

LESOTHO

In paragraph 15 of its report the Government of Lesotho states that the rights recognized in the Covenant are guaranteed to all individuals and that section 4 (1) of the Constitution specifically provides that every person in Lesotho is entitled, whatever “his” sex, to fundamental human rights and freedoms. In paragraph 151 the Government further reports that section 19 of the Constitution provides every person with equality before the law and to the equal protection of the law. However in paragraph 17 of its report the government states that section 18 (4) (c) of the Constitution “permits the application of customary law even if it is discriminatory”. Paragraph 151 of the Government’s report further provides that “...our Roman Dutch Law permits discrimination against women as being minors. The same obtains under Sesotho customary law, which relegates women to perpetual minority”. Equality Now is deeply concerned that the widespread application of customary law renders women perpetual legal minors, that under common law the same result obtains, that sections of the Constitution and various statutes by their plain language discriminate against women, that cultural practices deny women and girls the rights guaranteed by the Covenant, that the criminalization of abortion, and that restrictions on political participation of women leave Lesotho far short of full compliance with its obligations to respect women’s rights guaranteed by the Covenant. In preparing its submission Equality Now consulted the Lesotho Women’s Institute, a non-governmental organization in Lesotho, and referred to reports prepared by the Lesotho Ministry of Planning, Economic, and Manpower Development with assistance from UNICEF Lesotho, the United Nations Development Programme, and a report prepared for the World Bank. Reports from these groups are included as annexes to this submission.

Customary Law

Lesotho has a dual legal system, governed by customary law and Roman Dutch common law. The law to be applied is apparently determined by a “style of life” test, with more modern lifestyles governed by common law and more traditional lifestyles governed by customary law. The vast majority of women in Lesotho are governed in most aspects of their married life by the provisions of customary law. Under customary law, a woman is a perpetual minor, usually under the guardianship of her father or eldest member of her family, her husband upon marriage and her eldest son or male customary heir upon the death of her husband. Under customary law a woman has no legal capacity to enter into contracts without male consent and therefore cannot acquire property or obtain credit (except through her own social organizations). Mathabiso Mosala, Honorary President of the Lesotho Women’s Institute and a member of the Senate from 1993 to 1998, could not obtain an extension of the telephone in her house into another room without a letter from her husband (see Annex A, p. 5). Under customary law women cannot enter into employment contracts without the consent of their husband or guardian and may be removed from their employment by their husbands. Women cannot sue or be sued in their own names and cannot apply for passports or enter their children on their passports without the permission of their husband (Annex A, p.5 and Annex B, p.164). Under customary law the joint estate of a married couple is under the control of the husband (Annex B, p.162).

Marriage under customary law is potentially polygamous and requires the agreement of the parents of the parties (Annex C, p. 2). There is no fixed minimum age for marriages pursuant to

customary law (Annex B, p. 162). Divorce under common law results in the women returning to the wardship of the family into which she was born and she may only retain the immediate personal possessions from her marital home (Annex B, p. 162). After a customary divorce the father's obligation to support and maintain his children and former wife ends and then become the responsibility of the woman's family (Annex B, p. 162).

Under customary law women can only inherit property as widows in families with no sons (Annex B, p. 163). Customary law provides that the heir is to be the eldest son of the first married wife and, if she has no male child, the eldest son of the second married wife. Where there are no male children the senior widow is the heir. Although under customary law a man may make written instructions for distributing his property, he must leave the major part of the estate to the heirs described in order to be valid (Annex B, p. 163). Under customary law there does not appear to be any circumstance where a daughter can inherit property from her father.

Equality Now submits that the constitutionally protected application of customary law which prevents women from entering into contracts, obtaining credit, inheriting or controlling property, maintaining employment, or suing or being sued in their own names violates the rights set forth in Articles 2, 3, 12, 16 and 26 of the Covenant. Equality Now further submits that in accordance with its obligations under articles 3, 23, 24 and 26 of the Covenant the Government of Lesotho should prohibit polygamy, remove the requirement of parental consent for marriage, and establish a minimum legal age for marriage sufficient to ensure that marriages are entered into with the full and free consent of the intending spouses. Equality Now also considers that the failure to require a man who is divorced pursuant to customary law to support his children violates the obligations set forth in Article 23.4 of the Covenant.

Common Law and Discriminatory Statutes

The common law regulates the affairs of those Basotho who have adopted a modern lifestyle. Under common law, unless a woman marries under an ante-nuptial contract, which is reportedly very rare, she is deemed married in "community of property" and is therefore under her husband's marital power and a minor in law (Annex A, p. 4). Under common law, women married in community of property cannot own property. If they inherit, the property belongs to their husbands. As under customary law, women under common law without ante-nuptial contracts cannot make contracts, open bank accounts, obtain loans, or apply for a passport without the permission of their husbands (Annex B, pp.163-164).

Equality Now is also concerned about numerous statutes which are explicitly discriminatory. Section 40 (2) of the Constitution provides that "any woman who, after the coming into operation of this Constitution, marries a citizen of Lesotho shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho". The Constitution makes no similar provision for the acquisition of citizenship by a man who marries a woman citizen of Lesotho. The Marriage Act of 1974 sets a minimum age of marriage at 18 for boys and 16 for girls (Annex C, p. 2). The Deserted Wives and Children Proclamation of 1959, which provides for a maintenance order to be made against a person legally responsible for a destitute or impoverished wife or child, also provides for such an order to be invalidated if adultery is proved against the wife (Annex B, p. 166). This exception unilaterally exempts

husbands from responsibility for the protection and support of their families and might place the full burden for care on wives who have already been determined to be impoverished or destitute. The Deeds Registration Act (Number 12 of 1967) provides that “no immovable property shall be registered in the name of a woman married in community of property” (Annex C, p. 3). Education order Number 32 of 1971 requires that a woman applying for entrance into an educational institution or for a scholarship obtain the consent of her husband, if married, or her parents if single (Annex C, p. 4). Equality Now also notes that Public Service Order 1970 (section 12 (10)), provides that a woman in government service who marries shall be deemed to have voluntarily retired from the public service effective the date of her marriage (Annex B, p. 169). Equality Now submits that citizenship rights should be granted to spouses of citizens on an equal basis, that the legal age of marriage should be the same for men and women, that husbands should have an unconditional obligation to provide for their families and particularly their children, that women should be allowed to own and register land, and that all women should be allowed to undertake educational initiatives and employment on an independent and equal basis, in accordance with the rights set forth in Articles 3, 23 and 26 of the Covenant.

Political Participation

The Constitution of Lesotho restricts the right of women to take part in the conduct of public affairs, to be elected, and to have access on general terms of equality to public service. Section 86 of the Constitution vests executive authority in the King. The Constitution sets forth a wide range of powers to be exercised by the King including the ability to appoint the Prime Minister and other ministers, to nominate Senators, grant pardons, sign bills passed by parliament into law, and remove the Prime Minister and dissolve the Parliament under certain circumstances. The constitutional grant of broad executive authority to the King prevents a woman from ever exercising executive power at the highest level in Lesotho. Article 55 of the Constitution provides that the Senate shall consist of the twenty-two Principal Chiefs and eleven other Senators nominated by the King. Equality Now does not know whether these twenty-two Principal Chiefs must be men and requests the Committee to inquire as to whether this structure renders two-thirds of the 33 Senate seats unavailable to women. The May 1998 elections in Lesotho resulted in women holding only three of 80 seats in the lower house and 9 of 33 in the Senate (Annex E1, p. 4). As of 1996 there were no women with ministerial level positions in Lesotho and 18.2 percent of sub-ministerial positions were occupied by women (Annex E2). The constitutional restrictions on political participation by women and the low levels of representation by women in the executive and legislative branches of government violate the right set forth in Article 25 and 26 of the Covenant and contradict Section 20 of the Constitution of Lesotho, which guarantees the right to participate in government.

The Criminalization of Abortion and Reproductive Rights

There is no statutory law on abortion in Lesotho. Common law prohibits abortion except when performed to save the life of the pregnant woman (Annex F1, p. 105-106). The Regulation of Advertisements Proclamation of 1953 (No. 60 Section 3) prohibits the advertisement of items that could be used to procure an abortion (Annex F1, p. 106). Despite these legal restrictions, a 1981 study conducted by the Faculty of Law of the University of Lesotho indicated that abortion was a common phenomenon. The study also found that self-induced and other illegal abortions

were frequently reported to the police and that some cases were subject to prosecution (Annex F1, p. 106). Equality Now is also concerned by the high levels of maternal mortality, which are related to the unavailability of safe and legal abortion. In Lesotho, the estimated maternal mortality rate in 1990 was 610 per 100,000 live births (Annex F2, p. 1) and the lifetime risk of maternal death for a woman in Lesotho is one in 26 (Annex F4, p. 4).

Equality Now submits that forced maternity constitutes cruel, inhuman and degrading treatment in violation of Article 7 of the Covenant, particularly in cases of pregnancy resulting from rape, and that the high rate of maternal mortality in Lesotho, elevated by the laws which criminalize abortion, threatens women's right to life, guaranteed by Article 6 of the Covenant. Equality Now further submits that the right to "found a family" as set forth in Article 23 of the Covenant encompasses the right to determine the size of the family. The Committee has commented in regard to Article 23 that, "The right to found a family implies, in principle, the possibility to procreate and live together" (Article 23: 07/27/90, General Comment 19). The right to procreate is inseparable from the right not to procreate, and Equality Now submits that the criminalization of abortion in Lesotho violates Article 23 of the Covenant, as well as Article 6 of the Covenant.

Violence Against Women

Equality Now is deeply concerned that the report of the Government does not address the issue of violence against women. According to the UNDP report concerning Lesotho, "A husband has complete authority over his wife and may punish her as he sees fit. Wife-beating is regarded within the culture as a disciplinary measure, not as a crime" (Annex D, p. 2). According to Women Progress & Disparity, a UNICEF publication, Lesotho does not have any laws that specifically criminalize domestic violence or marital rape (Annex H). Having sex with her husband is considered the duty of a wife and if she insists that her husband use a condom or refuses to have sex with him she may be beaten or abandoned (Annex D, p. 2). The failure of the Government to acknowledge and address violence against women is incompatible with its obligations pursuant to Articles 3 and 26 of the Covenant and Section 27 of the Constitution, which obligates Lesotho to adopt policies aimed at ensuring the highest attainable standard of physical and mental health for its citizens.

Equality Now is also concerned about reports of the practice of female genital mutilation in Lesotho. In 1996 the Special Rapporteur on Violence against Women noted the government of Lesotho's own indication to her that "female genital mutilation still takes place in cases where girls and women are sent to initiation schools. Exactly how it is done and why is still shrouded in mystery. But it is definitely not done in sterile surroundings" (E/CN.4/1996/53, para.110). The Special Rapporteur expressed the urgent need for a further study of the issue. Equality Now does not have independent confirmation of the practice of female genital mutilation in Lesotho and requests the Committee to inquire of the state party representatives as to whether such study was ever performed and, if not, the reasons for such a long delay. Equality Now considers the practice of female genital mutilation to be a violation of Article 7 of the Covenant.

INDEX OF ANNEXES

- A. Lesotho Women's Institute, Report in Response to Request for Information, January 8, 1999.
- B. Ministry of Planning, Economic and Manpower Development of Lesotho with Assistance from UNICEF Lesotho, The Situation of Women and Children in Lesotho 1991, March, 1991.
- C. Johal, Ramina, Sepideh Kayuanshad and Deborah Lisker, Lesotho : Country Gender Profile, July, 1993.
- D. Raditapole, Deborah K, The Economics of HIV Transmission, United Nations Development Programme.
- E.1 Inter- Parliamentary Union, Women in National Parliament, February 5, 1999.
- E.2 United Nations Development Programme, Percentage of government positions occupied by women, 1996, Table 6-2.
- F.1 United Nations Secretariat, Population Division of the Department for Economic and Social Information and Policy Analysis, Lesotho.
- F.2 United Nations Development Programme, Contraceptive use, deliveries attended and maternal mortality, Table 3-2.
- F.3 UNICEF, Women's League Table, the Progress of Nations 1998.
- F.4 World Health Organization and the World Bank, Facts and Figures Maternal health Around the World, 1997, p.4.
- G. UNICEF, Women Progress & Disparity, 1997.