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***Women's Rights and Participation -***  
***Including Women's Access to Land and Inheritance,***  
***and the Role of Lobbying and Grassroots Organizations***  
***in Lesotho\****

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\* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations

## 1. Background

Lesotho is a mountainous country covering an area of about 30,350 square kilometers; it is landlocked by the Republic of South Africa, with an estimated population of 2.2 million people<sup>1</sup>. Lesotho's economy is closely tied to that of South Africa with Lesotho being the dependent partner. This dependency derives from the country's reliance on migrant labour remittances and its share from the Southern African Customs Union (SACU). The country is classified as one of the 49 least developed countries of the world with a per capita income of USD 423 (2001). This figure shows that 68% of the population is living below the poverty line. In 2005 it was ranked 149<sup>2</sup> out of 177 countries on the UNDP Human Development Index.<sup>3</sup> The country's land area is predominantly highlands with a limited natural resource base. Two thirds of the surface land area is highlands while only 10% is lowland, arable and suitable for agricultural production. The growth potential of the agricultural sector is therefore limited due to the scarcity of arable land. Agricultural productivity is affected by adverse weather conditions, serious soil erosion and poor land tenure systems. Compounding the situation is over-cultivation and overgrazing patterns. Lesotho is therefore classified as a subsistence agricultural economy. Land is therefore one of the declining resources in Lesotho. About 80% of Lesotho population live in the rural areas and derive some of their livelihood from crop and livestock productions.<sup>4</sup> Although so much importance is placed on agriculture, in recent years Lesotho has been cited as one of the countries affected by food insecurity and it is among the first to declare a national emergency for food insecurity.<sup>5</sup>

Lesotho has adopted a Gender and Development Policy 2003, therefore providing a policy framework within which gender should be mainstreamed in development. The policy commits the Government to ensure that all sectors of development take into account and address gender inequalities that permeate the make-up of Basotho society. In addressing issues of gender equality, the policy re-affirms the Government's commitment to decentralization of services to the poor, especially the marginal groups who cannot afford to access basic developmental services. This policy pronounces the Government's strategy to development, and it is an affirmation and commitment to addressing gender inequalities. These inequalities cut across the social, legal, cultural, economical and political spheres. The policy puts forth strategies to promote gender equality in the public and private arenas. Through this policy Lesotho undertakes to ensure gender equality in all sectors of development and commits Lesotho to undertaking measures that promote equal opportunities for men and women and boys and girls. It outlines strategies for a collaborative partnership between government, commercial, and civil society sectors to harmonize efforts that will address gender inequality in their programs. This policy calls for removal of all barriers (constitutional, institutional, legal, and socio-cultural) through enactment of laws, setting up of structures, coordinating efforts that will increase education, training and awareness-creation in Lesotho. However, being a fairly new policy, (adopted in 2003), its implementation and popularization has not as yet been fully effected.

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<sup>1</sup> Bureau of Statistics 1996

<sup>2</sup> UNDP Human Development report 2005

<sup>3</sup> Bureau of Statistics 2004

<sup>4</sup> *ibid*

<sup>5</sup> Jo- Abbot care Lesotho, June 2004

## **2. Introduction**

This paper discusses women's rights and participation, women's access to land and inheritance in Lesotho. It draws conclusions from studies<sup>6</sup> undertaken by Women and Law in Southern Africa Research and Education Trust in the past fifteen years of its existence as women's human rights organization in Lesotho and Southern Africa. Women's rights issues and access to resources and inheritance are still a major challenge in Lesotho and the Southern African sub-region despite the legal, policy and institutional frameworks which are systematically being put in place to address gender equality. Women's rights and participation are discussed within a context of disadvantaged position of women in Lesotho. Land tenure<sup>7</sup> insecurity is still widespread in Southern Africa and Lesotho is no exception.

Women's land rights and tenure security have been constrained by women's status as legal minors. The Lands Registry Act of 1967 specifically provides that no land shall be registered in the name of a married woman. Women's rights to land are analysed within the dual tenure systems that characterises Lesotho. Tenure insecurity manifests itself in a number of ways; namely competition resulting from overcrowding in the form of high population to land ratio and inappropriate and exploitative administrative practices and limited women's land rights. This is worrying because economies in Southern Africa are highly dependent on agriculture. The agricultural sector is a major contributor to the Gross Domestic Product. Given that over 80% of the Lesotho population is based on the rural economy, and has its livelihood linked to land and exploitation of natural resources, land tenure rights are central to sustainable agricultural production. The HIV/AIDS epidemic has brought a new dimension to land tenure problems in the sub-region and in Lesotho in particular as the country is battling with the third highest prevalence rate in the world<sup>8</sup>. The epidemic seems to have contributed to increased vulnerability of women, children, and poor households to land dispossession and increased likelihood of losing unutilized/underutilized land. Although Lesotho has signed international treaties to protect and uphold the human rights of her citizens, the substantive rights and equalities are still not enjoyed by women because the country has not yet made constitutional provisions to domesticate international undertakings to domestic laws. Notwithstanding, legal, policy and institutional reforms are underway to implement the undertakings of the Beijing Platform for Action and its five- and ten-year reviews. The role of lobbying and grassroots organizations in advancing women's human rights and freedom from discrimination and a right to improved livelihood therefore remains critical.

## **3. Women's Rights and Participation**

Lesotho is party to a number of international, continental and regional instruments that protect and promote women's rights. The global framework includes the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against

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<sup>6</sup> WLSA has produced over 250 publications in the form of books, monographs, position papers and articles on the socio-economic and legal position of women in Southern Africa. The publications include Women's Access to Productive Resources and Women's Inheritance Rights in Southern Africa (1990 to date)

<sup>7</sup> Land Tenure is a system of rights and institutions that govern access to and use of land (Adams 2001) and conditions under which land is held, used and transacted. It is one of the principal factors determining the way in which resources are managed and used and the manner in which benefits are distributed.

<sup>8</sup> 29-31% UNAIDS 2005

Women (CEDAW), the Vienna Declaration and Programme of Action, the Beijing Platform for Action, and the twenty-third special session of the General Assembly (also known as Beijing + 5), as reaffirmed in the Declaration recently adopted by the Commission on the Status of Women (Beijing +10). The continental framework includes the Protocol to the African Charter on Human and People's Rights on the Rights of Women and the New Partnership for Africa's Development (NEPAD). Regionally, the South African Development Community (SADC) Declaration on Gender and Development is one of the most important instruments to come into force on gender, development and democracy in recent history. This instrument sets a good example on how the sub-region has committed itself to implementing the 1995 Beijing Platform for Action commitments by linking development priorities with clear numerical targets and time frames. By signing this document, heads of states have reaffirmed gender equality as a fundamental human right and acknowledged the benefits to be gained if gender is embraced in all sectors of development.

At national level, there is constitutional, institutional, policy and legal frameworks that institute gender equality into democratic processes. In this scenario, however, Basotho women make up the majority of Lesotho's population<sup>9</sup> and also a bigger proportion of the unemployed, the poor and the landless. Because the agricultural sector is mostly at subsistence level, women are by and large economically dependent. The formal sector of Lesotho's economy is small and unable to absorb most of the potential labour force. This results in high unemployment rates especially for women who dominate the informal sector. This sector does not give Basotho women much economic power. Women's rights and participation in Lesotho are compounded by legal minority status of women which limits women's access to credit in order to expand their economic potential. Even though women in Lesotho play a major role in agriculture, their access to resources tied to land, such as fields, farming implements, and livestock, is generally through men. Therefore in Lesotho, like most Southern African countries, usufruct rights to land characterise women's access to land and inheritance. McFadden and Mvududu (2001) argue that under traditional tenure systems, men do not own land either, as absolute land rights are vested only in the head of the family for the benefit of the whole family. Hence land rights under custom places emphasis on group as opposed to individual rights.

#### **4. Women's Access to Land**

Women's access to land and inheritance in Lesotho is tied to the general socio-economic situation of women in general. Their access and control over land and other resources is linked to the two principal forms of land tenure systems found in Lesotho, namely customary and statutory land tenure systems. Like in all systems of duality, there is a mixture of tenure systems that allows varying degrees of access to resources by women. Women generally do have land use rights, especially under customary law. Lesotho has a dual legal system consisting of customary and general laws operating side by side. Customary law is made up of the customs of the Basotho, written and codified in the Laws of Lerotholi<sup>10</sup> whereas general law consists of imported Cape Colonial common law of South Africa (Roman Dutch Law) and the Lesotho

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<sup>9</sup> Of the 2, 233,255 Lesotho's population, women make up 1,129,296 and men make up 1, 103, 959

<sup>10</sup> In 1903 a Council was established to advice and suggests to the then British Resident Commissioner what was in the best interests of Basotho especially the laws governing them. The Council was later charged with the duty of formulating and writing down the Basotho laws which were up to then unwritten.

statutes. Under customary law a woman before marriage is under the guardianship of her father, upon marriage her husband takes over guardianship from her father and upon his death her guardianship is transferred to his heir. What this means is that under customary law, a woman does not have full rights as a person as she has to be assisted in situations where she wants to improve her economic status or engage in civil litigation. The customary land tenure system is governed by traditional rules and administered by traditional community leaders such as chiefs. Active occupation or usage of a piece of land is the main evidence of ownership or an existing interest on the land. Under custom, access to land is determined by group rights. Households have strong, exclusive residential rights, seasonally exclusive rights to arable land and shared rights to grazing and natural resources. Usually the individual's land use rights are secure though they are subject to certain conditions such as continuously cultivating land. Under the general law, though slightly different, a woman's position is still not fully equal to that of a man, she is regarded as a legal major if she is over the age of twenty-one and unmarried, widowed (at any age), or if married out of community of property having excluded her husband's marital powers. In such cases she would be regarded as a person who is fully capable of handling the affairs of her life without permission or assistance from anyone. However, a woman who is married in community of property would have the same status as those under customary law, she is a legal minor. This legal minority status restricts women from acquiring assets without assistance and permission, obtaining credit, entering into contracts and suing and being sued. The Land Act of 1979 regulates land rights in Lesotho. For instance, the Land Act gives women the right to acquire and hold land in their own names as well as the right to inherit it like anybody else. This law does however discriminate against women in that, although widows retain the rights of inheritance to their late husbands' property, they are stripped of that right on remarriage. Although this piece of legislation makes it possible for all citizens to acquire land, its application is restricted by the Deeds Registry Act of 1967, which prohibits women who are married in community of property to register land in their own names. Further, application of the 1979 Land Act is frustrated by conservative administrative bottlenecks surrounding land allocation in Lesotho. The land allocation committees, although administering a statutory law, still apply customary law principles in land allocation. The net result is that women's land rights are still not assured.

Women's access to land in Lesotho is protected by the Constitution, which has a bill of rights and guarantees its citizens all fundamental rights including freedom from discrimination. The Constitution further provides for the protection of the right to property for every citizen<sup>11</sup>. However, the Lesotho Constitution's major flaw is Section 18 (4) (c). This section provides for freedom from all forms of discrimination but qualifies this right by providing that this section will not apply in furtherance of customary law principles<sup>12</sup>. These provisions are obviously unfair against women and since they deny women the opportunity of equality with men, they contribute to stifling the economic development of the country. This is because women are legally incapacitated and hence unable to contribute economically on the same footing as men. Considering the fact that the majority of Basotho women are subject to customary law, this means that discrimination justified in accordance with custom is allowed by the Constitution.

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<sup>11</sup> Lesotho Constitution of 1993, Section 8(4)

<sup>12</sup> *ibid*

Lesotho has also embarked on legal reform processes that have resulted in the development of the Married Persons Equality Bill (2000) and Land Bill (2003). When they are enacted into laws these Bills will bring about legal equality between men and women and will enable married women to, among others, register land in their own names. Despite attempts by the Lesotho Government to tackle issues of development and transformation of the economy, gender issues and the legal position of women remain by and large in the margins and thereby continuously undermine various efforts that are geared towards improving the livelihood of the nation. In particular, many problems that are experienced by women are gender inequality-related and need to be addressed if meaningful development is to be achieved. Legal problems that women are faced with are cross-cutting and touch on issues of health rights, economic rights and access to vital services.

#### **4. Women's Inheritance Rights**

Inheritance like all resource related matters is governed by the duality of laws in Lesotho. Inheritance laws and practices in Lesotho discriminate against women and girls. Under customary law the heir is the first-born male child.<sup>13</sup> In a polygamous marriage the heir is the first-born male child of the first married wife.<sup>14</sup> If there is no male issue in the first house, the firstborn male child of the next married wife shall be the heir, but each house inherits property acquired and used by that household during the lifetime of the head of the family. According to custom, when the head of the family dies the heir inherits all the immovable properties in that household, amongst which are fields and buildings.<sup>15</sup> The heir is required to use the property to take care of all the minors and needy members of the extended family as well as to discharge other family obligations such as to bury the dead and negotiate and pay *lobola*<sup>16</sup> for all male children in that family. He is also expected to share the inheritance with his junior brothers.<sup>17</sup> If upon death of the husband the heir is under the age of majority, the widow is entrusted to use the property in consultation with the paternal uncles until the heir becomes of age.<sup>18</sup> Therefore the widow holds the property in trust for the heir and administers such property on the advice of the husband's family. Thus she cannot dispose of the property or lease the land without the approval of the whole family and their consent.

Despite the principle that land belongs to the whole nation and no one can inherit it, customary law makes provision for inheritance of land used for growing vegetables, tobacco, trees and residential purposes.<sup>19</sup> This implies that land not available for inheritance, is that used solely for agricultural purposes. The heir is entitled to inherit residential land to enable him to carry the responsibility of taking care of the minors.

It is evident that girls and women do not have access to land. They are to depend on other family members to access land. Customary law treats women as minors and as such they are neither regarded competent to hold land, inherit nor make any major decisions regarding land under their

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<sup>13</sup> *ibid* section 11

<sup>14</sup> *ibid*

<sup>15</sup> Likhapha Mbatha Reforming the Customary Law of Succession 260

<sup>16</sup> Bride price

<sup>17</sup> Laws of Lerotholi supra section 12(3)

<sup>18</sup> *ibid* section 12(1)

<sup>19</sup> Laws of Lerotholi section 7 Notification

control. The eldest sons, as discussed above, have the right of inheritance and when they do exercise this right, the women in occupation of or using the land inherited are left in a dependent situation. This is so because if allowed to use the land they have to use it on conditions set by the heir. There is also the possibility of them being denied access to the land. This leaves them with no security of tenure.

Under general law women's inheritance rights are regulated by the common law of succession. Under this law men and women have similar rights to succession depending on whether the deceased has left a will or if he died intestate. However, application of common law on inheritance matter in Lesotho is limited because most people regulate their affairs in accordance with custom.<sup>20</sup>

## **5. The Role of Lobbying and Grassroots Organizations**

The role of organizations whose mandate is to ensure women's access to productive resources is critical not only in Lesotho but in Southern Africa as a whole. Women and Law in Southern Africa was formed to provide research and empirical evidence that will influence policy and legal reforms to promote the social, economic and legal status of women. The organization works with strategic groups for legal literacy, legal awareness and provides assistance to women who want to assert their rights. WLSA is also part of a regional network on Women's Land and Water Rights in Southern Africa, a lobby group whose mandate is to push for policy and legal reforms to ensure women's land and water rights. Women's Lobby groups in Lesotho are now focussing on getting MPEB and subsequently Land Bill enacted into law and thereby ensuring equality between men and women. Gender inequality in Lesotho is one of the underlying causes of developmental challenges; namely, widespread poverty, high HIV/AIDS prevalence rate and food insecurity. Lesotho faces major challenges of women's lack of access to resources, legal minority status of women, conservative cultural beliefs and attitudes and constitutional reforms. Lobbying organizations have a mandate to work in strategic partnerships with critical groups like men, youth and decision-makers at different levels to take the gender agenda forward.

## **6. Conclusion**

This paper has shown that women's rights and participation, women's access to land and inheritance in Lesotho are issues that are surrounded by inequality, injustice and discriminatory practices. The legal framework has not afforded women protection and rights to productive resources on the same footing as men. As a result, economic empowerment of women and rural development initiatives that target women become fruitless. However, in response to global, regional, and national rights frameworks, Lesotho is reforming its laws, policies and institutions in order to embrace the necessary changes. Be that as it may, these changes are slow and require the right political attitude to effect constitutional reforms that would give all citizens substantive equality and rights.

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<sup>20</sup> WLSA 1994 Inheritance in Lesotho