended*, Prevention of Corruption and Economic Offences (Amendment) Act, No. 8 of 2006), *available at* <https://www.lesotholii.org/ls/legislation/act/1999/5> (last visited Aug. 3, 2017) [hereinafter PCEO Act].

⁵² PHOLO, *supra* note 46, at 99.

⁵³ PCEO Act, *supra* note 51, at art. 6(g).

⁵⁴ *Id.* at art. 6(i).

⁵⁵ *Id.* at arts. 6(j)-(k).

⁵⁶ *Lesotho Country Commercial Guide: Lesotho - Agricultural Sectors*, EXPORT.GOV (Jan. 11, 2016), <https://www.export.gov/article?id=Lesotho-Agricultural-Sectors> (last visited Aug. 3, 2017).

and Food Security;⁵⁷ the tourism industry, which is regulated by the Lesotho Tourism Development Corporation;⁵⁸ and the manufacturing industry, which has expanded from primarily textiles manufacturing to more industrial applications, such as electronics and automotive component manufacturing.⁵⁹ These industries are regulated by the Ministry of Trade and Industry.⁶⁰

Traditional Justice Systems

Lesotho's Local and Central Courts are "primarily customary courts," which are exclusively authorized to handle customary law matters involving members of the Basotho nation.⁶¹ The jurisdiction of the Local and Central Courts is limited to cases that have certain maximum penalties or amounts in controversy.⁶²

Anti-Trafficking Institutions

In addition to the Lesotho Police's CGPU, the Ministry of Gender, Youth and Sports operates a "One Stop Centre" that provides a temporary place of safety to women, children survivors of sexual and gender based violence, where they receive psycho-social support, mediation, economic empowerment, referral, and health and legal services.⁶³

The Ministry of Labour and Employment is charged with monitoring compliance with the Core International Labour Organization ("ILO") conventions, and (b) develop policies and strategies to safeguard the welfare of migrant workers and their dependents.⁶⁴

⁵⁷ Protection of Fresh Water Fish Proclamation, No. 45 of 1951, *available at* <http://extwprlegs1.fao.org/docs/pdf/les128714.pdf> (last visited Aug. 3, 2017).

⁵⁸ *Lesotho Country Commercial Guide: Lesotho - Tourism*, EXPORT.GOV (Feb. 22, 2017), <https://www.export.gov/article?id=Lesotho-Tourism> (last visited Aug. 3, 2017).

⁵⁹ *Lesotho Country Commercial Guide: Lesotho - Manufacturing*, EXPORT.GOV (Feb. 22, 2017), <https://www.export.gov/article?id=Lesotho-Manufacturing> (last visited Aug. 3, 2017).

⁶⁰ *See Ministry of Trade and Industry*, GOV'T OF LESOTHO, http://www.gov.ls/gov_webportal/ministries/trade%20&%20industry/trade.html (last visited Aug. 3, 2017).

⁶¹ Shale, *supra* note 37, at § 33.

⁶² U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT: JUNE 2016*, *supra* note 50, at 244.

⁶³ *See id.*; *see also Ministry of Gender, Youth and Sports*, GOV'T OF LESOTHO, http://www.gov.ls/gov_webportal/ministries/gender,%20youth,%20and%20sports/gender.html (last visited Aug. 3, 2017).

⁶⁴ *See Ministry of Labour and Employment*, GOV'T OF LESOTHO, http://www.gov.ls/gov_webportal/ministries/labour%20and%20employment/labour.html (last visited Aug. 3, 2017).

III. National Anti-Trafficking in Persons Legal and Institutional Framework

Anti-TIP Legal Framework

Domestic Statutory Authority

The Constitution of Lesotho provides that no person may be held in slavery or servitude, or required to perform forced labor.⁶⁵

The country's primary anti-TIP legislation is the Anti-Trafficking in Persons Act (Anti-TIP Act).⁶⁶ The law defines "trafficking" as the:

recruitment, transportation, transfer, harbouring, legal or illegal adoption, sale, supply or receipt of persons within and across the borders of Lesotho -
(a) by means of the use of threat, force or other means of coercion, abduction, kidnapping, fraud or deception, the abuse of power, law or legal process or a position of vulnerability or debt bondage; or
(b) the giving or receiving of payments or benefits to obtain the consent of a person having control over another person,
for the purpose of exploitation.⁶⁷

In imposing a "threat, force, or coercion" requirement upon the crime of trafficking of children, this definition of trafficking is not considered to be consistent with international law.⁶⁸

A person guilty of trafficking another person under the anti-TIP Act is liable for a fine of M1,000,000 or 25 years in prison.⁶⁹ Where the victim is a child, the offender is liable for a fine of M2,000,000 or life imprisonment.⁷⁰

The act also establishes offenses for acts that promote or facilitate trafficking.⁷¹ A person guilty of these offenses is liable for the same penalties as if the person had been convicted for the offense of trafficking.⁷² Furthermore, the act establishes aggravated forms of trafficking, consisting of (a) adoptions undertaken for the purposes of trafficking; (b) crimes undertaken by a syndicate or in large scale; (c) trafficking undertaken by a parent, sibling, guardian or relative of the trafficked person; (d) trafficking undertaken by a public figure or officer; (e) recruitment of the trafficked person to engage in prostitution with members of the military or law enforcement; or (f) the trafficked person's being killed, disabled, mutilated, or afflicted with an STD.⁷³ These aggravated offenses are punishable by a fine of M2,000,000, or life in prison.⁷⁴

⁶⁵ Lesotho, Constitution of 1993, art. 9(1)-(2), *available at* https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017).

⁶⁶ Anti-Trafficking in Persons Act, No. 1 of 2011, *available at* https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act--2011_html/Lesotho_TIP_Act_2011.pdf (last visited Aug. 3, 2017) [hereinafter Anti-TIP Act].

⁶⁷ *Id.* at § 2 (emphasis added).

⁶⁸ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 243, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited Aug. 3, 2017).

⁶⁹ Anti-TIP Act, *supra* note 66, at § 5(1).

⁷⁰ *Id.* at § 5(2).

⁷¹ *Id.* at § 6.

⁷² *Id.*

⁷³ *Id.* at § 7(1).

Lesotho has other laws relevant to TIP. The country enacted the Children’s Protection and Welfare Act in 2011, which criminalizes child labor, child abduction, child trafficking, child sexual abuse, and harmful cultural practices.⁷⁵ It also provides for the legal placement of children living outside parental care and has provisions on adoption, parentage and guardianship.⁷⁶ Further, it provides for the removal and rehabilitation of children that are victims of prostitution, sexual violence, labor exploitation, those who are denied education, and those who suffer from substance abuse.⁷⁷

Domestic Policies and Action Plans

According to the U.S. State Department, Lesotho launched a National Anti-Trafficking in Person Strategic Framework and Action Plan in July 2014.⁷⁸ However, ABA ROLI has been unable to locate a freely-available copy of this document online for review.

International Agreements

Lesotho has ratified or acceded to a number of international agreements relevant to addressing TIP, including:

- the UN Convention against Transnational Organized Crime (UNTOC);
- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime;
- the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
- the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- the Convention on the Rights of the Child, and both its Optional Protocols;⁷⁹ and
- International Labor Organization (ILO) Conventions:
 - No. 29 (concerning Forced or Compulsory Labor);
 - No. 105 (concerning the Abolition of Forced Labor);
 - No. 138 (concerning Minimum Age for Admission to Employment); and
 - No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor).⁸⁰

⁷⁴ *Id.* at § 7(2).

⁷⁵ Children’s Protection and Welfare Act, No. 7 of 2011, Part VI, *available at* <http://jafbase.fr/docAfrique/Lesotho/children%20act%20lesotho.pdf> (last visited Aug. 3, 2017); *Id.* at part IX.

⁷⁶ *Id.* at Part VII.

⁷⁷ *Id.* at Part X.

⁷⁸ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 222 (July 2015), *available at* <https://www.state.gov/documents/organization/245365.pdf> (last visited Aug. 2, 2017).

⁷⁹ *See Multilateral Treaties Deposited with the Secretary-General*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en (last visited July 22, 2017) (select “Lesotho” in the drop-down Participant list to access a full list of international treaties and agreements deposited with the U.N. Secretary-General that Namibia has ratified or acceded to).

⁸⁰ *Ratifications for Lesotho*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103188

Anti-TIP Institutional Framework

Lesotho appears to have a limited Anti-TIP institutional framework.

For example, there is a National Task Team that has been charged with implementing Lesotho's National Action Plan on the Elimination of Child Labor.⁸¹ This Task Team is led by the Ministry of Labor and Employment's Child Labor Unit, and has representatives from other government ministries, trade unions, NGOs, and international organizations.⁸²

There is also a Multi-Sectoral Committee on Combating Trafficking in Persons, which is chaired by the Commissioner of Refugees and includes members from other government ministries, local government, and the NGO, faith-based, and international community.⁸³ However, the mandate of this committee is unclear.

⁸¹ *Child Labor and Forced Labor Reports: Lesotho*, U.S. DEP'T OF LAB., BUREAU OF INT'L LAB. AFF., <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/lesotho> (last visited Aug. 2, 2017).

⁸² *Id.*

⁸³ *Id.*

IV. Justice System

Access to Justice

Equality and Non-Discrimination Provisions

The Constitution of Lesotho provides that all people, regardless of race, religion, sex, color, language, political or other opinion, national or social origin, birth or other status are entitled to equal justice under the law.⁸⁴

Access to Legal Aid

The Lesotho Constitution does not provide for legal aid for indigent parties.⁸⁵ However, a legal aid board was established in 1978; since then, Lesotho does offer legal aid in both civil and criminal matters.⁸⁶ In addition, the Federation of Women Lawyers and Women and Law in Southern Africa Trust provide legal aid to indigent women in cases related to gender equality and non-discrimination, including cases related to domestic violence, child maintenance, divorce and property belonging to divorced and/or widowed wives as well as orphaned and vulnerable children.⁸⁷ Finally, the Faculty of Law of the National University of Lesotho has also established a Legal Aid Clinic that provides professional legal services to the indigent parties while developing future legal aid and civil rights lawyers.⁸⁸

Criminal Law and Procedure

The Child and Gender Protection Unit within the Lesotho Mounted Police Service is one criminal justice institution that has a mandate that encompasses TIP. This unit deals mainly with protection of children, women, and men who have suffered from gender-based violence by investigating and prosecuting cases, as well as sensitizing the communities on issues of gender based violence.⁸⁹ A second institution is the Financial Intelligence Unit, which is a national agency charged with receiving, requesting, analyzing and disseminating to law enforcement authorities financial information concerning suspected proceeds of crime and alleged money laundering.⁹⁰

Responsibility for the prosecution of cases on behalf of the state lies with the Office of the Director of Public Prosecutions (DPP).⁹¹ The DPP manages prosecutions at every level of the court system, including the magistrates' and local courts; as a result, it is authorized to delegate the task of prosecution to 'public prosecutors'. Prosecutions need not necessarily be conducted by those who hold law degrees; it is sufficient to hold a Diploma in Law for cases in the magistrates' courts, and in local and central courts it is sufficient to have a matriculation

⁸⁴ Lesotho, Constitution of 1993, §§ 4, 19, *available at* https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017) [hereinafter LESOTHO CONST.].

⁸⁵ *Id.* at § 12(13).

⁸⁶ See Itumeleng Shale, *UPDATE: The Law and Legal Research in Lesotho*, § 35, GlobaLex (Nov./Dec. 2014), <http://www.nyulawglobal.org/globalex/Lesotho1.html> (last visited Aug. 2, 2017).

⁸⁷ *See id.* at § 36.

⁸⁸ *See generally id.*

⁸⁹ MAMOSEBI PHOLO, LESOTHO: JUSTICE SECTOR AND THE RULE OF LAW 95 (Mar. 2013), *available at* http://www.osisa.org/sites/default/files/afriamap_lesotho_justice.pdf (last visited Aug. 2, 2017).

⁹⁰ *See Financial Intelligence Unit, KINGDOM OF LESOTHO*, <http://www.fiu.org.ls/home/> (last visited Aug. 3, 2017).

⁹¹ LESOTHO CONST., *supra* note 84, at § 141.

certificate as a lay person.⁹² Lesotho does not appear to confer a right to private prosecution.

ABA ROLI has not identified any publicly-available standard operating procedures (SOPs) for these institutions.

Extradition

Lesotho has ratified the Southern Africa Development Community Protocol on Mutual Legal Assistance in Criminal Matters,⁹³ which governs all extraditions.

ABA has not been able to determine whether Lesotho has passed more detailed extradition laws than this; nor has it been able to determine whether Lesotho has signed any other bilateral or multilateral extradition agreements.

⁹² PHOLO, *supra* note 89, at 85.

⁹³ See Protocol on Mutual Legal Assistance in Criminal Matters, Southern Africa Development Community, Oct. 3, 2002, *available at* https://www.unodc.org/tldb/pdf/Lesotho/MLW_MLA_Protocol.pdf (last visited Aug. 3, 2017).

V. Economic System

Economic and Financial Crimes

The Lesotho legal code explicitly prohibits a number of economic and financial crimes.

Money Laundering

Money laundering in Lesotho is criminalized by the Money Laundering and Proceeds of Crime Act (Money Laundering Act).⁹⁴ Money laundering is defined under the Act as the acquisition, possession, use, conversion, or transfer of property “with the aim of concealing or disguising the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof.”⁹⁵

The Money Laundering Act also converts the Directorate on Corruption and Economic Offences Act into the Anti-Money Laundering Authority,⁹⁶ and charges it with a number of duties, including conducting money laundering and terrorist financing investigations and extending foreign legal assistance with respect to tracking property, monitoring financial institutions, and instituting confiscation orders.⁹⁷

Prosecutions under the Money Laundering Act may only be instituted by the Directorate for Public Prosecutions (DPP).⁹⁸

Financial Fraud

The Lesotho Penal Code criminalizes forgery of documents with the intent of defrauding a person.⁹⁹ Specific laws that address financial fraud, identity theft, and counterfeiting have not been identified. However, these crimes could feasibly be prosecuted by the Office of the General Prosecutor under the general fraud provisions of the Penal Code.¹⁰⁰

Terrorist Financing

Terrorist financing is prohibited by the Money Laundering Act, and is defined under the Act as the solicitation, receipt, provision, or possession of funds for the purposes of conducting terrorism, facilitating the collection or control of property, or directly or indirectly willfully providing or attempting to provide funds with the intent of carrying out a terrorist act or acts.¹⁰¹

Regulation and Monitoring of International Financial Transactions

Lesotho law requires financial institutions to monitor transactions for suspicious activity. Specifically, financial institutions are required to review the background and purpose of

⁹⁴ Money Laundering and Proceeds of Crime Act, No. 4 of 2008, § 25, *available at* http://www.fiu.org.ls/legislation/Money_laundering_&_Proceeds_of_Crime_Act.pdf (last visited Aug. 3, 2017) [hereinafter Money Laundering Act].

⁹⁵ *Id.*

⁹⁶ *Id.* at § 11(2).

⁹⁷ *Id.* at § 11(3).

⁹⁸ *Id.* at § 11(4).

⁹⁹ Penal Code Act, No. 6 of 2012, § 70, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls022en.pdf> (Aug. 3, 2017).

¹⁰⁰ *Id.* at § 68.

¹⁰¹ Money Laundering Act, *supra* note 94, at §§ 63-65.

unusual, large and complex transactions that lack an economic or a visibly lawful purpose.¹⁰² Suspicious transactions are required to be reported to the Commissioner of Financial Institutions.¹⁰³

The Anti-Money Laundering Guidelines also require financial institutions to obtain customer identification information, such as copies of identification cards and passports, and to keep such information for at least 10 years after the account is closed.¹⁰⁴

However, the law does not require the government to give financial institutions guidance on potential indicators of TIP; nor has ABA ROLI identified any specific government directives with regards to TIP indicators in international financial transactions.

Asset Freezing and Forfeiture

It does not appear that Lesotho's Penal Code mandates asset freezing and/or forfeiture for any financial offenses.

The Money Laundering Act states that suspicious imports or exports of currency may be seized and detained, and in general property and proceeds of that property may be confiscated under the terms of this Act.¹⁰⁵

Under the Anti-Trafficking in Persons Act of 2011, examining officers may detain any goods or documents related to TIP for a maximum of three days.¹⁰⁶ Additionally, the Anti-Trafficking Fund, established under the Act, may be supplemented by the "proceeds from the confiscation of property connected with trafficking,"¹⁰⁷ which implies that the Act envisions asset forfeiture or confiscation as a punishment.

Remittances

Lesotho has no laws promoting remittance economies. Financial flows from remittances are regulated under the Deferred Pay Act, applicable Foreign Exchange Controls, and the aforementioned Anti-Money Laundering Guidelines.¹⁰⁸ Immigrants working in Lesotho are restricted from transferring more than 80 percent of their net income.¹⁰⁹ The Lesotho government requires all foreign exchange-related transactions to be processed through the central bank.¹¹⁰

¹⁰² See Financial Institutions (Anti-Money Laundering) Guidelines, Legal Notice No. 199 of 2000, Part II, le at <http://www.lesotho.li.org/ls/legislation/sl/2000/199> (last visited Aug. 3, 2017).

¹⁰³ See *id.*

¹⁰⁴ See *id.*

¹⁰⁵ See Money Laundering Act, *supra* note 94, at § 28, Part IV.

¹⁰⁶ See Anti-Trafficking in Persons Act, No. 1 of 2011, § 18, available at https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act--2011_html/Lesotho_TIP_Act_2011.pdf (last visited Aug. 3, 2017).

¹⁰⁷ *Id.* at § 46(d).

¹⁰⁸ See LEFEELA J. NALANE, ET AL., THE REMITTANCES FRAMEWORK IN LESOTHO: ASSESSMENT OF POLICIES AND PROGRAMS PROMOTING THE MULTIPLIER EFFECT 20-21 (2012), available at https://publications.iom.int/system/files/pdf/framework_in_lesotho.pdf (last visited Aug. 3, 2017).

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

VI. Corporations

Liability of Legal Persons for Violations of Law

Under Lesotho law, legal persons (e.g., corporations) can be held liable for violations of the State's laws. The Penal Code provides that, if a person acting on behalf of a corporation commits an offense, the corporation can be held liable in two ways:¹¹¹ firstly, where an offense is created by statute with the express or implied intention of making corporations as well as natural persons liable; and secondly, when the person who commits the offense is a person charged with the direction of the affairs of the corporation.¹¹²

Punishment is provided for under the statute that establishes the offense.¹¹³

While these laws provide for liability of the corporation, it has not been determined whether, and on what grounds, officers, directors and shareholders of a corporations can be held legally liable for an entity's violations of state laws.

Compliance with Laws on Incorporation

Lesotho does not maintain an oversight mechanism to ensure corporate compliance with the requirements for incorporation. However, the law does impose sanctions for violations of the requirements of incorporation, including making materially misleading statements and falsifying or destroying documents.¹¹⁴

Corporate Social Responsibility Initiatives

Lesotho law generally does not require or incentivize corporations to undertake corporate responsibility initiatives.

However, corporations established under the Lesotho National Plan for Tourism must consider the impact of their operations on agriculture, land management, local communities and the environment.¹¹⁵ Furthermore, all companies seeking a license to conduct industrial activities must submit public health, occupational safety and environmental impact reports along with their license applications.¹¹⁶

Supply Chain Transparency and Accountability

The Anti-Trafficking in Persons Act of 2011 (Anti-TIP Act) includes provisions relevant to TIP in supply chains. Specifically, the Act allows the government to institute border control measures in order to examine persons, vehicles, or goods that might have some involvement with

¹¹¹ Penal Code Act, No. 6 of 2012, § 28, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls022en.pdf> (Aug. 3, 2017).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Companies Act, No. 18 of 2011, Part XX, *available at* <http://www.lesotholii.org/ls/legislation/act/2011/18> (last visited Aug. 3, 2017).

¹¹⁵ Tourism Act, No. 4 of 2002, § 5, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls019en.pdf> (last visited Aug. 3, 2017).

¹¹⁶ Industrial Licensing Act, No. 10 of 2014, § 4, *available at* http://www.lesotholii.org/files/Industrial%20Licensing%20Act,%202014_0.pdf (last visited Aug. 3, 2017).

trafficking.¹¹⁷ Other than this provision in the Anti-TIP Act, no Lesotho laws have been identified that set specific procedures for identifying goods and services whose supply chains might involve TIP.

No Lesotho law appears to directly address transparency and accountability in global supply chains. The Anti-TIP Act can be construed to address accountability in supply chains to the extent that it holds corporations liable for facilitating or procuring TIP by another party, although the entity must have knowledge and intent for liability to attach.¹¹⁸ However, this requires knowledge and intent on the part of the corporation in order for it to be held liable.

The act does not require businesses to impose anti-TIP policies in their supply chain management; nor does it require the government to refuse to contract with entities that are discovered to use TIP in their supply chains.

Contract Law

Lesotho law provides that certain contracts are void or voidable in a variety of situations. Under the Labor Code, contracts for foreign service (a contract made within Lesotho that is to be performed in whole or in part outside Lesotho) are void if entered into under coercion or undue influence.¹¹⁹ The Labor Code also prohibits foreign contracts where any recruited person is found by an attesting officer to have been recruited by misrepresentation, fraud, illegal pressure or mistake, and where the recruited person is under the age of 18.¹²⁰

With respect to foreign service contracts, substitutions for a previous contract are regulated, but unfair substitutions are not necessarily void or voidable.¹²¹ Substitution must be authorized by an attesting officer or labor representative who is satisfied that the substituting party fully understands the nature of the transaction, and that his or her consent to the substitution is not a result of coercion, undue influence, misrepresentation, fraud or mistake.¹²² It is a criminal offense where any person, without first entering into a foreign service contract under the Labor Code: (a) employs or engages, or knowingly assists in the employment or engagement, of any person with the intention that, when so employed or engaged, such person shall work outside Lesotho; or (b) induces or attempts to induce any employee to proceed outside the limits of Lesotho for the purposes of employment.¹²³

Lesotho does not appear to place any legal restrictions on women, minority groups, stateless people or foreigners to contract freely.

¹¹⁷ See Anti-Trafficking in Persons Act, No. 1 of 2011, §§ 14-17, *available at* https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act-2011_html/Lesotho_TIP_Act_2011.pdf (last visited Aug. 3, 2017).

¹¹⁸ *Id.* at § 5.

¹¹⁹ Labour Code, Order No. 24 of 1992, Part XI, *available at* <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/31536/64865/E92LS001.htm> (last visited Aug. 3, 2017).

¹²⁰ *Id.*

¹²¹ *Id.* at § 163.

¹²² *Id.*

¹²³ *Id.* at § 145.

VII. Natural Resources, Environment, and Property

Natural Resource Extraction Laws

Logging

Lesotho's logging industry is regulated by the Ministry of Forestry and Land Reclamation, pursuant to the Land Administration Authority Act and the Forestry Act.¹²⁴

Under the Forestry Act, authority for the management and control of forest reserves is generally vested in the Chief Forestry Officer, who is charged with advising the Minister for Forestry and Land Reclamation on the "ownership, control and management of any forest enterprise owned or run by the government."¹²⁵ All transfers of ownership, control, and management, and licenses to cut, take, or remove forest product must be embodied written agreements and licenses, respectively.¹²⁶

Licenses are required for any taking or removal of forest product, whether it be for commercial use by an entity of any size, or wood for domestic use or to construct or repair a dwelling.¹²⁷ The Chief Forestry Officer retains the right to deny licenses; such denials may be appealed to the Minister, and from there as necessary to a court of competent jurisdiction.¹²⁸

Fishing

Agriculture and fishing are regulated by the Ministry of Agriculture and Food Security pursuant to the Agricultural Marketing Act and the Freshwater Fish Proclamation.¹²⁹

The Freshwater Fish Proclamation generally provides that any person other than an African who willfully disturbs, takes, catches, kills, or otherwise possesses fish outside the close season has committed an offense under the terms of the Proclamation.¹³⁰ However, those who are ordinarily resident upon land that borders water or through which water flows are entitled to fish in it without obtaining a permit.¹³¹ While the Proclamation does not specifically provide for licensing requirements, these provisions seem to indicate that licensing requirements exist.

Mining, Oil, and Gas

Mining is regulated by the Ministry of Mining pursuant to the Mines and Minerals Act.¹³² The Act

¹²⁴ Land Administration Authority Act, No. 9 of 2010, *available at* https://www.lesotholii.org/files/node/12162/land_administration_authority_act_2010_pdf_15551.pdf (last visited Aug. 3, 2017) [hereinafter Land Act]; Forestry Act, No. 17 of 1998, *available at* http://www.commonlii.org/ls/legis/num_act/fa1998139.pdf (last visited Aug. 3, 2017).

¹²⁵ Forestry Act, *supra* note 124, at §§ 20-21.

¹²⁶ *Id.* at §§ 21(2)-22.

¹²⁷ *Id.* at § 23(1).

¹²⁸ *Id.* at § 24.

¹²⁹ Agricultural Marketing Act, No. 26 of 1987, *available at* <http://www.lesotholii.org/files/Agricultural%20Marketing%20Act%2026%200F%201967.pdf> (last visited Aug. 3, 2017); Protection of Fresh Water Fish, Proclamation No. 45 of 1951, *available at* <http://extwprlegs1.fao.org/docs/pdf/les128714.pdf> (last visited Aug. 3, 2017).

¹³⁰ Protection of Fresh Water Fish Proclamation, *supra* note 129, at § 6.

¹³¹ *Id.* at § 7.

¹³² Mines and Minerals Act, No. 4 of 2005, *available at* https://www.lesotholii.org/files/Mines_and_Minerals_Act_NO_4_of_2005.pdf (last visited Aug. 3, 2017).

provides that mineral rights are generally vested in the Basotho Nation,¹³³ and that mineral rights may only be acquired, via license, to individuals and companies of Lesotho.¹³⁴ Furthermore, the Act appears to provide that only citizens of Lesotho may generally be employed in minerals operations.¹³⁵ It further provides that members of the Commission for Mines and Geology may not acquire any mineral rights.¹³⁶

Mineral rights envisioned under the Mines and Minerals Act include prospecting licenses, mining leases, mineral permits, mineral concessions, and surface rights.¹³⁷ It appears that none of these licenses or permits may be issued without a showing that the applicant has access to adequate financial resources, technical competence, and experience to carry out the applications, and that the program of work makes proper environmental protections.¹³⁸ It does not appear that rights holders have any obligations with respect to labor protections under the Mines and Minerals Act.

Environmental Regulation

Environmental matters are regulated under the Environment Act of 2008.¹³⁹ The act adopts the following principles of environmental law: the ‘polluter pays’ principle, the precautionary principle, the principle of eco-system integrity, the principle of public participation in environmental policies, and the principle of inter-generational and intra-generational equity.¹⁴⁰

The act imposes quality standards for water, air, soil, waste, noise, odors and radiation.¹⁴¹ In addition, the act establishes a liability scheme and protocol for addressing spills of hazardous materials,¹⁴² requirements for preventing and addressing environmental degradation, including conservation, reforestation and afforestation,¹⁴³ management of hazardous waste,¹⁴⁴ and protection of wildlife.¹⁴⁵

Land Ownership and Eminent Domain

The Lesotho Constitution prohibits restrictions on the acquisition or use by any person of property.¹⁴⁶

However, the Land Act does place certain restrictions on who may hold title to property. Specifically, title to property may be held by (a) the government of Lesotho; (b) any citizen of Lesotho who is 18 years of age or older (except that title may be held by people less than 18 years old when it is a result of gift, inheritance or where the person is married); (c) companies

¹³³ *Id.* at § 3.

¹³⁴ *Id.* at §§ 4, 5(1).

¹³⁵ *Id.* at § 11.

¹³⁶ *Id.* at § 10.

¹³⁷ *Id.* at Parts IV-VII.

¹³⁸ *Id.*

¹³⁹ Environment Act, No. 10 of 2008, available at <http://extwprlegs1.fao.org/docs/pdf/les128916.pdf> (last visited Aug. 3, 2017).

¹⁴⁰ *Id.* at § 4.

¹⁴¹ *Id.* at Part VI.

¹⁴² *Id.* at Part VII.

¹⁴³ *Id.* at Part IX.

¹⁴⁴ *Id.* at § 75.

¹⁴⁵ *Id.* at § 113.

¹⁴⁶ Lesotho, Constitution of 1993, § 7, available at https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017) [hereinafter LESOTHO CONST.].

incorporated under the laws of Lesotho, provided that at least 20% of the shareholders are members of the Basotho Nation; (d) partnerships carrying on business in Lesotho where the shareholders are members of the Basotho Nation; (e) societies registered under the laws of Lesotho; (f) an association organized under the laws of Lesotho; and (g) foreign governments or public international organizations for which Lesotho enjoys similar reciprocity for purposes relevant to their activities.¹⁴⁷

No interest or right in any property shall be compulsorily acquired, except in cases of eminent domain by the government.¹⁴⁸ The government may exercise its eminent domain power where necessary for the purposes of defense, public safety, public order, public morality, public health, town and country planning, or the development or utilization of any property to promote the public interest, provided that the government has a reasonable justification for doing so and the person from who property is taken receives fair compensation.¹⁴⁹

Every person from whom property has been taken under this provision may appeal to the High Court for the purposes of contesting both the legality of the taking and the amount of compensation.¹⁵⁰

ABA ROLI has not identified any other laws or protections against land grabbing.

¹⁴⁷ Land Act, *supra* note 124, at § 6.

¹⁴⁸ LESOTHO CONST., *supra* note 200, at § 17.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

VIII. Individual Rights

Ratification of and Accession to International and Regional Human Rights Treaties

Lesotho has ratified or acceded to a number of international human rights treaties, including:

- the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol;
- the International Covenant on Economic, Social, and Cultural Rights (ICESCR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol;
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the Convention on the Rights of the Child (CRC); and both its Optional Protocols;
- the Convention on the Rights of Persons with Disabilities (CRPD); and
- the Convention and Protocol Relating to the Status of Refugees (Refugee Convention).¹⁵¹

Regional human rights treaties that Lesotho has ratified or acceded to include:

- the African Charter on Human and Peoples' Rights (Banjul Charter);¹⁵²
- the African Charter on the Rights and Welfare of the Child;¹⁵³ and
- the Organization for African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa.¹⁵⁴

Lesotho is a dualist state; as such, treaties are not automatically self-executing in Lesotho law. Once agreements have been concluded between Lesotho and any foreign governments, the Cabinet is obliged to sign the agreement, and then approval is sought of the King. The King's approval produces an Instrument of Ratification, which must then be passed by an Act of Parliament for the treaty to enter into force in Lesotho law.¹⁵⁵

Legal Guarantees of Equality and Non-Discrimination

The Lesotho Constitution guarantees "every person in Lesotho" their fundamental human rights, regardless of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁵⁶

¹⁵¹ Multilateral Treaties Deposited with the Secretary-General, United Nations Treaty Collection, https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en (last visited July 21, 2017) (select "Lesotho" in the drop-down Participant list to access a full list of international treaties and agreements deposited with the U.N. Secretary-General that Lesotho has ratified or acceded to).

¹⁵² African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58.

¹⁵³ African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49.

¹⁵⁴ Convention Governing the Specific Aspects of Refugee Problems in Africa, Sep. 10, 1969, 1001 U.N.T.S. 45.

¹⁵⁵ See OECD, GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES PEER REVIEWS: LESOTHO 2016 94 (2016), *available at* <https://books.google.com/books?id=M65wDQAAQBAJ&printsec=frontcover#v=onepage&q&f=false> (last visited Aug. 3, 2017).

¹⁵⁶ Lesotho, Constitution of 1993, § 4, *available at*

https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017)

Rights of Foreigners and Stateless Individuals

The Constitution does not explicitly provide for the rights of foreigners and stateless individuals; however, to the extent that constitutional rights apply regardless of national origin, it would appear that such individuals' rights are Constitutionally-protected. Furthermore, the Constitution states that the State must "take appropriate measures in order to promote equality of opportunity for the disadvantaged groups in society to enable them to participate fully in all spheres of public life."¹⁵⁷

Lesotho's Refugee Act does not appear to make specific provisions for the rights or duties of refugees or stateless persons.¹⁵⁸

State Human Rights Guarantees

The Constitution of Lesotho provides for the following civil and political rights:

- the right to life;
- the right to personal liberty;
- the right of freedom of movement and residence;
- freedom from inhuman treatment;
- freedom from slavery and forced labor;
- freedom from arbitrary search or entry;
- the right to respect for private and family life;
- the right to a fair trial for criminal charges, and to a fair determination of his civil rights and obligations;
- freedom of conscience, expression, assembly, and association;
- freedom from discrimination; and
- the right to participate in government.¹⁵⁹

State Human Rights Bodies

Lesotho has a number of state institutions that carry mandates to protect human rights and freedoms.

The primary human rights body is the Constitutionally-established Office of the Ombudsman, which investigates "action[s] taken by any officer or authority in the exercise of the[ir] administrative functions . . . in cases where it is alleged that a person has suffered injustice."¹⁶⁰ The Ombudsman has investigatory authority over malfeasance and nonfeasance by government entities that cause human rights violations.¹⁶¹

The Police Complaints Authority (PCA), established under the aegis of the Police Act, is an independent oversight body that addresses complaints against the police.¹⁶² It is established

[hereinafter LESOTHO CONST.].

¹⁵⁷ *Id.* § 26.

¹⁵⁸ *See* Refugee Act, No. 18 of 1983, *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85619/95951/F736164096/LS085619.pdf> (last visited Aug. 3, 2017).

¹⁵⁹ LESOTHO CONST., *supra* note 156, at § 4.

¹⁶⁰ *Id.* at § 135(1)(a).

¹⁶¹ *About Us*, OFFICE OF THE OMBUDSMAN, <http://www.ombudsman.org.ls/> (last visited Aug. 3, 2017).

¹⁶² MAMOSEBI PHOLO, LESOTHO: JUSTICE SECTOR AND THE RULE OF LAW 98 (Mar. 2013), *available at* http://www.osisa.org/sites/default/files/afrimap_lesotho_justice.pdf (last visited Aug. 2, 2017).

under the Ministry of Home Affairs, and reports directly to the Minister or the Police Commissioner. While the PCA may accept public complaints at any district police station, and presumably conduct investigations into police misconduct, as of 2013 the law provided that the PCA could not institute prosecutions without the permission of the Minister of Home Affairs.¹⁶³

As of June 2016, Lesotho had also enacted a bill establishing a Human Rights Commission into law.¹⁶⁴ However, two NGOs filed a constitutional law case against the establishment of the Commission, arguing that the law gave the Prime Minister of Lesotho too much power in appointing commission members; as of the end of the reporting period for the U.S. Department of State's 2016 Human Rights Report, this body had not yet been established.¹⁶⁵

¹⁶³ *Id.*

¹⁶⁴ U.S. DEP'T OF STATE, LESOTHO 2016 HUMAN RIGHTS REPORT 18, <https://www.state.gov/documents/organization/265480.pdf> (last visited Aug. 3, 2017).

¹⁶⁵ *Id.*

IX. Labor Rights

Work Protections Established by Law

Applicable International Instruments

Lesotho is party to a number of international instruments that protect workers, including:

- ILO Convention no. 29 (concerning Forced or Compulsory Labor);¹⁶⁶
- ILO Convention no. 105 (concerning the Abolition of Forced Labor);¹⁶⁷
- ILO Convention no. 138 (concerning Minimum Age for Admission to Employment);¹⁶⁸
and
- ILO Convention no. 182 (concerning the Worst Forms of Child Labor).¹⁶⁹

Domestic Legal Protections

The Labor Code of Lesotho establishes a number of labor practices and protections. For instance, it establishes licensing requirements for recruiters and labor agents.¹⁷⁰ When determining whether to issue such a license, the Labor Commissioner must consider “the provisions of the relevant Conventions and Recommendations on migrant workers of the International Labour Organisation and, in particular, take into account the possible untoward effect of the withdrawal of the persons proposed for recruitment upon the population of Lesotho and their health, welfare, morality and development in relation to recruitment for employment wholly or partly outside Lesotho.”¹⁷¹

The Labor Code also prohibits false or misleading labor recruitment practices; every recruited person must be brought by the recruiter as soon as reasonably possible before an attesting officer who must ensure that the recruited person has not been subjected to illegal pressure or recruited by misrepresentation, fraud or mistake.¹⁷² However, ABA ROLI was unable to identify provisions regulating fees paid to recruiters.

Any aggrieved party may file a claim before the Labor Court. The court has jurisdiction to,

¹⁶⁶ ILO Convention No. 29 (concerning Forced or Compulsory Labor) (June 28, 1930), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (last visited July 21, 2017).

¹⁶⁷ ILO Convention No. 105 (concerning the Abolition of Forced Labor) (June 25, 1957), *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105 (last visited July 21, 2017).

¹⁶⁸ ILO Convention No. 138 (concerning Minimum Age for Admission to Employment) (June 26, 1973), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 (last visited July 21, 2017).

¹⁶⁹ ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) (Jun 17, 1999), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (last visited July 21, 2017).

¹⁷⁰ Labour Code Order, No. 24 of 1992, § 139, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls012en.pdf> (last visited Aug. 3, 2017) [hereinafter Labour Code].

¹⁷¹ *Id.* at § 140.

¹⁷² *Id.* at § 149.

among other things, interpret the terms of contracts of employment, wages orders and collective agreements; determine whether an unfair labor practice has been committed and, if so, to award appropriate relief; and, hear claims for payment of statutory minimum wage due to an employee.¹⁷³ The Labor Code does not contain any language denying these protections to migrant, seasonal, domestic or informal economy workers.

The Lesotho Constitution guarantees freedom of movement for any person, including the right to enter and leave Lesotho.¹⁷⁴ Furthermore, the Anti-Trafficking in Persons Act (Anti-TIP Act) prohibits debt bondage.¹⁷⁵ However, ABA ROLI was unable to identify provisions in the Labor Code relating to freedom of movement, and there do not appear to be any laws in place prohibiting labor recruiters or employers from refusing workers their travel/identity documents.

Minimum Wage Requirements

Lesotho's Labor Code does contain minimum wage requirements, which are adopted through the imposition of wage orders by the government on employers in specific business sectors such as construction, clothing and textile manufacturing, wholesale and retail, hospitality and transportation.¹⁷⁶ Wage orders establish the minimum wages that must be paid to employees in certain sectors based on length of employment.¹⁷⁷

A general minimum wage also exists for business sectors, for which no sector-specific minimum wage is assigned.¹⁷⁸ If an employer fails to pay an employee at least the statutory minimum wage prescribed in a wage order, the employer shall be guilty of an offense and shall be liable for a fine not exceeding M300 or to imprisonment for a period not exceeding three months for each such offense.¹⁷⁹

Working Hours Requirements

The Labor Code establishes weekly normal hours limits; under its provisions, normal work hours may not exceed 45 hours per week.¹⁸⁰ Employees who work five days a week may not ordinarily work longer than nine hours a day, and for six-day employees, they may not work more than eight hours a day for five days and five hours on the sixth.¹⁸¹ Employees may not be permitted to work for longer than five hours at a stretch without being given a one-hour rest period.¹⁸²

¹⁷³ *Id.* at § 24.

¹⁷⁴ Lesotho, Constitution of 1993, § 7, *available at* https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017).

¹⁷⁵ Anti-Trafficking in Persons Act, No. 1 of 2011, § 9, *available at* https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act--2011_html/Lesotho_TIP_Act_2011.pdf (last visited Aug. 3, 2017).

¹⁷⁶ Labour Code, *supra* note 250, at § 57; Labour Code Wages (Amendment) Notice, No. 147 of 2011, *available at* <http://www.oit.org/dyn/natlex/docs/SERIAL/89050/102090/F1723640489/LS089050.pdf> (last visited Aug. 3, 2017).

¹⁷⁷ Labour Code, *supra* note 170.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at § 58.

¹⁸⁰ *Id.* at § 118.

¹⁸¹ *Id.* at § 118(1)(b).

¹⁸² *Id.* at § 118(2).

Overtime Remuneration

Overtime is limited to 11 hours per week at a rate of 1.25 times the normal wage.¹⁸³

Leave Requirements

Employees are required to take at least six continuous days paid leave per year, and, after six months of employment, receive 12 paid sick days.¹⁸⁴

The Labor Code entitles women to maternity leave for a period of six weeks before confinement, and a maximum of eight weeks following confinement.¹⁸⁵ However, pregnancy leave is only issued upon a written certificate, signed by a medical officer, registered nurse, or midwife, relating to the date of confinement.¹⁸⁶ The Labor Code does not, however, guarantee women payment during the time of their leave.¹⁸⁷

Labor Inspection and Oversight Systems

The Ministry of Labor and Employment's Industrial Relations Section (EIRS) and Occupational Health and Safety Section (OHSS) have labor inspection responsibilities.¹⁸⁸ EIRS is charged with conducting regular inspections of commercial and industrial businesses, and advising employees and employers alike on industrial relations and labour legislation compliance matters.¹⁸⁹ OHSS conducts workplace inspections, accident investigations, dangerous occurrences, and monitoring adherence with Occupational Safety and Health Legislation.¹⁹⁰

OHSS is further charged with providing training to their partners to improve their understanding of health and safety duties, promoting and implementing the National HIV & AIDS Policy in the workplace, and compiling and analyzing Occupational Safety and Health statistics.¹⁹¹

Inspectors only appear to receive *ad hoc* training on health and safety and risk assessment, and usually only through donor-funded courses.¹⁹²

Applicability of Labor Laws to Migrant Workers

Lesotho has developed a process by which non-citizens must obtain work permits in order to work in the country. No employer shall employ any person in Lesotho who is not a citizen of Lesotho, and no such person shall accept employment in Lesotho unless that person is in possession of a valid certificate of employment (work permit) issued by the Labor Commissioner.¹⁹³

¹⁸³ *Id.*

¹⁸⁴ *Id.* at § 120.

¹⁸⁵ *See id.* at § 133.

¹⁸⁶ *Id.* at § 133(2)-(3).

¹⁸⁷ *Id.* at § 134.

¹⁸⁸ *Labour Administration and Labour Inspection, Information Resources: Lesotho*, INT'L LABOUR ORG., http://www.ilo.org/labadmin/info/WCMS_112603/lang-en/index.htm (last visited Aug. 3, 2017).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Labour Code, *supra* note 170, at § 165.

Child Labor Laws

International Laws, Policies, and Agreements

Lesotho has ratified the CRC, which recognizes the rights of children to be protected from economic exploitation by requiring State Parties to prohibit children from performing any work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or development.¹⁹⁴ State Parties also undertake to provide minimum age requirements for employment, regulate work hours and employment conditions, and establish sanctions to ensure that child labor laws are effectively enforced.¹⁹⁵

Lesotho has also ratified the Optional Protocol on Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography,¹⁹⁶ in addition to the ILO Minimum Age Convention and the Worst Forms of Child Labor Convention.¹⁹⁷

Domestic Laws and Policies

Lesotho has passed a number of laws and policies that deal with child labor, including its worst forms.

In general Lesotho prohibits the employment of children younger than 15 years of age in commercial and industrial establishments, except for small family undertakings.¹⁹⁸ Furthermore, employers are prohibited from hiring persons under the age of 18 for work that is “injurious to health or morals, dangerous or otherwise unsuitable;”¹⁹⁹ takes place at night at any commercial or industrial undertaking;²⁰⁰ or takes place in a mine or quarry (except for approved apprentice programs).²⁰¹ Under the Children’s Protection and Welfare Act, children may not be employed in any labor that is “exploitative,” i.e. work that deprives or hinders a child access to health, education or development.²⁰²

Lesotho’s action plans and policies related to mitigating child labor, including its worst forms, include the National Action Plan on the Elimination of Child Labor, the National Anti-Trafficking in Persons Strategic Framework and Action Plan, the National Policy on Orphans and Vulnerable Children, and the Education Sector Strategic Plan of 2005-2015.²⁰³

¹⁹⁴ United Nations Convention on the Rights of the Child, art. 32(1), Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁹⁵ *Id.* at art. 32(2).

¹⁹⁶ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en (last visited July 21, 2017); *Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en (last visited July 21, 2017).

¹⁹⁷ *Child Labor and Forced Labor Reports: Lesotho*, U.S. DEP’T OF LAB., BUREAU OF INT’L LAB. AFF., <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/lesotho> (last visited Aug. 2, 2017) [hereinafter *Child Labor and Forced Labor Reports: Lesotho*].

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Children’s Protection and Welfare Act, 2011, No. 7 of 2011, § 226, available at <http://jafbase.fr/docAfrique/Lesotho/children%20act%20lesotho.pdf> (last visited Aug. 3, 2017).

²⁰³ *Child Labor and Forced Labor Reports: Lesotho*, *supra* note 197.

Provisions Regarding the Worst Forms of Child Labor

The U.S. Department of Labor reports that, while there is no law mandating a minimum age for voluntary military service, the Lesotho Defence Force's policy prohibits the recruitment of children under the age of 18.²⁰⁴ While the Children's Protection and Welfare Act and the Anti-TIP Act both prohibit forced labor, child trafficking, and the commercial sexual exploitation of children, it does not appear that Lesotho has laws that otherwise prohibit using children in other illicit activities.²⁰⁵

²⁰⁴ *Id.*

²⁰⁵ *Id.*

X. Rights of Communities and Indigenous People

Recognition of Customary and Communal Land Rights

Lesotho law stipulates that all land is vested in the Basotho Nation and is held in trust by the King.²⁰⁶ Where customary law governing land ownership is inconsistent with the Land Act, the provisions of the Land Act control.²⁰⁷ Beyond this, ABA ROLI has not identified any other laws that may or may not recognize communal land rights in Lesotho.

Governance of Land Without Formal Title

It does not appear that land without formal title, or with customary title, may be governed under other provisions of customary law. Indeed, it appears that because land is vested in the Basotho Nation and held in trust by the King, any land that lacks formal title pursuant to the provisions of the Land Act falls into this category.²⁰⁸

Community Rights in Land-Based Development

Lesotho recognizes community rights in land-based development at least to the extent that it has called for greater participation in environmental decisionmaking and program design.²⁰⁹

However, ABA ROLI has not determined whether Lesotho has more specific provisions relating to community rights in land-based development.

²⁰⁶ Land Administration Authority Act, No. 9 of 2010, § 4 *available at* https://www.lesotholii.org/files/node/12162/land_administration_authority_act_2010_pdf_15551.pdf (last visited Aug. 3, 2017).

²⁰⁷ *Id.*

²⁰⁸ *See* UN-HABITAT, LAND TENURE, HOUSING RIGHTS AND GENDER IN LESOTHO 35 (2005), *available at* https://www.un.org/ruleoflaw/files/Law_Land_Tenure_and_Gender_LESOTHO.pdf (last visited Aug. 3, 2017).

²⁰⁹ *See* NATIONAL ENVIRONMENTAL POLICY FOR LESOTHO (1998), § 3.3, *available at* https://www.liportal.de/fileadmin/user_upload/oeffentlich/Lesotho/30_wirtschaft-entw/National_Environmental_Policy_1998.pdf (last visited Aug. 3, 2017).

XI. Immigration and Border Security

Immigration Law Prohibitions against TIP and Migrant Smuggling

Lesotho's Alien Control Act is silent with respect to TIP and migrant smuggling.²¹⁰

However, the Anti-Trafficking in Persons Act (Anti-TIP Act) provides that any person who arranges or assists the illegal entry into or departure from Lesotho, in order to obtain financial or other material benefits, is guilty of the offense of smuggling and is liable upon conviction to 15 years imprisonment.²¹¹

Aggravated smuggling, involving circumstances where the smuggled person is subjected to torture or other inhumane treatment, where the smuggled person's life or safety is endangered, the smuggled person is a child, or the smuggled person is intended to be exploited, carries a 20 year sentence.²¹²

It is not a defense that the smuggled person consented at any time to the act of smuggling or initially consented to the exploitation.²¹³

Protections for TIP Victims in Immigration Law

The Anti-TIP Act provides certain special protections for TIP victims. Summary deportation is prohibited.²¹⁴ TIP victims may stay in Lesotho for a non-renewable period not to exceed 60 days.²¹⁵ Temporary residence permits may be granted to TIP victims in Lesotho who agree to cooperate in the investigation and prosecution of entities engaged in trafficking.²¹⁶ Permanent residency may be obtained by a TIP victim five years after obtaining a temporary residency permit, provided that they are able to demonstrate that they are likely to be killed, harmed or trafficked again if they are returned to their country of origin or the country from which they were trafficked.²¹⁷

Except as described above, the Anti-TIP Act does not explicitly prohibit sanctioning or holding TIP victims liable for immigration violations. Nor does the act require immigration officials to obtain explicit permission from TIP victims for their repatriation. However, the act does require that, before repatriating a victim, officials must give due consideration to the safety of the person during the repatriation process, the safety of the person in the country to which that person is being returned, the likelihood that the person will be killed, harmed or trafficked again, and in the case of children, the availability and suitability of care arrangements in the country to which the child will be returned.²¹⁸

²¹⁰ Aliens Control Act, No. 16 of 1966, *available at* https://www.unodc.org/res/cld/document/aliens-control-act-1966_html/Aliens_Control_Act_1966.pdf (last visited Aug. 3, 2017).

²¹¹ Anti-Trafficking in Persons Act, No. 1 of 2011, § 12, *available at* https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act--2011_html/Lesotho_TIP_Act_2011.pdf (last visited Aug. 3, 2017) [hereinafter Anti-TIP Act].

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at § 28.

²¹⁵ *Id.* at § 29.

²¹⁶ *Id.* at § 30.

²¹⁷ *Id.* at § 31.

²¹⁸ *Id.* at § 32.

Denial of Entry or Visa Revocation for TIP Offenders

Lesotho law does not explicitly permit denial of entry or revocation of visas to persons engaged in TIP. However, TIP and migrant smuggling may be extraditable offenses under Lesotho law.²¹⁹

²¹⁹ *See generally id.*

XII. National Security and Humanitarian Emergencies

National Security Laws and Strategies

ABA ROLI has not identified any publicly-available national security laws or strategies for Lesotho.

Firearm Import/Export Regulations

The Arms and Ammunition Act makes it illegal for any person other than a person in service of the crown to manufacture, sell, trade, purchase or possess automatic weapons.²²⁰ ABA ROLI has not identified any other publicly-available firearms regulations or laws for Lesotho.

Conflict Resources Regulations

While Lesotho is a Participant of the Kimberly Process,²²¹ ABA ROLI was unable to find any legislation specifically prohibiting the import and export of conflict resources.

Emergency Management Laws and Strategies

The country does have an emergency management law, the Disaster Management Act of 1997. The law establishes the Disaster Management Authority, which is tasked with creating and implementing measures for preventing, mitigating, preparing for, responding to and recovering from disasters.²²² The Disaster Management Act does not appear to contain any TIP-specific provisions.

²²⁰ The Internal Security (Arms and Ammunition) Act (Act No. 17/1966) (Lesotho).

²²¹ *Lesotho*, KIMBERLEY PROCESS, <https://www.kimberleyprocess.com/en/lesotho> (last visited Aug. 3, 2017).

²²² The Disaster Management Act, No. 2 of 1997, *available at* <http://www.ifrc.org/Docs/idrl/862EN.pdf> (last visited Aug. 3, 2017).

XIII. Conclusion

Despite not meeting the U.S. Department of State's minimum standards for the elimination of trafficking, Lesotho has recently made progress in its efforts. It passed the Anti-Trafficking in Persons Act in 2011 and launched a National Anti-Trafficking in Person Strategic Framework and Action Plan in July 2014. Regulations implementing the act were issued in 2015. One TIP case had been successfully prosecuted and five others were currently pending as of the close of the 2016 reporting date. While the act prohibits and punishes all forms of trafficking, it has been criticized for requiring the use of deception, threat, force, or other means of coercion in order for a child to be considered a trafficking victim.

Outside of dedicated Anti-TIP legislation, several other laws and policies are relevant to eliminating TIP in Lesotho. For example, the Children's Protection and Welfare Act criminalizes child labor, child abduction, child trafficking, child sexual abuse, and harmful cultural practices. It also provides for legal placement of children living outside parental care and has provisions on adoption, parentage and guardianship. Further, it provides for the removal and rehabilitation of children that are victims of prostitution, sexual violence, labor exploitation, or that are denied education or are substance abusers. The Lesotho Labor Code establishes weekly hour limits and regulates the recruitment of workers for work outside of the country. Furthermore, Lesotho law prohibits slavery, servitude, forced labor and debt bondage.

In sum, other than the shortcoming of the Anti-Tip Act described above, Lesotho appears to have a legal and institutional framework in place to combat TIP. However, Lesotho faces difficulty in securing resources to fully and successfully implement Anti-TIP measures in light of the severe socio-economic challenges currently facing the country.