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Country Review Report of the Kingdom of Lesotho

Review by Botswana and Gabon of the implementation by Lesotho of articles 15 – 42 of Chapter III. "Criminalization and law enforcement" and articles 44 – 50 of Chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2012 - 2013

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I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Kingdom of Lesotho (hereinafter, Lesotho) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Lesotho, supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Botswana, Gabon and Lesotho, by means of telephone conferences and e-mail exchanges and involving Ms. Botlhale Makgekgenene, Ms. Anna Mphetlhe and Ms. Nomsa Moatswi from Botswana, Ms. Alphonsine Kavio Avaro, Mr. Vincent Lebondo Le-Mali and Mr. Laurent Boukomey from Gabon and Mr. Leshele Thoahlane, Mr. Sefako Seema, Mr. Litelu Joseph Ramokhoro, Ms. Mamello Mafelesi and Ms. Mabasia Molato from Lesotho. The staff members from the Secretariat were Ms. Tanja Santucci and Ms. Chadia Afkir.

6. A country visit, agreed to by Lesotho, was conducted in Maseru, Lesotho from 6 to 9 May 2013. During the on-site visit, meetings were held with the Directorate on Corruption and Economic Offences (DCEO), the Director of Public Prosecutions (DPP), the Financial Intelligence Unit of the Central Bank (FIU), the Lesotho Mounted Police (LMPS), the Public Service Commission, the judiciary, as well as representatives from civil society and donor agencies.

III. Executive summary

1. Introduction

1.1 Overview of the legal and institutional framework against corruption of the Kingdom of Lesotho in the context of implementation of the United Nations Convention against Corruption

7. *Lesotho signed the Convention on 16 September 2005 and ratified it on 16 September 2005. The Convention entered into force for Lesotho on 15 December 2005.*

8. *Lesotho is a Constitutional monarchy, with the King as Head of State and the executive power in the hands of the Government led by the Prime Minister. There is a dual legal system with traditional customary law and general law based on the Roman-Dutch system. Lesotho is also a member of the Commonwealth of Nations (British Commonwealth).*

9. *The legal framework against corruption includes provisions from the Constitution, the Prevention of Corruption and Economic Offences Act 1999, as amended (PCEO Act), the Penal Code, the Money Laundering and Proceeds of Crime Act 2008 (AML Act), the Criminal Procedure and Evidence Act 1981 (CPE Act), the Fugitive Offenders Act 1967, international treaties and the common law.*

10. *The institutions most relevant to the fight against corruption are the Directorate on Corruption and Economic Offences (DCEO), the Attorney General, the Director of Public Prosecutions, the Lesotho Mounted Police Service (LMPS) and the Financial Intelligence Unit (FIU) of the Central Bank. Other relevant stakeholders include the judiciary, parliamentarians, civil society, the private sector and the media.*

11. *Lesotho is a member of the Eastern and South African Anti Money Laundering Group (ESAAMLG), the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and INTERPOL. Lesotho is also a member of the Southern African Development Community (SADC) and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA).*

2. Chapter III: Criminalization and Law Enforcement

2.1 Observations on the implementation of the articles under review

12. *As a general matter, it is recommended that Lesotho adopt a comprehensive definition of public officials in line with UNCAC article 2.*

Bribery and trading in influence (articles 15, 16, 18, 21)

13. *Both active and passive bribery of public officials are criminalized in the PCEO Act, sections 21 and 22. The indirect commission of the offence, omissions, and benefits to third parties are covered by common law and other statutory principles.*

14. *The bribery of foreign public officials and officials of public international organizations is not criminalized.*

15. *Section 21 of the PCEO Act incorporates trading in influence elements, but a comprehensive offence is not established. Missing elements are the impropriety of the offence, the actual exchange of benefits, indirect bribery, and omissions to act.*

16. *The bribery offences cited under UNCAC article 15 apply equally to the private sector by virtue of Section 31 A of the PCEO Amendment Act of 2006.*

Money-laundering, concealment (articles 23, 24)

17. Not all UNCAC offences qualify as predicate offences for money laundering, as section 25(1) of the AML Act is limited to predicate offences criminalized in Lesotho and/or subject to 2 years of imprisonment. Although accomplices are equally liable for attempts, counselling, procuring, aiding and abetting, and conspiracy to commit money laundering, the penalties are lower than for principals.

18. Concealment is addressed in section 25(1), although the section does not specify that the perpetrator need not have participated in the act.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

19. Section 13(3)(a) of the PCEO Amendment Act criminalizes the embezzlement, misappropriation or diversion of property, public or private funds, securities or any other thing of value. The provision does not explicitly refer to public officials or the mental element of intent.

20. Section 13(3)(b) of the PCEO Amendment Act criminalizes the intentional abuse of functions or position. The provision is not limited to public officials.

21. Section 31 of the PCEO Act does not formally criminalize illicit enrichment in a manner consistent with the Convention. An ongoing investigation is needed for DCEO to require a public official to explain his or her disproportionate wealth.

22. Embezzlement in the private sector is addressed through the application of section 13(3)(a) of the PCEO Amendment Act.

Obstruction of justice (article 25)

23. Section 87(4) to (6) of the Penal Code partially implements UNCAC article 25(a). The undue advantage to interfere in the giving of testimony and the use of force are not addressed, although Lesotho could apply the general bribery provision in Section 21 of the PCEO Act.

24. Section 12 of the PCEO Act makes it a crime for a person to resist or obstruct an officer of the DCEO in the execution of his or her duty. Judicial or law enforcement officers are covered under the very broad provisions in section 87(1) to (3) of the Penal Code.

Liability of legal persons (article 26)

25. The Interpretation Act defines the term "person" under Lesotho's criminal laws to include entities or legal persons. Section 3 read together with Section 44 of the Interpretation Act deal with the liability of companies. Punishment includes fines and imprisonment according to Section 34 of the PCEO Amendment Act, Section 25(1) of the AML Act and Section 28(2) of the Penal Code.

Participation and attempt (article 27)

26. Accomplice liability is addressed in the Penal Code (sections 23, 24 and 26). The crime of attempt (section 21) applies only to acts of bribery and the preparation for an offence is not covered.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

27. A comprehensive range of penalties for corruption-related offences has been established. The gravity of the offence is considered at sentencing, although sentencing guidelines are rarely applied.

28. Only the King and his designee enjoy immunity under the Constitution, while members of Parliament and judicial officers enjoy functional immunity.

29. Under the Constitution, the discretion to prosecute vests in the DPP (Article 99). Prosecutorial powers have been delegated pursuant to the CPE Act (Section 5) to two prosecutors in DCEO. All DCEO cases are reviewed by the DPP before they are filed in court. Any decision not to prosecute is reviewable by the aggrieved party. No corruption cases have been refused for prosecution to date.

30. According to the Prisons Amendment Act, convicted persons are eligible for early release or parole after having served half their sentence. Parole is based on determining factors such as the gravity of the offence and the likelihood of recidivism.

31. Lesotho's Public Service Act (Section 15(10)) provides for the suspension of public officers, on full pay, pending disciplinary enquiries, though their removal or reassignment is not addressed. The disqualification of convicted persons from holding public office (including State-owned enterprises) would be covered in the PCEO bill.

32. There are no formal or comprehensive policies related to the reintegration of prisoners into society.

33. The PCEO Act provides incentives to informers, including anonymity in judicial proceedings and witness fees. There are no guidelines on plea bargaining or immunity from prosecution, which can be applied under the common law. Mitigated sentences have been given to cooperators, but not in corruption cases.

Protection of witnesses and reporting persons (articles 32, 33)

34. There are no comprehensive measures to protect witnesses, experts and victims, though evidentiary measures could be applied under the common law. Legal protections for victims are not specified.

35. The police and DCEO accept anonymous complaints and reports, although whistleblower protections are not available.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

36. Confiscation, under Part IV of the AML Act, extends to "serious offences" punishable by at least two years imprisonment, including money laundering. This threshold encompasses most

UNCAC offences, but not offences under the Penal Code which do not carry a statutory minimum prison term (bribery, obstructing justice). Confiscation measures are applied by DCEO in accordance with Section 11(2) of the AML Act, which currently establishes DCEO as the anti-money laundering authority. The confiscation of property corresponding to the value of criminal proceeds is not applied in a manner that would allow for value-based confiscation. The FIU does not have administrative powers to freeze transactions temporarily.

37. *The PCEO Act (Section 31) addresses unexplained wealth. The PCEO bill would allow DCEO to directly request a court order to seize, freeze or confiscate assets. The administration of frozen and confiscated assets is not comprehensively regulated.*

38. *Bank secrecy is not a ground for refusal to furnish information to DCEO under the PCEO Act. Bank records may also be obtained by court order under the Act, which provides for overcoming bank secrecy.*

Statute of limitations; criminal record (articles 29, 41)

39. *Lesotho has a 20-year statute of limitations for corruption-related crimes, as established in the CPE Act (Section 22). No corruption cases have been barred by reason of the prescription period.*

40. *Foreign criminal records are admissible under common law principles in court proceedings for related offences that occurred within a ten-year period.*

Jurisdiction (article 42)

41. *Jurisdiction is principally established in the PCEO Act (Section 51), the AML Act (Section 25(1)) and the Penal Code (Section 4). Observations relate to the passive and active personality principles, offences against the State and participatory acts outside Lesotho to money laundering.*

Consequences of acts of corruption; compensation for damage (articles 34, 35)

42. *Procurement regulations permit the annulment of contracts on the basis of corruption. There is no system of 'blacklisting' companies or referring case outcomes to licensing authorities.*

43. *Limited measures are in place to allow aggrieved parties to initiate legal proceedings in corruption cases.*

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

44. *Relevant institutions include DCEO, the DPP, LMPS and the FIU. The DCEO bill would strengthen the independence and budgetary resources of the agency, though training remains limited. A potential overlap of functions between the police and DCEO was observed, and interagency coordination could be strengthened. The large case load of LMPS was further noted. The FIU's functions, independence and recruitment would be addressed in a pending enabling law.*

45. *Cooperation agreements are in place among law enforcement agencies and joint investigations are conducted as needed. A National Coordination Committee has been established, but coordination remains limited.*

46. *DCEO has a mandate to address corruption in both the public and private sector. The FIU coordinates cooperation with the private sector (mostly banks and financial institutions) and oversight of financial institutions.*

2.2 Successes and good practices

47. *Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:*

- *The AML Act regulates the confiscation, identification and seizing of assets in a comprehensive manner, although some observations are noted under UNCAC article 31 (including with respect to value based confiscation).*

- *The draft PCEO bill would cover conflicts of interest disclosures and provide for regular asset fillings.*

- *Converted, transformed and intermingled proceeds, as well as income and other benefits, are covered in the legislation and liable to be confiscated, seized or frozen if they constitute alleged proceeds of crime.*

- *The work of civil society in furtherance of the protection of witnesses and whistleblowers, including a dedicated fund for vulnerable witnesses/whistleblowers, was positively noted.*

- *The FIU is encouraged to continue its cooperation efforts with foreign counterparts through exchange/mentorship arrangements and membership in the Egmont Group. The FIU's awareness-raising efforts and training on anti-money laundering should be continued.*

- *The exchange of personnel among law enforcement agencies potentially constitutes a good practice and should be encouraged.*

2.3 Challenges in implementation

48. *The following steps could further strengthen existing anti-corruption measures:*

- *Ensure that all categories of public officials under UNCAC article 2 are covered.*

- *Supplement the bribery offences to incorporate the provisions of UNCAC article 15.*

- *Draft measures in relation to the bribery of foreign public officials and officials of public international organizations, taking into account UNCAC article 2.*

- *Continue efforts to ensure that an ad hoc provision on trading in influence is included in line with the Convention.*

- *Address the mental element of the embezzlement offence.*

- *Consider criminalizing illicit enrichment in line with UNCAC article 20.*

- *Establish specific procedures and a dedicated agency to verify asset declarations.*

- *Carefully consider the proposed changes to reorganize the mandate of law enforcement institutions under the PCEO bill.*

- *Consider removing the penalty requirement in the dual criminality provision of the AML Act.*

- *Consider amending the provision on accomplices and participation in money laundering in line with the Convention.*

- *Address conspiracy and participatory acts outside Lesotho to commit money laundering.*

- *Furnish a copy of the money laundering laws to the United Nations.*

- *Amend the text on obstruction of justice to bring it more fully in line with the Convention.*

- *Consider whether the existing legal framework regarding the crime of attempt is adequate in view of UNCAC.*

- *Review the penalty provisions for corruption and money laundering to ensure congruence and adequate deterrence for persons and legal entities.*

- *Monitor the imposition of sanctions and application of sentencing guidelines by the judiciary.*

- *Establish a specialized anti-corruption unit in the DPP with adequate capacity to handle corruption cases.*

- *Adopt a law regulating the DPP and a Prosecution Manual to ensure greater legal certainty in the prosecution of corruption and criminal cases.*

- *Consider adopting relevant measures to address the removal or reassignment of accused public officers, and the disqualification from holding public office of convicted officials, as proposed in pending legislation.*

- *Consider developing comprehensive policies on the rehabilitation and reintegration of prisoners into society.*

- *Amend the legislation to ensure that proceeds of all UNCAC offences can be confiscated, including by reason of their period of imprisonment.*

- *Adopt measures to permit value-based confiscation.*

- *A lack of human and technical capacity to trace, seize and confiscate criminal proceeds and limited resources were reported; the adoption of the PCEO bill, which would*

authorize DCEO to apply directly for a confiscation order, is encouraged, taking into account the need to ensure that confiscation powers in corruption cases handled by the DPP can be exercised by the DPP.

- *Consider establishing a dedicated agency to administer confiscated assets and monitoring the application of relevant provisions in practice.*

- *Conduct training and capacity building on pursuing illicit enrichment cases and review existing legislation involving a reversal of the burden of proof.*

- *Ensure that bona fide third party rights are adequately protected in confiscation cases.*

- *Limited resources, capacity and inadequate laws are constraints to the effective protection of witnesses, experts, victims, and whistleblowers; measures should be adopted as a priority to provide appropriate protections.*

- *Establish a website for DCEO to encourage reporting, inform complainants of their rights and raise transparency of DCEO operations and awareness of anti-corruption efforts.*

- *Adopt and implement a whistleblower law and appropriate structures to establish reporting procedures and provide effective protection on the ground.*

- *Establish a closer working relationship among investigative agencies to address consequences of corruption.*

- *Address the rights of victims to initiate legal proceedings in corruption cases.*

- *Clearly delineate responsibilities among law enforcement agencies and strengthen interagency coordination, especially among DCEO and LMPS.*

- *For DCEO, fill vacant positions. Ensure structured, comprehensive and regular capacity building and training for criminal justice institutions. DCEO should be adequately resourced and clearer laws should address its operational and financial independence. The need for a case management system is a priority.*

- *Ensure adequate resources, manpower and investigative capacity of LMPS, also under the PCEO bill, and consider conducting integrity training for police officers. Operationalize an effective case management for relevant agencies.*

- *Consider establishing a dedicated unit and increased capacity for corruption matters in the DPP. Clearly define confiscation powers in corruption cases handled by DPP.*

- *For FIU, encourage the swift adoption of its enabling law and an appropriate legal and administrative structure to receive and transfer STRs. Steps to increase capacity and personnel are encouraged.*

- *Continue steps to establish specialized expertise in the judiciary to hear corruption cases and transfer knowledge.*

- *Strengthen measures to encourage the cooperation of participating offenders. A law on plea bargaining and policy for the recruitment of informers could be useful.*

- *Enhance coordination among relevant agencies and clarify mandates in light of competing priorities. Establish a consistent practice of sharing case-related information and cooperation on specific cases.*

- *Consider legal or administrative measures requiring public officials to report bona fide suspicions of corruption.*

- *Ensure the continued dedication of resources and capacity to address corruption in the private sector. Enhance public awareness raising and outreach activities, especially in the regions. Continue to enhance partnerships with civil society.*

- *Consider adopting legal measures on admissibility of foreign criminal records.*

- *Consider establishing jurisdiction for offences described in UNCAC article 42(2).*

2.4 Technical assistance needs identified to improve implementation of the Convention

49. *The following forms of technical assistance could assist Lesotho in more fully implementing the Convention:*

- *Capacity building and training for institutions in the criminal justice system based on a detailed assessment of technical assistance needs; this should be conducted in cooperation with existing partners and build upon existing measures.*

- *Assistance in developing an appropriate case management system for DCEO and other agencies; work is underway in this regard.*

- *Article 15: Capacity building to strengthen the investigation and prosecution of corruption offences generally and the collection and updating of statistics.*

- *Articles 16 and 17: Good practices/lessons learned; legislative drafting.*

- *Article 19: Good practices/lessons learned.*

- *Article 20: Good practice/lessons learned; Development of an action plan for implementation as to procedures for asset and conflicts disclosures.*

- *Article 23: On site assistance; Training and capacity building for all law enforcement investigators, prosecutors and judges; Strengthening inter-agency coordination.*

- *Article 26: On-site assistance by an anti-corruption expert; Capacity building and training on how to conduct financial investigations against companies and their principals.*

- *Article 31: Good practices/lessons learned; Training and capacity building for all law enforcement and judicial officers on financial investigations and asset confiscation; Legislative drafting and on-site assistance on asset tracing, value-based confiscation and illicit enrichment.*

- *Articles 32 and 33: Model legislation; Capacity-building; On-site assistance; Model agreements/arrangements; also for article 33: Development of an implementation action plan.*

- *Articles 34 and 35: Good practices/lessons learned; On-site assistance; Development of an implementation action plan; also for article 34: Model legislation.*

- *Article 36: On-site assistance; Development of an implementation action plan; Capacity building for law enforcement agencies.*

- *Article 37: Laws and measures to encourage the cooperation of offenders.*

- *Article 38: Good practices/lessons learned; Development of an action plan for implementation.*

- *Article 39: Good practices/lessons learned; Capacity-building.*

- *Article 41: Good practices/lessons learned; Model legislation.*

3. Chapter IV: International cooperation

3.1 Observations on the implementation of the articles under review

50. Lesotho can apply its bilateral and multilateral treaties, including the Convention, to make and execute international cooperation requests. Lesotho has cooperated on the basis of reciprocity in the absence of a treaty in one case. Lesotho subscribes to the Commonwealth Schemes on Mutual Legal Assistance (Harare Scheme) and Extradition (London Scheme). The Attorney General is the central authority for international cooperation.

51. It was difficult to assess in detail Lesotho's practice of providing MLA and extradition in corruption cases, due to the small number of incoming requests, the absence of data on any requests refused, and the absence of a system for collecting data.

Extradition (article 44)

52. Extradition is addressed in international treaties and agreements to which Lesotho is party and the Fugitive Offenders Act of 1967. A treaty basis is required. Lesotho has entered into two extradition treaties (China, 2003 and South Africa, 2001), and the Convention could be considered as the legal basis for extradition.

53. Lesotho authorizes the extradition of its nationals if permitted under a treaty; otherwise Lesotho would ensure effective prosecution. Dual criminality is required under Section 5 of the Fugitive Offenders Act and Lesotho's extradition treaties. The Act takes a list-based approach to determining extraditable offences and requires that the offence be punishable by a minimum of one year imprisonment. Because not all corruption-related offences are

criminalized or punishable by one year in Lesotho, in particular those under the Penal Code, not all UNCAC offences are extraditable in Lesotho.

54. *Pursuant to Lesotho's treaties, corruption-related offences should not be treated as political offences, though this is not specified in the Fugitive Offenders Act. The Fugitive Offenders Act and treaties oblige Lesotho not to deny extradition requests related to fiscal matters.*

55. *According to the bilateral treaties and the Fugitive Offenders Act (section 6 (1)), Lesotho is bound to refuse a request for extradition that is based on a discriminatory purpose. The fundamental rights of persons in extradition proceedings are protected under Lesotho's legislation.*

56. *The extradition treaties do not provide for a duty of prior consultation with requesting States before extradition is refused.*

Transfer of sentenced persons; transfer of criminal proceedings (articles 45, 47)

57. *There are no agreements or arrangements on the transfer of sentenced persons or the transfer of criminal proceedings, and there has been no experience in this regard.*

Mutual legal assistance (article 46)

58. *There is no stand-alone law on mutual legal assistance in criminal matters (MLA). Lesotho relies on its bilateral and multilateral treaties. One bilateral treaty with South Africa (2001) is in place. The adoption of an MLA law has been proposed.*

59. *Dual criminality is required for rendering MLA, though it is not specified in Lesotho's treaty with South Africa. Lesotho reportedly has not refused any incoming requests and none of its outgoing requests have been refused, though the majority have been pending for some time. Non-coercive assistance could be provided in the absence of dual criminality, though there have been no examples in practice.*

60. *Requests are executed in accordance with Lesotho's law and treaty, and where possible requested procedures, though no examples were provided.*

61. *Bank secrecy does not appear to pose a challenge to the provision of assistance, and assistance would not be refused for offences involving fiscal matters under Lesotho's bilateral treaty.*

62. *Requests to the central authority should be addressed through diplomatic channels or through INTERPOL. The timeframe for responding to requests depends on the complexity of the matter, and delays are common.*

63. *There has been no experience in conducting video testimony in Lesotho, nor has there been experience with the transfer of prisoners to provide evidence or testimony.*

64. *Grounds for refusing and postponing assistance are specified in Lesotho's treaty with South Africa, though a requirement to consult before refusing or postponing assistance is not addressed.*

65. *Documents that are not publicly available cannot generally be provided pursuant to an MLA request.*

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

66. *Law enforcement authorities can cooperate through SARPCCO and INTERPOL. Lesotho is a member of ESAAMLG, SADC and ARINSA. DCEO is a member of the Southern African Forum against Corruption (SAFAC), International Association of Anti-Corruption Authorities (IAACA), and African Association of Anti-Corruption Authorities (AACA). Neither LMPS nor DECO have cooperation agreements in place with other countries. There has been limited experience in the exchange of personnel, communication or direct cooperation to combat corruption-related offences.*

67. *Lesotho has not conducted joint investigations or special investigative techniques internationally. Evidence derived from such techniques would be admissible under common law principles.*

3.2 Challenges in implementation

68. *The following steps could further strengthen existing anti-corruption measures:*

- *Amend the Fugitive Offenders Act of 1967 and bilateral treaties on extradition and MLA to ensure compliance with the Convention; ongoing consultations to adopt a new extradition law in line with the Convention are welcome.*

- *Adopt a system to collect data on the origin of MLA and extradition requests, the timeframe for responding to requests, and the response provided, including any grounds for refusal.*

- *Consider whether amending the law to have the DPP serve as the central authority would enhance efficiency; also consider establishing a specialized unit to handle extradition and MLA cases.*

- *Ensure that all UNCAC-related offences, including those under the Penal Code, are extraditable by virtue of their minimum period of imprisonment.*

- *Consider whether a threshold (minimum penalty) approach to determining extraditable offences would give greater flexibility to the extradition process.*

- *Amend the Fugitive Offenders Act to more clearly address the political offence exception in line with article 44(4) of UNCAC.*

- *Inform the United Nations of the treaty requirement for extradition and that UNCAC could be considered the legal basis for extradition.*

- *Ensure an obligation to prosecute nationals where extradition is refused or allow for the extradition of nationals.*

- *Consider adopting a specific legal framework on extradition for enforcing a sentence (article 44(13) of UNCAC).*

- *Establish a duty of prior consultation before extradition is refused.*

- *Consider whether there is an adequate treaty basis for issuing and executing extradition requests.*

- *Adopt, as a matter or priority, a specific law on MLA, to provide greater legal certainty in making and executing requests; early steps in this direction are welcome.*

- *Consider whether one single bilateral MLA treaty provides a sufficient legal basis (in addition to multilateral treaties) to issue and execute MLA requests; amend the bilateral MLA treaty as specified, in line the Convention.*

- *Specify the requirements on MLA for offences involving legal persons, and the purposes for which MLA may be afforded.*

- *Formalize measures on spontaneous information sharing and cooperation involving bank and financial records.*

- *Formalize the measures in paragraph 9 of article 46 and adopt the referenced measures in practice, for example in the form of guidelines for authorities.*

- *Ensure that prisoners receive credit while abroad to provide testimony or evidence. Formalize the requirements on the transfer of prisoners and other persons for providing assistance (paras. 10-12 and 27 of article 46) in law and treaties.*

- *Notify the United Nations of the central authority for MLA and acceptable language for requests, and formally establish the mechanisms for transmission of requests in law and treaties.*

- *Formalize the content requirements for incoming requests, the applicable law and any required procedures to execute requests in law and treaties.*

- *Consider specifying in law and treaties any requirements for conducting video testimony in Lesotho for purposes of hearing witnesses and transmitting evidence.*

- *Specify the limitations on use of evidence received pursuant to MLA requests and any situations where exculpatory evidence must be disclosed; also specify confidentiality requirements.*

- *Formalize the grounds for refusing assistance in law and treaties.*

- *Specify that assistance would not be refused for offences involving fiscal matters, and any grounds for refusal or postponement, in law and treaties.*

- *Establish that requests shall be executed promptly in accordance with requested timeframes and adopt procedures for authorities to respond to status inquiries for pending requests.*

- *Establish a requirement in law, treaties and practice to consult before refusing or postponing assistance.*

- *Address costs arrangements for MLA and the provision of public and non-public government documents.*

- *Reported challenges for MLA by Lesotho are: Inter-agency coordination; the absence of an MLA law, treaties and procedures; limited capacity, training and resources.*

- *Inadequate legal measures are reported challenges for the transfer of criminal proceedings.*

- *Enhance direct law enforcement cooperation in line with UNCAC article 48, in particular to facilitate communication, information exchange and direct cooperation in investigations; encourage learning, further training and staff exchange.*

- *Consider adopting legal measures to address special investigate techniques and the admissibility of evidence derived therefrom.*

3.3 Technical assistance needs identified to improve implementation of the Convention

69. *The following forms of technical assistance could assist Lesotho in more fully implementing the Convention:*

- *Article 44: Capacity building programmes, training for judges; development of an extradition law and model treaties*

- *Article 46: Capacity-building; model legislation and treaties.*

- *Article 47: Legal advice; model legislation and treaties.*

- *Article 48: Good practices/lessons learned; technical support.*

- *Article 49: Good practices/lessons learned; model agreements; capacity-building.*

- *Article 50: Capacity-building; legal advice/model agreements.*

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IV. Implementation of the Convention

A. Ratification of the Convention

70. The Convention was signed by Lesotho on 16 September 2005 (C.N.892.2005.TREATIES-33). It was ratified by Lesotho on 16 September 2005 (C.N.894.2005.TREATIES-34). To enhance implementation of the Convention, Lesotho passed the Prevention of Corruption and Economic Offences Act No. 5 of 1999, which was published in the official gazette on 12 August 1999 and subsequently amended by Act No. 8 of 2006. The Convention entered into force for Lesotho on 15 December 2005.

71. The implementing legislation for the Convention includes the Constitution of Lesotho of 1993, the common law, the Prevention of Corruption and Economic Offences Act of 1999 (as amended) (hereinafter also referred to as the PCEO Act), the Penal Code of 2010, the Money Laundering and Proceeds of Crime Act of 2008, the Criminal Procedure and Evidence Act of 1981, the Fugitive Offenders Act of 1967, as well as treaties on international cooperation in criminal matters.

B. Legal system of Lesotho

72. Lesotho is a Constitutional monarchy, with the King as Head of State and with the executive power in the hands of the Government led by the Prime Minister. There is a dual legal system with traditional customary law and general law based on the Roman-Dutch system. The Constitution provides for a clear separation of powers among the executive, legislative and judiciary.

73. Lesotho is also a member of the Commonwealth of Nations (British Commonwealth). As such, Lesotho's legal system has strong ties with the English common law legal system. According to the English common law system, provisions of international instruments or treaties are not self-executing, that is, they are not directly enforced by the courts or tribunals or administrative authorities. While some countries have departed from this tradition, Lesotho still follows the traditional common law approach. These provisions have to be transformed into internal laws or administrative regulations in order to be enforced. The process for giving effect to international treaties is that bilateral treaties are published in the official Gazette to give them the force of law and to apply them directly. While multilateral treaties are not published in the official Gazette, they can be applied in the same manner as bilateral treaties.

74. If the provisions of an international treaty or convention to which Lesotho is a State party are in conflict or at a variance with the domestic law, the tendency of the courts has been to give effect to the domestic law over the provisions of an international convention or treaty. Generally, an Act of Parliament is supreme. Once it has been properly passed by Parliament, the courts are bound to give effect to its terms, even if an order violates some principle of international law.

C. Previous assessments of anti-corruption measures

75. Lesotho is a member of the Eastern and South African Anti Money Laundering Group (ESAAMLG). The most recent mutual evaluation can be found at http://www.esaamlg.org/reports/view_me.php?id=231.

76. Lesotho law enforcement authorities cooperate through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and through INTERPOL. Lesotho is also a member of the Southern African Development Community (SADC) and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA).

77. The DCEO is a member of the Southern African Forum against Corruption (SAFAC), the International Association of Anti-Corruption Authorities (IAACA), and the African Association of Anti-Corruption Authorities (AACA).

D. Implementation of selected articles

78. The following agencies are involved in the implementation of UNCAC in Lesotho and were involved in the elaboration of the self-assessment.
    - The Directorate on Corruption and Economic Offences (DCEO)
    - Director of Public Prosecutions (DPP)
    - Lesotho Revenue Authority
    - Lesotho Mounted Police Service (LMPS)
    - Ministry of Foreign Affairs
    - Financial Intelligence Unit of the Central Bank (FIU)
    - Judiciary
    - Civil society organizations, i.e., the Transformation Resource Centre (TRC).

    An initial meeting was held in which all stakeholders were brought together to prepare the self-assessment.

79. As the focal agency for the UNCAC review, DCEO has collected data from its own sources and from other competent agencies, in particular by accessing case files, consulting with counterparts and collecting input from their data sources. This statistical data is collected annually for the compilation of a report to parliament and all divisions come together to consolidate the report. The DCEO prepares an annual administrative report on its operations and results for the Minister of Justice and also prepares annual reports on its operations. DCEO was previously situated under the Ministry of Justice and, since its operational and budgetary independence in 2012, reports only administratively to the Minister of Justice. DCEO's operations are further discussed under UNCAC article 36.

80. There is no formal case management system within DCEO or within the police. Case files are kept manually and statistics are not readily available. Lesotho has requested assistance in developing an appropriate case management system.

<u>General Observations of the reviewing experts:</u>

81. Regarding technical assistance needs to more fully implement the UNCAC measures under review, these consist mainly in training of all categories of personnel fighting corruption, capacity building and sharing of good practices, as detailed in this report. Moreover, the challenges identified during the review were mainly due to lack of human and financial resources. In this context, the reviewing experts welcome steps already being taken by bilateral donors and assistance providers to strengthen the capacity of

institutions and the legal framework against corruption in Lesotho. The reviewing experts suggest that the detailed assessment of Lesotho's technical assistance needs recommended in this report be conducted in cooperation with existing partners and build upon existing measures already in place. In this context, the measures being taken by the European Union (EU) to strengthen the justice sector in Lesotho are briefly summarized below.

82. The EU project LSO/002/08EDF 10 entitled "Strengthening the Lesotho Justice Sector (SLJS)" is aimed at improving the conceptual and institutional framework to combat corruption in Lesotho through a four-pronged strategy based on:
    1. assistance to the participatory definition of the country's national Anti-Corruption Strategy,
    2. assistance to the improvement of DCEO's anti-corruption education and prevention programmes,
    3. capacity-building of concerned DCEO divisions to enhance their intelligence, investigation and prosecution duties.
    4. The project seeks also to capacitate DCEO at large, while assisting its regionalization, providing knowledge tools, and strengthening administrative and management capacities. This strategy has been, under the auspices of DCEO, harmonized with other concerned development partners (UNDP and the Commonwealth).

    1/ As far as policy making is concerned, the project is to backstop, jointly with the UNDP, the organization of the National Dialogue on Corruption, which will foster a consensus on the outline of the overall anti-corruption policy and the financing of the wide dissemination of the anti-corruption policy document, once it is adopted. It will also provide assistance to the future National Coalition Against Corruption, in charge of implementing the national policy.

    2/ As far as education and prevention are concerned, the assistance of the project, to be channelled through the Public Education and Corruption Prevention Division, will mainly consist in technical and financial assistance to the continuation and improvement of three key prevention and education programmes already implemented by the division: public education including schools, prevention through systems analysis and research, monitoring and evaluation.

    3/ As far as intelligence, investigation and prosecution issues are concerned, the project is to strengthen the capacities of the three concerned divisions, while addressing the key constraint they commonly face: knowledge capacity gaps, lack of case management tools, and equipment gap. The Commonwealth project is presently assisting the creation of a manually held Case Management System (CMS) and further training of its users. A manual CMS is anticipated to be functional by mid-2014. The SLJS will then assist in the computerization of the CMS, training CMS users and uploading of reports and cases that have arisen since 2003 (approximately 1,600 reports and 250 prosecutions).

    4/ As far as the regional presence of DCEO is concerned, the project will equip two DCEO regional offices, equip the Administration and Finance Division, including the DCEO's information technology division, provide training to these institutions and help in the creation of the website.

83. The reviewing experts welcome the work envisaged under the SLJS and other technical assistance programmes, including the anticipated case management system and related measures to enhance case management and the provision of statistics.

Chapter III. Criminalization and law enforcement

84. A general observation regarding the implementation of Chapter III is the scope of covered persons in the Prevention of Corruption and Economic Offences Act. Under Section 17 of the Amendment Act of 2006, the law also covers private individuals for purposes of certain corruption, bribery and unexplained wealth offences:

> 17. The principal law is amended by inserting the following section after section 31:
> "Private persons
> 31A. Sections 21, 22, 23, 24, 26 and 31 shall, with necessary modifications, apply to persons who are not public officers."

> It is noted that the penalties for public officials and persons in the private sector are the same under the law.

85. The term "public officer" is defined in Section 2 of the referenced Act (as amended):

> "'public officer', for the purposes of this Act, means a person holding any public office and includes a Cabinet Minister, the head of a statutory body, a holder of a statutory position and a member of Parliament."

> The reviewing experts observe that, while the Act does not define the term "public office", the cited examples of public officers do not encompass all categories of public officials enumerated in article 2 of the Convention. While it is noted that the term "includes" in the referenced Act suggests that the listed categories of public officers are not exhaustive, Lesotho may wish to amend the Act, in the interest of greater legal certainty, to cover the specific categories of public officials listed in article 2 of the Convention, including, in particular, judicial officers and others performing a public function or providing a public service, whether paid or unpaid, permanent or temporary and irrespective of seniority.

Article 15 Bribery of national public officials

Subparagraph (a)

> *Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*
>
> *(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

(a) Summary of information relevant to reviewing the implementation of the article

86. Lesotho has cited the following measures.

Prevention of Corruption and Economic Offences Act No. 5 of 1999

Section 21, Corruption by or with public officer

21. (2) A person commits the offence of corrupting a public officer if he endeavours directly to influence the conduct of the public officer in respect of the duties of his office by a gift, promise or prospect of any benefit to be received by the public officer, or by any person, from any person."

Section 22, Corruption in respect of official transactions

22. (2) A person commits the offence of corrupting a public officer if he gives or agrees to offer to give any benefit to a public officer, whether for the benefit of that public officer or of another person as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the public officer is concerned in his capacity as a public officer.

Section 24, Promise of bribe to public officer after doing act

24. If, after a public officer has done any act as such officer, any person agrees or offers to give or procure for him any benefit on account of such act, the person so agreeing or offering shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of such act, corrupted the public officer in respect of such act.

Section 26, Bribery for giving assistance in regard to contracts

26. (2) A person commits the offence of corruption if he directly or indirectly gives, or agrees or offers to give any benefit to any public officer as inducement or reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in, promoting, administering, executing or procuring (including any amendment, suspension or cancellation) of any contract (including a subcontract) referred to in subsection (1).

Section 27, Bribery for procuring withdrawal of tender

27. (2) A person commits the offence of corruption if he directly or indirectly gives, or agrees or offers to give any other person any benefit as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender for such contract as is referred to subsection (1).

Section 29, Bribery in relation to auctions

29. (2) A person commits the offence of corruption if he directly or indirectly gives or agrees or offers to give any other person any benefit as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

87. Bribery is also criminalized under the Penal Code Act 2010, which codifies the common law offences of bribery and corruption in Sections 80 and 81. The mandate to investigate these offences is with the police, although both the police and DCEO can also investigate cases under the PCEO Act.

Penal Code Act 2010

Bribery

80. (1) A person who offers a bribe to any person in the employment of the Government of Lesotho, public company, public institution, public office, or to any person

occupying any Government office, and any person being in such employment or occupying such office who accepts a bribe, commits an offence.
(2) A person shall be held to offer a bribe if he or she offers to an-other person any gift or consideration with the intention of extracting or obtaining from that person some specific or indeterminate action or inaction by him or her in relation to his or her official duties.
(3) A person shall be held to accept a bribe if he or she agrees to take any gift or consideration in return for some specific or indeterminate action or inaction by him or her in an official or public capacity, knowing that the gift or consideration has been given for such action or inaction or realising that there is a substantial risk that it might have been given for this purpose.
(4) Where it is proved that any gift or consideration has been given to or received by a person in the employment of the Government of Lesotho, public company, public institution or occupying a public office by or from a per-son holding or seeking to obtain an advantage from the Government, public company or public institution in an area of activity in respect of which the recipient of the gift or consideration has influence, the gift or consideration may be deemed to amount to a bribe unless the contrary is proved on the balance of probabilities.

Corruption of agents and employees
81. A person who -
(a) corruptly gives or agrees to give or offers any gift or consideration to any agent or employee as an inducement or reward for doing or not doing or having done or not done any act in relation to his or her principal's or employee's or employer's affairs or business;
(b) being an agent or employee corruptly accepts or obtains or agrees to accept or attempts to obtain from any person, either for himself or herself or for another, any gift or consideration as an inducement or reward for doing or not doing or for having done or not done any act in relation to his or her principal's or employer's affairs or business, or for showing or not showing favour or dis favour to any person in relation to his or her principal's or employer's affairs or business; or
(a) knowingly gives to any agent or employee or, being an agent or employee, knowingly uses, with intent to deceive, his or her principal, any receipt, account or other document in which the principal or employer is interested and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge, is intended to mislead the principal or employer, commits an offence.

88. Lesotho has cited Sections 33A, 34 and 42 of the PCEO Amendment Act regarding punishment for bribery offences under the referenced Act. The minimum penalty for bribery is a fine of M10,000 (M100,000 for a company) and/or 10 years imprisonment.

Section 33 A (3)
"A person who commits a serious economic offence shall, upon conviction, be liable to a fine not less than M10,000 or imprisonment for a term not less than 10 years or both."

Section 34
"A person who commits the offence of corruption or cheating the public revenue under this part shall, upon conviction, be liable to a fine not less than M10,000 or to imprisonment for a

term not less than 10 years or both, and in the case of a juristic person the fine shall not be less than M100,000."

Section 42
"A person who commits an offence under section 38 or section 39[1] shall be liable to a fine not less than M5,000 or to imprisonment for a term not less than 5 years or both."

Lesotho explained that a "serious economic offence" under Section 33 A is any act that the Director General of the DCEO may declare that is not covered for sentencing purposes as an act of "corruption" under Sections 21-29.

89. Lesotho provided the following statistics on bribery from the DCEO. It is noted that these statistics involve bribery in both the public and private sector (ie, not only involving public officials). Moreover, the statistics relate only to bribery charges, and not to corruption offences generally.

As of 2012, the following aggregate statistics on embezzlement were reported.
Investigations: 140
Prosecutions: 10
Convictions: 15
Acquittals: 2

The following chart shows the carry-over of bribery prosecutions from previous years and completed prosecutions per year.[2]

Year	Open prosecutions	Completed prosecutions
2009	22	2
2010	26	3
2011	32	4
2012	40	1
Total	40 (current)	10 (7 convictions, 3 acquittals)

90. Lesotho provided the following examples of cases on the implementation of the provision.

Rex v Lahmeyer International. The case involved 8 foreign construction companies (Lahmeyer International) who were all charged with bribery of a public official (Mochebelele) who was in charge of the Lesotho Highlands water project; the companies were fined on pleading guilty and three officers were also convicted (1: 15 years, 2: 10 years).

91. Lesotho reported that the Prevention of Corruption and Economic Offences Act is under review and a draft bill has been prepared. A copy was provided to the reviewing experts. Lesotho indicated that a new law is expected to be enacted in the near future.

(b) Observations on the implementation of the article

[1] Section 38 (Entering upon premises by Director) and Section 39 (Disclosure of information).
[2] The matters are the ones recorded at the magistrate's court but exclude twelve Lesotho Highland Water Plant (LHWP) cases which were initially received by the Police but ended up being concluded by the DCEO.

92. Lesotho clarified that the offence in Section 21 covers not only the promise or offer to bribe a public official, but also the actual exchange. The act of giving a bribe endeavouring to influence an official's conduct constitutes the offence of bribery:

"…if he endeavours directly to influence the conduct of the public officer in respect of the duties of his office by a gift, promise or prospect of any benefit..."

There have been numerous cases where bribe givers were convicted of bribery, and the exchange or giving of a bribe is also covered under Section 22.

Under Section 22, which covers conduct not addressed in Section 21, the mere agreement to engage in bribery is sufficient to convict a person of bribery, and an exchange of benefit is not required. However, a mere promise of bribery without an agreement (meeting of the minds) would not be enough.

93. Lesotho explained that both positive and negative conduct (acts and omissions) are covered. Positive conduct is criminalized under Section 21 and negative conduct is criminalized under Section 22:

Section 22 (2) provides that "a person commits the offence of corrupting a public officer if he gives or agrees to offer to give any benefit to a public officer, whether for the benefit of that public officer or of another person as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the public officer is concerned in his capacity as a public officer."

94. Concerning the use of the terms "gift" and "benefit" in Sections 21 and 22, which do not specify that the advantage is undue or improper, Lesotho explained that the purpose for which the benefit is given in Section 21 (ie, endeavouring "to influence the conduct of the public officer in respect of the duties of his office") and in Section 22 ("as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the public officer is concerned") cover the impropriety of the advantage.

95. Concerning the indirect commission of the offence and the use of the term "directly" in Section 21 of the Act, Lesotho explained that the case of Rex v. Mochebelele (2008) is an example of indirect bribery, where the defendant, a public officer, was charged and convicted of accepting a bribe that was received indirectly through an intermediary person. While this was a case of passive bribery (article 15(b) of UNCAC), the same principle is applicable for cases of direct bribery.

96. As to the mental element of the offence, Lesotho explained that intent must be shown (ie, in Section 21 to "endeavour to influence the conduct of the public officer"). As a case in point, the authorities cited the case of Rex v. Lerotholi (2011) where the intent had to be proven; the case is pending on appeal.

97. With regard to the third party benefit (the use of the term "any person" in Section 21 of the PCEO Act), Lesotho explained that entities (in addition to natural persons) are covered by the Interpretation Act. This act defines the term "person" under Lesotho's criminal laws to include also entities or legal persons in addition to natural persons. The section dealing with the liability of companies is Section 3 read together with Section 44 of the Interpretation Act.

98. It would be desirable to supplement the bribery offences of Lesotho's law to incorporate the provisions of article 15 of the Convention.

99. These elements do not appear to be covered in the draft bill. Lesotho confirmed that as of 14 February 2013, it had not yet enacted this law but that the bill would be submitted to the Attorney General's office in a timeframe that would take into account the results of the UNCAC review. Once it has been reviewed by the Attorney General, the bill would be sent to the law draftsman in the Ministry of Justice, then to the Cabinet and Parliament.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

100. Lesotho has cited the following measure.

Prevention of Corruption and Economic Offences Act No. 5 of 1999
Section 21, Corruption by or with public officer
21. (1) A public officer commits the offence of corruption in relation to the duties of his office if he directly agrees or offers to permit his public conduct as a public officer to be influenced by gift, promise or prospect of any benefit to be received by him, or by any person, from any person.

Section 22, Corruption in respect of official transactions
22. (1) A public officer commits the offence of corruption if he accepts, or agrees or offers to accept, for himself, or for any other person a benefit as an inducement or reward for doing or forbearing to do anything in respect of any matter in which he is concerned in his capacity as a public officer.

Section 23, Acceptance of bribe by public officer after doing act
23. If, after a person has done any act as a public officer, he accepts, or agrees to offer to accept for himself or for any other person, any benefit on account of such act, he shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of such act, corrupted the public officer in respect of such act.

Section 26, Bribery for giving assistance in regard to contracts
26. (1) A public officer commits the offence of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any benefit as inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in, promoting, administering, executing or procuring (including any amendment, suspension or cancellation) of any contract (including a subcontract) with a public body.

Section 27, Bribery for procuring withdrawal of tender
27. (1) A person commits the offence of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any benefit as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supply of any article, material or substance.

Section 29, Bribery in relation to auctions
29. (1) A person commits the offence of corruption if he directly or indirectly accepts or agrees to accept for himself or any other person any benefit as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

101. The relevant portions of the Penal Code, as well as applicable penalties for passive bribery (Sections 33, 34 and 42 of the 1999 PCEO Act as amended), are cited under article 15(a) above.

102. Lesotho provided the following examples of cases on the implementation of the provision.

i) Rex v Mochebelele (conviction) C of A (cri) 02/08. As indicated above, the defendant, a public officer, was charged with accepting a bribe that he received indirectly through an intermediary person.
ii) Rex v Matete & ors (10-year conviction). The defendant was a civil servant, a clerk of the National Assembly, who accepted bribes from a private individual.

(b) Observations on the implementation of the article

103. Lesotho clarified that the offence in Section 21 covers not only the public official's promise or offer to accept a bribe, but also the actual exchange. The act of receiving the bribe whilst agreeing or permitting to have the actions influenced constitutes the offence.

"…if he directly agrees or offers to permit his public conduct as a public officer to be influenced by a gift, promise or prospect of any benefit to be received by him…."

104. The same explanations made above regarding the indirect commission of the offence, omissions, benefits and third party entities also apply to passive bribery.

105. It is noted that the draft bill does not address these issues.

(c) Challenges and technical assistance needs related to article 15

106. Lesotho has identified several challenges and technical assistance needs regarding the investigation and prosecution of corruption offences generally, which are not specific to bribery and are described under UNCAC article 36 below.

107. There are also challenges in the collection and updating of statistics on corruption cases. For example, due to poor record systems at the magistrates courts cases are often not tracked at the court level, though there is a record of the filing at DCEO and in the law reports of the year.

Article 16 Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

108. Lesotho has cited the bribery offences referred to under UNCAC article 15 above. Furthermore, Section 17 of the Amendment Act of 2006 provides that where in the Prevention of Corruption and Economic Offences Act the phrase 'public officer' is used, it shall include also a 'private person' for purposes of certain corruption, bribery and unexplained wealth offences:

17. The principal law is amended by inserting the following section after section 31:
"Private persons
31A. Sections 21, 22, 23, 24, 26 and 31 shall, with necessary modifications, apply to persons who are not public officers."

109. While the law is not specific to foreign public officials or officials of public international organizations, Lesotho considers foreign officials and officials of public international organization to fall within the category of private persons for purposes of the Act. This interpretation has never been applied or tested.

(b) Observations on the implementation of the article

110. The Convention is clear on the subject. The criminalization of active bribery is mandatory in relation to a foreign public official or official of a public international organization. The offences in the Act do not explicitly address this requirement. It would be desirable to supplement the offences to cover these officials explicitly. We suggest to include a definition of the term "foreign public official", based on article 2 of the UNCAC.

111. When asked about the absence of cases of foreign bribery, Lesotho explained that the law is not explicit, making it difficult to detect and convict such cases.

112. The draft PCEO law does not appear to address this subject. Lesotho is encouraged to include these measures in the draft law and to pursue the revision of law in this regard.

(c) Challenges related to article 16

113. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures: Constitution, laws, regulations.

(d) Technical assistance needs

114. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned;
2. Legislative drafting;

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

115. Lesotho has cited the following measures, which cover both public officials and persons in the private sector who engage in acts of embezzlement, misappropriation and theft:

Section 21(3) of the PCEO Act as amended by Section 13(3)(a) of the Amendment Act of 2006.
"A person commits the offence of corruption if –
(a) If he embezzles, misappropriates or diverts for his benefit or for the benefit of others , any property, public or private funds, securities or any other thing of value entrusted to him by virtue of his position"

Section 30 of the Prevention of Corruption and Economic Offences Act:
"A person commits the offence of cheating the public revenue and thereby deprive the public revenue of the money to which it is entitled."

116. A new law will be enacted soon, which will supplement the above mentioned provision. The bill recommends that embezzlement and revenue offences do not form part of the DCEO mandate.

117. The same sanctions listed under article 15 are applicable to these offences.

118. Lesotho provided the following case example on the implementation on the provision:

Rex v Lerotholi & Ors. The suspect was an immigration officer responsible for issuing residents' permits. He connived with the accounts' clerk to manipulate the system and embezzled public funds. The case is currently pending.

119. The DCEO provided the following statistics on the implementation of the provision (no further cases were reported by the police):

Investigation and Prosecution (article 21(3)):
2012: 10 (reported); 3 (investigated); 0 (prosecutions).
No further statistics were available for the years 2011 or 2010.

(b) Observations on the implementation of the article

120. The cited laws do not explicitly refer to a public official, though it was explained that they are covered. It is important that the elements required by the Convention should appear in the legal provision. In this case, the intention is absent.

121. One issue is that the draft PCEO bill would remove certain offences, such as embezzlement/misappropriation and revenue offences (eg, Section 21 of the Act as amended) as well as money laundering from the range of offences DCEO is currently mandated to investigate and pursue. It is recommended that DCEO consider carefully whether the transfer of such offences to the general mandate of the police would ensure that such cases are adequately investigated and pursued, given the current manpower, skilled staff and the large number of criminal offences handled by the police.

(c) Challenges related to article 17

122. Lesotho has identified following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures: Constitution, laws, regulations.

(d) Technical assistance needs

123. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned;
2. Legislative drafting;
3. Summary of good practices/lessons learned;

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed

influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

124. Lesotho did not fully implement the measure. It has cited the following national provisions, in addition to the common law:

Prevention of Corruption and Economic and Offences Act
Section 21, Corruption by or with public officer
21. (1) A public officer commits the offence of corruption in relation to the duties of his office if he directly agrees or offers to permit his public conduct as a public officer to be influenced by gift, promise or prospect of any benefit to be received by him, or by any person, from any person.
(2) A person commits the offence of corrupting a public officer if he endeavours directly to influence the conduct of the public officer in respect of the duties of his office by a gift, promise or prospect of any benefit to be received by the public officer, or by any person, from any person.

Section 25, Corrupt transaction by or with agents
25. (1) An agent commits the offence of corruption if he corruptly accepts, or agrees or offers to accept from any person, for himself or for any other person any benefit as an inducement or reward doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.
(2) A person commits the offence of corruption if he corruptly gives or agrees to give or offers to give to any agent any benefit as inducement or reward for doing or forbearing to do, any act or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.
(3) If any person knowingly gives to any agent, or if any agent knowingly gives to another agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement, which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, such person commits the offence of corruption.

125. The same observations made under article 15 above on the bribery offence are equally applicable here, including as regards the impropriety of the offence, the actual exchange of benefits, indirect bribery, and omissions to act.

126. Lesotho indicated that a new law is expected to be enacted in October; it will address trading in influence in Section 31C.

127. Lesotho provided the following case example on the implementation of the provision:
Rex v Mochebelele (2008): the accused middleman was convicted for facilitating a principal (Lahmeyer company) to obtain a Government contract by bribing the public official (Mochebelele). The facts summarized were common cause or not disputed. They justify the

conclusion that the respondents' respective positions of material influence qualified them at all relevant times as eligible subjects if Lahmeyer singled out Lesotho officials in order to pay them corrupt inducements to secure Lahmeyer's inclusion in the project.

128. Lesotho explained that there have been several cases of indirect bribery, which come close to the offence of trading in influence.

(b) Observations on the implementation of the article

129. This provision is not fully implemented. Section 21 incorporates trading in influence elements but does not necessarily qualify as a criminal offence of trading in influence. Reference is also made to the observations made under UNCAC article 15 above regarding the impropriety of the advantage.

130. Although there is no reference in Section 21 to acts when the advantage is offered not to a public official but to an intermediary who is not a public official, Lesotho explained that this is partly covered under indirect bribery and, where there is an agency relationship, under Section 25. However, the reviewing experts noted that influence peddling may be committed by any person – an agent, relative, politician, etc. – connected to the public official. Section 21 relates to corrupting public officers, and the explanation concerning indirect bribery under this Section does not encompass cases of influence peddling where the advantage is paid to an intermediary.

131. Section 25 also only has limited application to situations where there is an agency relationship.

132. Section 31 of the draft law is excerpted below (for information only). This does not form part of the review, as the law has not been enacted.

Draft PCEO Amendment bill
Trading in influence
31C. (1) A person who promises, offers or gives to a public officer or any other person, directly or indirectly, an undue benefit in order that the public official or the other person abuse his or her real or supposed influence or underperforms his or her duties with a view to obtaining from an administration or public authority an undue benefit for the original instigator of the act or for any other person commits an offence of corruption.
(2) A public officer or any other person who, directly or indirectly solicits or accepts, directly or indirectly, an undue benefit for himself or herself or for another person in order that the public officer or the person abuse his or her real or supposed influence or underperforms his or her duties with a view to obtaining from an administration or public authority an undue benefit commits an offence of corruption.

133. While the cited bill has not yet been enacted, the experts noted that Section 31B is quite similar to the provisions of article 18 of UNCAC. The national authorities are encouraged to continue their ongoing efforts to expand the legislation to ensure that an ad hoc provision on trading in influence is included in the legislation in line with the Convention.

(c) Challenges for the implementation of article 18

134. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures: Constitution, laws, regulations: the matter will be addressed in the upcoming law revision.

Article 19 Abuse of Functions

> *Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

(a) Summary of information relevant to reviewing the implementation of the article

135. Lesotho has cited the following measures:

Sections 21(3) of the PCEO Act as amended by Section 13(3)(b) of the Amendment Act of 2006 provides thus:

"A person commits the offence of corruption if –
(b) If he intentionally abuses the functions or position of his office in the performance or failure to perform an act, in violation of any law or in the discharge of his functions for the purpose of obtaining an undue advantage for himself or for another person."

136. Lesotho explained that entities (in addition to natural persons) are covered by way of the Interpretation Act. This act defines the term "person" under Lesotho's criminal laws to include also entities or legal persons in addition to natural persons. The section dealing with the liability of companies is Section 3 read together with Section 44.

137. Lesotho has provided the following case examples on the implementation of the provision under Section 21(3):

Rex v Pontso Lebotsa: the defendant, a public officer, was given the option of a fine in lieu of imprisonment.
Rex v Matete C of A (CRI) 4/2010 (referred to above). The accused was fined 5 years or M10,000 at the trial court, on appeal the judgement was reduced to a prison term of 7 years of which 3 were suspended.

(b) Observations on the implementation of the article

138. These provisions denounce the abuse of power but do not refer specifically to public officials. However, Lesotho explained that the term "person" encompasses both public and private officials.

139. It is noted that the penalties are the same for public and private officials.

140. No further information was available from Lesotho on reasons for the lack of statistics.

141. An additional provision to supplement Section 21(3) would be Section 31D of the draft bill, which is cited below for information only.

Draft PCEO bill
Section 31D, Abuse of office
31D. A public officer [or any other person] who does or omits to do any act in the discharge of the duties of his or her office for the purpose of obtaining any undue benefit for himself or herself or for another person commits an offence of corruption.

(c) Challenges related to article 19

142. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inter-agency co-ordination: each agency is responsible for investigating public officials for misconduct before it rises to the level of a criminal case;
2. Specificities in the legal system: Cabinet papers, for example, are protected which makes it difficult to investigate officials for abuse of office;

(d) Technical assistance needs

143. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned;

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

144. Lesotho has cited the following measures:

Section 31 of the PCEO Act provides:

"The Director or any officer of the Directorate authorized in writing by the Director may investigate any public officer, where there are reasonable grounds to suspect that that person-
(a) Maintains a standard of living above that which is commensurate with his present or past known source of income or assets reasonably suspected to have been acquired illegally; or
(b) is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets reasonably suspected to have been acquired illegally.
(2) A public officer is presumed to have committed the offence of corruption if he fails to give a satisfactory explanation to the Director or the officer conducting the investigation

under subsection (1) as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession.
(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property as a gift, or loan without adequate consideration from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused."

145. It is noted that public officers have an obligation to submit asset declarations upon joining the public service under Section 30 of the Act, as amended by Section 16 of the Amendment Act of 2006.

"Section 30A, Declaration of assets
30A. (1) A public officer shall be required to make a full declaration of all assets belonging to him or her prior to his or her assumption of office, which declaration shall always be expected to remain commensurate to his or her overall earnings and interests, in accordance with a form to be prescribed by the Minister.
(2) A public officer may be required, at any time after his or her assumption of office, to comply with subsection (1).
(3) The Director-General may require a public officer under investigation to make a full declaration of all assets belonging to him or her.
(4) Where a public officer fails to make a full declaration, and after an inquiry it is established that the person is the owner of undisclosed assets, the assets shall be forfeited and disposed as the Director-General may direct."

The matter of conflicts of interest and asset declarations is also addressed in Section 20 of the PCEO bill. Under the draft law, asset declarations received by the DCEO could be exchanged with other law enforcement or investigative agencies, if necessary.

146. Lesotho explained that there is no agency which verifies the assets declaration and no established procedures.

147. There have been no cases under the asset declaration or unexplained wealth provisions.

(b) Observations on the implementation of the article

148. The offence of illicit enrichment is not formally criminalized in a manner consistent with the Convention. It is noted that an ongoing investigation is needed under Section 31 in order for the DCEO to require a public official to explain the disproportionate wealth. This may impose a higher investigative threshold than is necessary insofar as some degree of suspicion or evidence is needed to open an investigation. Lesotho might wish to consider inserting a provision on illicit enrichment in line with UNCAC in Lesotho's legislation.

149. Section 44 deals with the evidentiary aspect of the commission of an offence under Part IV (confiscation in the context of a criminal proceeding), whilst Section 31 deals with unexplained possession of property as an offence

150. It is recommended that Lesotho establish specific procedures and a dedicated agency to verify the assets declarations. This can be done through a system of spot-checking specific declarations or rotating each year what agencies to focus on. It is also suggested that public officials should have an obligation to file asset declarations regularly, not just on joining the public service.

(c) Successes and good practices

151. It is welcomed that the draft bill would also cover conflicts of interest disclosures and provide for regular asset filings.

(d) Challenges related to article 20

152. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in its legal system: asset declarations may overlap with tax returns, which the Director General of DCEO already is empowered to access. The DCEO is also already empowered to require public officials to provide information and explanations where there are reasonable grounds of suspicion.
2. Limited capacity: human, technological, institutional, to investigate and verify asset and conflicts disclosures.
3. Limited resources for implementation: human, financial, to investigate and verify asset and conflicts disclosures.

(e) Technical assistance needs

153. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Development of an action plan for implementation: procedures are needed to investigate and verify asset and conflicts disclosures.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

154. The bribery offences cited under UNCAC article 15 above apply equally to the private sector by virtue of Section 31 A of the PCEO Amendment Act of 2006 (quoted above).

155. Lesotho explained that there was one case of bribery in the private sector where an official of a Chinese company bribed a trade union so that the union would not report the company for violation of labour laws. The bribery case against the company is pending.

(b) Observations on the implementation of the article

156. The article under review appears to be legislatively implemented and a case example was given, although no aggregate statistics were available.

Article 22 Embezzlement of property in the private sector

> *Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

(a) Summary of information relevant to reviewing the implementation of the article

157. Lesotho has cited the following measure:

Section 21(3) of PCEO as amended:
"A person commits the offence of corruption if he or she embezzles, misappropriates or diverts for his or her benefit or for the benefit of another person, any property, public or private funds, securities or any other thing of value entrusted to him or her by virtue of his or her position".

158. Lesotho explained that the required mental element is intent.

159. Most embezzlement and theft cases that are not significant or do not involve substantial public assets are handled by the police.

(b) Observations on the implementation of the article

160. Article 22 of the Convention focuses on the criminalization of embezzlement in the private sector. While Section 21 of the PCEO does not specify the private sector, it is applicable to any person, and therefore includes actors in the private sector.

161. While the police handle the majority of theft and embezzlement cases, as noted above, the draft PCEO bill would remove embezzlement and misappropriation (eg, Section 21 of the Act as amended) from the range of offences DCEO is currently mandated to investigate and pursue. It is recommended that DCEO consider this carefully.

Article 23 Laundering of proceeds of crime

Subparagraphs 1 (a) and 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

162. Lesotho has cited the following measures:

Section 25(1) of the Money Laundering and Proceeds of Crime Act No. 4 of 2008:
"1. A person commits the offence of money laundering if the person …
(a) Acquires, possesses or uses property; or
(b) Converts or transfers 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;
(c) Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,
Knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions-
(i) in Lesotho which constitute an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months;
(ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less that 24 months.
(2) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a period not less than 10 years or a maximum fine of not less than M50,000, or both, and in the case of a body corporate a fine of not less than M500,000."

163. It was explained that ownership rights with respect to property were covered under the definition of "property" in the Act, which encompasses "any legal or equitable interest in any such property".

(b) Observations on the implementation of the article

164. Reference is made to the observations in the latest ESAAMLG review (quoted above).

165. The Convention requires domestic legislation by giving the character of a criminal offence to money laundering, in accordance with fundamental principles of its domestic law.

166. Lesotho's law is limited to predicate offences criminalized in Lesotho and/or subject to 2-years of imprisonment. While this covers most corruption offences, namely those under the PCEO Act, it is noted that certain offences including those under the Penal Code may not satisfy this requirement. Lesotho is encouraged to do a comprehensive review of its penalty provisions to ensure that all UNCAC offences qualify as predicate offences for money laundering. In addition, as suggested by ESAAMLG, Lesotho is advised to consider removing the penalty requirement in the dual criminality provision to give full effect to the money laundering offence.

167. Lesotho may also wish to review the penalty provisions in the Act to consider whether these are adequate to deter persons and companies, in particular, from engaging in acts of money laundering. It is noted that the sanctions have not been amended or increased since the law was enacted in 2008. A proposal has been made to increase the sanctions, though a bill has not yet been drafted.

168. According to the FIU, a draft amendment of the Money Laundering and Proceeds of Crime Act that would address, inter alia, the ESAAMLG recommendations is under consideration and is expected to be submitted for approval in February 2014. The bill has not yet been drafted and was not available to the reviewing experts.

169. Lesotho reported that there has been only a single case of money laundering in Lesotho since the enactment of the law in 2008 reported at LMPS. In the case R. v L. Kholla RCI 694/09/11, the accused was charged with contravention of Section 26 of the Money Laundering and Proceeds of Crime Act 2008 by opening a bank account using false names and identification. It was further reported that two cases of money laundering were under investigation by DCEO at the time of the country visit involving the predicate offence of corruption and that no further allegations or complaints had been received. It was explained that the low number of cases is due to the fact that the law was only passed in 2008 and that there has been a lack of capacity to pursue money laundering cases.

170. As noted under challenges and technical assistance needs below, there is a lack of awareness, sensitization, training and capacity to pursue these cases, as well as a potentially overlapping mandate of three agencies that are mandated to investigate money laundering (DCEO, police, Revenue Authority). It was explained that each agency has its own specialized knowledge of the underlying predicate offence, although the Revenue Authority is mainly charged with financial matters and tax collection rather than pursuing criminal cases. Moreover, as the crime of money laundering is often undetected, it is recommended that law enforcement officers be adequately trained to investigate such crimes. In this context, the reviewing experts recognize the FIU's efforts as far as awareness raising among law enforcement officers is concerned and encourage the FIU's continued efforts in this regard.

171. To more fully implement the article, Lesotho has enacted the Money Laundering and Proceeds of Crime Act of 2008 and established the FIU. The unit is newly created and not yet independent, and has not yet begun receiving suspicious transaction reports (STRs). At the time of the review, it lacked adequate manpower, resources, and a legislative basis to fully pursue its mandate.

172. It was explained that a national committee on money laundering was constituted that included representatives of DCEO, the police, Revenue Authority and the Ministry of

Finance. The Committee has also identified a need for training of relevant law enforcement agencies, investigators, prosecutors and judges on anti-money laundering. The Committee has also recommended the establishment of interagency MOUs. It was noted that an MOU is already in place between the three agencies (DCEO, police, Revenue Authority) that covers information exchange, and it was recommended that Lesotho give full use to this MOU in regard to money laundering.

(c) Successes and good practices

173. The Money Laundering and Proceeds of Crime Act of 2008 contains provisions that enable domestic authorities to pursue the confiscation, identification and seizing of assets in a comprehensive manner, although some observations are noted under UNCAC article 31 below (including with respect to value based confiscation). Lesotho should consider amending the Act regarding predicate offences for money laundering.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

174. Lesotho has cited the following measures:

Sections 22, 23, 24 and 25 of the Lesotho Penal Code Act No. 6 of 2010 read together with Section 25 of the Money Laundering and Proceed of Crime Act of 2008, which deal with, attempts, counselling, procuring, aiding and abetting as well as conspiracy to commit any offence in the Kingdom, make such persons who do the above acts equally liable. However, the possible penalties are less for participants or accomplices to money laundering than for principals.

Penal Code Act No. 6 of 2010
Section 22, Attempts
22. (1) If, with intent to commit a criminal offence, a person does an act which is more than merely preparatory to the commission of the offence, she or he commits the offence of an attempt to commit the offence.
(2) Subsection (1) shall apply even where the facts are such that the commission of an offence is impossible.

Section 23, Counseling, procuring etc

23. (1) A person who counsels, procures or incites another to do any act or make any such omission of such a nature that if the act were done or the omission were made, an offence would thereby be committed, commits an offence.
(2) A person counsels, procures or incites the commission of an offence if he or she recruits, advises or otherwise encourages another person to commit that offence.
(3) A conviction under subsection (1) shall carry the same penal consequences as a conviction for the actual commission of the offence.

Section 24, Aiding and abetting
24. (1) Where an offence is committed, each of the following persons is liable and may be charged -
(a) a person who actually does the act or makes the omission which constitutes the offence;
(b) a person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
(c) a person who, with the intention of giving assistance, is present at the scene of the crime within such distance from the perpetrator as to be in a position to render immediate assistance to him or her to evade arrest or conceal the offence;
(d) a person who counsels, procures or incites any other person to commit the offence.

Section 25, Conspiracy
25. If a person agrees with another person or persons that a course of conduct shall be pursued or joins such agreement which, if carried out in accordance with their intentions, either -
(a) will lead to the commission of any offence by one or more of the parties to the agreement; or
(b) would do so but for the existence of facts which render the commission of the offence impossible,
he or she commits an offence of conspiracy to commit the offence or offences in question.

(b) Observations on the implementation of the article

175. Lesotho reported that there been no cases where co-offenders or attempts to commit money laundering were prosecuted.

176. Lesotho may wish to consider including a provision on accomplices and participation in the offence that is in line with the UNCAC provision in the draft amendment bill that would make such participants not just equally liable but subject to the same possible penalty as principals. Conspiracy and participatory acts outside Lesotho to commit money laundering should also be addressed.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

177. Lesotho referred to Section 25(1) of the Money Laundering and Proceeds of Crime Act No. 4 of 2008 (cited above).

(b) Observations on the implementation of the article

178. As noted above, Lesotho's law is limited to predicate offences criminalized in Lesotho and/or subject to 2-years of imprisonment, which may not cover all corruption offences. Lesotho is encouraged to ensure that all UNCAC offences qualify as predicate offences for money laundering and/or to consider removing the penalty provision to give full effect to the money laundering provision.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

179. Lesotho has cited the following measures:

Section 25 (1)(i) of the Money Laundering and Proceeds of Crime:

"… knowing or having reason to believe that such property is derived directly or indirectly from act or omissions- …
(b) outside Lesotho which, had they occurred in Lesotho would have constituted an offence under Lesotho law punishable by imprisonment for not less than 24 months."

(b) Observations on the implementation of the article

180. The observations on the minimum penalty requirement made above are repeated here.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

181. Lesotho reported that it did not furnish copy of its laws to the Secretary-General of the United Nations.

(b) Observations on the implementation of the article

182. This UNCAC provision is mandatory, so it is strongly recommended that Lesotho provide the copies.

183. Lesotho is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

184. Lesotho explained that under Section 25 of the Money laundering and Proceeds of Crime Act (quoted above) a person can be prosecuted both for money laundering and the underlying predicate offence.

(b) Observations on the implementation of the article

185. It was explained that Lesotho's legal system allows the prosecution of self-laundering.

(c) Challenges related to article 23

186. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination: one of the challenges that also partly explains the lack of any money laundering cases is that there are three agencies mandated to investigate money laundering, though this might be changed through the draft PCEO bill. One main reason for the lack of cases is that these agencies have not been sensitized or trained on the money laundering law and do not pursue money laundering cases. Also, there is a lack of awareness of and capacity to pursue the crime, although allegations have been received.

2. Inadequacy of existing normative measures: Constitution, laws, regulations.
3. Limited capacity: human, technological, institution. The FIU is newly created and not yet independent, and has not yet begun receiving STRs. At the time of the review, it lacked adequate manpower, resources, and a legislative basis to fully pursue its mandate.
4. Limited resources for implementation: human, financial.

(d) Technical assistance needs

187. Lesotho has indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:
1. On-site assistance by an anti-corruption expert.
2. Capacity building: Training is needed for law enforcement investigators, prosecutors and judges on money laundering and the need to pursue money laundering charges as part of the criminal case is needed. Inter-agency coordination should also be strengthened, including through making full use of the existing MOU and joint meetings or programmes.

Training on anti-money laundering has been provided to law enforcement agencies in Lesotho by AusAID and the Commonwealth.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

188. Lesotho has cited the following measure;

Section 25(1)(c) of the Money Laundering and Proceeds of Crime Act
"A person commits the offence of money laundering if the person …
(c) conceals the true nature, origin, location, disposition, movement or ownership of property …
Knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions-
(i) in Lesotho which constitute an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months;
(ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less that 24 months."

(b) Observations on the implementation of the article

189. Although this is an optional provision, it is desirable to introduce the fact that the offence is not necessarily related to the participation in the act ("*without having participated in such offences").*

190. It was explained that the continued retention of property would be encompassed by acts of concealment.

191. The same observations made above regarding money laundering are equally applicable to the offence of concealment.

(c) Challenges related to article 24

192. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures: Constitution, laws, regulations.

(d) Technical assistance needs

193. Lesotho indicated that the same assistance as mentioned above for money laundering, if available, would assist it in better implementing the provision under review.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

194. Lesotho has cited the following measures:

Section 87(4) to (6) of the Penal Code Act of 2010:
Obstruction of course of justice and officially constituted public enquiries
"(4) A person who applies or threatens to apply any sanction against any witness or prospective witness because such witness has given evidence or is likely to be required to give evidence before judicial proceedings or an officially constituted public enquiry, commits an offence.
(5) A person who makes an approach to any witness or prospective witness in judicial proceedings or officially constituted public enquiry with the intention that such witness should alter his or her testimony or refrain from giving testimony, commits an offence."
(6) A person who dismisses a servant or employee because he or she has given evidence or refused to give evidence on behalf of a certain party to judicial proceedings or at an officially instituted public enquiry, commits an offence."

The penalty for obstructing the course of justice and officially constituted public enquiry under the Penal Code (Schedule of Penalties): a fine a fine between M5000.00 and M10,000.00 or imprisonment up to 3 years or both.

195. Lesotho has indicated that the law is fully operational

(b) Observations on the implementation of the article

196. This provision of the law seems incomplete. The undue advantage to interfere in the giving of testimony and the use of force are not addressed, although it appears that in respect of the former, Lesotho could apply the general bribery provision in Section 21 of the PCEO Act (as amended) (quoted above). Moreover, Lesotho officials explained that the use of the term "sanction" would cover the use of force and that the term "approach" would cover the act of bribery (promise, offering or giving an undue advantage) to interfere in the giving of testimony, although this interpretation has not been tested. Further, it was explained that the offence would apply not just to the giving of testimony but also to the production of evidence, although the application has not been tested.

197. Given the fact that the provision under review is mandatory, it is recommended that Lesotho amend the text to bring it more fully in line with the provision under review. In particular, when amending and implementing this article Lesotho may wish to consider acts of trading in influence as a possible cause of obstruction of justice.

198. There have been no cases of obstruction of justice in Lesotho. It was reported that no such acts have been experienced.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

199. Lesotho has cited the following measures:

Prevention of Corruption and Economic Offences (Amendment) Act of 2006
Section 12, Resisting or obstructing officers
(1) A person who resists or obstructs an officer of the Directorate in the execution of his or her duty commits an offence.
(2) A person who commits an offence under this section or section 7 (2) or 8 (2) is, on conviction, liable to a fine of not less than M2,000.00, or to a term of imprisonment not less than 2 years, or both.

Penal Code Act of 2010
Section 87(1) to (3) Obstruction of course of justice and officially constituted public enquiries
87. (1) A person who wilfully fails to obey a court order or bring the administration of justice into disrepute, commits an offence.

(2) A person who makes any statement or performs any act with the intention of defeating or interfering with the course of justice, commits an offence.
(3) A person who in the course of judicial proceedings fails, without lawful excuse, to comply with the requirements of those judicial proceedings commits an offence.

(b) Observations on the implementation of the article

200. It was explained that the conduct of the offender must be intentional. The offence under the PCEO Act is limited to DCEO officers, though it was explained that judicial or law enforcement officers would be covered under the very broad provisions in Section 87(1) to (3) of the Penal Code (failing to obey a court order, bringing the administration of justice into disrepute, defeating or interfering with the course of justice, or failing to comply with judicial proceedings).

201. There have been no cases of obstruction of justice in Lesotho. It was reported that no such acts have been experienced.

202. Legislative clarification may be needed.

203. The penalties in relation to resisting or obstructing officers are also addressed in Section 12 of the draft PCEO amendment bill. The provision is cited below for information only.

Draft PCEO Bill
Resisting or obstructing officers
12. The principal law is amended in section 17 by deleting subsection (2) and substituting the following:
"(2) A person who commits an offence under this section, section 7(2) or section 8 (2) is, on conviction, liable to a fine not exceeding M50,000 or to a term of imprisonment not exceeding 5 years or both."

Amendment of penalty
12A. The principal is amended in section 19 by deleting "M2,000" and substituting "M20,000".

Article 26 Liability of legal persons

Paragraph 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

204. Lesotho explained that entities (in addition to natural persons) are covered by way of the Interpretation Act. This act defines the term "person" under Lesotho's criminal laws to

include also entities or legal persons in addition to natural persons. The section dealing with the liability of companies is Section 3 read together with Section 44.

205. Lesotho also cited the following measure.

Section 28 of the Penal Code
Offences by companies
28. (1) Where a person acting on behalf of a company or body corporate commits an offence, the company or body corporate may be charged with the offence if -
(a) that offence is one created by statute with an express or implicit intention of creating liability on the part of a company for the acts of its employees or officers; or
(b) the person who commits the act is a person charged with the direction of the affairs of that company or body corporate.
(2) Where a body corporate commits an offence under subsection (1), the punishment shall be a fine or imprisonment as may be provided for under the relevant statute.

206. It was explained that civil and criminal liability are possible against legal persons in Lesotho.

207. Lesotho has provided the following case examples on the implementation of the provision:

i) Rex v Lahmeyer International. The case is summarized under UNCAC article 15 above. The company was convicted of bribery and charged a fine.

ii) Rex v Maseru Travel (Pty) Ltd. The defendant was a travel agency that was engaged by the Government to organize travel for public officials and charged commissions. The company inflated the price of the commissions it charged, and this was known to and done with the connivance of the public officials. The case involved fraud and corruption (causing public officials to abuse their office).

208. Lesotho has provided the following statistics on the implementation of the provision:

2009-2012:
Convictions: Five companies have been convicted of corruption since 2009, and one was acquitted following the investigation. They were all bribery offences involving six companies in the same case, known as “Highland Water”.

A breakdown of the six Highland Water cases:
1. Acres International Ltd v Crown Lesotho Appeals Cases (2000-2004) 677
2. Sole v Crown Lesotho Appeal Cases (2000-2004) 612
3. Mochebelele v Crown Court of Appeals (CRI) 12/2009
4. Lahmeyer International v Crown Court of Appeals (CRI) 6/2002
5. Impriglo International v Crown Lesotho High Court 48 of 2006
6. Maseru City Travel Agency 2006 LLR (acquittal).

(b) Observations on the implementation of the article

209. The fines were imposed as criminal penalties for acts of bribery. The offence was found to have been committed by the entities.

210. The cases were initiated by DCEO.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

211. Lesotho explained that Section 134 of the Criminal Procedure and Evidence Act provides for the criminal liability of natural persons who are either Directors or shareholders of companies.

> Companies and partnerships to be named by their name, style or title
> 134. It shall be sufficient—
> (a) in every case in which it is necessary in any charge to name any company, firm or partnership, to state the name of the company of the style or title of the firm or partnership without naming any of the officers or shareholders of the company, or any of the partners of the firm or partnership, and one individual trading under the style or title of a firm may be described by the style or title;
> (b) where two or more persons not partners are joint owners of property, to name one of such persons adding the words "and another" or "and others", as the case may be, and to state that the property belonged to the person so named and another or others, as the case may be.

212. Lesotho further applies the common law principle of lifting the corporate veil to attribute liability to corporations. According to this principle, a prosecutor is able to look "behind" the company to the directors, officers, principals and other specific persons whose acts may otherwise be shielded from liability.

213. Lesotho has provided the following case example on the implementation of the provision:

> Rex v Maseru City Centre, a Managing Director of a company was charged along with his company and personally for acts of bribery he committed under the veil of representing the company. The company was found liable and ordered to pay a fine of M 2 million, but it was set aside on appeal. The Managing Director was acquitted.

214. Lesotho has provided the following statistics on the implementation of the provision;

> Year: 2008-2012:
> Cases: Of the 6 companies in the "Highland Water" case referred to above, 3 principals were charged with fraud and bribery; two of them were convicted and one was acquitted.

(b) Observations on the implementation of the article

215. The liability in the above cited case Rex v Maseru City Centre referred to bribery as an offence criminalized by the Convention. The proceedings against these persons were initiated by DCEO and lasted for four years. The company was found liable.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

216. Lesotho has cited the following measures:

Section 34 of the PCEO Amendment Act:
"A person who commits the offence of corruption or cheating the public revenue under this part shall, upon conviction, be liable to a fine not less than M10,000 or to imprisonment for a term not less than 10 years or both, and in the case of a juristic person the fine shall not be less than M100,000."

Section 25(1) of the Money Laundering and Proceeds of Crime Act No. 4 of 2008:
"(2) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a period not less than 10 years or a maximum fine of not less than M50,000, or both, and in the case of a body corporate a fine of not less than M500,000."

Section 28(2) of the Penal Code
Offences by companies
"(2) Where a body corporate commits an offence under subsection (1), the punishment shall be a fine or imprisonment as may be provided for under the relevant statute."

217. Lesotho provided the following examples of sanctions imposed against companies.

Acres International was fined M 15 million on charges of fraud and corruption.

Lahmeyer International was fined M 12 million on charges of bribery and corruption.

Millennium Travel and Tours (Pty) Ltd C of A 7/2011: the company was fined M 3 million on charges of fraud and corruption.

R v Maseru City Centre Travel Agency LAC 2007-2008: the trial court fined the company M 2 million, but it was set aside on appeal.

(b) Observations on the implementation of the article

218. Lesotho has identified a number of challenges and technical assistance needs that would be necessary for the full implementation of the article. Lesotho may also wish to consider whether the existing penalties/fines for corruption and money laundering involving legal persons are adequate to deter such conduct.

(c) Challenges related to article 26

219. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity: human, technological, institution:
2. Limited resources for implementation: human, financial.

(d) Technical assistance needs

220. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. On-site assistance by an anti-corruption expert;
2. Capacity building: e.g., training on how to conduct financial investigations against companies and their principals.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

221. Lesotho has cited the following measures:

Relevant sections of the Penal Code (Sections 23 to 27) are provided:

"Counseling, procuring etc
23. (1) A person who counsels, procures or incites another to do any act or make any such omission of such a nature that if the act were done or the omission were made, an offence would thereby be committed, commits an offence.
(2) A person counsels, procures or incites the commission of an offence if he or she recruits, advises or otherwise encourages another person to commit that offence.
(3) A conviction under subsection (1) shall carry the same penal consequences as a conviction for the actual commission of the offence.

Aiding and abetting
24. (1) Where an offence is committed, each of the following persons is liable and may be charged -
(a) a person who actually does the act or makes the omission which constitutes the offence;
(b) a person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) a person who, with the intention of giving assistance, is present at the scene of the crime within such distance from the perpetrator as to be in a position to render immediate assistance to him or her to evade arrest or conceal the offence;
(d) a person who counsels, procures or incites any other person to commit the offence.

Conspiracy
25. If a person agrees with another person or persons that a course of conduct shall be pursued or joins such agreement which, if carried out in accordance with their intentions, either -
(a) will lead to the commission of any offence by one or more of the parties to the agreement; or
(b) would do so but for the existence of facts which render the commission of the offence impossible,
he or she commits an offence of conspiracy to commit the offence or offences in question.

Shared intention or common purpose
26. Where two or more persons share a common intention or purpose to pursue an unlawful purpose together and in pursuit of such purpose an offence is committed, then each party to the common intention is deemed to have committed the offence."

Accessory after the fact
27. A person who assists another person who has completed the commission of an offence to escape arrest or apprehension commits the offence of being an accessory after the fact."

222. Lesotho has provided the following case example on the implementation of the provision:

Rex v Mochebelele & one (cited above). Mochebelele is an example of indirect bribery, where the defendant, a public officer, was charged with accepting a bribe that was received indirectly through an intermediary person. Moreover, there was a common purpose in the case, as the middleman (who was also convicted) was found to have aided and abetted the instigator's efforts to illegally obtain a contract under the Lesotho Highlands water project, which the public official (Mochebelele) was in charge of.

223. Lesotho has provided the following statistics on the implementation of the provision:

Years: 2009-2012
Prosecutions: 5 prosecutions under Section 26 of the Penal Code, referred to above under the Highland Water case (all pending except Mochebelele).

(b) Observations on the implementation of the article

224. Accomplice liability and the acts of assistants (or aiding and abetting) are addressed in Section 24, while instigators are addressed in Section 23 of the Penal Code.

Article 27 Participation and attempt

Paragraphs 2 and 3

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

225. Lesotho has cited the following measure:

Section 22 of the Penal Code:

"Attempts
If, with intent to commit a criminal offence, a person does an act which is more than merely preparatory to the commission of the offence, he or she commits the offence an attempt to commit the offence".

226. Lesotho also cited Sections 23, 24 and 26 of the Penal Code Act of 2010 (cited above), which deal with counselling, procuring, aiding and abetting, conspiracy and shared intention or common purpose in the commission of offences.

227. No statistics or case examples on the implementation of the provision were available.

(b) Observations on the implementation of the article

228. It is noted that the mere preparation for an offence is not covered by the general rules on conspiracy and accomplices.

229. It was explained that the crime of attempt would apply only to acts of bribery and not all offences defined in the Convention and the corruption of public officials. Though this UNCAC provision is optional, Lesotho may wish to consider whether the existing legal framework in this regard is adequate.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

230. Section 25 of the Money Laundering and Proceeds of Crime Act cited above specifically deals with knowledge, intent and purpose or having reason to believe that an act is being done and it is unlawful. The element "having reason to believe" in Section 25 allows for the mental element to be inferred from objective facts. In addition, all corruption offences in the Penal Code and the PCEO Act allow for an intention to be established circumstantially. It

was explained that this is in accordance with established rules of procedure under the common law.

231. Furthermore the offences created under the Prevention of Corruption and Economic Offences Act of 1999 and those under the Penal Code Act of 2010 deal with situations where an inference may be drawn.

232. Lesotho has provided the following case example on the implementation of the provision:

Rex v Mochebelele
Rex v Matete (referred to above)
In both cases, the defendant acted on an agreement and refused to testify. In both cases the requisite mental element was established circumstantially.

233. Lesotho has provided the following statistics on the implementation of the provision:

Year 2009-2012:
Cases: 10 bribery cases were reported during this period where intent was proven circumstantially. There were seven convictions and three acquittals.

(b) Observations on the implementation of the article

234. It was explained that courts infer knowledge, intent and purpose of an offender from circumstantial evidence in cases under the referenced laws.

(c) Challenges related to article 27

235. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures: Constitution, laws, regulations.

(d) Technical assistance needs

236. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Legislative drafting;
2. On-site assistance by an anti-corruption expert.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

237. Lesotho reported that it has not implemented this legal provision.

(b) Observations on the implementation of the article

238. Lesotho has a 20-year statute of limitations for all crimes except murder (which does not have a limitations period), as established in Section 22 (Prescription of Offences) of the Criminal Procedure and Evidence Act 1981.

> Part IV. Prescription of Offences
> Prosecution barred by lapse of time
> 22. The right of prosecution for—
> (a) murder shall not be barred by any lapse of time;
> (b) any other offence, whether at the public instance or at the instance of a private party, shall, unless some other period is expressly provided by law, be barred by the lapse of 20 years from the time when the offence was committed.
> (c) if after the lapse of 20 years there is a prosecution on a charge of murder and after hearing the evidence the court finds that the accused would be guilty of a lesser crime such as culpable homicide on which a verdict is competent, the accused shall be entitled to be acquitted on such lesser crime by reason of lapse of time.

239. No corruption cases have ever been barred in Lesotho by reason of the statute of limitations. The provision is adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

> *1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

(a) Summary of information relevant to reviewing the implementation of the article

240. Lesotho has cited the following measures:

> Penal sections of the Prevention of Corruption and Economic Offences (Amendment) Act of 2006:
>
> Section 33 A (3)
> "A person who commits a serious economic offence shall, upon conviction, be liable to a fine not less than M10,000 or imprisonment for a term not less than 10 years or both."
>
> Section 34
> "A person who commits the offence of corruption or cheating the public revenue under this part shall, upon conviction, be liable to a fine not less than M10,000 or to imprisonment for a term not less than 10 years or both, and in the case of a juristic person the fine shall not be less than M100,000."
>
> Section 42

"A person who commits an offence under section 38 or section 39[3] shall be liable to a fine not less than M5,000 or to imprisonment for a term not less than 5 years or both."

Section 12 (2), Resisting or obstructing officers
"(2) A person who commits an offence under this section or section 7 (2) or 8 (2) is, on conviction, liable to a fine of not less than M2,000.00, or to a term of imprisonment not less than 2 years, or both."

Penal Code
The penalty for obstructing the course of justice and officially constituted public enquiries (Section 87(4) to (6) of the Penal Code Act of 2010): a fine a fine between M5000.00 and M10,000.00 or imprisonment up to 3 years or both.

Penal sections of the Money Laundering and Proceeds of Crime Act of 2008:

Section 25 (2)
"A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a period of not less than 10 years or a maximum fine of not less M 50,000 or both, and in the case of a body corporate a fine of not less than M 500,000."

241. The table of penalties is as follows:

Offence	Minimum penalty (fine)	Imprisonment term
Bribery (public and private sector), illicit enrichment	M 10,000 (5,000 under Section 42) (M 100,000 for legal persons)	5-10 years
Bribery (Penal Code)		Up to 20 years
Embezzlement (public and private sector)	M 10,000 (5,000 under Section 42) (M 100,000 for legal persons)	5-10 years
Abuse of functions	M 10,000 (5,000 under Section 42)	5-10 years
Obstruction of justice	M 2,000	Min. 2 years
Obstructing the course of justice (Penal Code)	M 5,000 – M 10,000	Up to 3 years
Money laundering	M 50,000 Maximum (M 500,000 for legal persons)	Min. 10 years

242. Lesotho referred to the following cases:
Rex v Maseru City Centre (fine of M 1.2 million against the company)
Rex v Lahmeyer International (companies fined on pleading guilty and three officers convicted (1: 15 years, 2: 10 years))
Rex v Osman & ors (M 4 million fine)

243. Lesotho has sentencing guidelines in place. However, it was explained that they are rarely used and are not obligatory. Judges generally follow precedence and consider the gravity of the underlying offence at sentencing.

(b) Observations on the implementation of the article

[3] Section 38 (Entering upon premises by Director) and Section 39 (Disclosure of information).

244. Regarding the execution of sentences, Lesotho stated that sentences may be suspended in appropriate cases. No further information was available and a copy of the sentencing guidelines could not be examined by the reviewing experts. The following recommendations should be considered by Lesotho:

- Monitoring the imposition of sanctions to ensure that they have a sufficiently deterrent effect and amending the legislation if necessary. In particular, Lesotho is encouraged to review the penalties for legal persons to ensure: 1) congruence of penalties (for example, regarding money laundering and other offences) and 2) adequate deterrence to prevent companies and other legal persons from engaging in acts of corruption.
- Monitoring the application of sentencing guidelines by the judiciary, which Lesotho is encouraged to apply.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

> *2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

245. Lesotho reported that, in terms of the Constitution of Lesotho, only the King and any person exercising the functions of the office of regent or by virtue of a designation under the article 45(3) of the Constitution is immune from investigation and prosecution for acts in his official and personal capacity (article 50). However, the Penal Code Act absolves judicial officers from being held criminally liable for actions done when performing their judicial functions, which does not extend to intentional criminal acts outside the scope of their duties.

Section 21 of the Penal Code Act 2010 provides that "except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him or her in good faith in the exercise of his or her judicial functions, although the act done is in excess of his or her judicial authority or although he or she is bound to do the act omitted to be done."

It was explained that the term "judicial officers, for purposes of Section 21 of the Penal Code, includes judges, magistrates and presiding judges in local courts.

246. There are no immunities for public officials. Members of parliament enjoy the common law protections of functional immunity for acts in the consideration of parliamentary matters.

(b) Observations on the implementation of the article

247. Lesotho informed that there have not been concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents. Lesotho added that there have not been any relevant official enquiries or reports on the issue.

248. A case example was given where DCEO sought to charge a magistrate for tampering with a case file and, following consultations with the Attorney General's office, the charges were not brought. However, there have been two cases where magistrates have been convicted of a criminal offence. A case against a sitting minister is still pending, and a former member of parliament has been charged in a criminal case. A police officer was also convicted.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

249. Lesotho reported that under Article 99 of the Constitution of Lesotho 1993, the power and discretion to prosecute vest in the DPP. In exercising his discretion to prosecute offences, he may issue a written directive and delegation to prosecute, including to concerned law enforcement agencies, in accordance with Section 5 of the Criminal Procedure and Evidence Act 1981.

Article 99 of the Constitution of Lesotho 1993
99. Director of Public Prosecutions
(1) There shall be a Director of Public Prosecutions whose office shall be an office in the public service.
(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—
(a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
(c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.
(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.
(4) The powers conferred on the Director of Public Prosecutions by subsections (2)(b) and (c) shall be vested in him to the exclusion of any other person or authority except the Attorney-General:
Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.
(5) For the purposes of this section, any appeal from a judgement in criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court shall be deemed to be part of those proceedings:

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Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.
(6) Save as provided in section 98(2)(b) of this Constitution, in the exercise of the functions conferred on him by subsection (2) of this section or section 77 of this Constitution the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

Section 5 of the Criminal Procedure and Evidence Act 1981
Part II
Prosecutions at the Public Instance
A. Director of Public Prosecutions
5. The Director of Public Prosecutions may in any case in which he considers desirable so to do—
(a) institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
(b) take over and continue any criminal proceedings which have been instituted or undertaken by any other person or authority including any proceedings instituted before the commencement of this Act; or
(c) discontinue in writing at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or other person or authority.
6. (1) The powers of the Director of Public Prosecutions under section 5 may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.
(2) The Director of Public Prosecutions may retain counsel for the purposes of conducting any criminal proceedings instituted or continued by him
(3) The powers vested in the Director of Public Prosecutions but section 5 (b) and (c) shall be exercised by him to the exclusion of any other person or authority except that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.
(4) For the purposes of this section, any appeal from a judgement in criminal proceedings, before any court, or any case stated or questions of law reserved for the purpose of any such proceedings to any other court shall be deemed to be part of such proceedings except that the powers vested in the Director of Public Prosecutions by section 5 (c) shall not be exercised in relation to an appeal by a person convicted in criminal proceedings or to a case stated or a questions of law reserved at the instance of such a person.
(5) In the exercise of the functions vested in him by subsection (3) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority but nothing in this subsection precludes a court from exercising jurisdiction in relation to any questions whether the Director of Public Prosecutions has exercised those functions in accordance with law.

(b) Observations on the implementation of the article

250. DCEO currently has two prosecutors who are tasked with prosecuting DCEO cases through a long-term delegation from the DPP. Apart from DCEO, prosecutorial powers have not been delegated to any other agencies or departments.

251. It was explained that in practice, investigators handling corruption cases consult early on with the prosecutor in DCEO.

252. No corruption cases have been refused for prosecution to date. Any decision not to prosecute is reviewable by the aggrieved party. For example, in one case an aggrieved person appealed a decision of the DPP to take a case to the High Court, not the Magistrate's Court. Moreover, private prosecutions by persons with a substantial interest in the trial as a result of an injury suffered by the commission of the offence are permissible under Section 12 of the Criminal Procedure and Evidence Act 1981 where the DPP declines to prosecute an alleged offence and issues a certificate nolle prosequi to that effect.

253. During the country visit, Lesotho officials explained that DCEO prosecutes corruption cases under the delegation and supervision of the DPP. It was reported that cases involving corruption in the police force can be investigated by the police and would then be prosecuted by the DPP, but are more often investigated and thus prosecuted by DCEO under the supervision of the DPP. Moreover, DCEO consults at all stages of investigation with the DPP, who cannot interfere in or stop an investigation. All DCEO cases are therefore reviewed by the DPP before they are filed in court. The DPP, in turn, reports to the Attorney General, who supervises administratively the work of the DPP. The closing of cases is the prerogative of the DPP.

254. As described under UNCAC article 36, the reviewing experts recommend that Lesotho establish a specialized anti-corruption unit in, and ensure adequate capacity building for, the DPP to handle corruption cases. The reviewing experts also encourage Lesotho to adopt a law regulating the DPP and a Prosecution Manual in order to ensure greater legal certainty in the prosecution of corruption and other criminal cases.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

> *4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

(a) Summary of information relevant to reviewing the implementation of the article

255. Accused persons are eligible for bail whilst awaiting trial or appeal. The likelihood of abscondment is a fundamental principle that is taken into account in determining bail, together with the gravity of the offence. Sections 99 and 104 of the Criminal Procedure and Evidence Act 1981 and case law provide guidelines for decisions on bail.

Conditions of Recognizance
104 (1) The recognizance which is taken on the admission of an accused person to bail under this Part shall be taken by the court or judicial officer, as the case may be, either from the accused or from the accused and one or more sureties in the discretion of the court or judicial officer according to the nature and circumstances of the case.
(2) The conditions of the recognizance shall be that —

(a) the accused shall appear and undergo any further examination which the magistrate or the Director of Public Prosecutions considers desirable, and answer to any indictment that may be presented, or charge that may be made, against him in any competent court for the offence with which he is charged at any time within 12 months from the date of recognizance;
(b) the accused shall attend during the hearing of the case and receive sentence; and
(c) the accused shall accept service of any summons or warning to undergo further examination and any such indictment, charge, notice of trial or other notice undergo this Act at any place in Lesotho chosen and therein expressed by him.
(3) The recognisance shall continue in force notwithstanding that for any reason, when the trial takes place, no verdict is given, unless the indictment or charge is withdrawn.

(b) Observations on the implementation of the article

256. No further information has been made available during the country visit.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

257. According to the Prisons Amendment Act of 1974, convicted persons are only eligible for early release or parole after having served half of their prison sentence. Parole is not issued automatically, but based on determining factors such as the gravity of the underlying offence and the likelihood of repeated commission of an offence.

(b) Observations on the implementation of the article

258. Regarding examples of implementation, Lesotho reported that only one case was known in which a defendant was granted parole after having served ten years of a fifteen-year sentence.

259. This provision appears to be adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

260. Lesotho's Public Service Act, in Section 15(10), provides for the suspension of public officers, on full pay, pending disciplinary enquiries.

Section 15 of the Public Service Act 2005
"(6) Failure on the part of a public officer to follow any provision contained in a Code of Conduct issued under this section shall constitute a misconduct rendering the public officer liable to proceedings and sanctions as set out in the Code of Conduct.
…
(10) The Head of Department may, having regard to –
(a) the safety and security of persons or public funds or property;
(b) the process of investigations; and
(c) other circumstances,
suspend a public officer, on full pay, pending a disciplinary enquiry.
(11) Notwithstanding subsection (6), a public officer who has been convicted of a criminal offence shall be summarily dismissed from the public service on the basis of that conviction."

Public Service Regulations 2008
"Dismissal
39. A public officer's appointment may be terminated by way of dismissal for misconduct, after a fair hearing by the Head of Department."

Code of Conduct for public officials issued by the Public Service Ministry
Section 3 (Conduct of public officers)
…
(2) A public officer shall not – …
(f) by any act or omission willfully fail to comply with, or willfully disregard, any provision of a law or any lawful instruction given by any proper authority; …
(n) commit a criminal offence involving dishonesty, misappropriation of public funds or cause damage to public property or bring public service into disrepute;

(b) Observations on the implementation of the article

261. While suspension of accused public officers is covered, their removal or reassignment is not specifically addressed in the legislation. Lesotho may wish to consider including relevant measures in its legislation.

262. By way of example, Lesotho referred to the Principal Secretary of Administration in the Cabinet of Lesotho, the Financial Controller in the Cabinet, and the Procurement Manager in the Cabinet, who each came before the disciplinary committee on charges of corruption. All three officers were suspended pending the investigation.

263. It was explained that the Constitution empowers the Public Service Commission to handle all appointments and removals of public servants, while disciplinary measures (including dismissal from office on disciplinary grounds) are taken by each individual agency.

Article 30 Prosecution, adjudication and sanctions

Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

264. As described above, Section 15(11) of the Public Service Act 2005 provides that a "public officer who has been convicted of a criminal offence shall be summarily dismissed from the public service on the basis of that conviction." The disqualification from holding public office is not addressed.

265. The disqualification of members of the National Assembly is provided for by act of Parliament in article 59(3) of the Constitution of Lesotho.

"Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed."

266. Lesotho indicated that has not established a procedure for the disqualification of convicted persons from holding public office, but it is provided for in the draft PCEO Amendment bill. The Lesotho Independent Anti-Corruption Bill provides that convicted persons should be disqualified from holding a public office for five years. This bill has to be enacted, and is currently being prepared.

267. The section referred to in the bill includes enterprises owned in whole or in part by government.

(b) Observations on the implementation of the article

268. The draft bill appears to cover the non-mandatory disqualification of persons convicted of corruption in Section 45B, though the prohibition only applies to certain elected and appointed positions. Section 45A deals with non-corruption crimes. The provision is cited for information only.

45B. Effect of conviction of a corruption offence
Any person convicted of an offence under Part IV of this Act shall, by reason of such conviction, be disqualified for a period of 5 years from the date of such conviction from-
(a) being elected as a member of Parliament or any other public representative assembly; or
(b) being or being elected or appointed as a member of the Government or any other public body."

269. During the country visit, it was confirmed that public officials convicted of corruption offences can be dismissed from office, though there is no specific measure on the disqualification from holding public office.

270. Lesotho is encouraged to consider adopting relevant measures on disqualification from holding public office in line with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

271. Lesotho has cited the Public Service Act of 2005 as the applicable legal framework. According to recent amendments to the Constitution and the Public Service Act (Section 6), the power to discipline public servants is no longer vested with the Public Service Commission but with the Attorney General's office. The Public Service Commission is in charge of appointments to the public service.

Section 6 of the Public Service Act 2005
"Powers of the Commission
6. Subject to the provisions of the Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments) and the power to terminate appointments of such persons, save the power to discipline and terminate appointments of such officers for disciplinary reasons, is vested in the Commission."

272. The case of Rex vs. Matete was cited as an example of implementation where a public officer was dismissed before conviction. The defendant was a civil servant, a clerk of the National Assembly, who accepted bribes from a private individual.

(b) Observations on the implementation of the article

273. It was explained during the country visit that disciplinary and criminal processes can run in parallel, so that a public official acquitted of wrongdoing could still face disciplinary measures.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

274. Lesotho stated that it has not implemented this provision.

275. Lesotho's prisons are regulated by the Prisons' Proclamation of 1957. However, there are efforts to adopt a Prisons Act (the Lesotho Correctional Services Bill). Basic measures are taken to integrate and rehabilitate prisoners into society by way of counseling given to inmates and organizations formed for ex-convicts.

(b) Observations on the implementation of the article

276. There are no formal or comprehensive policies related to rehabilitation and reintegration of prisoners into society. Reintegration does not appear to be addressed in the Prisons Proclamation of 1957.

277. Lesotho is encouraged to consider developing comprehensive policies on the rehabilitation and reintegration of prisoners into society, in line with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 1

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

278. Lesotho has cited Part IV (Confiscation) of the Money Laundering and Proceeds of Crime Act of 2008. Section 37 provides:

"(1) Where a person is convicted of a serious offence, the authority may, not later than 6 months after the conviction, apply to Court for one or both of the following orders:
(a) a confiscation order against property that is tainted in respect of the offence;
(b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence."…

As defined in Section 2(1),
""tainted property" means property—
(a) used in or intended for use in connection with the commission of a serious offence;
(b) derived, obtained or realized as a result of or in connection with the commission of a serious offence.""

""serious offence" means an offence against a provision of-
(a) any law in Lesotho, for which the maximum penalty is death or imprisonment for life or other deprivation of liberty for a period of not less than 24 months and includes money laundering;

(b) a law of a foreign State, in relation to acts or omissions, which had they occurred in Lesotho, would have constituted an offence for which the maximum penalty is death, or imprisonment for life or other deprivation of life for a period of not less than 24 months;"

""proceeds of crime" means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;"

279. Section 37 of the PCEO Amendment Act further provides:

"37. The Attorney General may upon request by the Director-General and upon obtaining an urgent court order to that effect, seize, freeze or confiscate bank accounts or assets of any person who the Director General suspects, on reasonable grounds, to have committed an offence under this Act."

280. Lesotho has not provided examples of implementation.

(b) Observations on the implementation of the article

281. It is noted that confiscation under the Act extends to "serious offences," which are those punishable by at least two years imprisonment, including money laundering. This threshold covers most offences under the Convention, including obstruction of justice (which carries a two-year sentence under the PCEO Amendment Act). However, the offences under the Penal Code which do not carry a statutory minimum prison term (bribery, obstructing the course of justice) may not be adequately covered to the extent that a sentence of less than two years is imposed in a case.

282. It was explained that the confiscation measures in the Money Laundering and Proceeds of Crime Act of 2008 referred to above are applied by the DCEO, in accordance with Section 11(2) of the Act, which establishes DCEO as the Anti-Money Laundering Authority. In fraud and other criminal cases, confiscation could be done by the police, although the police reported that they have never confiscated assets except in theft cases to be produced as an exhibit in the criminal case.

283. It is noted that the definition of tainted property extends to criminal proceeds and instrumentalities used or destined for use in criminal offences. The latter includes, for example, a car that was used to transport persons to commit a crime, which occurred in a prior case of the Lesotho Revenue Authority.

284. The confiscation of property corresponding to the value of the criminal proceeds appears to be addressed in Section 48:

"Pecuniary penalty order on conviction
48. (1) Subject to this section, where the Authority applies to Court for a pecuniary penalty order against a person in respect of that person's offence the Court shall, if it is satisfied that the person has benefited from that offence, order him to pay to the Government an amount equal to the value of his or her benefit from the offence or such lesser amount as the Court

certifies in accordance with section 51(2) to be the amount that might be realised at the time the pecuniary penalty order is made.
(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 49, 50, 51, and 52." ….

However, it was explained that this provision is not applied in a manner that would allow for value-based confiscation. Lesotho should establish and apply measures to permit the confiscation of property corresponding to the value of criminal proceeds.

285. Provision is made for civil forfeiture under Part V (Civil recovery of property). Section 87(1) provides that "For the purpose of this Part all proceedings under this Part are civil proceedings, and are not criminal proceedings." It was explained that civil confiscation as part of a criminal case is also possible, for example where a defendant holds criminal proceeds but has not yet been charged.

286. Lesotho reported that there have been no orders to confiscate tainted property or proceeds of crime. DCEO officials reported that this is due to a lack of human and technical capacity to seize criminal proceeds.

287. It is recommended that Lesotho amend its legislation to ensure that proceeds of all UNCAC offences can be confiscated, including by reason of their period of imprisonment. In practice this would mean increasing the penalties for offences under the Penal Code and eliminating the threshold in the Money Laundering and Proceeds of Crime Act.

288. The reviewing experts also noted the draft PCEO amendment bill, which would give the DCEO the authority to apply directly to the court for an order of confiscation in corruption cases, and welcomed the adoption of this measure, taking into account the need to ensure that confiscation powers in corruption cases handled by the DPP can be exercised by the DPP.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

289. Lesotho has cited the Money Laundering and Proceeds of Crime Act of 2008. Section 56 thereof provides for identification, tracing, freezing or seizure.

"Powers to search for and seize tainted property
56. (1) A police officer or an authorised officer may, upon reasonable suspicion of the commission of an offence-
(a) search a person for tainted property;
(b) enter upon land or upon or into premises and search the land for tainted property; and
(c) in either case, seize any property found in the course of the search that the police officer or an authorised officer believes, on reasonable grounds to be tainted property;
Provided that the search or seizure is made-

(i) with the consent of the person or the occupier of the land or premises as the case may be;
(ii) under warrant issued under section 57; or
(iii) under section 59.
(2) Where a police officer or an authorised officer may search a person under this Division, he or she may also search-
(a) the clothing that is being worn by the person; and
(b) any property in, or apparently in, the person's immediate control."

290. Section 37 of the PCEO Amendment Act (quoted above) further provides that the Attorney General may, upon request by the DCEO and with a court order, seize, freeze or confiscate assets of any person suspected of a corruption offence.

291. Section 46 of the Criminal Procedure and Evidence Act 1981 further provides for the issuance of search warrants.

PART VI
Search Warrants, Seizure and Detention of Property
46. (1) If it appears to a judicial officer on-complaint made on oath that there are reasonable grounds for suspecting that there is upon any person or upon or at any premises or other place or upon or in any vehicle or receptacle within his jurisdiction —
(a) stolen property or anything with respect to which any offence has been, or is suspected on reasonable grounds to have been, committed; or
(b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence; or
(c) anything as to which are reasonable grounds for believing that it is intended to be used for the purpose of any offence,
he may issue a warrant directing a policeman named therein or all policemen to search any such person, premises, other place, vehicle or receptacle, and to seize any such thing if found, and to take it before a magistrate to be dealt with according to law.
(2). Any warrant issued under this section shall be executed: by day unless a judicial officer by a warrant specially authorises it to be executed by night, in which case it may be so executed, and in searching of any woman section 41 (3) mutatis mutandis applies;
(3) A warrant may be issued and executed on Sunday as on any other day under this section.

(b) Observations on the implementation of the article

292. As described under "Challenges" at the end of this article, asset tracing is a challenge in Lesotho.

293. As described under article 36, the FIU of Lesotho does not have administrative powers to freeze transactions temporarily.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

294. Lesotho referred to Section 59 of the Money Laundering and Proceeds of Crime Act 2008, as well as Sections 88-93 of the Act (concerning property preservation orders) for relevant provisions related to the administration of frozen, seized or confiscated property.

"Record of property seized
59. (1) A police officer or an authorised officer who seizes property under section 57 shall detain the property seized, taking reasonable care to ensure that property is preserved and dealt with in accordance with section 53 of the Criminal Procedure and Evidence Act 1981.
(2) The police officer or an authorised officer referred under subsection (1) shall be required to report to the Authority, on a monthly basis, on the status of all seized property."

295. Sections 109 and 110 of the Act further provide for the establishment of a "Criminal Asset Recovery Fund" to consist *inter alia* of moneys derived from the execution of confiscation and forfeiture orders.

296. Lesotho also referred to Section 53 of the Criminal Procedure and Evidence Act 1981.

Disposal of Article where no criminal proceedings are instituted or where it is not required for criminal proceedings

53. (1) If no criminal proceedings are instituted in connection with any article referred to in section 52 (c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.
(2) If no person may lawfully possess such article or if the policeman concerned does not know any person who may lawfully possess such article, the article shall be forfeited to the crown.
(3) The person who may lawfully possess the article in question shall be notified by registered post at his last known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the Crown.

(b) Observations on the implementation of the article

297. It is recommended that Lesotho consider monitoring the application of these provisions in practice. The reviewing experts recommend that Lesotho consider establishing a dedicated administrative agency to administer confiscated assets.

Article 31 Freezing, seizure and confiscation

Paragraphs 4, 5 and 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

298. As noted above, Section 2(1) defines "proceeds of crime" to mean "any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;"

(b) Observations on the implementation of the article

299. Converted, transformed and intermingled proceeds, as well as income and other benefits derived therefrom, are fully covered in the cited section and are thus liable to be confiscated. They can also be seized or frozen if they constitute alleged proceeds of crime.

(c) Successes and good practices

300. The cited legislation seems to be relatively robust, though no case examples were given. Lesotho appears to be able to pursue these measures to the fullest extent under its law.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

301. Lesotho has cited Section 8 (1) and (2) of the Prevention of Corruption and Economic Offences Act, according to which DCEO can serve a notice on a bank or financial institution and require it to comply with a document request absent a court order. Bank secrecy is not a ground for refusal to furnish information to DCEO.

302. Furthermore, bank records may be obtained by court order under Section 21 of the PCEO Amendment Act, which provides for overcoming bank secrecy.

303. Section 245 of the Criminal Procedure and Evidence Act deals with admissibility of bank records.

Section 8 (1) and (2) of PCEO 1999 Act.

Powers of the Director General to obtain information
8 (1) (d) "if in the course of any investigation into any offence under Part IV or V the Director General is satisfied that it would assist or expedite such investigation, he may, by notice in writing, require-
(d) the manager of any bank, in addition to furnishing any information specified in paragraph (c) to furnish any information of the originals, or certified true copies, or the accounts or the statements of accounts at the bank of any suspected person

8 (2) every person on whom a notice is served by the Director General under subsection (1), shall, notwithstanding any oath of secrecy, comply with the requirements of the notice within such time as may be specified therein, and any person who, without reasonable excuse, fails to so comply commits an offence and shall be liable to the penalty prescribed under section 17 (2).

Section 21 of the PCEO 2006 Amendment Act
"Bank Accounts
21. the Attorney General may, upon request by the Director General and upon obtaining an urgent Court Order to that effect, seize, freeze or confiscate bank accounts or assets of any person the Director reasonably suspects to have committed an offence under this Act."

Section 245 of the Criminal Procedure and Evidence Act
"Entries in bankers' books admissible in certain cases
245. The entries in ledgers, day-books, cash-books and other account books of any bank shall be admissible as prima facie evidence of the matters, transaction and accounts recorded therein, on proof being given by the affidavit in writing of a director, manager or an officer of that bank or by any other evidence—
(a) that the ledgers, day-books, cash-books or other account books –
(i) are or have been the ordinary books of that bank;
(ii) are in or come immediately from the custody or control of that bank; and
(b) the entries have been made in the usual and ordinary course of business."

304. Sections 12, 29 and 15(1)(i) of the Money Laundering and Proceeds of Crime Act 2008 set forth the DCEO's powers with respect to financial institutions.

305. Examples of implementation are: R v Matete (in which DCEO obtained the relevant bank records), R v Mochebelele (cited under UNCAC articles 15 and 30 for R v. Matete and articles 15 and 18 for R v. Mochebelele).

306. Lesotho reported that there have been about 120 cases since 2010 in which the Director General of DCEO made requests to banks directly invoking the provisions of Section 8 in obtaining information from banks with no objection. Of the 120, 92 were fraud and theft cases, the rest were corruption and bribery cases. There were no court orders in any of the 120 requests, and all of them were honored.

(b) Observations on the implementation of the article

307. It was explained that no court order is needed where financial documents and banking records are requested by DCEO under Section 8 of the PCEO Act, and that banks comply with such orders. A number of cases have been referred to in order to illustrate this.

308. It is noted that the draft PCEO bill would remove the procedure in Section 21 of the Act whereby DCEO may request the Attorney General's office for a court order to seize, freeze or confiscate bank accounts or assets, to allow DCEO to apply directly to the court for a relevant order.

309. Based on the information provided, the measures under Section 8 of the PCEO Act appear to be working in practice, and the further possibility of obtaining a court order where necessary would seem to provide adequate assurance that banking records can be obtained in future cases. It was also explained that bank and financial records can be obtained for mutual legal assistance purposes. The UNCAC provision appears to be implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

310. Lesotho reported that the Prevention of Corruption and Economic Offences Act has a provision for unexplained wealth, which empowers DCEO to call a person to explain the origins of his wealth. The relevant provision is Section 31.

Section 31 of the PCEO Act:
"The Director or any officer of the Directorate authorized in writing by the Director may investigate any public officer, where there are reasonable grounds to suspect that that person-
(a) Maintains a standard of living above that which is commensurate with his present or past known source of income or assets reasonably suspected to have been acquired illegally; or
(b) is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets reasonably suspected to have been acquired illegally.
(2) A public officer is presumed to have committed the offence of corruption if he fails to give a satisfactory explanation to the Director or the officer conducting the investigation under subsection (1) as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession.
(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property as a gift, or loan without adequate consideration from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused."

(b) Observations on the implementation of the article

311. It was reported that no cases have been investigated or prosecuted under this provision. The observations under article 20 above on illicit enrichment are repeated.

312. The provision is legislatively implemented, though no case examples were reported. The reviewing experts encourage training and capacity building for Lesotho officials on pursuing and charging cases involving a reversal of the burden of proof, as well as a review of the legislation to ensure that there are no legal obstacles to the investigation and prosecution of such cases.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

313. Lesotho cited Section 43 (Protection of third parties) of the Money Laundering and Proceeds of Crime Act 2008.

Protection of third parties
43. (1) Where an application is made for a confiscation order against
property, a person who claims an interest in the property may apply to Court, before the confiscation order is made, for an order under subsection (2).
(2) If a person applies to the Court for an order under this section
in respect of property and the Court is satisfied on a balance of probabilities
(a) that he or she was not in any way involved in the commission of the offence; and
(b) where he or she acquired the interest during or after the commission of the offence, that he or she acquired the interest
(i) for sufficient consideration; and
(ii) without knowing, and in circumstances such as
not to arouse a reasonable suspicion that the property was, at the time he or she acquired it, tainted property,
the Court shall make an order declaring the nature, extent and value (at the time the order is made) of his or her interest.
(3) Subject to subsection (4), where a confiscation order has
already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of 6 months commencing on the day on which the confiscation order is made, apply under this subsection to the Court for an order under subsection (2)
(4) A person who-
(a) had knowledge of the application for the confiscation order before the order was made; or
(b) appeared at the hearing of the application, shall not be permitted to make an application under subsection (3) except with leave of Court.
(5) A person who makes an application under subsection(1) or (3) shall give no less than 14 days written notice of the making of the application to the Director- General who shall be a party to any proceedings in the application.
(6) An applicant or the Authority may, in accordance with the rules of Court, appeal against an order made under subsection (2).

(7) The Court shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of Court with respect to the making of appeals has expired and any appeal from that order has been determined-
(a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or
(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

(b) Observations on the implementation of the article

314. While relevant legal measures appear to be in place under the Money Laundering and Proceeds of Crime Act, it is unclear whether these rights are adequately safeguarded in practice and how such rights would be protected in cases not involving money laundering offences. Moreover, no cases on the application of the cited measures were reported.

315. Lesotho should ensure that bona fide third party rights are adequately protected in practice in cases involving corruption-related offences.

(c) Challenges related to article 31

316. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.): the law is unclear as to value based confiscation and on the reversal of the burden of proof. A review of the relevant legislation is recommended.
2. Limited capacity (e.g. human/technological/institution): asset tracing is a challenge. The ability to conduct value based confiscation is unclear.
3. Limited resources for implementation (e.g. human/financial).

(d) Technical assistance needs

317. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Summary of good practices/lessons learned: training and capacity building on asset tracing and value-based confiscation for investigators and prosecutors from other countries, like South Africa, would be useful.
2. Legislative drafting and on-site assistance by an anti-corruption expert: there is a need to review the law and provide related training on value-based confiscation.
3. Capacity-building programmes for authorities responsible for identifying and tracing such property or instrumentalities: there is a need to sensitize investigators, prosecutors and the judiciary to pursue asset confiscation measures as part of the criminal investigation or proceeding. This is especially important in cases where a criminal conviction cannot be obtained. In particular, the reviewing experts encourage training and capacity building on pursuing and charging cases involving a reversal of the burden of proof as well as a review of the legislation, to ensure that there are no legal obstacles to the investigation and prosecution of such cases
Moreover, the reviewing experts emphasize the need for training and capacity building for all law enforcement and judicial officers on financial investigations and asset confiscations.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 32 Protection of witnesses, experts and victims

Paragraphs 1, 2 and 3

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

318. Lesotho reported that it has not implemented this provision. Although the PCEO Act has a provision dealing with the protection of informers (Section 50 as cited under UNCAC article 37 below), it is not effective to protect witnesses, experts and victims who testify generally in criminal cases.

319. Physical protection can be provided by the police, though it is not frequently applied. Witness relocation has been done by the police in very limited cases, such as a high profile murder case involving the former Prime Minister where relocation to South Africa was done. Witness relocation is dependent on funding and the needs of each case.

320. Regarding paragraph 2(b) of article 32, Lesotho has cited the common law as the applicable legal framework. If it is proved to the satisfaction of the court that it is in the interests of justice, adequate means could be employed to protect the identity of the witness, expert or victim. While the common law has not directly addressed the use of communications technology such as video or other means, such measures could be permissible in the interests of justice.

321. A case in point is Rex v. Keketso Lekota (CRI/T/21/2005), where the defendant testified in Germany via videoconference, which was streamed live directly via videolink into the court room in Lesotho.

322. Evidence has also been given in camera in rape and juvenile cases to protect the identity of the victims and witnesses.

(b) Observations on the implementation of the article

323. While limited resources seem to be a constraint in providing necessary protections for witnesses, experts and victims, the reviewing experts were informed during the country visit that there is also a reluctance on the part of the general public to report instances of potential retaliation or intimidation. Lesotho should treat this as a priority and adopt relevant measures, including raising awareness (especially in rural areas) and strengthening the victim protection office to address this issue.

(c) Successes and good practices

324. The reviewing experts were informed that one civil society organization they met with during the country visit had established a dedicated fund for the protection of vulnerable witnesses, or even whistleblowers. The work of this organization in furtherance of the protection of witnesses and whistleblowers was positively noted.

Article 32 Protection of witnesses, experts and victims

Paragraphs 4 and 5

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

325. Lesotho has not implemented these provisions because such arrangements do not exist.

(b) Observations on the implementation of the article

326. There are no provisions on the protection of victims in the Criminal Procedure and Evidence Law. However, an office established to address the concerns of victims of crime was established in the magistracy.

327. Lesotho has identified a number of challenges and technical assistance needs to fully implement the article.

(c) Challenges related to article 32

328. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
2. Limited capacity (e.g. human/technological/institution/);
3. Limited awareness of state-of-the-art programmes and practices for witness and expert protection
4. Limited resources for implementation (e.g. human/financial).

As noted above, this should be a priority area for Lesotho.

(d) Technical assistance needs

329. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection programmes
3. On-site assistance by an anti-corruption expert;
4. Model agreement(s)/arrangement(s).

The reviewing experts emphasize the need for technical assistance, as identified by Lesotho, to implement the article under review.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

330. There are no provisions on whistleblowers in the Prevention of Corruption and Economic Offences Act of 1999, which provides for the anonymity of informers in judicial proceedings.

(b) Observations on the implementation of the article

331. It was explained that the police and DCEO can both accept complaints and reports that are made anonymously, although whistleblower protections are not available. Complaints can be made in person, by letter or telephone and by email.

332. DCEO has not established a website, and is encouraged to do so, including to encourage the reporting of corruption cases, to inform complainants of their rights and to raise transparency of DCEO operations and awareness of anti-corruption efforts.

333. The reviewing experts welcome indications by Lesotho that a whistleblower law would be useful in the fight against corruption and encourage its adoption and implementation. In addition to the necessary legislation, appropriate structures should be put in place to establish reporting procedures for receiving complaints and providing effective protection measures on the ground.

(c) Challenges related to article 33

334. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution);
2. Limited awareness of state-of-the-art programmes and practices for witness and expert protection;
3. Limited resources for implementation (e.g. human/financial).

(d) Technical assistance needs

335. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Capacity-building programmes for authorities responsible for establishing and managing protection programmes for reporting persons
3. Development of an action plan for implementation;

The reviewing experts emphasize the need for technical assistance, as identified by Lesotho, to implement the article under review. Moreover, not just a law but appropriate structures should be put in place to effectively protect whistleblowers.

Lesotho stated that it has received some of the forms of technical assistance listed above without specifying them.

Article 34 Consequences of acts of corruption

> *With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

(a) Summary of information relevant to reviewing the implementation of the article

336. The following measure that would permit the annulment of a contract on the basis of fraud and corruption was referred to.

Section 39 of Public Procurement Regulations of 2007
39 (1) The procurement process shall be regarded invalid and the subsequent contract void or voidable in the following cases:
a) The contract shall have been entered into breaching the elements of the law of contracts;
b) The Unit (Procurement Unit) entered into the contract without the approval of the Chief Accounting Officer; or
c) The Unit entered into the contract breaching the procedures set out under these regulations.

(b) Observations on the implementation of the article

337. It was explained that corruption would fall within the scope of Section 39(a) ('breaking the elements of the law of contracts') under the regulations.

338. These steps are also included in Lesotho's "initial engagement contracts" for public procurements.

339. There is no system of 'blacklisting' companies convicted of criminal or corruption offences in Lesotho. Moreover, law enforcement agencies, like the police and DCEO, do not have systems in place to report completed criminal cases to the procurement or licensing authorities. This is considered to be a weakness, and Lesotho is encouraged to establish measures where such cases are referred to the Procurement Policy and Advice Division (PPAD) and the licensing authorities. A closer working relationship, including through the

adoption of agreements or memoranda of understanding (MOUs), among the DCEO, the police and other investigative agencies with PPAD would be conducive to the full implementation of the article under review.

340. Lesotho has identified challenges and requested technical assistance to adopt the measures described in the article under review.

(c) Challenges related to article 34

341. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity (e.g. human/technological/institution);
2. Limited resources for implementation (e.g. human/financial).
3. Model laws/systems for reporting cases by the law enforcement authorities to PPAD and licensing agencies.

(d) Technical assistance needs

342. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting
4. On-site assistance by an anti-corruption expert;
5. Development of an action plan for implementation;

The reviewing experts emphasize the need for technical assistance, as identified by Lesotho, to implement the article under review..

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

343. Lesotho cannot provide specific legislation regarding its implementation of this article, but added that nothing can prevent any aggrieved party from filing a claim under tort law.

344. As mentioned above, an office has been established to address the concerns of victims of crime in the magistracy.

(b) Observations on the implementation of the article

345. The reviewing experts observed that Sections 321 and 322 of the Criminal Procedure and Evidence Act appear to address the rights of injured parties to claim compensation for damages as a result of an act of corruption.

346. Lesotho reported that it has not yet come across any case where a civil claim filed by a victim of corruption was recognized by the courts, for example where a company complained of fraud or corruption in the award of a tender.

(c) Challenges related to article 35

347. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other; please specify);
2. Inadequacy of existing normative measures: there is no law or procedure to protect victims, witnesses, experts and whistleblowers.

(d) Technical assistance needs

348. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned: a law and implementing measures for the protection of victims, witnesses, experts and whistleblowers are needed
2. On-site assistance by an anti-corruption expert;
3. Development of an action plan for implementation;

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

349. Lesotho cited the Prevention of Corruption and Economic Offences Act (as amended), which creates the Directorate on Corruption and Economic Offences and in Section 3(1)(b) contains a basic provision for its independence.

3 (1) There shall continue in existence the Directorate on Corruption and Economic Offences which-

(a) shall be a juristic person, having perpetual succession, capable of suing and being sued in its own name and of performing acts as are necessary for, or incidental to, the execution of its functions; and

(b) shall not be subject to the direction or control of any person or authority in the exercise of its functions except in accordance with this Act.

350. The budget for DCEO is allocated based on a percentage of the country's overall financial budget, based on annual proposals submitted by DCEO to the Minister of Justice, who submits the proposal to the Ministry of Finance and Parliament. Section 4 of the PCEO Amendment Act

351. Lesotho explained that the draft PCEO Bill referred to above attempts to secure the full independence of the agency. It would further address budgetary issues by creating in Section 5A a welfare fund to provide for further funding of the agency besides regular budget allocations. The provision is cited below for information only.

PCEO Amendment Bill
Addition of new section
6. The principal law is amended by adding the following section after section 5:
"Welfare fund
5A. (1) The Commissioner shall, after consultation with the Minister responsible for finance, establish a fund to be known as the "Lesotho Independent Anticorruption Commission "Welfare Fund".
(2) The fund shall consist of –
(a) such money as may be appropriated by Parliament;
(b) donations and voluntary contributions as may be made thereto;
(c) such sums as may accrue by way of dividend or interest from the investment of the fund or any part thereof.
(3) The fund shall be controlled by the Commissioner and applied for the following purposes –
(a) procuring for officers of the Commission or former officers or persons so employed who have ceased employment or retired on pension, gratuity or other allowance, comforts, conveniences or other benefits not chargeable to the general revenue;
(b) granting loans to officers of the Commission and other persons employed by the Commission or former officers of the Commission and other persons formerly employed by the Commission who have ceased to be employed or retired on pension, gratuity or other allowance;
(c) making grants to persons who were wholly or partially dependant at the time of his or her death on –
(i) a deceased officer or a deceased former officer of the Commission who had ceased to be employed or had retired on pension, gratuity or other allowance;
(ii) a deceased person employed by the Commission who was at any time employed by the Commission and who had ceased to be employed or had retired on pension, gratuity or other allowance,
and who are in need of financial assistance, whether towards the payment of funeral expenses of the deceased or otherwise.

352. The DCEO was established in 2003 and has two prosecutors on delegation from the DPP and approximately 15 investigators.

353. Lesotho reported that no internal training has been conducted at DCEO since 2010. Staff is only trained through workshops organized by external and international organizations, such as ARINSA (December 2012).

354. Lesotho reported that the Convention's requirements on independence, training and resources of the DCEO are not implemented.

355. Besides the prosecuting authority (DPP), which is the sole prosecutorial body in Lesotho, law enforcement agencies that have a mandate to investigate corruption cases include (in addition to DCEO) the Lesotho Mounted Police Service (LMPS), Lesotho Revenue Authority (LRA), as well as the FIU for cash and suspicious transaction reports and potential money laundering cases. LRA is mainly charged with financial matters and tax collection rather than pursuing criminal cases.

356. LMPS has a mandate to investigate all offences under the Penal Code, including bribery and obstruction of justice, as well as money laundering offences. Nothing prevents the police from also investigating offences of corruption under the PCEO Act, though in practice significant cases are handled by DCEO. Some examples of more serious cases that would be handled by DCEO include cases involving senior government officers, police officers and other public officials. While LMPS may investigate cases involving corruption in the police force, a separate agency (Lesotho Police Complaints Authority) has been established by way of an MoU to oversee police integrity and disciplinary matters involving members of the police. Moreover, such cases are usually handled by DCEO, as the independence of the investigation cannot be ensured. It was reported that the police has referred only two cases to DCEO for investigation in these matters. If a disciplinary matter is found to rise to the level of criminal wrongdoing, the Police Complaints Authority will recommend referral of the case for criminal investigation to the police upon authorization from the Commissioner to proceed.

357. Lesotho provided the following information on police reports received between 1 January 2011 and 31 December 2012.

Type of Case	**Number of Cases Reported**
Corruption	56
Fraud	192
Embezzlement	0
Corruption Cases Involving the Police	38

358. The LMPS has a fraud unit that also handles corruption and economic crime, which consists of 20 officers that handle these cases. The LMPS handles a large number of cases and receives on average over twenty, sometimes more than fifty, cases in one month. Capacity to handle these cases is limited. The average case load of officers in the unit at a given time is over twenty cases, many of which are complex cases. It was reported, for example, that at the time of the review there had been hundreds of bribery cases handled by LMPS.

359. Although not technically a law enforcement agency, information is also provided on the functions and mandate of the FIU of Lesotho, which was established in December 2010. The FIU is not a stand-alone FIU but housed within the Central Bank of Lesotho (as described further under UNCAC article 39 below). An enabling law that sets forth the powers and mandate of the FIU does not currently exist but has been in development since 2011. It would provide for the FIU's functions, independence, recruitment of staff and the security of intelligence it obtains. The FIU does not have administrative freezing powers.

360. The FIU explained that because the Anti-Money Laundering Law only recently came into force, guidelines are still being developed and the FIU is consulting with covered institutions to sensitize them to the new obligations. There are four banks (including three subsidiaries of foreign banks) in Lesotho, and over 200 covered institutions, as defined in the Act.

361. To date, no STRs have been received. The FIU is not a member of the Egmont Group of FIUs.

362. The FIU has in place two memoranda of understanding (MoUs) with the FIUs in Namibia and South Africa. It has received two requests for information to date under the MoUs, both of which came from South Africa and are still under review.

363. Regarding the judiciary, the hierarchy of the court system is set out in the Constitution of Lesotho. At the time of the review, plans were underway to create a specialized anti-corruption unit in the High Court of Lesotho. It was explained that a judge from the Commonwealth Secretariat would be placed in the High Court in Lesotho in April 2012, specifically assigned to handle corruption cases. A commercial judge had been placed in this way previously to transfer skills on commercial cases to other judges. As of February 2013, an acting judge, identified by the Chief Judge and appointed by the King, was assigned to the High Court to handle a large amount of corruption cases. There are eleven High Court judges in Lesotho, and cases are assigned randomly. Officials at the High Court reported that the average case load per judge at the High Court is 240 cases.

364. A code of ethics is in place for judges that does not, however, provide for criminal or severe potential penalties. No judges have been impeached to date and there is no judicial oversight committee. Cases of discipline or misconduct are decided by the Chief Judge in after a hearing with the judge concerned. There is no independent panel or review.

365. It was recommended, at a recent meeting of Lesotho's Security Committee, which includes members of prosecution, law enforcement and the judiciary, that training for judges is needed on handling complex cases such as corruption, together with investigators and prosecutors.

366. A National Coordination Committee has been established, which meets quarterly to address issues of law enforcement and anti-money laundering of concern to various agencies. Heads of agencies meet periodically (sometimes on a monthly basis) to discuss important or sensitive cases, though there is no consistent practice of information sharing on specific cases among the law enforcement agencies.

(b) Observations on the implementation of the article

367. The reviewing experts observe that the role of each law enforcement and investigative agency in Lesotho is not clearly delineated and that therefore the same tasks could be performed by several agencies. Moreover, interagency coordination among the LMRPS and DCEO is a concern. Mechanisms to ensure that information is passed between the FIU once it begins receiving reports to DCEO should also be in place. In this context, no further information was available from Lesotho on the role of the National Coordination Committee, which agencies it comprises and whether it assumes any role in the oversight, coordination or execution of specific criminal or corruption cases.

368. Capacity building and training are needed for the institutions in the criminal justice system, namely LMPS, LRA, FIU and DCEO. Reference is made to the observations on technical assistance in the introduction. Specifically, the reviewing experts make the following observations in respect of the individual agencies:

DCEO:

- It is important to ensure that vacant positions, including those of Deputy Director General in the DCEO, are filled, which would allow the Director General to exercise a greater oversight function over DCEO operations.
- Capacity building for the two prosecutors as well as DCEO investigators is needed. Specifically, there is a need for training of personnel which is structured, comprehensive and regular. It is recommended that capacity building/training be conducted in an interdisciplinary manner involving other criminal justice institutions, such as LMPS, the FIU, LRA and judges.
- The DCEO should be adequately resourced in order to ensure its financial and operational independence.
- Clearer laws should address the operational and financial independence of DCEO, especially regarding the appointment and tenure of office of the Director General and the operational independence of the office. It is noted though that the draft PCEO bill would provide for the appointment of the Director General by a panel of five officials appointed by the King on the advice of the Prime Minister following the recommendation of a parliamentary committee. The bill would provide for the Director General to be accountable to the parliamentary committee.
- There is a lack of statistics regarding the operations of DCEO. Therefore, the need for a case management system that goes beyond individual files maintained by staff is a priority to enhance the ability of the DCEO to produce necessary statistics. Reference is made to the observations on technical assistance in the introduction.
- It is noted that some technical assistance is being provided through the European Union and Commonwealth programmes, as described in the introduction.

LMPS:

- LMPS officials confirmed during the country visit that there is no clear mandate of the police regarding the investigation of corruption cases. It was reported that the police may investigate corruption cases, especially offences under the Penal Code, including bribery and obstruction of justice, as well as money laundering offences (with the exception of cases involving corruption in the police, which are more often handled by DCEO or the Police Complaints Authority). However, it was explained that there the approach of law enforcement agencies has been “first come, first serve”, in that the agency receiving the corruption report often also proceeds with the investigation. This poses a risk of parallel investigations by different agencies in the same case. It is therefore recommended that Lesotho adopt a law, procedure or agreements/MOUs which clearly demarcate responsibilities among law enforcement agencies, including DCEO and the police.
- Procedures should also be established for clear information sharing among agencies on cases-specific information, files or data. One example are the operations of the commercial crime unit in the police, which officials of LMPS represented during the country visit were not aware of. Information sharing could be enhanced, for example, through the seconded police officers at DCEO and LRA, as well as additional secondments to other police units and agencies.
- It is also recommended to increase the capacity of the commercial crime unit in the police with regard to its manpower and capacity to investigate corruption and money laundering

or financial crimes cases. It is recommended that any capacity building/training be conducted in an interdisciplinary manner involving other criminal justice institutions, such as DCEO, the FIU, LRA and judges. Reference is made to the observations on technical assistance in the introduction.

- With respect to the draft PCEO bill, if it is passed as proposed Lesotho should ensure that there is adequate training for police officers on the new offences LMPS would be responsible for (e.g., money laundering and embezzlement).
- It is also recommended that LMPS consider conducting integrity training for police officers, given that it was reported during the country visit that there had been 38 allegations of corruption within the police in the previous year. It is suggested that the Police complaints Authority could exercise a greater supervisory role in this context.
- The reviewing experts note that the proposed case management would produce missing statistics, and Lesotho should ensure that the database also be operationalized in the police.
- As described more fully under UNCAC article 48, the reviewing experts encourage LMPS, as a capacity building measure, to enhance its cooperation with law enforcement agencies in other countries to facilitate communication and information exchange and direct cooperation in investigations. This could be done through adopting relevant MOUs or arrangements with other agencies.

DPP:

- The establishment of a dedicated unit or personnel in the DPP's office to focus on corruption and economic crime matters could ensure that such cases receive adequate attention and are handled by prosecutors with expertise in this area to work together with the two prosecutors at DCEO.
- A capacity increase and specific training on corruption and economic crime issues would be conducive to the effective prosecution of such cases.
- Lesotho should also consider establishing a dedicated unit or personnel on international cooperation in criminal matters to handle extradition and mutual legal assistance cases, as described more fully in chapter IV.
- As described under UNCAC article 31 above, while the draft PCEO amendment bill would give the DCEO the authority to apply directly to the court for an order of confiscation in corruption cases, there is a need to ensure that confiscation powers in corruption cases handled by the DPP can be exercised by the DPP.
- The reviewing experts also encourage Lesotho to adopt a law regulating the DPP and a Prosecution Manual in order to ensure greater legal certainty in the prosecution of corruption and other criminal cases, as described under UNCAC article 30(3)).
- Lesotho is further encouraged to consider establishing a dedicated agency to administer confiscated assets, as described under UNCAC article 31(3).

FIU:

- The reviewing experts welcome the swift adoption of the enabling law which would clarify the mandate, independence and ability of the FIU to receive and transfer suspicious transactions reports for further investigation to relevant investigative agencies. The reviewing experts also welcome the operationalization of the existing legal provisions to allow suspicious transaction and intelligence reports to be transferred to relevant law enforcement agencies for further investigation.
- The reviewing experts welcome measures being taken by the FIU to become a member of the Egmont Group and positively noted that it has engaged in information

exchange/mentorship arrangements with its counterparts in South Africa and Malawi. The FIU is encouraged to continue these efforts, including by considering the adoption of additional arrangements or MOUs with its counterparts in other countries.

- The reviewing experts encourage the FIU to continue to raise awareness on anti-money laundering and train law enforcement institutions and reporting entities (in particular, banks, financial institutions and industry participants), so that these entities file STR and other reports on a regular basis. The FIU's efforts in this regard were positively noted.
- It was reported that capacity building and an increase in personnel are measures currently being pursued, and these steps are welcomed by the reviewing experts. It is recommended that additional training be interdisciplinary, and reference is made to the observations on technical assistance in the introduction. It is noted that some training has already been provided to the FIU by the Australian anti-money laundering regulator, AUSTRAC.

Judiciary:

- The reviewing experts welcome the steps being taken to appoint a specialized judge to hear corruption cases and transfer necessary expertise to other judges.
- An overall need for capacity building/training in the judiciary on corruption cases was identified. This should be conducted in an interdisciplinary manner, and reference is made to the observations on technical assistance in the introduction

As a concluding observation to this article, it is recommended that Lesotho, and DCEO in particular, carefully consider if the proposed changes to reorganize the mandate of law enforcement institutions under the PCEO bill are most conducive to the investigation and prosecution of UNCAC offences. In particular, the reassignment of money laundering and embezzlement cases to LMPS, given its reported case load, should be carefully considered in light of existing capacity and resources of the police and other agencies.

(c) Challenges related to article 36

369. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution): the DCEO and LMPS are understaffed and lack skilled staff to adequately investigate and prosecute corruption cases.
2. Limited resources for implementation (e.g. human/financial): the DCEO does not have adequate resources to conduct its investigations, including based computer equipment, Internet to maintain a website, and a dedicated vehicle.

(d) Technical assistance needs

370. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. On-site assistance by an anti-corruption expert;
2. Development of an action plan for implementation;
3. Capacity building measures for the police, DCEO and other law enforcement agencies. Specifically, a need for training and capacity building of the fraud unit in the police was identified by the National Coordination Committee of Lesotho.

Lesotho has received some technical assistance from the Commonwealth Secretariat. A consultant is reviewing the national anti-corruption strategy and in the process has

recommended amendments to existing law, hence the Bill. The FIU has received some training by the Australian anti-money laundering regulator, AUSTRAC. Lesotho has also participated in occasional training through ARINSA, but has not conducted any internal training since 2010. Lesotho indicated that it would benefit from the extension or expansion of such technical assistance.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

371. Lesotho cited Section 50 of the Prevention of Corruption and Economic Offences Act, which provides for the protection of anonymity of informers in court proceedings.

"Protection of informers
50. (1)In any trial in respect of an offence under Part IV or V, a witness shall not be obliged to disclose the name or address of any informer, or state any matter which might lead to his discovery.
(2) Where any books, documents, or papers which are in evidence or liable to inspection in any civil or criminal proceedings under this Act contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court, before which the proceedings are held, shall cause all such persons to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.
(3) If in any proceedings before a court for an offence under this Act the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings of court is of the opinion that justice cannot be fully done between the parties thereto without

disclosure of the name of an informer or a person who has assisted the Director, the court may permit inquiry and require full disclosure concerning the informer or such person."

It was explained that this measure has never been applied in practice.

372. Section 36(10) provides further incentives in the form of witness fees for informers.

"A person appearing before the Director by virtue of subsection (6) -
(a) may be assisted at his examination by an advocate or an attorney;
(b) shall be entitled to such witness fees as he would be entitled to if he was a witness for the Crown in criminal proceedings in a magistrate's court."

373. There is no specific legislation on witness protection, physical protection and evidentiary measures like video testimony; however, Lesotho indicated that there is no reason why these measures cannot be applied to cooperating defendants.

(b) Observations on the implementation of the article

374. Lesotho explained that immunity from prosecution and plea bargaining are allowed under the common law. Mitigated sentences have been given to cooperators, but not in corruption cases. A case example is Rex v. Mokhothu, where a non-custodial sentence (fine) was agreed in a plea bargaining agreement with the defendant in exchange for information. There are no guidelines on the use of plea bargaining or immunities, which are granted under the common law. It was suggested that a law on plea bargaining could be useful. The reviewing experts welcome this suggestion.

375. No information was available on whether financial incentives or rewards can be given to informants.

376. A policy for the recruitment of informers does not exist. This was considered to be useful.

377. Lesotho has not entered into any agreements as provided for in paragraph 5, but considers that nothing can prevent such an arrangement.

378. Lesotho indicated that the extension of technical assistance in this area would be a priority for Lesotho, together with relevant protection measures under articles 32 and 33 (for experts, witnesses, victims and whistleblowers).

(c) Challenges and technical assistance needs related to article 37

379. Lesotho has identified the following challenges and technical assistance needs in fully implementing the article:
1. Inadequacy of existing normative measures: a law and guidelines on plea bargaining are needed that would cover immunity from prosecution and mitigated sentences, in particular for cooperating defendants.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

380. Lesotho explained that the law enforcement agencies concerned, namely, the DCEO, Police, and the Revenue Authority LRA, have MOUs dealing with the issue. Such MOUs include technical assistance, legal assistance and joint operations and information sharing. Specifically, DCEO has two MOUs in place, one with the Police and one with the Police and LRA.

381. Regarding examples of implementation, Lesotho informed that currently the three agencies have formed a joint team dealing with corruption cases. The team handles high-profile corruption and tax-related cases. Joint investigations are conducted on an as-needed basis in specific cases.

382. On the country efforts to implement the article, Lesotho informed that executives of the three agencies meet once in six months in the forum of the National Coordination Committee to review the agreements.

383. Regarding the exchange of personnel, currently DCEO has officials from the Revenue Authority and the Police attached to it.

384. There have been cases where the cooperation of public officials has been instrumental to DCEO and other investigating authorities in pursuing corruption cases. An example is Rex v. Lebothsa (the Chief Accounting Officer), who was a Crown witness who provided information that led to the conviction of his superior on corruption charges.

(b) Observations on the implementation of the article

385. As noted above under article 36, interagency coordination between the police and DCEO on investigating corruption cases, and also with the FIU, is a challenge. Lesotho should take steps to enhance coordination among relevant agencies, including DCEO, LMPS, LRA and the FIU, and to clarify mandates with respect to the investigation of corruption cases, in particular between the police and DCEO. While steps in this direction are being taken by the FIU, an appropriate legal and administrative structure should be put in place for the FIU to receive and transfer STRs to relevant law enforcement authorities for further investigation. This should be considered a priority for Lesotho.

(c) Successes and good practices

386. The exchange of personnel among law enforcement agencies like the police, DCEO and the DPP's office potentially constitutes a good practice, conducive to enhancing communication and law enforcement cooperation, and should be encouraged. Nonetheless, there is no consistent practice of sharing case-related information, and interagency coordination on specific cases should be enhanced to avoid overlapping responsibilities and functions.

(d) Challenges related to article 38

387. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency coordination in the investigation and prosecution of money laundering cases by DCEO, the police and FIU, as well as between the police and DCEO in corruption investigations.
2. Competing priorities.

The reviewing experts underscore the necessity to address interagency coordination issues.

(e) Technical assistance needs

388. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Development of an action plan for implementation regarding money laundering cases.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 39 Cooperation between national authorities and the private sector

> *1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*
>
> *2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

389. Lesotho reported that the FIU coordinates cooperation with the private sector (mostly banks and financial institutions) as well as oversight of financial institutions through the Central Bank regulations.

390. DCEO has a mandate to cover corruption in both the public and private sector. In addition, a body representing private sector interests known as Business Action Against Corruption (BAAC) works directly with the DCEO. The stakeholders meet every month with DCEO. BAAC was established to deal with corruption in the private business sector and is comprised of business owners. The BAAC initiative aims to assist businesses and the private

sector in improving the overall climate for growth in the country. Lesotho also participated in a training workshop on business ethics that was held in Botswana in September 2011.

391. The Public Education and Prevention Division of DCEO holds public gatherings and has a weekly broadcast on national radio station.

392. DCEO receives complaints in person and by telephone, email, letter or fax. It can also initiate investigations on its own initiative through leads such as the media or public reports. Anonymous reporting by members of the public of corruption complaints to DCEO is possible. The police also accepts anonymous complaints via its hotline and can travel to complainants to take their reports. Making complaints via email or the Internet is not currently possible.

393. In terms of awareness raising, the police uses the radio, pamphlets and conducts campaigns in school of crime and corruption issues specifically.

(b) Observations on the implementation of the article

394. There does not appear to be a duty for public officials in Lesotho to report suspicions of corruption. Lesotho may wish to consider whether legal or administrative measures to this effect would enhance the reporting of corruption incidents.

395. The following additional observations are made:

- The reviewing experts welcome the recent amendment of the PCEO Act to cover the private sector and encourage the continued dedication of resources to address corruption in the private sector.
- DCEO should enhance public awareness raising and conduct outreach activities, especially in the regions. The reviewing experts welcome the efforts being pursued by the European Union in support of these outreach activities.
- It is suggested that DCEO could do more to partner with civil society and other public institutions, although there seems to be a good cooperative relationship with the organizations identified during the country visit. It is recommended that DCEO continue to enhance partnerships among Government and civil society, including through providing appropriate resources to underscore this cooperation. A national platform of civil society organizations dedicated to fighting corruption together with the Government could be considered.

(c) Challenges related to article 39

396. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity (e.g. human/technological/institution): DCEO would like to conduct more awareness raising of corruption to the general public and in the private sector, and to encourage corruption reporting, but lacks adequate resources.
2. Limited resources for implementation (e.g. human/financial): DCEO has no presence outside the capital of Lesotho. Corruption complaints in the provinces are handled by the police. DCEO does not have a website for accepting complaints.
3. Limited awareness of state-of-the-art reporting programmes and mechanisms: whistleblower protections are needed.

(d) Technical assistance needs

397. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Capacity-building programmes for authorities responsible for regulating matters related to the private sector
3. Capacity-building programmes for authorities responsible for the establishment and management of reporting programmes

Lesotho did not report whether such assistance has been provided.

Article 40 Bank secrecy

> *Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

(a) Summary of information relevant to reviewing the implementation of the article

398. Lesotho cited the Prevention of Corruption and Economic Offence Act of 1999 as the applicable legal framework. The measures that allow DCEO to order the production and seizing of bank, financial or commercial records without a court order (Section 8 of the PCEO Act) are described under article 31(7) above.

399. Section 37 of the Act (quoted under article 31(1) above) provides that the Attorney General may upon request by the Director General and upon obtaining an urgent court order to that effect seize, freeze or confiscate bank accounts or assets of any person who the Director General suspects to have committed an offence. Also, Section 9 of the Amendment Act provides, "the Director General in the performance of his duties may require any person in writing to produce within a specified time books, records returns, data stored electronically or any documents relating to the functions of that public or private body."

400. As described above in article 31, Lesotho reported that there have been about 120 cases since 2010 in which the DCEO obtained information from banks directly with no objection and absent a court order. Of the 120, 92 were fraud and theft cases, the rest were corruption and bribery cases.

401. In Rex v Matete (quoted under article 17) and Rex v Millennium Travel (a bribery case), bank documents were obtained under Section 37 of the Act.

(b) Observations on the implementation of the article

402. Lesotho has taken measures toward ensuring that bank secrecy issues do not present obstacles to the pursuit of corruption cases.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

403. Lesotho explained that foreign criminal records are admissible under common law principles in court proceedings for offences that occurred within a period of ten years, and which are of the same family of offences. For example, if a person was previously charged with murder, Lesotho cannot raise a previous conviction of fraud or corruption.

(b) Observations on the implementation of the article

404. Lesotho has not encountered a situation where foreign criminal records were admissible in court proceedings. The issue has not been considered and there is no law or practice on the issue.

405. Challenges and technical assistance needs have been identified to implement the article.

406. While it was explained that foreign criminal records are admissible in practice under the common law, it may be useful to explore whether a legal provision would provide for greater certainty.

(c) Challenges related to article 41

407. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Specificities in its legal system;

(d) Technical assistance needs

408. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Summary of good practices/lessons learned;
2. Model legislation

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

409. Lesotho has cited the following measures on the implementation of this provision: Section 51 of the Prevention of Corruption and Economic Offences Act 1999, Section 25(1) of the Money Laundering and Proceeds of Crime Act and Section 4 of the Penal Code.

Section 51 of the Prevention of Corruption and Economic Offences Act 1999
"Jurisdiction
51. (1) The provisions of this Act shall have effect as relates to acts committed by any person within the territory of Lesotho, despite where the actual or intended consequence of his act has taken effect or has been intended to take effect. If the actual or intended consequence of an offence under Part IV or V of this Act has taken effect or has been intended to take effect in the territory outside Lesotho, that act shall also be deemed to have taken place in Lesotho.
(2) Offences under Part IV or V of this Act committed outside Lesotho by a citizen of Lesotho or a person who habitually resides in Lesotho shall also be subject to criminal jurisdiction in Lesotho according to this Act, despite where the actual or intended consequence of his act has taken effect or has been intended to take effect:
Provided an act of the kind in question corresponds to offences of the same nature, which are punishable under the law in force in that territory.
(3) Offences under Part IV or V of this act committed outside the territory recognised by international law as belonging to any State by a citizen of Lesotho or a person who habitually resides in Lesotho shall also be subject to criminal jurisdiction in Lesotho according to this Act, despite where the actual or intended consequences of his act has taken effect or has been intended to take effect."

Section 25(1) of the Money Laundering and Proceeds of Crime Act No. 4 of 2008
"1. A person commits the offence of money laundering if the person …
(a) Acquires, possesses or uses property; or
(b) Converts or transfers 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;
(c) Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,
Knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions
(i) in Lesotho which constitute an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months;
(ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less that 24 months."

Section 4 of the Penal Code
"Territorial application
4. (1) The jurisdiction of the courts of Lesotho for the purposes of this Code extends to every place within Lesotho.
(2) When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and

punished under this Code in the same manner as if any such act had been done wholly within the jurisdiction.
(3) A person who, while outside Lesotho, commits an act or makes an omission where such an act or omission forms part of an offence, of which the other elements occur or have effect within Lesotho or is an offence in respect of which Lesotho is enjoined to punish under international law, may, on coming into Lesotho, be tried and punished for such an offence as if the act or omission had been committed within Lesotho.
(4) An offence committed by any citizen of Lesotho within the confines of a Lesotho diplomatic mission abroad shall be triable within Lesotho as if the offence had been committed within Lesotho.
(5) A person who, while outside Lesotho, counselled another to do or omit to do in Lesotho an act or make an omission of such a nature that, if he or she had done the act or omission in Lesotho, he or she would have committed an offence, may be tried for an offence of the same kind, and is liable to the same punishment, as if he or she had done the act or made the omission in Lesotho.
(3) A person who creates or is in control of a situation of danger and who fails to prevent harm to others resulting from such danger, commits an offence.
(4) A person who sees another person in immediate danger of death or serious injury commits an offence if he or she omits to take reasonably practicable steps to rescue that person from such danger.
(5) A person who, having direct knowledge of the commission of an offence involving the taking or endangering of human life, without reasonable excuse fails to disclose to a chief, police or other law enforcement agents as soon as reasonably practicable such information as he or she possesses, commits an offence.
(6) The provisions of subsection (5) shall not apply to a legal practitioner or advisor or medical practitioner who acquires such knowledge in the course of professional duties.
(7) A person who has knowledge of the fact that a criminal offence involving danger to human life is about to be committed or who witnesses the commission of such an offence and fails, without reasonable excuse, to take steps to summon a chief, police or other law enforcement agencies, commits an offence."

410. The case cited by Lesotho as examples of territorial jurisdiction are: R v Matete and R v Mochebelele, where the offences occurred in Lesotho.

(b) Observations on the implementation of the article

411. Lesotho explained that it has jurisdiction over offences committed on board vessels and aircraft of Lesotho as an extension of its territorial jurisdiction.

412. The Money Laundering and Proceeds of Crime Act No. 4 of 2008 in Section 56 further provides for search and seizure where an offence was committed in Lesotho.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

413. Lesotho does not have specific legislation to implement the provision. Lesotho's law is concerned primarily with the place where the offence was committed.

(b) Observations on the implementation of the article

414. The provision does not appear to be implemented. Lesotho may wish to consider adopting legal measures to mirror the UNCAC provision more closely.

Article 42 Jurisdiction

Subparagraph 2 (b)

> *2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*
>
> *(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

(a) Summary of information relevant to reviewing the implementation of the article

415. Lesotho cited as the applicable measure Section 51(2) and (3) of the Prevention of Corruption and Economic Offences Act 1999, Section 4 of the Penal Code Act of 2010, and Section 25 (1) of the Money Laundering and Proceeds of Crime Act. All laws are quoted above.

(b) Observations on the implementation of the article

416. Section 51(2) of the PCEO Act and Section 4(2) of the Penal Code Act of 2010 are qualified by the dual criminality requirement. Lesotho may wish to consider adopting legal measures to mirror the UNCAC provision more closely.

Article 42 Jurisdiction

Subparagraph 2 (c)

> *2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*
>
> *(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

(a) Summary of information relevant to reviewing the implementation of the article

417. Lesotho cited Sections 22, 23, 24 and 25 of the Lesotho Penal Code Act No. 6 of 2010 read together with Section 25 (1) of the Money Laundering and Proceed of Crime Act of 2008, which deal with, attempts, counselling, procuring, aiding and abetting as well as

conspiracy to commit any offence in the Kingdom, make such persons who do the above acts equally liable.

(b) Observations on the implementation of the article

418. The quoted section establishes the money laundering offence but does not specifically address conspiracy or participatory acts outside Lesotho to commit money laundering.

419. The possible penalties are less for participants or accomplices to money laundering than for principals. Lesotho reported that there been no cases where co-offenders or attempts to commit money laundering were prosecuted.

420. Lesotho may wish to consider adopting legal measures to mirror the UNCAC provision more closely.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

421. Lesotho cited as the applicable measure Section 51 (3) of the Prevention of Corruption and Economic Offences Act 1999.

(b) Observations on the implementation of the article

422. The cited measure is limited to offences committed by citizens of Lesotho or persons who habitually reside in Lesotho. Also, the relevant conduct does not seem to be addressed. There are no other relevant provisions in the Penal Code or the Money Laundering and Proceeds of Crime Act. Lesotho may wish to consider adopting legal measures to mirror the UNCAC provision more closely.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

423. Lesotho reported that on extradition matters, it relies solely on international treaties and agreements. National legislation is yet to be enacted. At the moment, the Fugitive Offenders Act of 1967 is still the principal law.

424. Moreover, the arrangements to enact a new law are in progress. Consultations are being held with relevant stakeholders to oversee the enactment of such law. The bill is to be drafted.

(b) Observations on the implementation of the article

425. It appears that Lesotho has no difficulty to extradite a national to another country with which it has signed a treaty if permitted to do so under the treaty, though the refusal to extradite nationals is also recognized under the extradition treaty with China. The extradition of nationals is also not prohibited under the Fugitive Offenders Act of 1967.

426. Reference is made to the observations under paragraph 11 of article 44 below concerning extradition of nationals.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

427. Lesotho would ensure effective prosecution if it denies the extradition of a person on the basis of Section 4 (3) of the Penal Code Act of 2010 (quoted above).

(b) Observations on the implementation of the article

428. There have been no examples of the implementation of this provision.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

429. Lesotho cannot refer to a specific law or practice regarding its implementation of this provision. Reference is made to the information provided under paragraphs 4 and 5 of article 46 below.

(b) Observations on the implementation of the article

430. The observations under paragraphs 4 and 5 of article 46 of the Convention below are incorporated by reference. Lesotho is encouraged to specify these requirements in law and its future treaties.

Article 42 Jurisdiction

Paragraph 6

> *6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

(a) Summary of information relevant to reviewing the implementation of the article

431. Lesotho cited Section 51 of the Prevention of Corruption and Economic Offences Act 1999, Section 25(1) of the Money Laundering and Proceeds of Crime Act and Section 4 of the Penal Code as the provisions that set out additional grounds for jurisdiction.

(b) Observations on the implementation of the article

432. Lesotho has relevant measures in place to establish jurisdiction in criminal cases.

Chapter IV. International cooperation

433. As a general observation concerning international cooperation, it is noted that Lesotho has in place two bilateral extradition treaties and one bilateral treaty on mutual legal assistance:

- Treaty between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho on Extradition (2001)
- Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
- Treaty between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa on Mutual Legal Assistance in Criminal Matters (2001).

434. Lesotho explained that it uses its existing bilateral and multilateral treaties, including the Convention and the SADC Protocol, as well as the African Union Convention on Preventing and Combating Corruption, for purposes of making and executing international cooperation requests.

435. Lesotho can also cooperate with other States on the basis of reciprocity in the absence of a bilateral treaty. It has done so in one case, where a request for mutual legal assistance was sent to Germany, where no treaty was in place between the two countries.

436. The process for giving effect to international treaties is that bilateral treaties are published in the official Gazette to give them the force of law and to apply them directly. While multilateral treaties are not published in the official Gazette, they can be applied in the same manner as bilateral treaties.

437. Lesotho also subscribes to the Commonwealth Scheme on Mutual Legal Assistance (also known as the Harare Scheme) and the Commonwealth Scheme on Extradition (London Scheme), which are alternate schemes for international cooperation among Commonwealth countries based on domestic legislation rather than treaties.

438. As a general observation regarding the implementation of chapter IV by Lesotho, the reviewing experts recommend that Lesotho adopt a specific law on mutual legal assistance in criminal matters, to provide greater legal certainty in making and executing MLA requests, and they welcome the early steps that have been taken by Lesotho in this regard. In light of the treaty requirement for rendering MLA, it is also recommended that Lesotho consider whether one single bilateral treaty on MLA provides it with a sufficient legal basis (in addition to the multilateral treaties) to issue and execute requests for mutual legal assistance in criminal matters as needed, in particular in future cases.

439. It is also recommended that Lesotho amend its extradition law (the Fugitive Offenders Act of 1967) and its bilateral treaties on extradition and MLA, to ensure that they are fully in line with the Convention; several discrepancies are noted below. In this context, the reviewing experts welcome the ongoing consultations to adopt a new law on extradition and encourage the revisions to take into account the requirements of the Convention.

440. The reviewing States note, as a general matter, that it was difficult to assess in detail Lesotho's practice of providing mutual legal assistance and extradition in corruption cases, due to the small number of incoming requests, the absence of data on any requests that Lesotho has refused, and, more generally, the absence of a specific system for collecting data. It is recommended that Lesotho adopt a system to allow it to collect data on the origin of mutual legal assistance and extradition requests, the timeframe for responding to these requests, and the response provided, including any grounds for refusal.

441. While the Attorney General is the central authority for international cooperation, it was explained that his role is to channel incoming and outgoing requests that are executed by the DPP, the police and other authorities. Should this institutional structure lead to delays or other administrative obstacles, Lesotho should consider whether amending the law to have the DPP serve as the central authority would enhance efficiency. Moreover, the establishment of a specialized unit or personnel on international cooperation in criminal matters to handle extradition and mutual legal assistance cases would be conducive to the effective and timely administration of such cases.

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

442. For extradition matters, Lesotho relies solely on international treaties and agreements, as well as the Fugitive Offenders Act of 1967, which regulates how to execute and issue extradition requests pursuant to a treaty. It was explained that when a request is received, it is first reviewed by the DPP for compliance with an existing treaty. Once this is verified, the Fugitive Offenders Act gives direction as to how to handle the request (for example, whether a court order is needed to execute the request). Thus, a Minister's order would be issued with the authorization to execute the request on the basis of the Fugitive Offenders Act. In order to apply the Act to an incoming request for extradition, generally a substantial amount of evidence must be located in Lesotho, and a court could then, for example, issue an order for committal of a fugitive in readiness for his or her transfer. Regarding the procedure for the transfer, Lesotho would apply its treaties.

443. Lesotho explained that the arrangements to enact a new law on extradition are in progress. Consultations are being held with relevant stakeholders to oversee the enactment of such a law, which has not yet been drafted as the consultations are still in the early stages and involve the Ministry of Foreign Affairs, Attorney General's office, DCEO, police and parliamentary council.

444. For the purpose of dual criminality, Lesotho also relies on the existing treaties to determine whether dual criminality is satisfied.

445. Dual criminality is a requirement under Section 5 of the Fugitive Offenders Act of 1967, as well as the extradition treaties cited below. In making outgoing requests, Lesotho specifies that the crime is recognized under Lesotho's common or statutory law and includes as an annex the relevant domestic legal provisions, in order to explain in the request how dual criminality is satisfied. Although dual criminality is a fundamental principle that must be satisfied, it is flexibly applied by Lesotho in looking at the underlying conduct and constituent elements of the offence, rather than its strict wording. In addition to the dual criminality requirement, Lesotho's Fugitive Offenders Act takes a list-based approach to determining extraditable offences and requires that the offence be punishable by a minimum of one year imprisonment.

Section 5, Fugitive Offenders Act of 1967
Relevant Offences
5. (1) For the purposes of this Act an offence of which a person is accused or has been convicted in a designated country is a relevant offence if —
(a) it is an offence against the law of a designated country; and however it is described in that law, it falls within any of the descriptions set out in the First Schedule to this Act, and is punishable under that law with imprisonment for a term of twelve months or any greater punishment;
(b) in any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Lesotho if it took place within the Lesotho or, in the case of an extra-territorial offence, in corresponding circumstances outside Lesotho.
(2) In determining for the purposes of this Section whether an offence against the law of a designated country falls within a description set out in the First Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.
(3) The descriptions set out in the First Schedule include in each case offences of attempting or conspiring to commit, of existing counseling or procuring the commission of or being accessory

before or after the fact to the offences therein described, and impending the apprehension or prosecution of persons guilty of those offences.
(4) References in this section to the law of a country include references to the law of a part of that country.

First Schedule
(Section 5)
Description of relevant offences in designated countries

1. Murder (of any degree)
2. Culpable homicide
3. An offence against the law relating to abortion
4. Maliciously of willfully inflicting grievous bodily harm, or wounding
5. Assault occasioning actual bodily harm
6. Rape
7. Unlawful sexual intercourse with a female
8. Indecent assault
9. Procuring, or trafficking in, women or young persons for immoral purposes
10. Bigamy
11. Kidnapping, abduction or false imprisonment, or dealing in slaves
12. Stealing, abandoning, exposing or unlawfully detaining a child
13. Bribery
14. Perjury or subornation of perjury or conspiring to defeat the course of justice
15. Arson
16. An offence concerning counterfeit currency
17. An offence against law relating to forgery
18. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving falsitas or fraud
19. Housebreaking with intent to commit a crime, or any similar offence
20. Robbery
21. Extortion by means of threats or by abuse of authority
22. An offence against insolvency law or company law
23. Malicious injury to property
24. Acts done with the intention of endangering vehicles, vessels or aircraft
25. An offence against the law relating to dangerous drugs or narcotics
26. Piracy
27. Revolt against the authority of the master of the ship or the commander of an aircraft
28. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals

<u>Article 2 of the Treaty between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho on Extradition (2001)</u>
ARTICLE 2
“Extraditable Offences
1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by deprivation of liberty for a term of one year or more or by a more severe punishment.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting State for an extraditable offence, extradition shall be granted if a period of at least six months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether conduct is an offence against the law of the Requested State:
it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology;

the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.
4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence: Provided that the conduct for which extradition is sought is an offence in the Requested State, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the Requesting State.
5. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. However, where the law of the Requested State does not provide for jurisdiction over an offence in similar circumstances, the Requested State may, in its discretion, refuse extradition on this basis.
6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:
(a) it was an offence in the Requesting State at the time of the conduct constituting the offence; and
(b) the conduct alleged would, if it had taken place in the Requested State at the time of the making of the request for extradition, have constituted an offence against the law of the Requested State."

Article 2 of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
ARTICLE 2
Extraditable Offences
1. For the purpose of this Treaty, extradition shall be granted for the conduct which constitutes an offence under the laws of both Contracting States that is punishable by imprisonment or deprivation of liberty for a period of one year or more or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced by a court of the Requesting State for an extraditable offence, extradition for the purpose of enforcing the sentence shall be granted if a period of at least six months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether a conduct is an o offence against the laws of the Requested State, it shall not matter whether the laws of the Contracting States place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology or stipulate the same constituent elements of the offence.
4. An offence is extraditable whether or not the conduct constituting the offence on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. Where such conduct occurred outside the territory of the Requesting State, it shall set out its legal provisions establishing its jurisdiction.
5. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or foreign exchange regulation of the same kind as the law of the Requesting State.
6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that
(a) it was an offence in the Requesting State at the time of the conduct constituting the offence; and
(b) the conduct alleged would, if it had taken place in the Requested State at the time of the making of the request for extradition, have constituted an offence against the laws of the Requested State.
7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

446. The Attorney General's office (DPP) is the main agency in charge of extradition. The following statistics on incoming and outgoing requests for extradition since 2009 were provided.

Number of extradition requests	**Incoming (all from South Africa) (1 corruption-related request)**	**Outgoing (1 to Swaziland under SADC (pending), 4 to South Africa)** **(1 corruption-related request Rex v Mochebelele (pending))**
2013	1	-
2012	-	1
2011	-	1
2010	1	1
2009	1	2
Total	**3**	**5**

447. Lesotho has never refused a request for extradition and none of its requests have ever been refused. It was explained that there have been no other cases where Lesotho was the requested State and granted extradition (including in non-corruption related cases).

448. Lesotho has never made or received a request on the basis of the Convention, but indicated that nothing would preclude it from using UNCAC as a legal basis for extradition, as multilateral conventions can be applied directly in the same manner as bilateral conventions (though they are not published in the official Gazette). Lesotho could apply the Convention, and has in the past applied the SADC Protocol on Extradition for an outgoing request.

449. It was explained that to use international treaties like the Convention as the legal basis for extradition, only the articles that have been implemented would be applied.

450. Regarding examples of cases, Lesotho reported the following examples:

Rex v. Isaac Joseph CR/1264/2008. It was an incoming request from South Africa where the accused was charged with fraud and corruption in Lesotho. The case is still pending in Lesotho. The brief summary of facts is that the accused defrauded investors in South Africa by claiming that he had won tenders in Lesotho; the investors deposited funds to the accused's accounts in Lesotho, and he in turn diverted the funds to other accounts.

Rex v. Mbobo. It was an outgoing request in a murder case in which Lesotho requested extradition of the accused from South Africa. Extradition was granted and the accused was sentenced in Lesotho to life imprisonment.

Rex v Mochebelele. It was an outgoing request to South Africa, which is still pending in South Africa, though the defendant (who had been convicted of bribery in Lesotho but fled to South Africa) has been convicted there.

(b) Observations on the implementation of the article

451. No further information was available from Lesotho as to which countries are designated countries for purposes of the Fugitive Offenders Act 1967. During the country visit, it was explained that, although the Act would also apply to non-treaty Commonwealth countries, a treaty is required for extradition and there have been no requests for extradition in the absence of a treaty.

452. The reviewing experts observe that none of the cited examples illustrate that Lesotho is able to extradite persons if so requested, as they relate to outgoing requests for extradition made by Lesotho or to a pending request. A case was referred to during the country visit, Thabane Moses Sesinyi (2008), where an extradition request in a murder case was sent to Lesotho, but there was no information on the outcome of the case.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

453. Lesotho applies the dual criminality requirement. Only offences recognized under the laws of Lesotho qualify for extradition, and Lesotho would not allow the extradition of a person for an offence that is not punishable in Lesotho. In the absence of dual criminality, extradition cannot be allowed.

(b) Observations on the implementation of the article

454. It was explained that there have been no issues involving dual criminality regarding incoming or outgoings requests. It is known that dual criminality is a requirement for extradition in Lesotho.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

455. Lesotho indicated that it relies on its treaties for purposes of extradition and could in principle apply the Convention directly with regard to the articles it has implemented. Consultations on the enactment of a new Extradition Act are being conducted.

456. Lesotho's law and treaties specify a one-year minimum period of imprisonment for an offence to be extraditable.

Section 5, Fugitive Offenders Act of 1967 (quoted above).

Articles 2(1) and 2(8) of the Treaty between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho on Extradition (2001)
"1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by deprivation of liberty for a term of one year or more or by a more severe punishment."

Article 2(8) further provides
"8. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence."

Articles 2(1) and 2(7) of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
Article 2
Extraditable Offences
1. For the purpose of this Treaty, extradition shall be granted for the conduct which constitutes an offence under the laws of both Contracting States that is punishable by imprisonment or deprivation of liberty for a period of one year or more or by a more severe penalty.
…
7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

457. Lesotho indicated that it would apply its treaties if it received a request in these circumstances. Accordingly, it would not grant extradition for offences that do not satisfy the one-year minimum period of imprisonment.

458. Because not all corruption-related offences are criminalized or punishable by one year in Lesotho, in particular those under the Penal Code (see the table of penalties under UNCAC article 30 above), not all UNCAC offences are extraditable in Lesotho.

459. It was explained that the minimum period of imprisonment has not posed any challenges in practice, as the requirement is known for countries that have made incoming requests.

(b) Observations on the implementation of the article

460. In the context of the ongoing revisions of Lesotho's extradition law, it is recommended that Lesotho ensure that all UNCAC-related offences, including those under the Penal Code, are extraditable by virtue of their minimum period of imprisonment.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

461. As indicated above, not all UNCAC offences are extraditable in Lesotho under its law and treaties due to their minimum period of imprisonment.

462. The following provisions were cited regarding the political offence exception.

Section 6(1), Fugitive Offenders Act of 1967
6. (1) A person shall not be returned under this Act to a designated country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the court of committal or to the High Court in an action for the redress of a contravention of that person's right to personal liberty or for the review of the order of committal —
(a) that the offence of which that person is accused or was convicted is an offence of as political character;
(b) that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race. religion, nationality or political opinions; or
(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

Article 3 of the Treaty on Extradition with South Africa:
Extradition shall be refused in any of the following circumstances:
1. Where the offence for which extradition is requested is considered by the Requested State to be a political offence or an offence of a political character. For the purpose of this paragraph, the following conduct does not constitute a political offence or an offence of a political character: …
(b) conduct that constitutes an offence mentioned in a multilateral agreement to which the Kingdom of Lesotho and the Republic of South Africa are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution; …
(h) an attempt or conspiracy to engage in, counseling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (f).

Article 3(a) of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
ARTICLE 3
Mandatory Refusal of Extradition
Extradition shall be refused. Where:
(a) the offence for which extradition is requested is considered by the Requested State to be a political offence. For the purpose of this paragraph, with regard to requests to the Kingdom of Lesotho, the following offences,
among others, shall not constitute a political offence or an offence of a political character;
(i) murder or other violent crime against a Head of State or Head of Government of the Requesting or Requested State or against a member of
such person's family;
(ii) conduct that constitutes an offence mentioned in a multilateral agreement to which the Contracting States are parties and are obliged to
extradite the person or submit the matter to appropriate authorities for prosecution;
(iii) murder;

(iv) inflicting serious bodily harm;
(v) sexual assault;
(vi) kidnapping, abduction, hostage-taking or extortion;
(vii) placing, or using or threatening the placement of or use of or being in possession of an explosive, incendiary, or destructive device or
firearm capable of endangering life, of causing grievous bodily harm, or causing substantial damage to property;
(viii) an attempt or conspiracy to Commit, participation in the commission of aiding or abetting, counseling or procuring the commission.
of, or being an accessory before or after the fact to any of the foregoing offences;

(b) Observations on the implementation of the article

463. As noted under the previous provision, it is recommended that Lesotho ensure that all UNCAC-related offences, including those under the Penal Code, are extraditable by virtue of their minimum period of imprisonment. In the course of the ongoing efforts to update and amend Lesotho's extradition law, it is also suggested that Lesotho consider whether a threshold (minimum penalty) approach to determining extraditable offences would give greater flexibility than a list-based approach to extraditable offences.

464. It appears that pursuant to Lesotho's treaties, corruption-related offences should not be treated as political offences, as they are included in the multilateral agreements Lesotho is party to. However, this is not specified in the Act. However, in the context of the ongoing efforts to update and amend Lesotho's extradition law, Lesotho is encouraged to amend the Act to more clearly address the political offence exception in line with the provision under review.

465. It was explained that in the case of Rex v Mochebelele (cited above), where an outgoing request for extradition was made to South Africa, the defendant raised a claim of persecution. The defendant had been convicted in South Africa, but the case was still pending there.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

466. Lesotho cannot provide specific legislation regarding its implementation of this provision, but stated that it applies its bilateral and multilateral treaties and could apply the Convention directly.

467. Lesotho officials explained during the country visit that a treaty is required for extradition and there have been no requests for extradition in the absence of a treaty. For extradition matters, Lesotho relies solely on international treaties and agreements, while the Fugitive Offenders Act of 1967 gives direction as to how to handle and issue a request pursuant to a treaty.

468. Lesotho reported that it has never made or received a request on the basis of the Convention, but indicated that nothing would preclude it from using UNCAC as a legal basis for extradition, as multilateral conventions can be applied directly in the same manner as bilateral conventions (though they are not published in the official Gazette).

(b) Observations on the implementation of the article

469. It was explained that Lesotho could in principle apply the Convention as the legal basis for extradition, although it has had no experience in doing so. Lesotho has made an outgoing request to Swaziland on the basis of the SADC Protocol on Extradition.

Article 44 Extradition

Paragraph 6

> *6. A State Party that makes extradition conditional on the existence of a treaty shall:*
>
> *(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*
>
> *(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

(a) Summary of information relevant to reviewing the implementation of the article

470. Lesotho officials explained that a treaty is required for extradition and there have been no requests for extradition in the absence of a treaty. The Convention could also be considered as the legal basis for extradition.

471. Lesotho did not make the relevant notification to the Secretary General at the time of ratification.[4]

472. Lesotho cited the extradition treaties with South Africa and China, as well as the SADC Protocol on Extradition.

(b) Observations on the implementation of the article

473. Lesotho is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

[4] See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en#8.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

474. Lesotho referred to the dual criminality requirement and minimum period of imprisonment pursuant to its law and treaties as the applicable conditions for extradition. The list of offences in the extradition law is also referred to. As noted, not all UNCAC offences are extraditable by reason of their period of imprisonment.

475. Lesotho referred to the cases cited under paragraph 1. It was explained that there have been no other cases where Lesotho was the requested State and granted extradition (including in non-corruption related cases).

(b) Observations on the implementation of the article

476. Although a treaty basis is required for extradition, the conditions mentioned above are the relevant ones Lesotho follows for determining whether an offence is extraditable. The observations made under paragraphs 3 and 4 above are repeated here.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

477. Lesotho cited the treaty with South Africa as an example of implementation. It is a condition under the treaty with South Africa that a person can only be tried for an offence for which he has been extradited and that no person shall be extradited for political reasons, religion, sex or other form of discrimination. The full provisions of the treaties and the Act are set out below.

Articles 3 and 4 of the Treaty on Extradition with South Africa:
ARTICLE 3
Mandatory Refusal of Extradition
Extradition shall be refused in any of the following circumstances:
1. Where the offence for which extradition is requested is considered by the Requested State to be a political offence or an offence of a political character. For the purpose of this paragraph, the following conduct does not constitute a political offence or an offence of a political character:
(a) a murder or other violent crime against a Head of State or Deputy Head of State of the Requesting or Requested State or against a member of such person's family;

(b) conduct that constitutes an offence mentioned in a multilateral agreement to which the Kingdom of Lesotho and the Republic of South Africa are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution;
(c) murder;
(d) inflicting serious bodily harm;
(e) sexual assault;
(f) kidnapping, abduction, hostage-taking or extortion;
(g) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and
(h) an attempt or conspiracy to engage in, counseling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (f).
2. Where there are substantial grounds for believing that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of that person's race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.
3. Where the prosecution for the offence for which extradition is requested would be barred by prescription under the law of the Requesting State.
4. Where the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law.
5. Where the person sought has been finally acquitted or convicted in the Requested State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 4
Discretionary Refusal of Extradition
Extradition may be refused in any of the following circumstances:
1. Where the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence.
2. Where the person sought is being prosecuted by the Requested State for the offence for which extradition is requested.
3. Where the offence carries the death penalty under the law of the Requesting State, unless that State undertakes that if a sentence of death is imposed, it will not be carried out.
4. Where, in exceptional cases, the Requested State while also taking into account the seriousness of the offence and the interests of the Requesting State considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.
5. Where the person sought was a young offender within the meaning of the law of the Requested State at the time of the offence and the law that will apply to that person in the Requesting State is not consistent with the fundamental principles of the law of the Requested State dealing with young offenders.
6. Where the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

Articles 3 and 4 of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
Article 3
Mandatory Refusal of Extradition
Extradition shall be refused where:
(a) the offence for which extradition is requested is considered by the Requested State to be a political offence. For the purpose of this paragraph, with regard to requests to the Kingdom of Lesotho, the following offences, among others, shall not constitute a political offence or an offence of a political character:

(i) murder or other violent crime against a Head of State or Head of Government of the Requesting or Requested State or against a member of such person's family;
(ii) conduct that constitutes an offence mentioned in a multilateral agreement to which the Contracting States are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution;
(iii) murder;
(iv) inflicting serious bodily harm;
(v) sexual assault;
(vi) kidnapping, abduction, hostage-taking or extortion;
(vii) placing, or using or threatening the placement of or use of or being in possession of an explosive, incendiary, or destructive device or
firearm capable of endangering life, of causing grievous bodily harm, or causing substantial damage to property;
(viii) an attempt or conspiracy to commit, participation in the commission of aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to any of the foregoing offences;
(b) the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account on that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that person's positions may be prejudiced for any of those reasons;
(c) the person whose extradition is requested has, under the laws of the Requesting State, become immune from prosecution or punishment because of the lapse of time, pardon or amnesty;
(d) the offence for which extradition is requested constitutes only a military offence and not an ordinary criminal offence; or
(e) The person sought has been finally acquitted or convicted or is otherwise exempted from further prosecution for the same offence for which extradition is requested.

Article 4
Discretionary Refusal of Extradition
Extradition may be refused where:
(a) the offence for which extradition is requested is subject to the jurisdiction of the Requested State and the person sought is being prosecuted or will be prosecuted in that State;
(b) in exceptional cases, the Requested State, while also taking into account the seriousness of the offence and the interests of the Requesting State, considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.
(c) the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

Section 6, Fugitive Offenders Act of 1967
6. (1) A person shall not be returned under this Act to a designated country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the court of committal or to the High Court in an action for the redress of a contravention of that person's right to personal liberty or for the review of the order of committal
(a) that the offence of which that person is accused or was convicted is an offence of as political character;
(b) that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race. religion, nationality or political opinions; or
(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions,
(2) A person accused of an offence shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears as aforesaid that if charged with that offence in Lesotho he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Lesotho, be dealt with in that country for or in respect of any offence committed before his return under this Act other than —
(a) the offence in respect of which his return under this Act is requested;
(b) any lesser offence proved by the facts proved ----court of committal; or
(c) any other offence being a relevant offence in respect of which the Minister may consent to his being so dealt with.
(4) Any such arrangement as is mentioned in subsection (3) of this section may be an arrangement made for the particular case or an arrangement of a more general nature and----the purpose of that subsection a certificate issued by the authority of the Minister confirming the existence ----- arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

478. Lesotho has the death penalty in place, though it has only been applied in one case in the previous thirty years (a murder and rape case). No corruption-related offences carry the death penalty. It was explained that in its outgoing requests, Lesotho specifies that it would not apply the death penalty if the person sought were extradited to Lesotho. Lesotho would extradite a person to a requesting State where the death penalty was applicable.

479. No extradition requests made by Lesotho have been refused on the grounds of political reasons, dual criminality, religion, sex, race, or any other reason.

(b) Observations on the implementation of the article

480. As noted under the previous provision, the conditions for extradition are dual criminality, a one-year minimum period of imprisonment, and that the offence is recognized on the list of offences in the Fugitive Offenders Act. Additional conditions, such as the political offence exception, are included in the above-referenced treaties.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

481. Lesotho informed that there is no specific legislation relating to timeframes for extradition. However, the treaties with South Africa and China stipulate in article 12(4) respectively that within sixty days after the provisional arrest, the request for extradition and supporting documents must be received through diplomatic channels by the requested State.

Article 12(4) of the Treaty on Extradition with South Africa:
4. Provisional arrest shall be terminated if the Requested State has not received the request for extradition and supporting documents through the channel provided for in Article 6 within sixty (60) days after the arrest. The competent authorities of the Requested State, insofar as that is permitted by the law of that State, may extend that delay with regards to the reception of the documents referred to in Article 7.

Article 12(4) of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003):

4. Provisional arrest shall be terminated if the Requested State has not received the documents referred to in Article 7 through the channel provided for in Article 6 within, in the case of the Kingdom of Lesotho as the Requested State, sixty (60) days after the arrest and, in the case of the People's Republic of China as the Requested State, forty-five (45) days after the arrest. The competent authorities of the Requested State, insofar as is permitted by the laws of that State, may extend that period with regard to the reception of such documents.

482. Concerning other evidentiary matters and timeframes, the relevant texts of the law and treaties are set out below.

Articles 6 and 7 of the Treaty on Extradition with South Africa:

ARTICLE 6

Presentation of Requests

1. Requests for extradition shall be made -

(a) in the case of the Kingdom of Lesotho, to the Minister for Law and Constitutional Affairs;

(b) in the case of the Republic of South Africa, to the Minister for Justice and Constitutional Development.

2. Requests for extradition shall be made in writing and communicated through the diplomatic channel, however, direct communication between the competent authorities of the Contracting States is not excluded.

3. Requests for provisional arrest shall be made in writing and may be communicated either through the diplomatic channel or through the facilities of the International Police Organization [INTERPOL].

ARTICLE 7

Documents to be Submitted

1. The following documents shall be submitted in support of a request for extradition:

(a) in all cases, whether the person is sought for prosecution or the imposition or enforcement of sentence:

(i) such information, as may be available, about the description, identity, location and nationality of the persons ought;

(ii) a statement prepared by a public official, including a judicial, prosecuting or corrections official, which describes briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and the applicable penalty. This statement shall also indicate:

(aa) that these legal provisions were in force both at the time of the commission of the offence and at the time of the extradition request;

(bb) whether or not the prosecution of the offence, the imposition or the enforcement of any applicable penalty is barred by reason of prescription; and

(cc) where the offence occurred outside the territory of the Requesting State, the legal provisions establishing its jurisdiction; and

(b) in the case of a person sought for prosecution for an offence:

(i) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued in the Requesting State;

(ii) a copy of the indictment, charge sheet or other charging document; and

(c) in the case of a request submitted by the Republic of South Africa, a record of the case comprised of a summary of the evidence available to the Requesting State, including identification evidence that would be sufficient to justify the committal for trial of the person sought, if the conduct had occurred in the Requested State. The record may include any report, statement or other relevant documentation.

(d) in the case of a request submitted by the Republic of South Africa, prima facie evidence of the commission of the offence by such person.

(e) in the case of a request submitted by the Kingdom of Lesotho, a certificate issued by the prosecutor in charge of the prosecution of the case containing a summary of the available evidence and a statement that the evidence is sufficient under the law of the Requesting State to warrant the prosecution of the person sought.
(f) in the case of a person sought for the imposition or enforcement of a sentence:
(i) a statement by a judicial, prosecuting or corrections official describing the conduct for which the person was convicted and attaching a copy of the document that records the conviction and, where applicable, sentence of the person. This statement shall be certified by the judicial, prosecuting or corrections official to be accurate; and
(ii) if a portion of the sentence has already been served, a statement by a public official specifying the portion of the sentence which remains to be served.
2. Any sworn translation produced in the Requesting State of documents submitted in support of a request for extradition shall be admitted for all purposes in extradition proceedings.

Articles 6 and 7 of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
Article 6
Channel of Communication
1. The request for extradition shall be made in writing and communicated through diplomatic channels:
(a) in the case of the Kingdom of Lesotho, to the Ministry of Foreign Affairs; and
(b) in the case of the People's Republic of China, to the Ministry of Foreign Affairs.
2. Requests for provisional arrest shall be communicated as outlined in paragraph 1 of this Article or through the facilities of the International Criminal Police Organization (INTERPOL) or through other channels agreed upon by both contracting States.

Article 7
Documents to be Submitted
The following documents shall be submitted in support of a request for extradition:
(a) in all cases, whether a person is sought for prosecution or the imposition or enforcement of sentence:
(i) the name of the requesting authority;
(ii) information about the person sought including, but not limited to, his or her name, age, sex, nationality, occupation or location that may help to identify or trace that person;
(iii) a statement prepared by a competent authority, which describes briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and applicable penalty. This statement shall also indicate that the legal provisions provided were in force both at the time of the commission of the offence and at the time of the extradition request;
(iv) a copy of the text of the relevant legal provisions establishing criminal jurisdiction over the offence where the offence occurred outside the territory of the Requesting State; and
(v) a copy of the text of the relevant legal provisions concerning any time limit on the prosecution of the offence in question.
(b) in the case of a person sought for prosecution for an offence:
(i) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued by a competent authority of the Requesting State;
(ii) a copy of the indictment, charge sheet or other charging document, if any; and
(iii) a document issued by a competent authority in charge of the prosecution of the case containing a summary of the available evidence and a statement certifying that the evidence is sufficient under the laws of the Requesting State to warrant the prosecution of the person sought.
(c) in the case of a person who has been convicted:
(i) a statement by a competent authority, describing the conduct for which the person was convicted and a certified copy of the document that records the conviction and, where applicable, sentence of the person; and

(ii) if a portion of the sentence has already been served, a statement by a competent authority, specifying the portion of the sentence which remains to be served.

Sections 12, 13 and 17 of the Fugitive Offenders Act of 1967

Discharge in case of Delay in returning

12. (1) If any person committed to await his return is in custody in Lesotho under this Act after the expiration of the following period, that is to say —

(a) in any case, the period of two months beginning with the first day on which, having regard to subsection (2) of section 10 of this Act, he could have been returned;

(b) where a warrant for his return has been issued under section 11 of this Act, the period of one month beginning with, the day on which that warrant was issued, he may apply to the High Court for his discharge.

(2) If upon any such application the Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody, and, if a warrant for his return has been issued under the said section 11, quash that warrant.

13. (1)

Evidence

In any proceedings under this Act, including proceedings on an application for the review of an order in respect of a person in custody under this Act —

(a) a document duly authenticated, which purports to set out evidence given an oath in a designated country shall be admissible as evidence of the matters stated therein;

(b) a document duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, in any proceeding in any such country shall be admissible in evidence;

(c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of or of a part of, any such country shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purposes of this section —

(a) in the case of the document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge, or magistrate or officer in or of the country in question to be the original document containing or recording that evidence or a true copy of such a document;

(b) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been or to be a true copy of a document which has been so received;

(c) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid, and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the designated country.

(3) In this section "oath" includes affirmation or declaration; and nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

17. (1) This section applies to any person accused of an offence under the law of Lesotho as mentioned in subsection (1) of section 16 of this Act.

(2) If in the case of a person to whom this section applies, either —

(a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in Lesotho or being returned; or

(b) on his trial for that offence, he is acquitted or discharged, the Minister may, if he thinks fit, on the request of that person arrange for him to be sent back free of charge and with as little delay as possible to the country from which he was returned.

483. In Rex v Isaac Joseph, the provisions of the treaty as relates to timeframes stated above were complied with by Lesotho in regard to an incoming request.

(b) Observations on the implementation of the article

484. It was explained during the country visit that the timeframe for executing extradition requests depends on several factors, including whether the person sought can be located. It can take up to six months to process a request or, once a criminal case is launched, several days.

485. The information provided seems consistent with the provision under review, though little information was provided on the practical application of these measures in practice.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

486. Article 12 of the treaties with South Africa and China (respectively) provide for provisional arrest and ensuring the presence of the suspect in the proceedings. Further, Section 8 of the Fugitive Offenders Act 1967 provides for arrest for purposes of committal.

487. As for examples of cases, in Rex v Isaac Joseph and Rex v Mbobo, suspects were arrested and remanded into custody, and in the latter case, bail was refused and this was to ensure the defendant's presence at the hearing.

(b) Observations on the implementation of the article

488. Based on the information provided, the provision under review appears to be implemented.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

489. Lesotho reported that it cannot refuse extradition on the ground that the person sought is a national of Lesotho according to article 5 of the Extradition Treaty with South Africa (quoted below). However, extradition of nationals may be refused under the extradition treaty with China. The obligation to prosecute in lieu of extradition is set forth in article 5 of the treaty with China. The provisions are cited below.

Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
Article 5
Nationality
1. A Contracting State shall have the right to refuse to extradite its own nationals.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case for prosecution to its competent authorities and inform that Requesting State of any progress within six months.

Article 5 of the Treaty on Extradition with South Africa:
ARTICLE 5
Nationality
Extradition shall not be refused on the ground of the nationality of the person sought.

490. It was reported during the country visit that Lesotho has never refused the extradition of a national.

491. However, Lesotho would ensure effective prosecution if it denied the extradition of a person on the basis of Section 4 (3) of the Penal Code Act of 2010.

Section 4 of the Penal Code
Territorial application
(3) A person who, while outside Lesotho, commits an act or makes an omission where such an act or omission forms part of an offence, of which the other elements occur or have effect within Lesotho or is an offence in respect of which Lesotho is enjoined to punish under international law, may, on coming into Lesotho, be tried and punished for such an offence as if the act or omission had been committed within Lesotho.

(b) Observations on the implementation of the article

492. It is understood that Lesotho has no difficulty to extradite a national if permitted to do so under a treaty, though the refusal to extradite nationals is also permitted under the extradition treaty with China.

493. Lesotho can and has extradited its nationals, as in the case of S v. Sesinyi and another, in which the two accused were Lesotho citizens who committed a farm attack in South Africa and then fled to Lesotho. They were arrested in Lesotho and an extradition application was launched. The application was successful in a magistrate court in Lesotho whereafter the accused appealed the order in the Lesotho High Court. The appeal was eventually dismissed in 2010. The South African police authorities assisted the Lesotho Director of Public Prosecutions and his personnel during the extradition application. The accused were convicted of murder, robbery and rape in South Africa. One accused was sentenced to life imprisonment and the other to an effective term of 23 years imprisonment.

494. It is noted that the extradition of nationals is addressed on a case-by-case basis in Lesotho's treaties. Moreover, the reviewing experts have some reservations about the application of the cited Penal Code provision to cases involving nationals. Lesotho should

ensure that future treaties and the forthcoming extradition law establish an obligation to prosecute nationals where extradition of nationals may be refused or, alternatively, allow for the extradition of nationals.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

495. Lesotho stated that conditional surrender can be agreed upon by parties concerned under existing treaties. Lesotho considers this a matter of bilateral agreement between parties.

496. Conditional surrender of nationals has never been imposed by Lesotho.

(b) Observations on the implementation of the article

497. It was confirmed that, although conditional surrender of nationals is not a requirement under Lesotho's laws or treaties, it could be agreed on a case by case basis.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

498. Lesotho indicated that there is no specific legislation that would require it to consider enforcing the remainder of a foreign sentence in the case of a national, but this would be subject to an arrangement between parties.

499. Extradition for purposes of enforcing a sentence is addressed in articles 1 and 2(2) of the treaties with South Africa and China, respectively. As indicated above, Lesotho would not refuse extradition of its nationals in the case of South Africa, though it may do so under the treaty with China. Lesotho has never refused extradition of a national.

Articles 1 and 2(2) of the Treaty between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho on Extradition (2001)

"ARTICLE 1
Obligation to Extradite
Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty and their respective domestic law, persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE 2
"Extraditable Offences
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting State for an extraditable offence, extradition shall be granted if a period of at least six months of the sentence remains to be served."

Articles 1 and 2(2) of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
ARTICLE 1
Obligation to Extradite
Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty and their respective domestic laws and at the request of the other Contracting State, persons who are wanted for prosecution or imposition or enforcement of a sentence in the Requesting State for an extraditable offence.
2. Where the request for extradition relates to a person sentenced by a court of the Requesting State for an extraditable offence, extradition for the purpose of enforcing the sentence shall be granted if a period of at least six months of the sentence remains to be served.

(b) Observations on the implementation of the article

500. This provision of the Convention does not oblige a State party to adopt a specific legal framework on extradition for enforcing a sentence, but it is desirable to integrate such a framework. The obligation to extradite under these circumstances is addressed in the bilateral extradition treaties in cases not involving nationals.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

501. Lesotho cited as the applicable legal framework the Constitution of Lesotho (in particular Section 12), the Criminal Procedure and Evidence Act, and the Human Rights Act. Relevant provisions are also found in Lesotho's extradition law and treaties cited below.

502. The above legislation guarantees the fundamental human rights and freedoms of every person in the Kingdom of Lesotho, most specifically, the right to a fair trial and other human rights.

Article 4(4) of the Treaty between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho on Extradition (2001)

"ARTICLE 4
Discretionary Refusal of Extradition
Extradition may be refused in any of the following circumstances:
4. Where, in exceptional cases, the Requested State while also taking into account the seriousness of the offence and the interests of the Requesting State considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations."

Article 4(b) of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
ARTICLE 4
Discretionary Refusal of Extradition
Extradition may be refused where:
(b) in exceptional cases, the Requested State, while also taking into account the seriousness of the offence and the interests of the Requesting State, considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

Sections 6(1) and 16 of the Fugitive Offenders Act of 1967
6. (1) A person shall not be returned under this Act to a designated country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the court of committal or to the High Court in an action for the redress of a contravention of that person's right to personal liberty or for the review of the order of committal —
(a) that the offence of which that person is accused or was convicted is an offence of as political character;
(b) that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race. religion, nationality or political opinions; or
(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

16. (1) This section applies to any person accused or convicted of an offence under the law of or any part of Lesotho who is returned to Lesotho from any designated country, under any law of that country corresponding with this Act.
(2) A person to whom this section applies shall not, during the period described in subsection (3) of this section be dealt with in Lesotho for or in respect of any offence committed before he was returned to Lesotho other than —
(a) the offence in respect of which he was returned;
(b) any lesser offence proved by the facts proved for the purposes of securing his return; or
(c) any other offence in respect of which the Government of the country from which he was returned may consent to his being dealt with.
(3) The period referred to in subsection (2) of this section in relation to a person to whom this section applies is the period beginning with the day of his arrival in Lesotho on his return as mentioned in subsection (1) of this section and ending forty-five days after the first subsequent day on which he has the opportunity to leave Lesotho.

(b) Observations on the implementation of the article

503. Lesotho has cited relevant measures to implement the provision under review. By way of example, Lesotho cited the case of Rex v. Solomon R. Mabasa (2010), in which seven citizens of Mozambique and two citizens of South Africa were tried in Lesotho in a robbery case. The State secured them counsel and provided for translation to ensure they were in full appreciation of the criminal proceeding, in accordance with Section 12 of the Constitution. It was explained during the country visit that the issue of fair treatment has never been raised

by a defendant in an extradition case. Based on the information provided, the provision appears to be implemented.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

504. Lesotho reported that all treaties protect against discrimination. If proven factually that the extradition is based on considerations of politics, sex, race, religion, nationality etc., then Lesotho is bound to refuse the request, even if it involves an offence under the Convention. Lesotho cited the treaty between South Africa and Lesotho (article 3(2)) and the treaty with China (article 3(b)).

Article 3(2) of the Treaty between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho on Extradition (2001)
ARTICLE 3
"Mandatory Refusal of Extradition
Extradition shall be refused in any of the following circumstances:
2. Where there are substantial grounds for believing that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of that person's race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons."

Article 3(b) of the Treaty on Extradition between the Kingdom of Lesotho and the People's Republic of China (2003)
Mandatory Refusal of Extradition
Extradition shall be refused where:
(b) the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that that person's position may be prejudiced for any of those reasons;

Section 6(1) of the Fugitive Offenders Act of 1967
6. (1) A person shall not be returned under this Act to a designated country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the court of committal or to the High Court in an action for the redress of a contravention of that person's right to personal liberty or for the review of the order of committal —
(a) that the offence of which that person is accused or was convicted is an offence of as political character;
(b) that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race. religion, nationality or political opinions; or
(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(b) Observations on the implementation of the article

505. No provision of the Convention obliges a requested State to extradite if it has strong reasons to believe that the prosecution or punishment is sought against a person based on sex, race, religion, national origin ethnic and political opinions. The statute of limitations is optional.

506. The issue of political discrimination was raised in the case of Rex v Mochebelele (conviction) C of A (cri) 02/08, which was cited above, though it has not been finally considered by the court. The defendant raised the issue on appeal but not at the beginning of the trial.

507. Based on the information provided, the provision appears to be implemented.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

508. Lesotho cited the treaties with South Africa and China, specifying that both instruments contain grounds for refusal, but that fiscal matters are not one of them. Fiscal matters are also not referred to as grounds for refusal in Section 6 of the Fugitive Offenders Act (cited under paragraph 8 of the article above).

Article 2(4) of the Extradition Treaty with South Africa provides:
"4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence: Provided that the conduct for which extradition is sough is an offence in the Requested State, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the Requesting State."

Article 2(5) of the Extradition Treaty with China provides
5. Where extradition of a person is sought for an offence against a law relating to taxations, custom duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or foreign exchange regulation or the same kind as the law of the Requesting State.

509. The examples of implementation of this provision are: Rex v Mochebelele (outgoing request for extradition) and Rex v Isaac Joseph (incoming request from South Africa), which both involve fiscal matters. The latter is a recent case in which extradition involving fiscal matters was not refused by Lesotho (the matter is still pending but is expected to proceed).

(b) Observations on the implementation of the article

510. Lesotho has implemented this provision of the Convention.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

511. Lesotho informed that its extradition treaties require reasons for refusal to be communicated to the requesting State. However, a duty to consult before refusing extradition is not addressed. There are no specific workflow or other procedures in place for handling extradition requests in the DPP's office. There have been no cases where Lesotho has had to consult with a requesting State as it has never refused extradition.

Articles 14(1) and 22 of the Extradition Treaty with South Africa (emphasis added):
14.1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial refusal of an extradition request.

22. Consultation
The Ministry for Law and Constitutional Affairs of the Kingdom of Lesotho and the Department of Justice and Constitutional Development of the Republic of South Africa and their respective prosecuting authorities, or persons designated by them, may at any time consult with each other directly or through the facilities of INTERPOL in connection with the processing of individual cases and in furtherance of the efficient implementation of this Treaty.

Article 14 of the Extradition Treaty with China:
Article 14
Decision and Notification
The Requested State shall deal with the request for extradition in accordance with the procedures provided for in its laws and as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial refusal of an extradition request.

(b) Observations on the implementation of the article

512. The treaties do not provide for a duty of prior consultation with the Requesting State before extradition is refused. It is recommended that Lesotho amend its treaties in line with the provision under review and address the matter in the forthcoming extradition law.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

513. Lesotho informed that they are in consultations with Botswana on a bilateral extradition treaty. A Joint Bilateral Cooperation Commission (JBCC) with Botswana has been established, which consists of heads of State, ministers and technical staff and covers cooperation on all levels between the two countries, including matters of security, tax, and borders and that meets to discuss policy and operational issues. The JBCC is coordinating a bilateral treaty on extradition between the two countries and a draft has been prepared but not signed. A JBCC with South Africa has also been established.

514. Lesotho currently has in place two bilateral extradition treaties with South Africa and China as well as the SADC Protocol on Extradition. It is also party to the African Union Convention on Preventing and Combating Corruption since 2005.

(b) Observations on the implementation of the article

515. Lesotho has entered into a small number of extradition treaties, though it could in principle apply UNCAC directly. As a treaty is required for extradition, Lesotho is encouraged, in the context of ongoing reforms of its extradition law and practice, to consider whether it has an adequate basis for issuing and executing extradition requests in the future.

(c) Challenges related to article 44

516. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inter-agency coordination;
2. Inadequacy of existing implementing norm measures (laws, regulations etc.);
3. Specificities in its legal system;
4. Competing priorities;
5. Limited capacity (e.g. human/technological/institution);
6. Limited resources for implementation (e.g. human/financial).

(d) Technical assistance needs

517. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Capacity-building programmes for authorities responsible for extradition: training for judges and prosecutors on extradition is needed.
2. Development of an extradition law;
3. Model treaties.

None of these forms of technical assistance has been provided to Lesotho.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

518. According to the extradition treaties with South Africa and China, extradition may be sought for purposes of enforcing a sentence and the prisoner may be transferred in accordance with the provisions of those treaties.

519. The transfer of prisoners is not addressed in the Fugitive Offenders Act, which deals with the return and related custodial measures of persons accused or convicted of offences

(b) Observations on the implementation of the article

520. There are no multilateral and bilateral agreements on the transfer of sentenced persons. There has been no experience on the transfer of prisoners to or from Lesotho. It was explained that the matter would be addressed if the situation arose and that treaties are negotiated by executive decision on a case-by-case basis. The issue of prisoner transfer arrangements has not been formally considered. As a result the article is not implemented.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

521. There is no stand-alone law on mutual legal assistance. As in the case of extradition, Lesotho relies on its bilateral and (in principle) multilateral treaties. Lesotho has in place one bilateral treaty on mutual legal assistance with South Africa and is also party to the SADC Protocol on Mutual Legal Assistance in Criminal Matters and the African Union Convention on Preventing and Combating Corruption.

522. As mentioned in the introduction to chapter IV, a treaty is required for Lesotho to provide mutual legal assistance, although Lesotho can also cooperate with other States on the basis of reciprocity in the absence of a bilateral treaty, and it has done so in one case (as described below).

523. The information described in the introduction to chapter IV of this report on international cooperation and the application of international treaties for purposes of mutual legal assistance (MLA) is referred to.

524. Lesotho cited article 1 of the Treaty on Mutual Legal Assistance with South Africa.

Treaty on Mutual Legal Assistance with South Africa
Article 1.
Obligation to provide Mutual Legal Assistance
1. The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.

…

5. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.

525. Under article 1(5) of Lesotho's treaty with South Africa, dual criminality is not a requirement for rendering MLA. However, it was explained during the country visit that dual criminality is otherwise generally a requirement for rendering MLA, as in the case of extradition. The offence must be recognized in Lesotho.

526. Lesotho provided the following statistics on the number of MLA requests received and executed in the last three years.

MLA requests	**Incoming (all related to corruption, 1 from the UK (partially satisfied), 3 from South Africa (all satisfied))**	**Outgoing (10 corruption-related requests by DCEO via DPP to South Africa, 1 non-corruption related request to Germany (homicide))**
2010	1	11 since 2009
2011	2	
2012	1	
Total	**4**	**11**

The request to Germany was made on the basis of reciprocity, as there is no bilateral treaty in place with Germany.

527. Lesotho has not refused any incoming requests and none of its outgoing requests have been refused, though the majority of them have been pending for some time.

528. As an example of implementation, Lesotho reported that it has assisted South Africa in a number of corruption cases that extended to Lesotho. A recent case was a money laundering investigation relating to drug smuggling where some officials in South Africa and Lesotho were involved in the syndicate and Lesotho banks were being used in the laundering of monies. In executing the request, Lesotho opened a domestic inquiry and applied the provisions of its domestic law, in this case the Anti-Money Laundering and Proceeds of Crime Act, to execute the request. Consultations were held with the DPP on the money laundering charges. The request related to the provision of banking records to South Africa, which Lesotho was able to respond to.

529. Regarding the steps to ensure the full implementation, Lesotho informed that they have made a proposal for the enactment of a Mutual Legal Assistance Act, and this process will take at least six months. Discussions are being held between the Chief Anti-Corruption Prosecutor, DPP and the Attorney General, though they are still in the early stages. A treaty on MLA with Botswana is being drafted but is still in the early stages of negotiation.

530. As with extradition, the Attorney General's office (DPP) is the main agency in charge of MLA. This is also provided for in article 16 of the MLA Treaty with South Africa.

(b) Observations on the implementation of the article

531. The reviewing experts note that, with the exception of Lesotho's treaty with South Africa, it was explained that dual criminality is generally required to render MLA, as in the case of extradition.

532. The recommendations described in the introduction to chapter IV of this report on international cooperation are referred to. In particular, the reviewing experts recommend that Lesotho adopt a specific law on mutual legal assistance in criminal matters, to provide greater legal certainty in making and executing MLA requests, and they welcome the early steps that have been taken by Lesotho in this regard. In light of the treaty requirement for rendering MLA, it is also recommended that Lesotho consider whether one single bilateral treaty on MLA (in addition to the multilateral treaties) provides it with a sufficient legal basis to issue and execute requests for mutual legal assistance in criminal matters as needed, in particular in future cases. It is also recommended that Lesotho amend its bilateral MLA treaty, to ensure that it is fully in line with the Convention, as described below.

533. As also noted in the introduction, it was difficult to assess in detail Lesotho's practice of providing mutual legal assistance in corruption cases, due to the small number of incoming requests, the absence of data on any requests that Lesotho has refused, and, more generally, the absence of a specific system for collecting data. It is recommended that Lesotho adopt a system to allow it to collect data on the origin of mutual legal assistance requests, the timeframe for responding to these requests, and the response provided, including any grounds for refusal. This would allow a fuller assessment of whether Lesotho is able to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to UNCAC offences, as required by the provision under review.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

534. Lesotho has never rendered assistance on a request related to an offence involving legal persons. Because Lesotho recognizes the criminal liability of legal persons, it would not be precluded from giving assistance in such cases.

(b) Observations on the implementation of the article

535. Although no examples or treaty provisions have been cited, it appears that Lesotho would face no particular difficulties in providing assistance in relation to a request involving a legal person. Lesotho is encouraged to specify these requirements in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 3

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

536. Lesotho reported that it can afford the forms of mutual legal assistance listed in this provision.

Articles 1(6) and 8 of the Treaty on Mutual Legal Assistance with South Africa:
Assistance includes:
(a) locating and identifying persons and objects;
(b) serving documents, including documents seeking the attendance of persons; and providing returns of such service;
(c) providing information, documents and records;
(d) search and seizure;
(e) providing objects, including lending exhibits;
(f) taking evidence and obtaining statements
(g) authorizing the presence of persons from the Requesting State at the execution of requests;
(h) making detained persons available to give evidence or assist investigations;
(i) facilitating the appearance of witnesses or the assistance of persons in investigations
(j) taking measures to locate, restrain or forfeit the proceeds of crime; and
(k) any other form of assistance not prohibited by the law of the Requested State

Article 8
Search and Seizure
1. The Requested State shall execute a request for a search and seizure.
2. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

537. Regarding examples of implementation, Lesotho reported that it has assisted South Africa on the basis of this article in the "Instant Cape" matter. In this case, Lesotho provided bank records to South Africa upon request and also assisted South African authorities who came to Lesotho for pursuing their investigation.

538. Lesotho further reported that it can provide the forms of mutual legal assistance related to subparagraphs (j) and (k) based on its Money Laundering and Proceeds of Crime Act of 2008, specifically chapters IV and V (eg, Article 14) of the Act.

539. The measures in this provision would be fully addressed in the draft mutual legal assistance law.

(b) Observations on the implementation of the article

540. On the basis of the treaty provision and one example cited, it appears that Lesotho can provide assistance for various purposes, in line with the provision under review. Nonetheless it is recommended that the matter be specified in law and its future treaties.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

> *4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*
>
> *5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

(a) Summary of information relevant to reviewing the implementation of the article

541. Lesotho considers that the transmission of information without a prior request is feasible as a matter of reciprocity.

542. There are quite a good number of cases where information was shared and operations were undertaken pursuant to this article. For example, in one case Lesotho provided information by telephone to police authorities in South Africa concerning the identification of suspects in a corruption-related matter where there was no prior formal request.

543. No relevant measures were found in the treaty with South Africa.

(b) Observations on the implementation of the article

544. Lesotho is encouraged to formalize the measures on spontaneous information sharing in law and its treaties.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

545. Lesotho cited article 2(3) of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

546. It was explained that bank records can be provided in response to an MLA request upon issuance of a court order in accordance with the Money Laundering and Proceeds of Crime Act of 2008 (Section 32, Bank secrecy overridden).

547. No examples of implementation were provided.

(b) Observations on the implementation of the article

548. It was also explained during the country visit that the DCEO can provide bank records obtained under Section 8 of the Prevention of Corruption and Economic Offences Act without a court order (as described under UNCAC article 31 above) to a requesting State.

549. Although bank secrecy does not appear to pose a challenges to the provision of assistance under Lesotho's treaty with South Africa, it is recommended that Lesotho formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

550. Lesotho cited article 1(5) of the MLA Treaty with South Africa.

> Treaty on Mutual Legal Assistance with South Africa:
> 5. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.

551. As noted above, with the exception of South Africa, dual criminality is a requirement for Lesotho to render mutual legal assistance.

552. Lesotho has never denied a request for mutual legal assistance. There have been no issues of dual criminality in practice in responding to requests for mutual legal assistance. None of Lesotho's outgoing requests have been refused or postponed on the grounds of dual criminality.

553. Lesotho reported that coercive measures under Lesotho law refer to a situation where a subject is put under some force, duress, pressure of threats or undue influence of some kind, which normally violate the fundamental rights and freedoms of a subject, which could have been differently done.

554. Lesotho reported that it could render non-coercive assistance in the absence of dual criminality, such as where a subject volunteers to provide information on a voluntary basis where there is no official investigation despite the alleged offence not being a criminal inquiry in Lesotho. There have been no examples of this in practice.

555. Lesotho has not implemented paragraph 9(c).

(b) Observations on the implementation of the article

556. It is recommended that Lesotho formalize the measures laid out in the provision under review in law and its future treaties. Lesotho is also encouraged to adopt the referenced measures in practice, for example in the form of relevant guidelines for authorities handling MLA requests.

Article 46 Mutual legal assistance

Paragraphs 10 to 12

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

557. Lesotho cited articles 11 and 13 of the Mutual Legal Assistance Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 11
Making Detained Persons Available to Give Evidence or Assist Investigations
1. Upon request and to the extent permitted by laws of the Requested State:
a person serving a sentence in the Requested State shall be temporarily
transferred to the Requesting State to assist investigations or to testify provided that the person consents,
2. When the person transferred is required to be kept in custody under the law
of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request
3. When the sentence imposed expires, or where the Requested State advises
the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

Article 13
Safe Conduct
1. Subject to Article 11(2), a person present in the Requesting State in
response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than that to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free to
leave the Requesting State, has not left within thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned,

3. A person shall not be subjected to any sanction or compulsory measure in the Requested or Requesting State, for failing to appear in the Requesting State.

558. There has been no experience with the transfer of prisoners to or from Lesotho to provide evidence or testimony as provided for in the provisions under review.

(b) Observations on the implementation of the article

559. There is no provision in the treaty with South Africa on the prisoner receiving credit for serving his or her sentence while abroad for purposes of providing testimony. The remaining elements of the provision under review are largely addressed in the cited treaty. It is recommended that Lesotho formalize the requirements of the provision under review in law and its future treaties, and that it amend its existing treaty in this regard.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

560. Lesotho reported that it has established a central authority for mutual legal assistance, namely the Attorney General's office. This is also provided for in article 16 of the MLA Treaty with South Africa.

561. As a matter of existing practice, Lesotho allows requests for mutual legal assistance and any related communications to be transmitted to its central authority, but requires that such requests and related communications be addressed to it through diplomatic channels.

562. As a matter of existing practice, Lesotho agrees that, in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization (INTERPOL).

(b) Observations on the implementation of the article

563. It is suggested that the information provided above be formally established in law and in Lesotho's future treaties. It is recommended that Lesotho adopt the draft MLA law as a matter of priority.

564. As also noted in the introduction, while it was explained that the Attorney General is the central authority for international cooperation, his role is to channel incoming and outgoing requests that are executed by other agencies, including the DPP and the police. Should this institutional structure lead to delays or other administrative obstacles, Lesotho should consider whether amending the law to have the DPP serve as the central authority would enhance efficiency.

565. Lesotho has not made the requisite notification to the United Nations. It is encouraged to send the requested information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 46 Mutual legal assistance

Paragraph 14

> *14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

(a) Summary of information relevant to reviewing the implementation of the article

566. Articles 3(5) and 20 of the MLA Treaty with South Africa provide as follows:

> Treaty on Mutual Legal Assistance with South Africa:
> 5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.
>
> Article 20
> Language
> Requests and supporting documents shall be accompanied by a translation onto one of the official languages of the Requested State.

567. As a matter of existing practice, Lesotho would accept an oral request in urgent circumstances, if it is later confirmed in writing.

(b) Observations on the implementation of the article

568. The information provided should be codified in law and in Lesotho's future treaties.

569. Lesotho has not made the requisite notification to the United Nations. It is encouraged to send the requested information to the Chief, Treaty Section, Office of Legal Affairs, Room

M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

570. Lesotho cited Article 3 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 3
Contents of Requests

1 . In all cases, requests for assistance shall indicate:

(a) the competent authority conducting the investigation, prosecution or proceedings to which the request relates;

(b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;

(c) the purpose of the request and the nature of the assistance sought;

(d) the degree of confidentiality required and the reasons therefor, and

(e) any time limit within which the request should be executed.

2. In the following cases, requests for assistance shall include:

(a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime. a statement indicating, the basis for belief that evidence or proceeds may be found in the Requested State;

(b) in the case of requests to take evidence from a person, an indication as to whether sworn. or affirmed statements are required and a description of the subject matter of the Evidence or statement sought;

(c) In the case of lending of-exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned and

(d) in the care of making detained persons available, en indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return,

3. If necessary, and where possible, requests for assistance shall include:
(a) the identity, nationality and location of a person who is the subject of the investigation, prosecution or proceedings;
(b) details of any particular procedure or requirement -that the Requesting State wishes to be followed and the reasons therefor.
4. If the Requested Stale considers that the information is not sufficient to enable the request to be executed., it may request additional information
5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

571. There have been no issues with regard to the content of incoming or outgoing requests. In all cases Lesotho has been able to respond to incoming requests for MLA.

(b) Observations on the implementation of the article

572. It is recommended that Lesotho formalize these requirements in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

573. Lesotho cited Article 2(1) of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 2
Execution of Requests
1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.

574. As explained under paragraph 1 above, Lesotho applies its existing law in responding to requests for MLA received under its existing treaty. Furthermore, Lesotho informed that it endeavors to comply with the requested procedure, though there were no examples where it has been able to do so.

(b) Observations on the implementation of the article

575. It is recommended that Lesotho formalize these requirements in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

576. Lesotho cited Articles 9 and 12 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 9
Taking Evidence in the Requested State
1. A person requested to testify and produce documents, records or objects in the Requested State shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. The Requested State shall, to the extent permitted by its laws, permit the presence of persons, specified in the request, during the execution of the request and shall allow such persons to question the person giving the evidence" The Requested State may specify the manner in which the questioning will take place.
3. The persons present at the execution of a request shall be permitted to make a verbatim record of the proceedings. The use of technical means to make such a verbatim record shall be permitted.
4. To the extent not prohibited by its law, the Requested State shall execute a request for the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.

Article 12
Providing evidence or Assisting Investigations in the Requesting State
Upon request, the Requested State shall invite a person to assist in an investigation or to appear as a witness in the Requesting State, with that person's consent. In the request, the Requesting State shall advise what expenses are payable.

577. As an example of implementation, Lesotho cited the case of Rex v. Keketso Lekota, a murder cases where a German tourist had been robbed and murdered. A witness testified in Germany via video testimony, which was streamed live via videolink in a courtroom in Lesotho.

578. Lesotho has never conducted video testimony to transfer such evidence to another country, though in principle it would be able to do so on request from another country.

(b) Observations on the implementation of the article

579. The information in the cited case was introduced live during the court proceeding. It appears based on the example cited that there were no issues concerning the admissibility of such evidence in Lesotho. Nonetheless, Lesotho is encouraged to formalize the measures laid out in the provision under review in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

580. Lesotho cited Article 18 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 18
Limitation of Use
The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request, without the prior consent of the Central Authority of the Requested State.

581. There have been no instances where Lesotho was requested to provide information in a foreign investigation, prosecution or judicial proceeding and it encountered issues regarding using the evidence for other purposes than stated in the request, nor have there been any issues in this regard concerning Lesotho's outgoing requests.

582. Lesotho indicated that there are no circumstances where the authorities would be required under Lesotho law to disclose information received in response to an MLA request that is exculpatory to an accused.

(b) Observations on the implementation of the article

583. It is recommended that Lesotho formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

584. Lesotho cited Article 17 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 17
Confidentiality
1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential, disclosed or used only subject to such terms and conditions as it may specify.

2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. lf the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

585. No issues concerning confidentiality have arisen in practice in Lesotho's incoming or outgoing requests.

(b) Observations on the implementation of the article

586. It is recommended that Lesotho formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Subparagraph 21 (a)

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

587. Lesotho cited Article 4 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 4
Refusal or Postponement of Assistance
1. Assistance may be refused if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person.
2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary, if the Requesting State accepts assistance subject to those conditions, it shall comply with them.

588. Lesotho has never refused a request for MLA, nor have any of its outgoing requests been refused.

(b) Observations on the implementation of the article

589. The provision is implemented with respect to Lesotho's treaty with South Africa. Lesotho is encouraged to follow its existing treaty practice in terms of grounds for refusing MLA in its future treaties and to formalize these requirements in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

590. Lesotho cited Articles 1(3) and (4) and 2(3) of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 1
3. Criminal matters mean statutory and common law offences and, where applicable, customary law offences.
4. Criminal matters include investigations, prosecutions or proceedings relating to offences concerning taxation, customs duties and foreign exchange.

Article 2
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

591. Tax and fiscal offences are recognized under Lesotho's statutory and common law. Further, Lesotho explained that the MLA Treaty with South Africa contains grounds for refusal, but fiscal matters are not one of them.

592. No examples of implementation were provided.

(b) Observations on the implementation of the article

593. It is recommended that Lesotho formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

594. Lesotho cited Article 4(3) of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

595. The provision has never been applied in practice, because Lesotho has never refused a request for MLA in the past. It indicated that it would provide such grounds for refusal as required by its treaty.

(b) Observations on the implementation of the article

596. It is recommended that Lesotho formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

597. Lesotho cited Article 2(1) and (2) of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 2
Execution of Requests
1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.

598. Lesotho indicated that deadlines for incoming and outgoing requests are a challenge for Lesotho, particular if court proceedings are required. The majority of Lesotho's outgoing requests have been unanswered for some time. Lesotho reported that it lacks capacity to respond to requests in a timely manner.

599. Regarding the customary length of time between receiving requests for mutual legal assistance and responding to them, Lesotho reported that it depends on the complexity of the matter, but investigations begin as soon as the request is made. If the request does not involve a complex matter, such as the mere provision of banking records, it can be executed in approximately one or two months. Acknowledgement of receipt is done immediately and thereafter updates follow as requested.

600. No examples of implementation were provided.

(b) Observations on the implementation of the article

601. It is recommended that Lesotho formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

602. Lesotho cited Article 4(2) of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 4
2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

603. Lesotho would postpone assistance as required by its treaty. There have been no cases where assistance had to be postponed due to an ongoing domestic investigation or prosecution.

(b) Observations on the implementation of the article

604. Lesotho is encouraged to formalize the measures laid out in the provision under review in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

605. Lesotho has partially implemented this provision legislatively through its treaty with South Africa. Lesotho cited Article 4(4) of the MLA Treaty with South Africa, which establishes an obligation to consider whether assistance may be granted subject to such conditions as it deems necessary, but does not establish the related duty to consult with the requesting State on the issue. A general duty to consult is provided for in Article 23, but does not address the duty to consult before refusing or postponing assistance.

Treaty on Mutual Legal Assistance with South Africa:
Article 4
4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it

deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 23
Consultation
The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

(b) Observations on the implementation of the article

606. It is recommended that Lesotho adopt the relevant measures in its existing treaty as well as its future law and treaties, and to apply the measures in practice.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

607. The safe conduct provision in the Treaty with South Africa was cited under paragraph 12 above. The provision provides for a safe conduct period of thirty days and is thus more extensive than article 46(27) of the Convention.

608. There have been no cases where this measure has been invoked in practice for the transfer of a witness, expert or other person.

(b) Observations on the implementation of the article

609. Apart from the cited treaty provision, there are no laws or practice aligned to this provision. It is recommended that Lesotho formalize these requirements in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and

conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

610. Lesotho cited Article 21 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 21
Expenses
1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear:
(a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State and any expenses payable to that person while in the Requesting State pursuant to a request under Articles 11 or 12 of this Treaty;
(b) the expenses and fees of experts either in the Requested State or the Requesting State;
(c) the expenses of translation, interpretation and transcription; and
(d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parries shall consult to determine the terms and conditions under which the requested assistance can be provided.

611. There have been no cases where the issue of expenses has arisen in practice.

(b) Observations on the implementation of the article

612. The provision of the treaty is largely in line with article 46(28) of the Convention. Nonetheless, Lesotho is encouraged to formalize these requirements in law and its future treaties.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

613. Lesotho cited Article 7 of the MLA Treaty with South Africa.

Treaty on Mutual Legal Assistance with South Africa:
Article 7
Provision of Information, Documents, Records and Objects
The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.

The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.

614. Regarding information on how such records, documents or information can be obtained and how they are provided to the requesting State Party, Lesotho reported that upon receipt of a request, it would normally send to the requesting party all laws and documents relating to the request.

615. Lesotho explained that it cannot generally share documents that are not publicly available pursuant to an MLA request. If they are not available to the public, they cannot be availed to other countries, unless an oath of secrecy has been provided. There have been no cases where this issue has come up in practice.

(b) Observations on the implementation of the article

616. Lesotho is encouraged to formalize these requirements in law and its future treaties

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

617. Lesotho has in place one bilateral treaty on mutual legal assistance with South Africa, in addition to the SADC Protocol on Mutual Legal Assistance in Criminal Matters and the African Union Convention on Preventing and Combating Corruption.

618. As noted above, consultations on an agreement with Botswana are in place.

(b) Observations on the implementation of the article

619. As mentioned in the introduction to chapter IV of the Convention, in light of the treaty requirement for rendering MLA, it is recommended that Lesotho consider whether one single bilateral treaty on MLA provides it with a sufficient legal basis to issue and execute requests for mutual legal assistance in criminal matters as needed, in particular in future cases.

620. The reviewing experts also recommend that, in regards to technical assistance, Lesotho may want to consider good practices to learn from other countries that have so far been successfully rendering and requesting mutual legal assistance and implementing similar legislation.

(c) Challenges related to article 46

621. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination;
2. Specificities in its legal system: a law on MLA and additional treaties on MLA are needed. Procedures for handling and making MLA requests need to be drafted and established.
3. Limited capacity (e.g. human/technological/institution/): dedicated staff to handle MLA requests in the DPP's office is needed. Training is needed for judicial officers, in particular the Attorney General's office/DPP and other criminal justice institutions, to familiarize them with the requirements under Lesotho's law and treaties.
4. Limited resources for implementation (e.g. human/financial): awareness raising/training of investigating agencies regarding MLA processes are needed.

622. The reviewing experts agree with the challenges and technical assistance needs reported in relation to the implementation of article 46 of UNCAC.

(d) Technical assistance needs

623. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Capacity-building programmes for authorities responsible for international cooperation in criminal matters: Lesotho reported that it lacks capacity to respond to requests in a timely manner.
2. Model law and treaties.

None of these forms of technical assistance has been provided to Lesotho to-date.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

624. Lesotho has not implemented the provision. There are no agreements or arrangements on the transfer of criminal proceedings, nor have there been any such cases of transfers to or from Lesotho, although Lesotho could consider the Convention as the applicable legal framework for the transfer of proceedings.

(b) Observations on the implementation of the article

625. It was explained during the country visit that there has been no experience in the transfer of criminal proceedings.

(c) Challenges related to article 47

626. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (constitution, laws, regulations etc.);

2. Specificities in its legal system.

(d) Technical assistance needs

627. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Legal advice;
2. Model laws/treaties.

None of these forms of technical assistance has been provided

Article 48 Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make

full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

628. Lesotho has established two Joint Bilateral Cooperation Commissions (JBCC) with South Africa and Botswana, which consist of heads of State, ministers and technical staff and cover cooperation on all levels between the countries, including matters of security, tax, and borders and that meets to discuss policy and operational issues.

629. Lesotho law enforcement authorities cooperate with law enforcement agencies in other countries through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and through INTERPOL's the National Central Bureau in Maseru. Lesotho is also a member of the Southern African Development Community (SADC) and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA). Through these networks, Lesotho has direct points of communication in other countries.

630. It was explained during the country visit that LMPS has no MOUs or cooperation agreements in place with other countries, but cooperates through INTERPOL and SADC channels. The DCEO also has no such cooperation agreements with foreign counterparts in place. The MOUs signed by the FIU are described under article 36 of UNCAC above.

631. The DCEO is a member of the Southern African Forum against Corruption (SAFAC), the International Association of Anti-Corruption Authorities (IAACA), and the African Association of Anti-Corruption Authorities (AACA).

632. At the time of the review, the Lesotho police had three police liaison officers posted through SADC in other countries: two in Zimbabwe and one in Botswana, whose mandate covered all criminal matters generally, not limited to corruption. A police officer from Lesotho had also previously been posted in South Africa.

633. The FIU of Lesotho is a new established unit that can and does cooperate with other financial intelligence units outside of Lesotho. Although it is not a member of the Egmont Group, the FIU has received, at the time of the review, two requests for information/intelligence from the FIU in South Africa (pending) and has made one request to the same FIU (also pending).

634. Regarding case examples, Lesotho referred to a case in which 20 million rand were stolen from the Ministry of Health and uncovered in South Africa. Through cooperation with South African police, the Lesotho police was able to initiate proceedings in South Africa drawing on direct channels of law enforcement cooperation to obtain evidence.

635. Cooperation to respond to offences committed through the use of modern technology can be done in particular through information sharing through INTERPOL (using, for example, the I24/7 database) and SARPCCO, though no specific examples were available. Crimes committed in Lesotho using technology are generally not corruption-related but include cybercrime and ATM fraud where, for example, bank cards are stolen in South Africa and funds are withdrawn in Lesotho. These cases are frequently investigated by Lesotho law

enforcement directly in South Africa. Likewise, the Lesotho authorities frequently support police officers from South Africa who conduct investigations in Lesotho.

636. Lesotho indicated that it could use the Convention and other multilateral treaties as the basis for direct law enforcement cooperation, though there have been no such cases to date.

(b) Observations on the implementation of the article

637. There is little evidence by way of examples of direct law enforcement cooperation at the international level in corruption cases, although it is explained that in principle such cooperation would be permitted under existing frameworks and arrangements. It is recommended that Lesotho:

- Enhance direct law enforcement cooperation, including beyond South Africa and INTERPOL channels, in line with the measures outlined in the article, in particular to facilitate communication and information exchange and direct cooperation in investigations. This could be done through adopting relevant MOUs or arrangements with other countries.
- For police and other investigative agencies like DCEO, explore enhancing personnel exchanges, for example through police attachments in other countries.
- Encourage learning from other countries in regard to police-to-police cooperation mechanisms and engage in further training and staff exchange for relevant law enforcement institutions.

(c) Challenges related to article 48

638. Lesotho has identified the following challenges and issues in fully implementing the provision under review:
1. Inter-agency coordination;
2. Limited capacity (e.g. human/technological/institution);
3. Limited resources for implementation (e.g. human/financial), in particular in the investigation of offences committed through the use of technology.

(d) Technical assistance needs

639. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Summary of good practices/lessons learned;
2. Support in establishing technical systems (e.g. set-up and management of databases/ information-sharing systems to coordinate activities with foreign counterparts).

None of these forms of technical assistance has been provided

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be

undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

640. Lesotho cited as the applicable legal framework the Joint Bilateral Cooperation Commissions as well as its bilateral or multilateral agreements, through which joint investigative teams could be established in specific cases. However, Lesotho has had no experience conducting joint investigations at the international level and has not entered into any formal agreements or arrangements in this regard.

(b) Observations on the implementation of the article

641. Lesotho has not had experience with joint investigative teams at the international level, although it was reported in the country visit that there have been, in support of investigations being conducted by one country, joint operations among law enforcement agencies in the region, namely Mozambique, Botswana, Swaziland and Lesotho.

(c) Challenges related to article 49

642. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency coordination;
2. Specificities in its legal system: there are no agreements or MoUs that specifically address joint investigations.
3. Limited resources for implementation (e.g. human/financial).

(d) Technical assistance needs

643. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model agreements or arrangements;
3. Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation.

None of these forms of technical assistance has been provided

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full

compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

644. Lesotho has not implemented this article. Although special investigative techniques could be conducted in specific cases through the Joint Bilateral Cooperation Commissions and pursuant to Lesotho's MoUs and bilateral or multilateral agreements (eg, INTERPOL), Lesotho has had no experience conducting special investigative techniques in the context of cooperation at the international level.

645. Lesotho reported that it has conducted undercover operations and surveillance at the domestic level, including in corruption cases, and that these techniques are not prohibited by the Criminal Procedure and Evidence Act 1981. An example was a case of theft by an official in the Government printing office, where a trap was set to obtain evidence of the theft, and the official was convicted. DCEO has recently introduced "smart pens" to record information during investigations and wire taps have also been used.

646. Evidence derived from special investigative techniques would be admissible in court under the common law depending on the nature of evidence. For example, pure intelligence derived from surveillance operations would need to be further investigated and pursued in order to obtain direct evidence (such as documents or testimony) that is admissible in accordance with common law principles.

(b) Observations on the implementation of the article

647. While Lesotho has had no experience with special investigative techniques at the international level, it has had experience in doing so domestically. Based on the information reported during the country visit, the evidence derived from such techniques at the national level is admissible if the technique was lawfully conducted.

648. While Lesotho can conduct special investigative techniques in practice under its common law, it may be useful to explore whether a legal provision would provide for greater certainty concerning the conduct of such techniques, specifically at the international level, and the admissibility of evidence derived therefrom.

(c) Challenges related to article 50

649. Lesotho has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency coordination;

2. Specificities in its legal system: there is no specific legal provision addressing the powers of law enforcement authorities to conduct special investigative techniques and to provide for

the admissibility in court of evidence derived therefrom. It was explained that such a legal provision would be useful in ensuring greater legal certainty in conducting such techniques, in particular in the context of cooperation at the international level.

3. Limited capacity (e.g. human/technological/institution);
4. Limited resources for implementation (e.g. human/financial);
5. Limited awareness of state-of-the-art special investigative techniques;

(d) Technical assistance needs

650. Lesotho has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;
2. Legal advice/model agreements or arrangements (see challenges above);
3. Capacity-building programmes for authorities responsible for international cooperation in criminal/investigative matters.

None of these forms of technical assistance has been provided to Lesotho.

UNODC