

# SOUTHERN AFRICA LITIGATION CENTRE

## Q & A: COMPLAINT TO THE AFRICAN COMMISSION ON WOMEN'S ACCESS TO CHIEFTAINSHIP IN LESOTHO *Masupha and Others v the Kingdom of Lesotho*

### What is the complaint about?

This complaint to the African Commission on Human and Peoples' Rights (African Commission) challenges section 10 of the Lesotho Chieftainship Act which provides only for male succession to chieftainship, arguing that it violates fundamental rights guaranteed under the African Charter for Human and Peoples' Rights (African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Both treaties have been ratified by Lesotho.

### Who is filing the complaint?

The complaint is being filed by Senate Masupha, the first-born and only child of the late Principal Chief David Masupha and Chieftainess Masenate Masupha (of Ha 'Mamathe, Thupa-Kubu and Jorotane). Ms Masupha formerly served in the Lesotho diplomatic corps and is currently a business woman and entrepreneur. Ha 'Mamathe in the Berea District, Lesotho, is her home. She is a leader in her community and is seeking the authority and support to lead as Chief.

Two civil society organisations, the Federation of Women Lawyers (FIDA-Lesotho) and the Southern Africa Litigation Centre (SALC), have joined Ms Masupha in filing the complaint.

### Why is the case being taken to the African Commission?

Ms Masupha challenged the constitutionality of section 10 of the Chieftainship Act in the domestic courts in Lesotho. She lost her case in the Lesotho High Court and the Court of Appeal, which held that denying her the ability to succeed to chieftainship did not amount to unfair discrimination under the Constitution as the Constitution permitted discrimination in matters of customary law. Having exhausted her local remedies, Ms Masupha, FIDA-Lesotho and SALC chose to approach the African Commission given Lesotho's obligations under the African Charter and the Maputo Protocol.

In addition, ending gender discrimination in the succession to chieftainship is not only an issue in Lesotho but in many countries in the region. This complaint is a critical opportunity for the African Commission to make clear the obligations under its various treaties for countries to end gender discrimination in the office of chief.

### What is FIDA-Lesotho's and SALC's interest in the case?

FIDA-Lesotho is a non-governmental organisation based in Maseru that works to promote the rights and legal status of women in Lesotho. SALC is a non-governmental organisation based in Johannesburg, South Africa, that works to promote human rights and the rule of law in southern Africa. Both organisations were admitted as friends of the court (*amici curiae*) in the Lesotho High Court and Court of Appeal. Both organisations are committed to ending gender discrimination in law and practice and thus are interested in ensuring that happens in this particular case.

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## **What are the complainants arguing?**

Masupha, FIDA-Lesotho and SALC are arguing that section 10 of the Chieftainship Act violates a number of rights guaranteed under the African Charter and the Maputo Protocol, including the rights to dignity; freedom from cruel, inhuman and degrading treatment; equality; non-discrimination; culture; equal access to public service; and equal inheritance.

## **What can the African Commission do if it finds that Lesotho's chieftainship laws violate the African Charter and the Maputo Protocol?**

Lesotho is bound by its legal obligations under the African Charter and the Maputo Protocol having ratified both of the treaties. If the African Commission finds that Lesotho has violated the rights guaranteed under the African Charter and Maputo Protocol, then it is obligated to make the necessary changes to ensure it is in compliance with its legal obligations under the regional treaties.

## **Can a woman ever be a chief in Lesotho?**

There are instances in which women can legally occupy the position of chief. If a woman marries a chief, it is possible for her to succeed to the position in her own right upon his death. In some circumstances, a woman who was married to a chief can also become a temporary, acting chief on behalf of her son. However, all daughters are excluded from succeeding to the office of chief. Only first-born sons may succeed. A woman who does not marry into chieftainship can therefore never become a chief under Lesotho law.

## **How long will the case before the African Commission take to complete?**

It is not possible to predict how long it will take the African Commission to determine the outcome of a complaint before it. There are a number of steps that the African Commission will take in the process. This includes: (1) registering the complaint; (2) deciding whether to address the complaint; (3) deciding on whether the complaint is admissible; (4) deciding on the merits of the complaint; and (5) making a recommendation to the African Union's Assembly of Heads of State and Government which then can choose to adopt the African Commission's recommendations as binding.

## **Why is chieftainship important?**

In Lesotho, chieftainship entails the exercise of significant political, social and economic leadership and power. Chieftainship is integral to governance in Lesotho. Chiefs fulfil a number of political functions including providing support, aid and maintenance to the King, serving the people in the area of the chief's authority, promoting the community's welfare and interests, and maintaining public safety and order in the community. Chiefs are generally held in high esteem in the community. Community members may seek the assistance of traditional leadership structures when conflict arises and for a range of services including the registration of births and deaths and the solemnisation of customary marriages. Chiefs are important role models for the community.

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