

Lesotho

1. Discrimination in the family

a) Overarching legal framework for marriage

In Lesotho, there are two systems of marriages concluded under civil and customary law (Bureau of Statistics, 2012). The Constitution enshrines the principle of non-discrimination and equality of both women and men before the law and in all areas of life, however this is not applicable to laws concerning adoption, marriage, divorce, burial, devolution of property, death or other matters of personal law, nor where customary law governs the parties involved (Constitution of Lesotho, Sec. 18; CEDAW, 2010). Therefore, women and men enjoy the same rights to enter into marriage only if they are contracting the marriage under civil law but not in customary marriages. Moreover, mostly civil marriages are registered in the Registrar (Bureau of Statistics, 2012). The National Identity and Civil Registry Department is mandated with registration of customary marriages (Ministry of Gender, Youth, Sport and Recreation, 2014). Only the first customary marriage may be registered, thus polygamous marriages cannot be registered (Marriage Act, Sec. 4). Contracting a marriage under civil law requires free consent of the parties (Marriage Act, Sec. 3).

Under customary law, the man is obliged to exchange “*bohali*” (bride price) for a valid marriage. It is agreed upon negotiations between families and is paid either factually or symbolically in cattle (UNDP, 2015). It serves as a confirmation for a wife of belonging to the matrimonial home as she is considered to be married into her husband’s family (Ntimo-Makara, 2009; CEDAW, 2010). Customary marriages can be polygamous but it is rarely practiced (Ntimo-Makara, 2009; CEDAW, 2010).

Widows have the right to re-marry (Marriage Act, Sec. 24). However, the Act does not apply for widows whose marriage was contracted under customary law. Given the nature of customary marriage, once a woman enters into marriage, the marriage is concluded not only between the couple but also between the families. Nevertheless, the levirate custom of being married to, or engaging in sexual relations with a male relative of her husband is not as commonly practiced as it was in the past (Sigamoney, 2009).

b) Child marriage

The legal age of marriage for both women and men is 21 (Marriage Act, Sec. 25). Under certain exceptions, males at the age of 18 and females at the age of 16 may enter into marriage with the written consent of the Minister responsible if such marriage is considered desirable (Marriage Act, Sec. 25, 27). In addition, the consent of both parents of minors is required (Marriage Act, Sec. 25). Where the parents’ consent cannot be obtained, a District Administrator may grant written consent to the minor to marry a specified person (Marriage Act, Sec. 26). Eventually, the consent may be granted by a judge of the High Court (Marriage Act, Sec. 26). There is some inconsistency regarding the marriage age as the Children’s Protection and Welfare Act sets legal age of 18 and does not stipulate any exceptions (Children’s Protections and Welfare Act, Sec. 3). Early marriages are common

in rural areas since the customary law does not set a minimum age for marriage (US State Department, 2016; CRC, 2017).

c) Household responsibilities

The Legal Capacity of Married Persons Act of 2006 significantly improved the position of women in marriage by removing the minority status of a married woman and repealing the marital power of a man (Legal Capacity of Married Persons Act, Sec. 2). It enhanced equal standing before law of women and men and equalised power between them; women's legal capacity is also recognised (CEDAW, 2010). In the community of property marital regime, spouses jointly decide on joint estate; in the marriage out of community or property regime, they contribute as necessary for the joint household proportionally according to their financial means (Legal Capacity of Married Persons Act, Sec. 5, 16). Moreover, the child has the right to parental property that indicates a joint maintenance of the family (Children's Protection and Welfare Act, Sec. 19).

Both parents have equal rights and responsibilities towards their child regardless if they are married or not, or if they live together or not (Children's Protection and Welfare Act, Sec. 20). The parental responsibilities include protection of children from neglect, discrimination, violence, abuse, exploitation, exposure to physical and moral hazards and oppression; providing guidance, care, assistance and maintenance to ensure the survival and development of their children; exercising joint primary responsibility for raising the child; and ensuring that the child is not subjected to harmful practices (Children's Protection and Welfare Act, Sec. 20). Mothers and fathers have the duty to maintain a child or contribute towards such maintenance in order to supply food, clothing, health, life, basic education, reasonable shelter or any other thing that may be necessary for the well-being of the child (Children's Protection and Welfare Act, Sec. 212). A parent who does not fulfil the duty commits an offence punishable to imprisonment up to one months or a fine (Children's Protection and Welfare Act, Sec. 212). The Act provides for the application for maintenance order that may be made against any person who is liable to maintain a child or contribute towards it ((Children's Protection and Welfare Act, Sec. 213). The Children's Court awards maintenance regardless the marital status of the parents (Children's Protection and Welfare Act, Sec. 216). The maintenance order expires once the child attains age of 18 (Children's Protection and Welfare Act, Sec. 218).

d) Divorce

The Marriage Act that governs civil marriage does not include provision regarding dissolution of marriage (HRC, 2015b). However, some sources indicate that women and men have equal rights to divorce (US State Department, 2016). Civil marriage can be dissolved on the grounds of adultery and desertion, which can be actual or constructive (USAID, 2007). Recently, the irretrievable breakdown of marriage has been recognised as a ground for divorce (FAO Database). All proceedings are carried out before a competent court of law and divorce cannot be obtained another way (Emery, 2013). Legal standing in civil court is also available for customary marriages if registered under civil system (US State Department, 2014). Upon divorce, a woman is free from the marital power of her husband; community of property terminates and joint estate is divided in half (Emery, 2013; USAID, 2007). The rights of custody, guardianship and access are awarded upon mutual agreement between parents with respect to the best interest of the child (Emery, 2013).

Under customary law, divorce may be obtained through judicial procedures or upon agreement between spouses and their families. The grounds for a divorce are the marriage breakdown and persistent cruelty or neglect (Emery, 2013). A woman falls back under the guardianship of her father or his heir. From the economic perspective, spouses retain their own property and renegotiate the received *bohali*. Upon divorce, custody of the children is usually divided between parents but other factors such as allocation of fault and settlement of the *bohali* may be considered (Emery, 2013). Since divorce is still viewed as shameful and carries social stigma, those who are divorced are claimed *ba hlaluoe* (they are rejected/deserted) and non-legally divorced (Ntimo-Makara, 2009).

e) Inheritance

Under common law, women and men have similar inheritance rights and there are two types of succession - intestate and testate succession (USAID, 2007). The intestate succession refers to inheritance when the deceased died and left no will. Depending on the type of marriage (marriage in community of property or marriage out of community of property) the qualifications of succession vary. In the community of property the surviving spouse is entitled to his/her share of the joint property; the other half is equally divided between the spouse and the children (USAID, 2006). If the couple lived out of the community of property, the widow keeps her own property and inherits equally the spouse's property with children. If the deceased does not leave any children, the surviving spouse is the sole heir (FAO Database). In the testate succession, the property is distributed in accordance to a will or another written instruction. Under community of marriage, the will distributes the property only to the extent of his share of the joint estate (USAID, 2006). Otherwise, all of the property is distributed and the spouse and children could be disregarded. In addition, the law allows a widow to stay in the matrimonial home unless she remarries. It gives the woman usufruct right; she does not inherit property but acquires the right to use it (UN-HABITAT, 2005).

The application of common law in inheritance is limited since the majority of people adjust their affairs accordingly to custom (Matashane-Marite, 2005). Under customary law, succession is patrilineal, hence restricted to males (USAID, 2006). The firstborn male child is considered the heir; in polygamous marriages this is the firstborn male child of the first married wife (FAO Database). He is the universal heir and administers each respective house estate; the inheritance is shared with his younger brothers (USAID, 2006). In the event that there is no male child in the first house, the firstborn son of the next married wife takes the position of the heir (FAO Database). Lastly, if there is no male in any house, the senior widow is the heir but she is expected to consult and respect the male relatives of her husband who are considered as her proper advisers (CEDAW, 2010). The heir has to share the land with the widow for as long as she lives unless she remarries, then she retains life rights to the husband's fields (FAO Database). The High Court of Lesotho confirmed the exclusive right to inherit the customary title to the firstborn son denying daughter the same right on the ground of gender (Global Legal Monitor, 2013).

The Women and Law in Southern Africa organisation runs awareness raising campaigns on inheritance rights. Moreover, it takes a stand against property dispossession particularly of widows and female children (CEDAW, 2010). The National Action Plan on Women, Girls and HIV and AIDS also considered property and inheritance rights (CEDAW, 2010).

2. Restricted Physical integrity

a) Violence against women

Lesotho has signed and ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

The Constitution of Lesotho provides for freedom from inhuman treatment mandating that no one shall be subjected to torture or to inhuman or degrading punishment or other treatment (Constitution of Lesotho, Sec. 4, 8). In addition, the Sexual Offences Act has been enacted, serving to combat gender-based violence and mandate appropriate punishment for sexual offences (CEDAW, 2010). The Act provides for penalties for sexual offences, an offender is liable to 8 years of imprisonment at minimum and to death sentence as the highest penalty. It is the case when the perpetrator at the time of committing the crime had knowledge or reasonable suspicion of being infected with HIV (Sexual Offences Act, Sec. 32; Ministry of Gender, Youth, Sport and Recreation, 2014). It defines the sexual act and states that marriage or any other relationship is not a defence against a charge under the Act (Sexual Offences Act, Sec. 1, 3). The law does not provide for a comprehensive approach to address violence against women with specific provisions for perpetrators or victims and survivors, however, there are some specific regulations and support services provided. The legislation provides for protection of women and children by authorising hearings in camera and evidence through an intermediary as well as by confirming the rights of victims such as the right to information of the trial at all stages (Sexual Offences Act, Sec. 28; Open Society Initiative for Southern Africa, 2013).

It is reported that gender-based violence is increasing with sexual violence dominating (Ministry of Gender, Youth, Sport and Recreation, 2014). There are several measures adopted to combat violence against women. The Child and Gender Protection Unit was established within the Lesotho Mounted Police Service; it is mandated with protection of persons affected by the gender-based violence by investigating cases and ensure their prosecution (Ministry of Gender, Youth, Sport and Recreation, 2014). It also advocates for elimination of violence against women in communities. The survivors of gender-based violence may seek integrated support services at One Stop Centres. The victims are provided with temporary place of safety, psychosocial support, mediation, economic help, referral, health and legal services (CEDAW 2010; Ministry of Gender, Youth, Sport and Recreation, 2014). There is also a Child Helpline operating where children may seek help when affected by the gender-based violence (CRC, 2017). Moreover, the National Action Plan to End Gender Based Violence against Women has been launched (HRC, 2015a). It covers policy services, socio-economic, cultural and political rights, public education and awareness, integrated approaches and budgetary allocations (CEDAW, 2010).

There are capacity building trainings organised for police, judiciary, prosecutors, chiefs, traditional and religious leaders (HRC, 2015b). The programme raises awareness on women's and human rights, indicates how to deal with gender-based violence cases. Nevertheless, it is still noted that the underreporting of violence against women is partly caused by harsh and accusatory examination from male officers that refrain women (USAID, n.a.).

The rate of sexual violence is particularly worrisome due to the high prevalence of HIV in Lesotho (HRC, 2015a). The link between high incidences of gender-based violence and high infection of HIV

and AIDS has been recognised. The National Action Plan on Women, Girls and HIV and AIDS (2012-2017) addresses the vulnerability and the impact of HIV and AIDS on women and girls in violent situations (Ministry of Gender, Youth, Sport and Recreation, 2014).

b) Domestic violence

There is no legislation that addresses and criminalises domestic violence in Lesotho (UNDP, 2015). Instead, it is covered by general legal provisions and broadly considered as an assault (Ministry of Gender, Youth, Sport and Recreation, 2014). The Government is in the process of enacting the Domestic Violence Act; however this has already been some years in the process; the draft has been referred to consultations and research several times and requires further work (HRC, 2015b).

To prevent and combat domestic violence, the government has undertaken several institutional, awareness raising and educational measures. The mandate of the Child and Gender Protection Unit within the Lesotho Mounted Police Service covers domestic violence (Open Society Initiative for Southern Africa, 2013). There is the on-going Support Programme for Survivors of Domestic Violence (HRC, 2015a). It is present across all ten Lesotho's districts. There are also advocacy and awareness programs carried out by the Child and Gender Protection Unit, the Department of Social Welfare, and the Ministry of Gender and Youth, Sports, and Recreation as well as by local and regional civil society organisations, including radio programmes and print media campaigns (Saha, 2014). Domestic violence also has been recognised and mandated in the National HIV and AIDS Strategic Plan (CEDAW, 2010).

Domestic violence against women in Lesotho is widespread (US State Department, 2016). Cases of domestic violence are rarely brought before the court; they are considered as private matters to be solved within family. Women may hesitate to report violence to the police, seek medical assistance or legal redress due to social norms; fear of reprisal by family and partners; legal illiteracy; and economic vulnerability if the husband is convicted (UNDP, 2015; Saha, 2014). According to the government, domestic violence is commonly accepted by both women and men (Government of Lesotho, 2013). The law does not provide for specific penalties so judges have wide discretion in sentencing. An offender may be cautioned and released with a warning, given a suspended sentence, be fined or imprisoned (Open Society Initiative for Southern Africa, 2013).

c) Rape

The Lesotho legislation addresses sexual violence (Sexual Offences Act) and recognises rape as a criminal offence liable to imprisonment of no less than 10 years but which may be enhanced to death penalty when a victim is infected with HIV and perpetrator at the time of committing the crime had knowledge or reasonable suspicion of being infected with HIV (Sexual Offences Act, Sec. 32). A sexual act is unlawful if it takes place in any coercive circumstances (Sexual Offences Act, Sec. 3). The law also provides for increased imprisonment penalty of no less than 15 years for aggravated forms of rape, such as: the complainant has suffered grievous bodily or mental harm as a result of the offence; the complainant is under the age of 12; is by reason of disability exceptionally vulnerable; the offender has a sexually transmissible disease and at the time of the commission of the offence was aware of it; gang rape; use of fire arm or any other weapon or harmful instrument (Sexual Offences Act, Sec. 32).

The legislation recognises marital rape as a criminal offence (Penal Code, Sec. 52; Sexual Offences Act, Sec. 3).

The local understanding of rape is very narrow; it only applies to virgins sexually assaulted by strangers (USAID, n.a.). Women who know the perpetrator or who are already sexually active are not considered as victims of rape. There are also several barriers that hinder rape reporting. Victims may not be aware of their rights or may not know where to report the incident. Women are reluctant to report the offence due to fear of inappropriate and insensitive treatment, lack of privacy. In addition, police are not well trained in dealing with rape victims. There is also a low number of female police officers (USAID, n.a.). There were cases reported where offences were not registered after the victim had washed (Open Society Initiative for Southern Africa, 2013). Moreover, the costs of transport and medical assistance (rape exam, medicaments – emergency pill, penicillin etc., STD and HIV test) are high and to be covered by the victim. There is also a social factor included, victims of rape who report the incident, face rumours and derision, they are considered to be ‘spoiled’ (USAID, n.a.).

d) Sexual harassment

The legal framework prohibits sexual harassment (Labour Code, Sec. 5). The scope is limited to the workplace and, there are no legal provisions addressing sexual harassment in educational establishments, sporting establishments, public places or cyber-harassment. However, the Sexual Offences Act mandates “compelled sexual acts” which may be considered as indirect provision referring to sexual harassment (Sexual Offences Act, Sec. 4). In that case, the court may impose any appropriate sentence (Sexual Offences Act, Sec. 32).

Sexual harassment as defined in the Labour Code is considered as an unfair labour practice; it refers to any person who offers employment, threatens dismissal or imposition of any other penalty against the employers as a way to obtain favours or sexually harass them (Labour Code, Sec. 200). The Labour Court has jurisdiction to determinate unfair labour practices and make appropriate orders; it may forbid the person found engaged in such practices to continue or repeat (Labour Code, Sec. 201, 202). Moreover, failure to comply with the provision of the Code, including those regarding sexual harassment is punishable of imprisonment for three months or/and a fine (Labour Code, Sec. 239).

It is reported that Lesotho has very high prevalence rates of sexual harassment in the workplace and in education establishments (SADC, 2014). The rate of abuse at schools is the highest among Southern African Development Community countries. It is considered as a serious challenge to be addressed (SADC, 2015). Girls experience sexual harassment at schools by their teachers and learners; those incidents impede their equal access to education (Ngakane *et al.*, 2012).

e) Female genital mutilation

In Lesotho, the law prohibits cultural rites, customs or traditional practices which may negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development (Children's Protection and Welfare Act, Sec. 17). There is no evidence to suggest that female genital mutilation is a serious concern in Lesotho (IPU, n.a.).

f) Abortion

Abortion is illegal, but the Penal Code permits abortion in cases of emergency to prevent significant harm to the health of the woman; to prevent the birth of a child who will be seriously physically or mentally handicapped; or to terminate the pregnancy of a female person who is pregnant as a result of incestuous relationship or victim of rape (Penal Code, Sec. 45). This section does not mandate legal abortion to save the mother's life but this is endorsed under common law (Roman Dutch Law) applicable in Lesotho (Penal Code, Commentary to section 45). The termination of pregnancy must be performed by a registered medical practitioner upon a written opinion from another medical practitioner (Penal Code, Sec. 45). There is no provision stating maximum number of weeks by which the woman can seek the legal abortion; this may be performed at any stage of the pregnancy. However, termination of pregnancy is usually carried out at a relatively early phase due to possible medical difficulties and moral objections (Penal Code, Commentary to section 45). The Penal Code considers an illegal abortion as an offence. Performing an abortion is punishable of imprisonment up to three years or a fine (Penal Code, Part X – Penalties).

The restrictive access to abortion in Lesotho leads to illegal abortions and associated complications. It is considered as a great health issue, especially among young people facing unwanted pregnancies. Unsafe methods are commonly used, such as self-induction with sharp instruments or taking potions that may lead to chronic infections, infertility or death (UNDP, 2015).

There are reproductive rights programmes introduced to address safe motherhood, family planning services, prevention of mother to child transmission of HIV and AIDS and adolescent health (Ministry of Gender, Youth, Sport and Recreation, 2014). The Safe Motherhood Programme aims to reduce the number of deaths and illnesses associated with pregnancy and childbirth focusing on the welfare of the mother (HRC, 2015a). Family Planning Programme offers contraceptive means – condoms, pills, female and male sterilisation, and intrauterine contraceptive device (Ministry of Gender, Youth, Sport and Recreation, 2014). Some family planning services are available at the local level. In order to prevent the mother-to-child transmission of HIV and AIDS, antenatal care is provided across the country. Children have the right to sexual and reproductive health information and education appropriate to their age (Children's Protection and Welfare Act, Sec. 11, 234). Therefore, the Sexual and Reproductive Health Policy and Strategic Plan has been adopted which highlights the need of providing information of sexual and reproductive health for adolescents (CRC, 2017). The Adolescent Health Programme targets young girls and educate them on reproductive health issues to prevent teenage pregnancies and contracting illnesses (HRC, 2015a).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Unmarried and married women have the same rights as men to own, use, make decisions over land and non-land assets and use as collateral (Constitution of Lesotho, Sec. 4, 34; Legal Capacity of Married Persons Act, Sec. 3, 4, 5; Land Act, Sec. 6).

Through enactment of the Land Act 2010, ownership inequalities between women and men have been addressed, and now women in Lesotho have equal access to and control of lands (CEDAW, 2015b). The gender provisions ensure equal security of tenure to every citizen of Lesotho (Polasi *et al.*, 2015a).

It provides for presumption of joint title to immovable property in marriages contracted under civil, customary and any other law (Land Act, Sec. 10). Both spouses have the same right to administer the land; however any transaction must be conducted jointly by both spouses living in community of property or with the consent of another spouse (Land Act, Sec. 10). The same applies to non-land assets (Legal Capacity of Married Persons Act, Sec. 5, 7). The current land legislation is based on merit and need (Ministry of Gender, Youth, Sport and Recreation, 2014).

Any customary law inconsistent with the Land Act becomes inapplicable (Land Act, Sec. 4). Nevertheless, customary practices remain parallel to developments in the legal reforms. Under customary law, a woman is considered a minor, even after marriage; such status impedes access to land and assets (FAO Database).

To protect women's right to land and non-land assets, the Government of Lesotho has established Land Courts to strengthen access to justice and promote protection of economic rights (CEDAW, 2015). A number of campaigns and projects on economic rights, particularly on land rights, have been carried out by the Millennium Challenge Account (CEDAW, 2015). Moreover, the Department of Gender organises meeting with Community Councils to verify if women face any difficulties in land allocation. The Community Councils are also mandated to keep records based on sex-disaggregated data in relation to land allocation (CEDAW, 2015).

b) Secure access to formal financial resources

The Constitution of Lesotho provides for enjoyment of economic rights for all citizens (Constitution of Lesotho, Sec. 34). There is no restriction located to suggest that women and men do not have equal access to formal financial resources. The enactment of the Legal Capacity of Married Persons Act is considered as the most progressive legislation in protecting and repealing inequalities between women and men married in community of property; it empowers women to access and control resources within the marriage (ILO, 2011). Married and unmarried women have the same rights as men to open a bank account at formal institutions or obtain credit. Lesotho Bank Savings and Development (Amendment) Act 2008 provides for a married woman to open a bank account without her spouse's consent (CEDAW, 2010). Spouses married in community of property require the consent of the other spouse to enter into a credit agreement which binds the joint estate (Legal Capacity of Married Persons Act, Sec. 7). In addition, there are several initiatives undertaken to enhance economic empowerment of women.

Women's Entrepreneurship Development and Gender Equality programme has been designed in collaboration with the International Labour Organisation to enhance economic empowerment of women in Lesotho, focusing on growing businesses and creating employment (Ministry of Gender, Youth, Sport and Recreation, 2014). Moreover, the Lesotho Youth Credit Initiative has been established, seeking to increase household revenue through facilitated investment in income generating activities for young people, including young women (CEDAW, 2010). Its mandate covers economic empowerment, such as: extending credit; creating and sustaining existing jobs within the micro-enterprise (CEDAW, 2010). The Ministry of Agriculture reaches out rural areas by providing trainings for women (CEDAW, 2010). The Millennium Challenge Account on Gender Equality in Economic Rights aims to ensure equal access to economic resources and opportunities for girls and women and facilitate their meaningful participation in economic growth (SADC, 2014). It organises

awareness raising trainings on economic rights in practice; trains men and women in gender equality in economics (Ministry of Gender, Youth, Sport and Recreation, 2014; SADC, 2014). The Government has introduced various Gender and Economic Empowerment programmes sensitising commercial banks and financial institutions on the rights of married women to access credit (CEDAW, 2015). There is also the Lesotho Association of Women in Small Businesses that aims to create small enterprises and expand the existing ones to fight against poverty, increase and generate income, enhance gender equality and create employment opportunities (SADC, 2015).

Nevertheless, women's access to financial services and credit remains a concern. Women lack knowledge about laws and their capacity to access financial resources; they have neither credit history nor banking skills. Moreover, power relations in families and socio-cultural barriers remain an impediment (SADC, 2015; Polasi *et al.*, 2015b). Under customary law, a woman is considered a minor, it restricts her rights to obtain credit or enter into contract without the assistance of a man (FAO Database). Regarding entrepreneurship, the majority of Small, Medium & Micro Enterprise Businesses are owned by men (ILO, 2011). Female entrepreneurs indicate that they still need financial support to develop their businesses; business knowledge, skills and training; support in the form of tools equipment and machinery; business advice and information; marketing support; technical and transport support; networking with other business owners (van der Merwe, n.a.).

c) Workplace rights

Lesotho has ratified ILO Conventions C100 and C111, whereas it is not a party of Conventions C156, C183 and C189.

The law mandates non-discrimination in employment on grounds of race, colour, sex, marital status, religion, political opinion, national extraction or social origin (Labour Code, Sec. 5). It covers recruitment, hiring, terms and conditions, promotions and training (Labour Code, Sec. 5, Constitution of Lesotho, Sec. 30). There are provisions guaranteeing equal remuneration for work of equal value (Labour Code, Sec. 5; Constitution of Lesotho, Sec. 30). The Labour Code prohibits the employment of women on underground work in any mine (Labour Code, Sec. 132). Women can work the same night hours as men, however, for women workers for a period of at least three months before the expected date of childbirth and at least three months after childbirth an alternative to night work should be ensured (Labour Code, Sec. 130).

Under the Labour Code of Lesotho that governs the private sector, a pregnant female employee is entitled to a maternity leave of 12 weeks that is, six weeks before and six weeks following delivery (Labour Code, Sec. 133). This period may be extended upon submission of a written certificate signed by a medical officer or a registered nurse or midwife stating the woman is suffering from an illness arising out of her confinement (Labour Code, Sec. 133). There is no obligation imposed on the employer to pay wages to a female employee on maternity leave, although the contract of employment may provide for paid maternity leave (Labour Code, Sec. 134). Nonetheless, the paid maternity leave is mandated for workers in the Clothing, Textile and Leather Manufacturing Sectors which are dominated by women (CEDAW, 2010). An employee who has completed more than one year of continued service with the same employer in the above industry is entitled to two weeks of paid maternity leave; whereas an employee who has completed one year of continuous service with the same employer other than in the Textile, Clothing, and Leather Manufacturing should receive six

weeks paid maternity leave (Ministry of Gender, Youth, Sport and Recreation, 2014). Special provisions also apply for public servants (60 days) and teachers (90 days)(CEDAW, 2010). In addition, following the mother's return to work, she is entitled to nursing breaks for a maximum period of six months (Labour Code, Sec. 137). The pregnant woman's employment security is protected by provisions stating that pregnancy does not constitute valid reason of termination of employment; any dismissal that takes effect during employee's maternity leave is automatically considered as an unfair dismissal (Labour Code, Sec. 66, 136). An employer who contravenes the above provisions may be subjected to a fine (Labour Code, Sec. 133, 136, 137). In the event of unfair dismissal, the Labour Court may order remedies (Labour Code, Sec. 73). The law provides neither for paternity nor parental leave.

The economy of Lesotho strongly relies on manufacturing sector that is predominantly occupied by women (Polasi *et al.*, 2015a). Factory work is more accessible employment for women, it does not require high qualifications and education and it is better paid than most informal employment or rural domestic work that women are typically engaged in. Obtaining a position is very competitive; there are daily queues in front of factories for casual work (Ansell *et al.*, 2015). Notwithstanding women participating in the formal economy, women face low remuneration, long working hours, distance from home; those jobs are also less secure and less regulated than employment of men (Ansell *et al.*, 2015). Despite women's increased participation in the formal economy, they continue to receive lower salaries and to lack access to social benefits (Polasi *et al.*, 2015a).

4. Restricted Civil liberties

a) Citizenship rights

The law provides for married and unmarried women to acquire, change and retain the nationality, as well as confer nationality to their children (Constitution of Lesotho, Sec. 37-40; Lesotho Citizenship Order, Sec. 3-8). However, with regard to acquisition of citizenship by marriage, the law gives preference to men over women (CEDAW, 2013). Only male citizens of Lesotho can confer their nationality to their spouse by virtue of marriage. The wife is entitled to be registered as a citizen of Lesotho upon making application and upon taking the oath of allegiance (Constitution of Lesotho, Sec. 40; Lesotho Citizenship Order, Sec. 7). The foreign husband of a woman can attain Lesotho citizenship by naturalisation after five years (Lesotho Citizenship Order, Sec. 12; CEDAW 2013). It is reported that the Ministry of Gender carried out public gatherings, meetings, workshops and forums to discuss the problem of unequal treatment and citizenship acquisition; many communities advocated for equal treatment of citizenship for foreign spouses (CEDAW, 2015). Lesotho forbids dual citizenship and requires a person who or hold qualify for two nationalities to choose one or the other (Constitution of Lesotho, Sec. 41; Lesotho Citizenship Order, Sec. 8).

Birth registration in Lesotho is compulsory (Registrations of Births and Deaths Act, Sec. 3). Both parents have the right and duty to register their child (Children's Protection and Welfare Act, Sec. 20). The registration of illegitimate child or single parent child is also required. In the case of illegitimate child, the identification of a father is not needed, however, upon joint request of a mother and a father and acknowledgment of the fatherhood in writing, he may be recognised (Registrations of Births and Deaths Act, Sec. 19). The child has the right to be registered within 3 months after birth (Children's Protection and Welfare Act, Sec. 8). The registration is free of charge within one year of the date of birth; the delayed registration is a subject to a fine (DLA PIPER, 2016). Lesotho has introduced

electronic system of registration and the facilities are present in all 10 districts of the country (DLA PIPER, 2016). The registration is required to access education (Education Act, Sec. 3, 5); access social security programmes (Lesotho's National Social Protection Strategy, Lesotho Child Grants Programme) and obtain a passport (Passports and Travel Documents Act, Sec. 9). In Lesotho, less than 50% of children under age 5 are registered with the civil authority, the percentage varies across districts (Ministry of Health, 2014). There is no evidence to suggest that boys and girls are unequally registered. The National Identity Card Act covers birth registration and it is intended to harmonize services (CRC, 2017). The Government of Lesotho in collaboration with development partners promotes birth registration; also Lesotho Child Grants Programme contributes to the birth registration (CRC, 2017).

Pursuant to the National Identity Card Act, every Lesotho citizen is eligible to register and obtain an identity card once the age of 16 is attained (HRC, 2015a). The Act empowered women to apply for the identity card without their husband's authorisation (HRC, 2015a). It is noted that Lesotho has started issuing national identity cards in 2014 (South African Institute of International Affairs, 2014). The law also provides married and unmarried women with the same rights as men to apply for a passport (Passports and Travel Documents Act, Sec. 7). Regular passports are issued upon application of any Lesotho citizen for purposes of travelling in or out of Lesotho (Passports and Travel Documents Act, Sec. 7, 9). Both parents are entitled to include child, stepchild or adopted child under the age of sixteen in the passport (Passports and Travel Documents Act, Sec. 12). There are no restrictions found to suggest that married and unmarried women do not have equal rights as men to travel outside the country as the freedom of movement is confirmed in the Constitution (Constitution of Lesotho, Sec. 7).

b) Voting

Women and men enjoy equal voting rights (Constitution of Lesotho, Sec. 20; National Assembly Elections (Amendment) Act, Sec. 5). Women are not prohibited from participating in public affairs; they may be involved directly or through freely chosen representatives. The election system is based on universal and equal suffrage and secret ballot. The majority of registered voters are women (CEDAW, 2010).

Over the years, a number of initiatives have been undertaken to engage women in voting processes and ensure their enjoyment of political rights. The state-operated Independent Electoral Commission, before the general elections in 2015, launched an intensified Civic and Voters Education. It sought to reach out a wide electoral population through crowd pulling strategies, mass media campaign and individual contact; it was hoped to provide information to traditionally vulnerable and marginalised groups, such as: people from remote areas, women, youth and people with disabilities (IEC, 2015). The activities of the education programme included: production of educational and training materials, voter/electoral education outreach campaign, training of key stakeholders, civic and marginalised groups (IEC, 2015). The IEC partly collaborated with the civil society organisation to carry out voter education (UNDP, 2015). For instance, Women and Law in Southern Africa (WLSA) was assigned to provide education for girls and women; the NGO organised workshops, radio programmes, community dialogue, and focus group discussion (IEC, 2015).

c) Political voice

Women and men have equal rights to hold public and political offices in the legislature, executive and judiciary. The Constitution confirms the right of women and men to participate in the government (Constitution of Lesotho, Sec. 4). Therefore, everyone has the right to take part in the conduct of public affairs and to have access, on general terms of equality, to the public service (Constitution of Lesotho, Sec. 20). Qualifications for membership of Parliament does not difference between women and men (Constitution of Lesotho, Sec. 58). Similarly, the Government is appointed from the members of the National Assembly or the Senate (Constitution of Lesotho, Sec. 87). In case of judiciary, the appointment of judges is mainly based on the specified legal qualifications (Constitution of Lesotho, Sec. 120, 124).

Lesotho introduced legislated quotas in order to enhance political participation of women at the national and local levels. All political parties contesting in general elections are obliged to design the party list of candidates applying a zipping rule according to which men and women are alternated on the party list and ensuring there is an equal number of female and male candidates (National Assembly Elections (Amendment) Act, Sec. 47). At the local level, one third of all seats in municipal, urban and community councils are reserved for women and are distributed proportionally among the parties (Local Government Elections (Amendment) Act, Sec. 26). It is considered as a successful measure for inclusive and active participation of rural women in their respective local communities (CEDAW, 2010). There are no sanctions provided for non-compliance (IDEA, 2017).

None of Lesotho's political parties have adopted voluntary quotas (Quota Project, 2017). However, the National Assembly Elections (Amendment) Act encourages political parties to support political participation of women; ensure free access to public political meeting, facilities and venues; respect the right of women to communicate freely in political parties; refrain from forcing women to adopt a particular political position against her free will (National Assembly Elections (Amendment) Act, Sec. 30).

The political empowerment of women is outlined in the Lesotho's Vision 2020 document. It seeks to uproot discrimination against women and increase the number of women in decision-making positions. Gender and Development Policy adopted in 2003 provides guidelines for activities to be taken in order to enhance women's participation in politics and other decision-making spheres (CEDAW, 2010). Legal and policy measures are supported by appropriate institutions – the Gender Focal Points, the Gender Caucus Groups and the Basotho Women's Parliamentary Caucus (University of Pretoria, 2009). The Gender Focal Points group focuses on gender mechanisms within institutions and organisations and pushes forward gender-sensitive approach in all planning and programming; the Gender Caucus Group promotes gender issues among policy makers and leaders; the Women's Parliamentary Caucus stimulates gender debates among MPs and safeguards enactment of gender-responsive laws (Saha, 2014).

The full enjoyment of political rights by women is impeded by gradual changes in the society and its long-established values. Traditionally, communities are led by men where women's responsibilities revolve around reproductive roles and family-care (Matlho, L., n.a.). It is believed that women are not capable to hold managerial and decision-making positions so they often face criticism and antipathy once they decide to run for any political or public office. Another barrier is that of safety and job

security. The factor of safety refers to a widespread gender-based violence that women in electoral campaign are more exposed to. It is also required that persons standing for elections resign from their jobs. Women who are financially dependent on their husbands and responsible for housework are not in the position to invest required financial and time resources to run for the office (Matlho, n.a.).

d) Access to justice

There are no restrictions found to suggest that women in Lesotho have unequal capacity to sue and to be sued (Legal Capacity of Married Persons, Sec. 3). Woman's testimony carries the same evidentiary weight in court as man's in all types of court cases, civil, criminal, family court and tribunals. The Constitution states equality before the law and the equal protection of the law for all (Constitution of Lesotho, Sec. 19). The rights to a fair trial of criminal charges and a fair determination of civil rights and obligations of every person in Lesotho are guaranteed (Constitution of Lesotho, Sec. 4, 12).

Across the country, in each district's town centre operates a Magistrate Court. In addition, there are local and central courts in the villages accessible for all, including rural women (CEDAW, 2010). Nevertheless, in some cases the distance between the court and the rural village remains deterrent (UNCTAD, 2012). A number of legal acts have been translated into local Sesotho language, including those gender-related: CEDAW, Constitution of Lesotho, Legal Capacity of Married Persons Act, Gender and Development Policy and Sexual Offences Act (CEDAW, 2010). The Legal Aid Division, under the Ministry of Justice and Human Rights provides free legal assistance to indigent people all civil and criminal cases (US State Department, 2016). The majority of recipients of legal aid are women (CEDAW, 2010). However, it is reported that the programme does not receive sufficient resources, it is centralised in the capital city what hinders its effectiveness and makes the service inaccessible (Open Society Initiative for Southern Africa, 2013). Legal aid services are also provided by NGOs, such as: the Federation of Women Lawyers and Women in Law in Southern Africa (Child Rights International Network, 2014). Legal representation in cases of gender equality or women's rights is frequently offered at minimum cost or free of charge. Ministry of Gender and civil society organisations run projects and awareness raising campaigns on women's rights, focusing on rural communities (CEDAW, 2010).

To ensure that laws and proposals are consistent with the protection of fundamental rights and freedoms outlined in the Constitution, the Law Reform Commission has been established (Lesotho Law Reform Commission Act, Sec. 8). It is mandated to review legal documents with a gender perspective (CEDAW, 2011). The Commission identifies the society's legal needs and makes recommendations to respond to them (Open Society Initiative for Southern Africa, 2013). Lesotho has neither a Human Rights Commission nor a Gender Equality Commission, although calls to create such bodies and first steps have been taken back in early 2000s (Open Society Initiative for Southern Africa, 2013; CEDAW, 2010). Currently, a similar role is jointly shared by the courts, certain Ministries, the Office of the Ombudsman, the Police Complaints Authority (Open Society Initiative for Southern Africa, 2013).

In Lesotho, the customary law is constitutionally recognised as a parallel legal system (Constitution of Lesotho, Sec. 18). This so-called 'the Laws of Lerotholi' is a codification of customs and practices of the Basotho that were orally given from generation to generation (Open Society Initiative for Southern

Africa, 2013). However, it does not always correspond with legal needs of the populations, lacks certainty and does not provide for applicable procedures. Moreover, practitioners of customary law frequently are untrained and the applicable courts are not well equipped. The statutory High Court expressed its concern in this matter (Open Society Initiative for Southern Africa, 2013). Notably, the constitutional right to equality before law and the non-discrimination clause do not apply to people who practise customary law (Constitution of Lesotho, Sec. 18). This leads to a marginalisation and discrimination against women who are traditionally dependent on their male relatives (UNCTAD, 2012). In rural areas where customary law is still entrenched, women are disadvantaged with regard to their personal rights and freedoms, property rights, inheritance and succession rights (US State Department, 2016).

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