

**THE CAUSES AND IMPLICATIONS OF YOUTH UNEMPLOYMENT IN
LESOTHO: TIME TO MAKE SECTION 29 OF THE CONSTITUTION JUSTICIABLE
AND TO ENACT OTHER LAWS TO SOLVE THE PROBLEM.**

By

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Abstract

Youth employment is very important in eradicating the bitter and harmful effects of the socio-political and economic risks that Lesotho faces. However, enforcement of chapter three of Lesotho's constitution, level of education, the collapse of local industries, climate change, and neglect of agricultural sector, so is the high rate of diseases like HIV/AIDS tuberculosis and very high corruption rate in the government play a very serious uphill battle to overcome the very threatening unemployment rate among youth because the country has low financial resources. Consequently low standard of living and high crime rate are the direct result of youth unemployment. Lesotho is regarded as one of the poorest countries both the African region and in the world. In trying to solve the problem of high youth unemployment rate the country Incorporated policies advocated internationally especially those of ILO into its constitution since 1966 with a view to strengthen their campaign to reduce the unemployment rate. The justiciability of policies on opportunity to work as enshrined in chapter three of the 1993 Constitution of Lesotho form the fulcrum upon which the discussion in this paper is based. It concludes by recommending that the constitution must be amended or be reformed to make section 29 to be justiciable. Equally important creation of new laws and diversification of the economy (improvement of private sector) is very important so is the revitalization of collapsed local industries to absorb growing number of unemployed youths.

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List of abbreviations

AHRS	AFRICAN HUMAN RIGHTS SYSTEM
AU	AFRICAN UNION
CESCR RIGHTS	UN COMMITTEE ON SOCIAL ECONOMIC, SOCIAL AND CULTURAL
CPRs	CIVIL AND POLITICAL RIGHTS
FAO	FOOD AND AGRICULTURAL ORGANISATION
GNP	CROSS NATIONAL PRODUCT
HRC	UNITED NATIONS HUMAN RIGHTS COMMITTEE
ICC	INTERNATIONAL CRIMINAL COURT
ICCPR	COVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ILO	INTERNATIONAL LABOUR ORGANISATION
IMF	INTERNATIONAL MONETARY FUND
OHCHR	OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
OP-ICESCR	OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
SAC	THE 1996 SOUTH AFRICAN CONSTITUTION
SACC	SOUTH AFRICAN CONSTITUTIONAL COURT
SERs	SOCIO-ECONOMIC ^{iv} RIGHTS
SMEs	SMALL MEDIAUM ENTERPRISES
UDHR	UNIVERSAL CLARATION OF HUMAN RIGHTS
UN	UNITED NATIONS
UNDP	UNITED NATIONS DEVELOPMENT PROGRAMME
WTO	WORLD TRADE ORGANISATION

DECLARATION

I, Moratoe Peter Khalimane, the causes and implications of youth unemployment in Lesotho: time to make section 29 of the Constitution justiciable and to enact other laws to solve the problem is my work; sources used and quoted have been indicated and acknowledged.

MORATOE PETER KHALIMANE

Signed _____

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CHAPTER ONE

INTRODUCTION

Another issue which confronts many countries in the SADC region is the increase in unemployment.¹ Lesotho is one of SADC countries and it is not immune from the increase of unemployment. The hit of unemployment according to empirical research seems to be more concentrated on youth as compared to senior citizens in Lesotho. Youth unemployment rate tend to be higher than adult rates in every country in the world². Youth unemployment is a challenging policy arena for developing countries, yet little empirical evidence is available to inform policy planning and development.³ Youth unemployment is unemployment of young people classified by United Nations as those between 14 and 28 of age. But in many African countries however, “youth” is defined as someone from as young as 15 to someone well in their mid-thirties.

Lesotho, like other countries of the world, is faced with the problem of high youth unemployment. The problem of youth unemployment is very evident in Lesotho. While the number of university and college graduates increases from year to year, most of these graduates are not able to get employment. Lesotho's youth unemployment rate is estimated at 38.0 per cent in 2010 by ILO. It was also estimated that of the 7,500 graduates who enter the labour market each year, half do not get jobs. Even those who are employed are mainly working in subsistence agriculture where they do not earn salaries or if at all very meager wages⁴.

¹Mosito K. E & Setlojoane, DECENT WORK FOR ALL: TOWARDS FOSTERING SOCIAL PROTECTION IN THE SADAC REGION. LESOTHO LAW JOURNAL; Volume 26-2018, Number 1, p 7.

² Wikipedia .Org *Youth Unemployment*

³ Kahraman, B. (2011). *Youth Employment and Unemployment in Developing Countries*:

⁴ <http://www.lesotho> overview. Html

An unemployed person is someone without any physical means of livelihood but is actively seeking work⁵. It should be a person willing and able to work. There is no dispute that youth unemployment is a serious challenge in developing countries, including Lesotho where it affects young man and women a potential for crime and social unrest. Recently there has been on social media publication a huge and a disturbing protest against youth unemployment in Hamburg. Again following the news social unrest and political uprising in the Middle East underscored the perils of high rates of unemployment, especially among the youths. Olakitan again had the following to say,

*“...aside from terrorism, youth unemployment is one of the greatest threats to the national security mainly because idle hands are the devil’s workshop. In Nigeria for example, some of the effects of youth unemployment are seen in political unrest, economic instability, drug abuse, crime, prostitution, human trafficking, terrorism and kidnapping.”*⁶

The above submitted by Olakitan is not different from the bitter effects that Lesotho is facing due to high unemployment rate, Lesotho’s crime rate according to recent statistics reveals that it stood to as high as 41.25% which is a threat both to the government and the entire nation because it means the country has to invest more on crime other than pumping money into development of private sector to enhance the economy. And for the purposes of economic instability that Lesotho is facing is that, it losses a lot of valuable human resource due to the challenge of youth unemployment

Furthermore, Kaharaman⁷ asserts that both in France and Greece, there were suggestion in media and public discussion that youth unemployment might have played a role in the conflict as the two countries experiences significant above levels of youth unemployment as compared to other European Union countries.

Lesotho and South African relations are at the verge of been tarnished because of the problem of youth unemployment in Lesotho wherefore many Basotho are illegally migrating across South African borders, to seeks jobs⁸. There has recently been the loud cry across the

⁵ Olakitan, Y (2015). Youth Unemployment: *a time Bomb*. *National Mirror*, 2015.

⁶ *Ibid*.

⁷ See (2011) *supra*.

⁸ M. Mamochako Shale. Afrometer briefing paper no.11 Unemployment digest problem for Basotho, who also endorse illegal migration to get jobs,2013

African Region that South Africans seems to brutally kill their fellow brother complaining that people from other countries take their jobs what is known as Xenophobia, among those that were ill-treated are youth from Lesotho.

The Lesotho Government provides study loans to virtually all Basotho who get admitted to tertiary institutions in Lesotho and South Africa. After graduating, the beneficiaries are expected to repay a specified percentage of the loan. This cannot be possible without a job and income. The rising unemployment of youth who have graduated from tertiary institutions reduces the inflows to government hence the sources of funds for future financing of study loans. Consequently, funds that would otherwise be used to finance development projects and other important initiatives are used to close this gap. In addition, high unemployment and high youth unemployment imply that the economy is generating tax revenues that are far below its potential. This leads to increased government borrowing and/or slow delivery of public goods, hence slow economic development. If young people are left with no alternative but unemployment and poverty, they are more likely to join a rebellion as an alternative way of generating an income. Unemployment among the youth is associated with an increase in crimes such as robbery, drug related offences and murder as aforesaid.

Interestingly, Lesotho is a small, mountainous, and landlocked country, surrounded by its much larger neighbor, South Africa. It has a population of about two million, and a per capita gross domestic product (GDP) of \$1,222.⁹ It is said that its renewable resources are enough to sustain every citizen with necessary needs. Yet the country's youth unemployment according to Bureau of statistics (2018) is over 33%¹⁰. Recently the Ministry of defence conducted interviews for employment at least for quite a few numbers of soldiers, but the young stars who attended that interviews were five times the number of the entire army in Lesotho. This is the case with the interviews held in private sector, where there is a need for one person; many will be applying that post, even those who are over qualified for the job. The above examples show that youth unemployment is serious now than in the past, maybe the reason might be that many of Basotho men in the past years used to work in the mines hence youth unemployment was not that serious as it is

⁹ Lesotho's overview *supra*.

¹⁰ N:statista.com. *Data according to ILO estimates.see also UNDP Lesotho empowerment survey 2012*

nowadays. The table below shows the national youth unemployment rates for Lesotho from 2011-2018.

TABLE 1: NATIONAL UNEMPLOYMENT RATES BETWEEN 2011 AND 2018

YOUTH UNEMPLOMENT RATE¹¹

2018	33.22%
2017	33.19%
2016	33.96%
2015	34.16%
2014	34.04%
2013	34.53%
2012	35.33%
2011	36.77%

This table clearly shows that the unemployment is gradually decreasing, and most of the employed young stars are only those that are active in politics so are mostly liked by the leaders. The above evidence has set the contemporary contexts and provided the reason and motivation for this study. As already stated, Lesotho’s unemployment crisis is a national concern. Yet young people continue to be among the hardest hit by the job crisis. Consequently most parents are not only frustrated but also traumatized at seeing their sons and daughters turn into crimes and prostitution because of unemployment. It is important to note that even the government is also experiencing the hardest blow as aforesaid when this young stars are unemployed because they become bitter and angry which makes them to act unreasonably, and again the government fails to recover the loans used to finance

¹¹ H. Pletcher, 2018, Youth unemployment rate in Lesotho, Last edited September, 2019.

them as the government is the major sponsor of them. Furthermore because of high crime rate associated with this problem makes foreign investors reluctant to come and invest in country of this calibre. And lastly but not on the list the government is losing a very valuable human resources as this young people after completing their tertiary they leave Lesotho for other countries for green pastures, it is important to note that they apply and because of their skills they acquire permanent citizenship in foreign countries, for example Lesotho has trained many nurses who are now the citizens of England and the doctors who are now the citizens of South Africa.

Hence there is a need improve private sector because it is evident that government is over populated with unwanted human resource this is according to IMF publications. The best way to remedy the challenge is to create relaxed laws to improve Small Medium Enterprises (SME's), this has proved to be the only way of solving the high rate of unemployment. IMF demanded the government to cut budget aimed to pay the salaries of civil servants this technical advice is also a problem for it suggests that more civil servants must be retrenched.

It is for this reason that there should be a legislative intervention to level the ground field on the issue of improving private sector. There are policies long formulated since 1966 and incorporated in the constitution, which when applied in other countries function quite well but fails in Lesotho. Because of politician's corruption, policies relating to *right to work* are incorporated in chapter three of the constitution which are rights that can only be enforced when resources allow, politicians seems to intentionally deny youth in Lesotho the right to be unemployable knowing that they are covered by the supreme law of Lesotho.¹² We have good business policies like Business Economic Policy on Economic Diversification but to date they have not been implemented that is why for example we see so many taxies even when this taxi industry is heavily saturated. The best is to amend S.29 of the Constitution of Lesotho to incorporate it in chapter 2 making the right to work to be an enforceable right.

¹² The 1993 Constitution of Lesotho

Again Lesotho should also enact laws like Youth Credit Initiative Act which will create a bank which youth can easily access credit to establish their own businesses¹³ for it is clear that commercial banks are reluctant to lend money to people who do not suit their internal policies for example they will demand certain securities to lend money to an individual and many of Basotho youth fail to meet that requirement as they come from very poor families. Meanwhile the CBL persisted on structural reform to enhance credit accessibility by the private sector¹⁴ Lesotho has number of commercial laws enacted such as Central Bank of Lesotho Act,¹⁵ Partnership Proclamation¹⁶, and Companies Act¹⁷ which all fails to give a monopoly to youth with the aim of enabling them to enter into business for end result of job creation.

Lesotho is a country with high level of inequality, political, economic and social marginalization, and huge gap between the youth and the senior citizens with adverse human development. Poverty is highly concentrated among young people due to youth unemployment. The problem hits both youth in the formal and informal sector. Poverty and socio-economic marginalization has been due to the recent political instability rampant and runaway corruption that has debilitated government's resources capacity to provide basic services' climate change that led to increased drought, crop failure so as increased in the prices of basic commodities, despite economic growth level in recent years and the increase rate of literacy rate mentioned below inequality is still high ranking in the apex of African countries on the issue of inequality between the youth and elder citizens. Question to be asked is, how did Lesotho get into have these adverse poverty and inequality statistics? Nepotism and Colonialism is the answer to the propose question.

In Lesotho politics has been used to facilitate the interest of the political and economic elite discluding youth not active in party politics. Poverty and inequality greatly determine access to socio-economic goods and services such as education, health, access to employment and

¹³ [http : // www.undp. Orgz Lesotho>docu>ourwork](http://www.undp.org/lesotho/docu/ourwork)

¹⁴ Central bank of Lesotho Annual Report 2004.

¹⁵ No 2 of 2008.

¹⁶ No 78 of 1957

¹⁷ Of 2011

income generating opportunities, access to political or decision making power to determine the distribution of national resources and wealth, leading to social destabilization.¹⁸

The samples from the Bureau of Statistics of many years until 2020 indicates that the government of Lesotho has a youth population of 690,619¹⁹ and the overall literacy of 85.09 %²⁰ many of which are youth who are unemployed. This may have a bearing that the youth of this country feels isolated or hated. The government have policies like Youth Employment Project, which was piloted in 2006, vision 2020 on reduction of youth unemployment and recently the government through the Minister of Finance and the prime minister has announced their intention to create more than eight thousand jobs for youth of Lesotho but all this has in way closer to solving youth unemployment in Lesotho. It still remains the heaviest challenge.

The primary objective of this study is to investigate the causes and the effects of unemployment in Lesotho, to investigate whether or not youth unemployment has the negative impact on the society. Furthermore, to closely look at government policies aimed to increase employment creation in Lesotho. To arrive at the desired objective the following questions must be addressed *viz*;

- (a) What are the measure sources of effects of youth unemployment in Lesotho?
- (b) To what extend is youth unemployment a problem?
- (c) Are the policies long formulated to address the problem effective?
- (d) Is not the time to amend Section 29 of the Constitution and to enact other laws to enforce those good policies?

This study is primarily on comparative study; reference to foreign jurisdiction will be highlighted for illustration purposes South Africa and India are good examples which piloted this problem of reducing youth unemployment by enacting laws meant to assists the youth to engage into business to of load the government in eradicating poverty. The research also adopted a random sampling to assign hundred questionnaires to samples to individuals in each of towns selected. Group discussion and face to face interviews will be conducted. The

¹⁸ Alkire (n 34 ...) 18 According to report , where political institutions are seen unresponsive and are seen as tools for the perpetuation of unjust inequalities or the advancement of the interest of the elite, democratisation is undermined, creating conditions for state breakdown.

¹⁹ www.worldometers. Infor> world-population> Lesotho population

²⁰ Countrymeters.info. Lesotho

study will also be based on legislation and internet sources based on improving private sector for example creation of a development bank, giving young people on business incentives like tax holiday, and improving (SME's) to enhance job creation. The use of appropriate text books, case law, law journals and international conventions like Internatiol Labour Convention. Finally data will be presented by tables and pie charts and graphs where necessary. The selection of the country for comparative study is meant for no other reason but to get as global a perspective as possible.

This dissertation is divided into four chapters, of which chapter one sought to deal with the introduction of the study, particularly the issue which influenced high rate of youth unemployment and its implication to the society, the importance of enacting laws to solve the problem. Chapter two will be dealing with the literature review of legal issues and the laws relating to this topic from an international point of view and closer to home. Chapter three proceeds to give a comparative study of Lesotho's jurisdiction and that of South Africa and India. Finally the last chapter being chapter four will be a conclusion and some recommendations.

CHAPTER TWO

LITERATURE REVIEW AND THEORITICAL FRAMEWORK

The focus of this chapter is to provide a picture of the relevant laws governing the *right to work /employment* especially on youth both at national level and international level. Emphasis will be placed on the specific provisions of the relevant laws especially constitutional law, labour law, human rights laws etc. and the institution with regard to enforcement. The use of case law where possible to demonstrate how courts in other jurisdictions dealt with the issue bearing in mind eradication of youth unemployment.

They are various definitions and descriptions equated to the concept of unemployment the reason is people interpret things differently. For instance International Labour Organization (ILO, 2007) says unemployed persons are those who are currently not working but are willing and able to work for pay and have actively searched for work. Again unemployment refers to a number of people not having a job.²¹ According to ILO definition the Unemployed has the following characteristics

- (1) To be without a job , i.e. not to have worked for more than an Hour for a period of one week.
- (2) To be available to take up a job within a fortnight
- (3) To be actively looking for a job or to have found one this will begin later.

It also explains youth unemployment as the unemployment of young people between the ages of 18-35 years, it must be clear that this definition includes underemployment, it is therefore suffice to say that youth unemployment takes place when people of the ages above are able and are willing to work but are without jobs.

Furthermore, it occurs when young people are forced to take the jobs that lower than their qualifications, for example youth in Lesotho are to work in the Ministry of Forestry and land reclamation to control certain indigenous weed (sehala-hala) despite their qualifications. There are certain types of unemployment theories but for the purposes of this discussion the writer will only concentrate on two theories namely *Keynesian theory* and the *Search theory*. Keynesian theory is a situation whereby low rates, which aim at increasing employment levels fails because the economy is in recession and the employers are facing low demands for their goods and services.²² While on the other hand unemployment may

²¹Abuja, Nigeria, 2001, Annual Report: National Youth Policy.

²² Definition derived from the Advanced Oxford Dictionary

come as a result of employees living their current jobs to seek for better offers elsewhere which involves a certain optimum time spending in search for a better job,²³this is known as search theory.

Aalia Cassim and Morne had the following to say about youth unemployment;

“Unemployed youth are characterized by their lack of employability resulting from a range of socio-economic factors. They often have low level of education, and have dropped out of school and invariably do not have literacy, numeracy and communication skills needed in the labour market. They also have little work experience...these young people lack strong networks or social capital that allow them to source job opportunities, and tend not to have sufficient financial resources to enable mobility to areas where there is demand for labour.”²⁴

Youths refer to the most vital endowment or resources a country could possess, because they are the most referred to as the leaders of tomorrow, therefore there is a need for them to be established and fully empowered.²⁵ However the problem of chronic youth unemployment both in the formal sector and the informal sector is evident in Lesotho especially on those youth that are not active in party politics.

The former Minister Professor Ntoi Rapapa said that the only youth eligible for employment in Lesotho is those that seem to be active members of the ruling parties²⁶. Empirical research indicates that a quite huge number of youth is not active in politics and they being discriminated against during employment process. Job incentives are only catered those youth who are active members in party politics. A large number of young people when being asked many decry the methods used to select applicants which are not considered transparent some young people underline the fact that there is also discrimination,of family origin, some spoke of special favours obtained through bribery and the need to pay in order to get a job, or the widespread practice of string pulling and others spoke of abuse of power and sexual abuse. That discussion revealed that social relations are an important way of handing a job.

²³Harries, S.E,2005 The New Economics; Keynes' Influence on Theory and Public Policy.

²⁴ A,Cassim and M Oosthuizen,2014, The State of Youth Unemployment in South Africa. Africa in focus

²⁵ Lesotho Youth Empowerment Survey of 2012.

²⁶ On PC FM on the 20th May 2020 around 19:00hrs.

Every year thousands of graduates are churned out for whom there are no jobs so are those from vocational training. Yet Lesotho has long formulated good policies geared at eradicating the problem. The question to be asked is whether those long good policies formulated are implementable or effective pro-job creation policies to sufficiently galvanize the innate talents and overwhelming energy levels young Lesotho graduates and non-graduates.

The most important document which purported to implement job creation without distinction whether one is active in politics or not an active member in politics and whether one is youth or elder citizen, in Lesotho is its supreme law.²⁷ The 1993 Constitution of Lesotho adopted most of its sections if not all from The 1966 Lesotho Constitution, of most of which sections were copied from The Constitution of the United Kingdom.

Chapter 3, Section 29 (1) ²⁸provides that Lesotho shall endeavor to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts.

S. 29 (2) maintains that Lesotho shall adopt policies aimed at-

- (a) achieving and maintaining a high stable a level of employment as possible;
- (b) providing technical and vocational guidance and training programmes; and
- (c) achieving steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

It is important to note however that the rights contained under chapter 3 of Lesotho's Constitution are not justiciable of which "*right to work*" is one such right. Chapter III, Section 25 of the Constitution provides;

"The principles contained in this chapter shall form part of the public policy of Lesotho. These principles shall not be enforceable by any court but, subject to limits of the economic capacity and development of Lesotho shall guide the authorities of Lesotho ...by legislation or otherwise, the full realization of these principles."

²⁷ It is incorporated both in the 1966 and 1993 Constitutions respectively

²⁸ Ibid 1993 Constitution

The same “*right to work*” or the right to be employed is provided for under Chapter 2 Part 2 of the British’s Constitution²⁹. However the important Article which is relevant to our proposition that right to work is not a justiciable right is outlined under Article 27.3 which precludes the intervention of the courts in enforcing social and economic rights.

2.1 JUSTICIABILITY

“Justiciability” means that people who claim to be the victims of violations of these rights are able to file a complaint before an independent and impartial body to request adequate remedies if a violation has been found to have occurred or likely to occur and to have any remedy enforced.³⁰

“This reflects the view that while the Constitution should state the general principles on which public policy is to be conducted, it would not be appropriate for the courts to judge whether or not the Government or Parliament had provided, for example an adequate level of income maintenance. Unlike the rights secured in the Bill of Rights, such matters are essentially political and best determined by political means.”³¹

This is where the issue of judicial separation steps in, separation of powers means that courts must not be seen as usurping the executive or legislative or indeed administrative functions of other organs of state. All arms of the government should be sensitive to respect this separation; however this does not mean that courts cannot or should not make orders that have an impact on policy.³² The court in Swssborough Diamond Mines Pty Ltd v Miintary Council of Lesotho and others³³ had the following to say about the doctrine of separation of powers in Lesotho that;

It is not a matter of supremacy of the Parliament or of the Executive: neither is it a matter of supremacy of the Judicature.

²⁹ The Constitution of the United Kingdom

³⁰ The definition extracted from the case Indian Supreme Court Case of Olga Tells to be discussed in details later in the discussion.

³¹ *ibid*

³² Minister of Health and Others v Treatment Action Campaign (2) 2002 (5) SA 755 para 98

³³ 1991-96 LLR 1481 at 1697

None of them is supreme. The rule of law is the one which is supreme ensuring that each power is exercised within its proper limits. This was rightly put by J. Peete that,

“(When) a legal document is deficient in one respect or another, it deserves to be changed by the appropriate body to meet present circumstances. Judicial activism should not be an unruly horse because it would go against the very hallowed ethos of the rule of law.”³⁴

The South African courts have recognized this as a valid rejection of social rights. Justiciability must rely on their inability to be properly or effectively adjudicated. The cases in point are Government of SA v Grootboom³⁵, Soobramaney v Minister of Health³⁶ and Minister of Health v Treatment Action Campaign³⁷ in the latter case the Government was ordered to supply the Nevirapine drug to every hospital in South Africa. The court relied not only on the right to medical treatment but also equality. It is proper to mention that Socio Economic rights can be given teeth when they are protected as corollaries of Civil and Political rights, for example to give Right life a broader meaning to include right to livelihood.³⁸ The South African Constitution very carefully delineates social and economic rights, and provides that “everyone”³⁹ is entitled to reasonable access to housing, health care, and education.⁴⁰

“The Constitutional Court has held, however, that “reasonable access” does not mean that an individual is entitled to these provisions. Rather, these provisions should be progressively provided, taking into account the financial ability of the state. Indeed, the Constitution is carefully worded to give appropriate deference to the legislature, and it can be very difficult for courts and judges in the context of that careful wording to determine at what point the legislature or executive can be faulted and told that it is acting unconstitutionally... The question thus becomes whether courts should become involved in instructing the legislature or executive how to allocate such funds. Many individuals believe that it is not the province of the judiciary to do so.”⁴¹

³⁴ Khathang Tema Baitsukuli v Maseru City Council (CONST/C/1/2004)

³⁵ 2001 (1) SA 46 (cc) (S. Afr.)

³⁶ 1997 (12) BCLR 1696 (cc) (S.Afr.)

³⁷ 2002 (5) SA 721 (cc) (S. Afr.)

³⁸ Paul O’Connell, 2017, Vindicating Socio-Economic Rights. P181

³⁹ *Khoza and Others v Minister of Social Development and Others* 2004 (6) 505 (cc) (S.Afr.).

⁴⁰ *Constitution of the Republic of South Africa* Ch. 2 sections 26, 27, 29 (Oct.11.1996).

⁴¹ Richard J Goldstone, 2006, A South African Perspective on Social and Economic Rights. Volume 13, Issue 2 Article 2.

That is why this paper seeks to suggest that it is time for the Constitution of Lesotho to be reformed and incorporate Chapter 3 into Chapter 2 to become bill of rights which will be justiciable. In that way the Legislature will have been given a chance to perform its duties, and thus will be making the right of work to be enforceable consequently reducing youth unemployment in Lesotho. J. Peete in his obiter was of the view that;

*Human life would be meaningless if it does not enjoy liberty, freedom of movement, freedom to earn a living and enjoy other Socio-Economic Rights, for example rights to food or to earn living is by reason d'etre, a right indispensable to amenities like fresh and clear air and medicine and basic indeed be rendered impossible to sustain. The worth of human life depends upon its access to these essential commodities.*⁴²

Socio Economic rights to be meaningful and real to human life should not exist only at abstract or wishful level. In India, the Supreme Court has held on many occasions that the right to life must be expansively purposively and generously interpreted in order to give it its fullest meaning and purpose. The Supreme Court has therefore held that in order to enjoy a right to life , man must live a sustainable type of life with adequate food, shelter, health under favourable environmental conditions and that without food for few days, man's life deteriorates and ultimately may lose his that very life.

In the Indian case of Olga Tells v Bombay Manucipality Corporation⁴³the court held that the right to opportunity for work is the most precious liberty that a man possesses in order to sustain his livelihood. Every person has as much right to work as he has to live.

What is important here is, it should be clear that in India, the right to live and the right to work are inseparable and interdependent and that if a person is deprived of his job his very right to life is put in jeopardy. This proposition can be very essential in Lesotho to solve this high rate youth unemployment.

The "*right to work*" internationally is traced from way back in instrument such as firstly, The Universal Declaration of the Human Rights⁴⁴ the purpose of using the Declaration is to

⁴² ibid

⁴³ 1985 Supreme Court Reports 51

⁴⁴ adopted by the General Assembly in December 1948.

"The declaration has a considerable indirect legal effect and it is regarded by the Assembly and some jurists as part of the law of the United Nations

determine whether Socio Economic Rights, which Right to work or the right to be employed is its subset, meant that it cannot be enforced, for that would mean that if it cannot be enforced by the courts then it would be essentially difficult to solve the problem of youth unemployment in Lesotho. How, because as aforesaid there is discrimination on the issue of employing this young people in Lesotho both in the Government and in the private sector. If one is not into party politics then no job or even other incentives from the government either loan for him to establish one's own business.

Article 2 r/w Article 23 of the Universal declaration provide for the right to work/employment. The wording of Article 23 is of the effect that everyone is entitled to or has a right to work, to free choice of employment... while Article 2 maintains that this right shall be enjoyed by everyone without any distinction meaning that even youth is entitled to this right.

Having critically analysing the articles above I am of the view that the Declaration's aim was to put both the Civil and Political rights and Socio Economic rights on the same footing that both these rights are enforceable by the Courts of law because there is even PLEDGE by the state parties to ensure that socio economic rights are recognized and enforced.

The universal declaration set the base for the enjoyment of the *right to work or right to employment* for, because of it the International Covenant on Economic, Social and Cultural Rights⁴⁵ was adopted. It is important to note from the wording of its preamble that the idea was to place the rights contained in both the Covenant on Civil and Political rights and those on the Covenant of Economic, Social and Cultural Rights on the same footing because it provides,

"Recognizing that, in accordance with Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from FEAR and WANT can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights"

This is so because even the state party is under the obligation under the Charter of the United⁴⁶ Nations to promote universal respect for and observance of human rights and

⁴⁵ adopted by the General Assembly in 1966

⁴⁶ 1949

freedoms. The IESCR also goes on further to define the rights in some detail and sets out the steps that should be taken their realization for example Article 6 (1) provides that,

“The state parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work he freely chooses or accepts and will take appropriate steps to safeguard this right.”

The above section is corroborated by Article 11 (1) which maintains that,

“The state parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The state parties will take appropriate measures and steps to ensure the realization of this right. The steps to be taken by the state party to the present covenant to achieve full realization of the right shall include technical and vocational guidance and training programs policies and techniques to achieve steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individuals”

2.2 THE OBLIGATION OF PROGRESSIVE REALISATION TO THE MAXIMUM OF AVAILABLE RESOURCES

Lesotho ESC obligations must start from the base of indivisibility, interdependence and interrelatedness of rights.⁴⁷

The question to be asked here is whether by ratifying the covenant a state party immediately assumes the obligation of immediate implementation as found in the civil and political covenant? The answer to this question is found under Article 2(1) of the covenant which provides that; the general importance for realisation of ESC is premised on the standard of Progressive realisation in accordance with the miximum available resources of the state.

⁴⁷ A.sen emphasizes the instrumental values of all rights contending that rights reinforce each other and that: Political Freedoms (free speech & elections) help promote economic activity: social activity; social opportunitis.

2.3 PROGRESSIVE REALISATION

The entrenchment of the progressive realisation standard of in the ICESCR was due to the recognition that full realisation of all the substantive SERs could not be achieved over a short period of time.⁴⁸ It was thus intended as flexibility device reflecting the realities of the world and difficulties in achieving the full realisation of ESCR especially for developing countries.⁴⁹ However, due to its haziness there are concerns that state will misuse the standard as excuse for them to undertake measure to realise their covenant SERS obligations. The realisation must be as expeditious and effective as possible. ESC policies and programmes should not be unduly delayed.

2.4 MAXIMUM OF AVAILABLE RESOURCES

Even though substantive SERs are the same universally, the level at which these rights can be realised in any given state will depend vitally on the state's economy, and this determines the threshold a country must meet in discharging its obligations.⁵⁰ However the discretion is not absolute as it would otherwise nullify the substance of state's obligations.⁵¹ the obligation calls for prioritisation in the allocation of state resources especially with regard to social spending and implies the duty on the state to effectively and efficiently use the allocated resources accountably in the realisation of the covenant related objectives without diversion or misuse through corruption.⁵²

"Each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the ADOPTION OF LEGISLATIVE MEASURES."

⁴⁸ CESCR GENERAL COMMENT NO.3 Para .1 & 9 Chenwei Sepulveda- Nature of SER obligations 312, Alston & Quinn

⁴⁹ CESCR GENERAL COMMENT NO.3 PARA .9

⁵⁰ Dowell- Jones ,44-45

⁵¹ Alston & Quinn, 177-181

⁵² Sepulveda-Nature of SER obligations , 315

The conclusion drawn here is that the approach is different, because in terms of the language of this provision, a state does not; by ratifying this covenant undertake to give immediate effect to all rights it enumerates. Instead, the state obligates itself merely to take steps to the maximum of its available resources in order to achieve progressively the full realization of these rights. Can we actually say that it is easy to implement IESCR in least developed countries like Lesotho as compared to implementation of ICCPR?

Lesotho has ratified this treaty on 9th September 1992, does that mean by so doing after so many years when this treaty was adopted since 1966 the country was not ready to ensure that right to work is enforceable by the courts? Lesotho has a very low population but its resources are more than enough to sustain its citizens economically. Empirical research has it that the laws when it comes to the regulation and distribution of the natural resources of the country to sustain Basotho of today and of the future are only favourable to the foreign investors other than Basotho themselves⁵³. The bilateral treaty between Lesotho and SA on Article 4 sets the Purpose of the Project as thus;

(1) The purpose of the Project shall be to enhance the use of the water of the Senqu/Orange River by storing, regulating, diverting and controlling the flow of the Senqu/Orange River and its affluents in order to effect the delivery of specified quantities of water to the Designated Outlet Point in the Republic of South Africa and by utilizing such delivery system to generate hydro-electric power in the Kingdom of Lesotho.

(2) Without prejudice to the provisions of paragraph (1) each Party shall be allowed the opportunity to undertake ancillary developments in its territory including:

- (i) the provision of water for irrigation, potable water supply and other uses;
- (ii) the development of other projects to generate hydro-electric power, and
- (iii) the development of tourism, fisheries and other projects for economic and social development.

South Africa seems to have the upper hand in Lesotho's water because they control and regulate it and they are also allowed to even make hydro electronic powers, to even perform irrigation and for development of economic and social development while Lesotho

²⁰ an example is Article 30. [Treaty on the Lesotho highlands water project between the government of the Kingdom of Lesotho and the government of the Republic of South Africa signed at Maseru, 24 October 1986](#)

is only entitled to use it for hydro-electric power and to perform other petty things like irrigation.

The government of Lesotho should start thinking of having or enacting *Investment Code Act* which will monitor both the Domestic investment and foreign direct investment in the country. And such code should give preference to Domestic investment, this will increase the economy of the country as that has an advantage of money circulating in the country as opposed foreign investment were the profits are utilized outside Lesotho and that is bad for Lesotho's economy. Botswana and many other countries economy has flourished because domestic investment takes preference over foreign direct investment. It is not proper for Lesotho's economy for the government to only have a share of 30% to 70% profits of foreigners in the mining sector as this was discussed in many of public dialogue on many public platforms. Furthermore many of Basotho feel that they are being set lined when it comes into the business of Cannabis.

The 'Drugs of Abuse (Cannabis) Regulations, 2018 Act',

"The new regulations state that the main operating license which allows the licensee to engage in several activities ranging from cultivation to export costs M500 000 and it can be renewed for M350 000. A prospective entrepreneur who only intends to grow medical marijuana will have to pay M150 000 for a licence. Those who intend to manufacture medical marijuana products will also pay M150 000 while those who want to conduct testing will have to pay M100 000. Licences for research, transportation and supply of medical marijuana cost M50 000 each while those for storage cost M10 000. Those seeking to renew the cultivation and manufacturing licence are each expected to pay M100 000."

The fees are too high to encourage the local businessman to engage because many of Basotho are very poor let alone the poor youth of the country. It should be noted that the division is certainly neither originally-intended nor a necessary separation between the aforesaid covenants. The post war UDHR envisions and identifies the inherent and necessary interrelationship of the two types of rights; nevertheless the indivisibility of social and political rights has been repeatedly affirmed by the international community.

“all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis...”⁵⁴”

It is the duty of the state regardless of their political, *economic* and cultural system to promote and protect *all human rights* and the fundamental freedoms.⁵⁵ This was discussed in the case of *Khathang Tema Baitsukuli v Maseru City Council and others*⁵⁶ where the court was of the view the government has a constitutional duty and international obligation to actively promote the socio-economic rights of Basotho. Has Lesotho done enough to promote Socio Economic rights of which *right to work* are one of such rights?

In Khathang Tema Baitsukuli’s case it was held that if the state cannot within available resources provide sufficient jobs to the majority of our people thereby reducing the poverty levels, adequate opportunities and infrastructure must at least be availed to those people for them to eke out a living. It has being said earlier that Lesotho has little population and has more than enough resources amble to sustain its citizens but the economy is on the hands of foreign investors, and the country seem to fail on the law for control and regulation hence it is concluded that Lesotho has not done enough to provide sufficient jobs especially on youths. For example there are no laws aimed to suppress new infections of HIV/AIDS for it is evident that millions maloti are used to fight against the pandemic which money could be used for other economic development.

Patriotism seems to be lacking because corruption is not uprooted in Lesotho through legal enforcement. Public Accounts Committee has shown that millions in maloti are being lost through corruption but to date no actions have been taken against perpetrators who have voluntarily consented that they are corrupt.

Furthermore another problem with IESCR is that it does not establish any interstate individual complaints system. It only permits the state parties to submit reports on the measures which they have adopted and progress made in achieving the observance of the rights recognized herein.⁵⁷ And finally the covenant does not establish a special committee

⁵⁴ The 1993 Vienna Declaration.

⁵⁵Eric C. Christianen, ADJUDICATING NON-JUSTICIABLE RIGHTS: SOCIO ECONOMIC RIGHTS AND THE SOUTH AFRICAN CONSTITUTIONAL COURT. See also Vienna Declaration and programme of action, June 25, 1993, U.N. Doc. A/CONF. 157/23,1993, art 5.

⁵⁶ (CONTI/C//1/2004) [2005]LSHC 25 (26 January 2005);

⁵⁷ ECS Covenant art 16 (1)

to review the reports it only stipulate that the reports should be submitted to the UN Economic and Social Council (ECOSOC).

The Constitutional Assembly explicitly assigned the task of interpreting social rights to the judiciary in the South African Constitution.

“The text of the Social rights provisions echoes the language of the political rights provisions and it is placed in the Bill of Rights without distinction based on any kind of rights.”⁵⁸

It is essential to note that the judiciary of South Africa still has a very serious challenge of deploying legal framework to achieve their end.

Publication on news especially on social media has it that there had been discussions at the UN and African Union, Lesotho included that, there is an increasing recognition that youth should be given a greater focus as they have potential to contribute significantly to the political and socio economic advancement. A lot of priority is given to youth development and empowerment.⁵⁹

Regionally African Youth Charter policy framework has been compiled, which its main purpose defines responsibilities for member states to fully develop youth in their territories.

The justiciability of the socio economic rights regionally is expounded in the African Charter on People’s Human Rights⁶⁰(ACHPR) it recognizes the indivisibility of all Human Rights, all generations of human are recognized and that socio economic rights are justiciable. The case in point is Serac v Nigeria⁶¹ ,

“where social and economic Rights Action for Economic and Social Rights brought a case against Nigeria to the ACHPR alleging the military its business relationship with shell petroleum exported oil reserves with no regard for health or environment of the organic people. The exploitation had resulted in extensive Government had though of local habitat seriously affecting the food production of the area, and also resulted in short and long term health consequences to the local people. The commission found on merit that Nigeria had violated many of the rights enshrined in the Charter including those provided for under socio and economic rights.”

Besides the policy framework African youth charter has devised to fully develop and empower youth it also paved rights and freedoms of youth so that national development programs and strategic plans can be developed to empower youth. Because of this strategic

⁵⁸ *Supra. Article of Eric. C. Christianen.*

⁵⁹ See The African Union Constitutive Act and the African Union Commission Strategic Plan 2004-2007.

⁶⁰ It came into effect on 21 October 1986.

⁶¹ Peg 68.

plan coming closer home Lesotho has recognized it by enacting National Youth Council Act, 2008;

“Ensuring that the issues affecting the youth are integrated as a cross-cutting theme in the ongoing formulation of the national strategic Development Plan (2012-2017). In recognition of the strategic importance of youth involvement in governance and development of the country, the parliament passed the National Youth Council Act, 2008.”⁶²

The Act allows for design of youth programmes to address the needs of youth, thus offering guarantee of youth involvement in the decision making process that affect the youth in particular this was essential in the establishment of youth parliament. And besides the above mentioned Act there several/ various other policies which have been initiated by the government of Lesotho over the past few years to minimize the problem of high youth unemployment, even the international bodies like IMF and World Bank have also contributed to the affords directed at reducing youth unemployment.

For example in 2006 the government of Lesotho through the Ministry of Gender and Youth , sports and Recreation with collaboration with the United Nations Development Programme (UNDP), United Nations (UN),ILO, UNICEF and Commonwealth youth foundation implemented Youth Employment Project (YEP) with the aim of creating employment for poverty reduction. In 2007 UNDP engaged the support of youth organization business and community groups, the UN and agencies such as the mine workers Development Agency (MDA) which gave birth to Youth Credit Initiative which intended to provide micro financing for Yep trainees. In 2009 the government launched the National Volunteer Corps Project to respond to youth unemployment in partnership with the UNDP.

The government signed a memorandum of understanding (Mou) with commercial banks on the establishment of a M50 million partial credit guarantee fund in May 2012 by the then Minister of Finance Dr. Thahane. The National Development Corporation (LNDC) also established a partial Credit Guarantee in 2012 with the objective of facilitating support to investors who wish to start or expand MSEs and finally very recently the GOL announced over 30000 jobs, Industrial Licensing Act of 2014 is Enacted to promote industrial development and micro small and medium enterprises, there is also Amendment of Trading Enterprises Regulation⁶³which established one-stop business facilities which intended to make it easier for one to register companies and to obtain trade license. Through Land

⁶² UNDP,2012, Lesotho Youth Empowerment Survey. Also see www.lesothoyouthreport.com final.pdf

⁶³(1999) in December 2011

administration reform improved the process of establishment of leasehold titles which are normally used to access loans, for they are produced as securities for the bank issuing a loan.

Despite all this all this efforts youth unemployment remains high. Youth unemployment has been tremendously high for many years in Lesotho and is one of the country's major socio-economic challenges; it is evident that because of state policy the government cannot be brought to task even if the government willfully breaches the constitutionally guaranteed Socio Economic rights because in Lesotho those rights are not justiciable. See Khathang Tema Baitsukuli's case.⁶⁴

All those efforts fail not because the country is poor but because enforcement needs a political will and government officials are corrupt. Politicians seem to only develop their members, they do not even care whether those chosen have technical know-how as long as such youth is the member of their party he is preferred over all others, and this is going to have a very bad implication on Lesotho's education because many young Basotho are now complaining that it is worthless to be educated in Lesotho if your surname is not known to the rulers.

⁶⁴ *Supra*

CHAPTER THREE

PROCEDURAL REFORM AND THE LESSONS FROM THE DEVELOPMENT OF COMPARATIVE LAW.

INTRODUCTION

To a certain extent, the contemporary evolution of procedural law has taken into account some of these difficulties, highlighting the need to adapt the old model of individual actions to new challenges, such the collective incidence of some violations, or the need for urgent protection of fundamental legal rights before a violation takes place. Environmental, consumer and mass tort procedures have opened up new paths in this direction.

The relaxation of formalistic procedural requirements in order to consider serious violations of rights has also been feature in countries like India, South Africa Columbia and Costa Rica. The broad constitutional review powers of the South African Constitutional Court are a good example of the development of the tradition. Constitutional, legislative and judicial evolution in this field has been dramatic in Latin American Countries, countries like Argentina, Brazil, Colombia and Costa-Rica. In Argentina, the judicial development of new constitutional action enshrined in the 1994 amendments to the constitution, providing for a collective *amparo* through a direct interpretation of the constitutional provision has been creative.

In Brazil use of novel procedural mechanism called public civil action to trigger judicial protection in environmental, consumer, and occupational safety and health cases has become widespread since its regulation in 1985⁶⁵. In Colombia, a number of new procedural mechanism namely *acci'on de tutela* before the constitutional court, *acc'on de popular* before the ordinary courts, and *acci'on de cumplimiento* have radically altered the possibilities for challenging state activities or omissions before the judiciary.

⁶⁵ See R. de C. Mancuso, *Aca Civil Publica* (sa o Paulo:Ed. Revista dos Tribunais, 1999),pp46-55

In Costa Rica, a centralised and rather simplified *amparo* jurisdiction before the Constitutional Section of the Supreme Court has led to noteworthy result, including cases brought by children challenging educational decisions by school directors.

It is clear that different countries have their own domestic legislation for protection of ESC rights; the purpose of this chapter therefore is to show the comparison and the differences in these domestic legislations of the three countries, Lesotho, South Africa and India. This will be achieved by looking critically at the laws relating to justiciability of ESC rights, focus on the right to work there off to solve youth unemployment.

As has been shown in previous chapter protection of the right to work is contained in numerous laws including international instruments which can be traced back in the early 1948 where right to work was contained in Declaration of the Human Rights.⁶⁶ Which give birth to International Covenant on Economic, Social and Cultural Rights in 1966⁶⁷, and finally the recent applicable statute concerning right to work is Lesotho's Constitution⁶⁸

Having said the above it is important to note that the socio-economic integration of young people is a challenge that forms an integral part of this fight. In Lesotho many of the institutions and positive measures required to realise Civil and Political rights including judicial systems, employment equity programmes and human rights institutions, require resources and time to implement. "The dichotomies may be refined into more nuanced appreciation of some particular challenges of ESC rights, of course, but the idea of excluding human rights claims requiring positive measures or resources from judicial consideration is now recognised as contrary to modern understanding of human rights."⁶⁹

3.1 Lesotho's perspective

In Lesotho the issue of the justiciability of ESC rights from the standpoint of the rights holders and the interest meant to be protected leads to very different conclusions. Rights claimed requiring positive measures of protection or provision from the state may be

⁶⁶ supra

⁶⁷ supra

⁶⁸ 1993 Constitution of Lesotho

⁶⁹ S.Lieberg, " Social and Economic Rights" in Charkalson et al (eds), Constitutional Law of South Africa (cape Town: Juta, 1996)

considered more problematic in terms of the roles of the courts in relation to the legislatures, but the right of the holders who require positive measures of the state for the protection of rights also tend to be the most disadvantaged and marginalised groups at this point being the youth⁷⁰ with the greatest need for access to the courts for protection of their human rights.

It is interesting to note that in Lesotho there are domestic laws which are improved to enhance job creation for youth for example Company's Act⁷¹ and others I must mention at this point that must be interpreted and applied so as to provide, wherever possible, effective remedies to ESC rights. I still believe that the case of Khathang Tema⁷² denied youth ESC rights which right to work and livelihood are such rights. This has consequently placed Lesotho in the violation of the obligations under the ICESCR. Human rights such as the guarantee of equality and rights to life and livelihood should be interpreted so as to provide, "to the greatest extent possible" the full protection of ESC Rights⁷³ as correctly put "neglect by the courts of this responsibility is incompatible with the principle of rule of law, which must always be taken to include respect for international human rights obligations."⁷⁴ look at the CESCR for emphasis in its concluding observation China In 2005. Despite the demand by the committee urging state parties to ensure that legal and judicial training takes full account of justiciability of rights contained in the Covenant and promotes the use of the Covenant as a source of law in domestic courts Lesotho failed Basotho youth in Khathang Tema Basotho's case and the court in that case held that ESC rights are not justiciable refer to chapter 2 of paper.

The committee draws the attention of the state party to general comment No.9 on domestic application of the covenant and invites the state party to include information concerning case law on periodic report⁷⁵ domestic courts in Lesotho should have ensured that in all areas of decision making , whether in administrative decisions, judicial interpretations of statutes or exercise of direction by officials, domestic law is applied so as to ensure compliance with the ICESCR and provide effective remedies to any alleged violations.

3.2 South African perspective

⁷⁰ These groups are those most likely to be ignored in political process, most likely to face discrimination.

⁷¹ *ibid*

⁷² *Supra*.

⁷³ General Comment No.9

⁷⁴ *ibid*

⁷⁵ CESCR, concluding observation on China, E/C.12/11/Add.107. 13 May 2005, para 42.

In 1992 Craig Scott & Patrick Macklem wrote an influential article which played a vital role in the South African context to have made economic, social and cultural rights to be made fully justiciable.⁷⁶ They noted assessments of what are legitimate roles for the courts and of their competence to perform them, are largely dependent on how important the court considers the interest at stake. "Competence is created by courts" as was correctly put by those two learned authors. After the ratification of the South African Constitution, the constitutional court and other courts there have risen to the challenge, and become leaders among the world's judiciaries in engaging with the fundamental human rights values that are at stake in ESC rights claims.

The South African courts have recognized this as a valid rejection of this a valid rejection of social rights. Justiciability must rely on their inability to be properly or effectively adjudicated. The South African Constitution very carefully delineates social and economic rights, and ⁷⁷provides that "everyone" is entitled to reasonable access to housing health care and education.

'The constitutional court has held, however that reason access' does not mean that an individual is entitled to these provisions. Rather, these provisions should be progressively provided, taking into account the financial ability of the state. Indeed the constitution is carefully worded to give appropriate deference to the legislature, and judges in the context of that careful wording to determine at what point the legislature or executive can be faulted and told that it is acting unconstitutionally...the question thus become involved in instructing the legislature or executive how to allocate such funds. Many individuals believe that it is not the province of the judiciary to do so.⁷⁸

The growing acceptance of ESC rights as justiciable and the extension of the optional communications procedures at the UN into the sphere of ESC rights in a reaffirmation of the basic values that lie behind international and domestic human rights. Human rights values are intricately linked with participatory rights and must ensure the ability of vulnerable and disadvantaged groups in society and advance claims to dignity equality and security in their own voice bring to light injustices and exclusion that occur in the political process and seek effective remedies.

⁷⁶ Craig Scott & Patrick Macklem, *Constitutional Ropes Of Sand or Justiciable Guarantees?* 141 *University of Pennsylvania Law Review*, Vol \. 141 (1992)1, pp 35-36

⁷⁷ Constitution of Republic of South Africa Ch. 2 section 26,27,29 (Oct11.1996)

⁷⁸ Richard J Goldstone, 2006, *A South African Perspective on Social and Economic Rights* Volume 13, Issue 2 Articles 2.

In domestic procedures, it has become clear that active involvement by NGO, representing various stakeholders groups such as women, person with disabilities, young people newcomers and minorities is essential when courts or tribunals consider important systemic claims related to government programs or policies.⁷⁹ Concerns about whether legal claims, rather than political advocacy, are the best tools for the marginalised and vulnerable groups to use to address systemic injustice may now be addressed by considering new ways in which litigation strategies in conjunction with political advocacy strategies.⁸⁰

There have been many instances such as advocacy for HIV_AIDS treatment in South Africa, where ESC rights claims have been used to enhance political strategies and make them more effective.⁸¹

3.3 Indian perspective

The right to work means that people have a human right to work or engage in productive employment and may not be prevented from doing so. The preamble to the constitution secures social, economic and political justice to all citizens of India. And justiciability of right to work was fully discussed in chapter 2 of the paper when critically scrutinizing the Olga Tolls's case.

⁷⁹ South Africa v Grootboom 2001 (1) SA 46 (cc) (Grootboom) and Treatment Action Campaign cases (supra)

⁸⁰ ibid

⁸¹Ma Heywood , “preventing Mother –to-Child HIV Transmission in South Africa : Background, strategies and outcomes of the treatment action campaign case against the minister of health, “south African journal on human rights vol.19 no.3 (2003) and Shanna mohair, “a moral to the tale: the treatment action campaign and political of HIV/AIDs centre for policy studies university kwazulu natal (204): Geoff Bud lender, ‘ A paper Dog with peal teeth; the Tac case has proved that constitution is a powerful people ‘s tool” mail and Guardian (July 12, 2002)

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

A total number of 100 questionnaires were administered in this study to 45 males and 55 females. The research questions were answered by the findings which revealed the followed factors to be responsible for youth unemployment in Lesotho. The non-justiciability of Socio Economic and Cultural rights provided for under Section 29 of our Constitution, lack of industries, and inadequate job creation by the government. The effects of this can be seen in low standard of living, poverty and increase in social vices among the unemployed youths as its test of relationship was significant at 5 % level of significance. The above results are consistent with the face –to-face interview and focus group discussions as participants reported that youth unemployment is caused by inadequate manufacturing industries and the collapse of existing ones, neglect of agriculture, poor government policies towards the generation of employment opportunities , un-conducive market environment.

In order to improve the socio-economic conditions of the poor, vulnerable and marginalised youth in Lesotho, there is a need for their social economic as well as political empowerment to enable them to effectively take part in societal decision making in both the public and private shares with regard to resource distribution.

Equally importantly the study has disclosed the importance of litigation in the achievement of the transformative aspiration of Constitution⁸² in the entrenched socio-economic rights. it is acknowledged as was rightly put by Nicholas that, “litigation is not panacea of socio-economic rights enforcement but rather, other political and advocacy strategies play an important role in the emancipation of socio-economically deprived groups in the society”⁸³

The country of Lesotho must ensure that it build societies and economies that generate opportunities for investment, entrepreneurship, skill development, job creation and sustainable livelihoods for youth, by extending social protection this can be done by enacting other laws to extend protection of right to work guaranteed in our constitution.

⁸² The 1993 Constitution of Lesotho.

⁸³ Nicholas Wasong Orago, 2013, poverty, in equality and socio economic rights: A theoretical framework for the realisation of socio –economic rights in the 2010 Kenyan Constitution.

As a researcher of this study, I believe some efforts has been put by the government of Lesotho to ensure that the *right to work* by the people of Lesotho youths included is protected. This is evidenced by different legislations that have been enacted, policies made, workshops held for the entire nation however this protection does not seem effective primarily because the right to work is not justiciable as it is provided for under Chapter 3 of our Constitution, That is to say the absence of an adequate procedural framework of ESC rights. This additional weak spot relates to the broad discretion granted to political branches and especially to administration in the implementation of social services.

As a researcher and having conducted the study, I believe that Lesotho can still do much better in protecting the *right to work* concentrating dearly on youth of Lesotho, by adhering to the under mentioned recommendations they play a vital role to see to it that youth unemployment in Lesotho is the tale of yesterday;

The government must ensure that economic development goes hand in hand with social development. The government must create job opportunities for young woman and men. This can be done by creating short-term job for young people, and steps to improve the environment for longer –term private sector growth. This can be done by enhancing efficiency and equalise opportunity.

To provide funds for labour intensive infrastructure projects, provide financial and administrative support to companies playing a significant role in the Lesotho labour market. Provide decent and productive jobs for young people. Another method is to increase skills of young people by introducing technical programmes aimed at sharpening their skills. The laws must be enacted to facilitate partnership between public and private sectors, policy makers and economic actors to work on implementing reforms in the Constitution to promote employment in Lesotho

The funding of green job, so as social innovation hubs is very important. There should be laws to facilitate this programme The Nul innovation hub is a good example which hub if properly funded would create up to 60% of job creation to the youth. The creature and establishment of private employment centre, training and hiring of the first 50 employment facilitators, intensive career guidance at employment centres, work orientation measures must be encouraged and backed by sanctions if not properly adhered to.

The creature of job opportunities for young graduates in literacy programmes, Lesotho must also hand the issue of job Readiness and job placement for marginalised youth project this may be made possible by grants from foreign investors, who hold majority shareholders in huge profit making company's in Lesotho.

Young people should be engaged by acting as intermediary NGO, giving sub grants to other NGO's to provide youth employment programmes in the form training and job placement thus addressing the need for increased youth employment and entrepreneurship Lesotho.

The fund from the government must be readily available aimed at preparing the quarter of disadvantaged young people for the job market and provide them with the skills they need to find and succeed in jobs and businesses. This could be done by inserting a clause in the Constitution making it mandatory to the government to assist youths with good business proposals to be assisted financially.

Lesotho must adopt National State Policy. This will help to minimize politicians to do as the please consequently limit and or eradicate corruption. What is taking place as of now is that more often than not when a new government comes into the reins it comes with its new policies neglecting the policies of the outgoing government no matter how good they are. Vision 2020 policy was a good policy to start with, because it had many job opportunities for youths but the current government is saying nothing about it, maybe because they fill like they will be promoting the visions of the former government.

Formulation of policies that encourage youth to be job creators and self-employed rather than chasing white collar jobs in already saturated labour market is essentially important, and empowering them with both technical advice and financial assistance to meet their end, and there should be a law in place to facilitate this and the government should be held responsible if it fails to comply. The collapsed of local industries should be revived to provide employment opportunities that will absorb the idle youths and prevent them from going into crimes.

Efforts should be made by the government to encourage and support youths to practice mechanized farming in Lesotho. There must be a law enacted by the parliament making it a crime for young people to be seen loitering in the streets without farming and monetary incentives must be there to facilitate the issue of iengaging in farming. A good example is that of what is taking place in Cape Town. (Ceres). And finally farming should be taken seriously like what is taking place in construction businesses. If the law could be made to make farming business a business eligible for tendering this will encourage young farmers to engage. Youths is marginalised when it comes into owing land because land is still in the hands of the elder people who are not even utilizing. Land Act 2010- tried to solve the problem but it failed to give a monopoly to Basotho youth but instead gave the upper hand to the foreigners.

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