

## APPEALS AGAINST ACQUITTALS AND SENTENCES POSITION IN THE KINGDOM OF LESOTHO

Memorandum by the Government of Lesotho

In the Kingdom of Lesotho the customary courts have been established and created by the Central and Local Courts Proclamation No. 62 of 1938 (Vol. X of 1965). These courts are endowed with civil and criminal jurisdiction. The criminal jurisdiction of these courts is governed and regulated by the warrant of the Minister of Justice with the concurrence of the Chief Justice of Lesotho, and these courts administer the Basotho law and custom—and they can hear all cases criminal save those cases where death of a human being is alleged to have occurred.

2. Any person aggrieved by a decision of a Local Court can appeal as of right to a Central Court and should the Central Court confirm the conviction and sentence, a further appeal as of right lies to the Judicial Commissioner. But there shall be no appeal to the High Court from the decisions of the courts of the Judicial Commissioner except in the following cases:—

- (a) Upon any question of law or of native law and custom reserved by the Judicial Commissioner at the instance of either party or of his own motion; or
- (b) Upon the Certificate of the Judicial Commissioner that it is a fit case for appeal on any other ground which appears to him to be a sufficient ground of appeal:

Provided that nothing herein contained shall in any way affect the right of the High Court to make such an order as may seem just upon the motion of any party aggrieved by the refusal of a Judicial Commissioner to allow an appeal under the preceding paragraphs (Section 28(3) of the Central and Local Courts Proclamation 62/1938.

3. In our jurisdiction the Director of Public Prosecutions may challenge the decision of a magistrate's court in the following circumstances:

- (a) Where a magistrate dismisses the summons or charge at any stage of the proceedings on exception or on the ground that it is bad in law and/or that it discloses no offence. (Section 73(2) of the Criminal Procedure and Evidence Proclamation)
- (b) Where the magistrate has given a decision in favour of an accused on any matter of law. The procedure to be followed here is by way of stated case (Section 73(7) of the said Proclamation).

4. In our jurisdiction the Director of Public Prosecutions cannot apply for review of a sentence or order imposed by a Subordinate Court unless such sentence or order sought is mandatory by law. Our policy is that sentencing is a pre-eminent discretion of a trial judge and each case is to be determined according to its particular facts and circumstances.

5. Section 7(2) of the Court of Appeal Act No. 10 of 1978 provides as follows:

If the Director of Public Prosecutions is dissatisfied with any judgement of the High Court upon a point of law in the exercise of its original jurisdiction, he may appeal against such judgement to the Court (of Appeal); and secondary appeals are provided for under section 8 of the Act No. 10/78 (supra). It reads as follows:

- (1) Any party to an appeal to the High Court may appeal to the Court of Appeal) against the High Court Judgment with the leave of the Judge of the High Court, or, when such leave of the court on any ground of appeal which involves question of law but not on a question of fact nor against severity of sentence.
- (2) For the purposes of this section an order made by the High Court in its revisional jurisdiction, or a decision of the High Court on a case stated shall be deemed to be a decision of the High Court in its appellate jurisdiction.

6. In Lesotho where the Crown appeals against an acquittal on a point of law from the High Court to the court of Appeal and the appeal succeeds, this has no effect on the earlier acquittal though there is no express provision in the Court of Appeal Act.

7. It must be clear that in Lesotho the Crown cannot appeal against a sentence imposed by a trial court, unless the sentence sought is mandatory by law as already pointed above in paragraph (4).

8. Our law also provides that the Court of Appeal can if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed. In case of an appeal against the conviction, the court of Appeal can either quash the conviction and direct a judgment and verdict of acquittal to be entered or if the interests of justice so require, order a new trial.