

Lesotho

Relevant International Instruments

<i>International Instruments</i>	<i>Signed</i>	<i>Ratified</i>
Article 4 of the African Charter of Human and People's Rights	Yes	Yes
Article 6 of the International Covenant on Civil and Political Rights (ICCPR)	Yes	Yes
First Optional Protocol to the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Convention Against Torture	Yes	Yes
Convention on the Rights of the Child	Yes	Yes

Legal Framework

STATUS

Retentionist.

SCOPE

Section 5 of the Constitution permits the infliction of any punishment authorized by law, including the death penalty. In the civilian courts the following crimes are punishable by the death penalty, namely murder and treason in terms of section 297 of the Criminal Procedure and Evidence Act 1981 (Criminal Procedure and Evidence Act), rape where the accused is to his knowledge infected with HIV in terms of section 32 (vii) of the Sexual Offences Act, 3 of 2003. However, the death penalty can only be imposed where the court finds that there are no extenuating circumstances. These circumstances vary from age, peer pressure, *dolus eventualis* (the reckless causing of death, foreseeing that death might occur but carrying on regardless whether it occurs or not), to intoxication, provocation, using more force than necessary in self-defence, superior orders, which while on the particular facts fall short of justifiable defence in law, nevertheless reduce the moral blameworthiness of the accused and hence constitute extenuating circumstances.

The following crimes are punishable by death by the court martial, namely, mutiny, failing to suppress mutiny, aiding the enemy, communication with the enemy and cowardly behaviour in terms of sections 48, 49, 41, 42, and 43 of the Lesotho Defence Force Act 4 of 1996 respectively. The Defence Force Act applies only to members of the defence force.

MORATORIUM

Lesotho

There is no moratorium. This is so perhaps, because for the last five years there is no death penalty that has been confirmed by the Court of Appeal. The Court of Appeal has in each case found some extenuating circumstance to warrant commuting the death penalty. One may venture to suggest that this is partly because all the members of the Court of Appeal come from South Africa, a jurisdiction which has abolished the death penalty. This consideration would influence them to look for and find an extenuating factor in invariably every case.

METHOD OF EXECUTION

Death is by hanging in terms of section 298 of the Criminal Procedure and Evidence Act. As far as practically possible the minimum suffering has been inflicted. There is no professional hangman available in Lesotho. The last time a prisoner was hanged, in 1996, a professional hangman had to be hired from abroad to carry out the task.

Statistics

NUMBER OF DEATH SENTENCES PASSED

Between 1992 and 1998, six death sentences have been handed down by the High Court for murder. In *Phumo v Rex*, CA/CRI/7/90 the Court of Appeal commuted the death sentence to seven years' imprisonment; in *Rex v Sosolo*, CRI/T/13/90 the Court of Appeal commuted the death sentence to 15 years, while in *Sekhobe Letsie and Another v Rex*, CA/CRI/3 and 4/91 the death sentence was commuted to life in respect of the second accused.

NUMBER OF EXECUTIONS

There have been no executions in the last five years. The last execution in Lesotho was in 1996 of a male aged between 30 and 40 years. There is presently no one on death row because of the rigorous application of extenuating circumstances by the Court of Appeal.

International Standards

JUVENILE OFFENDERS/PREGNANT WOMEN

The Criminal Procedure and Evidence Act expressly forbids the execution of children below 18 and pregnant women.

CLEMENCY/PARDON

There is the right to seek pardon or commutation. Section 102 of the Constitution provides for a Pardons Committee on the Prerogative of Mercy

Lesotho

whose function is, inter alia, to advise the King on the exercise of clemency as specified in section 331 of the Criminal Procedure and Evidence Act.

The appeal is made to the Pardons Committee which receives representations from the judges of both the High Court and Court of Appeal; the defence counsel; the accused himself; the Director of Public Prosecutions and the District Secretary of his district.

There has been no clemency/mercy for the last five years. The Project's National Coordinator, Moses OA Owor, chaired this committee between 1994 and 2000. The committee received two applications. One was successful on the ground that although the accused's defence that he was acting on superior orders was not legally justifiably as he had murdered two ex-ministers including their wives, he was morally less blameworthy as he was in his own imagination trying to carry favour with his superiors. The second application was not successful. It involved the cold bloodied murder of a helpless woman in the course of stealing a VCR; the only plausible excuse for the murder was to eliminate evidence as there was no sign of any resistance to the robbery by the victim.

The death penalty has not been carried out pending any appeal or other recourse procedure.