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LESOTHO

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**NOTE No. 069/13**

**LG/UN/12**

The Permanent Mission of the Kingdom of Lesotho to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit the following response from the Government of the Kingdom of Lesotho to the Working Group on the Issues of Discrimination Against Women in Law and in Practice on the case of Senate Masupha v. Senior Resident Magistrate, regarding the latter's right to succession to Chieftainship.

The Permanent Mission of the Kingdom of Lesotho to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

**GENEVA**  
**2 SEPTEMBER 2013**



**NOTE NO. 1****FR/UN/11**

The Ministry of Foreign Affairs and International Relations of the Kingdom of Lesotho presents its compliments to the Working Group on the Issues of Discrimination Against Women in Law and in Practice and has the honour to refer to the letter by the Working Group referenced OL LSO 1/2013, on the case of **SENATE MASUPHA v SENIOR RESIDENT MAGISTRATE**, regarding the latter's right to succession to Chieftainship.

The Ministry wishes to submit to the esteemed Working Group, the position of the Government of the Kingdom of Lesotho regarding the above case, as requested thereof. A copy of those submissions is hereto attached.

The Ministry of Foreign Affairs and International Relations of the Kingdom of Lesotho avails itself of this opportunity to renew to the Working Group the assurances of its highest consideration.

**MASERU****23 AUGUST, 2013**

## **SENATE MASUPHA CASE RESPONSES TO THE WORKING GROUP**

As the Working Group will recall, International treaties or instruments are not self executing in the Kingdom of Lesotho and thus an Act of parliament has to be promulgated to give effect to the instrument. Lesotho is a State Party to major international treaties, conventions and protocols and is making efforts within its means to comply and to complete the process of domesticating them through legislation. Although there are no specific legislations addressing each instrument, the Government has enacted various pieces of legislation incorporating different instruments.

Chapter II of the Constitution sets out in Section 4 (1) (o) the right to equality and in 4 (1) (n) freedom from discrimination, which is also prohibited in Section 18 (1) and (3). Section 18(4) (c) elaborates and qualifies the foregoing. It is the basis for the reservation to Article 2 of CEDAW due to incompatibility with customary law. The central point, as Section 26 (1) and (2) indicate, is that the Constitution commits the country to make policies that will promote a society based on equality and justice for all citizens regardless of gender. Perceived inconsistencies in this regard are among the issues of current national debates. Legal Capacity of Married Persons Act 2006 therefore stands as a testimony to the commitment of the Government to end discrimination against women. The Act eliminates discrimination against women across all walks of life. The challenge being addressed is that of women under customary law.

As regards the existing reservation to Article 2 of CEDAW, Lesotho has undertaken measures to ensure elimination of discrimination against women and gender equality by undertaking a review of all laws that are discriminatory against women in issues of, amongst others, inheritance, locus standi in judicio and administration of estates. The Law Reform Commission has been entrusted with this task.

The Government is aware of the ongoing case of Ms. Masupha and the facts alleged therein. It is important for the Working Group to note that Ms. Masupha has lodged an appeal against the High Court decision and thus the laws that have been cited are the crux and subject of the appeal and as a result, in order to give effect to

the due process of the law, the Executive, as one arm of Government, does not deem it fit to respond on the matter as it is sub-judicae. This is motivated by the International Law Principle of Separation of Powers which enunciates that the Executive has the responsibility to respect the Independence of the Judiciary. Further, the respect for Judicial Independence is spelled out in major international and regional instruments such as the Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights to which Lesotho is a State Party.

Regarding the circumstances surrounding this case and the laws that have been cited, it is of paramount importance for the Working Group to note that the Government of Lesotho has undertaken significant measures to prohibit and eliminate discrimination against women. There have been improvements in the legal framework to support women's legal rights and address critical barriers to the empowerment of women, through amongst others, the enactment of laws 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. It is worthy to note also that the 2003 Gender and Development Policy is under review. The Policy is based on the realization of human rights of all, women and men alike, holding principles of equal participation in development, non-discrimination and the empowerment of the marginalized women and men, girls and boys. These and other improvements are reflected in Lesotho's report on the domestic implementation of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) of 2010 amongst others.

Further, the Children's Protection and Welfare Act 2011 enhance the promotion, protection and realization of the rights and welfare of children equally as defined in the Convention on the Rights of Children, the African Charter on the Rights and Welfare of the Child and other international instruments, protocols, standards and rules on the protection and welfare of children.

Continuous advocacy and dissemination measures are being undertaken to ensure that the rights of women in Lesotho are fully realized.

With regard to the concerns of the Working Group on the obligations of the Kingdom of Lesotho under various international and regional instruments mentioned, it is imperative to note that the concerns are a clear manifestation of the pace of change being dictated by the tempo of the evolution of traditions of the society and as such an elected Government has to be sensitive to the traditions of the society that forms its electorate.

Despite prevailing financial constraints and several developmental challenges Lesotho faces as a developing country, the Government remains committed to promote gender equality, women's empowerment and upholding the principle of non-discrimination to all. She is nevertheless mindful of the fact that a lot still has to be done and assures the Working Group of her continued cooperation and engagement in further dialogue.