

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Working Group on the issue of discrimination against women in law and in practice.

REFERENCE:OL LSO 1/2013

28 June 2013

Dear Mr. Lefeu Ramone,

I have the honour to address you in my capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolution 15/23.

In this connection, I would like to bring to your Government's attention information I have received concerning the denial of daughters' right to succeed to chieftainship.

According to the information received:

A recent decision by the High Court of Lesotho in the case of Senate Gabasheane Masupha v Senior Resident Magistrate of the Subordinate Court of Berea (Mr. Kolobe) and Others [2013] LSHC 9 (3 May 2013) (hereinafter "Masupha") upheld a provision of the Chieftainship Act No 10 of 1968 (hereinafter "Act") which is discriminatory towards women.

Section 10 of the Act, passed by the legislature, is a restatement and codification of the customary law of Lesotho with respect to succession to the office of the Chief. Sections 10(2) & (3) of the Act only allow a son of a Chief to succeed to that office, denying the same right to a daughter. If no son is available to succeed to the office, Section 10(4) of the Act allows a Chief's wife to succeed; however, once that wife's tenure ends, only the brother or uncle of the previous male Chief may succeed.

The Lesotho Constitution protects freedom from discrimination in Section 18, providing that "no law shall make any provision that is discriminatory either of itself or in its effect." However, Sections 18(4)(b) & (c) create an exception for laws concerning adoption, marriage, divorce, burial, devolution of property on death or other like matters, and "application[s] of the customary law of Lesotho."

In *Masupha*, the High Court of Lesotho, Constitutional Division, upheld Section 10 of the Act as constitutional. Ms. Masupha, who was denied a Chieftainship despite being the first born daughter of the Chief, challenged Section 10(2) of the Act as being discriminatory because it would allow a first born son to succeed but not her. Despite noting that “girls or unmarried women can never be [chiefs]” while sons and unmarried men can, the Court stated that “the Applicant cannot be said to be discriminated against on the basis of her sex.” *Id.* 43, 56. The Court further found that even if there was discrimination, there would be no violation of the Constitutional prohibition of discrimination due to the exception in Section 18(4)(c) for customary law.

The Working Group expresses concern that the Lesotho Constitution contains exceptions to the non-discrimination provision of Section 18 allowing for discrimination against women when customary law is applicable. We would like to remind your Government of its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), which was ratified by Lesotho on 22 August 1995. Article 5(a) calls for States to “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” With this in mind, the Working Group would like to reiterate the recommendations from the 2011 Concluding Observations of the CEDAW Committee (CEDAW/C/LSO/CO/1-4) that Lesotho “place high priority on the process of full incorporation of the Convention into its domestic legal system” and that Lesotho reform its Constitution in order to prohibit “all forms of discrimination against women on all grounds, including... where customary law is applicable.” In its report on political and public life (A/HRC/23/50, para. 81) (hereinafter “PPL Report”), the Working Group notes that “[t]he inclusion of any clause in the constitution that derogates from the guarantee of gender equality, by deferring to contradictory precepts in other orders of justice such as traditional... principles, undermines the equality standards of international human rights law.”

The Working Group expresses concern at the reservation Lesotho entered to CEDAW, which states that “Lesotho declares that it does not consider itself bound by article 2 to the extent that it conflicts with Lesotho’s... law relating to succession to chieftainship.” The CEDAW Committee notes in its Concluding Observations that this reservation is “contrary to the object and purpose of the Convention” and urges Lesotho to withdraw it. In its statements on reservations to CEDAW (A/53/38/Rev.1), the CEDAW Committee holds that “article 2 is central to the objects and purpose of the Convention,” implying that no country may issue a reservation to this article. The Committee specifically states that “enter[ing] reservations to article 2 to protect rights of succession to the throne and to chiefly and other traditional titles... is discriminatory against women.”

Article 7 of CEDAW calls on States to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in

particular, shall ensure to women, on equal terms with men, the right... (b)... to hold public office and perform all public functions at all levels of government.” In its thematic report on public and political life (A/HRC/23/50), the Working Group recommends that States “[t]ake concrete steps towards achieving parity in political decision-making and leadership at all levels.” The Working Group acknowledges and appreciates Lesotho’s efforts at improving female participation in conventional Government roles. As noted in your Government’s 2010 report to the CEDAW Committee (CEDAW/C/LSO/1-4), women comprise over 50% of the judiciary as well as local Government positions. However, General Recommendation No. 23 (A/52/38/Rev.1) on women in political and public life points out that “[t]he political and public life of a country is a broad concept” that includes “royal powers.” As such, the office of the Chief is within the scope of article 7 of CEDAW.

The Working Group would also like to draw your Government’s attention to the International Covenant on Civil and Political Rights (hereinafter “ICCPR”), acceded to by Lesotho on 9 September 1992. Article 25 recognizes that “[e]very citizen shall have the right and the opportunity... (a) [t]o take part in the conduct of public affairs... [and] (c) [t]o have access, on general terms of equality, to public service.” Each State must “adopt such laws or other measures as may be necessary to give effect to the rights recognized in the [ICCPR],” and must also “ensure to all individuals within its territory... the rights recognized in the... Covenant, without distinction of any kind, such as... sex.” Id. art. 2. Additionally, article 3 requires States to “ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the... Covenant.” In General Comment No. 25 (CCPR/C/21/Rev.1/Add.7), the Human Rights Committee recognizes that the “conduct of public affairs... is a broad concept which relates to the exercise of political power.” The Committee also reiterates that article 25 protects the rights of “every citizen,” barring any distinction on the grounds of sex. Therefore, the office of the Chief is within the scope of ICCPR, article 25, and no gender discrimination is permitted.

In article 13, the African Charter on Human and Peoples’ Rights, ratified by Lesotho on 10 February 1992, also ensures the right of “every citizen” to participate freely in Government and have “equal access to... public service.” Every individual is entitled to the enjoyment of this right “without distinction of any kind such as... sex.” Id. art. 2. Additionally, in article 18(3), the Charter requires that States categorically “ensure the elimination of every discrimination against women.”

Further, the 2004 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, in article 2, requires States to take affirmative actions to combat all forms of discrimination against women, including by enacting and effectively implementing measures aimed at prohibiting “all forms of discrimination” as well as by taking “corrective and positive action in those areas where discrimination against women in law and in fact continues to exist.” Importantly, the Protocol calls on States to “commit themselves to modify the social and cultural patterns of conduct of women and men... with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority

or the superiority of either of the sexes, or on stereotyped roles for women and men.” Equal participation in political life is specifically referred to in article 9.

In view of the aforementioned, the Working Group would like to call on your Government to ensure the elimination of discrimination against women in all forms of political life, including in the office of the Chief. More broadly, we call on your Government to repeal Constitutional exceptions to the prohibition of discrimination, which derogate from the guarantee of gender equality by deferring to contradictory precepts in other orders of justice, including customary law. Similarly, the reservation to article 2 of CEDAW should be removed as it is contrary to the object and purpose of the Convention. The Working Group would also like to stress the importance of enacting legislation which fully implements not only CEDAW, but all international and regional treaties to which your Government is party.

We would appreciate receiving information from your Government within 60 days on the accuracy of the alleged facts as well as measures it is taking to address the above-mentioned concerns. The Working Group undertakes to ensure that the reply is reflected in the report that it will submit to the Human Rights Council for its consideration.

Please accept, Mr. Lefeu Ramone, the assurances of our highest consideration.

Kamala Chandrakirana
Chairperson-Rapporteur of the Working Group on the issue of
discrimination against women in law and in practice