



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

Distr.: General  
26 August 2010

Original: English

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

**Consideration of reports submitted by States  
parties under article 18 of the Convention on the  
Elimination of All Forms of Discrimination  
against Women**

**Combined initial to fourth periodic reports of States parties**

**Lesotho\***

[July 2010]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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## Acronyms

ANC & MCH	Antenatal Care and Mother and Child Health
ARV	Antiretroviral
AU	African Union
BPA	Beijing Platform for Action
CARMMA	Campaign on Accelerated Reduction of Maternal Morbidity
CBL	Central Bank of Lesotho
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CGPU	Child and Gender Protection Unit
CHAL	Christian Health Association Lesotho
DHS	Demographic Health Survey
FIDA	Federation for Women Lawyers
GBV	Gender Based Violence
GEMSA	Gender and Media in Southern Africa
GFP	Gender Focal Point
GoL	Government of Lesotho
GMAS	Gender and Media Advanced Study
GTC	Gender Technical Committee
GTZ	Deutsche Gesellschaft Fur Technische Zusammenarbeit
ICPD	International Conference on Population Development
IEC	Independent Electoral Commission
IECC	Integrated Early Childhood Care
IEMS	Institute for Extra Mural Studies
ILO	International Labour Organisation
IUCD	Intra Uterine Contraceptive Device
LLRC	Lesotho Law Reform Commission
LMPS	Lesotho Mounted Police Service
LCN	Lesotho Council of NGOs
LPPA	Lesotho Planned Parenthood Association
MAF	Mission Aviation Fellowship
MCA	Millennium Challenge Account
MCP	Multiple and Concurrent Partnerships
MDG	Millennium Development Goals
MEGYA	Ministry of Environment, Gender and Youth Affairs

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MEL	Ministry of Employment and Labour
MGYSR	Ministry of Gender and Youth, Sport and Recreation
NAC	National AIDS Commission
NEPAD	New Partnership for African Development
NGO	Non-Governmental Organisation
NUL	National University of Lesotho
PEP	Post Exposure Prophylaxis
PEPFAR	Presidential Emergency Fund for AIDS Response
PHELA	Phela Health and Development Communications
PMTCT	Prevention of Mother to Child Transmission
RSA	Republic of South Africa
SADC	Southern African Development Community
SRHR	Sexual and Reproductive Health Rights
STIs	Sexually Transmitted Infections
TRC	Transformation Resource Centre
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNGASS	United Nations General Assembly Special Session
UNICEF	United Nations Children's Fund
WEDGE	Women's Entrepreneurship Development and Gender Equality
WHO	World Health Organisation
WLSA	Women and Law in Southern Africa

## **List of statutes**

Administration of Estates Proclamation 1935  
Deserted Wives and Children's Proclamation 1959  
Company's Act 1967  
Deeds Registry Act 1967  
Public Health Order 1970  
Lesotho Citizenship Order 1971  
Marriage Act 1974  
Public Service (Amendment) Regulations 1977  
Land Act 1979  
Children's Protection Act 1980  
Criminal Procedure and Evidence Act 1981  
Lesotho Citizenship (Amendment) Order 1989  
Labour Code Order 1992  
National Assembly Elections (Amendment) Act 2001  
Teaching Service Regulations 2002  
Sexual Offences Act 2003  
Local Government Elections Amendment Act 2004  
Public Service Act 2005  
Legal Capacity of Married Persons Act 2006  
Local Government Act 2006  
Lesotho Bank Savings and Development (Amendment) Act 2008  
Labour Code Wages (Amendment) Act 2009  
Education Act 2010

## Foreword

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.

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.

It is to this end that the Government of Lesotho put all its efforts in developing a comprehensive report which includes the challenges and developments towards recognition and realization of women's rights. This report highlights the constitutional, legal and administrative measures taken to implement the provisions of the Convention. Such measures include the enactment and adoption of relevant sectoral legislations and policies. The report further highlights social, cultural and other barriers that hinder the promotion of gender equality in the priority areas of concern identified in the CEDAW. It is 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.

The rights of women are also linked to socio-economic and cultural rights. The Government of Lesotho has taken steps towards the recognition and realization of these rights through the adoption of policies and strategies aimed at improving protection of the right to health, the right to education, workers' rights and the rights of people with disabilities among others. Mindful of the linkages between gender equality and the achievement of national and global development targets, particularly the Millennium Development Goals (MDGs), it is hoped that the report will provide useful development indicators on priority issues that affect both women and men.

As a valuable tool to improving and broadening the spectrum of protection of the basic rights of women, through this report, the Government of Lesotho reiterates its commitment to the provisions of the Convention and looks forward to the support of its partners in promoting and improving the lives and well being of Basotho women.

Pakalitha B. Mosisili (Mr.)  
The Right Hon.  
The Prime Minister

## **Executive summary**

### **Introduction**

The position of women in Lesotho has been progressively improving over the last 50 years. As we have entered in the new century, there has been an increasing number of women holding decision making positions. Women are represented in all aspects of social, political and cultural life and have gradually gained emancipation from male's authority. While we applaud these achievements we must nonetheless face the reality of the situation as it is today and recognise that rights of women are still violated and that they still face labels of inferiority and cultural stigmatization. In the past, Lesotho has been in the same situation. However, positive steps have been taken and are aggressively continuing to be taken to rectify the situation. As public awareness on discrimination against women grows, so does the demand for action to eliminate such discrimination, hence the unwavering commitment of Lesotho to building a comprehensive framework aimed at eliminating such discrimination and ensuring the full enjoyment of women's rights.

To demonstrate its political resolve to promote and protect the basic rights of women, in 1995, Lesotho ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), thereby assuming the obligation and willingness to comply with and implement the provisions of this Convention. Nonetheless, Lesotho ratified CEDAW with a reservation to Article 2 with respect to succession to the throne and chieftainship.

This Report represents a compilation of the Kingdom of Lesotho's initial, second, third and fourth periodic State Party Report on the implementation of CEDAW. It highlights the constitutional, legislative and administrative measures adopted in Lesotho to give effect to the provisions of the Convention and to determine progress in its implementation. It also analyses the factors and difficulties which hamper the full respect and implementation of CEDAW's obligations. Mindful of Lesotho's overdue submission, this Report represents a confirmation of Lesotho's willingness to comply with its international obligations, particularly within the human rights framework. The drafting of the Report presented an important opportunity to critically evaluate the situation of women in Lesotho, acknowledge the weaknesses and shortcomings as well as recognize the progress achieved for ameliorating women's rights.

### **Women's legal status in property ownership and marriage**

Lesotho recognizes the dual legal system, within which Customary Law and Common Law co-exist. Lesotho is a patriarchal society, grounded on customs, culture and social patterns. To mention a few, married women in Lesotho used to be treated as minors, hence subjected to their husbands' marital power. This meant that the husbands had exclusive power and control over the joint estate. Such imbalance rendered wives minors with no *locus standi in judicio*, contractual capacity and proprietary capacity. Furthermore, they used to be deprived of claiming power in the guardianship of their children and perceived as not being competent to hold important decision making positions.

Nevertheless, there have been improvements in the legal framework of the Kingdom of Lesotho to support women's legal rights and address critical barriers to the empowerment of women, through, amongst others, the enactment of laws that aimed at protecting the rights of women. Examples of such laws include: the Sexual Offences Act 2003 which recognizes marital rape as an offence, the Legal Capacity of Married Persons

Act 2006, which removes the minority status of women married in community of property and the Labour Code Order 1992, which defines discrimination in the work place as any exclusion or preference made on the basis of sex, marital status or religion, the Labour Code Wages (Amendment) Act 2009, which provides for paid maternity leave for workers in Clothing, Textile and Leather Manufacturing Sectors, among others.

Despite these improvements, many amendments in the national laws are still required in order to eliminate discrimination against women. Major and rapid progress has been made. Efforts are afoot to complete the progress of elimination of discrimination against women at the earliest manageable time.

## **Women and education**

The literacy rate of Lesotho is approximately 83% as compared to the average of 62.4% in sub-Saharan Africa (UNESCO 2004). Female literacy stands at 93%. Lesotho has exceeded gender parity in access to primary education rated at 82% for girls and 75% for boys; with a completion rate for girls at 80%. To show its commitment to expanding educational opportunities, the Government enacted the Education Act 2010 which provides for free and compulsory education.

## **Gender-based violence**

As previously mentioned, the Sexual Offences Act was enacted with the purpose of combating Gender Based Violence (GBV), prescribing appropriate sanctions for sexual offences and in particular recognizing marital rape as an offence. The Government of Lesotho has also established the Child and Gender Protection Unit (CGPU) within the Mounted Police Service and a One Stop Centre to provide integrated support for survivors of GBV. In addition, a National Action Plan has been developed with a Coordination Plan to End Gender Based Violence, as well as a child help line with the support of UNFPA, UNDP, UNICEF and civil society organizations. It is also worth noting that the Government of Lesotho is putting a lot of efforts in order to facilitate the drafting of a Domestic Violence Bill.

## **Women and health**

One of the main concerns in Lesotho is the spread of HIV and AIDS, which has a disproportionate impact on women due to social and cultural factors. To address the problem, the Government of Lesotho has therefore put forward and dynamic programmes including the National HIV and AIDS Policy and the National Action Plan on Women, Girls and HIV and AIDS 2007–2010. The National Aids Commission has also been established and is now being strengthened for greater effectiveness.

Another health concern for women is the high maternal mortality ratio which is estimated at 970/100,000 live births. Safe Motherhood programmes and Campaigns on Accelerated Reduction of Maternal Mortality (CARMMA) were adopted by Government to ensure that no woman should die while giving life. It is part of the effort to punctually reach Millennium Development Goals (MDGs).

## **Human trafficking**

Another concern, yet hidden, is international human trafficking. Women are particularly at risk of being trafficked. Lesotho ratified the UN Protocol to Prevent,

Suppress and Punishing trafficking in Persons, especially Women and Children. Draft Bill to address this situation is already been finalised and is due for cabinet consideration. It has been put on the fast track. Nonetheless, it is yet to enact a law which deals specifically with this issue. On the other hand, the Government of Lesotho is actively engaged in combating regional and international human trafficking, through its involvement in the drafting of the 10 Year SADC Strategic Plan of Action on Combating Human Trafficking, especially Women and Children.

### **Women in politics**

The situation of women in the political sphere has improved considerably in the last decade although a complete equality between men and women has still not yet been fully achieved. The Government, with the goal of achieving *de facto* equality in political participation at the national level, has developed the Gender and Development Policy 2003, which provides guidelines aiming at empowering women in politics and decision-making positions. Furthermore, in 2006, a 50/50 campaign was launched for gender parity in the political spheres. At the regional level, Lesotho has signed the SADC Declaration on Gender and Development in 1997 which sets a 30% target of women in decision making positions for 2005, AU Solemn Declaration on Gender Equality in Africa 2004 the SADC Protocol on Gender and Development in 2008, the and the AU Gender Policy 2009.

The situation of women in politics has been enhanced by the National Assembly Election (Amendment) Act 2001 and Local Government Election (Amendment) Act 2004. Specifically, the latter Act reserves one third of the sits of local government positions for women. As a result, women currently hold 52.8% of positions at the local government level.

In 2009, the participation of women in decision making positions was as follows: Ministers 33%, Assistant Ministers 60%, Principal Secretaries 23.8% Deputy Principal Secretaries 16.6%, and Directors 48%. In the Judiciary, the position of the Registrar of the High Court is held by a woman and female representation in the judiciary is 65.2%.

It is worth mentioning that the speaker of parliament, Commissioner of Police, Auditor General, Chairperson of Independent Electoral Commission (IEC), Director General of Health, Registrar General etc, are all women.

### **Efforts to eliminate discrimination against women**

Overall, the Government has put in place several mechanisms to protect the rights of women. Among them, a Draft Implementation Plan of 2008/10 was developed for mainstreaming gender concerns in different sectors under the auspices of the above mentioned Gender and Development Policy 2003. As a result, Gender Focal Points (GFPs), the Gender Technical Committee (GTC) and Gender Forum have been established to effectively implement the plan.

Furthermore, the following mechanisms have been put in place to ameliorate women's situation in Lesotho: the Lesotho Law Reform Commission, which was established with a mandate to review laws in conformity with fundamental human rights and freedoms; the Legal Aid Unit which provides legal aid services to indigent people, the majority of whom are women; the Millennium Challenge Account Gender equality in Economic Rights, Training and Outreach Programme; Safe Motherhood Programme, whose aim is to reduce the number of deaths and illnesses associated with pregnancy and childbirth; Adolescent Health Care Programme whose aim is to educate young girls about reproductive health issues; Lesotho Youth Credit Initiative which increases household

revenue through facilitating investment in income generating activities by young people and the Women's Entrepreneurship Development and Gender Equality Programme.

Dedicated Ministry of Gender was established in 1998.

## **Conclusion**

In conclusion, through the enactment of laws and the adoption of policies and programmes, Lesotho has taken steps towards the recognition of women's rights and to aggressively combat discrimination against women. But as important as it is to understand the progress that has been made, it is equally crucial to be aware of the enormity of the task that lies ahead. Despite the almost universal recognition of women's rights at all levels, women's secondary status and oppression persist. The Government, mindful of the necessity to improve this situation and to achieve a complete equality between men and women, reiterates its commitment to comply with the provisions of CEDAW.

## Background

### Geography

1. Lesotho is located in Southern Africa. It is landlocked by the Republic of South Africa. It covers an area of about 30,555 square kilometers and has a population of about 2 million.

### Demographic features

#### Population

2. The 2006 census set the population at about 2 million. Males constituted 48.6% of the total population, while females represented 51.4% of the population.

#### Population by age

3. In 2003, males below the age of 15 years were 39.5% of the entire male population. Female population below the age of 15 years was 37.6% of the female population. Males under the age of 15 years in 2006 were 35% of the male population. The female population under the age of 15 years constituted 32.5% of the entire female population.

4. During the same year, males over the age of 65 years constituted 3.3% of the total population. Females above 65 years of age in comparison were 4.4% of the population.

5. The urban population in the 2006 census represented about 23% of the total population compared to about 17% in 1996. This translates to about 36% increase in the urban population during the 10 year intercensal period.

Figure 1

**Lesotho 1996 Population Pyramid**

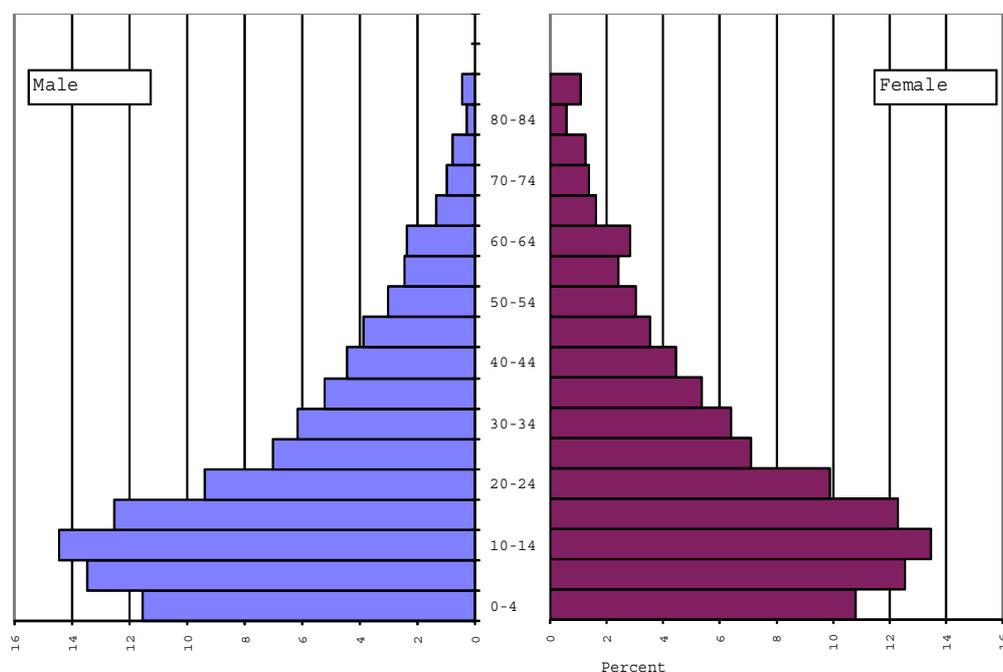
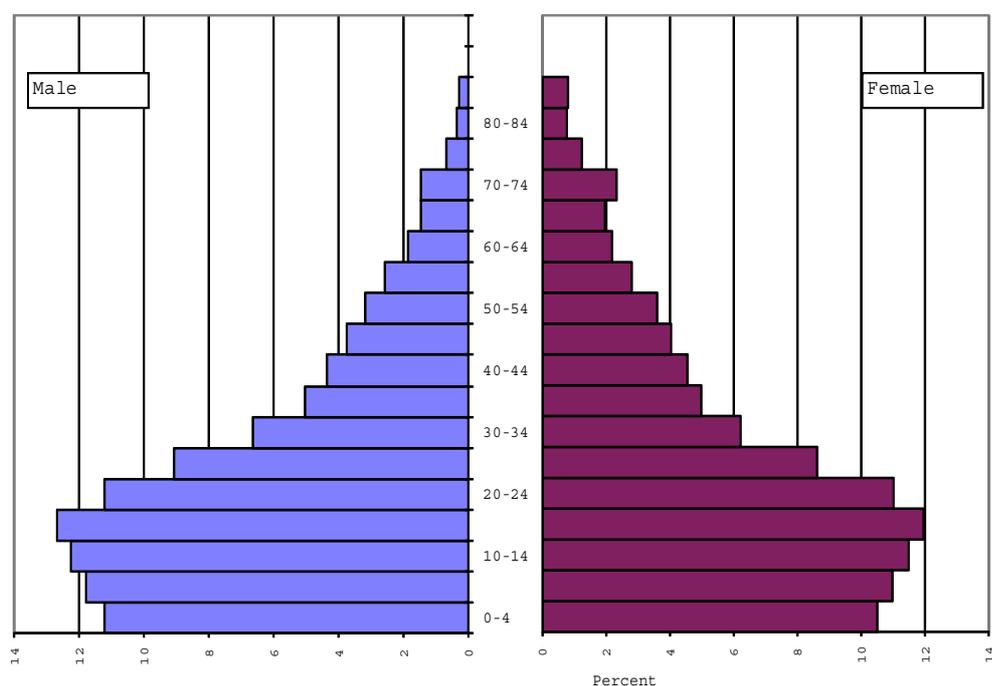


Figure 2  
Lesotho 1996 Population Pyramid



Source: BOS.

Table 1  
Percentage distribution of household heads by age and sex – 1996 and 2006

Age group	1996		2006	
	Males %	Females %	Males %	Females %
<25	60.5	39.5	62.7	37.3
25-44	80.7	19.3	74.4	25.6
45-64	69.7	30.3	63.7	36.3
65+	54.8	45.2	45.2	54.8
Overall average	70.6	29.4	64.7	35.3

	1996	2001	2006	2008
Life expectancy at birth				
Both sexes	59.0	-	41.2	46.3
Males	58.6	48.7	39.7	-
Females	60.2	56.3	42.9	-

Infant mortality rate (per 1,000 live births)				
Both sexes		74	81	94.0
Male		77	88	102.5
Female		70	73	83.9

Urban	-	85	03.8
Rural	-	58	90.8
<hr/>			
Maternal mortality ratio (Per 1,000 live births)	459	752	659
<b>Total fertility rate</b>	<b>4.1</b>	<b>4.2</b>	<b>3.5</b>

## Socio-economic and cultural indicators

GNI (Atlas method) has been estimated to be about USD 1060 per capita.

6. Per annum average GDP growth was about 4.6% over 1988–98 and 3.7 over 1998–2008. Industry formed 35% of GDP while services formed 58% and Agriculture only 7%. (Source: World Bank) in 2008. Foreign Exchange reserves were 8.5 months of import cover in 2008 and 7.9 months of import cover in 2009. Inflation rate averaged about 7.2 in 2009. Lesotho has sustainable level of external indebtedness and is not among the HIPC countries. Fiscal discipline has been consistently observed.

### Unemployment rate

7. The unemployment rate has been high due to the global financial and economic crisis. Lesotho economy being manufactures export driven suffered a heavy blow as a result of that global crisis. In 2008 unemployment rates were estimated to be as follows:

	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>
Lesotho	22.7	21.2	24.6
Urban	22.0	20.8	23.1
Rural	23.0	21.3	25.3

### Literacy rate

8. The adult literacy rate in 2006 was about 82% broken down as follows:

	<i>Males</i>	<i>Females</i>
Self reported literacy	73.7	90.3
Full completion of primary school	36.5	52.4

In 2008 it has been estimated to have risen to 84.5% in the meantime.

## Politics and legal background

### Political system

9. Lesotho is a constitutional monarchy. She gained independence from Britain on the 4<sup>th</sup> October, 1966. The King is the Head of State. The Head of Government is the Prime Minister. To ensure separation of powers as well as checks and balances, there are three independent arms of Government, namely the Executive, the Legislature and the Judiciary.

Lesotho has adopted an electoral model that combines both the First Past the Post and Proportional Representation electoral models. That has ensured a more inclusive National Assembly. As a result, Lesotho used the Mixed Member Proportional Representation Model in the 2002 and 2007 general elections. Elections are conducted by an Independent Electoral Commission (IEC). Regional and International observers have been invited for every general election since 1993. All those 18 years of age and above are entitled to vote.

### **Legal system**

10. Lesotho has a dual legal system: Roman Dutch Law (Common Law) and Basotho customs (Customary Law). These two systems of law have equal validity with the *proviso* that in cases of inconsistency, Statutory Law prevails. However, the two (2) systems cannot be applied simultaneously in a given situation.

### **The monarchy**

11. Section 45 of the 1993 Constitution of Lesotho provides that the King is designated by the college of chiefs in accordance with the Customary Law of Lesotho if his predecessor dies or if there is a vacancy in the office of the King.

### **The executive**

12. Section 86 of the Constitution of Lesotho provides that the executive authority is vested in the King who shall exercise those powers through the authorities or officers of the Government. The King exercises this jurisdiction in accordance with advice of the Cabinet and this is in accordance with section 92 of the Constitution.

13. As the Head of Government, the Prime Minister shall be the leader of a party which has the majority of members in the National Assembly after elections. He is appointed by the King on the advice of the Council of State.

14. There is also the Deputy Prime Minister and other Ministers who shall not be less than seven (7) in number. The Ministers are appointed from among members of the National Assembly and the Senate by the King on the advice of the Prime Minister. Currently there are eighteen (18) Ministers.

15. The Prime Minister, Deputy Prime Minister and all other Ministers form the Cabinet of Ministers. The main function of Cabinet is to direct Government policies and daily affairs of the State. Cabinet is responsible collectively to Parliament.

### **The Parliament**

16. Lesotho has an independent legislative arm of government. The Parliament of Lesotho is bicameral and consists of the Senate as the upper house and of the National Assembly as the lower house. The Senate consists of the twenty-two (22) Principal Chiefs and eleven (11) other members nominated by the King on the advice of the Council of State.

17. The National Assembly comprises of one hundred and twenty (120) elected members. Eighty (80) members are directly elected from constituencies and the other forty (40) are elected through proportional representation. Hence the inclusiveness and participatory nature of democracy in Lesotho.

## The judiciary

18. Lesotho has an independent judiciary. The judiciary comprises of Court of Appeal; the High Court; Subordinate Courts and specialized tribunals exercising a judicial function as enshrined in the Constitution.

19. The judiciary in the performance of its functions is free from interference and subject only to the Constitution and any other law. The Executive branch of government accords assistance that enables the judiciary to protect its independence, integrity, dignity and effectiveness. The Executive and the Legislature do respect and observe the independence of the judiciary as stipulated in the Constitution. The judiciary decides matters before it impartially, on the basis of facts in accordance with the law. The High Court also sits as the Constitutional Court to hear human rights matters and any other matters which warrant interpretation of the Constitution of Lesotho.

## Part I

### Article 1

20. For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which had the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### Constitutional measures

#### *Fundamental freedoms*

21. In terms of Section 4 of the Constitution of Lesotho, fundamental human rights and freedoms are guaranteed to everyone whatever their race, colour, sex, language, national or social origin, property, birth, or other status including the right to be free from discrimination. The provisions of the Chapter on fundamental freedoms bind both public officials and private persons.

#### *Freedom from discrimination*

22. Section 18 deals with freedom from discrimination and stipulates that no law may make a provision that is discriminatory and that public officials whilst performing their duties in terms of any law, may not treat any person in a discriminatory manner. The Constitution defines discrimination as affording different treatment to different persons on the basis of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.

23. It is important to note that the principle of non-discrimination does not apply to laws relating to adoption, marriage, divorce, burial, devolution of property, death or other matters which fall within the provisions of personal law. The principle also does not apply where the Customary Law of Lesotho governs the parties concerned.<sup>1</sup>

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<sup>1</sup> Section 18 (4) (c) Constitution of Lesotho.

*Impact of gender-based violence against women*

24. Section 18 remains silent on discrimination that takes place in the domestic or private sphere. However, this gap is addressed by the recent legislative enactments, such as Legal Capacity of Married Persons Act 2006 and Sexual Offences Act 2003. Violence against women, also considered as gender discrimination, manifests predominantly in the domestic sphere. Below, in the section entitled ‘Legislative Measures’, the new legislation and policy frameworks are established to address the gaps and challenges in this regard.

25. Section 25 of the Constitution details principles of State policy which gives Government the authority to enact laws and policies promoting equality and non-discrimination.

**Legislative measures**

26. In practice, the Government can use the Constitutional definition of discrimination against women as a basis to draft legal documents and laws to ensure that women enjoy equal rights as men, and that they are not discriminated against. An example in this regard is the Labour Code Order 1992 whose specific sections are dedicated to the definition of discrimination, compatible with that provided in CEDAW. Section 5(1) defines discrimination in the work place as any distinction, exclusion or preference made on the basis of race, colour, gender, marital status, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment.

27. Sexual Offences Act 2003 offers protection and recourse against sexual violence. This Act notably recognises marital rape as an offence under the prescribed circumstances. This is a significant step forward, as the law previously did not recognise it as such.

28. The Legal Capacity of Married Persons Act 2006 removes the minority status of women married in community of property and has enhanced their equal standing before the law with men with respect to economic development.

29. Nonetheless, there are provisions in the Customary Law of Lesotho, encoded in the Laws of Lerotoli, which could be interpreted as marginalising women. Such provisions relate to inheritance practices, where traditionally the heir is considered to be the first born son. However, the Code applies to Basotho who strictly practice customary way of life and it protects the female members of society by giving responsibility of care and protection on the heir (male) to feed, clothe and provide shelter to women.

**Administrative measures**

30. The Gender and Development Policy 2003 states that the Government of Lesotho (GOL) aspires for “a nation that perceives women, men, girls and boys as equal partners, based upon the principles of equal participation in development, non discrimination and the empowerment of marginalised women, men, girls and boys”. In this way, the policy seeks to achieve the provision of the Lesotho Constitution which states that “Lesotho shall adopt policies aimed at promoting a society based on equality and justice for all its citizens regardless of sex” and of the Vision 2020 which states that “men, women and people with disabilities will be equal before the law; and will be accorded equal opportunities in all aspects of life”.

31. The Gender and Development Policy further provides an important analysis of the situation of women in Lesotho highlighting the following key trends:

- Lesotho has a higher proportion of educated women than men and its female literacy rate has been 93% and is believed to have risen to 94%. It is twice the African average.

- With respect to women's marginalisation, key pieces of legislation have been passed in order to empower and protect women. An example is the Deeds Registry Act 1967, certain aspects of which were amended by the Legal Capacity of Married Persons Act 2006 to the effect that women married in community of property are no longer perpetual minors without locus standi in judicio.
- Socio-cultural norms have however not kept pace with legal advancements. Gender and Development Policy notes that gender roles and stereotypes continue to be facilitated by patriarchy, a system based on an ideology which supports and justifies the subordination of women by men, regulates relations between them and allows men to control women both through economic dependence and the threat of violence. Transforming society accordingly is a long term challenge which is being addressed. This reflects the fact that the tempo of the evolution of social traditions is a pace setter in the effort to meet set targets.
- In the 2007 general elections, 26% of elected parliamentarians were women. This figure is below the 50% stipulated in the African Union Solemn Declaration on Gender Equality in Africa 2004, as well as SADC. At the local government level, women made up 52.8% of Community Councilors elected in the 2005 local government elections.

## Article 2

### Reservation to article 2

32. The Constitution of Lesotho gives recognition to Customary Law in matters related to succession to the Throne of the Kingdom of Lesotho and succession to chieftainship as well as personal law.

33. Lesotho entered a reservation on Article 2 of CEDAW. On ratification in August 1995, the Government's statement on the reservation reads as follows:

*"The Government of the Kingdom of Lesotho does not consider itself bound by Article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the Throne of the Kingdom of Lesotho and the law relating to succession to chieftainship. The Lesotho Government's ratification is subject to the understanding that none of its obligations under the convention especially in Article 2 (e) shall be treated as extending to the affairs of religious denominations.*

*Furthermore, the Lesotho Government declares it shall not take any legislative measures under the Convention where those measures would be incompatible with the Constitution of Lesotho."*

34. In 2004, Lesotho withdrew from the reservation the text indicated in italics in the statement above. Thus, the reservation to the Article remains valid with regard to succession to the throne and to chieftainship.

35. The legal system of Lesotho is such that international instruments do not automatically apply or take effect upon ratification. The instruments only come into effect after they have been incorporated into national laws by an Act of Parliament.

36. This reservation is a clear manifestation of the pace of change being dictated by the tempo of the evolution of traditions of the society. An elected government has to be sensitive to the traditions of the society that forms its electorate.

### Constitutional measures

37. Section 18 (2) of the Constitution provides that “no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of functions of any public office or public authority”.

38. Section 18 (4) (1) of the Constitution prohibits discrimination of any kind and unfair treatment. Section 18 (4) (c) provides some exceptions to the principle of non discrimination in respect to the application of Customary Law.

39. Chapter III of the Constitution promotes justice and equality and details principles of State policy that can be utilised to remedy the challenges identified above. Section 26 (1) states that “Lesotho shall adopt policies aimed at promoting a society based on equality and justice for all its citizens regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Sub-Section (2) states that “the State shall take appropriate measures in order to promote equality of opportunity for the disadvantaged groups in the society to enable them to participate fully in all spheres of public life”.

40. Section 30 (a) (i) provides that women in particular, be “guaranteed conditions of work, including pension or retirement benefits, not inferior to those of men, with equal pay for equal work”. Section 30 (e) also offers “the protection of women who are in employment during a reasonable period before and after childbirth”.

### Legislative measures

41. Before 2006, women married in community of property were considered legal minors as husbands had marital power over their wives. Women could not enter into contracts except those limited to procurement of household necessities, neither did they have a right nor say in the choice of the guardianship of their children. They had no capacity to own or register property in their own names and no legal right to sue or be sued unassisted by their husbands.

42. Marital power was abolished by the enactment of the Legal Capacity of Married Persons Act in 2006. This in effect has equalized power between women and men in marriages in community of property, and insists on mutual consent in decisions that bind the joint estate. The Act has amended specific sections of laws that discriminated against women:

- The Administration of Estates Proclamation 1935
- The Deeds Registry Act 1967
- The Marriage Act 1974
- Lesotho Bank Savings and Development (Amendment) Act 2008

43. Section 5 of the Labour Code Order 1992 deals with non-discrimination with respect to labour matters and acts of sexual harassment in the workplace. It also provides for equal remuneration for work of equal value for both women and men. Failure to comply with the above attracts a penalty of M 600<sup>2</sup> or imprisonment for three months or both as provided in Section 239.

44. Section 133 of the Labour Code offers statutory maternity leave to women six weeks before delivery and six weeks following delivery, and thereafter an hour a day for nursing for six months after her return to work. It further protects women in Section 136 (1) which

<sup>2</sup> About USD 80.

provides that “any dismissal of any employee that takes effect during her statutory maternity leave shall automatically be an unfair dismissal”. However, there is no obligation on the employer to pay wages to women on maternity. It is left to the discretion of the employer to do so or to the terms of the employment contract. In the case of civil Servants, Public Service Act entitles women to 60 days maternity leave on full pay.

45. The Labour Code Wages (Amendment) Act 2009 provides for paid maternity leave for workers in the Clothing, Textile and Leather Manufacturing industries, as discussed in Article 11. This is reflective of a new trend of employment of women in textile industries. Lesotho’s clothing and textile industry employs mostly women and this has led to some women migrating from the rural areas to seek employment in the textile factories in urban areas.

46. Lesotho has enacted legislation namely the Sexual Offences Act 2003, to combat among others, sexual violence and to prescribe appropriate sentences for sexual offences. The Act recognizes marital rape as an offence under the prescribed circumstances. The minimum penalty for sexual offences is eight years imprisonment and the maximum is the death sentence where the perpetrator at the time of the commission of the offence had knowledge or reasonable suspicion of being infected with the human immunodeficiency virus (HIV). Lesotho is currently in the process of enacting a Domestic Violence Bill.

#### **Administrative measures**

47. In Lesotho redress for cases of discrimination can be sought through the legal system. Furthermore, there is in place the office of the Ombudsman to handle such cases. The main function of the Ombudsman’s office is to receive and investigate complaints from aggrieved persons against government agencies and statutory corporations and/or officials and employees of such organizations and recommend remedial action where it finds a complaint justified. Such complaints may include those that concern human rights violations. The Labour Courts and the Directorate of Dispute Prevention and Resolution can hear cases brought forward to them with specific regard to labour issues.

#### *National machinery on gender*

48. The Ministry of Environment, Gender and Youth Affairs (MEGYA) was established in 1998 as a national machinery to coordinate and mainstream gender issues in all national policies and implementation programmes, with the view to achieving gender equality. In 2002, the Government shuffled ministries a result of which the Ministry of Gender and Youth, Sports and Recreation (MGYSR), amongst others, was established. Further, it is the Ministry’s function to drive and direct the Country’s initiatives to promote and protect the rights of women. Several initiatives have been implemented as a result of the establishment of this coordinating Ministry. They include:

- The promotion of women’s economic empowerment
- Advocating for reform of existing laws that are discriminatory against women
- The promulgation of new legislation and policies aimed at the protection and promotion of women’s rights

#### *Gender and Development Policy 2003*

49. The Gender and Development Policy 2003 calls for non-discrimination towards women, men, girls and boys in the following ten priority areas: gender and poverty and economic empowerment; gender and education and training; gender and youth; gender and power, gender and politics and decision making; gender and health; gender-based violence; gender and civil society organizations; gender and the media; gender and the environment;

gender and science and technology. These form also the critical areas of concern in the Beijing Platform for Action and its Declaration.

50. The policy serves as a guiding tool to the Government of Lesotho in its effort to achieve gender equality and protect the interests of vulnerable groups such as women. It is also used as a guide in gender mainstreaming process for all Government Ministries, which will serve to address gender concerns in a wide spectrum of developmental issues.

51. Subsequent to the formulation of Gender and Development Policy, a Draft Implementation Plan 2008/10 thereof was developed for mainstreaming gender concerns in policies and programmes of different sectors. It includes and requires the participation of all Government Ministries and departments in its execution. Concurrently, Gender Focal Points (GFPs), the Gender Technical Committee (GTC) and an Expanded Theme Group on Gender and Reproductive Health (later renamed Gender Forum) have been established to effectively implement the plan. The GTC and the Expanded Theme Group comprise of Government, Non Governmental Organisations (NGOs) and donor organizations who meet regularly for planning, strategy formulation and implementation of policy regarding gender issues in Lesotho.

#### *HIV and AIDS Strategic Plan*

52. In an effort to curb the spread of HIV and AIDS, which impacts disproportionately on women, the GoL launched the National HIV and AIDS Strategic Plan 2007/2011. The plan identifies domestic violence as one of the factors fuelling HIV and AIDS in Lesotho and commits to redress it. Accordingly, efforts are being made to address Domestic Violence as an issue of concern. For instance, the National AIDS Commission (NAC), Ministry of Health and Social Welfare and other stakeholders such as Presidential Emergency Fund for AIDS Response (PEPFAR) support the Behaviour Change Strategy, which is regarded as an effective way of addressing domestic violence and consequences of multiple concurrent partnerships. There is also the National Aids Commission which is currently being streamlined and strengthened in order to enhance its greater effectiveness.

#### *Lesotho Law Reform Commission*

53. The Lesotho Law Reform Commission (LLRC) was established with a mandate to review laws of Lesotho and consider proposals with a view to ensuring that the laws and proposals are consistent with the protection of fundamental human rights and freedoms specified in Chapter II of the Constitution.

#### *Child and Gender Protection Unit (CGPU)*

54. Child and Gender Protection Unit (CGPU) was established in 2002 as a specialized unit within the Lesotho Mounted Police Service (LMPS) under the Ministry of Home Affairs and Public Safety and of Parliamentary Affairs to respond to the increasing violence against women and children. The Unit provides user-friendly reporting environment that ensures confidentiality between victims and police; responds and investigates promptly all cases involving vulnerable groups including children as well as victims of gender-based violence (GBV).

55. The Unit is operational in all police districts. CGPU raises awareness through media, public gatherings, church and school visits on the rights and responsibilities of children and women and safeguards their rights.

#### *One Stop Centre for survivors of gender-based violence*

56. The MGYSR in collaboration with United Nations Development Programme (UNDP) and United Nations Population Fund (UNFPA) has established a One Stop Centre

to ensure an integrated response to survivors of gender based violence (GBV). It will provide victim/survivor support services such as legal advice, health care and counselling.

*National Action Plan on Gender-based Violence*

57. As a result of the recommendations of 16 Days of Activism against Gender Violence 2007, the MGYSR with the support of UNFPA, GENDER-LINKS in partnership with GEMSA, civil society organizations and other stakeholders have formulated a National Action Plan on Gender Based Violence. The plan focuses on the following key areas: legislation and policy services, socio-economic, cultural and political rights, public education and awareness, integrated approaches and budgetary allocations.

58. The above are in line with the Southern African Development Community (SADC) Addendum on the Prevention and Eradication of Violence against Women and Children and other national policy documents such as the Gender and Development Policy.

*Civil society cooperation*

59. There are a number of civil society organizations in Lesotho working towards achieving the goal of gender equality and some explicitly seek to promote women's rights. Amongst those operating at national level are Women and Law in Southern Africa (WLSA), Federation of Women Lawyers (FIDA), the Lesotho Council of NGOs (LCN), Lesotho Planned Parenthood Association (LPPA), PHELA Health and Development Communications as well as GEMSA. WLSA runs a free legal advice centre for women, empowerment programmes for women in leadership positions, and has run awareness campaigns on property and inheritance rights. FIDA trains paralegals in communities around Lesotho to give legal advice. They also provide legal services for women and occasionally take on pro-bono cases for orphaned children (particularly girls) in cases of property grabbing and dispossession. GEMSA monitors the media for equal and positive representation of women.

60. Each of these organizations has in the past run programmes individually and as consortia, during key events such as the 16 Days of Activism against Gender Violence and International Women's Day. Some of their programmes have focussed on inheritance rights, women's rights awareness, providing specific health services to women, information dissemination and awareness raising campaigns, as well as research on pertinent issues affecting gender and women in Lesotho.

*Translation and dissemination of human rights instruments*

61. The Government in collaboration with civil society organizations translated into Sesotho and disseminated the following documents: CEDAW, Lesotho Constitution 1993, Legal Capacity of Married Persons Act 2006, Gender and Development Policy 2003 and Sexual Offences Act 2003.

62. Lesotho has put in place policies and other mechanisms, including the above mentioned laws, and has ratified a number of human rights instruments including CEDAW. It also complied with the recommendations of the International Conference on Population Development (ICPD), the Beijing Platform for Actions (BPA) and its Declaration and MDGs. Lesotho is yet to assess their impact on the advancement of women. This is partially because the appropriate institutional mechanisms to monitor the impact of such instruments in Lesotho are yet to be established. The establishment of a Human Rights Commission is under way. UNDP and Irish Aid have been instrumental in supporting the Government to establish the Commission. Two missions were undertaken by consultants in 2007 and one of the duties of the consultants was to draft a model legislation facilitating the establishment of the Commission. The model legislation has been completed. The

Government has undertaken Human Rights Institutions Trainings for members of Inter-sectoral Committee on Human Rights.

63. A session on CEDAW was included as part of the training organised by the MGYSR targeting political party delegates and Women's Wings/Leagues representatives during a local government elections 2005 campaign.

#### **Judicial measures**

64. A notable case of positive discrimination that has been brought before the courts was that of Molefi Tšepe v IEC CIV/APN/11/2005 preceding the local government elections: the appellant brought forward a case claiming violation of his constitutional right to stand for elections. His claim was based on the premise that the Local Government Elections (Amendment) Act 2004, that reserved 30% of all electoral divisions to be contested by women only, was discriminatory on the basis of sex. He lost the case on grounds provided for by Sections 18 (4) (e) and 26 of the Constitution. The judgement makes reference to CEDAW in that Lesotho is a State Party to the Convention which recommends the adoption of special temporary measures to redress discrimination against women and the action taken under the Elections Act was a form of positive discrimination and affirmative action.

### **Article 3**

#### **Constitutional measures**

65. Section 26 (1) of Chapter III of the Constitution of Lesotho provides that "Lesotho shall adopt policies aimed at promoting a society based on equality and justice for all its citizens regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Sub-section 2 provides that "[I]n particular, the State shall take appropriate measures in order to promote equality of opportunity for the disadvantaged groups in society to enable them to participate fully in all spheres of public life." These two provisions above give the Government of Lesotho a basis on which to act and take appropriate measures to ensure the full development and advancement of women.

#### **Legislative measures**

66. The Legal Capacity of Married Persons Act 2006, as discussed under Article 2 above has widened the scope of economic rights and freedoms for women married in community of property. They are no longer considered legal minors and can, therefore, perform activities which used to be restricted by law due to marital power.

67. The Sexual Offences Act 2003 has empowered women to negotiate issues related to their wellbeing, particularly their sexual and reproductive rights. It also offers survivors of sexual violence legal recourse against perpetrators.

68. The Labour Code Wages (Amendment) Act 2009 provides for minimum wages for domestic workers, who are predominantly women, most of whom are uneducated or have only basic literacy skills. Domestic work is an unregulated sector and the rights of these workers are open to abuse. The minimum wage provides some safeguard for these women in terms of wages they are legally eligible to earn, although this is not sufficient to cater for their basic needs.

69. The Local Government Elections (Amendment) Act 2004 reserves 30% of constituencies to women to increase their participation in politics and decision making positions.

70. The Education Act 2010 provides for free and compulsory primary education. This legislation will maintain Lesotho's high female literacy level, which is currently at 94%.

#### **Administrative measures**

71. Lesotho Vision 2020 provides a framework within which short to medium term development plans can be formulated. It states that "men, women, people with disabilities will be equal before the law; and will be accorded equal opportunities in all aspects of life". The Poverty Reduction Strategy recognizes that "gender is understood from the point of view of equity, with analysis, or interventions bearing in mind both sexes". The Government of Lesotho, in collaboration with development partners and civil society organizations, has initiated programmes, projects and mechanisms aimed at benefiting women's advancement such as:

(a) The Women's Entrepreneurship Development and Gender Equality (WEDGE) is designed to empower women to grow their businesses, to create employment and to contribute to gender equality developmental programmes in Lesotho;

(b) Lesotho Youth Credit Initiative whose overall goal is to increase household revenue through facilitating investment in income generating activities. The specific objectives of the project are:

- To enhance food and economic security of the poor
- To strengthen the capacity of Lesotho Youth Credit Initiative to extend credit in a profitable and sustainable manner
- To create and sustain existing jobs within the micro-enterprise which are operated by the beneficiaries

(c) The 5<sup>th</sup> Country Programme of Cooperation between the Government of Lesotho and UNFPA 2008–2012, which aims at enhancing institutional and technical capacity of the Government and civil society organizations to advocate for, plan, implement and monitor gender responsive policies and programmes. The programme also aims at increasing capacity of the Government and civil society organizations to prevent GBV and manage survivors thereof in order to promote women's and girls' rights;

(d) The establishment of the Legal Aid Unit to provide legal services to indigent persons, the majority of whom are women. Eighty percent (80%) of cases handled by Legal Aid are maintenance cases by women;

(e) The Millennium Challenge Account on Gender Equality in Economic Rights, Training and Outreach Programme aims to enable women to realize their economic rights in practice and to ensure that they access economic resources and opportunities in order to participate meaningfully in the economy;

(f) PHELA Health and Development Communications addresses factors that make women vulnerable to multiple and concurrent partnerships and domestic violence. Dialogues are held with women's and men's groups to address their vulnerabilities;

(g) WLSA deals with property and inheritance rights as a strategy to mitigate against property dispossession particularly of widows and girl-children. They also run women empowerment programmes, the focus of which has been to support women in leadership positions from government to grassroots organisations;

(h) The Catholic Relief Services together with the Catholic Commission for Justice and Peace and the Transformation Resource Centre ran the Generating New Directions in Empowerment and Rights (GENDER) Project which aimed at increasing women's autonomous decision-making capacity and decrease their vulnerability to

dispossession and disenfranchisement. The project planned to increase citizens' knowledge and awareness of human and gender rights as well as to improve the quality of social services available to women through national policies;

(i) The LPPA, through the assistance of GTZ-Germany, introduced an advocacy project on women's rights. The project was aimed at educating women about their basic human rights and policies with special emphasis on laws related to sexual and reproductive health issues. The project has since become a programme in LPPA activities targeting the populations of Semonkong, Qacha's Nek, Quthing, Thaba-Tseka and Mokhotlong.

#### *Factors and difficulties*

72. Challenges that have somewhat slowed down the pace of attaining full development of women include:

- Cultural barriers where women's empowerment issues at times are met with some resistance by both men and women due to snail-paced appreciation of the true intentions of such development efforts. The challenge is continuation of public education in this regard. That entails additional financial resources which are scarce in the case of Lesotho as an LDC.
- Limited appreciation of human rights issues and of capacity to promote and protect women's rights in informal structures such as the family, where women often seek justice.
- Administratively, inadequate resources and coordination by stakeholders working on women's advancement curtail some of the development efforts that would benefit women. Capacity is the main constraint in this case.
- Discomfort with the formal procedures of the court, high legal costs, lacklustre enforcement and limited knowledge about their rights, often inhibit women from seeking justice through the courts of law. This limits their exercise of human rights and fundamental freedoms on an equal basis with men. Plaintiff friendly structures and machinery are needed. That implies additional financial resources. Lesotho is among the least developed countries with low official development assistance (ODA) ratio. This is a major constraint.

## **Article 4**

### **Constitutional measures**

73. Reference is made to Section 26 of the Constitution, as discussed under Article 3.

### **Legislative measures**

74. Section 3 of the Local Government Elections (Amendment) Act 2004 has a direct bearing on participation of women in Local Government which provides that "notwithstanding anything in this Act not less than one third of the seats in a council shall be reserved for women".

75. On the basis of the above measures, the Government embarked on a national mobilization on 30% quota for women at Local Government which actually resulted in 53% women representation. This achievement means that Lesotho tops the list of SADC states with regard to women's representation at the local government level.

**Administrative measures***SADC Declaration on Gender and Development 1998*

76. Lesotho signed the SADC Declaration on Gender and Development which committed governments to ensure that there was 30% participation by women in politics. In 2008, Lesotho signed the SADC Protocol on Gender and Development where Article 5 of Part II stipulates that “State Parties shall put in place affirmative action measures with particular reference to women in order to eliminate all barriers which prevent them from participating meaningfully in all spheres of life and creating an environment conducive for such participation”. Further, Article 13 (1) of Part III provides that State Parties “shall adopt specific legislative measures and other strategies to enable women to participate equally with men in all electoral processes including the administration of elections and voting”.

*Solemn Declaration on Gender Equality in Africa*

77. Lesotho has signed the above Declaration to concur with the practice that ensures that there is equal representation of males and females in all political and decision making positions in the Country. Specifically, Member States agreed to expand and promote the gender parity principle that was adopted by the organs of the African Union, the Sub-Regional Economic Groupings in collaboration with political parties and the national parliaments in African countries. To this effect, the Government through the Ministry of Gender and Youth, Sports and Recreation, launched a 50/50 campaign in 2006. The campaign has contributed in changing the mindset of the population with regard to equal representation of women and men in politics at the national level thus resulting to 58% representation of women at the local government elections.

*The Gender and Development Policy 2003*

78. Gender and Development Policy 2003 provides that deliberate measures, such as legislated quota and zebra system as well as affirmative action to ensure equal representation in the numbers of women and men including people with disabilities in the National Assembly, be adopted.

**Judicial measures**

79. See *Molefi Tšepe V IEC*, as discussed in Article 2.

**Article 5****Constitutional measures**

80. Section 35 (1) of the Constitution provides for the right of every citizen “to freely participate in the cultural life of the community and to share the benefits of scientific advancement and its application”.

**Legislative measures**

81. Section 3 (3) of Sexual Offences Act 2003 addresses prejudices and practices that discriminate against spouses where marriage or any other relation shall not be a defense when shown that:

- Violence or threats were used to engage in a sexual act
- The spouses or partners are separated by an order of court

- One of the spouses had deserted
- The complainant spouse was sick
- The accused spouse was reasonably suspected to have sexually transmitted disease
- There is a judicial order of restraint in respect of the accused spouse

82. The Legal Capacity of Married Person Act 2006 also addresses the same issues, as discussed under Article 2.

83. The Deserted Wives and Children's Proclamation 1959 stipulates that the natural father has to maintain the illegitimate minor children.

84. With regard to children born out of wedlock, Customary Law provides that the children's maternal grandfather assumes the responsibility of being the father to the child. In some instances, the family of the biological father is customarily bound to pay six herds of cattle as compensation to the girl's family, if sued for impregnating the girl.

85. Customary Law regulates Bohali (bride price), which is one of the essential requirements for a valid customary marriage. It is intended to give the wife a sense of belonging to the matrimonial home.

86. According to the Laws of Lerotholi, the heir in Sesotho is invariably a male. The law provides that he uses the inheritance with his father's widow or widows to share with his junior brothers according to their line of birth. However, this inheritance right of the first male imposes an obligation on the heir to take care of the welfare of the widow and siblings.

87. Basotho embraces the socialisation of children through participation in household chores while simultaneously they are not being deprived of education, leisure and recreation time due to them. It is believed that children need to be inducted in family cultural practices and it is the family's primary responsibility to transmit culture. As a safeguard against children being deprived of the right to education, the Education Act 2010 is enacted to provide for free and compulsory education. Violation of this Act attracts a fine of not less than M1,000<sup>3</sup> or imprisonment for a term of not less than 1 year or both.

### **Administrative measures**

#### *Implementation of international human rights instruments*

88. Under the Millennium Challenge Account Project 2006 (between the Government of Lesotho and that of the United States of America) the impact of cultural patterns and stereotyped roles of men and women is being addressed through a number of activities.

89. The establishment of Legal Aid Clinics affords an opportunity to many by bringing legal services to the people in all the ten administrative districts.

#### *Activism against gender-based violence*

90. The Government of Lesotho has consistently joined the rest of the world in commemorating International Women's Day, African Women Month, the 16 Days of Activism Against Gender Violence, World AIDS Day, the International Day for Persons with Disability and the Human Rights Day. During these specially designated dates extensive awareness raising and outreach activities have been undertaken to inform the public on women rights issues, GBV, HIV and AIDS, as they relate to cultural practices

<sup>3</sup> About USD 133.

and change of attitudes for both men and women. Various relevant NGOs are incorporated in pertinent activities including those addressing Part 6 Article 21 of the SADC Protocol. It provides that State Parties shall take appropriate measures to review traditional norms, including social, economic, cultural and political practices which legitimise and exacerbate the persistence and tolerance of GBV.

91. Other efforts to deal with prejudices and cultural practices are contained in the 5th Country Programme of Cooperation between the Government of Lesotho and UNFPA 2008–2012, as discussed under Article 2. The intended output is to increase the capacity of the Government and civil society organizations to prevent gender-based violence in the Country.

92. The Intersectoral Committee on Human Rights has held public awareness campaigns on maintenance of minor children and deserted wives.

93. The Ministry of Education and Training has recently introduced Life Skills Programme and family education to the High Schools curricula. The Ministry enlists the assistance of competent and relevant organizations in its delivery.

### **Challenges**

#### *Polygamy*

94. Polygamy is an acceptable cultural practice in Lesotho. However, it is now very rarely practiced. In the rare event that polygamy occurs, Customary Law sanctions and regulates polygamy. It requires that for a man to engage in a polygamous marriage, the consultation of the first married wife is a prerequisite. However, many women are not aware of their right to have such subsequent unions annulled where consultation was not sought. Public education in this regard needs to be stepped up resources and capacity permitting.

95. According to Customary Law, the principle of *malapa ha a jane* (that a man should have separate property for each of his wives), guarantees against any likely adverse impact of polygamy on other wives and requires that the husband provide for all the houses to ensure that none of the houses loses property to the other. However in practice this principle is not strictly monitored and adherence enforced. Hence need to address it even though it would involve capacity expansion and additional financial resources.

#### *Maintenance*

96. Follow up actions to assess the impact of the awareness campaigns on issues of maintenance have not been adequately done. In cases where the man pays maintenance, they only contribute financially and are not involved in the day to day upbringing of the child. In addition, there are no special courts to handle maintenance cases which results in delays in the process of claiming maintenance. This again poses a challenge of capacity augmentation in the face of limited financial resources.

## **Article 6**

### **Constitutional measures**

97. Chapter II of the Constitution of Lesotho enshrines fundamental human rights, which are guaranteed to all persons regardless of their race, sex, religion or political affiliations. Amongst the rights protected therein, the following are relevant to anti-trafficking in persons:

- The right to life

- The right to personal liberty
- The right to freedom of movement and residence
- Freedom from inhuman treatment
- Freedom from slavery and forced labour

98. Section 8 of the Constitution focuses on the freedom of the person from inhuman treatment. Section 8 (1) provides that “no person shall be subjected to torture of inhuman or degrading punishment or other treatment”, and Section 9 of the Constitution provides that “no person shall be held in slavery or servitude and no person shall be required to perform forced labour.” This provides for *inter alia* a situation where the person is taken from his or her home under the pretence of employment but is forced into prostitution.

99. Section 22 of the Constitution provides for the justiciability of these rights hence any person whose rights have been violated, could seek a remedy from the courts of law.

### **Legislative measures**

100. The law specifically addressing human trafficking and exploitation of women has been drafted in readiness for enactment as earlier stated. There are already pieces of legislation in place that could be used to prosecute offences related to trafficking and exploitation of women. They are:

- Labour Code Order 1992
- The Children’s Protection Act 1980
- Sexual Offences Act 2003
- Common Law Offences of Abduction, Kidnapping and Man Stealing

#### *Common law offence of abduction*

101. Sections 2 and 3 of Part II of the Laws of Lerotholi provide that abduction (*chobeliso*) and seduction of mentally defenseless women and children under the age of 16 years and the abduction of an unmarried woman is an offence. Section 7 of Part II of the Laws of Lerotholi further provides that abduction of married woman is unlawful in Lesotho subject to a fine not exceeding £50<sup>4</sup> or imprisonment for a period not exceeding twelve (12) months.

#### *Labour law*

102. Part II, Section 7 (1) of the Labour Code Order 1992 prohibits forced labour. It states that any person who exerts or imposes forced labour or causes or permits forced labour to be exerted imposed for his or her own benefit or for the benefit of any other private individual, association or other such body shall be guilty of an offence and liable on conviction to a fine.

#### *Children’s Protection Act 1980*

103. The provisions of this Act deal mainly with the protection of children in cases of abduction, child stealing, assault, sexual offences and any offence involving bodily injury to the child. This Act provides some measures of protection to vulnerable children, for example, children can be moved to a place of safety in cases where they are being, or about

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<sup>4</sup> About USD 80 (M600).

to be exploited, as a first step of action before the perpetrators could be arrested and/or prosecuted.

104. The Children's Protection and Welfare Bill which is being tabled before Parliament will repeal this Act and consolidate all laws on children. Part VIII of the Bill is devoted to trafficking and abduction of children. The Bill also has a comprehensive definition of trafficking, which is substantially the same as the one contained in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Section 2 of the Bill defines trafficking as "the recruitment, transportation, sale and harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the position of vulnerability or of the giving and receiving of payments and benefits to achieve the consent of the person having control over the other person, for the purposes of exploitation".

105. The Bill will provide a comprehensive legal framework for addressing trafficking and exploitation of children. Therefore the Bill will apply to persons below the age of eighteen (18) years. A gap will still remain when it comes to trafficking of persons above eighteen (18) years of age, as they will not be catered for in the provision. Girls will therefore be protected by this legislation along with boys.

#### *Sexual Offences Act 2003*

106. Section 4(1) (b) of Sexual Offences Act 2003 states that "a person who compels another to engage in a sexual act with a third party commits an offence. In addition, a person who induces another either by false pretences or fraud, use of authority, status, power, privilege, or undue influence, to allow or submit to a sexual act commits an offence".

#### **Administrative measures**

##### *Efforts to combat human trafficking*

107. Lesotho ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2006. The Protocol provides that Member States shall collaborate in combating human trafficking in persons globally.

108. Lesotho is actively involved in the implementation of a 10 Year SADC Strategic Plan of Action 2009 to 2019 on combating human trafficking especially of women and children. The goal is to promote cooperation amongst SADC Member States in adopting legislative measures and devising mechanisms aimed at combating human trafficking in the Southern African region.

109. With the support of UNDP, the Ministry of Home Affairs and Public Safety and of Parliamentary Affairs completed the assessment on human trafficking in Lesotho and Cabinet has issued a directive to draft the Anti-Trafficking in Persons Legislation.

110. With the assistance of UNAIDS and UNFPA,<sup>5</sup> a mapping exercise on commercial sex work has been undertaken in Lesotho with the objective to assess perception, vulnerability and risk factors in relation to HIV and AIDS and other STI's, to assess current initiatives related to HIV and AIDS prevention for sex workers and assess sex workers' preference for services in order to inform the programmatic design.

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<sup>5</sup> Shilumani and Waterman. (2008). ' An Assessment of Sex Work in the Main Towns of Lesotho' . Report funded by UNFPA and UNAIDS Lesotho.

111. The Government, with other partners such as the USA and WLSA, educate the public including students and pupils, using various methods, about human trafficking.

### **Challenges**

112. A specific challenge with regard to developing and implementing effective strategies to address human trafficking is the paucity of reliable data. Today, trafficking in persons is regarded as a human rights concern all over the world. Yet there are no accurate statistics of persons who are subjected to trafficking. Capacity to address this challenge effectively needs to be built. That will entail additional financial resources.

113. The high level of unemployment estimated at 22.7% has been cited as a major contributing factor to poverty in Lesotho. Unemployment creates conditions that favour traffickers. For example, it becomes easy to lure vulnerable people, particularly women, by promising lucrative jobs abroad. The Government of Lesotho is committed to creating employment as major means of eradicating poverty in Lesotho.

## **Part II**

### **Article 7**

#### **Constitutional measures**

114. Section 20 (1) of the Constitution deals with the right to participate in Government. It provides that every citizen shall enjoy the right:

- To take part in the conduct of public affairs, directly or through freely chosen representatives
- To vote or to stand for election at periodic elections under the Constitution under a system of universal and equal suffrage and secret ballot
- To have access, on general terms of equality, to the public service

115. Women have access to the rights mentioned above and are not prohibited from taking part in public affairs. To illustrate this point, 57% of registered voters in the 2007 general elections were women. Women also constituted 26% of persons who stood for office in the same elections.<sup>6</sup>

#### **Legislative measures**

116. The Government of Lesotho enacted the following laws which enable participation by women in political and public life:

- National Assembly Elections (Amendment) Act 2001
- Local Government Elections (Amendment) Act 2004

117. The National Assembly Elections (Amendment) Act 2001 encourages all registered parties in Lesotho to facilitate the full participation of women in all political activities. It also encourages parties to respect the right of women to communicate freely in political parties. Furthermore, it encourages parties to refrain from forcing women to adopt a particular political position other than that which is in accordance with their free choice.

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<sup>6</sup> Independent Electoral Commission (IEC), 2008.

Women are now represented in political parties' executive committees where the main party decisions are taken.

118. To enforce women's participation and decision making in politics, the Local Government Elections (Amendment) Act 2004 facilitated a quota system reserving 30% of local government positions to women. Women now hold 52.8% of positions in local government structures.<sup>7</sup>

#### Administrative measures

119. Lesotho is a signatory and party to the following regional instruments addressing equality of men and women in politics and government:

- SADC Declaration on Gender and Development 1998 which set the 30% target of women in decision-making positions by 2005
- AU Solemn Declaration on Gender Equality in Africa 2004
- SADC Protocol on Gender and Development 2008 which calls for gender balance in all decision-making positions
- AU Gender Policy 2009

120. At the national level, Lesotho has developed the Gender and Development Policy 2003 which provides guidelines for actions to be taken for the empowerment of women in politics and other decision-making spheres.

121. Lesotho is also a signatory to the SADC Gender and Development Policy which encourages Member States to increase and improve the representation of women in all structures of governance and all levels of decision making in public, private and social spheres to at least 50% by 2015. In 2006, the MGYSR launched a 50/50 campaign for gender parity in political decision-making positions in the Country. As a result of this and other efforts, 25% of women were elected into the National Assembly in the 2007 national elections. Although this falls short of the 50% target, it marks an increase from the 2002 elections where 14% were represented in Parliament. It marks movement towards that target. Lesotho ranks 6<sup>th</sup> in the SADC region on the proportion of women and men in parliaments.

122. Basotho Parliamentary Women's Caucus has been formed with the aim of bringing together female Members of Parliament (MPs) across party lines from both houses of Parliament; elected representatives from the National Assembly and representatives from Senate. This provides a useful *forum* for female MPs to *caucus* and discuss issues particular to them.

Table 2

#### Women in politics as of 2009

<i>Position</i>	<i>Female %</i>	<i>Male %</i>
Ministers	33%	67%
Assistant Ministers	60%	40%
Members of Parliament	24%	76%
Senators	26%	74%
Local Government councilors	52.8%	47.2%
Overall representation	49.6%	50.4%

*Source:* Ministry of Public Service, November 2009 and Ministry of Local Government, April 2010. N.B. Figures in brackets are in absolute terms.

<sup>7</sup> Ministry of Local Government and Chieftainship Affairs, 2008.

123. The table above indicates the current representation of women in Cabinet. This marks an improvement for women's representation in 2002 which had 21% female Ministers and 79% male Ministers. Overall representation of women in politics stands at 49.6%.

Table 3

**Women in the public service sector as of 2009**

<i>Position</i>	<i>Female %</i>	<i>Male %</i>
Principal secretaries	23.8%	76.2%
Deputy principal secretaries	16.6%	83.3%
Directors	48%	52%
District administrators	20%	80%
Commissioners	33.3%	66.7%
Overall representation	22.5%	77.5%

*Source:* Ministry of Public Service, April 2010 and Ministry of Local Government, April 2010.  
N.B. Figures in brackets are absolute.

124. The overall representation of women in the public service is 22.5%. The table above represents senior management positions in the public service.

Table 4

**Women in the judiciary**

<i>Position</i>	<i>Female %</i>	<i>Male %</i>
Judges	50%	50%
Registrar	100%	0%
Deputy Registrars	0%	100%
Magistrates	49%	51%
Senior Judicial Commissioners	100%	0%
Judicial Commissioners	71%	29%
Central courts presidents	73%	27%
Local courts presidents	79%	21%
Overall representation	65.2%	34.8%

*Source:* Figures validated by the Ministry of Justice/UN validation meeting, April 2010.

125. Women form a majority in judicial structures, particularly in the lower courts, namely the Local and Central Courts. Female judges of the High Court are at 50%. These changes the face of the judiciary, particularly at this level, which has been traditionally male dominated.

**Article 8****Constitutional measures**

126. Section 143 of the Constitution deals with Lesotho diplomatic representation abroad. It vests power in the King on the advice of the Prime Minister to appoint or remove from office persons holding or acting in the offices of Ambassador, High Commissioner or other principal representatives of Lesotho in any other country.

**Legislative measures**

127. There is no legislation that is designed to protect solely the rights of women in diplomatic missions. Diplomats of both genders enjoy similar protection.

**Administrative measures**

Table 5

**Representation of diplomats and ambassadors at Lesotho international missions**

<i>Position</i>	<i>Female</i>	<i>Male</i>
Ambassadors	26.7%	73.3%
Consuls General	0%	100%
Consulate officials	36.4%	63.6 %
Diplomatic officials	49.3%	50.7%
Overall representation	43.2%	56.8%

*Source:* Ministry of Foreign Affairs, April 2010. N.B. Figures in brackets are absolute.

128. In all Lesotho diplomatic missions abroad, there is an almost equal number of male and female diplomatic officials. 49.3% of them represent females and 50.7% represent males. The number of those occupying decision making positions such as that of the ambassador is higher for males at 73.3% than for females at 26.7%. There are four (4) consulates. In the position of Consul General there are two (2) men.

**Challenges**

129. The cause of the slower than desired pace of increased women's participation in political leadership and occupancy of decision making positions is the slow metamorphosis of Basotho traditions. Campaigns and public education exercises need to be stepped up. Meagre resources to achieve such activities is the limitation.

**Article 9****Constitutional measures**

130. Section 40 of the Constitution provides that any woman who is or has been married to a Lesotho citizen shall become a citizen of Lesotho only after applying for citizenship, taking an oath of allegiance and being registered as a citizen. Citizenship by marriage can only be passed by a male Lesotho national to a non-Lesotho female spouse. A non-Mosotho female who marries a Mosotho male can acquire Lesotho citizenship by virtue of marriage while a non-Mosotho male who marries a Mosotho female cannot acquire Lesotho citizenship by virtue of marriage.

**Legislative measures**

131. In Lesotho, the issues of citizenship and nationality are dealt with under the Lesotho Citizenship Order 1971 which provides that a person can attain Lesotho citizenship by birth or naturalization or registration.

132. Citizenship by birth is a legal right for anyone who can prove the facts of birth and parentage while citizenship by naturalization and registration are not legal rights; they can be granted or refused by the Minister responsible for immigration.

*Citizenship by birth*

133. Section 2 of the Lesotho Citizenship (Amendment) Order 1989 provides for automatic acquisition of Lesotho citizenship of all persons who are born in Lesotho. Where a non-Mosotho woman marries a Mosotho male, she has an option to either renounce or retain her citizenship.

*Citizenship by registration*

134. Section 4 of Lesotho Citizenship Order 1971 provides that women who were married to Basotho men before Lesotho attained independence in 1966 are entitled to be registered as citizens.

135. This provision protects the rights of women in citizenship. That is to say, marriage does not automatically change the nationality of a married woman before and after independence. If a Mosotho male marries a non-Mosotho female, that non-Mosotho female will become a Lesotho citizen through registration without renouncing her citizenship. If a Mosotho female marries a non-Mosotho male, she does not lose her nationality.

**Administrative measures**

136. Lesotho has ratified the following Treaties in relation to Article 9 of the Convention:

- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
- 2008 SADC Gender and Development Protocol which commits State Parties to put in place legislative provisions which ensure that married women and men have the right to choose whether to retain their nationality or acquire their spouse's nationality

**Part III****Article 10****Constitutional measures**

137. Section 28 of the Constitution provides for education for all and adoption of policies aimed at ensuring that:

- Education is directed to the full development of the human personality and sense of dignity and strengthening the respect for human rights and fundamental freedoms
- Primary education is compulsory and available to all
- Secondary education, including technical and vocational education, as well as higher education is made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education financial resources permitting
- Fundamental education is encouraged and intensified as far as possible for those persons who have not received or completed their primary education

**Legislative measures**

138. The Government of Lesotho enacted the Education Act 2010 to enforce the right to education by making it compulsory and free to learners at primary level from the age of six

(6) years in all Government schools. Section 3(c) makes provision for education for all in accordance with the provisions of Section 28 of the Constitution.

139. In cases where a learner at primary school fails to attend regularly, a parent of the learner could be found guilty of an offence and liable on conviction to do community service or to a fine of not less than M1,000.00<sup>8</sup> or to imprisonment for a term of not less than 1 year.

#### **Administrative measures**

140. The Government has education as one of its high priorities evidenced through large budget allocation for that purpose.

#### *Education Sector Strategic Plan 2005–2015*

141. The Education Sector Strategic Plan 2005–2015 acknowledges Lesotho's commitment to considering education as a basic human right which has to be afforded to all citizens to improve development in the Country. The objectives in this regard are:

- To expand and improve comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children
- To ensure that by 2015 all children, particularly girls, and children in difficult circumstances, have access to and complete, free and compulsory primary education of good quality
- To ensure that the learning needs of all young people and adults are met through equitable access to appropriate learning and life-skills programmes
- To achieve a 50% improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults; by eliminating gender disparities in primary and secondary education by 2015, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality
- To improve all aspects of education and ensuring excellence of all so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life-skills

142. In its plan to afford education to all, the education and training sector has been divided into the following six (6) levels.

#### (a) Integrated Early Childhood Care (IECC)

143. IECC is considered to be an integral part of pre-schooling process. The stage is considered important because it is when the child develops intelligence, personality and social behavior. The primary goal of this level is to expand and improve comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children. The SADC Gender and Development Protocol, which Lesotho has ratified, aims to reduce the burden of the multiple roles played by women.<sup>9</sup> Schools at this level will allow women to engage in other activities at ease knowing that their children are properly being cared for.

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<sup>8</sup> About USD 133.

<sup>9</sup> Part 5 Article 16.

## (b) Basic education

144. Lesotho introduced free primary education policy in 2000 which resulted in an increase in the number of pupils enrolled at primary level. The gross enrolment rate has steadily increased over the years until 2006 when it stabilized. It can be assumed that the number of late entrants at primary level had been completed in 2006. From 2007 forth, gender pattern changed. The rate of males enrolled exceeded female enrolment rate. Specifically 51% were male and 49% were female. The changing trend can be attributed to successful initiatives urging parents to release their male children for formal schooling. With the realization that guaranteed employment abroad is becoming uncertain the importance of formal education has re-gained appreciation by many Basotho families and they are eager to have their children to enroll in school. The free primary education policy has made it even easier for most families to send their children to school. The more recent compulsory primary education should improve the picture even more.

Table 6

**Primary net enrolment rate 1994 to 2008**

<i>Years</i>	<i>Males</i>	<i>Females</i>
1994	47%	53%
1999	48%	52%
2003	50%	50%
2006	50%	50%
2008	51%	49%

*Source:* MOET, 2009.

145. Between 2007 and 2008 average student/teacher ratio was about 35 and there were 1,455 registered primary schools for a population of 2 million.

## (c) Secondary education

146. Females outnumbered the males and the pattern has marked a change from previous patterns that had more males at secondary level. The change is marking a success in measures adopted to increase enrolment rate of female and to retain them at all education levels.<sup>10</sup>

Table 7

**Secondary net enrolment rate 1994 to 2008**

<i>Year</i>	<i>Male</i>	<i>Female</i>
1994	41%	59%
1999	43%	57%
2003	44%	56%
2006	44%	56%
2008	43%	57%

*Source:* MOET, 2009.

<sup>10</sup> Gender and Development Policy 2003 and Education Sector Strategic Plan 2005.

147. Between 2007 and 2008 average student/teacher ratio was about 24. There were about 240 secondary schools for a population of 2 million.

(d) Technical and vocational institutions

148. Technical and vocational schools offer certificates and diplomas in a wide range of programmes, such as Architecture, Business Studies, Home Economics, Plumbing, and in many other disciplines. Enrolment in these institutions is open to both men and women. The main sources of data have been the National Health Training College, Lesotho College of Education and Lesotho Poly-technic.

(e) Higher education

149. National University of Lesotho (NUL) and Limkokwing University form part of the higher education category. There are many Lesotho students studying in tertiary educational institutions abroad. Accurate data on their numbers and gender distribution is not available.

150. NUL has introduced courses on gender and development in different departments, especially in Sociology, Languages Development Studies and Arts.

151. Overall, in 2006/7 the NUL enrolled 6,724 students, of which 51.7% were women and 48.3% were men. Most students were enrolled in the Social Sciences faculty at 34.3% compared to Law and Agriculture which constituted 9.3% and 5.3% respectively. Women were least registered in the Science and Technology faculty at 30.4% and Agriculture faculty at 39.6%. It is evident that women still opt for stereotyped professions such as Education (64.3%), Health Sciences (66.3%) and Humanities (65%). That is by choice.

Table 8

**NUL enrolment by faculty and sex (undergraduates) – 2006/07**

<i>Faculty</i>	<i>Female</i>		<i>Male</i>		<i>Total</i>
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>	
Agriculture	140	39.6	214	60.4	<b>354</b>
Education	941	64.3	522	35.7	<b>1 463</b>
Health sciences	238	66.3	121	33.7	<b>359</b>
Humanities	476	65	256	35	<b>732</b>
Law	313	50.4	308	49.6	<b>621</b>
Science and technology	208	30.4	684	69.6	<b>892</b>
Social sciences	1 161	50.4	1 142	49.6	<b>2 303</b>
<b>Total</b>	<b>3 477</b>	<b>51.7</b>	<b>3 247</b>	<b>48.3</b>	<b>6 724</b>

*Source:* NUL, 2008.

152. Postgraduate programmes are offered in five (5) out of seven (7) faculties, these are Agriculture, Humanities, Law, Science and Technology and Social Sciences. There is a relatively low enrollment of women at postgraduate level. In the year in under consideration they formed 43.1%, as compared to 56.9% for men.<sup>11</sup>

<sup>11</sup> NUL, 2008.

## (f) Lifelong learning and non-formal education

153. In the Government's attempts to afford education to all, lifelong learning and non-formal education targets specifically disadvantaged groups such as out of school youths, adults who missed opportunity for formal education for one reason or another as well as retrenched workers. The Institute of Extra Mural Studies (IEMS) of the NUL mounted numerous programmes including Gender and Development in Media and Communication Studies. They offer undergraduate programmes on a full-time and a part-time basis. In the academic year 2006/2007, 1,784 students were enrolled of which 67.7% were women and 32.7% were men.

154. The Gender and Development Policy 2003 advocates for the review and reform of curricula to eliminate stereotype concepts of the roles of women and men, boys and girls and gender sensitive career guidance at all levels of education. The policy also proposes that trainees and in-service teachers and curriculum developers undergo gender training and sensitization. In 2005, with the support of UNICEF, the Government undertook an education gender audit of the entire education sector. The audit covered the curricular, inspection, enrolment etc.

## Article 11

### Constitutional measures

155. Section 29 (1) of the Constitution provides that every person has the opportunity to gain his or her living by work he or she freely chooses and accepts. Section 30 provides for the adoption of policies aimed at securing just and favourable conditions of work and in particular policies directed at achieving:

- Equal opportunity for men and women to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence
- The protection of women who are in employment during a reasonable period before and after childbirth

### Legislative measures

156. Lesotho ensures proper code of practice through the use of five (5) primary legal instruments and these are:

- Labour Code Order 1992
- Labour Code Wages (Amendment) Act 2009
- Teaching Service Regulations 2002
- Public Service Act 2005
- Public Service (Amendment) Regulations 1977

#### *Labour Code Order 1992*

157. Equal opportunities for all and equal remuneration for equal work are provided for under Section 5 (3) of the Labour Code, as discussed under Article 2.

158. Section 133 (2) of the Labour Code 1992 provides for mandatory maternity leave for all employers in the private sector.

*Labour Code Wages (Amendment) Act 2009*

159. Labour Code Wages (Amendment) Act 2009 provides for paid maternity leave for workers in the Clothing, Textile and Leather Manufacturing Sectors and provides that an employee who has completed more than one year of continuous service with the same employer in the Textile, Clothing and Leather Manufacturing Industry shall be entitled to receive two weeks paid maternity leave. An employee who has completed more than one year of continuous service with the same employer other than in the Textile, Clothing, and Leather Manufacturing shall be entitled to receive six weeks paid maternity leave.

160. Over and above the maternity leave period, the new mother can be given a nursing hour for the next three to nine months until the baby is six months old or one year old.

*Teaching Service Regulations 2002*

161. Teachers are guided by the Teaching Service Regulations, which provide, amongst others, that female teachers be granted ninety calendar days paid maternity leave.

*Public Service Act 2005*

162. Public Service Act 2005 Section 8 (1) provides that “[E]ntry and advancement within the public service shall be determined solely on the basis of merit namely ability, qualification, knowledge, skill and aptitude after fair and open competition which assures that all citizens of Lesotho receive equal opportunity”.

163. Public Service (Amendment) Regulations 1977 considers the rights of women in that regulation 556 (1) provides that a female officer may be granted paid maternity leave for a period not exceeding sixty (60) calendar days.

**Administrative measures***SADC Gender and Development Protocol 2008*

164. Article 19 of the Protocol provides for equal access to employment and benefits. Member States are urged to create equal access to wage employment and conducive working conditions, including equal pay and opportunities for equal work for all sexes in the workplace.

165. Preliminary results of the Labour Force Survey 2008 reveal that economically active population was 54% male and 46% female.

*Sex disaggregated employment rates*

166. The overall unemployment rate was recorded at 22.7%. The rate was higher for females at 24.6% compared to 21.2% for males.<sup>12</sup> This reflects the fact that the global financial and economic crisis hit industries dominated by women harder.

*Employment by sector*

167. The Lesotho Labour Force Survey 2008 reflects that a large section of persons who are economically active participate in subsistence farming. The sector is associated with massive poverty especially in the period of excessive drought and it comprises more women who adapted to cultivating the land when their husbands were in paid employment

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<sup>12</sup> Bureau of Statistics, Lesotho. 2008. ‘Preliminary Results of the Labour Force Survey’.

domestically and abroad. Textile and garment industry employees are 95% women. Women also dominate in the informal sector.

*The changing nature of employment patterns in Lesotho*

168. Both the Interim Poverty Reduction Strategy and Vision 20/20 point to two significant gendered shifts which are drivers of change in Lesotho:

- The high levels of retrenchments in the Republic of South Africa (RSA) mining industry
- The employment of women in the textile industry

*Employment creation*

169. Section 132 (1) of the Labour Code imposes restriction on employment of women in underground work in the mines except with the written approval of the Labour Commissioner in accordance with the Underground Work (Women) Convention, 1935 (No. 45) of the International Labour Organization.

**Judicial measures**

*Palesa Peko vs the National University of Lesotho* (LC/33/94) [1995] LSLC 10 (1 August 1995).

170. NUL suspended Ms Peko without pay for allegedly being absent from work without explanation. At the hearing, Ms Peko explained that her six year old son had fallen ill and was admitted to hospital and operated upon.

171. In deciding on the case, the Court cited Article 23 of Recommendations of ILO Convention No. 165 of 1981 concerning workers with family responsibilities which provides that “it should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness”.

172. This illustrates how Lesotho used the case to implement CEDAW as it relates to protecting the rights of women in the workplace.

**Challenges**

173. According to the Labour Code Wages (Amendment) Act 2009, women in the private sector are entitled to maternity leave only if they have worked for the same employer for a continuous period of at least one year. This poses a problem for those who have not completed the stipulated period.

**Article 12**

**Constitutional measures**

174. Section 27 of the Constitution provides for Lesotho to adopt policies aimed at ensuring the highest attainable standard of physical and mental health for its citizens, including policies designed among others to:

- Provide for the reduction of stillbirth rate and of infant mortality and for the healthy development of the child
- Provide for the prevention, treatment and control of epidemic, endemic, occupational and other diseases

- Create conditions which would assure to all, medical service and medical attention in the event of sickness
- Improve public health

#### **Legislative measures**

175. Lesotho has enacted the Public Health Order 1970 and its subsequent Regulations on Communicable diseases. The Order mandates the Ministry of Health and Social Welfare to promote personal health and environmental health within Lesotho, and to prevent and control communicable disease.

#### **Administrative measures**

176. In an effort to address the health needs of women, Lesotho has committed itself to the International Conference on Population Development Plan of Action (ICPD) and the Millennium Development Goals (MDGs). These two work hand-in-hand in their focus on the empowerment of women. The ICPD argues that through achieving reproductive health care and family planning for all, along with other basic health and education services, population stabilization will occur naturally, and not as a matter of coercion or control. The MDGs include improved maternal health, reducing infant and child mortality and prevention of sexually transmitted infections including HIV and AIDS.

177. The health care centers in the Country cover almost 100% of the population, 60% being Government facilities and 40% being operated by the Christian Health Association Lesotho (CHAL). The centers are located even in hard to reach areas within various districts.

178. Lesotho, through the Ministry of Health and Social Welfare, has put in place reproductive health programmes, which encapsulate safe motherhood programme, family planning services, prevention of mother to child transmission of HIV and AIDS and adolescent health.

#### *The safe motherhood programme*

179. The programme focuses on the wellbeing of the mother. It aims at reducing the number of deaths and illnesses associated with pregnancy and childbirth. Through the programme, women of reproductive age i.e. 15 to 49 years are taught and encouraged to take good care of their health by attending regular medical check-ups to ensure diagnosis of curable diseases such as breast and cervical cancer in their early stages. They are also educated on activities that increase the risks of ill health as well as those that can prolong the individual's life. Mothers are generally encouraged to breastfeed in the first six months of motherhood. Reports show that 95% of infants were breastfed at some point in their lifetime.<sup>13</sup>

#### *Family planning programme*

180. The programme is specifically intended to improve the health and welfare of women by enabling them to time their pregnancies by using medically approved products. Different products that are offered at Lesotho family planning services include condoms for men and women, injected and oral contraceptives, intrauterine contraceptive device (IUCD) as well as male and female sterilisation. Some of these services are available at the

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<sup>13</sup> Ibid.

community/village level. Examples are condoms for both males and females, and oral contraceptives.

181. Lesotho Demographic Health Survey (2004) shows that 97.2% of all women considered for the survey knew about at least one contraceptive method and of these women, 63.1% reported that they had used a contraceptive method at some point in their lifetime. The survey also considered traditional contraceptive methods, 70% of the women had used modern methods while 30% had used traditional methods. Amongst others, traditional methods were considered to be periodic abstinence and withdrawal.<sup>14</sup>

*Prevention of mother-to-child transmission of HIV and AIDS*

182. According to UNAIDS, the dominant mode of transmission of HIV in the Country is through sexual intercourse, which can lead to unplanned pregnancies.<sup>15</sup> The prevention of mother-to-child transmission programme was introduced in Lesotho in 2003. If the results of the tested mother are positive, further examination is undertaken to determine whether the pregnant mother needs prophylaxes or antiretroviral treatment (ARVs). The percentage of HIV infected women who received ARVs to reduce the risk of mother to child transmission has increased from 5.9% in 2005 to 7.1% in 2009.

183. Counselling and testing of pregnant women form part of antenatal care. According to GoL implementation of the recommendations of UNGASS Report 2010, the trend of antenatal care HIV testing and counselling stood as shown in the table below:

Table 9

**Trend on ANC HIV testing/number of pregnant women counselled and tested for HIV in 2005–2009**

<i>Year</i>	<i>New ANC clients</i>	<i>Pre-test counselled</i>	<i>HIV tested</i>	<i>Post test counselled</i>
2005	9 700	10 684	5 459	4 913
2006	11 952	13 047	9 277	7 168
2007	24 651	26 293	23 965	23 196
2008	33 609	38 779	37 159	37 159
2009	32 881	29 300	27 389	25 322

*Source:* GoL/UNGASS Report 2010.

184. In Government clinics and hospitals, pregnant women receive antenatal check-ups for free. Thereafter, infants are entitled to an immunization course without charge. These services are offered and available to all districts regardless of their marital status. Lesotho Demographic Health Survey (LDHS 2004) shows that 90% of pregnant women received antenatal care from a health professional (a doctor or a nurse, midwife, or nursing assistant). The remaining 10% constituted 1% of pregnant women who had consulted traditional birth attendants and 9% of those who did not receive any antenatal care.

185. Antenatal care appreciation is closely associated with the pregnant woman's educational level. Women with higher education level are likely to use antenatal care

<sup>14</sup> Ibid.

<sup>15</sup> Kimaryo, Okpaku, Githuku and Feeney (Eds), 2004, 'Turning a Crisis into an Opportunity: Strategies for Scaling up the National Response to the HIV/AIDS Pandemic Lesotho'.

facilities than those with no education. Likewise, pregnant women in the rural areas are less likely to make antenatal care visits than pregnant women in the urban areas.<sup>16</sup>

186. To ensure that women receive adequate nutrition during pregnancy and lactation, the Government has ensured that hospitals and clinics provide advisory services on healthy eating to pregnant women and nursing mothers. In public hospitals and clinics, vitamins and food supplements are given to pregnant women as their increased intake is needed during pregnancy and breastfeeding periods.

187. Similar to other African countries, HIV and AIDS has a woman's face in Lesotho. HIV prevalence is estimated at 23.6% whereupon 57.7% were women and 42.3% were men.<sup>17</sup> Infection levels differ given various social factors, the rate of women infected invariably exceeds that of men. For example, the prevalence is higher amongst the youth, that is persons aged 15 to 24 years at 15% for women and 6% amongst men. The employment status of individuals also depicted a high infection rate amongst women than men; 33% employed women compared to 20% employed men were infected. In addition, 23% unemployed women and 16% unemployed men tested HIV positive.<sup>18</sup>

188. SADC Model Law on HIV and AIDS aims to achieve the following as a guide to legislative efforts on HIV related issues in Southern Africa to which Lesotho also adheres and has informed the drafting of the HIV and AIDS Bill:

- Provision of a legal framework for the review and reform of national legislation related to HIV in conformity with international human rights law standards
- Promotion of the implementation of effective prevention, treatment, care and research strategies and programmes on HIV and AIDS
- Ensuring that the human rights of those vulnerable to HIV and people living with or affected by HIV are respected, protected and realised in the response to AIDS
- Stimulation of the adoption of specific measures at national level to address the needs of groups that are vulnerable or marginalised in the context of the AIDS epidemic

#### *Adolescent health programme*

189. Adolescent Health Programme aims at educating young girls about reproductive health issues so they avoid fatal mistakes such as like falling pregnant at a young age and contracting illnesses. The programme includes counseling services on sexual and reproductive matters. Through school health education and life skills programme, pupils are taught how to maintain healthy habits.

190. The National Action Plan on Women, Girls and HIV and AIDS (2007–2010) aims at reducing vulnerability and mitigating the impact of HIV and AIDS on women and girls in the following six (6) thematic areas:

- Prevention of HIV and AIDS among women and girls
- Girls education
- Gender based violence
- Property and inheritance rights

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<sup>16</sup> LDHS 2004.

<sup>17</sup> UNGASS Country Report 2007/2009.

<sup>18</sup> Ministry of Health and Social Welfare and Bureau of Statistics, 2004, 'Lesotho Demographic and Health Survey'.

- Putting value to women's care work
  - Women and girls' access to HIV and AIDS care and treatment
191. Key policies adopted to support maternal health include, among others:
- National Health Policy 2008
  - National HIV and AIDS Policy 2006
  - Revised National Strategic Plan 2009–2011
  - National Reproductive Health Policy 2008
  - National Action Plan on Women Girls and HIV and AIDS 2007–2010

192. The National Reproductive Health Policy 2008 considers special needs of the different target populations and the need to abide by conventions guarding against discrimination on the basis of gender, disability, culture and social status. The Policy provides for amongst others, essential Sexual and Reproductive Health Package aimed at ensuring safe motherhood, family planning, reproductive health and GBV, male involvement and access to sexual and reproductive health services.

#### *Reproductive health programme*

193. Concerned about high maternal mortality rate, which in Lesotho was estimated at 752 maternal deaths per 100,000 live births in the 2004 health survey<sup>19</sup> and higher according to the recent estimates, the Government has adopted the Roadmap for Accelerating Reduction of Maternal and Newborn Morbidity and Mortality in Lesotho (2007–2015). The programme is supported by UNICEF, UNFPA and WHO. The Government has also developed a five year Prevention of Mother to Child Transmission (PMTCT) and Paediatric HIV Treatment Scale-Up Plan 2007–2011 which includes the four (4) pronged approach outlined below:

- Primary prevention of HIV infections among women of child-bearing age
- Prevention of unintended pregnancies among HIV infected women
- Prevention of HIV transmission from infected mothers to their children
- Provision of continuous care, treatment and support for infected mothers, their partners and children

194. NGOs, such as the Institute of Development Management and Lesotho Planned Parenthood Association, have formulated programmes offering training and counseling on PMTCT and HIV and AIDS. Mobile clinics have been provided in hard to reach areas to ensure women have access to health care services. The Ministry of Health has developed guidelines on how to administer Post Exposure Prophylaxis (PEP) for occupational health and survivors of sexual violence. A subsidised registration fee of M20.00<sup>20</sup> is required for the tests to be made so that PEP may be administered and this is available in most health care centers.

#### **Challenges**

195. According to the Annual Joint Review Report 2007/8 fiscal year, done by the Ministry of Health and Social Welfare, a National Condom Programming Strategy to

<sup>19</sup> LDHS, 2004.

<sup>20</sup> About USD 3.

inform the distribution, access and appropriate use of condoms by either men or women in Lesotho has not yet been developed.

196. The implementation of the National Action Plan on Women, Girl and HIV and AIDS is limited due to financial resource capacity of the lead Ministry – MGYSR in charge of overseeing its implementation. There is a need to coordinate reproductive and health issues for effective fulfillment of the right to reproductive health, especially by women.

## Article 13

### Constitutional measures

197. Sections 34 of the Constitution of Lesotho provides for enjoyment of economic and social rights and requires that “Lesotho adopts policies which encourage its citizens to acquire property including land, houses, tools and equipment and take such other economic measures as it considers affordable”. Section 35 (1) provides that Lesotho shall endeavor to ensure that every citizen has an opportunity to freely participate in the cultural life of the community and to share in the benefits of scientific advancement and its application.

### Legislative measures

198. The Land Act 1979 was amended in 1992 to enable widows to own land. Section 5(2) provides that the surviving spouse is given the same rights in relation to the land as her deceased husband except in the case of remarriage because the land shall not form part of any community of property.

199. The Legal Capacity of Married Persons Act amended the Land Act, thereby providing for joint title to land for spouses married in community of property. The Legal Capacity of Married Persons Act addresses social and economic benefits of persons married in community of property. Section 7 provides that spouses married in community of property acquire the consent of the other to obtain a loan, mortgage or any financial credit thus repealing the minority status of women married in community of property (Marriage Act 1974). The Act further amended the Deeds Registry Act 1967 on the provisions relating to women as follows.

200. Section 14 (1) enables the Deeds Register to register and to “... disclose the full name and status of the person, whether unmarried, married, widowed or divorced”.

201. Section 14 (2) states, “[W]here a person is married, the full name of the other spouse shall be disclosed and it shall be stated whether the marriage was contracted in or out of community of property”. As a result, the Deeds Registry (Amendment) Act was enacted in 2008.

202. Laws of Lerotholi provide that only the male child can inherit land. It reads: “[T]he heir in Basotho shall be the first male child of the married wife, and if there is no male in the first house the first born male child of the next wife married in succession shall be the heir”.<sup>21</sup> The law further stipulates that “[I]f there is no male issue in any house the senior widow shall be the heir, but according to the custom she is expected to consult the relatives of her deceased husband who are her proper advisers”.<sup>22</sup>

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<sup>21</sup> Section 11 (1).

<sup>22</sup> Section 11 (2).

### **Administrative measures**

203. The Government has put measures in place to provide economic and social support as follows:

- Establishment of Old Age Fund for the elderly which grants them M300.00<sup>23</sup> per month
- Free antenatal check-ups for pregnant women
- Free immunization course for infants, thus, between the ages 0 to 5 years
- Free and compulsory primary education in all public schools
- M360.00<sup>24</sup> to orphans over a three months period
- Establishment of the Legal Aid Unit

### *Education*

204. In addition to the free and compulsory primary education strategic plan that Lesotho is implementing, there is the child sponsorship programme which targets children at a secondary and high school level. The Government offers non-refundable educational grants to children who have been identified by the Social Welfare Department and teachers as needing financial assistance to pursue their studies. There is also the bursary loan scheme which awards loans to persons who study at a technical and higher education level both in Lesotho and abroad. The bursaries are payable to the Government upon completion of the student's studies at a 50%, 65% or 100% rate depending on the individual's sector of employment, which are the civil service, private sector or outside Lesotho respectively.

### *Employment*

205. Government employees with an academic degree, whether male or female, married or unmarried, have access to housing loan guarantee scheme and car loan schemes and access to Government houses at lower rental fees.

### *Culture*

206. The Ministry of Tourism, Culture and Environment promotes cultural identity equally among men and women. Educational institutions also celebrate cultural days where pupils and students, boy and girls, are exposed to different aspects of their culture.

### **Challenges**

207. There is no restriction as to women taking part in sporting activities. Additional financial resources are needed to promote active sport among women.

## **Article 14**

### **Constitutional measures**

208. There is no need for specific provision on protection of the rights of rural women. All women are included in the provisions dealing with non discrimination.

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<sup>23</sup> About USD 40.

<sup>24</sup> About USD 50.

**Legislative measures**

209. There is no legislation specifically addressing protection of the rights of rural women as a special group. Legislation passed in Lesotho addressing women's issues covers all women equally regardless of their location. The Local Government Act 2007 through which women in the rural areas benefited is an example of the effect of umbrella legislation to advance the interests of women.

210. The Company's Act 1967 as amended in 2008 removes and substitutes discriminatory provisions by introducing gender equality in company establishment and management. It allows women, including those who are married in community of property or otherwise, to set up companies and become directors of companies without a requirement to obtain consent from their husbands.

211. Lesotho Bank Savings and Development (Amendment) Act 2008 now provides for married women to open bank accounts without their spouses' consent.

**Administrative measures***Institutions*

212. In the districts, each town centre has a Magistrate Court where Common Law is dispensed. There are also the Local and Central courts in the villages to which all women have equal access. As such, it can be said that rural women and urban women have equal protection of the law and the law does not distinguish between rural and urban women.

213. Several Government Institutions and NGOs run projects and conduct awareness raising campaigns on women's rights, targeting the rural communities. NGOs work with rural communities on human rights awareness and education. PHELA, WLSA, CRS, CCJP, TRC and FIDA have run projects with information awareness activities on subjects such as human and women's rights and GBV, for women. The Ministry of Gender through its campaigns and district-based activities also performs this function. Government departments such as the CGPU and the Master of the High Court have been known to visit rural communities to inform them of their services. The Ministry of Justice through its Intersectoral Committee on Human Rights undertook a nationwide campaign, targeting rural areas on human rights awareness and education.

214. The Nutrition Department in the Ministry of Agriculture supports women's groups in rural areas. The department provides training to women's groups to create income generating projects. They further provide training to pregnant mothers on nutrition for themselves and for children aged 0-5 years to combat malnutrition. Trainings and mentoring on home management activities, household food production, food preservation, nutrition for HIV patients are offered in rural areas to groups which consist predominantly of women.

*Policies and programmes*

215. The Gender and Development Policy has, as one of its priority programme areas, gender, economic empowerment and poverty reduction. This has been reinforced in the implementation framework of the policy whereby several interventions have been formulated in support of the informal activities of rural women. For example, the National Plan of Action for Women and Girls on HIV and AIDS has been initiated by the Ministry, whereupon different organizations initiated programmes that seek to address key issues in the plan.

## (a) Health programmes

216. An example of such initiatives includes family planning services that extend throughout the Country, covering rural areas through a number of clinics. Statistics show that there is widespread knowledge about the use of contraceptives and family health services; 99.6% in urban areas and 98% in rural areas.<sup>25</sup> Efforts have been made to make health services as widely accessible as possible through the establishment of a three tiered referral system that stems from community level through Health Posts operated by community health workers which include birth attendants, community-based condom distributors and other volunteer workers.

217. NGOs, such as the LPPA conduct outreach and education activities on family planning making services more accessible to women residing in rural areas. A recent project of the LPPA established structures with individuals based in villages to act as distribution points for contraceptives, making them more accessible to women residing in those communities.

218. As one of the health service areas in the Country, the Lesotho Flying Doctor Service provides emergency medical service to the remote mountainous areas of the Country. It has also initiated rural health care programmes and brings in essential supplies to areas in distress. Mission Aviation Fellowship (MAF) provides air transportation to the flying doctor service. In addition, MAF provides flights to rural health clinics operated by Partners in Health.

219. The Clinton Foundation has been supporting the Ministry of Health to improve its HIV and AIDS services in the most remote and isolated areas of the Country through refurbishing clinics, improving drug procurement and management systems, recruiting and providing training to health workers and in ensuring that HIV treatment is increasingly available for children.

## (b) Politics and education programmes

220. The local government elections ushered in new community-based governance structures of which women constitute a majority. Fifty eight percent (52.8%) of local government councilors are women. This demonstrates inclusion and active participation of rural women, at their respective local communities, in development planning and management. Programmes have been run by the Ministry of Gender, Ministry of Local Government and Gender Links to train female and male councilors on gender awareness and to assist them in gender mainstreaming.

221. Ninety-Three percent (93%) of rural women are literate, reflective of the generally high literacy rate of women in Lesotho. Young girls have been favoured to receive education, usually up to basic primary schooling level. There are distant learning programmes that offer secondary and tertiary education. Some rural districts have vocational training schools that are open to both men and women. The Ministry of Gender through its Department of Youth operates two rural based vocational skills training centres where young women and men are trained in various subjects including agriculture, Carpentry, Sewing and Knitting. There are also management courses to enable them to start and operate their own businesses upon completion of the training.

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<sup>25</sup> LDHS, 2004.

(c) Economic development programmes

222. The Government has another rural based programme covering all rural districts which offers training in entrepreneurship for youth including young women. An example of such programmes is Women Entrepreneurship Development and Gender Equality (WEDGE) whose objectives include creating employment and contributing to gender equality in the economic empowerment of women. In addition to this, the Government has established the Lesotho Youth Credit Initiative as discussed in Article 3. Automated Grinding mills have been provided by Government for rural women to ease their burden of household chores.

223. Self help groups and cooperatives are established and are sustained amongst rural women where there are limited facilities to access finance and other services. Village Loans and Savings Associations have been formed to close the gap in the absence of interaction with more formal structures. The limited interaction between banks and credit agencies and rural communities remains a challenge.

224. Several interventions benefit rural women, namely the Rural Water Supply and Rural Electrification Projects and the Gender and Energy Project. The project on Gender and Energy supports rural women. The project is expected to lead to income generation and ease the problem of fuel shortage in the targeted districts.

225. Millennium Challenge Account trains women in the rural areas on their economic rights, as discussed in Article 3 of the Report.

#### **Challenges**

226. Pace of progress in these matters is determined by the rate of evolution of the customs and traditions of the society and the enabling capacity. The latter implies need for additional financial resources.

## **Part IV**

### **Article 15**

#### **Constitutional measures**

227. The Constitution of Lesotho guarantees equal rights between women and men. Section 19 of the Constitution provides for equality before the law and equal protection by the law for all citizens regardless of race, colour, sex, language, national or social origin, property, birth, or other status.

#### **Legislative measures**

228. The Legal Capacity of Married Persons Act 2006 gives women married in community of property the legal capacity as discussed under Article 2.

229. The Children's Protection and Welfare Bill 2010 recognises 18 years as the age of majority for both boys and girls.

#### **Administrative measures**

230. As discussed in Article 2, the Legal Capacity of Married Persons Act 2006 has been simplified, translated into Sesotho and continues to be disseminated by the Government and civil society organisations.

231. FIDA, WLSA and MCA, run a legal education project, providing training and outreach activities informing women of their economic rights, in line with the above mentioned Act.

232. The Government of Lesotho provides legal service to women through its Legal Aid Unit which mediates between married couples where there is a need.

### **Challenges**

233. The challenge of intensifying the dissemination of the Legal Capacity of Married Persons Act 2006 and that of women's legal capacity building is recognized. That would facilitate enhancement of enjoyment of rights by women. There is need for unified and focused dissemination strategy for effectiveness. Above all, rigorous monitoring and evaluation mechanism needs to be devised in order to achieve greater effectiveness. This is another area where capacity acts as a constraint in the quest for best practice.

### **Constitutional measures**

234. Section 4 (1) (g) and Section 11 of the Constitution provide for the right to respect private and family life.

235. Section 19 of the Constitution emphasizes the principle of equality of both men and women before the law and in all areas of life including marriage. The fundamental human rights and freedoms are applicable to all and do not discriminate on the basis of marital status.

236. Section 40 provides that any woman who is or has been married to a Lesotho citizen shall become a citizen of Lesotho only after applying for citizenship, as discussed in Article 9.

## **Article 16**

### **Legislative measures**

237. Section 7 of the Lesotho Citizenship Order 1971 denotes that a woman married to a citizen of Lesotho shall apply for citizenship and upon taking oath of allegiance shall be granted citizenship of Lesotho, as discussed in Article 9.

238. Civil marriages in Lesotho are governed by the Marriage Act 1974 and the Legal Capacity of Married Persons Act 2006. Such marriages are based on the premise of consent of both parties getting married as stated in Section 3 of the Marriage Act 1974 that "[N]o person may be compelled to enter into a contract of marriage with any other person or marry against his or her wish".

239. The legal age for marriage is twenty-one years; however, males under the age of eighteen and females under the age of sixteen can get married with the written consent of the Minister responsible, if she/he considers such a marriage to be desirable and in the interest of the parties concerned.<sup>26</sup> This also requires the consent of both parents of the minors. Nonetheless, the Children Protection and Welfare Bill 2010 which upon enactment will repeal certain restrictive provisions of the Marriage Act.

240. Section 25 further provides that "[N]o marriage officer shall solemnize a marriage between parties of whom one or both are minors unless the consent of the parents or parties which is legally required for the purpose of contracting the marriage has been granted and

<sup>26</sup> Section 27 of the Marriage Act.

furnished to him in writing”. Civil marriage can take place in and out of community of property. Marriage out of community of property can be effected by both parties entering into an ante-nuptial contract at the inception of the marriage. This allows the wife to own separate property and to manage and administer it herself. The spouses remain under a reciprocal duty to support and maintain each other.

241. As discussed above, the Legal Capacity of Married Persons Act 2006 addresses discrimination against women in matters related to marriage in community of property.

242. Deserted Wives and Children’s Proclamation 1959 as amended provides for the maintenance of wives and children including those born out of wedlock under both Civil and Customary Laws as discussed in Article 5.

#### *Basotho customary marriages*

243. Customary marriage is regulated by Section 34 of the Laws of Lerotoli. Part II recognizes a Basotho customary marriage as one that has fulfilled the following requirements:

- Agreement between parties to the marriage
- Agreement between parents or those representing parents
- Agreement on bohali (bride’s price) for the marriage

244. Customary related relationships such as *Chobeliso* (abduction) and Polygamy have been discussed under Articles 5 and 6 respectively.

#### **Administrative measures**

245. Lesotho is a State Party to the SADC Gender and Development Protocol which enforces the enactment and adoption of appropriate legislative and administrative measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage. Lesotho met the requirement when the Legal Capacity of Married Persons Act was enacted in 2006.

246. The Government of Lesotho established the Legal Aid Unit to deal with amongst others, divorce cases and maintenance cases most of the beneficiaries of which are destitute women.

#### **Challenges**

247. There is a Deserted Wives and Children’s Proclamation. But even if women are aware of the existence of the same law, they do not benefit from it as some cannot the fee of M200.00.<sup>27</sup> However, it is a prerogative of the Chief Legal Aid Counsel to waive that fee.

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<sup>27</sup> About USD 27.

## Measures to implement outcomes of the Beijing Platform for Action

### Women and poverty

248. Lesotho has adopted Vision 2020 and an interim National Development Framework. In addition, it has undertaken, as a priority women empowerment programmes and projects such as Women's Entrepreneurship Development and Gender Equality, the Gender Equality in Economic Rights and Lesotho Credit Initiative.

### Education and training of women

249. The Government of Lesotho has made primary, secondary and higher education equally accessible to all. This has been enhanced by the enactment of the Education Act 2010 making primary education free and compulsory. Lesotho has exceeded gender parity in access to primary education, rating at 82% for girls and 75% for boys. Completion rates are also higher for girls, representing 80%. Moreover, lifelong learning and non-formal education has been instituted for the disadvantaged.

### Women and health

250. In an effort to address the health needs of women and to protect their sexual and reproductive health and rights, Lesotho adheres and has adopted the following:

- The International Conference on Population Development Plan of Action
- The Millennium Development Goals
- The Roadmap for Accelerating Reduction of Maternal and Newborn Morbidity and Mortality in Lesotho (2007–2015)

251. Lesotho has put in place reproductive health programmes focusing on safe motherhood, family planning services, prevention of mother to child transmission of HIV and AIDS and adolescent health. Key policies adopted in this regard include among others the National Health Policy, the National HIV and AIDS Policy and Strategic Plan 2006–2011, the National Reproductive Health Policy 2008 and the National Action Plan on Women Girls and HIV and AIDS 2006–2010. It is partnering with UNFPA, UNICEF, WHO, Institute of Development Management and NGOs such as the and LPPA, Christian Health Association of Lesotho (CHAL) to scale up programmes offering training and counseling on PMTCT and HIV and AIDS, and to administer Post Exposure Prophylaxis (PEP) to survivors of rape.

### Violence against women

252. To address violence against women, Sexual Offences Act 2003 has been enacted. Child and Gender Protection Unit was also established within the Lesotho Mounted Police Service. One Stop Centre has also proved to be very effective to ensure an integrated response and support services to survivors of GBV. Other standing achievement is the formulation of a National Action Plan, a corresponding Coordination Plan to End Gender-Based Violence and a child help line with the support of UNFPA, UNDP, UNICEF and civil society organizations. Lesotho has consistently joined the rest of the world during the

annual 16 Days of Activism against Gender Violence to heighten attention on this gross violation of women's rights.

### **Women and armed conflict**

253. Continued commitment has been made by the Government of Lesotho in deploying and involving women to support the African Union efforts in peace building missions in the continent.

### **Women and the economy**

254. Women are active in several economic sectors such as the wage labour and subsistence farming. Through the assistance of the United States of America through Millennium Challenge Account, the Government has reviewed and is continuing to review all laws that are economically discriminatory to women. These include the Land Act, the Laws of Lerotoli, the Company's Act and the Lesotho Savings and Development Order 1971. Programmes such as Gender Equality in Economic Rights, WEDGE and Lesotho Youth Credit Initiative have also been put in place.

### **Women in decision-making positions**

255. Lesotho developed the Gender and Development Policy 2003. She signed the SADC Declaration on Gender and Development in 1997 and the SADC Protocol on Gender and Development in 2008 with the goal to promote equality of men and women in politics and decision making. As of 2009, the participation of women against men stands as follows: Ministers 33%; Deputy Minister 60%; Principal Secretaries 23.8%; Deputy Principal Secretaries 16.6%; Directors 48%; Local Government Councilors 52%. In the Judiciary, the position of the Registrar of the High Court is filled by a woman. There is 50% female representation of Judges and 49% female representation of Magistrates. In addition the Speaker of the National Assembly, the President of the Independent Electoral Commission, the Police Commissioner, Registrar General, Auditor General and the Registrar of the High Court, to mention but some, are all women currently.

### **Institutional mechanisms for the advancement of women**

256. The Government of Lesotho has a full fledged Ministry of Gender and Youth, Sports and Recreation that promotes women's rights and addresses women's specific needs in all spheres. Gender officers have been deployed in all districts. Several projects and programmes on the advancement of women are run by the Ministry with the support of UNFPA, UNICEF and UNDP. The Government has also established gender focal points in line Ministries, Gender Technical Committee and the Gender Forum. In an effort to strengthen women's organizing and to ensure their full participation in national development, the Government hosted a National Women's Forum preceding the establishment of an APEX Body for Women with a corresponding task force of representatives from 10 districts of the Country.

257. Discussions on the establishment of a Human Rights Commission and a Gender Equality Commission are under way. With regard to the Human Rights Commission, UNDP and Irish Aid have been instrumental in supporting the Government in its establishment. In this regard, three study tours have been undertaken; model legislation has

been completed and training on Human Rights Institutions for members of Inter-sectoral Committee on Human Rights has been conducted.

258. With regard to the Gender Equality Commission, UNFPA has supported the Ministry of Gender to conduct two desk reviews on countries that have established Gender Commissions. It has therefore undertaken one study tour and has held national consultation on the establishment of the Gender Equality Commission.

### **Human rights of women**

259. The Constitution of Lesotho provides for the protection and promotion of women's rights. The Legal Capacity of Married Persons Act 2006 provides for equal rights for women married in community of property. Lesotho is a State Party to International and Regional Conventions and Protocols that promote and guarantee the rights of women such as CEDAW, the SADC Gender and Development Protocol and the Universal Declaration on Human Rights. There are programmes in place to disseminate information on human rights and to create awareness on national, regional and international mechanisms seeking redress of human rights issues.

### **Women and the media**

260. Through partnership established with Genderlinks, a Gender and Media Baseline study was conducted in 2002. The study revealed that out of the 12 Southern African countries examined, women's views and voices are grossly under-represented in the media. However, using the measure of women sources, Lesotho scored second best with 21% women news sources, 4% higher than the regional average of 17%. The sequel Gender and Media Audience Study (GMAS) found that 15% of women in Lesotho (compared to an average of 12% in the overall regional study) cited news that ask for feedback like letters to the editors and talk shows as amongst their favourite genre. With the support of GEMSA-Lesotho a diversity journal for use in reportage and ethics of gender aware stories was developed. In the last eight years the situation has improved tremendously.

### **Women and the environment**

261. To show its commitment to preserving a healthy environment and to create awareness of the environment, the Government has developed a National Environmental Policy. The goal of the policy is to protect and enhance the natural and cultural environment in order to achieve sustainable livelihoods and development for Lesotho.

### **The girl child**

262. The Government has initiated projects to address the needs of the girl child. For example, in 2002 she established the Child and Gender Protection Unit within the Police Service which received special training on gender issues as well as handling abused children. In 2003, Lesotho enacted the Sexual Offences Act which protects underage girls from forced marriages and sexual abuse. She established the Office of the Master of the High Court to deal with issues of inheritance of orphaned children. With the support of UNICEF and UNFPA, she has reviewed workbooks for the Lesotho Distance Teaching Centre to make them gender- and HIV-responsive and has implemented life skills and child rights programmes.

## Conclusion

263. This Report is a portrait of rapid and consistent improvement in the lot of women in Lesotho. The move towards best practice accelerated in the last fifteen years. Conventions, Protocols acceded, and policies subscribed, to be they global, regional or sub-regional clearly demonstrate credible commitment of the authorities in Lesotho to move expeditiously towards the requirements of CEDAW. The Constitution, the legal framework as well as domestic policies and practices further bear witness to the high level of commitment to speedy progress toward total elimination of discrimination against women in Lesotho. In this journey the pace of progress has been determined by capacity which is often very limited. Capacity needed to accelerate progress further would involve additional resources which the country does not have given that it is among the least developed (LDC). Absorptive capacity of the society for change is another determining pace setter. An elected government cannot be expected to move faster than national consensus permit. Required enhancement of absorptive capacity entails commitment of additional resources, once again. In an LDC additional financial resources are scanty.

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