LESOTHO

Lesotho gained independence from Britain in 1966 and is a constitutional monarchy with a dual legal system consisting of customary law and common law. The major challenges facing the country are high unemployment and HIV/AIDS prevalence rate coupled with food insecurity.\(^1\)

The constitution of Lesotho guarantees the right to equality and non-discrimination on the basis of sex, however customary laws are exempted from this constitutional guarantee.\(^2\) The constitutional principle of non-discrimination does not, however, apply to laws relating to adoption, marriage, divorce, burial, devolution of property, death or other matters that fall under personal law or where Customary Law governs the parties concerned.\(^3\) Lesotho became a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995 and ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2004. The country submitted its first report to the Committee on the Elimination of Discrimination against Women in 2010. Lesotho also ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa in 2004.

Lesotho has a dual legal system – Common Law (Roman Dutch Law) and Customary Law (Basotho customs). Both systems have equal validity, although in cases of inconsistency, Statutory Law prevails.\(^4\)

\section{1. Discriminatory Family Code}

The Marriage Act of 1974 and the Legal Capacity of Married Persons Act of 2006 govern civil marriages. These laws ban forced marriages\(^5\) (as does customary law)\(^6\) and set the \textit{legal age of marriage} at twenty-one. Males under the age of 18 and females under the age of 16 can, however, get married with written consent of the designated Minister and both parents of the minors.\(^7\) The Children’s Protection and Welfare Act in 2011 defines the minimum age for entering marriage as 18.\(^8\) There is no minimum age under customary law, which provides that both girls and boys can marry after puberty.\(^9\) Regarding \textit{early marriage}, 2006 UN data shows that 155 of girls between 15-19 years old were married.\(^10\)

In 2006 Legal Capacity of Married Persons Act also removes the minority status of women married in community of property, and provides equal rights, \textit{parental authority} and responsibilities to parents and spouses.\(^11\) In

\begin{footnotesize}\begin{itemize}
\item \(^1\) African Development Bank (2005) p.1
\item \(^2\) Sections 4 and 18, Chapter 2 of the Constitution of Lesotho
\item \(^3\) CEDAW (2010) p.16; Section 18 (4) (c) Constitution of Lesotho
\item \(^4\) CEDAW (2010) p.15
\item \(^5\) Section 3 of the Marriage Act
\item \(^6\) Mapetla, M (2009) p.38
\item \(^7\) CEDAW (2010) p.50
\item \(^8\) CEDAW (2011a) p.9
\item \(^9\) CEDAW (2011a)
\item \(^10\) OECD (2014), Gender, Institutions and Development Database, http://stats.oecd.org
\item \(^11\) Mapetla, M (2009) p.38; CEDAW (2010) p.17; 19
\end{itemize}\end{footnotesize}
practice, however, married women are often still treated as minors and prevented from owning land or given a lesser say in guardianship over children.\textsuperscript{12} In the event of divorce, common law assigns equal rights of guardianship and custody, to be determined in practice by mutual agreement between the spouses and ultimately with the children’s best interests in mind.\textsuperscript{13} Under customary law, children are commonly divided between the mother and the father.\textsuperscript{14}

According to the law on inheritance, sons and daughters have equal inheritance rights to property, as do female and male surviving spouses.\textsuperscript{15} In addition, the Lesotho Land Act of 1997 allows widows to stay in the matrimonial home provided they do not remarry, thereby giving the widow usufruct rights and not ownership rights.\textsuperscript{16} Under customary law, however, it is reported that daughters do not have the same inheritance rights as their brothers.\textsuperscript{17} First-born sons are typically considered to be the heirs to land and other property.\textsuperscript{18} In cases where there is no male heir, the (senior) wife is expected to consult the family of her deceased husband.\textsuperscript{19}

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Under common law, women have the \textit{right to initiate divorce} and proceedings are carried out in a “competent court of law”.\textsuperscript{20} In order for customary law marriages to have legal standing in civil court, they must also be registered under the common law system.\textsuperscript{21} Alternatively, such divorces can be obtained through customary judiciary procedures or through informal arrangements between the spouses and their families. Upon finalization of a customary divorce, women fall back under the guardianship of her father or his heir. Generally, divorce is viewed as shameful and carries social stigma.\textsuperscript{22}

The age specific fertility rate of women age 15-19 years of age was 96 per 1,000 women according to the 2009 DHS, a level similar to that seen in previous surveys, although overall total fertility rates continue to decline.

With regard to decision-making, the 2009 DHS reports that 58\% of women declare that they and their husband jointly decide how her earning are to be spent, while only 5\% of women declare that their husband alone makes this decision.\textsuperscript{23} In terms of household purchases for daily needs, women are the main decision-makers (73.8\%) while decisions on large household purchase are most commonly made jointly with her husband (63.1\%).\textsuperscript{24}

While polygamy is an acceptable behaviour in Lesotho it is rarely practiced, according the 2009 DHS, only 1.7\% of men age 15-59 have two or more wives.\textsuperscript{25}

\begin{itemize}
  \item \textsuperscript{12} CEDAW (2011b) p.7
  \item \textsuperscript{13} Emery, R. (2013) p.702
  \item \textsuperscript{14} Emery (2013), p. 702
  \item \textsuperscript{15} Law no. 64-378 on Inheritance, Articles 22 and 39
  \item \textsuperscript{16} UN Habitat (2005) p.21
  \item \textsuperscript{17} Mapetla, M (2009) p.38
  \item \textsuperscript{18} CEDAW (2010) p.17
  \item \textsuperscript{19} Idem, p.46
  \item \textsuperscript{20} Emery, R. (2013) p.701
  \item \textsuperscript{21} US State Department (2012)
  \item \textsuperscript{22} Emery, R. (2013) p.702
  \item \textsuperscript{23} DHS (2009) p.224
  \item \textsuperscript{24} Idem, p.222
  \item \textsuperscript{25} Idem, p.71
\end{itemize}
2. Restricted physical integrity

There is no specific legislation prohibiting domestic violence; cases reported are charged and prosecuted as common law offences of assault, intimidation, etc. The Law Reform Commission has, for some years, been in the process of enacting a Domestic Violence Bill, but no draft is currently available for review and few domestic violence cases are brought to trial.

While data on the prevalence of domestic violence is not available, surveys have measured attitudes towards violence against women. The 2009 Demographic Health Survey found that 37.1% of women agreed that her husband is justified in beating his wife for at least one of the four reasons proposed: arguing with her husband, neglecting the children, going out without her husband's permission, refusing to have sex with her husband.

The Sexual Offenses Act of 2003 recognizes marital rape under prescribed circumstances, and mandates a penalty of eight years imprisonment. The death sentence is issued in cases where the perpetrator had knowledge or reasonable suspicion of being infected with HIV. From January to December 2011, a little over one thousand cases of rape and sexual assault were reported, and 420 individuals were convicted. However, discomfort with formal court procedures, legal costs, and limited knowledge of rights often prohibit women from seeking recourse.

The Lesotho Labour code explicitly bans sexual harassment, defining the latter as: “any person who offers employment or who threatens dismissal or who threatens the imposition of any other penalty against another person in the course of employment as a means of obtaining sexual favours or who harasses workers sexually shall commit an unfair labour practice.” While not explicitly defining sexual harassment as such, the Sexual Offenses Act of 2003 bans “compelled sexual acts,” defined as “a person who compels another person to engage in a sexual act with himself/herself or to engage in a sexual act with a third person.”

Female genital mutilation (FGM) is reported to not exist in Lesotho.

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Abortion is only allowed in Lesotho to save a women’s life. A 2009 Demographic Health Survey found that 47% of married women age 15-49 use contraception, with almost all of these women using a modern form of contraception (46%). The same survey reports that 23% of currently married women have an unmet need for

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28 US State Department (2012)
29 DHS (2009) p.228
31 CEDAW (2010) p.20
32 US State Department (2012)
33 CEDAW (2010) p.25
34 Lesotho Labor Code, Sec. 5 and 200
35 Sexual Offences Act 2004, Art 4 (1)
36 Inter-Parliamentary Union (2009)
38 DHS (2009) p.54
family planning. Finally, while 44% of women age 45-49 had their first child by age 20, 37% of women age 20-24 had their first child by age 20, showing a slight delaying for first childbirth. The median age at first birth among women age 45-49 is 20.4 years compared to 21.2 year for women age 25-29.

3. Son Bias

The male/female sex ratio for the working age population (15-64) in 2013 is 0.95 and the sex ratio at birth is 1.03. Lesotho does not appear to be a country of low concern in relation to missing women due to high AIDS mortality.

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Gender disaggregated data on rates of infant mortality and early childhood nutrition show little differences between male and female children. Lesotho has also achieved gender parity in primary and secondary school enrolments, indicating that there is no preferential treatment of sons in access to education. The literacy rate among women in Lesotho is very high, at 93%. In addition, the Government of Lesotho enacted the Education Act in 2010, which provides for free and compulsory primary education and females now outnumber males at the secondary level.

4. Restricted resources and assets

With respect to access to land, the principal land legislation in Lesotho is the Land Act of 1979. This legislation is gender neutral. Although the law is gender-neutral, customary practices provide that land is allocated primarily to men through inheritance, requiring women to access land through their husbands. Further, until 2006, married women in Lesotho experienced discrimination in accessing land as legally they were considered to be minors.

In 2006, the government passed the Legal Capacity of Married Persons Act that sought to eliminate the discrimination previously imposed upon married women through customary law, giving married women the right to own and register land and property in their own names. The Act also provided for the joint title to land for spouses married in community of property. The Land Act of 2010 similarly provides equal property ownership rights to both men and women (unmarried and married). According to 2008 data from the Lands Surveys and Physical Planning, women owned approximately 40% of resettlement or combined land.

39 Idem p.86
40 Idem p.50
41 Central Intelligence Agency (2013)
42 DHS (2009)
43 World Economic Forum (2010) p.192
44 CEDAW (2010) p.9
45 Idem p.37
47 Idem, p.58
48 CEDAW (2010) p.19
50 CEDAW (2010) pp. 19; 46
51 CEDAW (2011b) p.2
Under civil law, women in Lesotho have the right to access to bank loans and other financial services. However, a lack of knowledge about the laws and limited collateral to place against their bank loans continue to prevent women from accessing bank loans.\(^{53}\) The government has sought to redress this inequity by introducing a gender credit programme to provide women capacity building services and credit support. The government reports that women make up 80% of the beneficiaries of this programme.\(^{54}\) In addition, in an effort to counter the previous minority status of women, section 7 of the Legal Capacity of Married Persons Act states that spouses married in community of property must acquire the consent of the other spouse in order to obtain a loan, mortgage or other type of financial credit.\(^{55}\) Finally, the Land Act of 2010 introduced leasehold in rural areas, facilitating women’s ability to access credit using land as collateral.\(^{56}\)

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A 2010 study revealed how the Lesotho Highlands Water Project (LHWP), a large-scale multi-dam development project, had a negative effect on rural women’s access to land and food security. The policies designed to compensate women and men who lost their land for the construction of the dams reinforced the existing gender inequalities. Women who were deprived of access to the agricultural fields that they had worked or owned were then disqualified from receiving compensation for the loss.\(^{57}\)

5. Restricted Civil Liberties

There are no reported restrictions on women’s freedom of movement and access to public space in Lesotho and women can apply for a passport in the same way as a man.\(^{58}\) In the 2009 Demographic and Health Survey (DHS), women report that the decision to visit her family or relatives is made mainly by the husband and wife jointly (34.3), as opposed to mainly the husband (28.7%) or mainly the wife (31.9%).\(^{59}\) The Constitution and law provide for freedom of assembly and expression. The government generally respects these rights in practice.\(^{60}\)

In Lesotho, women are largely able to exercise their right to participate in national politics, and the government has taken specific affirmative-action measures to promote the latter. The Local Government Elections (Amendment) Act of 2004 reserves one-third of seats for women (quotas) while the National Assembly Electoral Act of 2011 endeavours to ensure the representation of women by encouraging political parties to facilitate women’s rights to freely communicate with political parties and guarantee their freedom of political expression.\(^{61}\) It also provides for party lists that alternate women and men candidates for elections under the proportional representation system.\(^{62}\) There continues however, to be a disjuncture between the legal provisions and actual practice as political parties resist implementing affirmative action policies.\(^{63}\)

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\(^{53}\) Idem p.57
\(^{55}\) CEDAW (2010) p.46
\(^{56}\) CEDAW (2011b) p.2
\(^{58}\) World Bank (2013)
\(^{59}\) DHS (2009) p.224
\(^{60}\) US State Department (2012)
\(^{61}\) Idem p.38; CEDAW (2010) p.10
\(^{62}\) CEDAW (2011b) p.2; Kapa, M (2013) p.38
\(^{63}\) Kapa, M. (2013) p.8
The post-2007 election Cabinet included seven ministers and two assistant ministers, making up 39% of the overall Cabinet while in the 2012 elections that followed, five women were appointed as Ministers and three as Deputy Ministers, or 27% female representation.\textsuperscript{64} 27% of seats in national parliament in 2013 were held by women.\textsuperscript{65}

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A study on the representation of gender in the media in Lesotho found that women’s views and voices are under-represented in the media with women constituting only 21% of the news sources in monitored media. The study also found that gender specific news items did not have a profile in Lesotho media.\textsuperscript{66}

The Labour Code of 1992 provides for basic workers rights including the provision of adequate working conditions, including the prohibition of unfair treatment to female employees. It also provides for equal remuneration for work of equal value for both men and women.\textsuperscript{67} Section 30 of the constitution provides that women be “guaranteed conditions of work, including pension or retirement benefits, not inferior to those of men, with equal pay for equal work”. Section 30 also offers “the protection of women who are in employment during a reasonable period before and after childbirth”.\textsuperscript{68}

Section 144 of the Labour code provides pregnant women with maternity leave of six weeks before and six weeks after delivery, the right to benefits for the full support and maintenance of herself and the child, the right to free medical care, and once back at work, time-off to nurse the child during the day. The Labour Code Wages (Amendment) Act of 2009 provides for two weeks paid maternity leave for workers in Clothing, Textile and Leather Manufacturing industries, provided they have completed one year of continuous service with the same employer.\textsuperscript{69} The Labour Code Wages (Amendment) Notice, 2012, holds employers responsible for 100% of maternity benefits.\textsuperscript{70} Civil servants – under the Public Service Act - are granted 90 days maternity leave on full pay.\textsuperscript{71}

\begin{footnotes}
\item[64] Kapa, M. (2013) p.4
\item[65] OECD (2014), Gender, Institutions and Development Database, http://stats.oecd.org
\item[66] Mapetla, M (2009) p.88-89
\item[67] CEDAW (2010) p.19
\item[68] CEDAW (2010) p.19
\item[69] CEDAW (2010) p.40
\item[70] World Bank (2013)
\item[71] Idem pp.19-20; CEDAW (2011a) p.7
\end{footnotes}
Sources


