



POLICE BRUTALITY IN LESOTHO:

*Assessing prevalence and enhancing
human rights protection and
accountability for violations*

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ABBREVIATIONS AND ACRONYMS

APT	Association for Prevention of Torture
AU	African Union
BMP	Basotuland Mounted Police
CAT	Convention Against Torture
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CERD	Convention on Elimination of Racial Discrimination
CGPU	Child and Gender Protection Unit
CID	Crime Investigation Department
CMW	Convention on the rights of Migrant Workers and members of their families
CP&E	Criminal Procedure and Evidence Act
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
FDGs	Focus Group Discussions
IC&D	Inspectorate, Complaints and Discipline
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ICJ	International Court of Justice
KII	Key Informant Interviews
LMPF	Lesotho Mounted Police Force
LMPS	Lesotho Mounted Police Service
OAU	Organisation of African Unity
OC	Officer Commanding
PCA	Police Complaints Authority
PMU	Police Mobile Unit
PSU	Primary Sampling Units
PTC	Police Training College
RCTS	Robbery and Car Theft Squad
RLMP	Royal Lesotho Mounted Police
SOU	Special Operations Unit
SRC	Students' Representative Council
SSU	Secondary Sampling Units
TRC	Transformation Resource Centre
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties

OPERATIONAL DEFINITIONS

Torture:

For purposes of this study torture is used as defined in article 1(1) of CAT as follows:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹

Police Brutality:

In the context of this study, police brutality refers to use of unnecessary, or excessive force by police officers when handling suspects and other members of the public. It is used to refer to torture and other cruel, inhuman and degrading treatment.

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EXECUTIVE SUMMARY

The Kingdom of Lesotho is a party to several international human rights instruments which mandate it to prevent and prohibit acts of police brutality including those which amount to torture or other cruel, inhuman and degrading treatment. These obligations have to be implemented through various means including adoption of legislative, administrative and judicial measures. Despite these obligations, allegations of police brutality keep increasing year after year in Lesotho. It is against this backdrop that the Transformation Resource Centre (TRC) commissioned a study into police brutality in Lesotho. The objectives of the study were to identify cases of police brutality and to assess its prevalence, factors which drive it, capacity of oversight institutions to respond to it and to recommend means which will strengthen protection of victims by amongst others, putting an end the culture of impunity.

The study was conducted through collection and analysis of both primary data and secondary data. The primary data was collected through questionnaires, structured key informant interviews (KII) and focus group discussions (FGDs). Secondary data was collected through a desktop review of international human rights instruments to which Lesotho is a party, domestic legal and institutional frameworks against torture, state party reports and human rights reports compiled by international and national organisations and government institutions.

The key finding in this study, which discussed in greater detail in this report is that police brutality is rife in Lesotho, with 79.4 percent of respondents having experienced either

verbal or physical abuse by the police at least once in their lifetime. The study has also found that the major factors contributing to the high prevalence of police brutality in Lesotho include failure to prohibit torture as a distinct crime, impunity for police officers who commit these acts as well as condonation and encouragement of excessive use of force by political leaders. Over and above this, institutions vested with police oversight are restricted both in law and resources to effectively deal with allegations of police brutality. Limitations in both the legal and institutional frameworks have resulted in increase of cases of police brutality, impunity for perpetrators, lack of adequate redress to victims of torture and a huge part of the government budget being used to pay damages for victims who take legal action against government.

On the basis of the findings in this study, the following recommendations, the practical implementation of which are stated in detail in section four, are made: First, enactment of a specific anti-torture legislation, which is in conformity with Lesotho's international human rights obligations. Secondly, Lesotho's institutions and offices, such as the LMPS, the Police Complaints Authority, the Director of Public Prosecutions, the Office of the Ombudsman and the Judiciary must be capacitated through training and alignment of their mandates with international standards in order for them to effectively investigate allegations of torture and other acts of police brutality, to prosecute perpetrators, to impose appropriate penalties on those convicted and to award reparative remedies to victims of torture and other acts of police brutality.

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SECTION ONE: INTRODUCTION AND BACKGROUND

1.1 Introduction

In pursuit of its mandate to promote human rights in Lesotho, the Transformation Resource Centre (TRC), has noted that from June 2017 to June 2018, a total of 22 persons were allegedly killed by the police in various circumstances including while in police detention, during arrests and in operations to quell riots during public demonstrations.

In an attempt to mitigate the prevalence of human rights violations by members of the

LMPS, TRC engaged in a number of human rights promotion activities including facilitation of training workshops for police officers. The objectives of the workshops were to raise awareness of state's human rights obligations and also to understand the causes and circumstances which contribute to human rights violations within this institution. TRC further engaged the government of Lesotho through the Minister of Police as well as Commissioner of Police. Despite the above efforts, cases of police brutality kept happening and TRC elevated this dreadful situation to the regional and international



TRC slams police brutality

Mamphe Molelele

THE issue of alleged police brutality took centre stage when the Transformation Resource Centre (TRC) made its presentation at the recent 63rd Ordinary Session of the African Commission on Human and People's Rights (ACHPR) in Banjul, Gambia.

In the damning presentation, the TRC said it was worried about the safety of Lesotho's citizens, their wellbeing and the preservation of their human rights.

The TRC report said that the torture and killing of civilians had reached alarming levels in Lesotho.

"Lesotho has been faced with challenges where police torture and kill civilians when exercising their duties," the TRC said in its report to the African Commission.

"We are worried that police brutality in Lesotho is getting out of hand. The TRC received and documented from January 2018 several examples of human rights violations by police to the victims when arresting and keeping them in custody."

"The TRC has exhausted internal remedies where it engaged with the government on these issues. Nothing has changed. The TRC engaged police authorities on these issues and up until now, police continue to torture and kill civilians and enjoy the protection of the authorities in furtherance of impunity."

What was frustrating, the report said, was that the police authorities were fully aware of the perpetrators of the torture and killings but no legal action has been taken against them.

The TRC report said it appeared that instead the perpetrators were the ones getting the protection of the law.

"The TRC reported to the African Commission during its 62nd Ordinary Session in Mauritania in April 2018 on harrowing incidents of torture and arbitrary killings by members of the police force. The TRC put it before the Commission that police officers involved in such barbaric acts are known."

"However, they enjoy the protection of government contrary to Lesotho's Minimum Police Service (Admin) Regulations of 2004 as amended in 2004 which requires managers to ensure that necessary disciplinary and criminal measures are taken to discipline rogue police officers."

The report said the police were acting against the provisions of the Constitution and the LMPS ACT of 1996 which prohibit torture and inhuman practices.

The TRC gave examples of civilians that were allegedly tortured by the police when they brought in for interrogation over crimes they were suspected to have committed.

Lesotho is currently experiencing rampant incidents of torture and killings by members of the police service. This is evidenced by some recent tortures on the 28th June 2018 of Mr Mpho Mokhele, Mphela Kibising and Lefeleng Molelele who were severely tortured at the Vhutheshele Detention and Custody Hubbers (Crime Unit Police at Mochoshane II by police in custody.

Police Minister Mamphe Mokhele.

Mr Mokhele endorsed torture from Maers to Maseru where upon arrival he was kicked in a dirty pit latrine toilet for the whole night. The torture was aimed at forcing them to incriminate themselves to a crime committed in 2013."

The report also referred to the killing Thelengane 'Mota' by the Ha-Mofoka police officers in August 2017.

In another incident on 8th February 2018, the Butha Buthe Police shot and killed one Thelengane 'Mota' by the Ha-Mofoka police officers in August 2017.

The TRC said it blamed some of the incidents of police brutality on the government leaders who allegedly made public statements which incited the police to disregard human rights.

"TRC is concerned that prior to the advent of these unfortunate incidents of torture and killings of civilians by police, reckless statements were issued by the government officials inciting the police to disregard the rule of law and human rights."

"While condemning heinous crimes such as murder and rape of the elderly, the Prime Minister of Lesotho (Thomas Thabane) has been recorded on several occasions in his public statements or speeches issuing statements that seemed to incite or perpetuate infliction by police on suspects."

"The Minister in the Prime Minister's Office has also said on record that police must shoot criminals and the government will collect compensation."

The Minister of Police was also quoted by the media telling a public gathering in Butha Buthe in Maseru that people behaving like animals are social misfits and "should be weeded out," the TRC stated in its report.

The report said it would seem that police officers were "perpetuating these barbaric actions" with the belief that they had blessing of the Prime Minister and some of his cabinet ministers.

"The TRC wishes to unequivocally state that there is no law, regional or international, directly or indirectly, permitting use of torture or to kill suspects who are under the custody and control of the police."

The TRC therefore called on the government to take effective measures to end the practice of torture and other forms of abuse by speedily enacting a law which criminalises torture and which will ensure that perpetrators of torture are held accountable.

The government, the TRC report said, should ensure the independence and efficacy of the Police Complaints Authority (PCA) to handle civil complaints about police officers who violate human rights. The PCA's decisions must be binding on government.

The TRC's submission comes against the background of growing international and local calls for the government to act against police brutality.

A recent ACHPR report seen by this publication expresses concern over the "persistent allegations of police brutality" in Lesotho and calls on the government to capacitate the relevant institutions to enable them to investigate alleged cases of human rights violations.

"The government should incorporate the protection and promotion of human and people's rights in all its actions as well as in the legal policy and institutional reforms which would be initiated as a result of the ongoing national dialogue," the ACHPR report states.

The police have been under fire for torture suspects in extract confessions, a practice that has allegedly led to deaths and subsequent lawsuits against the force.

Three weeks ago, Dr Thabane said the Minister of Police, Mr Mamphe Mokhele, must "do the right thing" by investigating the deaths of suspects in police custody.

Dr Thabane said this in the wake of a plea by the government to investigate the deaths of suspects in the hands of the police.

In the National Reforms Declaration signed with the opposition last month, the government undertook to "investigate and report on the findings of opposition parties in their cases of circumstances surrounding the deaths of innocent people in police custody."

Early this year, the Minister of Police, Mr Mamphe Mokhele, said the police would do the right thing by investigating the deaths of suspects in police custody.

Ms Mokhele, who served as a police officer for 37 years, made the resolution at a crime where the LMPS was presented with forensic equipment which was donated by the African Commission.

She, however, said she hoped the donor would go a long way in removing the need for torture as the police could now use a machine whether or not a suspect had been known in the commission of a crime.

"We, as the police, are often forced to use force to get information out of people because times we would be sure that the suspect will tell the crime but due to lack of taught skills we have to use force," Ms Mokhele said.

However, in a recent interview with this publication, Commissioner Mokhele said the police took the issues of alleged police brutality seriously.

"It is my responsibility to ensure that we have a clear image of the police force. Our duty is to protect the people and not harm them. We investigate cases where people are tortured in police custody, and take legal action against those who are found on the wrong side of the law. There are several cases where officers have been brought before the court."

"Officers who are being investigated are referred to other areas to move them from the area where they are being investigated. It is not to protect such officers but to allow innocent processes."

"We are not quiet about this issue and I have been on radio to talk about police brutality which is of great concern to us," Commissioner Mokhele said.



SECTION ONE: INTRODUCTION AND BACKGROUND

human rights mechanisms. In particular, TRC reported about police brutality during the 60th, 61st, 62nd and 63rd Ordinary Sessions of the African Commission on Human and Peoples' Rights. During its promotion mandate to the Kingdom of Lesotho in October 2018, the African Commission also raised the issue of police brutality with the government of Lesotho.

On 22 February 2019, Amnesty International, jointly with the TRC and Southern African Human Rights Defenders Network, concerned about the hiking cases of police brutality, issued a statement in which the three organisations called the Lesotho authorities to ensure independent investigations into allegations of torture and death at the Kao region, the details of which are outlined in section three of this report.¹

1.2 Statement of the problem

Despite the various efforts which TRC engaged in, to date acts of police brutality continue to take place with impunity. There are no positive steps taken by the government to address this problem. Perpetrators of acts of police brutality are not prosecuted and internal disciplinary measures are taken against very few of them. There are also no measures taken towards enactment of an anti-torture legislation in accordance with Lesotho's international human rights obligations. In the absence of a comprehensive anti-torture legislation, apart from claiming monetary compensation from government, victims of police brutality remain without any other form of redress.

1.3 Objectives of the study

The main objective of this study is to illustrate the problem of police brutality in Lesotho. The specific objectives are:

- To assess the prevalence of police brutality in Lesotho;
- To find the root-cause of police brutality;
- To assess the impact of police brutality to the affected communities
- To assess the impact of police brutality on the LMPS as an institution
- To recommend measures to prevent police brutality, to punish its perpetrators and also to provide redress to the victim

1.4 Structure of the report

The report is structured into four sections. Section one consists of an introduction, problem statement, objectives of the study and an overall structure of the report. Section two consists of the methodology used in the study including the study design, setting, data collection, data management and analysis as well as the scope and limitations of the study. Section three contains findings including analysis of the national legal and institutional frameworks against Lesotho's international human rights obligations, the prevalence of police brutality in Lesotho, its types and levels, factors which contribute to such, as well as forms of assistance provided to victims. The fourth and last section consists of conclusions and recommendations.

Amnesty International, TRC and Southern African Human Rights Defenders Network Public Statement 'Lesotho: Authorities must ensure an independent investigation into torture allegations and death' AFR 33/9896/2019.



Police deployed to dispel Kao protesting community against the mine in Botha Bothe

SECTION TWO: METHODOLOGY

2.1 Introduction

In compliance with the terms of reference for this study, the consultant adopted an approach which ensured and promoted the participation of the survivors of police brutality and relatives of victims, the community, various stakeholders as well as leaders of the police service in Lesotho. The aim of this approach was to enhance the capture of all their inputs into the analysis and recommendation of measures to put an end to this human rights violation. The adoption of a participatory approach informed the conclusions and recommendations in this study.

The study followed a logical order that included preparatory meetings, documentary reviews, conducting key informative interviews with key project actors, focus group discussions, field data capture and analysis as well as writing of the preliminary and final reports.

2.2 Study Design

a) Conceptual model

A mixed methods approach, involving gathering both qualitative and quantitative data from multiple sources of information, was employed in this study. This approach ensured the triangulation and validation of information during the course of data collection and analysis.

b) Data collection methodologies

Both qualitative and quantitative methodologies were employed to collect data using participatory approaches. Four key methods of data collection used to collect data for this study are literature review, Focus Group Discussions (FGDs), Key Informant Interviews (KII) and structured questionnaires were used as illustrated in **table 1** below:

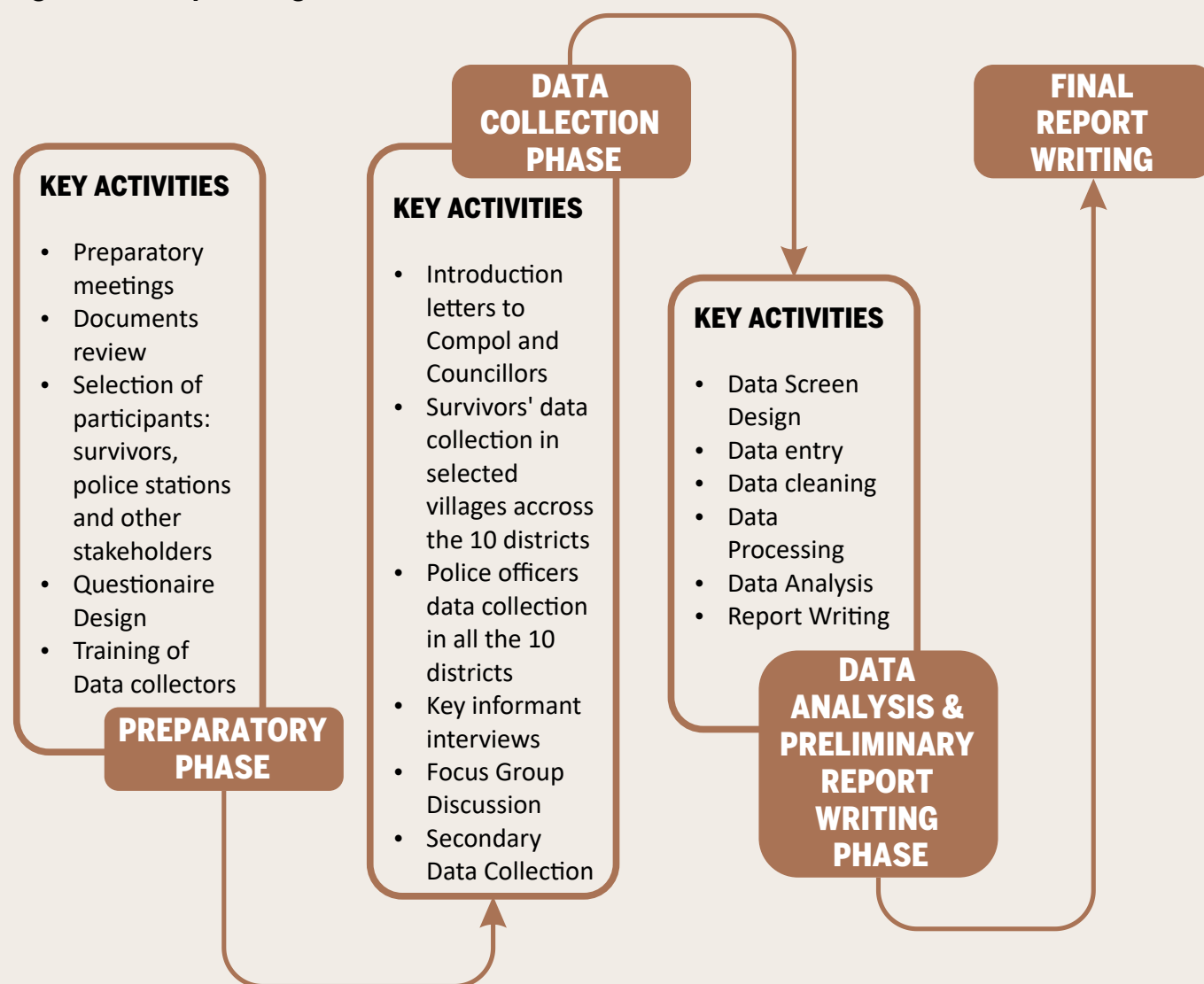
SECTION TWO: METHODOLOGY**Table 1: Data Collection Methodologies**

Method	Details
Literature Review	Desktop research was carried out to acquaint the consultant with the phenomenon of police brutality in Lesotho and to identify the issues that ought to be verified through field research. The key documents reviewed include newspaper articles, correspondence between TRC and the government agencies such as the Prime Minister and the Commissioner of Police; national and International reports on human rights situation in Lesotho and on cases of police brutality in particular. The information assisted in development of data collection tools.
Focus Group Discussions	Targeted respondents including survivors and relatives of victims of acts of police brutality in the years 2017, 2018 and 2019 were brought together to share their experiences. This also served as a means of triangulation of further sources of information.
Key Informant Interviews with stakeholders	Interviews were held with key stakeholders and staff of such institutions including Police Complaints Authority, Office of the Ombudsman and lawyers.
Survivors Survey	Through structured questionnaires, a selected sample of survivors of police brutality and relatives of victims of police brutality was interviewed. The selected sample included both males and females who were from selected villages in the 11 policing districts of Lesotho
Police Officers Survey	Through structured questionnaires, a selected sample of senior and junior police officers was interviewed. The sample included both male and females drawn from the main police units (CID, SOU, Traffic, RCTS, CGPU, Stock Theft and Charge Office) in the 11 policing districts of Lesotho

2.3 Study Setting

A three-phased implementation plan was designed to facilitate undertaking of the study and finalisation of the report as illustrated by way of a diagram in **fig. 1** below.

Figure 1: Study Setting



2.2.1 Phase 1: Preparatory phase

This included preparatory consultations with human rights officers of TRC. The meetings were aimed at working out modalities and firming up a detailed field schedule for the entire assignment process. This included reviewing the existing relevant documents, e.g. human rights treaties and relevant domestic laws, correspondence and reports of prior activities which TRC had undertaken at the national and international levels as well as key informant interviews with relevant stakeholders such as investigations departments of the PAC and Office of the Ombudsman. During this phase the study methodology and data collection process and tools were designed and set out for quality assurance.

SECTION TWO: METHODOLOGY**2.2.2 Phase 2: Study data collection**

This phase involved participatory field data collection in the eleven policing districts. Both quantitative and qualitative data were collected. During the visits the data collectors informed the stakeholders about the relevance of and need for the study. The consultant set out a data collection map which set out the eleven policing districts from which interview samples were identified and selected for the survey. The selection of suitable study areas was based on a number of considerations including geographical diversity and gender representation.

a) Data collection

The sample size for the project study interviews were selected using stratified random sampling, randomised at all levels, namely: the selection of the primary sampling units (PSUs), i.e. the districts, and the secondary sampling units (SSUs), i.e. the villages/councils. That is, in each district all villages/councils had the same probability of being selected.

b) Sample selection and sample size

According to the objectives of the study, a sample size that is representative and ensures comparability between the different policing districts in their response to cases of police brutality was desired. However, due to limitations illustrated below, such could not be obtained. As a result, although the target number for all respondents was a total of 502, only 145 individuals participated in the study. Six participants represented six

(6) taxi associations drawn from the three regions of Lesotho eight (8) respondents were members of student representative councils (SRCs) representing 4 tertiary institutions (National University of Lesotho, Lerotholi Polytechnic, Lesotho College of Education and National Health Training College); six (6) respondents were drawn from three (3) women's associations (Women's clinic, NUL legal aid clinic and Women and Law in Southern Africa) and fourteen (14) participants were part of a focus group discussion with survivors and relatives of victims of police brutality whose cases took place in the districts of Butha-Buthe, Leribe and Maseru). A further 107 respondents were from...villages drawn from the 11 policing districts which were distributed as indicated in table 2.2 below.

Table 2: Sample selection and size

District	Number of respondents
Butha-Buthe	20
Leribe	19
Berea	4
Maseru	17
Mafeteng	11
Mohale's Hoek	10
Quthing	6
Qacha's Nek	18
Thaba-Tseka	0
Mokhotlong	1

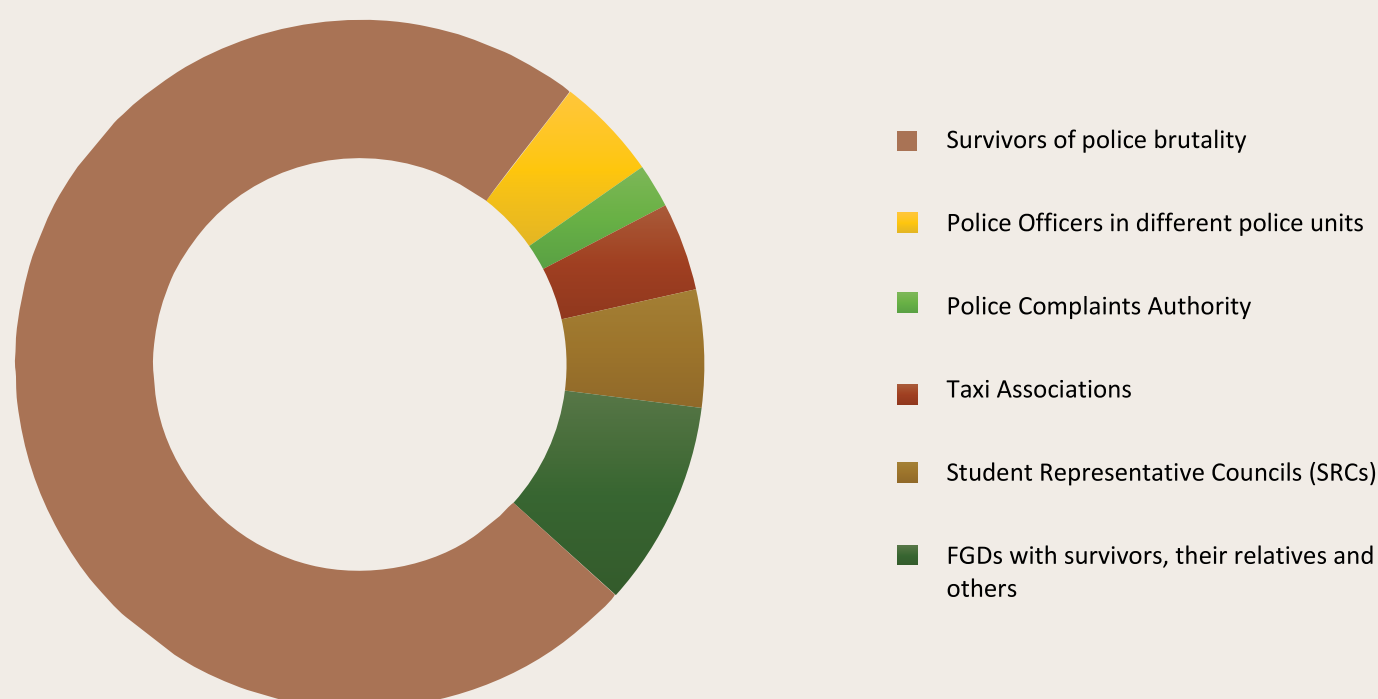
2.3 Study methods matrix

The consultant used both primary and secondary data. The primary data comprised information collected using interview guides and questionnaires administered to the police officers, survivors of police brutality and relatives of victims directly during the survey. The data helped in capturing and measuring issues related to project objectives that is from existing data sources and would not in fact be easily obtained from primary sources. For purposes of this study, secondary data was obtained through abstraction of PCA and high court records.

Table 3 Study methods matrix

Target Group	Data Collection Tools	Target Number per policing district	Actual number
Survivors of police brutality	Questionnaires	385	107
Police Officers in different police units	Questionnaires	44	7
Police Complaints Authority	Key Informant Interviews	1	3
Taxi Associations	Questionnaires	6	6
Student Representative Councils (SRCs)	Interview Guides	16	8
FGDs with survivors, their relatives and others	Interview Guides	50	14

Pie 1 Study methods matrix



SECTION TWO: METHODOLOGY**2.4 Data Management and Analysis**

This section encompasses pre-analysis, analysis and report preparatory phase. It describes steps taken to manage collected data from cleaning to report writing.

2.4.1 Data Management

Primary data was cleaned before capturing into the database to reduce errors. These errors include inconsistencies, miscoding and typos which often need to be cleaned before inputting data into the database. Data was then coded and captured using SPSS software for quality assurance, reliance and reliability of the study findings and most importantly for managing and analysing huge data sets.

2.4.2 Data Analysis

Quantitative data was analysed using Statistical Package for Social Sciences (SPSS) software. The reason why this software was preferred over others is that it is user friendly and allows one to analyse data without using advanced statistical analysis skills. Using the data, frequencies and cross-tabulations were run to unpack the characteristics of respondents. In addition, Microsoft excel was also used to draw tables and graphs for presentation of the results.

2.5 Phase 3: Report preparation

This phase entailed compilation of the draft report. Following drafting of an initial report, a data validation exercise through key informative consultations with selected stakeholders will be conducted. The overall objective of data validation exercises will be to verify the numbers provided and to build up a common position that reflects the prevalence of police brutality and recommendations for its abolition.

2.6 Limitations of the study

The biggest limitation in this study was obtaining data. While the plan was to interview 502 respondents, these samples could not be obtained due to the following reasons:

1. Survivors of police brutality were reluctant to respond to questionnaires for fear of reprisals from the police
2. Chiefs and councillors were reluctant to direct data collectors to known victims of police brutality
3. Police officers were reluctant to respond to questionnaires for fear of self-incrimination and/ or disciplinary action for having divulged confidential information
4. Police officers and in some instances chiefs and councillors, had the fear that the data might be used for litigation against the institution and or individual police officers
5. In some areas, the public had a misconception that the data would be used for furtherance of political interest.



SECTION THREE: FINDINGS

3.1 Introduction

“Use of excessive force and abuse of power by the police is a persistent problem in Lesotho”. Stated the Director of investigations, Police Complaints Authority.¹ In line with the objectives of this study, this section provides findings on compatibility of the national legal and institutional frameworks with Lesotho’s human rights obligations, the prevalence of police brutality in Lesotho, types and levels of police brutality, root causes of police brutality, social and demographic characteristics of survivors and victims of police brutality, as well as forms of assistance provided to those affected.

3.2 Legal frameworks against acts of police brutality

Historically, torture and other forms of police brutality were accepted in criminal law as indispensable tools through which the truth could be extracted from suspects, as forms of punishment to cleanse offenders and also as a deterrent to would-be offenders.²

For these reasons, early development of international law did not contain standards against torture.³ However, currently use of torture and other forms of cruel, inhuman and degrading treatment are prohibited human rights violations at both international and national levels. States’ obligations to prevent and prohibit acts of police brutality which amount torture have also become part of customary international law.

3.2.1 International legal frameworks against police brutality

3.2.1.1 Customary international law

Article 38 of the Statute of the International Court of Justice (ICJ) lists custom as one of the sources of international law and defines it as ‘a general practice accepted as law’.⁴ Customary international law has two elements of *usus* (state practice) and *opinio juris* (the belief that such practice is required as a matter of law),⁵ both of which the prohibition of torture satisfy.⁶

1. Interview on.....
2. WP Nagan & L Atkins ‘The international law of torture: From universal proscription to effective application and enforcement’ (2001) 14 Harvard Human Rights Journal 92.
3. T Buergenthal ‘The normative and institutional evolution of international human rights’ (1997) 19 (4) Human Rights Quarterly 703.
4. ICJ Statute article 38(1) (b).
5. These two elements are well established as they have been confirmed and elaborated on in *SS Lotus (France v Turkey)* 7 September 1927 PCIJ Ser.A No.10 (Lotus case); *The Asylum case (Columbia v Peru)* 1950 ICJ Reports 395; *Rights of passage over Indian Territory (Portugal v India)* 1960 ICJ Reports 6 (Rights of Passage case); *North Sea Continental Shelf cases* 1969 ICJ 3 para41.
6. R Sifris *Reproductive freedom, torture and international human rights: Challenging the masculinisation of torture* 37.

SECTION THREE: FINDINGS

Prohibition of torture is also given the status of a peremptory norm in both human rights law and international humanitarian law.⁷ It 'has the highest standing in customary [international] law and is so fundamental as to supersede all other treaties and customary laws (except laws that are also *jus cogens*)'.⁸ The *jus cogens* status has been summarised by the International Criminal Tribunal for the former Yugoslavia (ICTY) as follows:

...the fact that torture is prohibited by a peremptory norm of international law has effects at the inter-state and individual levels. At the inter-state level, it serves to internationally delegitimize any legislative, administrative or judicial act authorising torture... at the individual level, ...one of the consequences of the *jus cogens* character... is that every state is entitled to investigate, prosecute and punish or extradite individuals accused of torture who are present in a territory under its jurisdiction.⁹

From this reasoning, the following state's

obligations are identified:

- the obligation not to enact any laws, nor take any administrative measures or judicial decisions, which authorise torture;
- the obligation to investigate allegations of torture,
- to prosecute suspects of torture,
- to punish those convicted of torture and also
- to extradite suspects of torture whom the state does not prosecute.¹⁰

It being a *jus cogens* norm, prohibition of torture gives rise to *erga omnes* obligations (that which a state owes to the entire international community) to prevent and prohibit torture, to punish its perpetrators and to provide redress to its victims even in the absence of treaty ratification.. That is, Lesotho would be bound by such obligations even if it was not party to the international human rights instruments in **tables 4(a) and (b)** and **table 5** next page.

8. Human Rights Watch *The legal prohibition against torture* 1 June 2004 <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture> [accessed 12 January 2019].

9. *Prosecutor v Anto Furundzija* Case No IT-95-17/1-T Judgement 10 December 1998 paras 155 - 156.

10. *Questions relating to the obligation to prosecute or extradite (Belgium v Senegal)* 2012 ICJ Reports para 113.



Police dismissing protestors



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3.2.1.2 UN legal framework against torture and other cruel, inhuman and degrading treatment

Table 4(a) : UN treaties

Instrument	Article	State obligations
International Convention on Eradication of Racial Discrimination (CERD) of 1965. ¹	Art. 4 Art.5	Prohibition of racial discrimination. ² The right to security of person and protection by the State against violence or bodily harm, whether inflicted by the government officials, or by any individual group or institution
International Covenant on Civil and Political Rights (ICCPR) of 1966. ³	Art.7 See also HRC, GC 314	<ul style="list-style-type: none"> • Prohibition of torture and other cruel, inhumane and degrading treatment; • Prevention of torture; • Protection of detained person from cruel and inhuman treatment • Punishment of perpetrators of torture • Redress to victims of torture • Submission of state party report on implementation
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 ⁵	Art. 2, 5, 11 and 12	Prohibition, prevention, punishment and provision of redress of victims of gender-based violence
Convention Against Torture (CAT) of 1984. ⁶	All Articles	<ul style="list-style-type: none"> • Obligation to define torture in accordance with CAT • Adoption of legislative, administrative and other measures to prevent torture • Absolute prohibition of torture • Criminalisation of torture and related offences • Training of law enforcement officers and review of rules of interrogation • Investigate allegations of torture • Redress victims of torture • Exclusion of torture-induced evidence in criminal proceedings • Prevent other cruel, inhuman and degrading treatment/ punishment • To submit state party reports on implementation of CAT

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Convention on the Rights of the Child (CRC) of 1989. ⁷	Art. 38 CRC GC 13	Prevention and prohibition of torture of children Punishment of perpetrators and redress to child victims Obligation to report on measures taken
Convention on the Rights of All Migrant Workers and Members of their Families (CMW) of 1990. ⁸	Art. 7, 16, 17 and 22	<ul style="list-style-type: none"> • adoption and implementation of legislation prohibiting acts of violence; • effective investigation of cases of abuse and violence; • prosecution and punishment of those responsible with appropriate punishments; • adequate reparation to victims and members of their families; • human rights training for public officials; • effective monitoring of the conduct of state agents; and • regulation of the conduct of private persons and entities with the view to prevent acts of violence.
Convention on the Rights of Persons with Disabilities (CRPD) of 2006. ⁹	Art. 15	Prevention and prohibition of torture Submission of state party reports on implementation

- 1 Adopted by UN GA Res. 2106 (XX) on 21 December 1965. Lesotho acceded to it on 4 November 1971
- 2 While CERD does not specifically mention torture in its text, it prohibits all acts of discrimination including violence
- 4 Human Rights Committee General Comment 31
- 7 Adopted by UN GA Res. 44/25 on 20 November 1989. Lesotho ratified it on 10 March 1992.
- 8 Adopted by UN GA Res. 45/158 of 18 December 1990. Lesotho ratified it on 16 September 2005.
- 9 Adopted by UN GA Res. 61/106 on 13 December 2006. Lesotho acceded to it on 2 December 2008.



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The UN has also set standards against torture in other non-binding instruments, also referred to as soft law or consensus documents in **table 4(b)** below.¹

Table 4(b) UN Soft Law

Standard minimum rules for the treatment of prisoners 1957 (as amended in 1977);	Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture) 1975;
UN code of conduct for law enforcement officials 1979;	Declaration of basic principles of justice for victims of crime and abuse of power 1985;
Body of principles for the protection of all persons under any form of detention or imprisonment 1988;	Basic principles for the use of force and firearms by law enforcement officials 1990;
Basic Principles for the Treatment of Prisoners 1990;	Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions 1990;
Declaration on the Protection of All Persons from Enforced Disappearance 1992;	Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) 1999 and
Basic Principles and Guidelines on the right to a remedy and reparations for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Impunity Principles) 2005.	

1. Although non-binding in nature, soft law is persuasive, provides guidelines for the implementation of the legally binding instruments and also provides evidence of the existence of customary international law.

SECTION THREE: FINDINGS**3.2.1.3 AU Treaties against torture and other cruel, inhuman and degrading treatment****Table 5: AU treaties**

Instrument	Article	States' obligations
African Charter on Human and Peoples' Rights (African Charter) 1981	Art. 5	Obligations to prevent and prohibit torture, Provision of redress to victims of torture Report on measures taken
African Charter on the Rights and Welfare of the Child (African Children's Charter) 1990	Art. 16	Prevention and prohibition of torture of children Punishment of perpetrators Provision redress to victims Report on implementation
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) 2003	Arts. 2 and 5	Prevention and prohibition of violence against women Punishment of perpetrators Provision of redress to victims Report on implementation
African Youth Charter 2006	Art. 18(2)	Prevention and prohibition of torture against the youth

AU Soft Law

The main AU 'Soft law' instrument which extrapolates African states' obligations under article 5 of the African Charter is the AU Guidelines and measures for the prohibition and prevention of torture, cruel and inhuman or degrading treatment or punishment (Robben Island Guidelines or RIGs), adopted by the African Commission in 2002 in the Gambia and came into force in 2008.²

2. Robben Island Guidelines.
3. See Guidelines 1, 4, 5, 16-19.
4. Guidelines 20 to 31.
5. Guidelines 48 – 50



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The Robben Island Guidelines address the implementation of states' obligations, which are divided into three main categories of obligations: (1) to prohibit torture;³ (2) to prevent torture⁴ and (3) to provide redress to victims of torture.⁵

3.2.2 National Legal Framework

In each of the international human rights instruments in **tables 4(a) and (b)** and **table 5**, state parties undertake to adopt specific measures against torture and other cruel, inhuman and degrading treatment. Central to states' obligations is the enactment of laws against this form of treatment by those in official capacity including the police.⁶ In its General Comment 2, the Committee against Torture stated that an effective law against torture and other cruel, inhuman and degrading treatment is one which takes into account the definition of torture in article 1(1) of CAT, which recognises the absolute nature of the right to freedom from torture as contained in article

2(2), which excludes the defense of superior orders as per article 2(3), which criminalises torture as a distinct crime as mandated in article 4(1) and provides appropriate punishment in terms of article 4(2) of CAT.⁷

Considering that there is no specific anti-torture law in Lesotho, the question which this study sought to answer is whether the existing laws are comprehensive enough to comply with Lesotho's human rights obligations as outlined in the tables above.

(α) **Constitution of Lesotho 1993**

The Constitution is the supreme law in Lesotho.⁸ It contains a bill of rights in chapter two. Section 8(1) thereof provides that 'no one shall be subjected to torture or to inhuman or degrading punishment or other treatment'. Subsection (2), however, contains the following proviso:

Nothing contained in or done under the authority of any law shall be held

6. For instance, African Charter article 1; see also CAT article 2(1).
7. Committee against Torture, GC 2 paras 5, 9, 11 & 26.
8. Constitution section 2.
9. Constitution section 5(1) protects the right to life. However, section 5(2) retains the death penalty as a lawful punishment in Lesotho.
10. Constitution section 6.
11. Constitution section 9.
12. Constitution section 10.
13. Constitution section 12.
14. Constitution section 18; In Committee against Torture, GC 2 para 20 & HRC, GC 31 para 8, the Committee against torture and the HRC respectively stated that states' general obligation to prevent torture also includes the duty to protect people who belong to minority and marginalised groups because they are vulnerable to being subjected to torture because of their status, such as sex, sexual orientation, gender identity, age, ethnicity, etc. Therefore, the non-discrimination provisions in section 18 of the Constitution comply with this obligation.
15. Constitution section 19 guarantees the right to equality before the law and equal protection of the law in compliance with states' obligations under CAT article 13, which mandates state parties to ensure that there are competent authorities to which victims of torture can complain and be impartially heard.

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to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Lesotho before the coming into operation of this Constitution.

The Constitution, therefore, guarantees the right to freedom from torture, but excludes lawful punishment from being regarded as torture, which exception is also contained in article 1(1) of CAT. The Constitution also protects other rights, which are relevant to the prevention of torture. These include the right to life,⁹ right to personal liberty,¹⁰ freedom from slavery and forced labour,¹¹ freedom from arbitrary search or entry,¹² right to fair trial,¹³ freedom from discrimination,¹⁴ right to equality before the law and equal protection of the law¹⁵ and the right to a remedy when the rights contained in the Constitution have been infringed.¹⁶

Having listed a number of human rights, from section 4 to section 20, section 21 of the Constitution contains circumstances under which human rights and fundamental freedoms may be derogated from. It provides that during any time when Lesotho is at war or when a state of emergency has been declared in accordance with section 23, section 6, which provides for the right to personal liberty, section 18 on freedom from discrimination and section 19 on the right to equality before the law

and equal protection of the law may be derogated from.

Section 8, which provides for the right to freedom from torture, is not listed amongst the rights which may, during a state of emergency, be derogated from. The Constitution thus protects freedom from torture as a non-derogable right. This is in accordance with article 2(2) of CAT and article 4 of ICCPR in compliance with states' obligations under customary international law, as well as ICCPR, CAT and the African Charter.¹⁷ The Constitution complies with the international human rights obligation to recognise freedom from torture as a non-derogable right. Therefore, by assaulting or torturing members of the public or committing any acts which are cruel, inhuman or degrading, members of the LMPS violate constitutionally protected rights.

Equally relevant to states' obligation against torture is the obligation to provide redress to victims of human rights violations.¹⁸ In this regard, section 22 of the Constitution provides that:

- (1) If any person alleges that any of the provisions of sections 4 to 21 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation

16. Constitution section 22.

17. ICCPR article 4; CAT article 2(2) & (3); African Charter article 27, all which do not permit derogation from the prohibition of torture.

18. ICCPR article 2(3); HRC, GC 31 para 8 interpreted states' obligations under ICCPR article 7 to include obligation to provide effective remedy. CAT article 14; Committee against Torture, GC 3 para 2.



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to the person), then, without prejudice to any other action with respect to the same matter, which is lawfully available, that persons (or that other person) may apply to the High Court for redress.

Section 22 therefore complies with article 14 of CAT and article 2(3) of ICCPR, which mandate that where there has been a human rights violation, the victim must be availed avenues to complain and such a claim must be adjudicated upon by a competent and impartial court or tribunal.

Despite the positives in the Constitution, three big challenges remain: first, the Constitution does not define torture,¹⁹ second, it does not criminalise torture as a distinct crime nor contain any provisions from which it may be inferred that torture is a crime and third, majority of Basotho are not aware of this section and often believe that the police are entitled, in law, to assault suspects of criminal offences.

(β) **Criminal Procedure and Evidence Act 1981**

The Association for Prevention of Torture (APT) Guidelines on an anti-torture law state that a human rights compliant anti-torture law must have a provision, which contains

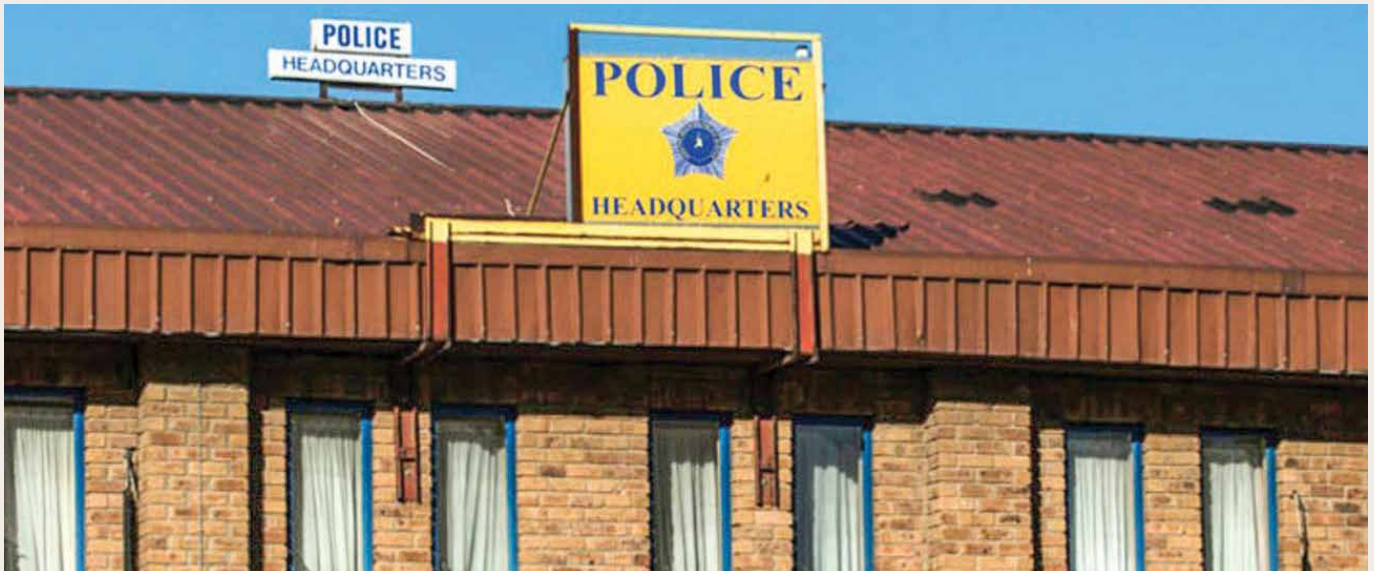
an exclusionary rule. This element is by itself a torture prevention mechanism contained in article 15 of CAT.²⁰ The HRC has also interpreted states' obligations under article 7 of the ICCPR to include the obligation to exclude evidence, which has been obtained through torture from criminal proceedings.²¹ In the African context, Robben Island Guideline 29 lists the exclusion of evidence obtained through torture as one of torture prevention measures compliant with articles 1 and 5 of the African Charter.

Although there is no law, which criminalises torture in Lesotho, the legal system complies with this aspect of the obligation to prevent torture in that section 228 of the Criminal Procedure and Evidence Act (CP&E) 1981 rejects the use of evidence that was obtained through the use of torture in judicial proceedings. It provides that:

(1) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence (whether before or after his apprehension and whether on a judicial examination or after commitment and whether reduced into writing or not), be admissible in evidence against such person provided the

19. Constitution section 8 guarantees the right to freedom from torture, but does not define it.
20. CAT article 15 provides that 'each state party shall ensure that any statement, which is established to have been made as a result of torture, shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made'.
21. Sahadeo v Guyana para 9.3 and Zhakhangir Bazarov v Kyrgyzstan para 6.4.
22. Malefetsane Phala Mabope and Others v Rex 1993/1994 Lesotho Law Reports 154.
23. As above.

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Lesotho Mounted Police Service Headquarters

confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto.

(2) If a confession is shown to have been made to a policeman, it shall not be admissible in evidence under this section unless it is confirmed and

reduced to writing in the presence of a magistrate.

This section was interpreted by the Lesotho Court of Appeal in the case of *Mabope and Others v Rex*.²² In this case, the Court held that a pointing out, done consequent to torture of the person who makes it, is not free and voluntary and therefore inadmissible as evidence to prove commission of

24. CAT article 15; Robben Island Guideline 29; Mujuzi (note 44 above).
25. The obligation to exclude torture-induced evidence in criminal proceedings was elaborated upon in the Robben Island Guidelines as one of states' obligations under article 5 of CAT.
26. Penal Code Act section 94 lists torture as one of the offences, which constitutes crimes against humanity, and section 95 lists torture as a war crime.
27. Penal Code Act section 30.
28. Penal Code Act section 31.
29. Penal Code Act, sections 40 - 42.
30. Penal Code Act, section 38.
31. Penal Code Act, section 51.
32. Penal Code Act, section 52; Sexual Offences Act section 3, which criminalises all sexual acts that take place under coercive circumstances.
33. Committee against Torture, GC 2 paras 10 & 11.
34. As above.
35. As above.
36. Redress 'Legal frameworks to prevent torture in Africa: Best practices, shortcomings and options for going forward' (March 2016) 10 www.redress.org/downloads/publications/1603anti-torture-legislative-frameworks-in-africa.pdf [Accessed 18 February 2019].
37. CAT Committee, GC 2 para 8.
38. Committee against Torture, GC 2 para 17.



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a criminal offence.²³ Section 228 thus fully complies with Lesotho's obligations under CAT,²⁴ ICCPR and African Charter.²⁵ Torture of a suspect with the intention to obtain evidence therefore becomes a futile exercise as such evidence is not admissible in the courts of law.

(χ) Penal Code Act 2010

The Penal Code does not prohibit torture as a distinct crime.²⁶ As a result of this omission, acts of police brutality, which amount to torture, are absorbed into other criminal offences, such as assault,²⁷ aggravated assault,²⁸ murder,²⁹ culpable homicide,³⁰ indecent assault,³¹ and unlawful sexual acts.³² This is inconsistent with Lesotho's obligations under articles 1, 2 and 4 of CAT.

When interpreting states' obligations under these articles, the Committee against Torture has raised its concern that failure to criminalise torture as a distinct crime from assault creates loopholes for impunity.³³ It has also criticised the approach of charging perpetrators of torture with other offences other than torture as being inconsistent with the obligation to take legislative measures against torture.³⁴ It stated that this approach fails to highlight the gravity of the offence of torture and consequently perpetrators do not get the appropriate punishment and the victims are not availed the redress, which they deserve.³⁵ Furthermore, this approach makes it difficult for the state to track, report upon and respond effectively to the incidences of torture.³⁶ According to General Comment 2 of the Committee against Torture, criminalisation of torture is central to fulfilling the obligation to prohibit it.³⁷

Articles 1 and 4 of CAT also require state parties to criminalise all modes of participation as well as attempts to commit torture.³⁸ The negative consequence of Lesotho's failure to criminalise torture and all its modes of liability is that even the obligation to prescribe 'appropriate penalties' on those convicted of torture is also compromised as the Penal Code Act does not contain any punishments for the crime of torture.

(δ) Sexual Offences Act

Failure of the Penal Code Act to proscribe torture has also left sexual violence, which meets the requirements of CAT (sexual torture) in the purview of the Sexual Offences Act. The Sexual Offences Act prohibits sexual offences generally and does not specifically focus on sexual offences in which those in an official capacity take advantage of their position and commit sexual offences against victims subject to their control or under their detention for purposes prohibited under article 1.³⁹ Criminalising sexual torture in the same manner as other sexual offences fails to take into account the gravity of sexual torture and also fails to prescribe penalties that are appropriate for the offence of torture. For instance, in the case of MM and MM,⁴⁰ in which the two police officers in Mokhotlong district are alleged to have tortured two female suspects by inserting sticks into their genitals were charged with contravening section 3 of the Sexual Offences Act, a section which covers all sexual offences and therefore not highlighting that the said police officers took advantage of their position.

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3.2.3 National Institutional frameworks

Over and above legislative measures, implementation of Lesotho's human rights obligations against police brutality also depends on the capacity of national institutions which, in this section are analysed in line with the standards and obligations relating to the investigation, prosecution and punishment of perpetrators of torture, as well as provision of adequate redress to its victims.

(α) *Lesotho Mounted Police Service*

Mandate of the LMPS is to uphold the law, to preserve the peace, to protect life and property, to detect and prevent crime, to arrest offenders and to bring them to court.⁴¹ The LMPS is also responsible for the investigation of crime and the training of law enforcement officials. The LMPS was established on 26 October 1872 by the British administration prior to Lesotho's independence from Britain,⁴² then known as the Basutoland Mounted Police (BMP) mainly made up of chiefs' sons and magistrates.⁴³ While the magistrates had judicial powers, the other officers' main duties were to assist the magistrates as interpreters and to work as messengers in the Magistrate Courts.⁴⁴

Other functions of the police included the collection of revenue, customs and gaol duties.⁴⁵ In 1963 there was established, the Police Mobile Unit (PMU) which was within the Basutoland Mounted Police, tasked to control political conflict, which the colonial administration thought would ensue during the 1965 elections. The Basutoland Police Proclamation of 1957 was amended to expand the functions of the police force to include the preservation of peace, the prevention and detection of crime, the apprehension of offenders and the collection and communication of intelligence affecting public peace.⁴⁶ It also authorised the police officers to carry arms.⁴⁷ On 4 October 1966, Lesotho officially gained independence from Britain.⁴⁸ The police service changed its name to the Lesotho Mounted Police Force (LMPF).⁴⁹ It later changed to Royal Lesotho Mounted Police (RLMP).

From the time of its establishment, there were various allegations that the police used excessive force, which at times resulted in death and disability of suspects. In 1998, with the aim of professionalising the police service, ridding it of political influence and violation of human rights, the Police Service Act of 1998 was enacted and the police service changed its name

41. Constitution section 147; Police Service Act section 4.

42. PE Garner 'Policing in Lesotho' (1971) 44(1) *The Police Journal: Theory Practice and Principles* 42; 'Lesotho Mounted Police Service: About us' www.lmps.org.ls [accessed 20 March 2019].

43. Likoti FJ 'The implications of executive influence on the police service: A study of Lesotho Mounted Police since independence' (1999) 2(2) *Lesotho Law Journal* 203.

44. As above.

45. As above.

46. BMP Proclamation No. 27 of 1957 section 6.

47. As above.

48. Lesotho Independence Act of 1966.

49. S Rosenberg & RF Weisfelder *The historical dictionary of Lesotho* (2013) 472 162.



to the current Lesotho Mounted Police Service (LMPS).

When asked about their ability to investigate and take suspects of “torture” to court, a police officer in the district of Mafeteng, who requested anonymity said:

“we do not charge suspects with torture because there is no such crime, if a police officer is alleged to have committed these acts, we open a charge of assault, or if the suspect has lost his or her life, murder”.

The next question, which then arises, is whether the LMPS is competent to carry out investigations for these other offences such as assault and take perpetrators to court. Respondents in this study answered this question in the negative. Their view is that one cannot expect the perpetrators to prosecute themselves. This view was expressed in the following terms:

“U keke oa qosa thokolosi ho molo!”.⁵⁰

The competence of LMPS officers to investigate allegations of torture is also dependent upon the type of training, which they receive. In this study, 74 percent of police officers pointed to lack of training as a major factor which contributes to the high prevalence of police brutality in Lesotho. Flaws in the training of police officers is also confirmed by key informant interviews during which police officers stated that:

“During our training in PTC, we are subjected to a lot of both physical and psychological torture”.

Acceptance of ill-treatment as a way of instilling discipline within the LMPS is also confirmed, by the LMPS Spokesperson, Superintendent Mpiti Mopeli in a newspaper interview when addressing the video clip which showed street vendors being assaulted and ordered to roll on the ground. He said

*“...but those men were not cooperative when they were to leave the place, hence the police reacted the way they did.”*⁵¹

(β) **Police Complaints Authority**

The Police Complaints Authority (PCA) is a statutory body established in terms of section 22 of the Police Service Act.⁵² It is a civilian body with mandate to oversee policing. Its mandate include:

... the responsibility for investigating and reporting to the Police Authority [who in terms of the Act is the Minister] on any complaint referred to it by the Police authority or the Commissioner, which is a complaint from the members of the public about the conduct of a member of the Police Service.⁵³

50. Loosely translated you cannot be judge in your own cause

52. Police Service Act No.7 of 1998, section 22.

53. Police Service Act section 22 (3).

54. HRC, Summary record of 1743rd Meeting 1 April 1999, UN Doc CCPR/C/SR.1743 para 58 in which members of the HRC questioned the independence of the PCA under the authority of a Minister.

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According to Mr Ramots'ekhoane, one of the investigating officers at PCA,

“Establishment of the PCA under the Police Service Act and making it responsible to the Minister of Police compromises its independence and ability to embark on independent investigations”

PCA's lack of independence was further highlighted by the Human Rights Committee in reviewing Lesotho state party report under the ICCPR.⁵⁴ According to the director of investigations, other factors, which compromise its competence include inaccessibility and lack of any power beyond investigation.⁵⁵

As far as procedural accessibility is concerned, in terms of section 22 of the Police Service Act, members of the public do not have direct access to the PCA, but have to either go through the Commissioner of Police or the Police Authority who then forwards such complaints to the PCA.⁵⁶ There is no written procedure for channelling complaints to the Police Authority. In an attempt to address this challenge,

“PCA has adopted Standard Operating Procedures in terms of which members of the public can directly approach the PCA and their complaints are taken to the Minister of Police, who then after review, refers

*them to the PCA for investigation”.*⁵⁷

The problem which remains however, is that not all cases taken to the Minister are referred back to the PCA for investigation and the law does not require the Minister to justify his or her failure to refer such cases. Furthermore, majority of respondents indicated that they do not know about the PCA. This thus renders the PCA ineffective.

The other challenge is that according to section 22, the powers of the PCA do not go beyond investigating and reporting such complaints to the Minister. It has no power to institute any legal or disciplinary proceedings against the officer(s) complained of. In 1999, when Lesotho's initial report to the HRC was considered, the Lesotho delegation welcomed the Committee's suggestion that the PCA should be empowered to give effect to its findings,⁵⁸ yet two decades later the law governing the PCA remains the same.

PCA also has human and financial resources challenges. These were highlighted by the director of investigations as follows:

“Because PCA is within the Ministry of Police, the bulk of the budget goes to the LMPS. Also, initially PCA had 10 cars but have all been reallocated to the Ministry and it now has no single car. Majority of PCA personnel

55. R Crawshaw, S Cullen & T Williamson Human Rights and Policing (2007) 413.

56. Police Service Act section 22 provides that the PCA shall investigate complaints from members of the public, which are brought to its attention through the Commissioner of Police and Minister of Police.

57. Interview with Director of Investigations, PCA 12 April 2019.

58. HRC Summary Record 1744th Meeting 1 April 1999, UN Doc CCPR/C/SR.1744 para 10.



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have now been deployed to the Ministry. We were also supposed to have about 35 investigators who would also be working in all districts but currently they are only 9, all based in Maseru, with no presence at the district level".

According to Mr Mosae, an investigator at PCA, the dire situation is caused by lack of political will on the part of government to capacitate the PCA and amend the laws in order for it to be effective. This is further confirmed by the Minister of Police attitude towards the PCA as she state that:

" We are losing a lot of money by keeping the PCA operational and I am going to disband it soon enough... we need a PCA that will produce results, not the current one whose end products are dependent on the referrals by the Minister and the police commissioner".⁵⁹

(χ) **Office of the Ombudsman**

The Office of the Ombudsman is established in terms of sections 134 and 135 of the Constitution. The nature, mandate and powers of the Ombudsman are described in the Ombudsman Act of 1996 as investigation and recommendation of preventiva-

tive and remedial action on complaints related to maladministration, corruption, injustice, human rights, corruption and degradation of the environment.⁶⁰ This office is therefore mandated to receive complaints on human rights violations, including torture. However, as far as police brutality is concerned, the Ombudsman usually refers complaints against members of the police service to the IC&D office for investigation. The Ombudsman then requests reports and makes follow-ups as to the extent to which the allegations of torture have been investigated.

The Ombudsman also has mandate of visiting places of detention and receiving reports on general conditions of detention. The 2016 report of the Ombudsman to parliament which covers the period between 2012/2013 submitted in terms of section 16 of the Ombudsman Act shows that the Ombudsman has over the years, visited places of detention, focused on conditions of detention such as overcrowding but did not pay particular attention to torture and CIDT in the police and correctional detention facilities.⁶¹

(δ) **Director of Public Prosecutions**

The DPP is established in terms of section

59. P Kabi "Police Complaints Authority to be disabanded" Sunday Express 20 November 2018

60. Ombudsman Act section 7.

61. The challenge is, however, that the Ombudsman does not submit annual reports on time. The latest report covering 2012/2013 was submitted in 2016. This report does not cover torture or complaints against the police. It only reports on visit of 28 police stations and 6 correctional centres, which was done after six years. Recommendations made in the report addressed working conditions of the police and correctional officers and nothing on allegations of torture or conditions of detention.

62. CAT articles 12 & 13.

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141 of the Constitution. The mandate of the DPP is prescribed in section 5 of the CP&E as 'institution and undertaking of criminal proceedings against any person before any court (other than court martial) in respect of any offence alleged to have been committed by that person'. While the primary mandate to prosecute is invested in the DPP, effective prosecution of suspects of torture is highly dependent on the ability of investigation officers to gather evidence on the basis of which the suspected perpetrators are prosecuted.⁶² Lack of anti-torture legislation in Lesotho has proven to be a challenge to the capacity of institutions, such as the LMPS to investigate allegations of torture. This in itself presents challenges to the ability of the DPP to prosecute suspects and of the courts of law to impose appropriate sanctions.

With regard to acts of police brutality which do not amount to torture, the challenge is that very few of them are investigated and

ultimately brought to the DPP for prosecution. This status is illustrated by the fact that even though there is an appalling number of civil claims against the commissioner of police for damages resulting from acts of police brutality, there are spotted corresponding criminal cases against the officers implicated. Failure to prosecute perpetrators of torture therefore amounts to violation of the state's international obligation to punish torture.⁶³ In 73.2 percent of reported cases, no criminal action was taken against the police officers implicated in such acts.

3.2 Prevalence of police brutality

This study has revealed that the prevalence of police brutality in Lesotho is high. As illustrated in **fig. 2** below, 69.5 percent of respondents to questionnaires, indicated that they have suffered some form of abuse by the police at least once in their lifetime while 17.9 percent has experienced such more than once. Out of the 14 participants in the focus group discussion, 9 reported to have personally suffered torture at the hands of the police at least once, while one had been assaulted more than once. Five of the participants reported that their relatives had been assaulted and died at the hands of the police between December 2017 and January 2019 when the discussion took place. While data was being captured, 64 men in the Kao area, in the district of Butha-Buthe were also assaulted and one of them died. Cases extracted from the interviews and the FGD include the following:



Victim of police brutality showing his injuries

63. CEDAW Committee, GR 19 para 11; Committee against Torture, GC 2; HRC, GC 31

BOX 1: Assault of the box room controller

In October 2018, one Katiso was assaulted at Police Head Quarters in Maseru on suspicion of having stolen money from G4S where he is employed as a box room controller. No charges were ever laid against him for the alleged theft and to date he remains an employee of G4S.

BOX 2: Kao 1: Assault of protesters and death of Terene Pitae

Following operations of the Kao Diamond Mine, members of surrounding village blocked roads and launched a protest in which they accused the mine of reneging on its promises to provide them with employment and other services as part of compensation for extractive mining operations in their village. The police set up an operation aimed at quelling the riots. In so doing, a number of villagers were assaulted, shot and one Terene Pitae was shot dead.

BOX 3 - Kao 2: Village raid and the death of Poshoane

On 26 December 2018, while data for the current study was being captured, TRC received reports that the police had raided the two villages of Ha Shishila and Lephats'oane in Kao, wherein 64 men were assaulted on account of one having been involved in a fight with a police officer over a girlfriend, at a village bar. One Poshoane, who was a paralegal and a liason between the Kao mine and the villagers intervened when Police assaulted the suspect who had in fight with Police offer, requesting the police to arrest the suspect instead of assaulting him on the 27/12/18 Police radded the whole village targeting amongst others Mr. Poshoane. The police turned to him, handcuffed him with another, and assaulted him with sticks and stones, cut his dreadlocks with sharp stones while beating him. They took him to the hospital where he was declared dead.

BOX 4 - Mongali and Sekhonyana die in police cells

On 16 January 2019, two men of Qacha's Nek, were found dead in a police cell at Hlotse police station. The duo had been arrested on 14 January on suspicion of robbery, and on the morning of 16 January were found dead in the cell.



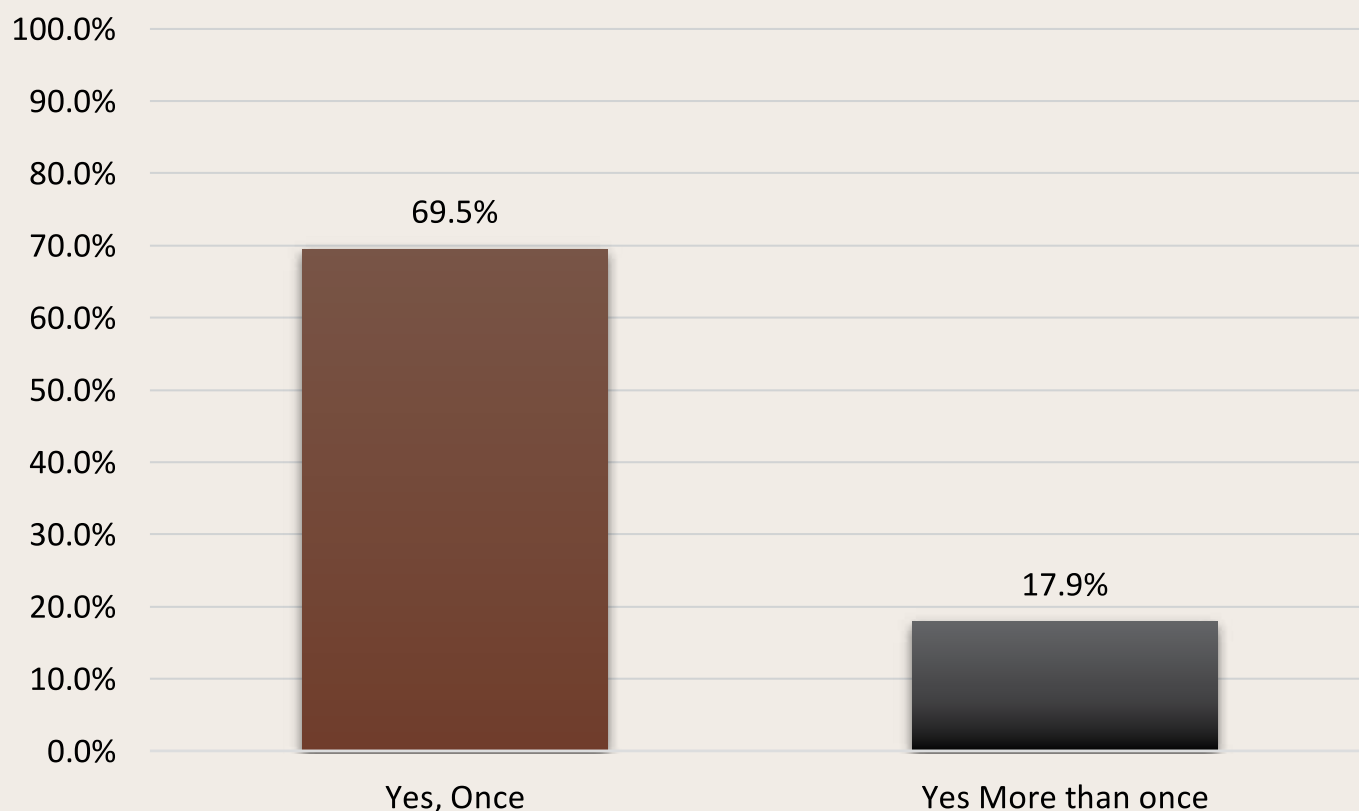
Lesotho mounted police service

SECTION THREE: FINDINGS

A common feature in the cases outlined above, is that to date no criminal charges have been laid against the victims, who were subjected to torture on suspicion of having committed criminal offences.

Fig. 2 Prevalence of police brutality in Lesotho

Percentage Distribution of victims who/families experienced an illtreatment



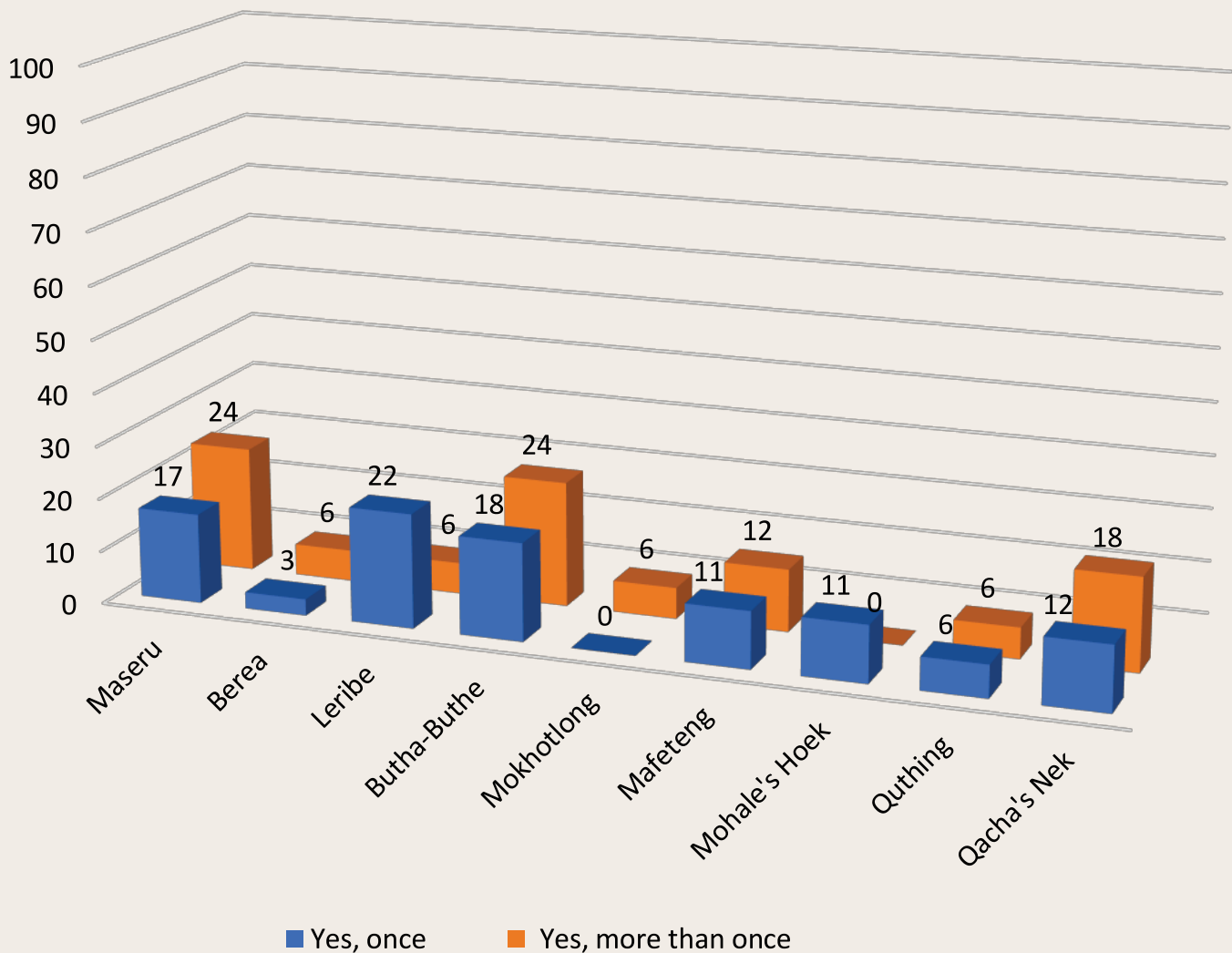
The high prevalence of police brutality in Lesotho has also been highlighted in reports of international organisations such as the Amnesty International in its 2017/18 Report on human rights in Lesotho. Amnesty International reported that there was an increase in human rights violations including unlawful killings. The cases recorded by Amnesty International included amongst others, the killing of one Tumelo Mohlomi, a student at the National University of Lesotho who was shot at the back of her head by a police officer while at a restaurant outside the university. The other is a case of Thato Makara who was arrest in relation to a murder case and was severely assaulted while being forced to confess.¹

According to the results of this study, police brutality affects men more than women. The districts of Maseru and Butha-Buthe recorded highest prevalence, with 24 percent of respondents in both districts having stated that they experienced police brutality more than once in their lifetime.

¹ Amnesty International Report 2017/18

Fig 3 Prevalence of Police Brutality by District

Percentage Distribution of Victims who/their Families Experienced an Illtreatment by District



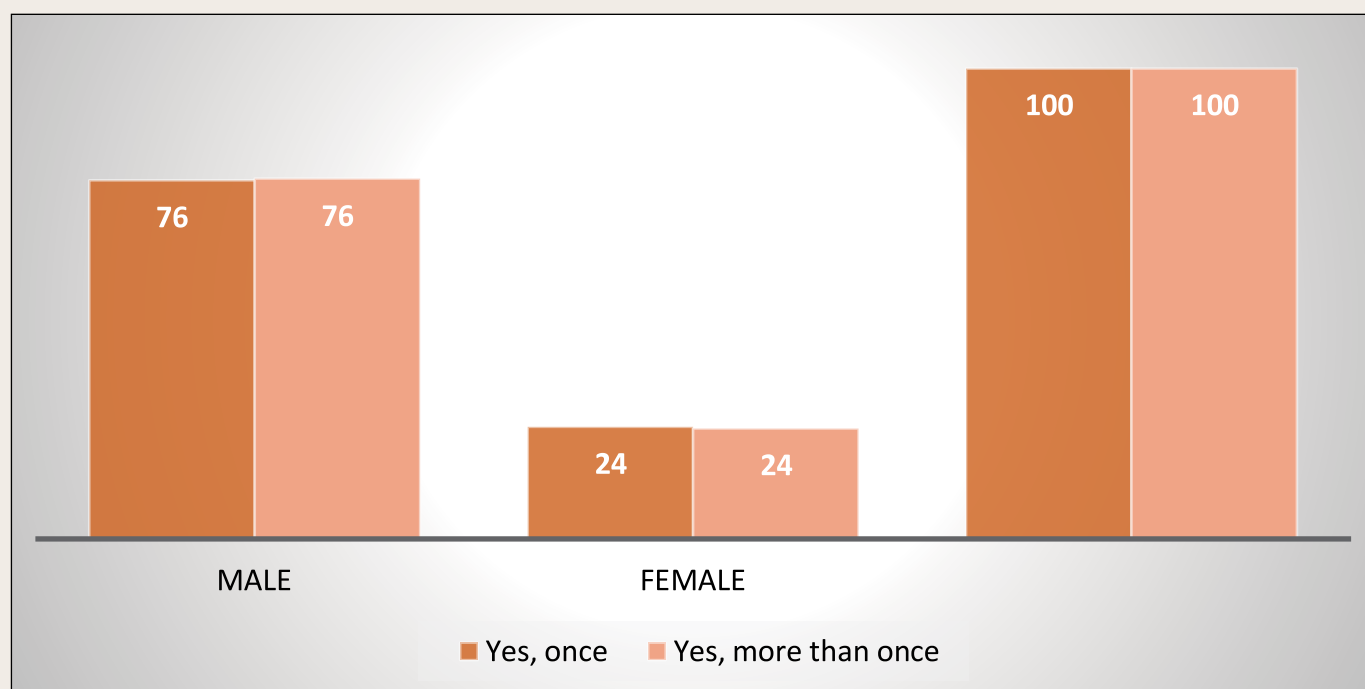
Source: Field Study Results



SECTION THREE: FINDINGS

Fig 4 Prevalence of Police Brutality by Sex

Percentage Distribution of Victims who/their Families Experienced an Illtreatment by Sex



Source: Field Study Results



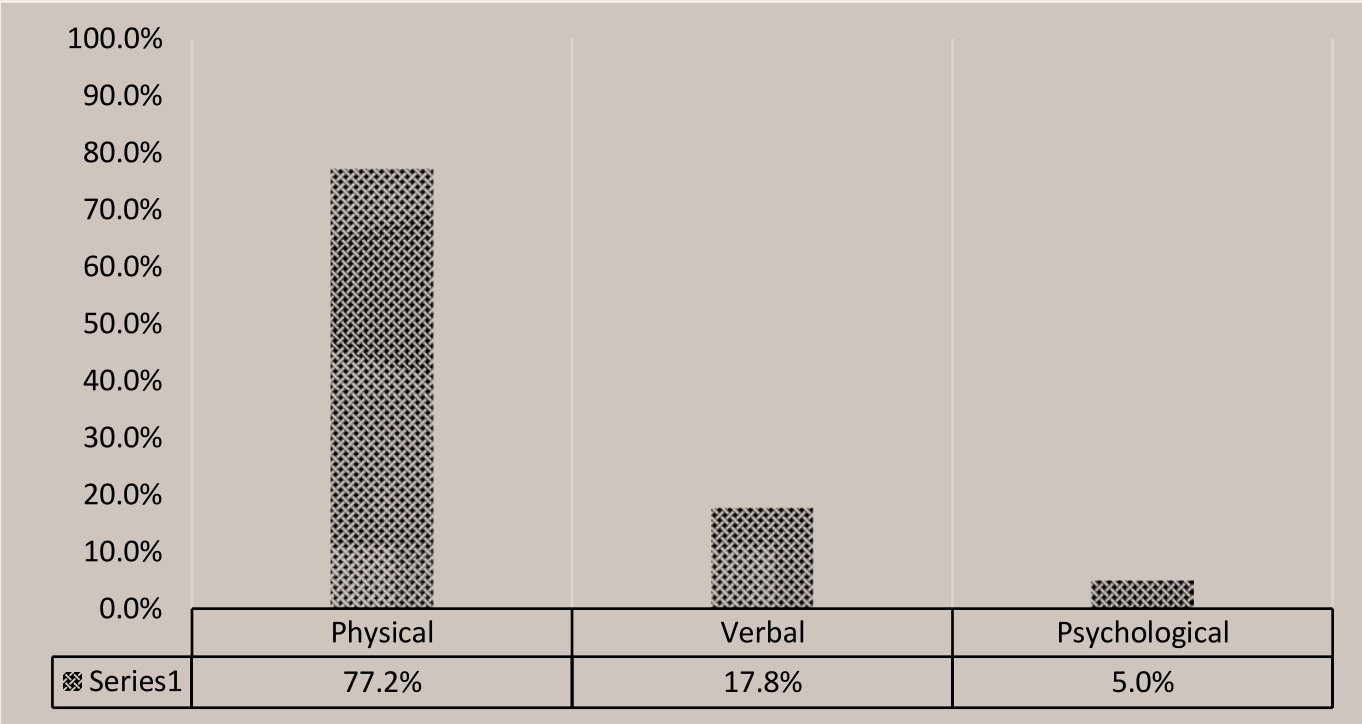
Young people marching to petition the government

3.3 Types and levels of police brutality

Police brutality in Lesotho takes different forms, the most common being physical which has been experienced by 77.2 percent of respondents while 17.8 percent and 5 percent have suffered verbal and psychological forms of police brutality respectively.

Fig. 5 Percentage Distribution by type of assault

Percentage Distribution of Victims by ways in which they were assaulted



Source: Field Study Results

Respondents in this study have experienced police brutality under different circumstances. Some are victims of ill-treatment in groups while others have suffered individually. Where there is group punishment such as in the Koro-koro and Kao 2 cases, the police normally request the victims to lie or roll on the ground and whip them while so lying or rolling. There have also been video clips circulating on social media which depict street vendors next to the traffic department and in another, members of the public in Sehlabeng, being assaulted by the police while rolling on the ground.



Members of the Lesotho Mounted Police Service assaulting civilians

SECTION THREE: FINDINGS

Source:

The respondents who were subjected to physical torture individually, indicated that the police used a heavy and thick stick to assault them. During the FGD, one of the respondents stated that:

"I was assaulted with a heavy shambok, and the Dr. who attended to me after my release told me that the aim of using such objects is to prevent bleeding so that there may be little evidence to prove that the acts took place".

Below is a picture of some of the victims of police brutality in the Kao 1 scenario in the above text box.

Victims of police brutality in Kao.



Victim of Police brutality from the village of Kao in Botha Bothe

Source: TRC File

In worst cases, the acts of police brutality have resulted in death of suspects such as in the Molapo, Mongali and Sekhonyana cases, the 2017 Koro-koro as well as the Kao 1 and 2 cases narrated in the prevalence of torture. The post-mortem reports in these cases highlight that the victims died from severe and brutal assaults, while Mongali and Sekhonyana were suffocated with a tube and Pitae and Rantlo were shot. Rantlo's post-mortem reflect further that, after he was shot, his skull was cut open and facial skin ripped off in the process of removing a bullet which was stuck in the skull.

Funeral of Poshoane Moloi, Kao community member killed during village raid.

Deceased Poshoane Moloi, killed by police in Kao village

3.3 Factors which contribute to police brutality

In the quest to find factors which contribute to these acts, this study has found that 61.3 percent of acts of police brutality are committed with the view of obtaining confessions from suspects of criminal offences.¹ This was further confirmed by the Minister of Police Mrs Mokhele, who before assuming service

as a Minister had served as a policewoman for 37 years. When accepting the donation of forensic equipment from the Algerian government, she stated that:

"We as the police are often forced to use violence to get information out of people because at times we would be sure that the suspect committed the crime but due to lack of tangible evidence we have to use force".²



The burial ceremony of Poshoane Moloi after being killed by the police

¹ In accepting the donation of forensic equipment from the Algerian government, the Minister of Police, Mrs Mokhele stated that the Police are often forced to use violence to get information from suspects.

² M Phakela 'Minister admits to police torture' Sunday Express 27 February 2018.

SECTION THREE: FINDINGS

The study found further that 8 percent of cases of police brutality are committed to control riots and protest and 30.7 percent to merely instil terror amongst the population. The police officers in Lesotho resort to various unlawful acts including verbal physical, and psychological assault on individuals and groups. Some of these acts result in death of victims. The effect of these acts does not only end with the individuals but also the entire society.

According to the police officers who were respondents in this study, numerous factors such as scarcity of resources, lack of appropriate training and other factors contribute to police brutality in Lesotho. Seventy-one percent of respondents attributed acts of police brutality to lack of training on alternative investigation techniques on the part of the police officers while 13.4 percent point to lack of resources and the remaining 13.4 percent to other factors other than the two.

Fig. 6 Factors which contribute to police brutality

Factors which contribute to Police Brutality



3.4 Social and Demographic Characteristics of victims and survivors of police brutality

This section outlines the key results of the quantitative and qualitative study on the social and demographic characteristics of survivors of torture and other acts of police brutality. It defines the key social and economic characteristics of people interviewed during the study. It is important to indicate at the outset that majority of respondents interviewed were men who constituted 79 percent of respondents while women constituted 20.6 percent of respondents.

The study indicated that majority of survivors of police brutality in Lesotho are men. This is mainly attributed to the fact that majority of acts of police brutality take place during arrest or detention in police cells. The study also found that the police often use excessive force in cases of robbery, stock theft and car theft, suspects of which are often men.

Table 6 Gender distribution of survivors of police brutality

Gender	Total of respondents	
	Number	Percentage
Male	85	79.4
Female	22	20.6
Total	107	

Source: Field Study Results

Table 7: Age distribution of survivors

Age Group	Frequency	Percent
15-24	14	4.9
25-34	31	8.8
35-44	23	10.8
45-54	13	19.6
55-64	12	9.8
65-74	8	12.7
75-84	1	5.9
Total	102	100

Source: Field study results

Of the 107 participants who were respondents to questionnaires, 4.9 percent were aged between 15 and 24 years, 8.8 percent between 25 and 34 years, 10.8 percent between 35 and 44 years, 19.6 percent between 45 and 54 years, 9.8 percent

between 55 and 64 years, 12.7 percent between 65 and 74 and 5.9 percent between 75 and 84 years. The age of five respondents was not known. There were no cases of survivors aged 17 years and below.

The age bracket of 80 years and above was the least and not affected at all. This may be due to the nature of offences with which people in this age brackets are associated as such do not fall within the range for which police officers are believed to use excessive force.

Table 8 Level of Education of Survivors

LEVEL OF EDUCATION	Total	
	Number	Percentage
None/ Never	3	2.9
Primary School	58	55.8
Secondary/ High School	35	33.7
Technical/ Vocational Training	3	2.9
College/ University	5	4.8
TOTAL	104	

Source: Field Study Results

From table 3.4 above, study results showed that approximately 3 percent of respondents never attended school. About 56 percent of survivors of police brutality had been to primary school, 33.7 percent has gone through secondary and/or high school education, approximately 3 percent through technical and/or vocational training and about 5 percent through college and/or university education.

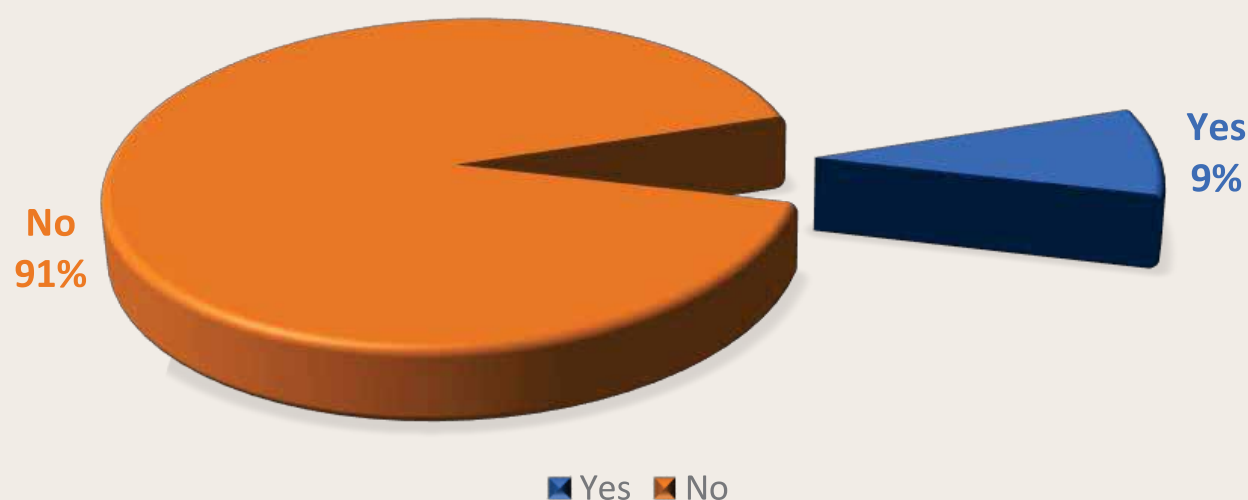
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3.6 Forms of assistance provided

Fig. 3.6 below shows that only 9 percent of respondents admitted to have received some form of rehabilitation while 91 percent had not received any form of rehabilitation or assistance. That is, despite the devastating physical and psychological effect of acts of police brutality as well as the state's obligation to provide redress to victims of such acts, none was provided to majority of survivors. Over and above, this relatives of victims who died as a result of police brutality were also not provided any form of assistance. They were responsible for demanding explanations as well as post-mortem reports as to deaths of their relatives. Thereafter, no form of counselling whatsoever was provided.

Fig. 7 Victims of Police Brutality who were Offered Rehabilitation Services

Proportion of Victims of Police Brutality Who were offered Rehabilitation Services



Source: Field Study Results



Police dissolving industrial action at Ha Thetsane



SECTION FOUR: CONCLUSIONS AND RECOMMENDATIONS

4.1 CONCLUSION

Torture and other cruel, inhuman and degrading acts, all of which amount to police brutality have the negative effects on victims, members of their families, the society and the LMPS as an institution. The high prevalence of acts of police brutality in Lesotho has also created a negative image for the country as such reflect failure to protect human rights in compliance with international obligations.

While section 8 of the Constitution guarantees the right to freedom from torture, the Constitution does not fully implement Lesotho's human rights obligations against torture. In other jurisdictions, the hurdle is tackled by backing up constitutional provisions with laws, which criminalise violation of the rights contained in the Constitution.¹ However, as will be illustrated in the findings, the Penal Code of Lesotho fails to criminalise torture and therefore leaves a lacuna with regard to the obligation to criminalise torture and all modes of participation in it.

The absence of anti-torture legislation in Lesotho has had catastrophic effects in that it has created space for impunity and where perpetrators are brought before courts of law, they are prosecuted for lesser offences, such as assault and the sentences imposed do not highlight the gravity of the offence of torture. Due to lack of legislative framework to that effect, victims have also gone without any redress except for claiming damages from the government.

The study also found that survivors of police brutality suffer from long-term physical and psychological ill-health as a result of the infliction of pain through such acts. Relatives of victims who die in the hands of the police are also left with no form of redress and rehabilitation for the trauma caused by death of their loved ones. The impunity for perpetrators of acts of police brutality and limited access to justice also leaves survivors and relatives of victims frustrated therefore compounding on the psychological effects of these acts.

1. For instance, section 12 of the Constitution of South Africa protects the right to freedom from torture. The constitutional provision is backed up by the Prevention and Combating of Torture of Persons Act 2013 which criminalises torture as a discrete crime. See JD Mujuzi 'Prosecuting and punishing torture in South Africa as a discrete crime and as a crime against humanity' (2015) 23 (2) African Journal of International and Comparative Law 339.
2. Association for Prevention of Torture 'Guide on anti-torture legislation' March 2014 (APT Guidelines). www.apr.ch/content/files_res/anti-torture-guide-en.pdf [accessed 5 April 2019].

SECTION FOUR: CONCLUSIONS AND RECOMMENDATIONS



4.2 RECOMMENDATIONS

Based on the findings of this study, the following recommendations are made:

1. Empowerment of citizens to know their rights and means of obtaining redress when they have suffered at the hands of the police;
2. Enactment of an anti-torture legislation which is in line with international human rights standards;

In this regard, it is recommended that Lesotho must follow a guide developed by the Association for Prevention of Torture (APT), which assists law-makers to assess national legal frameworks' compliance with the above criteria.² In terms of this guide, an anti-torture legislation complies with the provisions of CAT if it contains the following elements or covers the following themes:

- a) Definition of torture;
- b) Modes of liability;
- c) The exclusionary rule;
- d) Jurisdiction;
- e) Complaints, investigations, prosecutions and extraditions;
- f) Amnesties, immunity, statute of limitation;
- g) Non- refoulement; and
- h) Redress.³
3. Review of the legal framework governing the Police Complaints Authority with the view of enabling it to be independent from the Ministry of Police and its mandate to be expanded to include prosecution of suspects of acts of police brutality;
4. Provision of redress to victims of police brutality to be contained in the anti-torture law;

3. As above.

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Committee against Torture <i>Concluding Observations on Morocco's initial report</i> 21 December 2011, UN Doc CAT/C/MAR/CO/4; Committee against Torture <i>Concluding Observations on Gabon</i> 17	HRC Summary Record 1744 th Meeting 1 April 1999, UN Doc CCPR/C/SR.1744 para 10.
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Member of the LMPS assault a nurse during nurses protest at Queen Mamohato hospital

The logo features a central graphic of two hands clasped together, with a map of Lesotho in the background. The map is filled with vertical brown stripes. The hands are white with black outlines. The entire logo is set within a white oval with a brown border. The background of the entire page is a repeating pattern of small, stylized hands holding each other, arranged in a grid-like fashion.

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