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ANNEX

**Neighbourhood, Development and International Cooperation Instrument (NDICI) –
Global Europe**

Exceptional Assistance Measure regarding Lesotho

1. IDENTIFICATION

Action: Lesotho - Emergency support to the Lesotho Judiciary

Action Reference: NDICI CR 2021 / 50

Cost: EUR 310 000 (European Union contribution).

Budget Line: 14 02 03 10

Duration: Maximum 18 months. The authorising officer responsible may decide to extend this period twice by a further period of up to six months, up to a total maximum duration of 30 months, under the conditions laid down in Article 23(6) of Regulation (EU) 2021/947.

Lead service: FPI

2. ACTION SUMMARY

Lesotho has a history of cyclic instability and a volatile political environment. Following recommendations by the Southern African Development Community (SADC), the Government of Lesotho, with support from the United Nations, the Delegation of the European Union and other stakeholders, instituted a national dialogue and reform process with a view to stabilise Lesotho. A major immediate intervention to end impunity and stabilise the security sector is to ensure impartial investigations and fair trials of security sector related crimes. This action will specifically support the seconding of foreign judges to the High Court of Lesotho to preside over trials involving high-profile defendants in security related criminal cases.

The proposed action is part of the overall support to Lesotho's broader national reform agenda. It is a follow up to an action currently supported under the Instrument contributing to Stability and Peace. Both actions will be implemented by the United Nations Development Programme (UNDP).

3. BACKGROUND AND RATIONALE

3.1 BACKGROUND

Lesotho has experienced repeated political crises, since 2014, mainly arising from the disturbances related to changes in the commanders of the Lesotho Defence Force. Between February 2015 and June 2017, Lesotho has gone through two general elections and two changes of Government. The Southern African Development Community (SADC) undertook a number of interventions in order to stabilise the political and security situation. Since 2014, this included the appointment of the SADC Facilitator, deployments of the SADC Observation Mission to Lesotho (SOMILES), the SADC Commission of Inquiry (the Phumapi Commission), the SADC Oversight Committee on Lesotho and the SADC Preventive Mission in Lesotho (SAPMIL).

The findings of the Phumapi Commission - an independent inquiry into the circumstances leading to the death of Army Commander Lt.Gen Mahao - are part of the comprehensive SADC decisions on Lesotho. It obliges Lesotho to prosecute all military personnel who committed human rights atrocities against the people of Lesotho and its elected civilian leadership. Since the return to power of Prime Minister Thabane and the establishment of a four party coalition in July 2017, the government started implementing some of the recommendations of the Phumaphi Commission and indicted the former Defence Forces Commander and other Defence Force officers. There are a significant number of political cases involving high ranking military and police officers, members of the military intelligence and special forces. While these cases are directly linked to Lesotho's and SADC's efforts to bring long-lasting stability to the political and security situation in the country, the Lesotho judiciary is already inundated with thousands of cases that are pending trial and the number of judges available to try these cases is limited. In addition allegations of politicisation have diminished public trust in the ability of local judges to independently, impartially and justly preside over sensitive cases.

There is consensus among political actors and civil society in Lesotho that steps to accelerate the justice process in respect to these cases can have a positive impact on the national dialogue process consisting of a national leaders' forum, the establishment of a national dialogue planning committee, planning for a multi-stakeholder dialogue, consultations at district level carried out by civil society, and a final "wrap-up" conference.

The speedy resolution of the cases involving high ranking former security personnel who were arrested and have been in prison pending trial would mitigate a significant source of political tension. To this end, the Government of Lesotho approached SADC whose Member States agreed, at summit level, to second experienced judges in order to assist with the resolution of high profile criminal cases.

3.2 RATIONALE FOR CRISIS RESPONSE ACTIONS UNDER THE RAPID RESPONSE PILLAR OF THE NEIGHBOURHOOD, DEVELOPMENT AND INTERNATIONAL COOPERATION INSTRUMENT

The pending, unresolved and politically sensitive criminal cases of high ranking military officers in Lesotho at a critical time for national durable reconciliation constitutes an exceptional and unforeseen situation in the sense of Article 4(4) of the NDICI Regulation. An adequate response cannot be provided under any other European Union Instrument due to the urgency with which the funds are required and due to available resources already being firmly committed.

Annex IV, paragraph 1, points (d) and (e) of Regulation (EU) 2021/947 specifically provides for the use of the NDICI rapid response pillar to provide: (d) support for the development of democratic, pluralistic state institutions, including measures to enhance the role of women in such institutions, effective civilian administration and civilian oversight over the security system, as well as measures to strengthen the capacity of law-enforcement and judicial authorities involved in the fight against terrorism, organised crime and all forms of illicit trafficking, and (e) support for international criminal tribunals and ad hoc national tribunals, truth and reconciliation commissions, transitional justice and other mechanisms for the legal settlement of human rights claims and the assertion and adjudication of property rights.

3.3 RISKS AND ASSUMPTIONS

Risks	High, medium, low	Mitigation
UNDP will not recruit enough judges or ones that are appropriately experienced.	Medium	UNDP with the Lesotho Judicial Service has started negotiating recruitment for foreign judges from SADC Member States
Insufficient personal security provided for the foreign judges.	Medium	The Judiciary will review the proposed personal security arrangements for the foreign judges and make the necessary recommendations, including deploying private security agencies if necessary. The Judiciary may, therefore, decide to

		request contracting of private guards to enhance the security of the judges.
Trial process may be delayed or halted due to political in-fighting within the Government of Lesotho.	Medium	UNDP will work closely with the Judiciary to advance the cases.
Inexperienced or compromised prosecutors will be assigned to prosecute the cases.	Medium	The Directorate of Public Prosecutions will be engaged to ensure that highly experienced Prosecutors are assigned and the UNDP will play a monitoring role.
COVID-19 pandemic may exacerbate situation in Southern Africa creating impediments for the judges to travel to Lesotho, which may impact the project's life-span.	High	The possibility of virtual trial will be put in place in order to continue with the cases processing.
The project may create perceptions that justice can only be delivered by foreign judges.	Medium	The exceptionality of the cases are acknowledged by civil society in Lesotho. Moreover, foreign judges assisting with appeals and other matters are not a new phenomenon in Lesotho.
<p>Assumptions:</p> <p>There is an adequate number of appropriately experienced local prosecutors for these politically sensitive cases.</p> <p>The Government of Lesotho can mobilise the required administrative support and material infrastructure for the trials.</p>		

4. OBJECTIVES

4.1 OVERALL OBJECTIVE

The overall objective of the action is to support political stability in Lesotho.

4.2 SPECIFIC OBJECTIVES

- (1) Assist Lesotho to implement obligations arising from the SADC Phumapi Commission of Inquiry regarding high-profile cases.
- (2) Increase confidence and public trust in independent and impartial prosecution of former security service personnel accused of crimes in Lesotho.

5. PROGRAMME COMPONENTS AND EXPECTED RESULTS

The main expected results/outcomes include:

Expected Result (1): High-profile security related criminal cases are handled in an impartial and efficient manner contributing to enhanced stability in Lesotho.

Activities (indicative):

- Recruitment and deployment of independent and impartial foreign judges to objectively try criminal matters involving high profile former security service accused persons;
- Technical and operational support to judges, prosecution, investigators, defence lawyers and litigants through provision of logistical support, research and stenographic services.

Expected Result (2): Enhanced case management capabilities in the judiciary for improved access to justice.

Activities (indicative):

- Support to trial of criminal cases through case allocation and initiating foundational activities for a comprehensive case management system, conduct of the criminal trials, monitoring of trial proceedings to enhance transparency;
- Develop a solid project management structure to support case management, reporting and impartial trial process.

6. IMPLEMENTATION

6.1 IMPLEMENTATION MODALITIES

The Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures¹.

6.1.1 Indirect management with an international organisation

This action may be implemented in indirect management with the United Nations Development Programme (UNDP). This implementation entails ensuring continuous in-country project management support. The envisaged entity has been selected using the

¹ www.sanctionsmap.eu Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website, it is the OJ version that prevails.

following criteria: UNDP, being engaged in the justice sector in Lesotho, can build on the technical expertise required to address potential issues arising during the trials, which are related to the wider capacity issues of the Lesotho judicial system. UNDP also disposes over a wide range of established partnerships, including with key donors and international partners.

6.2 INDICATIVE BUDGET

The total European Union contribution under this Financing Decision **will not exceed EUR 310 000**. A breakdown among components is provided hereunder, and is indicative.

Indicative budget breakdown

Component	EU contribution (amount in EUR)	Indicative third-party contribution, in currency identified
6.1.1. – Indirect management with UNDP	310 000	N.A.
Total	310 000	N.A.

6.3 ORGANISATIONAL SET-UP AND RESPONSIBILITIES

The action shall be implemented under indirect management. It will be devolved and sub-delegated to the **European Union Delegation in Lesotho**, with the support of the Commission for the conclusion of the contracts implementing the action.

6.4 PERFORMANCE AND RESULTS MONITORING AND REPORTING

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and a final report. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and outcomes) as measured by corresponding indicators, using as reference the Logframe matrix. The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

6.5 EVALUATION

Having regard to the nature of the action, an evaluation will not be carried out for this action or its components.

The Commission may, during implementation, decide to undertake such an evaluation for duly justified reasons either on its own decision or on the initiative of the partner.

The financing of the evaluation shall be covered by another measure constituting a financing decision.

6.6 AUDIT

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

The financing of the audit shall be covered by another measure constituting a financing decision.

6.7 COMMUNICATION AND VISIBILITY

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation.

In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and delegation agreements.

The Communication and Visibility Requirements for European Union External Action (or any succeeding document) shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

Acknowledging that activities financed under this action will be politically sensitive and/or may constitute a security risk for the implementing partner/beneficiaries, the communication and visibility plan for this measure should develop a differentiated approach to satisfy the requirements from the legal obligations to which EU external funding is bound to without putting at risk the actions supported by this measure.

7. COMPLEMENTARITY, COORDINATION AND FOLLOW-UP

The measure will be closely coordinated with the NDICI Geographic Pillar which proposes in its National Indicative Programme a more medium and long-term support to the governance reform programme, including to the justice sector in terms of fair, timely and efficient delivery of justice.