



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

Distr.: General  
30 August 2013

Original: English

---

**Committee on the Elimination of Discrimination  
against Women**

**Concluding observations on the combined initial to fourth  
periodic report of Lesotho\***

**Addendum**

**Information provided by Lesotho in follow-up to the concluding  
observations\*\***

---

\* Adopted by the Committee at its fiftieth session (3-21 October 2011).

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.



## **FOREWORD**

1. Three decades ago the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), also known as the Women's Bill of Rights and the Women's Convention, was adopted by the United Nations General Assembly on 18 December, 1979. Lesotho ratified the Convention in 1995.

2. The Convention requires that all inter-related factors and forms of discrimination against women be they institutional, legal or ideological, be identified and eliminated. CEDAW is an "anti-discrimination treaty", aiming to achieve the protection and promotion of women's rights as well as gender equality. This means that State Parties do not only have to ensure that the legislation is not discriminatory against women but also to guarantee that all necessary arrangements are put in place to ensure women experience and enjoy equality in their lives.

3. It is to this end that the Government of Lesotho in line with Article 18 of CEDAW put all its efforts in developing a comprehensive report in July 2010 which included challenges and developments towards recognition and realization of women's rights. The report highlighted constitutional, legal and administrative measures taken to implement the provisions of the Convention. Such measures included the enactment and adoption of relevant sectoral legislations and policies. The report further highlighted social, cultural and other barriers that hinder the promotion of gender equality in the priority areas of concern identified in the CEDAW. It gave a clear demonstration of sustained partnership, coordination and synergy between government, development partners and women's organizations and networks in ensuring that women's voices and aspirations are reflected in national development programmes.

Dr. Motsoahae T. Thabane (Mr.)  
Right Hon. The Prime Minister

## **Background**

4. Having considered the Lesotho's combined initial, second, third and fourth periodic report at its 1007th and 1008th meetings on 11th October 2011, the CEDAW Committee gave its concluding observations thereto. Paragraph 47 of the concluding observations makes provision for follow-up on their implementation requires that Lesotho provides within two years after presentation of her report written information on steps undertaken to:

- (a) Repeal Section 18 (4) (b) and (c) of the Constitution;
- (b) Include in the Constitution and other appropriate legislation provisions which prohibit direct and indirect discrimination against women in the public and private spheres and in matters relating to adoption, marriage, divorce, burial, devolution of property, death or other matters that fall within the provisions of personal law;
- (c) Prepare a unified code in which unequal inheritance, property and land rights and polygamy are addressed;
- (d) Amend without delay all remaining discriminatory provisions and administrative regulations, including provisions and regulations relating to family, marriage and divorce and take all necessary legislative measures to ensure women's equal share in all marital property regardless of monetary and non-monetary contributions to the marital property; and
- (e) Prohibit polygamy in accordance with the Committee's general recommendation No. 21.

## **Executive Summary**

### **Introduction**

5. The Kingdom of Lesotho recognizes that women's rights are still encroached upon and that women continue to face discrimination especially in customary and cultural matters which is entrenched by Section 18 (4) (b) and (c) of the Constitution such that even if a rule of customary law may be discriminatory in effect it will not be so if applied to persons who are subject to that law. The discriminatory is further reinforced by Section 10 of the Chieftainship Act 1968 and the Laws of Lerotoli 1903 in Section 11 both of which discriminate against women in areas of succession to Chieftainship and to the Throne and inheritance.

### **Unequal inheritance rights**

#### **Constitutional measures**

6. Section 26 to Chapter III of the Constitution provides that Lesotho shall adopt policies aimed at promoting a society based on Equality and Justice for all its citizens regardless of among others sex. This Section further binds Lesotho to take appropriate measures aimed at promoting equality of opportunity for the disadvantaged groups as a way of enabling them to participate fully in all spheres of public life.

A proviso to Section 18 (4) provides that nothing contained in subsection (4) shall prevent the making of laws in pursuance of the principle of State Policy of promoting a society based on equality and justice for all the citizens of Lesotho and

thereby removing any discriminatory law. This part of the Constitution allows Parliament to pass laws which deal with any customary practices or laws which are discriminatory and perpetuate inequality. Examples of laws that Parliament enacted and amended in pursuance of this proviso include: Legal Capacity of Married Persons Act 2006, Land Act 2010, Chieftainship Act 1968, Financial Institutions Act 2012, Deeds Registry Act 1967, Local Government Elections (Amendment) Act 2011, and National Assembly Electoral Act 2011.

The 6th Amendment to the Constitution of Lesotho makes provision for establishment of the Human Rights Commission and an enabling legislation for its establishment is in its second draft form. Part of the mandate of the Commission is to encourage harmonization of national laws, policies and practices with international human rights instruments to which Lesotho is a state party. This is a window of opportunity through which all national laws which do not conform to the country's commitments internationally or regionally will be brought to conformity.

### **Legislative measures**

7. The Ministry of Gender has proposed harmonization of the Laws of Lerotholi with the Legal Capacity of Married Persons Act (LCMPA) and the process is at a Draft Bill stage for presentation to Parliament in its next session in August 2013. The intention of the harmonization is to repeal Section 11 of the Laws of Lerotholi which discriminates against women in inheritance and to put widows in full control of their joint estate after passing off of their husbands in line with the provisions of the LCMPA. The Law Reform Commission is currently reviewing, with the aim of developing a unified code on inheritance, the Administration of Estates Proclamation No. 19 of 1935; Inheritance Act No. 26 of 1873, Intestate Succession Proclamation No. 2 of 1953, Wills Act 1876, Marriage Act 1974 to give redress to the unequal inheritance rights.

Equally important, Lesotho enacted the Land Act 2010, Section 4 (3) of which makes any customary practice inapplicable if the practice is inconsistent with the Act such that any customary practice which seeks to discriminate in issues of land becomes inapplicable.

### **Administrative measures**

8. Despite the Constitutional and Legislative measures, Lesotho has also established the Land Administration Authority (LAA) for efficient issuance of leases and the LAA has also assisted in effectively implementing provisions of the Legal Capacity of Married Persons Act and the Land Act 2010 which give women the right to hold title to land without the need to inherit it and to register their rights to the said land. This year LAA has undertaken a series of public gatherings nation-wide to sensitize Basotho men and women about their rights to hold title to land and registration of same especially women who did not have the right before the enactment of the LCMPA which influenced enactment of the Land Act 2010 and also to inform them of procedures involved therewith. Coupled with this initiative the Government of Lesotho has also put in place Land Courts to accelerate access to justice and promote protection of economic rights.

The Department of Gender has been holding and is continuing to hold meetings with Community Councils with a view to making sure that women do not face any challenges about land allocation within Community Councils. The

Government of Lesotho has also put in place a Gender and Economic Rights programmes targeting, inter alia, commercial banks and financial institutions with sensitization on the rights of married women to access credit as appears in the LCMPA using land as collateral where necessary.

9. Lesotho has also established the National Identity and Civil Registry Department within the Ministry of Home Affairs which will among others deal with registration of customary marriages in order to provide certainty and secure women's rights to:

1. Matrimonial property upon death of their spouses;
2. Matrimonial property during divorce or annulment of marriage;
3. Burial; and
4. Devolution of property.

10. The Department of Gender conducted Mobile campaigns, meetings, public gatherings and consultations in all the Districts to sensitize and get the views of the public on unequal inheritance rights and succession to Chieftainship. The outcome was that majority of Both Basotho men and women agreed that the law should provide equal inheritance rights with reservations to arable land. Few were of the opinion that women especially girl children could only have inheritance rights where there is no male child in a family. In relation to succession to Chieftainship majority of Both Basotho men and women were adamant that Chieftainship defines them as Basotho such that unmarried women whether or not born of royal blood cannot succeed to office of Chieftainship to avoid uncertainty in the line of succession. Fewer agreed to unmarried women succeeding to Chieftainship only in the event that the law was amended to force them not to marry for fear that should they marry in a non-royal family the line of succession would be distorted. Few understood Chieftainship as a form of inheritance that the laws of inheritance should be amended to provide for equal inheritance rights.

### **Chieftainship**

#### **Legislative measures**

11. The Ministry of Local Government, Chieftainship and Parliamentary Affairs has also embarked on nation-wide consultations geared towards review of the Chieftainship Act as a whole and Section 10 forms part of the Sections that will be reviewed and this becomes a window of opportunity to push for amendment of Section 10 which differentiates between married women and unmarried women in succession thereby affording only married women the right to succeed to chieftainship.

#### **Judicial measures**

12. On the 29th August, 2012 the High Court of Lesotho sitting as a Constitutional Court heard a Constitutional Application in which Senate G. Masupha (the only child and daughter of the late Principal Chief Masupha and 'Masenate) challenged Section 10 of the Chieftainship Act for excluding unmarried women from succession to Chieftainship on the basis that it is unconstitutional for being discriminatory on the basis of sex relying on Sections 18 (3) and 19 of the Constitution which prohibits discrimination on the basis of sex among others and

equality before the law and equal protection of the law. The Chieftainship Act in Section 10 (4) affords surviving wives of Chiefs the right to succession in their own right in the event that their husbands die without any male children but denies unmarried women such a right even if they are the only daughters of late Chiefs. It is on this basis that Miss. Senate challenged the Act.

In handing down judgment on the 03rd May, 2013 the Constitutional Court advanced the following reasons:

(a) The Act does not exclude women or girls from succeeding to Chieftainship in all circumstances as married women still succeed as regents or in their own right;

(b) Neither all men nor boys are permitted to succeed to Chieftainship as the Act makes provision for only first born sons or uncles of a deceased Chief in the event that there are no sons;

(c) Section 10 is intended to ensure certainty in the line of succession;

(d) Section 10 makes “mere differentiation” as opposed to “naked preference”;

(e) Section 10 makes distinction between married and unmarried women such that Senate could only claim discrimination on the basis of her “status” not “sex”;

(f) Courts cannot ignore Lesotho’s reservation to Article 2 of CEDAW lest they would be failing to consider the deliberate and considered view of the Executive Arm of government;

(g) Section 10 was not unconstitutional for the reason that Section 18 (4), (b) and (c) allowed difference of treatment in matters of Custom.

Although this case has not changed the status of women in matters of succession, it has given guidance on the areas that gender advocates need to focus on in advocating for equal succession rights and removal of the Reservation to Article 2 of CEDAW.

## **Adoption**

### **Legislative measures**

13. Adoption in Lesotho is done under the Children’s Protection and Welfare Act 2011 and Section 51 thereof gives non-discriminatory conditions to persons who qualify to adopt and Section 55 gives married women and men the right to jointly make application for adoption accompanied by proof to that effect.

## **Polygamy**

### **Legislative measures**

14. The Laws of Lerotoli do not sanction polygamy but acknowledge the practice and provide clarity on how matters of succession and inheritance should be dealt with in case polygamy exists.

**Administrative measures**

15. In order to protect women's rights especially property rights public gatherings are continuing to be held to raise awareness about the proper procedures that must be followed in conducting polygamous marriages, some of which procedures involve consultation with the senior wife. Women and Law in Southern Africa is conducting a Baseline study on polygamy the outcome of which will inform the country on the steps to be taken in relation to the practice.

**Citizenship**

16. In Lesotho conditions on acquisition of citizenship by marriage make a naked preference to Basotho men over Basotho women. The practice which has somehow evolved into law dictates that any non-Mosotho man who has married a Mosotho woman and wishes to acquire Lesotho citizenship should take up to 5 years before naturalization while a non-Mosotho woman who marries a Mosotho Man acquires Lesotho citizenship upon completion of necessary paperwork.

**Constitutional and legislative measures**

17. Government of Lesotho through the Ministry of Home Affairs has set up a task team to look into sections 40 and 41 of the Constitution of Lesotho 1993 that relate to citizenship and advice the Ministry on steps to be taken in response to the restriction to dual citizenship and discrimination against women as it relates to acquisition of citizenship by marriage.

---