



## THE INTERNATIONAL COMMISSION OF JURISTS (ICJ) IN CONJUNCTION WITH THE JUDICIARY OF LESOTHO

### JUDICIAL SYMPOSIUM ON JUDICIAL INDEPENDENCE, ACCOUNTABILITY AND REFORM IN LESOTHO

28th – 30 July 2010

*The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.*

*- Vienna Declaration and Programme of Action, 1993*

MASERU, LESOTHO

## CONCEPT NOTE

### A. The Symposium

1. The International Commission of Jurists (ICJ) in conjunction with the Judiciary of Lesotho will on 28<sup>th</sup> - 30<sup>th</sup> July 2010 hold a Judges' Symposium in Maseru, Lesotho. The theme of the symposium will be: *Judicial Independence, Impartiality, Accountability and Reform in Lesotho*. It will take place over a period of two days. The Conference will consist of 3 main discussion areas: (a) the Independence and Impartiality of Judges, lawyers and prosecutors; (b) the Accountability of Judges, lawyers and prosecutors; and (3) exploration of options for reform.

### B. The Context

2. The Constitutional order of Lesotho codifies the principle of the independence of the judiciary.<sup>1</sup> It vests judicial power in the judiciary, which exercises it through its hierarchy of courts consisting of the Court of Appeal High Court, Subordinate Courts and Courts-martial and other tribunals that may exercise judicial authority if so empowered by the legislature.<sup>2</sup> The Constitution declares that: "the courts shall, in the performance of their functions under this Constitution or any other law, be independent and free from interference and subject only to this Constitution and any other law."<sup>3</sup> It then enjoins the Government to accord such assistance as the courts may require to enable them to protect their independence, dignity and effectiveness, subject to the Constitution and any other law.<sup>4</sup>

3. The legal history and jurisprudence of Lesotho indicates that the Kingdom has since independence generated judges, lawyers and prosecutors whose professionalism and commitment to constitutional and legal principles was beyond question. The contribution of these legal professionals to the judicial tradition in Lesotho is seen by many as an inspiration to consolidate gains made and a catalyst for improvements where performance gaps remain.

4. Although the principle of judicial independence is well established, judges in many parts of the world including in some African jurisdictions, are subjected to various forms of pressures aimed at compromising their ability to discharge their responsibilities in true independence. The factors that may make judges susceptible to external pressures are numerous. The most common will include: appointment on a partisan basis; the lack of security of tenure, as may be the case where judges are employed on temporary contracts; inadequate remuneration which may make them more amenable to corruption; public criticism and threats by the Executive or legislature aimed at intimidating judges; criminal prosecution for lawful discharge of judicial functions; politicized transfers, non-allocation of files and unlawful dismissals, among many others.

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<sup>1</sup> *The Constitution of Lesotho*, Article 118

<sup>2</sup> *Ibid.*, Article 118 (1)

<sup>3</sup> *Ibid.*, Article 118 (2)

<sup>4</sup> *Ibid.*, Article 118 (3)

### **C. The Theory of Judicial Independence**

5. The principle of an independent judiciary derives from the basic principle of the rule of law, in particular the doctrine of separation of powers. According to the doctrine, the executive, the legislature and the judiciary constitute three separate and independent branches of government. These different organs of State have each exclusive and specific responsibility. And by virtue of this separation, it is not permissible for any branch to interfere into the other's sphere of responsibility. Thus, the separation of powers is the cornerstone of an independent and impartial judicial system, without which the rule of law and social stability cannot be achieved.

6. Under international law, the State is obliged to organize its apparatus in such a way that internationally protected rights and freedoms are guaranteed and their enjoyment assured. In that sense the notion of judicial independence is not for the benefit of judicial officers but is rather meant for the protection of the individual from the abuse of power. It follows that only an independent judiciary is capable of rendering justice impartially on the basis of the law and irrespective of the social standing of the litigating parties.

7. Where judges fail to play their respective key roles to the full in maintaining justice in society, there is a serious risk that the culture of impunity will take root, thereby alienating the population from the authorities. If the capacity of the people to secure justice is fundamentally frustrated, they may be driven to take the law in their own hands, resulting in a further deterioration in the administration of justice and preservation of the rule of law.

### **D. Objectives:**

The main objective is to contribute to the strengthening of the independence, impartiality and accountability of the judicial arm of government in Lesotho.

The specific objectives include:

- To facilitate sharing of ideas, experiences, best practices and reform initiatives that address issues on judicial independence and impartiality, integrity, transparency, accountability, and efficiency;
- To familiarize participants with existing international and regional legal rules, principles and jurisprudence relating to the judiciary, prosecutors and lawyers.

### **E. Expected Outputs:**

- Presentation and discussion of ideas, experiences, best practices, and reform initiatives;
- Identification of areas that require further strengthening; and
- A Report of the Conference capturing the two days of deliberations