

**MATRIARCHY, KINGSHIP INSTITUTION AND THE QUESTION OF SUCCESSION
IN LESOTHO: THE CASE OF PRINCESS SENATE GABASHEANE MASUPHA**

BY

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**A DISSERTATION SUBMITTED TO THE DEPARTMENT OF HISTORICAL
STUDIES, FACULTY OF HUMANITIES,**

NATIONAL UNIVERSITY OF LESOTHO, ROMA,

**IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF A
MASTER OF ARTS DEGREE IN AFRICAN HISTORY**

JULY 2024

ABSTRACT

Lesotho's royal system, a distinct cultural and historical phenomenon, faces several difficulties today, especially regarding succession by women. Using the example of Princess Senate Gabasheane Masupha, a well-known royal family member, this study investigates the organisation's function, importance, and succession dilemma. By employing a qualitative research methodology that integrates interviews, archival research, and literature analysis, this study unveils the intricate relationship between culture, tradition, gender, and power in determining the institution's course. The results emphasise the need for creative strategies to deal with succession concerns as well as the necessity for a comprehensive knowledge of the genesis of the matriarchy kingship institution and its current relevance. This study adds to the current conversations in Lesotho and elsewhere on gender, culture, and leadership by providing information for academics, legislators and cultural guardians.

DECLARATION

I, Ntefeleng Semuli declare that the dissertation that I herewith submit for the Master's Degree in African History at the National University of Lesotho, is my independent work under the supervision of Professor Noah Echa Attah and that I have not previously submitted it for any qualification.

Signature and Date

Ntefeleng Semuli (201404039)

CERTIFICATION

I certify that this dissertation entitled “Matriarchy, Kingship Institution and the Question of Succession in Lesotho: The Case of Princess Senate Gabasheane Masupha” has been duly completed by Semuli Ntefeleng (201404039) of the Department of Historical Studies, Faculty of Humanities, National University of Lesotho, Roma.

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ACKNOWLEDGEMENTS

All praise and thanks are due to the Almighty God, who made it possible for me to complete this dissertation. My immense appreciation goes to my late mother, 'Mamatela Roxy Khahliso Raleting Semuli who cultivated in me the love for education, and the will to succeed, traits that have influenced my academic and personal pursuits. Thanks to my daughter, Karabo Neo Grace Palime, who from the moment she came into my life, fuelled my determination to pursue knowledge and excellence.

To Professor N.E. Attah, my supervisor, I express my gratitude. You have my sincere gratitude for sharing your knowledge and experience with me. It means the world to me that you have always believed in me, even when I have doubted myself. *Ese mo nife igbega yii*. I also want to thank the Head of the Department, of Historical Studies, Dr Hove and the lecturers in the department, especially, Mr. Mphezulu, Dr Chakawa and Dr Maliehe, for providing the enabling environment for my postgraduate study. Similarly, I sincerely appreciate Mr. Phamotse, my former high school history teacher. To women in History Ms Ralebitso and Ms Ntsane thank you bo-mme, you went out of your way to support the upcoming historian unconditionally. Your insights and expertise have been invaluable to me during this process. Your willingness to share resources and offer advice has truly made a difference in the quality of my work.

My sincere appreciation goes out to Princess Senate Gabasheane Masupha. She was essential in adding knowledge, clarity, and ideas that substantially improved the research's quality and content. To my co-supervisees, Moqiti, Ts'ele, and Mokoena. I am truly grateful for the opportunity to have worked alongside such talented and dedicated co-supervisees. During this difficult period of study, the friendship of Motsepe, Mokoena, Phaila, Maboee, Mandlovu, Koali, and Leotla has been a source of support and encouragement. Thank you, my buddies.

My family members are not left out of my acknowledgements as I sincerely appreciate, my brothers, sisters, and nieces whose love and encouragement have given me the strength to persevere through challenges and pursue my educational dreams with confidence. Nozi, your role in our lives has been nothing short of extraordinary.

Finally, I would like to express my gratitude to the National Manpower Development Secretariat of the Government of Lesotho for providing the student loan that allowed me to complete my Master's education.

DEDICATION

To my late mother, Mamatela Roxy Khahliso Raleting Semuli

LIST OF ABBREVIATIONS

WILSA.....Women and Law in Southern Africa

FIDA.....Federation of Women Lawyers Lesotho

LLS.....Lesotho Law Society

SALC.....Southern Africa Litigation Centre

ACHPR..... African Commission on Human and Peoples Right

SADC.....Southern African Development Community

GEM.....Gender Entrepreneurship Media

MCC.....Millennium Challenge Corporation

CEDAW.....Convention on The Elimination of All Forms of Discrimination Against Women

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Chapter One: Introduction

1.1 Background to the Study

Chieftaincy and leadership are integral to many African societies' cultural and historical fabric, including Lesotho. Lesotho has a rich tradition deeply intertwined with its leadership and the patriarchal chieftaincy system. Lesotho has a hereditary monarchy built on a dualist form of governance consisting of a contemporary democratic parliament and a long-standing customary system. Since custom and tradition are valid sources of law, common law, and customary law recognize the institution of chieftaincy.¹ Based on gender and sex, women and daughters, in particular, are excluded from the right to succeed in chieftainship under customary law, which is recognized by common law. The patriarchal nature of the Lesotho monarchy like most African societies, does not permit a girl child to become a king even if she is the first-born member of the royal family.² Section 3(1) of the Laws of Lerotholi states that in a case where a chief dies leaving a minor son, the senior widow or the younger brother may act as a regent until such son becomes an adult when the widow or the uncle shall yield the throne to him. Section 11(1) provides that the heir to the throne shall be the first male child of the married wife, and if she has no male child, then the first-born male child of the next wife shall be the heir.³ Section 11(2) provides that if there is no male child in any house, the senior widow shall be the heir, however, according to the custom she was expected to consult the relatives of her deceased husband for advice.

Although the Lesotho Constitution spells out that everyone is equal before the law and has the right to equal protection and benefit from the law, women are still excluded from some benefits relating to inheritance. Most first-born women are overlooked when it comes to the inheritance of

¹ Basutoland National Council Report on Constitutional Reform and Chieftainship Affairs, Morija; Maseru, 1958.

² H. Ashton, *Political Organization*, London: Oxford University Press, 1952, p.52.

³ Laws of Lerotholi section 3 (1)

the estate of a late father or from occupying the position of traditional leadership if there is a male child born in the family despite the existence of an elder sister. Culture is used as an excuse to exclude females from inheritance but to benefit male children in most Black South African ethnic groups. For instance, when it comes to the occupation of the position of a traditional leader the family will rather wait for the male child to come of age while another mature man (regent) acts on his behalf even if there is a legible female adult born of the deceased.⁴

Batlokoa people who were part of the Sotho-speaking people, patriarchy and primogeniture rule made it impossible for Nthatisi to become the heir to the throne after the death of her father, Kgosi Mokotjo because she was a female. Sekonyela her brother was the heir but their mother, 'Manthatisi, however, became the regent during her son's minority between 1813 and 1824. This was not new among the Batlokoa people because the same thing happened to Mokotjo's mother Ntlo-Kholo who had married Montoedi. When Montoedi passed away, Ntlo-Kholo assumed the reigns until Mokotjo came of age. Sehalahala who was Mokotjo's half-brother opposed Manthatisi's leadership and felt that she was a foreigner (as she was born a Mosia) and the people wanted to be ruled by a 'pure' Motlokwa. Others resented being led by a woman. Despite this, Manthatisi remained resolute and headstrong as she led the Batlokoa.⁵

When Seeiso Griffith passed away in 1939, there was a crisis in the Paramount Chieftaincy's succession. His brother, Bereng Griffith, who had been denied to succeed him to the throne, aspired unsuccessfully to be Regent for the two-year-old Prince – Seeiso's son by his second marriage. Mantšebo who was Seeiso's first wife was, however, supported to become the Regent by the "Sons

⁴ A.Z. Nengome and M.N. Lambani, "Deprivation tendencies to chieftaincy ascension by first-born females among selected South African ethnic groups" *Gender and Behaviour*, vol.16, no.2, 2018, p.17.

⁵ T. Setumu, *Until Lions Document Their Heritage: Southern Africa's Fighters Against Colonial Plunder*, Makgabeng Heritage Research & publishing, 2014, p. 165.

of Moshoeshoe" and the British Resident Commissioner. This development created conflict within the ruling house because Mantšebo was not the mother of the heir to the throne.⁶ The matter was then taken to the Basutoland High Court in 1942. The Court ruled that the Laws of Lerotholi were not legally binding, therefore, the appointment of 'Mantsebo as the regent was upheld against Bereng. The presiding Judge, Lansdown further noted that women could hold the office of a King, and that 'by statutory law, the High Commissioner chose whom he pleased to be Regent.

Mantsebo was her husband's first wife or senior wife and bore him a daughter, Ntšebo who was ineligible to succeed to the throne because of gender. Bereng Griffith, Mantšebo's brother-in-law wanted chieftaincy and his supporters refused to recognize 'Mantšebo as regent and sued her in the High Court of Basutoland. Bereng put forward an argument that traditional law and custom prevented women from functioning as chiefs. He also contended that Seeiso and 'Mantšebo had married under the levirate custom and therefore, as his brother's widow, he was obliged to marry her. He insinuated that women have authority only if they are married. In this case, some chiefs supported the claim of Mantšebo to be chief and fortunately, a direct descendant of the Senate who is her grandfather Gabasheane was one of them.

Senate Gabasheane Masupha is the first-born child of the late Principal Chief David Gabasheane Masupha and his first wife, Chieftainess Masenate Gabasheane Masupha. When Principal Chief Masupha passed away in August 1996, his first wife, Chieftainess Masupha became chief as provided for under section 10(4) of the Chieftainship Act. The Chieftainess passed away on 6 December 2008, leaving the position of chief open. On 19 February 2009, a family meeting was held and Lepoqo David Masupha, the son of Principal Chief Masupha and his second wife was

⁶ E.A. Eldredge, "Government and Change in Lesotho, 1800-1966: A Study of Political Institutions by L. B. B. J. Machobane Review", *the Journal of Modern African Studies*, Vol. 32, No. 2, 1994, p. 350.

named as the successor to the chieftainship. The younger brother of Principal Chief Masupha, Sempe Gabasheane Masupha, challenged the appointment of Lepoqo David Masupha, and instituted proceedings in the lower court. The parties raised several procedural concerns, but the primary legal dispute was whether section 10 of the Chieftainship Act was unconstitutional to the extent that it denied daughters the right to succeed to chieftainship based on sex.⁷

1.2 Aim and Objective

The study aims to explore the historical roles of men and women within the traditional Basotho society, particularly focusing on how matriarchy and patriarchy have influenced leadership and succession. By focusing on the specific case of Senate Gabasheane Masupha, the study aims to provide a detailed examination of a significant legal and cultural dispute regarding female succession in a traditionally male-dominated system. This includes the historical context of her claim and its impact on Basotho society.

Objectives

The objectives of the study are as follows: to investigate the cultural and historical relevance of Lesotho's matriarchal royal system; to look into the institution's current situation and its function in contemporary Lesotho; to examine the institution's problems with succession, especially in light of Princess Senate Gabasheane Masupha's situation; to investigate the effects on the institution of matriarchal kingship of Lesotho's legal and cultural frameworks controlling succession; To evaluate how succession challenges affect the institution's relevance and continuity; to add to the continuing discussion on gender, culture, and leadership in Lesotho and abroad; To offer suggestions for resolving the succession issues and guaranteeing the longevity of the matriarchal

⁷ Constitutional Case No.5/2010 [2013] LSHC 9 (03 May 2013).
<http://www.lesotholii.org/ls/judgment/high-court/2013/9>.

kingship institution. By fulfilling these goals, the study hopes to clarify the intricate problems of Lesotho's matriarchal royal system and provide guidance for initiatives to fortify and conserve this significant historical and cultural institution.

1.3 Research Questions

This study provides a springboard for understanding the intricate problems of matriarchy, the institution of kingship, and succession in Lesotho, with an emphasis on the case of Princess Senate Gabasheane Masupha as a potential source of further analysis and reform. Therefore, the study will be guided by the following research questions:

1. What is the Lesotho matriarchal history and culture, and how has it influenced the institution of kingship? What effects has the patriarchal system had on Lesotho's kingship institution's succession norms and practices?
2. What are the political and legal structures controlling succession in Lesotho, and how do they affect the role that women play in the institution of kingship?
3. In what ways does Princess Masupha's example illustrate the conflicts that exist between contemporary human rights norms that support gender equality and customs from her culture?
4. What can be inferred from other nations or societies that have effectively included gender equality in their customary leadership frameworks?
5. How may the instance of Princess Masupha serve as a springboard for more extensive conversations in Lesotho and elsewhere about gender, power, and tradition?
6. What effects will this research have on advocacy, practice, and policy initiatives that seek to upend patriarchal practices and advance gender equality in Lesotho and around the world?

1.4 Statement of Research Problem

The system of kingship in Lesotho has historically been patriarchal, creating significant barriers for women in leadership roles, despite the deep cultural legacy of matriarchal influence. This issue is particularly evident in the case of Princess Senate Gabasheane Masupha, who has been denied the right to ascend to the throne solely due to her gender, despite her royal ancestry. The exclusion of women from succession rights highlights broader issues of gender inequality, power dynamics, and the enduring influence of patriarchal traditions in Lesotho's chieftaincy.

The severity of this problem is far-reaching, as it not only perpetuates gender discrimination in leadership but also impacts social and economic structures. By barring women like Princess Masupha from positions of power, Lesotho's legal and political systems reinforce gendered hierarchies that limit women's participation in governance, ultimately stalling progress on gender equality and inclusive development. This creates a ripple effect, reinforcing patriarchal norms throughout society and excluding half the population from meaningful contributions to leadership, governance, and decision-making.

1.5 Justification of the Study

This study is crucial for its cultural, political and legal significance in Lesotho's history, particularly concerning the issue of matriarchal succession. The system of matriarchal royalty in Lesotho, though largely overshadowed by patriarchal norms, holds historical and cultural importance that deserves thorough exploration. For example, figures such as Queen Mantšebo, who served as a regent in the early 20th century, highlight the leadership roles women have historically played in Lesotho. Her case provides empirical evidence that, despite current exclusionary practices, women have been central to the monarchy. Investigating the complexities

surrounding Princess Senate Gabasheane Masupha's exclusion from the throne further illuminates the enduring tensions between tradition and gender equality in succession matters.

This research directly contributes to the ongoing conversation about gender equality by interrogating the legal and cultural barriers that continue to limit women's roles in leadership. For instance, studies have shown that gender discrimination in leadership directly correlates with broader societal inequalities, as evidenced by similar struggles in countries like Kenya, where women have faced legal challenges in seeking chieftaincy roles. The exclusion of Princess Masupha echoes global trends where women are systematically denied leadership positions due to entrenched patriarchal practices, even when they possess the same qualifications and lineage as their male counterparts.

Furthermore, this study addresses human rights issues within the framework of matriarchal kinship systems. Lesotho is a signatory to international human rights conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), yet its legal systems continue to uphold patriarchal succession laws. Empirical evidence from countries that have reformed similar practices, such as Rwanda's gender-inclusive policies in governance, demonstrates that promoting women's leadership has far-reaching positive effects on political stability and social progress. This study thus supports the need for legal and political reforms in Lesotho that align with international human rights standards.

The research is also critical for advocating political and legal reforms aimed at promoting inclusivity. By examining the legal framework of succession in Lesotho, this study can provide empirical insights for constitutional amendments. For example, South Africa's 2004 Constitutional Court ruling on the Shilubana case, which affirmed the right of a woman to assume traditional leadership, shows how legal precedents can be used to challenge patriarchal norms and support

gender equality. These reforms in Lesotho could lead to similar advancements, ensuring that women are no longer excluded from leadership roles solely based on gender.

Additionally, this study contributes to women's representation and empowerment by amplifying the experiences of women in leadership roles. By analyzing Princess Masupha's situation, the research challenges dominant patriarchal narratives and offers an alternative perspective on female leadership in Lesotho's traditional structures. Empirical evidence from other African nations like Uganda, where women have successfully taken on chieftaincy roles, shows that when women are included in leadership, it leads to more balanced decision-making and community well-being. This study is thus a critical contribution to understanding the potential for female leadership in Lesotho.

The historical relevance of this research extends to modern-day Lesotho by providing an understanding of how past practices of matriarchal leadership inform contemporary discussions on gender and succession. For instance, historical records of women like Manthatisi, who led the Batlokoa during a period of political instability, provide a precedent for female leadership in Basotho culture. These examples highlight the need to reassess current legal and cultural barriers preventing women from taking up leadership roles.

In addition, the study offers new insights into the dynamics of gender, power, culture, and tradition in Lesotho's kingship system, addressing the gap in existing research on matriarchy and succession. This research will provide policymakers, academics, and cultural guardians with a deeper understanding of how gender and leadership intersect in traditional systems. In other countries like Ghana, research on the role of Queen Mothers in the chieftaincy system has helped shape policies that promote gender inclusiveness in traditional governance structures. Lesotho stands to benefit from similar studies that can inform both cultural preservation and gender equality efforts.

By examining Princess Masupha's case and the broader context of matriarchy in Lesotho, this study closes a critical knowledge gap on the relationship between gender, power and tradition. It provides an empirical basis for advocating reforms that foster gender equality, inclusive leadership and cultural preservation in Lesotho while contributing to broader global discussions on these issues.

1.6 Literature Review

The study of Princess Senate Gabasheane Masupha's struggle to ascend the throne of her father challenges the traditional status quo of patriarchal practice in Lesotho, which is prevalent in most African countries. Perumal explains that succession to chieftaincy or traditional leadership is commonly characterized by a struggle against paternalism in most African cultural traditions because it is governed by the customary rule of male primogeniture. The thrust of the rule is that only males can be heirs. In practice, this means that it is either the eldest male child or the nearest male relative of the deceased who is entitled to become heir. The male primogeniture rule, like many customary rules and traditions, is infused with gender inequality and as such has been the subject of a constitutional challenge because arguably, it has contributed substantially to the current failure to realize gender equality in a democratic state founded on the values of non-racialism and non-sexism.⁸ This is no exception in Lesotho as, Eldredge indicates that men used customary law to establish women's subordination, noting that customary laws served as "... the means for, rather than the cause of, Basotho women's subordination".⁹

⁸ N. D. Perumal, "Harmonising cultural and equality rights under customary law — some reflections on *Shilubana and Others v Nwamitwa* 2009 (2) SA 66 (CC)", *Agenda: Empowering Women for Gender Equity*, no.84, 2010, p.102.

⁹ E.A, Eldredge, "Women in production: the economic role of women in nineteenth-century Lesotho". *Signs: Journal of Women in Culture and Society*, vol. 16, no.4, 707-731. p.728

Tebbe posits that it needs to be acknowledged that women have been assigned a subservient role by customary practices since time immemorial. Their stigmatization by their communities has played a critical role in discrimination against their gender for many years and it has exposed women to various obstacles of a historical and cultural nature to their active and equitable participation in the political and social realms, particularly in denying them access to traditional chieftaincies.¹⁰ Whereas in Lesotho, the Laws of Lerotholi govern succession to chieftainship and permit only a male child to inherit the seat, they effectively exclude women from leadership positions and reinforce gender inequality in traditional authority structures. They further stress the fact that traditional chieftaincy, according to the rules of patrilineal succession, was always inherited by the eldest son of the chief.¹¹ Eddie explains that the British Monarchy is the oldest and strongest serving that has been established for centuries whereby the right and title to the crown are through birthright.¹² Beemer asserts that the first crowned queen was Mary in 1553 she was a “queen regnant” and was succeeded by Queen Elizabeth I in 1558 who was her sister. She was a single woman in a traditional role.¹³

Clancy shows that succession to the British throne is governed by a set of rules and laws, notably the Act of Settlement 1701, the Royal Marriages Act 1772, and more recently the Succession to the Crown Act 2013. The British monarchy operates under absolute primogeniture, meaning that the eldest child regardless of gender of the reigning monarch is the first in line to the throne.¹⁴

¹⁰ N. Tebbe, “Inheritance and Disinheritance: African Customary Law and Constitutional Rights”, *The Journal of Religion*, vol. 88, no. 4, 2008, p.473.

¹¹ Laws of Lerotholi 1993

¹² C. A. Edie, “Succession and Monarchy: The Controversy of 1679-1681”, *The American Historical Review*, Vol. 70, No. 2, 1965, p.355. pp. 350-370

¹³ C. Beemer, “The Female Monarchy: A Rhetorical Strategy of Early Modern Rule”, *Rhetoric Review*, Vol. 30, No. 3, 2011, p. 258.pp. 258-274

¹⁴ L. Clancy, “The Corporate Power of the British Monarch: Capitalism, Wealth and Power in Contemporary Britain”, *Sage Journals*, vol. 69, iss.2, 2020.

Monk adds that the Succession to the Crown Act 2013, removed the historical requirement that an heir to the throne must obtain the consent of the other Commonwealth realms.¹⁵ Clancy adds that any significant changes to the line of succession would require an Act of Parliament. This ensures that any modifications to the rules of succession must be debated and approved by the United Kingdom Parliament and potentially other Commonwealth legislatures.¹⁶ In Lesotho like any other Commonwealth country that copied some elements of monarchy in Britain, the country uses the Chieftaincy Act of 1968 when it comes to issues concerning the inheritance to chieftaincy whereby a male first child is the one that is found to be eligible for the throne.¹⁷ This also affects Lesotho as it is a member of the Commonwealth of Nations and as a rule for its members, their constitution should associated with or comply with commonwealth values.

However, Nyane asserts that Moshoeshe as the founder of the Basotho nation did not accede to power through primogeniture; the rule probably started gathering momentum with his first son Letsie. It is imperative to note, though, that the fact that Moshoeshe I did not accede to supremacy through primogeniture has led other commentators, to argue that succession to office of King is not necessarily by right of birth. It is argued that the Sesotho adage that *Morena ke Morena ka Batho* (the chief is chief because of the people) is a broader principle that undergirds governance in the Sesotho way. It is a maxim to demonstrate not only the democratic nature of the Sesotho mode of government but it is also a procedural principle that anchors the role of the people in the process of chiefly succession.¹⁸

¹⁵ D. Monk, “The Role of the Monarchy in Modern Democracy: European Monarchies Compared”, *International Journal of Law in Context*, vol.16,2020, p. 495.

¹⁶ L. Clancy, “The Corporate Power of the British Monarch: Capitalism, Wealth and Power in Contemporary Britain”, *Sage Journals*, vol. 69, iss.2, 2020.

¹⁷ Lesotho Chieftainship Act 22 of 1968

¹⁸ H. Nyane, “The Constitutional Rules of Succession to the Institution of Monarch in Lesotho”, *PER / PELJ* 2019(22) - DOI <http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>, p.6.

Mensah contends that before the advent of European colonial rule in Africa, each ethnic group had devised and designed their mechanism for resolving disputes and administering justice across the continent by customs and laws that were recognized and accepted by the people. Although these customs varied from one traditional area to another, they served the purpose of protecting and safeguarding the fundamental human rights of the people without compromising the security of the community.¹⁹ Dodo argues that in Africa there were matrilineal societies where women had leadership roles in governance structures as advisors, regents, soldiers, army commanders, and bodyguards amongst others. She goes on to cite an ancient Kingdom in Congo where there were female regents and kings such as Donna Veronica and Donna Susanne di Nobrena and Queen Amina of the Songhai kingdom in Niger during the 15th century. Queen Amina is believed to have been a strong fighter who successfully fought her neighbours and managed to build cities, receiving taxes from other chiefs, and is known for introducing the cola nut in Niger.²⁰ However, the law that is being used in Lesotho for the offices of chieftainship is the Chieftainship Act 1968, section 10 sub-section 2, whereby a firstborn son can inherit the throne.²¹

According to South Africa's constitutional, dispensation is based on the premise that all existing laws are subject to the Constitution of the Republic of South Africa 1996, including African customary law, and that all laws are limited only by the Constitution.²² South African customary law is a body of law by which millions of South Africans regulate their lives in a multicultural society. But Mmisinyane argues that most of the South African traditional leadership still uses male primogeniture whereby women are still considered ineligible to be traditional leaders in

¹⁹ I. Owusu-Mensah, "Politics, Chieftaincy and Customary Law in Ghana's Fourth Republic", *The Journal of Pan African Studies*, vol.6, no.7, 2014, p.269.

²⁰ O. Dodo, "Traditional Leadership Systems and Gender Recognition: Zimbabwe", p.43.

²¹ The Chieftainship Act of 1968

²² Constitution of the Republic of South Africa 1996.

respective of their seniority.²³ According to the Constitution of Lesotho, section 45 gives supremacy to customary law when it comes to succession to the office of the king.²⁴ This was even seen by the court's unison in terms of customary law and its position in the Constitution that a female could not be permitted to succeed in chieftaincy.²⁵

Molefe adds that aspects of gender discrimination that have received judicial attention have largely been confined to the intestate succession of a deceased's estate devolving according to the law of persons or family law. Little attention, either judicial or academic, has been given to the issue of sex discrimination as played out by the customary (constitutional) law rule of patrilineal succession in terms of which women may not ordinarily hold political office in the large majority of traditional African communities in the country.²⁶ This was confirmed by the Constitutional case that the courts of law were handling matters of succession, as Mmisinyane showed that this primogeniture is often challenged because it discriminates unfairly based on gender.²⁷ According to the Magistrate's court papers, the Senate is the only child of the first wife of Chief David Masupha and Masenate Masupha under their civil marriage. The chief then married their second wife under customary law under which their union was declared null by the marriage produced a son Lepoqo under which during court proceedings he was declared illegitimate. After the death of Chief Masupha the wife became the regent chief but in later years followed her husband, their daughter

²³ B. Mmisinyane, "the Role of Traditional Authorities in Developing Customary Laws in Accordance with the Constitution: Shilubana and others v Nwamitwa 2008 (9) bclr 914 (cc) 2009, vol.12, no: 3.

²⁴ Section 18 (1) of the Constitution

²⁵ Senate Masupha v Senior Resident Magistrate for the Subordinate Court of Berea (unreported) C of A (CIV) 29/2013.

²⁶ R. Molefe, "Ruling on women traditional leader stokes tension", City Press Newspaper 8 June 2008 11

²⁷ B. Mmisinyane, "the Role of Traditional Authorities in Developing Customary Laws in Accordance with the Constitution: Shilubana and others v Nwamitwa 2008 (9) bclr 914 (cc) 2009, vol.12, no: 3.

could not succeed them because of cultural norms of chieftainship succession. Senate was of age to be a chief but Lepoqo was still a minor so regency was an option during family council.²⁸

The Constitution of South Africa 1996 held a case of chieftaincy within the Valoyi community which originated from 1948 when Chief Fofeza Nwamitwa reigned for two decades until 1968 when he died without an heir. The firstborn could not be a chief because of gender so chieftaincy moved to his younger brother Richard. Richard died in 2001 after the country transitioned to constitutional democracy of 1994 which celebrates gender equality. This case ruled in favour of male primogeniture reasoning with the fact that a female cannot become a chief in terms of customs and traditions.²⁹ Mmusinyane still argued that injustice applied in this case as in 1968 a female was denied chieftaincy even if free South Africa is supposed to have gender equality at its apex they still deny a female leadership based on traditional practices.³⁰ According to the Traditional Leadership and Governance Framework, the succession to chieftaincy has always used a primogeniture rule which may seem to be unjust and unfairly discriminatory towards women.³¹ In the case of Senate Masupha in 2012 the chieftaincy laws of 1968 were still being used that only stipulate a male succession to the throne.³² The high court sat as a Constitutional court on the matter of Senate and Mamathe chieftaincy, the basis of the case was the exclusion of unmarried women from Succession to Chieftainship and Whether Section 10 of the Chieftainship Act is unconstitutional for being discriminatory based on sex.³³

²⁸ Section 10 of the Chieftaincy Act 22 of 1968

²⁹ Constitution of the Republic of South Africa Act 108 of 1996

³⁰ B. Mmusinyane, "the Role of Traditional Authorities in Developing Customary Laws in Accordance with the Constitution: Shilubana and others v Nwamitwa 2008 (9) bclr 914 (cc), 2009, vol. 12, no: 3, p.17.

³¹ Traditional Leadership and Governance Framework Act 41 of 2003

³² Senate Masupha v Senior Resident Magistrate for the Subordinate Court of Berea (unreported) C of A (CIV) 29/2013.

³³ Constitutional Case No.5/2010

Mmusinyane made it clear that it should be noted that though in the past it was not permissible by the Valoyi that a female child be heir, in terms of democracy and the new Republic of South Africa Constitution it is now permissible that a female child be heir since she is also equal to a male child. The matter of chieftainship and regency would be conducted according to the Constitution of the Republic of South Africa.³⁴ The constitution of South Africa considered many as one and female views were part of the constitution to be treated fairly and equally to their counterparts.³⁵ But Mireku also indicates that according to the Constitutional Court, Customary law is living law and will in the future inevitably be interpreted, applied and when necessary, amended or developed by the community itself or by the courts. This will be done given existing customs and traditions, previous circumstances and practical needs, and of course the demands of the Constitution as the supreme law.³⁶ The 1996 Constitution of South Africa has made progressive objectives harmonizing customary practices with constitutional values in enabling women to occupy traditional chieftaincy thrones.³⁷ The Constitution of Lesotho Section 10, sub-sections 18 and 19 in Chapter II which has the heading ‘Protection of Fundamental Human Rights and Freedoms’, entitles every person free from any sort of discrimination and equality before the laws and equal protection of the law.³⁸

Ntshabele elucidates that the succession of the daughter of the late traditional leader of the Bafokeng clan, in the North-West Province after her father died without an heir. Although she got the position to the throne her descendants are not entitled to it since they are not linked to the royal

³⁴B. Mmusinyane, “the Role of Traditional Authorities in Developing Customary Laws in Accordance with the Constitution: Shilubana and others v Nwamitwa 2008 (9) bclr 914 (cc), 2009, vol. 12, no: 3, p.15

³⁵ The Constitution of South Africa 1996

³⁶ O. Mireku, “Customary law and the promotion of gender equality: An appraisal of the Shilubana decision”, *African Human Rights Law Journal*, no: 10, 2010, p.515.

³⁷ Constitution of the Republic of South Africa 1996

³⁸ The Constitution of Lesotho 1993.

family. The children are not royalty and the family is patriarchal so there is a provision.³⁹ Lambani and Nengome argue that even though the South African Constitution thoroughly stipulates that everyone is equal before the law and has a right to equal protection and benefit of the law, women are still excluded from some benefits relating to inheritance. They emphasize that most first-born females are overlooked when it comes to the inheritance of the state of a late father or when occupying the position of traditional leadership if there is a male child born in the family despite the existence of an elder sister.⁴⁰ However, in the same province, Molefe illustrates a controversy by the objection which has been raised since 199 regarding the traditional chieftaincy claim by Refiloe Mabalane of the Baphiring community. Despite her being the eldest of six children and a male heir being number five she was denied this right because of gender and this was only because the chieftaincy throne has traditionally been exclusively reserved for men.⁴¹ They state that Lesotho is no exception as Chieftainship prevents females from holding that position because of their gender.

According to Van Rensburg the fact that more communities seem to accept women as their leaders reflects the progress of true gender transformation in chieftainship. The judgment in cases regarding female chieftaincy must be seen as a classic example of the application of customary law by the traditional authority in line with the Constitution and it reflects the plight of women under customary law. Rensburg further elaborates that the Constitution can be of massive assistance in issues regarding female discrimination.⁴² According to Patel from the Southern

³⁹ D. Ntshabele, "Reflections about gender equality in the institution of chieftainship in Foundation of Tertiary Institutions of the Northern Metropolis (FOTIM) International Conference", *Gender Studies Here and Now*, 17-19 January 2006

⁴⁰ A.Z. Nengome and M.N. Lambani, "Deprivation tendencies to chieftaincy ascension by first-born females among selected South African ethnic groups" *Gender and Behaviour*, vol.16, no.2, 2018, p.19.

⁴¹R. Molefe, "Judgment gives me the courage to fight on", *City Press Newspaper*, 2008, p. 11.

⁴²A.M.J, Van Rensburg, "The Judiciary and its Constitutional Mandates to Develop and Apply Customary Law", *Obiter*, 2001, p. 217.

African Litigation Centre, during court proceedings of the case of Masupha, the Court used the provision in the Chieftainship Act that allows the senior wife to inherit the title as a caretaker if there are no living first-born males from any of the deceased's marriages.⁴³

Kumar implies that Botswana has a dual legal system that recognizes both customary law and common law. The Botswana legal system recognizes the rights of the country's indigenous people to have customary law accommodated within the communities they live in.⁴⁴ Botswana has the Preamble of the Customary Law Act: Chapter 16:01 of 1969, which provides for the application of customary law in certain actions before the courts of Botswana, to facilitate the ascertainment of customary law.⁴⁵ However, Botswana National Reports defend that the question of ascertainment of customary law is often a challenge with the Government of Botswana acknowledging that "customary law is not written and has variations among different communities".⁴⁶ Also in Lesotho Nyane claims that the rules that govern succession to the office of King in Lesotho are largely customary. The Constitution of Lesotho, 1993 provides that succession to the office of King shall be regulated in terms of customary law.⁴⁷

Richardson elucidates that Botswana has numerous ethnic groups of which each is led by a paramount chief who presides over the entire group of village chiefs, sub-chiefs, and headmen. All these positions are traditionally hereditary and these people are administering customary law

⁴³ S. Writer, 'the girl who dared swim against the tide', *Public Eye*, 9 August 2013

<http://www.southernafricalitigationcentre.org/cases/ongoing-cases/womens-rights/>

⁴⁴ A.R. Kumar, Customary Law and Human Rights in Botswana. <http://www.du.edu/korbel/hrhw/working/2009/52-kumar-2009.pdf> last accessed on 19 September 2023.

⁴⁵ Botswana Customary Law Act: Chapter 16:01 of 1969.

⁴⁶ Botswana; National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1; Human Rights Council Working Group on the Universal Periodic Review Third session, Geneva, 1-15 December 2008; A/HRC/WG.6/3/BWA/1 5 September 2008

⁴⁷ H. Nyane, the Constitutional Rules of Succession to the Institution of Monarch in Lesotho. *Potchefstroom Electronic Law Journal*, vol.22, 2019, p.1–29. <https://doi.org/10.17159/1727-3781/2019/v22i0a4461>

through customary courts in their different areas.⁴⁸ Morapedi adds to this by saying most African societies where chieftainship predates colonialism, ascendancy to the throne was also hereditary with those belonging to the royal house or closely related to it ascending if the position becomes vacant. He mentions that the pre-colonial Tswana states were autonomous or independent. In Botswana, political entities with each paramount chief being the head of his ethnic group did not owe allegiance to any other superior authority. Morapedi illustrates that in Setswana customary law, a chief was born and chieftainship was hereditary in the males.⁴⁹ The Constitution of Lesotho states that accession to the position of head of state is still by right of birth.⁵⁰ However, according to Mahao chieftaincy in Lesotho was an institution encompassed in the same breath as executive, legislative, judicial authority, and more. This at once makes a chief or even this institution, a judge, ruler, maker, guardian of the law, and repository of wealth and these were extensive powers that were invested in one institution. He continues to say this institution in practice was less about the personal power of the incumbent chief and more about the system of government. Chieftaincy as an institution is expressed through political administrative and judicial functions.⁵¹

Morapedi shows that in Botswana the throne cannot be vacant, if the heir is still minor the uncle could take the reins of power and rule as a regent and women could not be chiefs even in pre-colonial Tswana but they could be regents like Ntebogang of the Bangwaketse ethnic group who was a regent from 1924-1928 and Mmamoremi became the regent for her son among the Batswana in the 1930s.⁵² the Constitution of Lesotho stipulates also that the throne cannot be vacant if the

⁴⁸ A.M. Richardson, "Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform", *Human Rights Brief*, vol.11, iss.2, 2004, Art.6, p.2.

⁴⁹ W. G. Morapedi, "Chieftainship and Modernity: the case of Botswana", *Boleswa Occasional Paper in Theology and Religion*, vol.1, 2006, p.98.

⁵⁰ The Constitution of Lesotho 1993, Section 45.

⁵¹ L.N. Mahao, *Colonial Rule and the Transformation of Chieftaincy in Southern Africa: A Case Study of Lesotho*

⁵² W.G. Morapedi, "Chieftainship and Modernity: the case of Botswana", p.100.

heir is minor the widower may act in her place if there is no one the uncle in line of succession takes the place.⁵³ Nyane established the origins of the customary law of succession in Lesotho can be traced back to the 19th century when Moshoeshoe founded this nation from various Sotho-speaking people who were refugees of Lifaqane. The rules that govern custom relating to custom succession can safely be traced back to him as his sons applied them to the office of chieftainship. However, Machobane indicates that it should be clear that Moshoeshoe himself did not ascend to the throne through the right of birth as it cannot be established with certainty.⁵⁴

Out and Nabiebu assert that Nigeria has about 500 ethnic nationalities with distinctive native laws and customs laws that govern and regulate inheritance and succession.⁵⁵ They further explain that the Efik customary rule of inheritance is not patrilineal or of primogeniture, that is, it does not only allow male children to inherit but also the females can. The daughters can be appointed as successors and also heads of families. The Efik has the patriarchal part, which originated from the Hebrews and Jewish people whereby a father is a family leader, this patriarchal part is influenced by culture and tradition.⁵⁶ The laws that govern succession in Lesotho came to light in 1903 under Paramount Chief Lerotholi the son of the Letsie. This was after the Cape Colony Report of Commission on Laws and Customs of the Basotho 1872. The chief used this opportunity to draw and regulate laws and rules for succession to avoid the female husbandry saga that happened in the royal house. This made him legitimize himself as the rightful heir of Letsie and made the first

⁵³ Section 10 of the Chieftaincy Act 22 of 1968

⁵⁴ L. B. B.J. Machobane, *Government and Change in Lesotho, 1800-1966: A Study of political Institution*, the Macmillan Press LTD, London, p.5.

⁵⁵ M. T. Out and M. Nabiebu, Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis” *European Journal of Social Sciences*, Vol. 62 No:2, 2021, p.52

⁵⁶ M. T. Out and M. Nabiebu, Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis” *European Journal of Social Sciences*, vol. 62, no: 2, 2021, p.52.

law of the 1903 Laws of Lesotho succession. He made sure the first male child had the right to chieftaincy and inheritance.⁵⁷

According to Dada even though the general regulation of a patrilineal system is that females have no right to succession Efik customs are permissive to this discrimination. The female children if appointed as heads of the family are not expected to marry as their children would be expected to perpetuate the lineage. The Efik customary law is the democratic will of surviving members of the family that overrides the principles of patriarchy.⁵⁸ Out and Nabiebu denote that this is different for the Ibo ethnic group as the rules of inheritance are dominated by the principle of primogeniture that is fully based on the patrilineal system. The males share the inheritance lands and houses but the females whether daughters of widows have no right to inheritance whereby the deceased had daughters only one would be persuaded not to marry but remain in the family to bore an heir.⁵⁹ Machobane explains female husbandry that Moshoeshoe performed to his first grand-daughter Senate, the girl was not to marry a man but she married a woman, and that women had to sire children for her using one male from the royal family.⁶⁰ Nyane asserts that Senate Masupha was not married when she claimed her father's throne, the royal family council makes decisions in alignment with the constitution of Lesotho 1993 and this Constitution does not involve the girl child in its provisions.⁶¹ According to the Constitution of Lesotho, section 45 gives supremacy to customary law when it comes to succession to the office of king, and customarily a girl or even a

⁵⁷ Laws of Lerotholi part, S 2, 1903 version.

⁵⁸ O.E. Dada, "Intestate Succession and Administration of Estate Under the Customary", *A Paper Presented at the Induction Course for Newly Appointed Judges of the Area/Sharia/Customary Courts, 3rd – 5th July, 2023.*

⁵⁹ M. T. Out and M. Nabiebu, "Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis", p.53

⁶⁰ L.B.B.J. Machobane, "Gender, Succession and Dynastic Politics: the Saga of Senate and her son Motšoene Molapo Moshoeshoe, 1858-1930", *Review of Southern African Studies*, vol.4, no.1, 2000.

⁶¹ H. Nyane, "The Constitutional Rules of Succession to the Institution of Monarch in Lesotho", *PER / PELJ* 2019(22) - DOI <http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>, p.20.

woman is a man's responsibility to take care of.⁶² As to this case, the courts were in unison in terms of customary law and its position in the Constitution that a female could not be permitted to succeed in chieftaincy.⁶³

Out and Nabiebu present that in the Yoruba Customary law of inheritance and succession, only the deceased's children both male and female can inherit. Both legitimate children share equally, however, the eldest male child is automatically in control, management, and trusteeship of their deceased father's estate. This is because the eldest succeeds as head of the family but the siblings have to be consulted and their consent obtained before family property can be alienated.⁶⁴ Dada concludes that under customary law in Nigeria, various ethnic groups' people generally qualify for the right to inheritance for they are raced on blood relationships.⁶⁵ Juma elaborates that there are two key principles in the Basotho law of succession. The first is that of male primogeniture which is embodied in section 11 (1) of the Laws of Lerotholi, which provides that the heir will be the first male child of the first married wife and if there is no male child in the first house, then the firstborn male child of the next wife married in succession. Male primogeniture is a common practice in most traditional communities in many parts of Africa.⁶⁶

1.7 Methodology

The study employed a qualitative research method to explore the interplay between matriarchy, kingship and succession practices in Lesotho. The qualitative method was based on both secondary

⁶² Section 18 (1) of the Constitution

⁶³ *Senate Masupha v Senior Resident Magistrate for the Subordinate Court of Berea* (unreported) C of A (CIV) 29/2013.

⁶⁴ M.K. Out and M. Nabiebu, "Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis", *European Journal of Social Sciences*, vol.62 no:2,2021, p.54

⁶⁵ O.E. Dada, "Intestate Succession and Administration of Estate Under the Customary", *A Paper Presented at the Induction Course for Newly Appointed Judges of the Area/Sharia/Customary Courts, 3rd – 5th July, 2023*.

⁶⁶ L. Juma, "The Laws of Lerotholi: Role and Status of Codified Rules of Custom in the Kingdom of Lesotho", *Pace International Law Review*, vol.23, Iss. 1, 2011, p.123.

and primary sources. The secondary sources were drawn from relevant books and journal articles, while the primary sources included interviews and archival materials. The interviews followed an ethnographic design, gathering information from individuals who worked closely with traditional authorities and had a deep understanding of Basotho's socio-cultural dynamics. This approach provided a rich account of Lesotho's chieftainship.⁶⁷ The purposively targeted interviewees included chiefs, relevant officials from the Ministry of Local Government and Chieftaincy, traditional and cultural custodians, feminist activists, and culture and heritage historians.

The archives served as a repository of documents related to constitutional laws, Hansard, government records, court case papers, and newspapers, which were useful for this research. The interviews complemented the archival data and, where necessary, cross-checked available information for validation.⁶⁸ The use of both primary and secondary sources complemented each other and provided a clearer understanding of Senate Gabasheane Masupha's struggle for matriarchal recognition in Lesotho chieftaincy. They also provided insights into the past through clear interpretations of the available information.

During this research, ethical considerations were rigorously addressed to ensure respect for interviewees and the integrity of the study. Informed consent was obtained from all interview subjects, with clear communication about the research's purpose and rights. Privacy and confidentiality were safeguarded by anonymizing sensitive data and securely storing all information. Accuracy and integrity were maintained through careful cross-checking of sources and proper citation. The research team ensured respectful representation of historical figures,

⁶⁷ S. Reeves, A. Kuper and B. David, "Qualitative Research: Qualitative Research Methodologies: Ethnography", *British Medical Journal*, Vol. 337, No. 7668.2008, p. 512.

⁶⁸ S. Reeves, A. Kuper and B. David, "Qualitative Research: Qualitative Research Methodologies: Ethnography", p.513.

considered the societal impact of their findings and adhered to archival access policies. Transparency in reporting and adherence to ethical publishing standards further ensured the research's credibility and ethical conduct.

1.8 Scope and Limitations

Scope: the study is geographically focused on Lesotho, examining the traditional kingship institution and its succession laws within this specific cultural and legal context. The research centres on the intersection of matriarchy, kingship, and succession, with a particular emphasis on gender dynamics and the challenges faced by women in claiming traditional leadership roles. Senate Gabasheane Masupha's case is used as the primary case study to illustrate broader themes and issues related to gender and succession in Lesotho. The study will analyze both legal frameworks: the Constitution of Lesotho and customary law (The Laws of Leretholi) and cultural practices that influence succession in traditional leadership.

Limitations: discussions about traditional leadership and gender roles are often sensitive. Cultural resistance or reluctance from some stakeholders to openly discuss these issues poses challenges to data collection and analysis. Time constraints significantly impacted the depth and breadth of the study; with a constrained timeframe, there may be insufficient time to conduct a comprehensive set of interviews with all relevant stakeholders. People who contributed massively to the project development. These include traditional leaders, legal experts, community members and women's rights activists. Time limitations restricted the researcher from conducting multiple or extended visits to relevant locations in Lesotho; hence, affecting the depth of ethnographic research and interviews.

1.9 Summary of Chapters

Chapter One: Introduction: This is the chapter that introduces the study. It provides the background of the study, literature review, research problem, the significance of the study, and research questions. This chapter also presents the aims and objectives of the study, methodology, and lastly limitations of the study.

Chapter Two: Matriarchy and Kinship Institution: This chapter deals with the discussion of the laws, acts, and provisions that deny the matriarchy in Lesotho, it gives clear notation of how matriarchy and kingship institutions work in the country. This is where clear indication of how the chieftaincy institution works with the laws that support it. It highlights the core of the kingship institution and why the country is known to be patriarchal over matriarchy.

Chapter Three: History of Women and Kingship Institution: This chapter explores the lives of women who played significant roles in Lesotho's kingship institution across different historical eras. It examines key figures such as Manthatasi, who, during the era of the Lifaqane, became the regent for her son Sekonyela, navigating her role as both a mother and a leader. The chapter also delves into the colonial era, highlighting Mantsebo, the first woman in Lesotho to serve as Paramount Chief through the regency of her stepson, Bereng. The chapter analyses the successes and challenges these women encountered within male-dominated institutions, demonstrating how their leadership shaped opportunities for future generations of women. It traces how their resilience and influence laid the foundation for women in Lesotho to pursue leadership roles, offering an in-depth look at their legacy and the ongoing struggle for gender equality in traditional leadership.

Chapter Four: Princess Senate Gabasheane Masupha and the Struggle for Matriarchy and Kingship Institution. This chapter finds how matriarchy was introduced by King Moshoeshoe I into the royal family and how he viewed the role of a girl-child and then it covers the recent

Princess Senate Gabasheane Masupha's life and her quest for her late father's throne to become a successor for it. This includes the struggles from the local courts to the court of appeal. This is the core of the study where she has based herself on the traditional ceremony that the founder of the Basotho nation performed on Senate Letsie to make her an heir to the throne because of the leadership qualities that she had over her brothers.

Chapter Five: The Aftermath of Princess Senate Gabasheane Masupha and the Struggle for Matriarchy and Kingship Institution: The case of Senate Gabasheane Masupha brought light on many aspects of culture that some of the Basotho people were not even aware of. This has led to many academic people writing about the Constitution of Lesotho and the Chieftaincy Act to educate the nation about them. This has even led to many organizations giving free guidance and education on issues of gender equality on all platforms of life including the kingship institution. This case has brought revolutionary awareness of women's rights as they should be treated equally with men's rights as they are both human rights.

Chapter Six: Summary and Conclusion: This is the chapter that highlights and summarizes the findings from previous chapters and offers general opinions about giving a girl child access to inheritance even in a chieftaincy throne or even immovable family assets.

Chapter Two: Matriarchy and Kingship Institution

2.1 Matriarchy versus Patriarchy

Chieftaincy originated years before Africa's encounter with European colonial administrators. The evolution of this institution was necessitated by the need for them to engage in sedentary lifestyles, to have individuals steer their affairs. It is interwoven in the social and cultural fabric of the land with the family head at the base of the traditional political hierarchy while the paramount chief is at its apex.¹ The term, chieftaincy includes queen mothers who are the female counterparts of chiefs, elected to and installed by those who select the chiefs. Under the paramount king/chief are the divisional chiefs, sub-chiefs and the village chiefs who are all accountable to the paramount chief through the hierarchy.² Lesotho's colonization by the British thus further shaped Basotho society in patriarchal beliefs and ways of life, thereby cementing and perpetuating women's subordinate social status. It also furthered the denial of power to women, by shaping power relations to favour the colonialists and Basotho men, against Basotho women.³

Matriarchy is a social system in which the power and leadership roles are controlled by females, and women are typically the primary authority figures in inheritance. Women are the ones that make the decisions that affect the whole community. Descent and inheritance are often traced through the maternal line. Descent in the father line is traced patriarchally. The Minangkabau ethnic group in Indonesia and the Akan people from West Africa parts like Togo, part of Ivory Coast and Ghana are some places where matrilineal societies are found.⁴ Property, names and titles may be

¹Anthony A. Costa, "Chieftaincy and civilisation: African structures of government and colonial administration in South Africa." *African Studies* 59, no. 1 (2000): 19.

²Kwabena Boateng and Stephen Afranie. "Chieftaincy: An anachronistic institution within a democratic dispensation? The case of a traditional political system in Ghana." *Ghana Journal of Development Studies* 17, no. 1 (2020): 27.

³Elizabeth Eldredge A. "Women in production: the economic role of women in nineteenth-century Lesotho." *Signs: Journal of Women in Culture and Society* 16, no. 4 (1991): 725.

⁴Barbara R. Hauser, "Born a Eunuch-Harmful Inheritance Practices and Human Rights." *Law & Ineq.* 21 (2003): 1.

passed down from mother to daughter. In matriarchy, women may play central roles in the organizations and structure of society, and they are responsible for matters related to family, community and governance. Matriarchies may attribute spiritual or religious significance to femininity with women holding key roles in religious practices and rituals. This can be seen in church leaderships like when the church seems to have dictatorial ideas than in the ordinary life where women are taken for granted. On the same note, David Crabtree states that women comprise the large majority of active church members and are the sustaining force in almost every congregation.

Archbishop Margaret E. Benson-Idahosa is the Matriarchy of Church of God Mission International and the wife of the late Archbishop Benson Idahosa. She was ordained in 1983 and consecrated Bishop in 1988 thus becoming the first female Pentecostal Bishop of such a big ministry in Africa. Mantsopa holds a very important place in the history of the chieftaincy of Lesotho as she was the first traditional and spiritual advisor as a woman to King Moshoeshoe.⁵ She also took on the role of coaxing rain through prayer. Mantsopa's role in coaxing rain through prayer exemplified her deep connection with the spiritual world and her respected position within her community. In performing rain-making rituals, Mantsopa engaged in a series of ceremonial actions and prayers designed to invoke divine intervention and ensure sufficient rainfall for the fertility of the land. Her role involved elaborate rituals that included prayers, sacrifices, and symbolic gestures aimed at appeasing the gods or spirits responsible for weather control.⁶ The BriBri people (of Costa Rica) are allowing people to be revered and thus women are the only people who can prepare the sacred

⁵Michelle Colman, "Religious traditions, heritage and land: dynamics in making a heritage site with contested claims to land a tourist attraction. A case study of Modderpoort." PhD diss., 2009.

⁶ Dalifa. H. D. Ngobese and Mogomme. A Masoga, A Cultural- Historical Appraisal of Three Selected Sacred Spaces of the Eastern Free State: Phenomenological Approach, *Alternation Special Edition* 25, (2019), 298.

cacao drink for their religious rituals. They also hold sway in economic activities, thus, the control over the resources and trade is under women. The Umoja ethnic group is known as “true-no man’s land” because men are banned, the Umoja people who are women show tourists their village as part of work and work to educate others about their rights⁷ Women have significant influence over social issues. In the Mosuo tribe in China, women don’t marry but if they choose to have a partner the mother plays the primary role in raising the children.⁸

In a matriarchal society, women exercise authority throughout social life and control power and wealth. Women are responsible for preserving and passing down cultural traditions, rituals and knowledge. This positions them as the primary educators and moral guides within the community. Unlike patriarchy, matriarchy is not embedded in structures and institutions in any culture in the contemporary world. While societies with patrilineal kinship systems are strongly patriarchal, societies with matrilineal kinship systems are not matriarchal. This is a common source of confusion. In matrilineal kinship systems, children primarily belong to their mother’s kin group, and inheritance passes through the maternal line, however, leadership is exercised by the senior men of the family. Instead of a woman’s husband, it is her brother or mother’s brother (her maternal uncle) who makes decisions about family resources and disciplines the behaviour of family members. Scholars who theorize the existence of ancient matriarchies suggest that those societies were not only matrilineal but also dominated by the leadership of women as well as the values of fertility and motherhood.⁹

⁷Dyah Sulistyningrum, Siti Drivoka Sulistyningrum, and Sri Sumarni. "A Systematic Review Of “Modern Matriarchy” Featuring The Khasi, The Mosuo, The Bribri, The Minangkabau, The Akana, The Umoja." In *English Language and Literature International Conference (ELLiC) Proceedings*, vol. 6, (2023):99

⁸ Karen McGee, “the Impact of Matriarchy Traditions on the Advancement of Ashanti Women in Ghana”, *University of San Francisco: a Digital Repository@ Gleeson Library Geschke Center*, (2021)1.

⁹ Mary, Becker, "Patriarchy and inequality: Towards a substantive feminism." *U. Chi. Legal F.* (1999): 21.

Patriarchy is a widespread gender ideology that positions men as rulers of private and public life. Within the household, the eldest male is recognized as head of the family, organizing the activities of dependent women and children and governing their behaviours. Family resources such as money and land are controlled by senior men. Men make decisions; women acquiesce. Beyond the family, men are accorded positions of leadership throughout society, and women are summoned to play a supportive and enabling role as marginalized subordinates.¹⁰ All forms of oppression draw support from common roots and other social systems oppressions coexist with the patriarchal structures. Ramakhula stresses the fact that patriarchy is an oppressive structure, which supports male domination. Under the rule of patriarchy, women are powerless and unable to exercise their rights as human beings. To correct the situation, radical feminists opt for an anti-militaristic, non-hierarchical society organized on female values. Patriarchy is a system in which social structures and practices are constructed in such a manner as to enable and perpetuate the domination, oppression, and exploitation of women by men.¹¹ Men predominantly occupy political offices and legislative bodies, making laws and policies as the parliament of Lesotho is made up of two houses, the Senate has 22 principal chiefs with only 5 women against 17 men (thus excluding 11 elected members who are not chiefs) and the National assembly has 120 members with 30 women as members and 90 men as members.¹²

Patriarchy is a form of mental, social, spiritual, economic and political organization/structuring of society produced by the gradual institutionalization of sex-based political relations created, maintained and reinforced by different institutions linked closely together to achieve consensus on

¹⁰ Mary. Becker, *Patriarchy and Inequality: Towards A substantive Feminism*”, p.25

¹¹ Thabang, Ramakhula, “the impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho”, Law Thesis University of Free State, 2022.

¹² Nolutshando, Phungula, *Creating a South African Sub-Regional Conflict Transformation Model: Conflict Recurrence in Lesotho*. Cambridge Scholars Publishing, 2024.

the lesser value of women and their roles. These institutions interconnect not only with each other to strengthen the structures of domination of men over women, but also with other systems of exclusion, oppression and/or domination based on real or perceived differences between humans, creating States that respond only to the needs and interests of a few powerful men. Patriarchy stands as the principal obstacle to the advancement and development of women. It operates in such a manner as to project women as inferior to men and incapable of any true contribution to society, more so in the public sphere, hence necessitating their relegation to the private sphere. Though women experience patriarchy in different forms and levels of domination, the control it affords men over them remains fixed.¹³ The inheritance laws in some societies more especially the patriarchal ones, favour men over women and legal systems that deny them voting ownership rights.¹⁴

Ramakhula explains that this control stands undefeated even despite the progress that has been made in advancing women's rights and advancing the use of merit over sex in appointments and promotions. This is because the patriarchal system still creates and enables obstacles that prevent women's advancement, even where they possess the necessary merit. The exclusion of leadership roles like the succession to chieftaincy through the Chieftaincy Act of 1968 in Lesotho and social and cultural norms that are deeply entrenched gender roles dictate that women's primary responsibilities are domestic and caregiving, limiting their participation in public life and professional careers.¹⁵ These obstacles are experienced by women both in the private and public spheres and manifest themselves through subordinating women in a myriad of ways. For example,

¹³ Thabang. Ramakhula, "the impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho", Law Thesis University of Free State, 2022.

¹⁴ Bina, Agarwal, "Gender and command over property: A critical gap in economic analysis and policy in South Asia." World development 22, no. 10 (1994): 1458.

¹⁵ Nasima Carrim, "New'men and 'new'women: Cultural identity work of husbands and wives related to housework and childcare." Asian Social Science 13, no. 11 (2017): 1-12.

boys are groomed from birth to see and approach life through a patriarchal lens, where women are projected as less powerful and of less value than men.¹⁶

Comparison between Matriarchy and Patriarchy

Attribute	Matriarchy	Patriarchy
Definition	A social system where women hold the primary power and leadership roles.	A social system where men hold the primary power and leadership roles.
Inheritance	Property and titles are often passed down through the female line.	Property and titles are often passed down through the male line.
Family Structure	Matrilineal descent is emphasized, and families are often organized around the mother's lineage.	Patrilineal descent is emphasized, and families are often organized around the father's lineage.
Gender Roles	Women typically have more authority and decision-making power in various aspects of society.	Men typically have more authority and decision-making power in various aspects of society.
Political System	Women hold positions of political power and make important decisions for the community.	Men hold positions of political power and make important decisions for the community.
Historical Examples	Some indigenous societies in pre-colonial Africa and Native American tribes.	Many ancient civilizations, feudal societies, and modern-day patriarchal societies.

¹⁶ Thabang. Ramakhula, “the impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho”, Law Thesis University of Free State, 2022.

Figure 1: Comparison between Matriarchy and Patriarchy, “What is Patriarchy?” by Alda Facio *Translated from the Spanish by Michael Solis (2013):1-5*<http://www.learnerwhr.org/wp-content/uploads/D-Facio-what-is-Patriarchy.pdf>(accessed date 30/01/2024)

Matriarchy and patriarchy represent two distinct social systems with contrasting attributes. While matriarchy emphasizes women's power and authority, promoting more fluid gender roles, participatory decision-making, and egalitarian power dynamics, patriarchy tends to reinforce traditional gender roles, hierarchical decision-making structures, and power imbalances. Understanding the attributes of both systems allows us to critically analyse their impact on society and work towards creating more inclusive and equitable social structures.¹⁷ Ramakhula argued that patriarchy is made up of several structures, one of which is patriarchal relations in the state, reflected through policies and actions that possess a systemic bias towards patriarchal interests, meaning patriarchy contributes to women’s exclusion from and subordination in politics. The patriarchal state is much gendered, and this is reflected through “... gendered political forces, actions have gender-differentiated effects, and a structure [is highly gendered]”. Amongst the implications lies the possibility of state compositions and policies having patriarchal undertones that protect and perpetuate patriarchy in different social spheres, even when seemingly pro-women.¹⁸

2.2 The Evolution of Chieftainship Institution

Before the establishment of the Basotho nation, the chieftainship of the Sotho-Tswana tribes was a simple institution. A few thousand people belonged to one tribe and were ruled by one chief.

¹⁷ Alda Facio, “What is Patriarchy?” *Translated from the Spanish by Michael Solis (2013):1-5*<http://www.learnerwhr.org/wp-content/uploads/D-Facio-what-is-Patriarchy.pdf>(accessed date 30/01/2024)

¹⁸ Thabang. Ramakhula, “the impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho”, Law Thesis University of Free State, 2022.

There was little, if any subordination of the chief to the chief and little if any, political cohesion between tribes even at times of great danger, as individual chiefs operated with a high degree of autonomy and were not subordinate to other chiefs. Each chief had significant control and authority within their territory or community. The chief ruled with the help of great men of the tribe who were called the “right hands” of the chief – (*Matona*). As in the old days a chief's greatness was judged by the size of his following, a chief was unwilling to rule in such a way as to encourage the people to leave him for another chief as it is said *Morena ke Morena ka Sechaba* (a chief is a chief because of the grace of the people). This provided a highly democratic control over the rule of the chief.¹⁹ As the Basotho nation grew in size and King Moshoeshoe's power grew, two factors led to the growth of the pyramidal hierarchy of the Basotho chieftaincy of today. The first was the joining of other tribes to the Basotho, thus, subordinating to Moshoeshoe and the second one was when other chiefs under him looked after the remoter parts of his growing country or even be his eyes and ears in areas where control was required.²⁰

The chieftaincy institution is completely controlled by traditional succession law that is usually described as ‘heredity modified by expediency’. This is explained by Duncan that normally succession would be by heredity but that if an heir were unsuitable, particularly in a crisis he would be passed over in favour of a better man or even a preferable member of his family.²¹ This practical rule for succession of the one-chief tribe was adapted by the Basotho when they developed subordinate chiefs. The appointment of a new chief involved a ceremonial process. Once the family agreed on who the new chief should be, they would take the chosen young man to the superior

¹⁹ Patrick Duncan, *Sotho Laws and Customs*, (Moriya, Morija Museums & Archives 2006):47.

²⁰ Patrick Duncan, *Sotho Laws and Customs*, p.47

²¹ Archibald, Duncan, *Kingship of the Scots, 842-1292: Succession and Independence*. Edinburgh University Press, 2016.

chief, bringing an ox as a gift. The ox was given to the superior chief so that the death of the deceased chief could be formally reported and “that he might drink the blood of his dead subject”, symbolizing the continuation of leadership. If the candidate was acceptable, the superior chief would agree to his succession. In front of a large gathering, the superior chief would publicly confirm the family's choice. From that moment, the new chief's appointment was officially recognized.²²

According to Duncan, the succession to the chieftainship shall be by the right of birth: that is the firstborn male child of the first wife married and if the first wife has no male child, then the firstborn male child to the next wife married in succession shall be the chief: provided that if a chief dies leaving no male issue the chieftainship shall devolve upon the male following according to the succession of houses. Thus, succession is through the male line only.²³ This is stipulated in the laws of succession to the office of chieftaincy in Laws of Lerotholi 1968. Laws of Lerotholi 1968, the succession to chieftainship shall be by right of birth: that is the firstborn male child of the first wife married: if the first wife has no male child, then the firstborn male child of the next wife married in succession shall be the chief. Section 10 (2), gives provision on Section 10 (1), the son of the first legal marriage succeeds the father in descending order.²⁴ Since the founding of the Kingdom of Lesotho by Moshoeshoe, the principle of chieftaincy was patrilineal succession. As Pule and Thabane point out, Casalis saw that at times chieftainship was violated when a successor or heir apparent lacked qualities that made one *Morena*, like when Mokhachane succeeded at the expense of his brother Libe who was so mean and contemptuous of his followers whom he

²² Patrick Duncan, “Sotho *Laws and Customs*”, (Moriya Museums & Archives 2006):48

²³ Patrick Duncan, *Sotho Laws and Customs*, 44

²⁴ The Laws of Lesotho 1968

compared to “flies collecting round the edges of a dish”. Chieftaincy is a very centralized state system that is very organized around a hierarchy.²⁵

Chieftaincy Pyramid

Figure

2

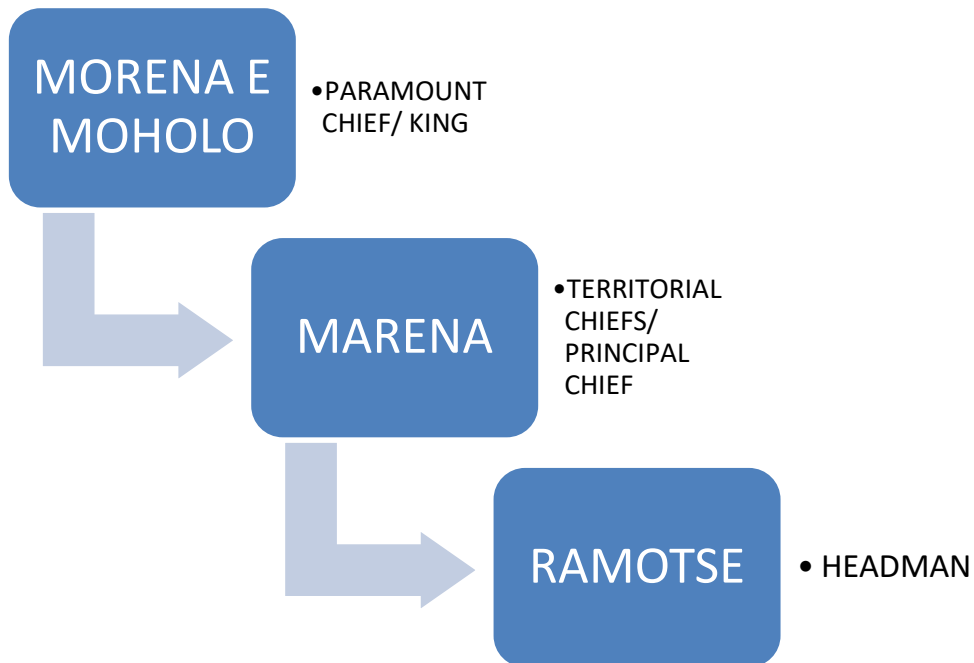


Figure 2: the Pyramid of Chieftaincy Hierarchy from The Constitution of Lesotho 1993

At the top of this pyramid is the King/paramount chief during colonial rule, then followed by the territorial chiefs lately known as principal chiefs who ruled the districts. They were followed by the headmen who were still chiefs but had limited responsibility as they exercised authority only at the village level. Although the chiefs ruled their people directly, they owed allegiance to the central authority of *Morena e Moholo, " sechaba sa Motlotlehi", (the people belong to the King the chief is to serve his purpose)*. The Constitution of Lesotho created the office of the King, who

²⁵ Neville. Pule and Motlatsi Thabane, “Essays on Aspects of the Political Economy of Lesotho 1500-2000”,(National University of Lesotho,2013):28

is both the Constitutional monarch and Head of State. The monarchy is hereditary, with succession based on customary law provisions and administered by the College of Chiefs. The role of the College of Chiefs is to elect the King by the customary law of Lesotho. Section 45 of the Constitution provides that when a vacancy occurs in the office of the king, the College of Chiefs shall designate the successor by the customary law of Lesotho, “in order of prior right”.²⁶ Both the King and the College of Chiefs are seen as custodians of the Basotho heritage. The College of Chiefs helps the King maintain the relevance and integrity of traditional practices in contemporary governance. The Constitution does not make provision for a woman to be appointed to the office of King, except if appointed as a regent. Section 45 goes further to state that the occupant of the office of King shall be appointed as per customary law provisions, which rely on the male primogeniture rule as also applied in appointment to chieftainship and inheritance.²⁷

2.3 Customary Law, Matriarchy and Chieftainship Institution

Custom refers to the practices and norms developed by people within a particular society to maintain conduct and order. Over time, these practices gain authority and are observed consistently, becoming what is known as customary law. Customary law in Lesotho, particularly concerning the succession to the offices of both the King and other chieftaincies, reflects the deeply ingrained patriarchal structure that has historically governed Basotho society. Customary law, therefore, refers to norms that evolved from practice and later became endowed with binding authority.²⁸ In Lesotho, the customary law rules governing succession to the office of the King are similar to those for any other chieftaincy position. These rules are rooted in pre-colonial traditions

²⁶ The Constitution of Lesotho Section 45 and 46

²⁷ The Constitution of Lesotho 1993, Section 46

²⁸David B. Coplan and Tim Quinlan, “A Chief by the People: Nation versus State in Lesotho” *Africa: Journal of the International African Institute* 67 no1, (1997):34.

but have been influenced and modified through colonial and post-colonial changes. Despite these changes, the principles of customary law continue to play a significant role in the succession to both the office of the King and principal chieftaincies. That notwithstanding, today the rules that govern succession to the office of king and that of the chief are largely the same, as they are both based on customary law. Thus, for customary succession, the two will hereinafter generally be treated interchangeably.²⁹

The Lerotholi Laws which were promulgated in 1903 are the main source of customary law in the Kingdom of Lesotho. The chieftaincy institution, rooted in customary law, is a cornerstone of social and political organization. Customary law governs various aspects of life, including succession, governance, and social conduct, and is traditionally patriarchal. However, there are instances where matriarchal elements play a significant role, either through practical necessity or cultural adaptations.³⁰ Part 1 of the Laws of Lerotholi under the deceased chief leaving heir who is minor, section 3 (1) states that the widow or the younger brother of the deceased chief may act as chief during the minority but when he comes of age, he may take the throne.³¹

The Laws of Lerotholi provide for heirship to the properties of the parents to be for only male children. There can never be a female heir and girls cannot inherit immovable property. That is the terrain of only male children. Under the Laws of Lerotholi, a customary widow has only the right of use over her property. She cannot dispose of the property nor sell it in any way without getting permission from the male side of his dead husband's family.³² This customary law does not give

²⁹ Thabang Ramakhula, "the impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho", Law Thesis University of Free State, 2022.

³⁰ Laurence, Juma, "The laws of Lerotholi: role and status of codified rules of custom in the kingdom of Lesotho." *Pace Int'l L. Rev.* 23 (2011): 92.

³¹ Laws of Lerotholi Section 3(1) 1959

³² Laws of Lerotholi 1903 section 11,13 and 14

justice to females both a girl and a mother, a girl is born with a boy and both at some stage they siblings and a female is a mother to both of them but this law changes everything the girl is at mercy of his brother's seniority in traditional inheritance and a mother now becomes a child to her son this is not fairness at all.³³

Women are significant only to bore children in chieftaincy and they become even more recognized if the child is a boy, because she is a chief's mother.³⁴ Succession to the office of chief generally and the office of king in particular, would be hereditary; based on the primogeniture rule. But certain exceptions are necessitated by peculiar circumstances. Duncan describes this scenario as "hereditary modified by expediency".³⁵ There is therefore an institution called a "family council" at which all matters of succession and inheritance are considered at least in the first instance. The family council, or college of chiefs in the case of succession to the office of king, is ultimately the final arbiter on matters of succession. What is known for certain is that in certain circumstances, like the imbecility of the first son, the council can decide against the rule.³⁶

The succession process includes the setting of the royal council which is the family council where matters relating to chieftaincy are discussed. They usually look at how the candidate is fit for the position if not even make recommendations for the next person who can be suitable for it still using the chieftaincy act on succession to the throne.³⁷ Succession is one of the laws that fall under the Customary laws of Basotho this is the people's way of living if they see fit that it no longer

³³ Interview with Mathabo, Botha-Bothe, 22nd December 2023

³⁴ Hoolo, Nyane, "The constitutional rules of succession to the institution of monarch in Lesotho." *Potchefstroom Electronic Law Journal (PELJ)* 22, no. 1 (2019): 25

³⁵ Patrick Duncan, *Sotho Laws, and Customs*, (Morija: Morija Museum and Archives, 2006):48

³⁶ Hoolo. Nyane, "The Constitution Rules of Succession to the Institution of Monarch in Lesotho", *Potchefstroom Electronic Law Journal* 22, no.1(2019) (<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>)

³⁷ Isaac Schapera "the Laws of Lerotholi in Basutoland", *African Studies* 11, no.4, (1952):155 <https://doi.org/10.1080/00020185208706884>

serves them like before clearly they have rights in the Constitution under human rights to make amendments to this law as to deal away with discrimination. Eldredge elaborates that this kind of discrimination that is supported by law undermines women and girl's dignity and economic potential in that most women and girls, do not see any need to strive to acquire any immovable property for they will be working hard only for the males to benefit. Some women accept the situation and suffer in silence for the atrocities they endure are backed by the law. Some choose to leave their villages and go to the towns for employment. If the law does not protect women, especially the law that is customary to them, it becomes difficult for them to find equity in all spheres of life.³⁸

Women, particularly queens and mothers of chiefs, wield considerable influence behind the scenes. They often act as advisors to male chiefs and can play crucial roles in decision-making processes. Despite the formal patriarchal structure, women have played critical, albeit informal, roles within the chieftaincy institution. Elder women, particularly mothers and wives of chiefs, often act as advisors and hold significant sway over decisions made by the male chiefs. This informal power is recognized within the community, even though it is not codified in customary law. As noted by Gill, the influence of women behind the scenes, particularly in family and community matters, is an essential aspect of governance in many Basotho communities.³⁹ Customary law in Lesotho allows for certain exceptions where women can assume temporary leadership roles, particularly in regency situations. When a chief dies and the heir is too young to rule, the widow of the chief or another senior female relative may act as a regent, managing the affairs of the chieftaincy until the male heir is of age. According to Ellenberger, these regency roles are crucial for maintaining

³⁸ Elizabeth, Eldredge, A., "Women in production: the economic role of women in nineteenth-century Lesotho." *Signs: Journal of Women in Culture and Society* 16, no. 4 (1991): 724

³⁹ Stephen Gill, "A Short History of Lesotho" (Moriya: Morija Museum and Archives, 1993),163.

stability and continuity within the chieftaincy during transitional periods. While these roles do not signify a permanent shift towards matriarchal leadership, they illustrate the practical adaptability of customary law in addressing leadership vacuums.⁴⁰

In matriarchy, where women hold primary power positions in leadership and social organization, contrasts sharply with the customary practices in Lesotho. Under customary law, women have been systematically excluded from inheriting chieftaincy titles and immovable property, reflecting a patriarchal structure rather than a matriarchal one. However, women could serve as regents for their minor sons, a role that allowed them temporary authority and a caretaker position within the chieftaincy institution. This regency provision, while giving women a significant role, does not equate to a matriarchal system as it is temporary and dependent on the presence of a male heir.⁴¹

In Lesotho, customary law rules governing succession to the office of *Morena e Moholo*, the law of succession in Lesotho, particularly as detailed in the Chieftainship Act, explicitly excludes women from inheriting chieftaincy positions and immovable property, which are reserved for male heirs according to customary laws. The laws are fairly similar to the rules governing succession to any other junior chieftaincy. In fact, according to one articulate oral Mosotho historian, Tumisang Letsie, “chieftaincy in Lesotho was originally one thing, which was hierarchical in nature, at whose apex was *Morena e Moholo*” (*paramount Chief and lately King*)⁴². Indeed, this statement is important to demonstrate a pre-colonial scenario, which is different from the colonial incarnation of “Paramount Chief” and later Motlotlehi (King) in the post-colonial dispensation. These latter

⁴⁰ Frédéric Ellenberger, D. ed. *History of the Basuto, Ancient and Modern*. (Caxton publishing Company, limited, 1912.)

⁴¹ Elisabeth, Murphy, "Quiet Resistance in the Nineteenth-Century British Novel: An Examination of Jane Austen's *Pride and Prejudice* and Charlotte Brontë's *Jane Eyre*." PhD diss., Radford University, 2020.

⁴² Interview with Mpho, Roma, 23rd November 2023

colonial incarnations, according to Letsie, have hugely disaggregated *Morena e moholo* from the general chieftaincy.⁴³

The current King can hardly claim the status of *Morena e Moholo* because he is no longer directly related to the appointment of chiefs, their discipline and be the final arbiter on their disputes - whether they be boundary disputes or succession disputes.⁴⁴ That notwithstanding, today the rules that govern succession to the office of king and that of the chief are largely the same, as they are both based on customary law. Thus, for customary succession, the two will hereinafter generally be treated interchangeably. As Duncan observes, it would seem that the origins of the customary law of succession are traceable to the 19th century, when Moshoeshoe organized the various Sotho-speaking communities that were scatted by *lifaqane* wars that swept almost the entire Southern Africa. The same applies to the case of the institution of *Morena e Moholo*.⁴⁵ Duncan says the position of paramount chief is a modern creation based on the personality of Moshoeshoe. Thus, the rules of custom regulating succession can safely be traceable to Moshoeshoe himself.

There is sufficient evidence to the effect that accession to highness by Moshoeshoe was not necessarily regulated by the currently established rules of succession. While Machobane further illustrates: "... exactly when and how Moshoeshoe assumed the office initially of *Morena* (as distinct from *Morena e Moholo*) over his little chiefdom of Bakwena of Mokoteli (a fragment of Monaheng's dynasty) before Lifaqane, is something we can no longer establish with certainty".⁴⁶

The way Moshoeshoe became the leader of the Basotho people was far not because of patriarchy,

⁴³ Hoolo Nyane, "The Constitution Rules of Succession to the Institution of Monarch in Lesotho", *Potchefstroom Electronic Law Journal* 22, no.1, (2019) (<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>)

⁴⁴ Hoolo Nyane, "the Constitution Rules of Succession to the Institution of Monarch in Lesotho", *Potchefstroom Electronic Law Journal* 22, no.1, (2019) (<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>)

⁴⁵ Patrick Duncan, *Sotho Laws and Customs, (Moriya: Moriya Museum and Archives, 2006):48*

⁴⁶ Lehlohonolo Machobane, *Government and Change in Lesotho, 1800-1966: A Study of Political Institution*, (London: Macmillan, 1990):230.

to Chief Lethole of the Makhoakhoa clan in Botha-Bothe indicated that Moshoeshoe is still at his youthful stage and he is capable of fighting wars against other Nguni people. Leadership by that time was all about strength and bravery and being very strategic and tactical in times of war as a leader. However, there is evidence to the effect that Letsie, the first son of Moshoeshoe, was, after the demise of the father, recognized as the *Morena e Moholo* and heir to Moshoeshoe's chieftainship. As Moshoeshoe himself did not accede to power through primogeniture, the rule probably started gathering momentum with his first son Letsie. It is imperative to note, though, that the fact that Moshoeshoe did not accede to supremacy through primogeniture has led other commentators, particularly some of the chiefs that see women as fit to accede to the throne as long as they have the qualities of leadership and they feel the need.⁴⁷ One law student argues that succession to the office of chieftaincy is not necessarily by right of birth. She argues that chieftaincy is all about unity when we see fit and having some good characters to represent us as a whole.⁴⁸

The Sesotho proverb that *Morena ke Morena ka Batho* shows how in the past the importance of the views of people meant to the chieftaincy institution. The role of the people was very important to the succession process people cannot be led by a criminal just because of the blood of royalty. Nyane agrees that this proverb is a maxim to demonstrate not only the democratic nature of the *Sesotho* mode of government but it is also a procedural principle which anchors the role of the people in the process of chiefly succession.⁴⁹ The Laws of Lerotholi provide for heirship to the properties of the parents to be for only male children. There can never be a female heir and girls

⁴⁷ Hoolo Nyane, "The Constitution Rules of Succession to the Institution of Monarch in Lesotho", *Potchefstroom Electronic Law Journal* 22, no.1, (2019) (<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>)

⁴⁸ Interview with Moneuoa, Butha-Buthe, 29th November 2023

⁴⁹ Hoolo, Nyane, "The Constitution Rules of Succession to the Institution of Monarch in Lesotho", *Potchefstroom Electronic Law Journal* 22, no.1, (2019) (<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a4461>)

cannot inherit immovable property. That is the terrain of only male children. Under the Laws of Lerotholi, a customary widow has only the right of use over her property. She cannot dispose of the property nor sell it in any way without getting permission from the male side of his dead husband's family.⁵⁰ Customary law fails to provide justice for females, both as girls and as mothers. When a girl is born alongside a boy, they are siblings. However, under this law, the girl's status is subordinated to her brother's seniority in traditional inheritance and the mother is reduced to the status of a child under her son's authority. This situation clearly demonstrates a lack of fairness.⁵¹

Eldredge elaborates that this kind of discrimination that is supported by law undermines women and girl's dignity and economic potential in that most women and girls, do not see any need to strive to acquire any immovable property for they will be working hard only for the males to benefit. Some women accept the situation and suffer in silence for the atrocities they endure are backed by the law. Some choose to leave their villages and go to the towns for employment.⁵² If the law does not protect women, especially the law that is customary to them, it becomes difficult for them to find equality in all spheres of life.

2.4 The Constitution and Chieftainship Institution

Part III of the Laws of Lesotho 1968 is titled Succession to the Office of the Chief under Section 10. The section stipulates who is eligible for the office of chieftaincy. Section 10 (1) in this section a reference to a son of a person is a reference to a legitimate son of that person.⁵³ Lesotho enjoys constitutional supremacy. The 1993 Constitution provides in section 2 that it is the supreme law

⁵⁰ Laws of Lerotholi 1903 sections 11,13 and 14

⁵¹ Interviewed with Mathabo, Butha-Buthe, 22nd December 2023

⁵² Elizabeth A. Eldredge, 'Women in Production: The Economic Role of Women in Nineteenth-Century Lesotho', *Journal of Women in Culture and Society* 16, no.4(1991):721

⁵³ Laws of Lesotho 1968, Section 10.

of the land and if ‘any other law is inconsistent with the Constitution that other law shall, to the extent of that inconsistency, be void’.⁵⁴ The Constitution further stipulates in section 18(1) that no law shall make any provision that is discriminatory either of itself or in its effect. Section 18(4)(c) maintains that section 18(1) shall not apply to any law to the extent that, that law makes provision for the application of the customary law of Lesotho concerning any matter in the case of persons, who under that law, are subject to that law. That is, any discrimination that is done under customary law is condoned.

This means that in Lesotho any statutory law or international law that goes against customary law, that law shall be invalid and customary law shall prevail, when statutory law or international law contradicts customary law, the latter is considered more authoritative and binding.⁵⁵ The 1993 Constitution of Lesotho is the supreme law of the land and includes a Bill of Rights that guarantees the protection of fundamental human rights and freedoms. Among these protections is Section 18, which provides for freedom from discrimination on various grounds, including sex. This constitutional provision is meant to ensure that all individuals, regardless of their gender, are treated equally under the law and have equal access to rights and opportunities.⁵⁶

The subsequent chapter three of the 1993 Constitution, which dwells on principles of state policy, takes away the right not to be discriminated by maintaining under section 26 that the right to equality shall not be enforceable by any court in Lesotho but is only enforceable subject to the limits of the economic capacity and development of the state. It is self-evident that one cannot assert the right to equality because, it is not justiciable, meaning that women and girls are not sufficiently guaranteed constitutional protection against discrimination. The issue of women in

⁵⁴ The Constitution of Lesotho 1993

⁵⁵ The Constitution of Lesotho Section 18(4)

⁵⁶ The Constitution of Lesotho Section 18 (3)

chieftaincy institutions intersects with the broader challenges regarding gender equality and constitutional protections against discrimination.⁵⁷ The Constitution of Lesotho provides guarantees of equality and non-discrimination (e.g., Section 18 on Equality before the Law and Section 19 on Protection from Discrimination). However, the interpretation and enforcement of these provisions can be limited by cultural and traditional practices, including those governing chieftaincy. Lesotho operates under a dual legal system where customary law coexists with statutory law. Customary practices often dictate that chieftaincy positions are inherited through patrilineal descent, excluding women from leadership roles.⁵⁸

The Laws of Lerotholi also do not recognise any woman or a girl child. They are only perceived as perpetual minors who cannot hold any position of power. This was anchored by the court's decision in the Senate Gabasheane Masupha v Seniors Resident Magistrate Berea case where, being a woman, the chief's daughter was denied succession to be a chief after her father died.⁵⁹ Leotla asserts that the way she saw how law students and lecturers and the law society as a whole handled and researched to write an article to find the insides of this case in pursuit of making Basotho understand the customary law is fantastic.⁶⁰

Section 10 of The Chieftainship Act maintains that succession to chieftainship is the realm of only biological males of married mothers and no females except when females act as regents.⁶¹ This constitutes discrimination based on gender and is a human rights violation based on the principle of equality. No child chooses the gender or sex in which they are born. Makalo highlights this

⁵⁷ The Constitution of Lesotho 1993 Section 26

⁵⁸ Obeng Mireku, "Customary law and the promotion of gender equality: An appraisal of the Shilubana decision." *African Human Rights Law Journal* 10, no. 2 (2010): 518.

⁵⁹ Senate Gabasheane Masupha vs Senior Magistrate Berea C of ACIV/29/2013

⁶⁰ Interview with Leotla, Roma, 6th December 2023

⁶¹ The Chieftaincy Act of 1968 section 10

injustice by sharing his personal experience: he and his older brother have daughters only, while his youngest brother has a son. Despite this, Makalo asserts that this does not make him any less of a man, nor does it make his daughters any less human. His daughters are rightfully his children and deserve the same inheritance and recognition as any male child. However, societal perceptions and the pressure to have a male child have caused significant stress and undermined his and his daughters' rightful status within the community. This highlights the need for reform in chieftainship succession laws to ensure equality and eliminate gender-based discrimination.⁶²

2.4.1 The Constitution and Matriarchy in Chieftainship Institution

Chapter V of the Constitution of Lesotho 1993 establishes laws that govern the office of the King. Section 44(1) there shall be a King of Lesotho who shall be a constitutional monarch and Head of State. Succession to the throne of Lesotho in section 45 (10), the college of chiefs may at any time designate, by the customary law of Lesotho the person(or persons, in order of prior right) who are entitled to succeed to the office of King upon the death of the holder of, or the occurrence of any vacancy in, that office and if on such death or vacancy, there is a person who has previously been designated in pursuance of this section and who is capable under the customary law of Lesotho of succeeding that office, that person(or, if there is more than one such person, that one of them who has been designated as having the first right to succeed to the office) shall become King.

The office of King is established under the Constitution section 44 of 1993. This section caters to only males who hold office as kings. The section does not provide a biological female child born in the royal family or any other house to succeed the King when he dies. She can only act as a regent, the female married to that family, not a daughter born in it. The women gain the status of

⁶² Interview with Mafereka Ha-Rampai 20th December 2023

retaining the throne through marriage rights, she becomes a queen just for being married to king.⁶³ Similarly, section 10(2) of the Chieftainship Act 1968 makes provision for only a male child to succeed to the office of the chief. If the Constitution and the chieftaincy Act give men priority over women when it comes to inheritance to the institution of chieftaincy where does it give women priority over men in terms of opportunities that only the norms and customs can make laws to? The Constitution of Lesotho enshrines principles of equality and non-discrimination (e.g., Sections 18 and 19), these principles often clash with customary laws that are still influential in areas like chieftaincy. The courts have refused to declare these sections unconstitutional, as evidenced by the Senate Masupha case. This implies that, according to the existing rules, women are deemed incapable of governing a nation simply because of their gender.⁶⁴ Senate Gabasheane Masupha is a princess, born of royal blood and was raised in this institution of chieftaincy as she saw her father rule and later her mother.

The Constitution is the foundation of all laws in Lesotho, which serves to protect the human rights of everyone. It starts by providing in section 4 that all citizens, regardless of status, are entitled to enjoy the rights provided for, under the Constitution.⁶⁵ Then Section 18, provides that no laws are to be made that would discriminate against any person whether in wording or effect.⁶⁶ On the face of it, it appears the Constitution supports women, their status and rights on the same basis as men. However, a deeper look tells a different and contradictory story. The effective enforcement of inheritance laws within Lesotho's chieftaincy institution, which predominantly favours male heirs

⁶³ The Constitution of 1993 Section 44

⁶⁴ Hoolo Nyane, "A Critique of the Swazi Constitution Rules on Succession to Kingship", *De Jure Law Journal* 52, no.1, (2019):72

⁶⁵ The Constitution of Lesotho 1993 section 4 (1)

⁶⁶ The Constitution of Lesotho 1993 section 18 (1)

while excluding females, raises concerns about their role in ensuring equitable protection and representation for all citizens, particularly women.

Section 18(1) of the Constitution prohibits the making of any law that would, whether in wording or effect, discriminate against anyone. Section 18(4) (c) of the same Constitution appears to legalise discrimination based on custom, especially against women. This contradiction in the same Constitution raises a lot of questions. While one section of the Constitution appears to support discrimination, another section of the same Constitution appears to justify discrimination.⁶⁷ One of the consequences of this provision is that it has provided customary law with an umbrella protection against scrutiny, while also effectively legalizing discrimination based on customary law. This provision provides legality and validity to pieces of legislation that establish men as superior to women, and thus, gives men an advantage over women.⁶⁸ The danger with this law is that the Constitution of Lesotho is the supreme law, and if any other law is inconsistent with it, that law shall be void, leading to the thinking that the law is unjust to women.

2.4.2 The Chieftaincy Act

The Chieftainship Act of 1968 embeds the principle of male primogeniture, which is a customary law practice where the firstborn legitimate son inherits the chieftaincy title and associated properties. This principle is reflective of broader customary laws in Lesotho that prioritize male heirs in the inheritance of immovable property. Section 10 deals with succession rules. The section stipulates that the office of the chief is inherited by the firstborn legitimate son. If there is no male heir from the first wife, the inheritance passes to the firstborn male child of subsequent wives. By explicitly detailing succession through male lineage, the Act systematically excludes daughters

⁶⁷ The Constitution of Lesotho 1993 section 18 (4)(c)

⁶⁸ The Constitution of Lesotho 1993 section 18(1)

from inheriting the chieftaincy title and any associated immovable properties tied to the title. If the chief dies leaving a minor son, the widow may act as a regent. This provision allows women a temporary and caretaker role but does not grant them the right to inherit the chieftaincy title or associated properties permanently.⁶⁹ Part III of the Laws of Lesotho which is titled succession to the office of chief section 10 states the rules that govern the chieftaincy institution. Section 10 (1) states that in this section a reference to a son of a person is a reference to a legitimate son of that person. Section 10 (2) when an office of chief becomes vacant, the firstborn or only son of the first or only marriage of the chief succeeds to that office who is the firstborn or only son of the first or only marriage of a person who, but for his death or incapacity, would have succeeded to that office by the provisions of this subsection.⁷⁰

The Chieftaincy Act of 1968 section 10(3) if when an office of chief becomes vacant no person succeeds under the preceding subsection, the first-born or only son of the marriage of the chief that took place next in order of time succeeds to that office, and so, in descending order of the seniority of marriages according to the customary law, that person succeeds to the office who is the first-born or only son of the senior marriage of the chief or of a person who but for his death or incapacity, would have succeeded to that office by the provisions of this subsection.⁷¹ If when an office of chief becomes vacant no person succeeds under the two preceding subsections, the only surviving wife of the chief, or the surviving wife of the chief whom he married earliest, succeeds to that office of chief, and when that office thereafter again becomes vacant the eldest legitimate surviving brother of the male chief who held the office last before the woman, succeeds

⁶⁹ The Chieftaincy Act of 1968 section 10

⁷⁰ Chieftaincy Act 1968 section 10(2)

⁷¹ The Chieftaincy Act of 1968 section 10 (3)

to that office, or failing such an eldest brother, the eldest surviving uncle of that male chief in legitimate ascent, and so in ascending order according to the customary laws.⁷²

A person is incapable of succeeding to the office of chief if he is not a citizen of Lesotho. No succession to an office of chief in terms of this section or section 11 shall have any effect unless and until the King acting by the advice of the minister has approved thereof. If the King acting on the advice of the Minister should refuse to approve of the succession to an office of Chief of the first person who has the right to succeed, the person next in order of prior right shall have the right to succeed.⁷³ Before the Act, traditional governance in Lesotho was deeply rooted in patriarchal customary law. Chieftaincy roles were typically passed down through male lineage, with significant power vested in male chiefs. Lesotho, known as Basutoland under British colonial rule, maintained a system of indirect rule where traditional chiefs played a crucial role in local administration. This period saw the coexistence of colonial administrative structures with indigenous chieftaincy institutions.

Lesotho gained independence from Britain in 1966, which brought about the need to formalize and modernize its legal and governance systems. The new nation sought to balance traditional practices with modern state governance. In 1968, the Chieftaincy Act was enacted to provide a legal framework for the roles and functions of chiefs, as well as to address succession issues within the chieftaincy institution. The Act established clear guidelines for the succession of chiefs, codifying customary practices while also introducing new legal standards to ensure consistency and fairness. It delineated the duties and responsibilities of chiefs, including their roles in local governance, land

⁷² The Chieftaincy Act of 1968 section 10(4)

⁷³ The Chieftaincy Act of 1968 section 10 (7)

management and dispute resolution. This formalization aimed to integrate chieftaincy roles within the broader national governance framework.⁷⁴

This section to me seems as though women are used as emergencies just in case something happens why can't they have the first choice there because they are rightfully competent to fill the position expressed by Nkhono Malerato?⁷⁵ A minor heir immediately after his marriage if he is under the age of twenty-one years, or on attaining the age of twenty-one years shall be through the correct channels by his paternal uncles or such other persons whose duty it is under Basuto Law and Custom to do so, to the Paramount Chief, who may if he is satisfied that such heir is capable of carrying out the duties of chief, recommend to the High Commissioner his declaration as a chief or defer such recommendation for such period as he shall think fit.⁷⁶ At this stage we usually see most of the Sesotho custodians coming to the rescue to save the chieftaincy at all costs so that it may not be exposed to the vultures that are eying to see loopholes narrated one local chief and a traditional doctor.⁷⁷

The law of succession excludes a girl child at all costs, she cannot inherit anything that is immovable and has blood ties to what only men can get through customary laws. Section 10 of the Chieftainship Act explains. Succession to chieftainship this section states that succession to chieftainship is limited to biological males of married mothers. Women are excluded from inheriting these positions, except when acting as regents. Exclusion of women, by explicitly stating that only males can inherit chieftaincy roles, the Act effectively side-lines women and girls, denying them the opportunity to inherit and hold traditional leadership positions. This exclusion

⁷⁴ Laurence Juma, "The Laws of Lerotholi: Role and Status of Codified Rules of Custom in the Kingdom of Lesotho", *Pace International Law Review* 23, (2011):92

⁷⁵ Interview with Nkhono Malerato, Butha-Buthe, 16th December 2023

⁷⁶ The Customary Laws Section 39(1) and (2)

⁷⁷ The Anonymous interview, Ha-Rampai, 13th January 2024

of women from the chieftainship was of great significance, as all authority was vested in the chief. The chief was the “ruler, judge, maker and guardian of the law, repository of wealth, dispenser of gifts, leader in war, priest and magician of the people”. This meant that women’s exclusion from the chieftainship kept them away from significant social power and influence.⁷⁸ Women are, as a result, still barred from the chieftainship as per the Laws of Lerotholi, except as regents and acting chiefs in their husbands’ absence. They are just there to act and fill the space to avoid a vacuum by a girl child born in royalty doesn’t have that place in chieftaincy.

The Chieftainship Act has also provided statutory authority to customary law’s male primogeniture rule regarding succession to the Chieftainship. The relevant subsections of section 10 of the Chieftainship Act provide, when an office of the Chief becomes vacant, the firstborn or only son of the first or only marriage of the Chief succeeds to that office and so, in descending order, that person succeeds to the office who is the firstborn or only son of the first and only marriage of a person who, but for his death or incapacity, would have succeeded to that office by the provisions of this subsection.⁷⁹ While making the subsection why can the College of Chiefs make the provision to allow girl children to just have a say in their father's house, this leaves out the royals who have only daughters to share their thoughts openly about this section because it would seem as though they are in-line with giving girl-child power.⁸⁰

This exclusion of people from the institution and only including certain people to benefit from it has led to people undermining the authority of chieftaincy and criticising the norms and cultural aspects that they are formed under. As Kapa has illustrated chieftainship is viewed as an outdated

⁷⁸ Thabang. Ramakhula, “the impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho”, Law Thesis University of Free State, 2022.

⁷⁹ The Chieftaincy Act 1968 section 10 (2)

⁸⁰ Interview with Matela, Maseru, 19th November 2023

form of political authority and an affront to democracy, with no role in the democratization process. This makes it a ‘problem’ to be solved through either democratization or abolition. In terms of the second perspective, a contextual or pragmatic position is adopted, and chieftainship is seen as functional within democracy. Those who hold this view feel that chieftainship should be retained, but that it should be molded to suit the context and needs of African societies.⁸¹

2.4.3 The Chieftaincy Act and Matriarchy

Under the notion of inheritance, the law that promotes the exclusive right to inherit an elder male child of the family is provided for in the Laws of Lerotholi. Section 11(1) makes provision for heirship; that the heir is regarded as a male child of the first married woman in the family. If she has no male children, her female children are overlooked and heirship passes to the male child of the second wife in succession. This is equally under threat as women and girls are steadily becoming aware of their entitlements in the family and advocate non-discrimination rooted in gender.⁸² This section brings division in children because one child has laws that support him while it excludes the other and no place can defend her. This is the marginalization of children’s rights and child abuse regarding customs and norms.

An inheritance study by Women and Law in Southern Africa found that the male primogeniture rule does not find approval from Basotho women, the majority of whom complain about the irresponsibility of most heirs, as they often mismanage family property, neglect their duties towards their families, and fail to provide adequate support, leaving women and children vulnerable. These dissatisfactions led to the relaxation of the male primogeniture rule application

⁸¹ Motlamelle A. Kapa, ” the Chieftainship in Lesotho: to Retain or to Abolish?, *African Journal*33,no.2(2014):82.,

⁸² Laws of Lerotholi Section 11 (1)

in some instances, leading to women and younger sons being appointed heirs in some instances.⁸³ Only women married to the family get the power to inherit the throne, this means because of marriage she gains status through her husband. Chief Khoabane Theko, one of the grandsons of the Great Moshoeshoe and the current chairperson of the College of Chiefs, confirms that it is a well-established practice that wives of late chiefs can become regents in the stead of minor heirs apparent.⁸⁴ Chieftainship still enjoys legitimacy as a leadership model in Lesotho. Succession in chieftainship is still based on male primogeniture, as was the historical position. Women are, as a result, still barred from the chieftainship as per the Laws of Lerotholi, except as regents and acting chiefs in their husbands' absence.⁸⁵

The case of *Senate Gabasheane Masupha v Senior Resident Magistrate of the Subordinate Court of Berea and Others (Masupha case)*. In this case, Masupha, the eldest daughter of the Principal Chief of the Teyateyaneng areas, sought to succeed as the next Principal Chief of the 'Mamathe, Thaba-kubu and Jorotane areas. The court held that based on section 10 of the Chieftainship Act, Masupha could not succeed her father, as that was contrary to custom and customary law. Masupha argued that the interpretation of section 10 excluded her based on sex⁸⁶, just because she is a female customs do not allow her to ascend to the throne. The matriarchal part is being denied access to the institution of chieftaincy. Even if a girl child is born as firstborn, she cannot by any chance be chief that position is born for her younger brother. The Laws of Lerotholi maintain that succession to chieftainship only devolves upon male children. The Chieftainship Act has also provided

⁸³ Thabang Ramakhula, "The impact of customary law and its constitutional protection on the social status and political participation of women in Lesotho", Law Thesis University of Free State, 2022.

⁸⁴ Hoolo 'Nyane," The Constitution Rules of Succession to the Institution of Monarch in Lesotho", *Potchefstroom Electronic Law Journal*22, (2019)

⁸⁵ Motlamelle, A. Kapa," The Chieftainship in Lesotho: to Retain or to Abolish?", *African Journal* 33, no.21, (2014): 82.

⁸⁶ Constitutional Case No.5/2010 [2013] LSHC 9 (03 May 2013).

statutory authority to customary law's male primogeniture rule regarding succession to the Chieftainship. It is law that no woman except the ones that are married to chieftaincy be given the role as regent, no firstborn daughter is entitled to the position. This was at first a traditional way of life that became codified into the laws that can be supported by the constitution of the country.

Chapter Three: History of Women and Kingship Institution

3.1 Regent Chief Manthatisi Sekonyela

Kingship is one of the most significant institutions in the Basotho country. The issue of succession is one of the most hotly debated. Chieftainship is hereditary in the male line, passing from father to son. The succession issues were originally addressed by a council comprising key members of the chief's family and the chiefs of the main ethnic groups. Female ancestors could not claim succession. The regent was often a paternal uncle if the heir was a minor. Public affairs were considered a man's role and privilege, not a woman's. According to Ashton, chieftainship is one of the most significant institutions in Basotho, and succession is one of the most hotly debated issues in Sesotho and public life. He says that the rule of succession takes priority in the Laws of Lerotholi, where it stands at the top of that authoritative compilation under Declaration number 2. He goes on to explain that chieftainship is hereditary in the male line and is typically passed down from father to son.¹ The chapter explores how indigenous leadership institutions such as kingship and structures connected with women in leadership roles, such as Mmanthatisi and Mantsebo, have made significant contributions not just to gendered history but also to gendering the history of African polities and monarchs. It demonstrates that women are as capable of climbing the throne of authority by becoming leaders in their communities, civilizations, and monarchs, and so command respect and honour.

Queen Manthatisi was the Warrior Queen who commanded powerful men during Lifaqane, to protect the Tlokoa people and was so feared that she was depicted as a frightening one-eyed monster. She was a gorgeous, educated woman with good manners and grace, who was well-

¹ Hugh Ashton, *Political Organization*, (London: Oxford University Press, 1952):193.

briefed, incredibly eloquent, and determined yet cautious.² Mmanthatsi was the daughter of Mothaha, the Basia chief born Monyaluoe and also known as "Mosanyane." She was born in 1784 in Thaba-Nchu, now Harrismith district, in South Africa's Free State province. She grew up in an area noted for its wildcats. "Monya", as she was commonly referred to, was a tall, attractive and skinny woman, thus her people dubbed her "Mosanyane", which means "the tiny one". She was famous for her intelligence and fortitude of character.³ 'Manthatsi fell in love with and married her cousin Kgosi Mokotjo, the chief of Batlokoa, an adjacent ethnic group. Her first child was a girl named Nthatsi, thus she was given the name Manthatsi, which translates to "Nthatsi's mother" because it was usual to name a woman after her first child. Their second child, Sekonyela, was male.⁴

Khosi Mokotjo got an illness during a fight and died in 1813 when Sekonyela was just nine years old. He left behind a devoted wife and three small children, one girl and two boys. Sekonyela was too young to succeed his father, causing power problems among the Batlokoa ethnic group, while Sehalahala, Khosi Mokotjo's brother, sought to take authority. Manthatsi held her ground, acting effectively and fearlessly to replace her son as regent. Many people were displeased with this, but she refused to allow her gender to prohibit her from protecting and defending what was rightly her children's.⁵ Queen Manthatsi exercised enormous power throughout southern Africa throughout her reign. Manthatsi ruled as queen, saving her people from catastrophic droughts and political unrest. Her conquests stretched to central modern-day Botswana, and at the height of her military

² Austeria Letholetseng. Ntsike, "An African leadership paradigm: the missing link for productivity and empowerment case of Lesotho." PhD diss., (Stellenbosch: Stellenbosch University, 2001.)

³ Afrofuturism, Pan-African, Africa by Us, I. Miss My Afrobeats, and S-Coming Soon. "Queen Mmanthatsi Botswana, Lesotho, and South Africa."

⁴ Sarah Zimmerman, J., "Women and Militarization", In *Oxford Research Encyclopedia of African History*. 2020.

⁵ Neo Mohlabane, "Ke Mosali oa Mosotho: Reflecting on Indigenous Conceptions of Womanhood in Lesotho", *A Journal of African Studies* 49, (2023):467.

and political dominance, her army was reported to be 40,000 warriors eager to expand their territory.⁶ Rival communities feared and respected Manthatisi, and some chiefs chose to surrender rather than face the wild Queen. People were so afraid of the courageous fighter that they propagated rumours about her being a one-eyed monster who feeds her people with breast milk.⁷

The Queen suffered multiple humiliating defeats, the most recent of which happened in 1823, known as the Battle of Dithakong. A conflict erupted, killing hundreds of invaders. The Queen then detached her army and led her fatigued soldiers on the Great March, securing their survival from the British Forces' fire. She even forced the Bataung and Bafokeng people across the river, which is today known as the Vaal. Manthatisi finally moved her people to Lesotho's Marabeng Mountains.⁸ Many nations were unable to overcome her military methods; her adversaries were simply outmatched. For example, when her people were under siege, Queen Regent Mmanthatisi gathered all of the ladies and organized them into lines in front of the camp. The males who remained in the camp stood in front of the ladies, brandishing the mats and hoes that the women had been holding. When viewed from a distance, this assemblage of corpses and 'weaponry' resembled a formidable warrior force, repelling Mpangazitha's onslaught. He had intended to find the camp defenceless, but after witnessing this terrifying scene, he opted to retreat. He paused his mission and returned to his headquarters to prepare a new plan.⁹ Like any other commander, she

⁶ Elizabeth A. Eldredge, "Sources of Conflict in Southern Africa, c.1800-30: the Mfecane Reconsidered", *The Journal of African Studies* 33, (1992):18.

⁷ Elizabeth A. Eldredge, "Sources of Conflict in Southern Africa, c.1800-30: the Mfecane Reconsidered", *The Journal of African Studies* 33, (1992):17.

⁸ Elizabeth A. Eldredge, "Sources of Conflict in Southern Africa, c.1800-30: the Mfecane Reconsidered", *The Journal of African Studies* 33, (1992):18

⁹ Chitja Twala, "Warrior Queen Manthatisi of the Batlokoa in Pre-Colonial Southern Africa: A Re-appraisal of her Power Dominance and Leadership Qualities" in: *The Power and Authority of African Women in Southern African and in the African Diaspora during 'pre-colonial and colonial times'*, Skotaville Publishers, University of Free-state, (2022):185.

devised a plan to win battles, but this one was unusual in that she utilized women to trick opponents.

Manthatisi was the queen of her day; she endured the test of time throughout tough times, known as Lifaqane or Mfecane when important men such as Shaka were slaughtering people for pasture and power. This lady was a fantastic woman who fought with her soldiers to defend women and children. The conventions and practices of her day were the very standard for leading nations; she ensured that women's capacity to lead and support the people under her leadership was acknowledged, as she was doing what her mother-in-law already understood. She is an accurate representation of what a woman may undergo in a patriarchal culture.

3.2 Regent Paramount Chief Mantšebo Seeiso

Mantšebo Amelia Seeiso was born Moipone Nkuebe in 1902 at Sebapala, Quthing. She was the only daughter of Chief Sempe Nkuebe and Manneko Alice Mpepuoa Nkuebe, who had three siblings.¹⁰ Moipone went to St Gabriel Roman Catholic Church Primary School in the Quthing region. At the time, primary education stretched to standard three, to teach kids how to read and write while also instilling Christian values in them at a young age. Moipone studied this as part of her primary education.¹¹ Moipone married Seeiso Simon Griffith, the son and heir apparent of Paramount Chief Griffith Lerotholi, in 1925. Seeiso's mother, Maseeiso, was Moipone's aunt, while Moipone's father, Sempe, was Maseeiso's biological brother. Seeiso therefore married his cousin's sister. Thus, there is not much debate that Moipone's mother influenced his decision to marry Seeiso. This was a widespread practice among Basotho, based on the belief that money should flow within the family. Moipone's marriage was completed using both customary and

¹⁰ Moeletsi oa Basotho, 4 April 1964.

¹¹ Mary N. Ntabeni, "Mantšebo Amelia Seeiso" in E.K. Akyeampong and H.L. Gates (eds), *Dictionary of African Biography*, (UK, Oxford University Press, 2011):320.

formal marital procedures. According to tradition, the two families that married their children (Sempe and Griffith's families) exchanged *bohali* (bride's prices). Mopoine's marriage was performed by civil marriage customs at S.t Gabriel Mission, where the Catholic Church officiated the event.¹²

The Royal Succession Since the Formation of Basotho as a Nation

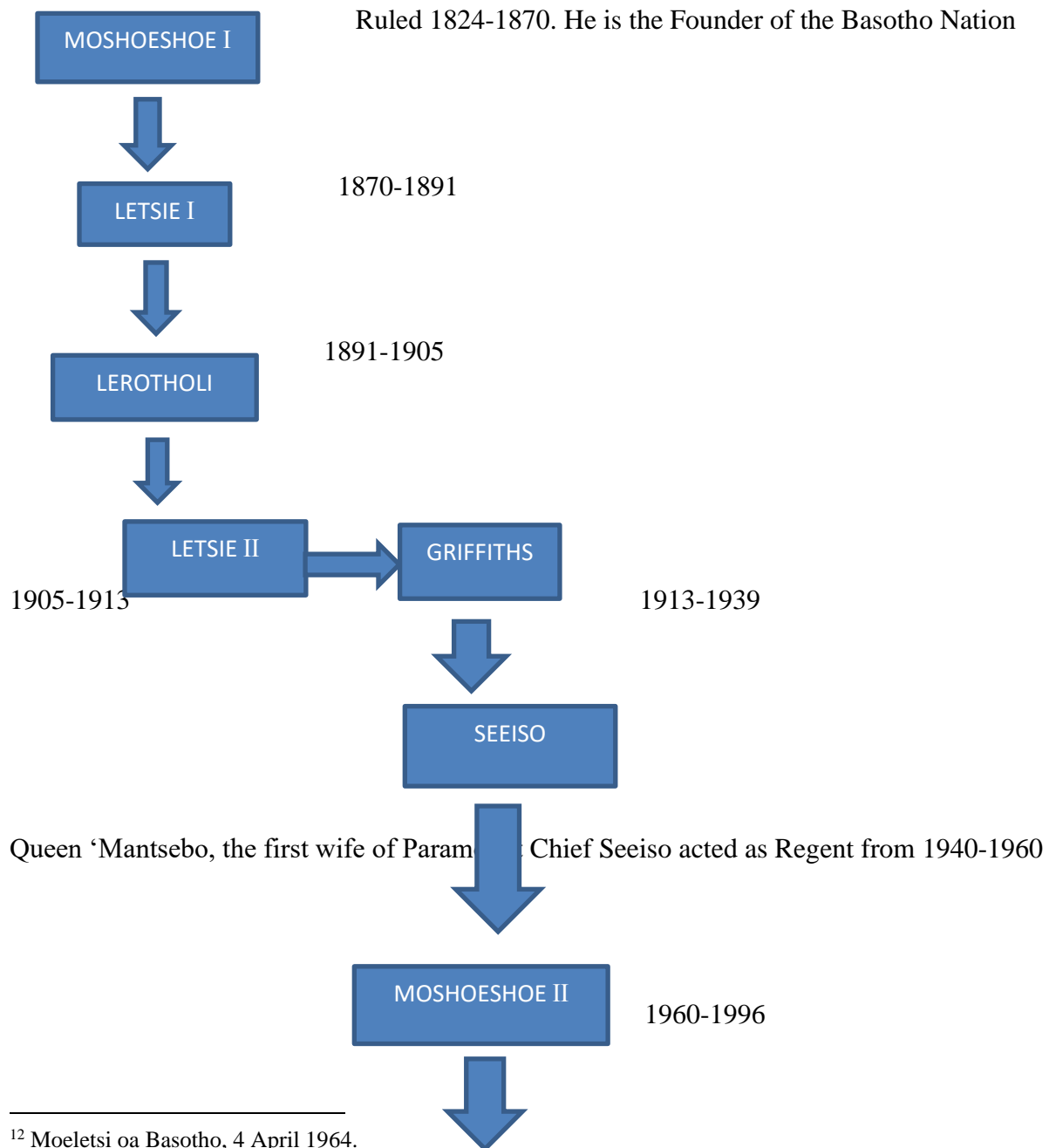




Figure 3: the Royal Succession, from Morija Archives

Seeiso's family was established in Phamong, where his father Griffith was stationed before becoming the Paramountcy and when Seeiso married Moipone, his father Griffith, now Paramount Chief, relocated the newlywed couple to Mokhotlong, where they established their family. Seeiso was appointed the main chief of Mokhotlong Ward and supervisor of Batlokoa, which had hitherto operated independently until Seeiso's arrival. The couple first lived in Salang before relocating to Thabang. The name Thabang implies that the inhabitants of that area should be overjoyed because they have a leader. Places in Lesotho are commonly named after events that occurred there, therefore Thabang is not an exception.¹³

3.3 Accomplishments of Women in Chieftaincy Institution

One of the most prominent concepts that supported gender disparities at the time appears to have been the partitioning of society into public and private domains. Men ruled the public realm, while women's power was limited to the home. 'Manthatisi defied the rule. She rose to prominence at a period when Lesotho did not consider women's roles in public affairs. It's impossible to see Manthatisi as a leader in such a pre-feminist age. She dominated the 'wild cat people' (Batlokoa) and could vanquish her male opponents. She was tougher, more analytical, and more determined in the face of battle.¹⁴ Manthatisi emphasized the need to act logically to safeguard her people at all times. She was also involved in gender politics and challenged the notion that women were

¹³ Tebatso Matiheli Octavia Ntsane-Mosebo, "The regency of paramount chieftainess Mantsebo Amelia Seeiso 1941-1960." PhD diss., National University of Lesotho, 2021

¹⁴ Nelvis Qekema, Culture Review/ the Great Queen Manthatisi, 2021 : [online] culture-review.co.za. Available at: <https://www.culture-review.co.za/the-great-queen-manthatisi> > [accessed 14 Feb 2024]

incapable of making decisions. She questioned the idea that leadership is exclusive to men. She performed all of this at an age of deep-rooted female oppression, with numerous types of patriarchy prevailing in Lesotho. She faced several impediments to involvement, and pressure was pushed from every point.¹⁵

Despite being not, the first woman in her ethnic group to do so, she remained firm and drew inspiration from her mother-in-law. Manthatisi was a socially aware leader who learnt to understand and respect her male opponents as well. One has to infer that some of the expectations were incompatible with her leadership style, resulting in friction. She seemed to have surmounted whatever role conflicts she may have faced by focusing on the goal of bringing her people to prosperity. She must have dismissed expectations that did not align with the objective task need. She refused to mistake her biological sexuality for her whole human potential. Her sexual difference did not confine her to it. She was working hard to defend her son's heritage and ensure that the Tlokwa people did not perish as a result of the conflict.¹⁶ During the southern African slave trade, she battled against foes, including British invaders, while protecting her tribe's territories. This tremendously strong Queen was the heart and soul of her army and had a huge impact on Southern Africa.¹⁷ Nkhono 'Maseretse stated that this lady was remarkable; she battled men and won, which was miraculous.¹⁸

Chieftainess Mantsebo opposed the forced marriage custom that Basotho seems to have accepted as a norm. She denied the proposal first to her married brother, who sought to replace the void left

¹⁵ Neo Mohlabane, “ Ke Mosali oa Mosotho: Reflecting on Indigenous Conceptions of Womanhood in Lesotho”, *A Journal of African Studies*49,(2023):462.

¹⁶ Nelvis Qekema, Culture Review/ the Great Queen Manthatisi,2021: [online] culture-review.co.za.Availableat:<https://www.culture-review.co.za/the-great-queen-manthatisi> >[accessed 14 Feb 2024]

¹⁷ John Aerni-Flessner, Charles Fogelman and Nthabiseng Mokoena-Mokhali, *Historical Dictionary of Lesotho*, Rowman & Littlefield Publishers,2023):46

¹⁸ Interview with Nkhono Maseretse, Teyateyaneng 16th February 2024

by her late brother, as is usual in Lekenelo.¹⁹ Mantšebo discontinued the tradition by refusing lekenelo to her brother-in-law, Bereng Griffith. She rejected it because Bereng intended to use that as leverage to ascend to the regency. By rejecting Bereng's proposition, she established a precedent for women to oppose lekenelo.²⁰ By doing so, a space was created in which any customs that harmed female citizens could be evaluated and destroyed, restoring freedom and authority. Mantšebo successfully protected women's ability to choose marriage. This tradition compelled a widow to marry her late husband's brother, allowing him to assume full responsibility for the household. She also banned Lebotla, which required a girl kid to marry into a man's family after he died and allowed all male equivalents access to her for her to procreate and keep the family alive.²¹ Basotho marital rituals that harmed women were declared illegal during Mantsebo's reign. The Basotho-land Women and Girls' Protection Proclamation No.14 of 1949 forbade the practice of chobeliso (abduction). Chobeliso was accompanied by violence, which included a guy assaulting and raping a female to marry her. This edict also specified a penalty of six head of cattle and one year in jail for anybody who violated it.²² In 1947, Mantšebo petitioned the National Council to alter issues 11 and 14 of the Laws of Lerotholi, granting male children full inheritance rights. She suggested giving women and girls the ability to inherit property. In 1948, the National Council updated the Lerotholi Laws. The following developments occurred: widows were allowed to inherit their husbands' property and estates. Following the widow's death, the heir would inherit

¹⁹ Anne Mager, "GENDER POLITICS IN COLONIAL LESOTHO 'This Matter of Women is Getting Very Bad': Gender, Development and Politics in Colonial Lesotho. by Marc Epprecht. Pietermaritzburg: University of Natal Press, 2000. Pp. ix+ 281.£ 18.95; \$34.95, paperback (ISBN 0-86980-953-9)." *The Journal of African History* 43, no. 2 (2002): 313-376.

²⁰ Tebatso Matiheli Octavia Ntsane-Mosebo. "The regency of paramount chieftainess Mantsebo Amelia Seeiso 1941-1960." PhD diss., National University of Lesotho, 2021.

²¹ Tebatso Matiheli Octavia Ntsane-Mosebo, "The regency of paramount chieftainess Mantsebo Amelia Seeiso 1941-1960." PhD diss., National University of Lesotho, 2021

²² Tebatso Matiheli Octavia Ntsane-Mosebo, "The regency of paramount chieftainess Mantsebo Amelia Seeiso 1941-1960." PhD diss., National University of Lesotho, 2021

the property. If there is no heir to the house, the heir to the chieftainship should receive the property upon the widow's death and utilize it to assist the dependents. Minor heirs should be safeguarded against widows taking their inheritance.²³

Epprecht explains that female chiefs are typically thought to have been little more than puppets for their male advisors if their existence is even acknowledged. Women are portrayed as puppets for male power brokers, “commodities” and “things”. Even more problematic from a feminist standpoint is how these roles are pervasively characterized by unfounded clichés about women supposed “nature.” This includes their perceived weaknesses, such as physical beauty, morality, conservatism, and religiosity.²⁴ Basotho women were thought to be minors, constantly subject to the authority of their male guardians; they were truly men's responsibility, and they must accept their commands. Traditionally, women were expected to be subordinate to males from an early age. And it was made easier by the constitution's passage, which granted male children sole control over inheritance, according to Kefuoe.²⁵

This decision reversed the ancient norm of women being liable to their in-laws after their spouses died and not inheriting their husbands' property. Mantšebo, the first Paramount chief to advocate for women's rights in Basutoland, was credited with achieving the resolution. According to Nkhono Maseretse, the manner Mantšebo was married to her cousin, then after the death of her husband, the brother wanted to take her as his wife, shows that this lady has to move quickly to abolish this custom officially as she nearly fell into it. She witnessed how cruel it is for young girls to be married to old men while they still have a future, but they are bound by habit.²⁶ Majoro goes

²³ National Council Proceedings, Vol.2 1948, p 102.

²⁴ Marc Epprecht, “Gender and history in southern Africa: a Lesotho “metanarrative”.” *Canadian Journal of African Studies/La Revue canadienne des études africaines* 30, no. 2 (1996): 195.

²⁵ Interview with Kefuoe Botha-Bothe 20th February 2024

²⁶ Interview with Nkhono Maseretse, Teyateyaneng 12th February 2024

on to say that “this is tyrannical, women suffer for centuries, they are forced to stay at home and carry children, they are pushed to embrace polygamy with an illusion of growing connections and family sizes”.²⁷

According to Ntsane-Mosebo, during Mantšebo's rule as the regent Paramount chieftainess, the number of female chiefs climbed from 2% in 1911 to 12.5% in 1955. At the same time, four women out of twenty-two senior chiefs joined the Sons of Moshoeshoe organization. Mantšebo's achievement as a transformative figure in women's political emancipation was seen as biased towards a certain class of women, chieftains. But this is arguable because, as queen, she was aware of the difficulties that princesses and even chiefs' spouses face, which is why she appeared to be more engaged in matters affecting that specific group.²⁸ At least she understood some of the challenges that women face, unlike some Chieftainesses who could not even have a say on the Senate's case but they are still her parents.²⁹

Lesotho's education system took a positive turn during this period, with the introduction of higher education. During Mantšebo's rule, Pius XII Catholic University College was established in 1945, marking a significant development in higher education.³⁰ Mantšebo and the National Council approved the Catholic Bishops' proposal for a college in 1941, seeing it as a chance for Basotho students to enter the corporate world and serve Basutoland.³¹ This woman was so visionary, she was one of a kind when it came to the education of Basotho children; the situation of education in

²⁷ Interview with Kefuoe, Botha- Bothe 19th February 2024

²⁸ Tebatso Matiheli Octavia. Ntsane-Mosebo, "The regency of paramount chieftainess Mantsebo Amelia Seeiso 1941-1960." PhD diss., National University of Lesotho, 2021.

²⁹ Interview with Chief Khoabane 13th May 2024

³⁰ Moeletsi oa Basotho, 4 April 1964

³¹ Munyaradzi Mushonga, "Government, community and the university in Africa today: the case of the National University of Lesetho." PhD diss., University of the Free State, 2017.

South Africa at the time was unbearable for the Basotho people due to the apartheid regime, and she worked tirelessly for them to establish that college, explained Mr Daemane.³²

Mantsebo was a highly brilliant woman who wanted the Basotho people to profit from anything in the future. According to Moeletsi oa Basotho, the diamond mining licensing agreement in Lesotho was obtained in 1955. She travelled to Britain in 1957 to prepare for Basutoland's independence, where she served as the primary facilitator for the delegation. The country's constitution was set to be modified in 1957, and she prepared the way for the new constitution.³³ Mantsebo implemented a program of fighting medical murder in 1950. She encouraged the chiefs and the community to collaborate with the investigative commission. The chiefs were to force people to attend pitso (community gatherings), where she was generally perceived as the Paramount Chief addressing the country about how the issue was jeopardizing people's safety. She asked the public to work properly with the commission to provide precise information to the police, which would lead to the prosecution of culprits in court.³⁴

Basotho empowerment involved agitating for a larger role in decision-making on national issues. By the 1950s, she was speaking with one voice with political parties calling for self-government. She believes that Basotho should be given a bigger role in the country's government. This was one of the daring measures she took, giving people influence over who makes choices for them; the Basotho people now can choose the type of political system they desire. Giving people power and authority was exceedingly unusual under chieftaincy; people were to be obedient to chieftom control; they were to be ruled rather than empowered.³⁵ According to Chief Lerotholi and Theko,

³² Interview with Mr Hlomela Thetsane 16th February 2024.

³³ Moeletsi oa Basotho, 4 April 1964

³⁴ Moeletsi oa Basotho, 10 May 1949

³⁵ Marc Epprecht, 'This Matter of Women is getting very Bad': Gender, Development and Politics in colonial Lesotho, (Pietermaritzburg University of Natal Press, 2000)

Mantsebo did an exceptional job one day when she realized the Bafokeng's representation was missing and summoned them to Matsieng to choose their leader to represent them in the house of chiefs, but the clan was unable to agree on a single leader.

3.4 Challenges and Disputes

'Manthatisi assumed leadership when certain members of the clan sought to take advantage of the circumstance and protect the orphaned son's inheritance. The Batlokoa may have been disrupted if not for 'Manthatisi, who expertly walked a delicate line and resumed the regency on behalf of her minor son. She had to work harder than other men because she was doing it to prove them wrong that she can protect this legacy for her children's sake thus the power of matriarchy, "women do it for their children".³⁶ Perhaps 'Manthatisi's greatest ally in the course that she had set for herself was her confidence. She emerged as an effective woman leader, one who altered how her contemporaries thought, felt and acted. Her brother-in-law sought the throne he stated the ladies were from a different clan, Basia hence she could not be a leader of Batlokoa.³⁷

The Batlokoa's quarrelsome temperament was continually generating difficulty, whether among themselves, with their neighbours, or with distant ethnics. Manthatisi was therefore compelled to let her troops fight. Their military prestige is said to have been high, and the battles and invasions boosted it. Clan after clan fell to 'Manthatisi's approach. When thousands of people learned of her approach, they fled to the hills. A fight for control in the Caledon valley ensued between 'Manthatisi and Mpangazitha, the Hlubi leader. The wild cat people fared poorly. It is stated that if not for 'Manthatisi's cleverness, their raiding escapades would have ended then and there. Nkhono Mapono highlighted that 'Manthatisi lived in a man-dominated age, the war zone, but she

³⁶ Interview with Chief Thoolo 15th May 2024

³⁷ Austeria Letholetseng Ntsike, "An African leadership paradigm: the missing link for productivity and empowerment-the case of Lesotho". PhD diss., Stellenbosch: Stellenbosch University, 2001.

was fearless, admitting her faults and learning a lot from them because she had to defend her people. Manthatisi is one of the reasons Moshoeshoe relocated from Botha-Bothe to Thaba-Bosiu; she was constantly on his case.³⁸

Manthatisi did not distance herself from the achievements of her troops. Rather, she assumed full responsibility for their subpar performance with the Hlubi. To business leaders, it suggests that they should encourage the efforts of their followers while also being prepared to make difficult decisions to ensure that individuals perform at the desired level. She accepted responsibility for warriors' shortcomings as well as their successes. The warriors' victory was imposed on her, and so did the failure.³⁹ According to Chief Thoolo, Manthatisi's matriarchy was exceptional, this woman was a true warrior of her own time. She became part of her troops in wars, thus how far she would lead as a woman.⁴⁰

Mantšebo became the regent of Prince Bereng, who was not her biological child. Mabereng was Seeiso's second wife. After the regency catastrophe, Mantšebo and Mabereng faced a fresh dilemma over the guardianship of the heir apparent. After being confirmed as the Queen Regent, Mantšebo took complete power and responsibility over Prince Bereng. Despite Mantšebo's appointment, Mabereng, Chief Theko Makhaola, Chief Thabo Mojela, and Chief Bolokoe of Malebanye refused to recognize it. Mantšebo was awarded full custody of the kid, whom she was to mentor in her capacity.⁴¹ This was not difficult for her because she was born into royalty, and we should remember that she was married to her cousin, so his children consider her an aunt too,

³⁸ Interview with Nkhono Mapono, Thetsane 16th February 2024

³⁹ Austeria Letholetseng Ntsike, "An African leadership paradigm: the missing link for productivity and empowerment-the case of Lesotho". PhD diss., Stellenbosch: Stellenbosch University, 2001.

⁴⁰ Interview with Chief Thoolo on the 15th May 20145

⁴¹ Moeletsi oa Basotho, 12 April 1949

revealed Chief Thoolo. According to him, persons born into chieftaincy and those who marry into it have distinct perspectives on their roles.⁴²

During World War II, Lesotho remained a British colony, posing difficulty for Mantšebo to maintain Basotho's support for the British war effort. To garner all of this support, she implemented two measures: encouraging Basotho men to enlist in the African Voluntary Corps and raising finances for the war. The first and greatest duty she engaged in in her early days as regent Mantšebo heroically supported the British military effort throughout WWII. She travelled around the nation beginning in 1941, encouraging Basotho men to enrol in the army to support the British during the war.⁴³

The 1940s and early 1950s witnessed not only chieftaincy changes but also the advent of Liretlo (medicine killings), which terrified the population. In 1945, seventeen murder cases involving Liretlo were reported to the government, 97, while between 1946 and 1948, the number of recorded killings increased to 37. This was a dilemma because it occurred under her rule as a woman, and people are now killing each other for selfish gain. She was charged with medical murder due to seven instances on her ward, Mokhotlong, and her biological daughter, Ntšebo, was suspected of being an accomplice.⁴⁴ While it is true that people were found mutilated and dead, what remained a serious controversy was who carried out liretlo and what were the reasons behind liretlo. Some scholars pointed to chiefs, on whom the reforms that started in 1938 took away much of the prerogatives they previously enjoyed as well as the authority they had in the society. As a result, it was believed that chiefs resorted to liretlo for magic medicine that could help them regain what they lost. She did this with great help from her advisors like the likes of Chief Khethisa who was

⁴² Interview with Chief Thoolo 15th May 2024

⁴³ Leselinyana la Lesotho, 6 January 1943

⁴⁴ Moeletsi oa Basotho, 4 January 1949

also the second in command of the armed forces of Lesotho. Ntsane-Mosebo stated that, while it is true that victims were found maimed and dead, there is still a substantial debate on who carried out liretlo and why.⁴⁵

During a male-dominated era in deeply patriarchal societies, two remarkable women rose to power as regents for their sons, who were heirs to the throne. Tasked with safeguarding their sons' rightful positions, they faced the challenge of resisting their brothers-in-law, who sought the throne, as cultural norms dictated that women should not hold such authority. Despite these obstacles, they carved out their legacies, becoming role models for young girls and women aspiring to leadership in patriarchal systems. Their achievements marked a significant turning point in the institution of kingship, demonstrating that, even in the male-dominated sphere of chieftaincy, women can triumph. Their influence endures today, serving as a testament to the strength of African women in leadership. Their impact continues to resonate in discussions about African patriarchal leadership and the erosion of matriarchal power in traditional societies.

⁴⁵ Interview with Chief Khoabane on the 21 May 2024

Chapter Four: Princess Senate Gabasheane Masupha and the Struggle for Matriarchy and Kingship Institution

4.1 Initiation of Women into Chieftaincy Institution

Chieftaincy evolved long before Africa's experience with European colonial officials. The rise of this institution was driven by the need for individuals leading sedentary lifestyles to have leaders to oversee and manage their affairs. It is woven into the social and cultural fabric of the region, with the family head at the bottom of the traditional political structure and the supreme chief at the top. The term chieftaincy refers to the structure that governs conventional African societies. The word refers to queen mothers, who are the female equivalents of chiefs who are elected and installed by the chief's selection committee. The divisional chiefs, sub-chiefs, and village chiefs report to the paramount chief through the hierarchy.¹ Laws prohibiting women from inheriting the position of chief have been overturned in South Africa and Namibia, but not in Lesotho. Senate Gabasheane Masupha is battling for the right to hold the title previously held solely by males.

The customary laws that govern succession may be traced back to Moshoeshoe himself. Substantial evidence shows that the present succession laws did not necessarily govern Moshoeshoe's elevation to highness. According to Machobane, it is unclear when and how Moshoeshoe assumed the office of Morena (as distinguished from Morena e Moholo) over his minor chiefdom of Bakwena of Mokoteli (a remnant of Monaheng's dynasty) before lifaqane.²

¹ Kwabena Kwabena Boateng and Stephen Afranie, "Chieftaincy: An anachronistic institution within a democratic dispensation? The case of a traditional political system in Ghana." *Ghana Journal of Development Studies* 17, no.1 (2020): 26. DOI//<http://dx.doi.org/10.4314/gjds.v17i1.2>

² 2 Lehlohonolo B. Machobane and Stephan Karschay. *Government and change in Lesotho, 1800–1966: a study of political institutions*. Springer, (1990):6

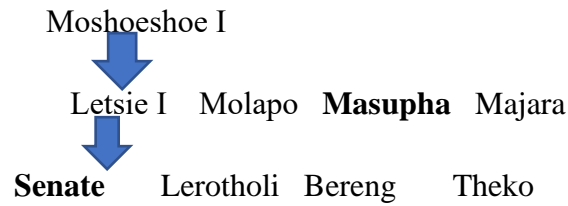


Figure 4: The Lineage of Moshoeshoe I indicates where Senate is from

The rhinoceros horn ceremony is a royal ceremony in which an heir is given complete authority and shown how the chieftaincy institution is designed. The heir is presented to the country as the next in line of succession to the crown. This horn is a sign of power. Moshoeshoe's rhinoceros horn was passed down to all his successors. This is passed down from heir to heir. Chiefs used this horn to “note their rank”. This ritual was a traditional occasion in which a chief was publicly installed in front of an assembly of all senior males. The successor is frequently instructed on how to govern fellow subordinates. The predecessor urges him to govern wisely, strongly, and equitably, and to always follow the advice of his kinsmen and senior councillors.³ Another tradition is the female husband where a royal lady marries another prominent woman for her brother to produce an heir for the royal family. By tradition, the married lady is expected to be a male rather than a wife. Her wife, another female to whom she is wedded, is turned over to a chosen, presumably willing guy in an attempt to procreate, but that man's proxy only spawned offspring. The female husband serves as the formal father of the children. Female husband-ship is popular in royal families when the goal is to safeguard the chieftaincy and contemplate succession to the throne.⁴

³ Lehlohonolo B. Machobane, *Government and Change in Lesotho, 1800-1966: a Study of Political Institutions*, (1990) 10.

⁴ Lehlohonolo Machobane, B. B. J. "Gender, Succession and Dynastic Politics: The Saga of Senate and her son Motšoene Molapo Moshoeshoe, 1858-1930." *Review of Southern African Studies* 4, no. 1 (2000): 20

Princess Senate Letsie

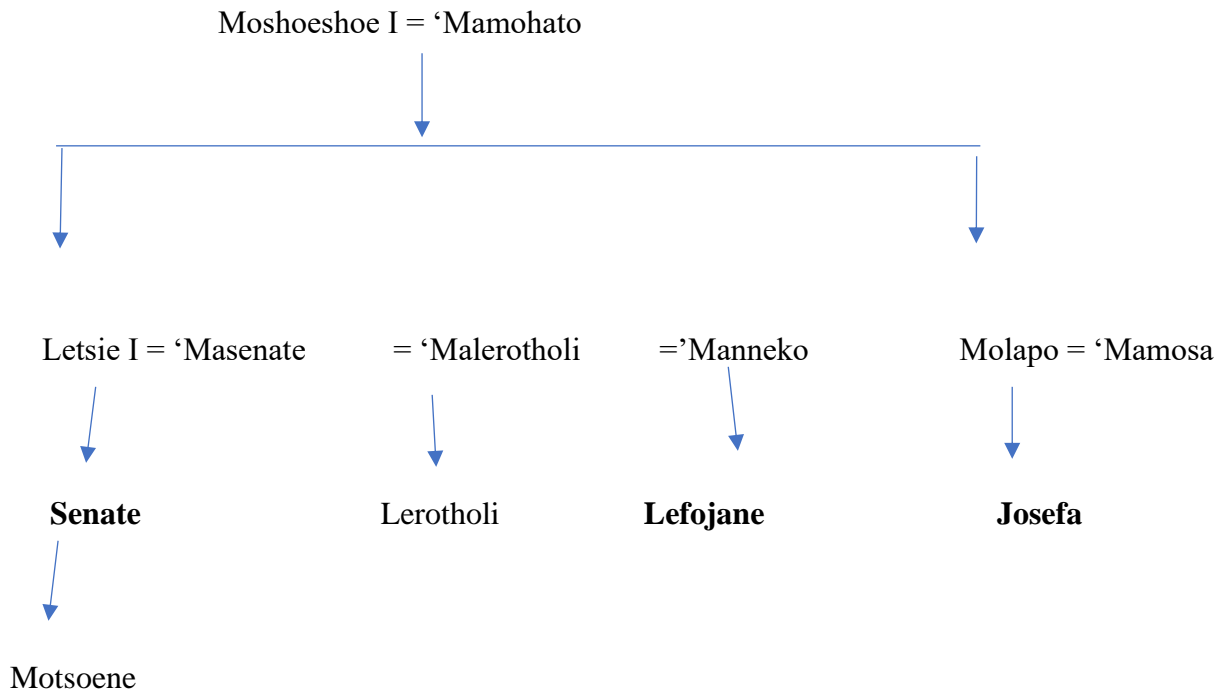


Figure 5: The tree shows males that had children with Senate and which houses they were from

As Moshoeshoe's first granddaughter from his eldest son Letsie, she was the first royal daughter to be entered into marriage. Moshoeshoe alerted the Senate about the female-husband problem. He originally introduced her to the Basotho people during a public gathering at Thaba-Bosiu as the successor to the kingdom.⁵ When Moshoeshoe introduced Senate to the people, he said the following: "I am your King until my death; after that, my son Mohato, sometimes known as Letsie, will follow me, but his successor will be Senate, the female I am laying my hand on. This girl is a highly remarkable individual and a fragile jewel for the Basotho people that must be properly protected".⁶ He then introduced Senate to the Basotho country, where she swore an oath of office to the chieftaincy promising to reign with compassion and patience, to provide a calm environment for the disadvantaged and to treat everyone equitably, rich or poor. Senate

⁵ Lehlohonolo Machobane, B. B. J. "Gender, Succession and Dynastic Politics: The Saga of Senate and her son Motšoene Molapo Moshoeshoe, 1858-1930." *Review of Southern African Studies* 4, no. 1 (2000): 23

⁶ 6 Lehlohonolo Machobane, B. B. J. "Gender, Succession and Dynastic Politics: The Saga of Senate and her son Motšoene Molapo Moshoeshoe, 1858-1930." *Review of Southern African Studies* 4, no. 1 (2000): 19-41.

lifted her hand and said, "Creator of Heaven, creator of our great-grandfathers, creator of all countries, creator of Basotho country, have compassion on me and grant me strength and bravery to manage this nation".⁷

Moshoeshoe gifted her with the rhino horn as a symbol of leadership.⁸ After this introduction ceremony, she was trained into leadership roles; she was trained to be a true warrior in war because she was now required to be a part of them to become acquainted with succession politics; she learned when to surrender in war and when to give spies orders to check the enemy's strategies. This taught Senate to be extremely good at strategic war planning, to be objective, to select words properly, to care about people, and to be patriotic. According to Thabane, Moshoeshoe trained Senate to be a man who was exactly suitable for the position of chieftaincy in every department or even in parts that every royal male child went through in the process of being groomed for the throne, and he ensured she knew those tasks flawlessly.⁹

Senate became a man when she accepted the oath of leadership. Moshoeshoe arranged for Senate to marry another woman to keep her masculine status, and he gave lobola to his nephew Ramaneella to gain a hand in marriage for his daughter Maneella. Maneella was changed into Senate's wife, and Senate vehemently supported the bizarre development, stating in 1883 that "I am the husband-my marriage is greater than that of a cattle marriage since she is now entirely and legally transformed into the opposite gender." Maneella was subsequently renamed Maletsabisa, and she was placed under the complete care of Lerotholi (Senate half-brother), who was tasked with siring offspring for the female spouse Senate.¹⁰

⁷ David-Frédéric Ellenberger, *History of the Basuto*, (Morija Museum & Archives 1997).

⁸ James Jacob Machobane, *Senate Shoeshoe 'A Moshoeshoe*, (1983):23

⁹ Interview with Thabane Roma 7th March 2024

¹⁰ Lehlohonolo Machobane, B. B. J. "Gender, Succession and Dynastic Politics: The Saga of Senate and her son Motšoene Molapo Moshoeshoe, 1858-1930." *Review of Southern African Studies* 4, no. 1 (2000): 22.

The Senate's prerequisites for retaining the status of throne successor were that she remains a female who is unable to produce children and must rely on her wife to do so. She was a guy, thus her wife needed to be present for her to fulfil that role. By coincidence, Senate succumbed to temptation and had a kid with Lefojane, her half-brother from his father's third marriage. Lefojane fathered a kid named Deborah. This event caused Senate to lose all royal powers and obligations, as well as her position in the line of succession.¹¹ Now that things had taken a different turn, the King had to devise a strategy to maintain the chieftaincy within Letsie's first house while still employing Senate as an heir. Then the next plan was implemented, in which the son of Molapo, Moshoeshoe's second son, would father children with Senate. Josefa was now the ideal partner for Senate to have children with. The King intended for him to visit Thaba-Bosiu to speak with Senate.

“Moshoeshoe I used Senate to unify his sons by making it manly. She was being used as a tool by Letsie and Molapo to foster brotherhood. He legally arranged for Molapo's son Josefa to produce an heir with the Senate. Senate achieved this: Moshoeshoe constructed a house for me in Thaba-Bosiu, where Josefa met me, and a kid was born for Letsie's large house as a result of our union. There was no sign of marriage because no cattle were distributed to commemorate the nuptials of the Senate and Josefa”¹²

Sanders highlights the unique relationship between Senate, Letsie's senior daughter, and Josefa Molapo's senior son. Their grandfather Moshoeshoe arranged for Senate to be the husband and Josefa to be the wife, resulting in Motšoene as Letsie's heir and successor to the royal throne.¹³

The relationship resulted in the birth of Motšoene Molapo Moshoeshoe, a son the grandfather had long coveted. Moshoeshoe publicly announced this son as King in line of succession. After the birth of this kid, Moshoeshoe proclaimed publicly that Senate is free to marry anyone she wants because she has bored Letsie with a son who would replace him. Moshoeshoe presented

¹¹ James Jacob Machobane, Senate Shoeshoe ‘A Moshoeshoe, (1983):49.

¹² Lehlohonolo Machobane, B. B. J. "Gender, Succession and Dynastic Politics: The Saga of Senate and her son Motšoene Molapo Moshoeshoe, 1858-1930." *Review of Southern African Studies* 4, no. 1 (2000): 25.

¹³ Peter Sanders, Moshoeshoe Chief of the Sotho (1975):207.

Senate with the jewellery that his instructor Mohlomi had given him upon ascending to the chieftaincy. This included *sepetja*, which is the bracelet he gave to Senate so that she might give it on to her kid when it fits him correctly. This is a chieftaincy bracelet, exclusively handed to heirs. Senate was given commands that she should deliver to the son when he is ready to lead the people; chieftaincy is fatherhood to one's fellow citizens, love, mercy, and persistence, as well as respect for women and children.¹⁴ Moshoeshoe utilized a variety of techniques to cement and defend his chieftaincy, one of which was the marital alliance; in this case, he made it apparent that he would go to great lengths to ensure the throne's security, including marrying siblings for royal purposes.

According to Advocate Thabane, in 1974, women, particularly Chieftainesses, were granted the right to inherit their late husbands' thrones even if they did not have sons. This provision was originally provided to females who served as regents for their sons, which is why Masenate Masupha was a full principal chief of Mamathe even though she had no son.¹⁵ Chief Joang Molapo states that it is not an issue to give their sisters the office of chieftaincy as long as they understand that "chieftaincy is of the Koena clan" and that their progeny are entitled to their fathers' clans. He goes on to say that even after marriage, they can hold the post, but their offspring cannot; nonetheless, their husbands can be regents, much as chiefs' spouses can become regents even if they do not have royal blood.

The chieftainship must be kept within Bakoena's line; otherwise, the Basotho society would remain patriarchal. He admits that the Senate is royalty and should be regarded as such, but the office of chieftaincy belongs to Masupha and Masupha's children are the caretakers of that Mamathe office. According to him, as "Sons of Moshoeshoe", they still respect the women who are granted executive responsibility in chieftaincy since they are members of the family

¹⁴ James Jacob Machobane, Senate Shoeshoe 'A Moshoeshoe, (1983):99.

¹⁵ Interview with Thabane Roma 6th May 2024

and must make ultimate judgments. Marriage is not an issue for him since “seboko haase fetohe” (clan does not change) wherever you go, you still have royal blood.¹⁶ He goes on to clarify that chieftaincy still permits spouses to take the office, even if they come from a different clan because they are qualified by marriage, but this appears to be different for a female child, as some people believe marriage disqualifies her from the post. However, the girl child must understand that her children do not qualify for the post. The office is a lasting legacy of a certain clan and should be inhabited by that clan.

4.2 Princess Senate Gabasheane Masupha’s Early Life, Professional Career and Leadership

Senate Gabasheane Masupha is the sole offspring of the late chief David Masupha and chieftainess Mmasenate Gabasheane Masupha. She is from Ha-Mamathe, Berea District. She attended St Agnes Primary School before continuing her career at St Mary's High School. She attended the University of Natal, where she earned a Bachelor of Law from 1994 to 1996, then Honours in Political Sciences in 1997, and Urban and Regional Planning from 1998 to 1999. Princess Senate was a researcher at the University of Natal and the main planner at Durban's Department of Traditional and Local Government Affairs. She became assistant director of Johannesburg City Council in 2003, worked for Lesotho Foreign Affairs in 2007, and earned a master's degree in international policy from the University of Rome in Italy in 2010.¹⁷ She also worked as a counsellor at the Lesotho Embassy in Rome before being named Ambassador between July 2012 and June 2013. She is now the high commissioner for Lesotho in Germany. Her father, Principal Chief David Gabasheane Masupha, died in 1996, and her mother, Chieftainess Mmasenate, passed away in 2008. Both chiefs served as major chiefs of Mamathe,

¹⁶ 16 Interview with Chief Molapo Maputsoe 6th May 2024

¹⁷ Staff writer, “The girl who dared swim against the tide” *Public Eye*, 13 August 2013
<https://www.southernafricalitigationcentre.org/2013/08/22/the-girl-who-dared-swim-against-the-tide/>

Thupa-Kubu and Jorothane, with chieftainess Mmasenate holding that post for about 12 years until she died in 2008. When she died, the office of chieftain became empty and could only be inherited by a male heir. According to Princess Senate, “My parents were chiefs throughout their entire life since it was their right, which made me feel safe as I grew up”. However, once her mother died, she lost her royal comfort zone. There was unexpected familial friction about who would inherit the chieftainship. She further said, “I was a victim of this tension because it seemed like I wasn't even present”.¹⁸

Moshoeshoe family tree through his son Masupha where Senate is the grandchild

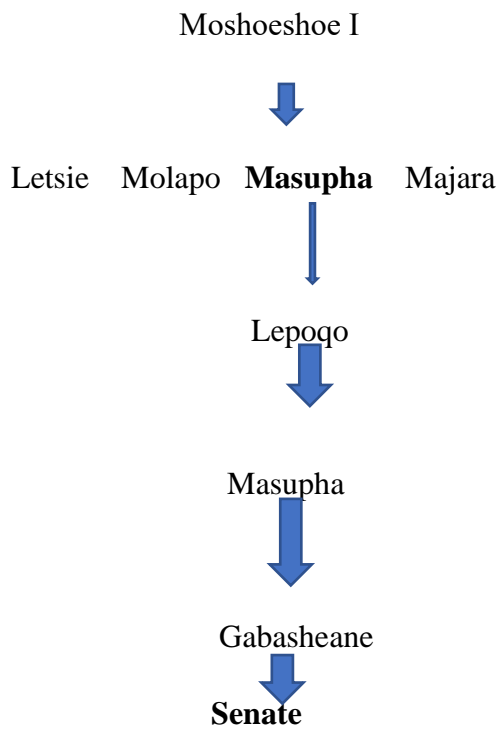


Figure 6: Moshoeshoe family tree through his son Masupha where Senate is the grandchild

4.3 Legal and Cultural Foundation of the Struggle

The late Chief David Masupha was survived by two wives, Mmasenate and Malepoqo. Mmasenate had just one child, our Princess Senate and her sister's wife had three children: a

¹⁸ Staff Writer, “The girl who dared swim against the tide” *Public Eye*, 13 August 2013
<https://www.southernafricalitigationcentre.org/2013/08/22/the-girl-who-dared-swim-against-the-tide/>

male and two daughters. Following the death of Principal Chief Masupha, there was a struggle over whose wife would replace him. Ironically, conventions discriminated against Senate because she is female, and they were also utilized against the second wife, Malepoqo, who was married conventionally. The courts ruled in favour of the first marriage since it was based on civil rights.¹⁹

Senate Masupha is an only child, and Lesotho's rules restrict women from inheriting the chieftainship unless in the case of the death of a chief spouse. In this case, Masupha's mother may have been the chief, but after her death, the post could only be inherited by a male successor. This is a longstanding custom in the royal family that forbids first-born daughters from inheriting the throne following the death of either one or both of their parents and Princess Senate was no exception after both parents died.²⁰ Following the death of chieftainess Mmasenate, a family meeting was held on February 19, 2009, and Lepoqo David Masupha, the deceased Chief David Masupha's son from his second wife Malepoqo, was named a successor to the chieftaincy, but the late Chief Masupha's younger brother, Sempe Masupha, challenged the decision and appointment in the lower court.²¹

This is because neither the chieftaincy nor the office can be left empty. The family nominated Lepoqo Masupha as heir, but Senate did not attend the meeting and she was barred from family discussions. However, Senate claims that, despite being the first-born child of the late Chief's first wife, she was not considered for the chieftainship solely because of her gender, as she stated in an interview with the *Sunday Express*.²² Senate's parents married by civil rights marriage; no customary marriage could be formed during the civil rights marriage. “She says her father attempted to marry the mother of Lepoqo David Masupha, but the marriage was

¹⁹ Billy Ntaote, ‘Masupha in Major Breakthrough’, *Sunday Express*, 6 June 2015

²⁰ Chieftaincy Act of 1968

²¹ Staff, Writer, “Increased Recognition of Women’s Right to Chieftainship in Southern Africa”, *Southern Africa Litigation Centre*, 9 November 2022

²² Billy Ntaote, ‘Masupha in Major Breakthrough’, *Sunday Express*, 6 June 2015

annulled in 1978". Lepoqo was also running for chieftain because his father had no sons from his first marriage to, Senate's mother.²³

During the family meetings conducted at her parent's house during her absence, she was eventually asked to leave as if she had no right to be there. At one of her appearances with the local press, she stated that one of her late uncle's wives had asked her if she may stay at her home because she was now serving as chief. She said that she refused and that she was only welcome to visit the property, not remain and inhabit it under any conditions. This disagreement with the family haunted her for almost a year before she emerged from the shadows to fight for the rights of a girl kid.²⁴

Advocate Mosito contended that the marriage between Lepoqo's mother and the late Chief Masupha was unlawful since the late chief's previous marriage was under civil law, which, he said, prohibited polygamy.²⁵ However, one Mamathe resident claims that on one occasion, chieftainess Mmasenate performed a ritual and ceremony to welcome the kid "Lepoqo" into the family, and they continue to wonder why the second wife's children have the family's name if they are not members²⁶ Senate found this terrible because she had spent her entire life in chieftaincy. "My parents were chiefs their entire lives, and that was their right". "I felt comfortable growing up", Masupha told CNN. "But when my mother died, I was taken out of my comfort zone. There was unexpected familial friction about who would inherit the chieftainship. I was a victim of this tension because it was as if I didn't exist".²⁷ They disregarded her because they believed she was not the true successor to the kingdom per Lerotholi's customs and regulations. Despite being the sole surviving child of her parents'

²³ Tefo Tefo, "Court Seal Senate's Fate", *Sunday Express*, 21 April 2014

²⁴ Staff writer, "The girl who dared swim against the tide" *Public Eye*, 13 August 2013
<https://www.southernafricalitigationcentre.org/2013/08/22/the-girl-who-dared-swim-against-the-tide/>

²⁵ *Sunday Express*, 21 April 2014

²⁶ Interview with Teboho on the 26th March 2024

²⁷ Tefo Tefo, "Court Seals Senate's Fate", *Sunday Express*, 21 April 2014

legally bonded marriage, she was considered a stranger in processes involving chieftain succession.²⁸

4.4.1 The Struggle at the Magistrate Court

On February 19, 2009, a family meeting was held at Ha 'Mamathe. At the meeting, Lepoqo David Masupha (also known as Lesenyeho) was named as the Successor to the Chieftainess, and Seemola 'Matumahole Gabasheane Masupha was appointed to act as regent on behalf of Lepoqo David, who under-age at the time. Sempe Gabasheane disputed the appointment and opposed the nomination and presentation of the first defendant, Lepoqo David, and the Regent for the following reasons. The appointment excluded “inner members of the household of the late Chief Gabasheane Masupha in whose house death had happened”. The first defendant is the “illegitimate” son of the late Chief Gabasheane Masupha, who was not legally married to his mother. He was illegitimate and could not ascend as chief. The late Chief Gabasheane David Masupha was lawfully married by civil rights to the late Chieftainess 'Masenate David Gabasheane Masupha, who succeeded her husband as chief following his death. The second defendant's candidacy as interim Principal Chief on behalf of the first defendant was challenged because she was not the lawful wife of the plaintiff's late brother, who was already married when he attempted to marry her. It eventually became prevalent since the parties were legally married.²⁹

Sempe Gabasheane Masupha requested an order directing the Minister of Local Government to present his name to the King as the lawful successor to the vacant office of Principal Chief of the area, thus setting aside the nomination and presentation of Lepoqo David Masupha and his proxies as successors to that vacant office. The judgments made there were completely lawful and effective. The defendants claimed that any nomination other than that of Lepoqo

²⁸ Laws of Lerotholi 1903

²⁹ Constitutional Case No.5/2010

David would have been illegal and an illegitimate divergence from the line of succession under Customary Law. As a consequence, the parties were prepared to begin the trial in October 2009, when pleadings were closed and a plea to the revised claim was filed. Heads of argument were filed on behalf of the parties, and Counsel Parties attended a pre-trial conference in which the issues were restricted before the trial commenced under Magistrates Court Case No. CC21/09 before His Worship Mr Kolobe, the Senior Resident Magistrate.³⁰

David's younger brother, Sempe Gabasheane Masupha, then filed a petition in the Berea Magistrate's Court to become the principal chief. Because the second wife's marriage to Chief Masupha had been declared null and void, the chieftaincy usually passed to the second house by tradition.³¹ However, Lepoqo David Masupha, the late principal chief's second wife's son, challenged the assertion. Lepoqo's mother sided with her son in the claim dispute. Then again, Senate was not mentioned in those court proceedings but later applied for permission to have the issue transferred to the High Court due to its constitutional implications. This is because the High Court can sometimes sit as the Constitutional Court since the case included the Chieftainship Act, which is one of the legislations that regulates this country. After all, the kingship institution is a pillar of government and a source of high authority.³²

In the middle of the Magistrate Court hearings, Princess Senate Gabasheane Masupha applied to intervene as an interested person. The primary remedy she requested in the application was as follows: granting the Applicant leave to intervene in CC21/09. Allowing her to file her documents within three days of receiving an order of intervention in CC21/09. The delivery of judgment in case CC21/09 is postponed pending the conclusion and involvement of Princess Senate.³³ The learned Magistrate, after fully considering the matter, made his ruling, which

³⁰ Constitutional Case No.5/2010

³¹ Magistrates Court Case No. CC21/09

³² Interview with Mofumahali Berea 26th March 2024

³³ Constitutional Case No.5/2010

could be summarized as follows: "that the application for intervention ought to be made seriously and should not be frivolous. Princess Senate should have a direct and substantial interest in the matter. The Court concluded that under Lesotho law, females and girls had no direct and substantial interest in matters of succession, particularly where there was a son. The Constitutional Court ruled that Princess Senate's application was frivolous and unfit for determination. Therefore, the plea for intervention was dismissed.³⁴ The plaintiff's case was dismissed by the Court because it could not set aside the appointment or that of the acting Chief. To set aside a decision of a functionary, it must be proven that the decision was taken illegally and was completely biased. The family had not departed from the line of succession and did not have the authority to settle the subject unilaterally; instead, they were required to follow it. The plaintiff's complaint was thus dismissed. This occurred on April 6, 2010, and the reasons were disclosed later, on April 12, 2010.³⁵

4.4.2 The Struggle at the High Court Constituted the Constitutional Court

On April 14, 2010, the Applicant, Senate Gabasheane Masupha, filed the current proceedings in the High Court. She requested different types of remedies against Respondents, including the Senior Resident Magistrate of Berea, the Speaker of the National Assembly, Sempe Gabasheane Masupha, Lepoqo David Masupha (Alias Lesenyeho), and others. The Applicant, Princess Senate Gabasheane Masupha, represented by Advocate K. Mosito, KC, requested urgent relief against the Respondents, supported by a certificate of urgency.³⁶ In 2010, Senate Masupha filed a major action in Lesotho's Constitutional Court, challenging the Kingdom's Chieftainship Act, which exclusively enables men to inherit chieftainship. Masupha and her attorneys claimed that the Act is illegal because it discriminates against female children. Yes, Masupha was within her rights because the Constitution protects the human rights of all

³⁴ Constitutional Case No.5/2010

³⁵ Constitutional Case No.5/2010

³⁶ Constitutional Case No.5/2010

Mosotho citizens; if it cannot protect the other gender and makes provisions for one without considering how they affect the other, this constitutes a violation of human rights in a country where everyone is protected by the Constitution.³⁷ In 2012, the Constitutional Court issued its decision, concluding that the Act was justified and appropriate in light of Lesotho's culture. Masupha's appeal was therefore dismissed, and she lost the ability to inherit the chieftainship. However, the court highlighted that Lesotho is “lagging” in the implementation of gender equality measures and that it was time for the country to move away from the “undesirable effects of customary law”.³⁸ When her future became unknown, Masupha petitioned Lesotho's Constitutional Court for her right to inherit the chieftainship in 2013. This stage, which found that the statute was discriminatory based on gender, challenged Section 10 of Lesotho's Chieftainship Act, which barred unmarried women from succeeding to chieftainship.

When Masupha filed her court challenge, she stated that “this lawsuit is not just about me, but about all women in Lesotho.” It aims to abolish women's second-class status and ensure equal access to all elements of Lesotho society. She stated in public that women are viewed as second-class or even non-existent persons as if they were defined by society as being only good in the kitchen and having children.³⁹ Undeterred by the decision, Masupha and her legal team brought the matter to the country's Court of Appeal, where it was once again dismissed. This time, the court stated that upgrading the Act was a concern for Parliament. At this moment, Masupha stated, “I hope that the government would take responsibility and repeal these regressive laws.” There is tension in Lesotho politics, in which cultural claims undermine, marginalize, and override the importance of gender equality. The existence of some rules, such

³⁷ Interview with Ramakhula Roma 23rd February 2024

³⁸ Tefo Tefo, “Court Seals Senate Fate”, *Sunday Express*, 21 April 2014

³⁹ Interview with Majoro Botha-Bothe 20th February 2024

as the one governing chieftainship, appears to favour one gender over the other, granting it authority.⁴⁰

Senate's issue drew the attention of many individuals, including senators and chiefs, particularly senior chiefs, who had differing views on her case. During my chat with Chief Lerotholi, he indicated that the matter is extremely significant because it touches the lives of Basotho and chiefs are required to defend both sexes without bias. All persons are equal and deserve the same treatment under the law, and the chieftainship institution is one of the first and most important institutions that must serve properly since it is at the heart of the society. The chiefs are the closest to the people; they are the ones who know them best since they provide services at whatever time is specified.⁴¹ The chief was fair enough to indicate that the chieftainship institution is the basis and foundation of the Basotho nation and that any issue involving the institution must be closely related to what the community desires, as “Morena Mohlomi did indicate that the law did not know a poor man and that man's poverty should not debar him from obtaining any justice”. Chieftaincy is the basis of the Basotho nation and it is built on standards. These norms help to steer the nation so that it is always in sync with time and place.⁴²

Lesotho has 22 principal chiefs. The chiefs had differing views on Senate Masupha's issue; during an interview with Lesotho Times, the late Principal Chief of Ha-Maama, Mabela stated that discrimination against unmarried girls breaches the principles of equality of rights and respect for human dignity. She went on to argue that such prohibitions prevent women from participating on an equal basis with males in their nations' political, social, economic, and cultural life, as well as stifling societal and family success.⁴³ According to the same publication,

⁴⁰ Billy Ntaote, “Masupha in Major Breakthrough”, *Sunday Express*, 6 June 2015

⁴¹ Interview with Chief Lerotholi Roma 8th March 2024

⁴² Peter Sanders, *Moshoeshoe: Chief of the Sotho*, (London, Heinemann, 1975):.21.

⁴³ Letuka Chafotsa, “Gender divides chief's Meeting”, *Lesotho Times*, 2013.

the Principal Chiefs of Tajane and Qachas'nek place a greater stress on Basotho customs and culture when establishing the country's direction in questions of chieftaincy and succession in Lesotho.⁴⁴

Discrimination does not just occur in chieftainship institutions; the Principal Chief of Leribe stated that the ban on discrimination should extend to all aspects of life. Chieftainship is one institution among several that serve. Basotho discrimination should be addressed in all aspects of life to ensure gender equality. The principal chief of Rothe, as well as the chiefs of Ramabanta and Kubake, emphasized that the issue of chieftainship should be handled first by the grassroots since the communities own the issue of chieftainship and succession. The principal chief of Rothe, as well as the chiefs of Ramabanta and Kubake, emphasized that the issue of chieftainship should be handled first by the grassroots since the communities own the issue of chieftainship and succession.⁴⁵ What the principal chiefs say is without debate; what the society wants, it must have; the chieftainship is at the heart of the Basotho; whatever they wish to alter, they must be able to do so. The Deputy Speaker of the National Assembly remarked that what the society makes noise about at the grassroots shifts the attention of both chambers of Parliament and the Senate to listen to the community effectively.⁴⁶ This is consistent with Sesotho's statement 'Morena ke Morena Ka Sechaba'(a chief because of the grace of people). Finally, it is up to the community to decide what their way of life should be, as chieftaincy is built on norms, how we do and see things. The Princess Senate's lawsuit was denied, but it was appealed a year later, with the justices arguing that modernizing the regulation was a concern for Parliament.

⁴⁴ Letuka Chafotsa, "Gender divides chief's Meeting", Lesotho Times, 2013.

⁴⁵ Letuka Chafotsa, "Gender divides chief's Meeting", Lesotho Times, 2013.

⁴⁶ Interview with Tsita-Mosena Roma 8th March 2024

4.4.3 The Struggle at the Court of Appeal

The Princess Senate Gabasheane Masupha is an unmarried lady in Lesotho's diplomatic corps who serves overseas. Until his death, her father served as the Principal Chief of Ha-‘Mamathe, Thupa-Kubu, and Jorothane. He was replaced by his wife, the Senate's mother. Following her death in December 2008, the position of Principal Chief became vacant. In February 2009, a family gathering was conducted, and Lepoqo David Masupha, the Senate's late father's then-minor son and sole child from a later marriage, was named as the chieftain's successor, with a regent appointed until his majority. Several legal cases involving the succession proceeded. As a result, the appellant applied with the High Court, which exercised its authority as Lesotho's Constitutional Court. The relief she sought was an order declaring that Section 10 of the Chieftainship Act, 22 of 1968, is unconstitutional in the sense that it purports to deny her the right to succeed to the principal chieftainship solely because she is female and that a female firstborn child of a chief is entitled to be considered for chieftainship succession.⁴⁷ The application was unsuccessful, hence this appeal.

On April 17, 2014, the Court of Appeal ruled that the Constitutional Court was valid in its decision against Masupha on March 3, 2013, since according to local customs, a girl-child cannot replace her father as a chief. However, during its 56th Ordinary Session, held in Banjul from April 21 to May 7, 2015, the African Commission on Human and People's Rights (ACHPR) concluded that Ms Masupha's Chieftainship challenge was "suitable to be considered by the commission" and notified her of this in a letter dated May 8, 2015.⁴⁸ The Court of Appeal's summary was as follows: "Constitutional and customary law - entitlement of appellant, the daughter and only issue of a Chief by his first marriage, to succession to the Chieftainship - only son of subsequent marriage nominated as successor by the family -

⁴⁷ C OF A (CIV) 29/2013

⁴⁸ Billy Ntaote, "Masupha in Major Breakthrough", *Sunday Express*, 6 June 2015

constitutionality of Section 10 sub-section 2 of the Chieftainship Act in excluding entitlement of women to succeed by right of birth - whether appellant entitled to relief in terms of Sections 18 and 19 of the Constitution.⁴⁹

The Federation of Women Lawyers (FIDA-Lesotho) and the Southern Africa Litigation Centre (SALC) provided significant support to the Princess during her legal battle. The Commission stated that “Princess had alleged violation of her right to non-discrimination, equality, and equal protection of the law, dignity, and not to be subjected to cruel, inhuman, and degrading treatment, equal access to public service, property, and access to health and culture, as well as the obligation to end discrimination against women and reform discriminatory laws”. The duty to end harmful behaviours, the right to participate in political and decision-making processes, and the right to fair economic opportunity. The right to health, including sexual and reproductive health, the right to live in a supportive cultural environment, and the right to equitable inheritance.⁵⁰

Justice Howie of the Appeal Court stated that the appellant's constitutional challenge against Section 10 is based on Subsections 18 and 19 of Chapter II of the Lesotho Constitution. The chapter is titled “Protection of Fundamental Human Rights and Freedoms” and has subsections 4. Section 18 guarantees everyone in Lesotho the right to be free of discrimination, and Section 19 sub-section 5 guarantees everyone equality before the law and equal legal protection. These rights and others are stated as fundamental rights and freedoms in Section 4, Subsection 1 of the Constitution. The subsection concludes by stating that the listed rights and freedoms are protected by the Chapter's provisions “subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the

⁴⁹ C OF A (CIV) 29/2013

⁵⁰ Billy Ntaote, “Masupha Major Breakthrough”, *Sunday Express*, 6 June 2015

enjoyment of the said rights and freedoms by any person does not prejudice the public interest”.⁵¹

The Southern Africa Litigation Centre argued that Section 10's exclusion of first-born (or only) daughters of chiefs from entitlement to succeed as chief is unconstitutional unless it can be said to be a limitation, "intended to ensure that the enjoyment of the said rights and freedoms does not prejudice the rights and freedoms of others or the public interest", the said rights and freedoms being listed in subsection 4 (1) and including, as already in section 19. The phrase "prejudice of the public interest" is the source of worry in this instance, which involved pure discrimination against a female kid.⁵² During this campaign, independent groups that advocate for gender equality in all aspects of life fought with the Princess. Princess Masupha also told the Sunday Express that she was working closely with local and global civic entities to fight for Lesotho women's rights in terms of chieftainship succession. Masupha mentioned that she was partnering with the Federation of Women Lawyers, Women and Law in Southern Africa and the Southern Africa Litigation Centre. The three societies were also involved in the court proceedings and served as “friends of the court”.

On Thursday, one of the "friends of the court," Deputy Director Priti Patel, called the Court of Appeal decision “a bad day for women in Lesotho”. He stated that “the Court of Appeal has reaffirmed that women are second-class citizens in Lesotho”. Lesotho has made tremendous progress in abolishing gender discrimination, including the elimination of male marital authority. However, this decision sends a clear message that discrimination against women based simply on their gender is still allowed.⁵³ The court argued that modernizing the regulation was up to 88 Parliament. This was supported by Deputy Speaker Mosena in an interview, who

⁵¹ C OF A (CIV) 29/2013

⁵² C OF A (CIV) 29/2013

⁵³ Tefo Tefo,” Court Seals Senate’s Fate”, *Sunday Express*, 21 April 2014

stated that matters that concern Basotho in all aspects of life can be made by the noise they make at the grassroots because the parliament relies on what the people want; if they want change, they must not always politicize even matters that can bring change to all of them. Even if an excellent concept is given by a member of the white party, we ought not to dismiss it because we belong to the black party.⁵⁴ People must be informed of how chieftaincy matters influence them since the Senate's case is currently before the African Court. The Maputo Protocol is a very delicate treaty that people must grasp very clearly when it comes to concerns surrounding succession to chieftaincy in Lesotho and inheritance in general, as described to me by Advocate Koena Thabane.⁵⁵

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) remains one of the most progressive legal instruments providing a comprehensive set of human rights for African women. Unlike any other women's human rights instrument, it details wide-ranging and substantive human rights for women covering the entire spectrum of civil and political, economic, social and cultural as well as environmental rights. Maputo Protocol is a living document that continues to be translated into domestic laws and programmes to ensure that women enjoy the rights provided in the Protocol.⁵⁶

The Maputo Protocol addresses various rights related to women and girls across the African continent. Although the protocol primarily focuses on women's rights, it also includes provisions related to children's rights, particularly to inheritance. Article 21 of the Maputo Protocol emphasizes equality in inheritance whereby women and girls have the right to inherit property, including the right to equitable inheritance of family property, in line with their male counterparts. This provision also implies that children, regardless of gender, should have equal

⁵⁴ Interview with Tsepang Tsita Mosena Roma 8th March 2024

⁵⁵ Interview with Koena Thabane Roma 8th March 2024

⁵⁶ Azubike, Onuora-Oguno. "Commentary on the Right to Education: An Expository of Article 12 of the Maputo Protocol." *Public Governance, Administration and Finances Law Review* 8, no. 1 (2023): 43-54.

inheritance rights. The protocol protects children whose parents have passed away, ensuring they are not denied their inheritance rights, especially in cases where there is no male heir. These provisions ensure that both women and children, particularly girls, have equal and protected rights to inherit property in Africa, aligning with broader efforts to eliminate gender discrimination in property and inheritance laws across the continent.⁵⁷

In a nutshell, the struggle for matriarchy in the kingship institution in Lesotho, as exemplified by Princess Senate Gabasheane Masupha, highlighted the complexities of succession within the royal family. King Moshoeshoe I's introduction of matriarchy into the royal family, coupled with his recognition of the leadership potential in a girl-child, set a precedent that influenced Princess Senate's quest for the throne. Her efforts to claim her late father's throne, grounded in the traditional ceremony that King Moshoeshoe I performed to establish Senate Letsie as an heir, became a focal point in her pursuit of leadership. Princess Senate faced significant challenges, moving through a series of legal battles from local courts to the Court of Appeal. Her struggle brought to the forefront issues of gender, tradition and leadership within the context of Basotho culture. Despite the obstacles, she remained firm in her belief that the values and leadership qualities recognized by King Moshoeshoe I should apply to her claim. Though her journey was marked by legal and cultural resistance, her determination and advocacy for matriarchy within the royal family have left a lasting impact on discussions surrounding gender and succession in Lesotho's kingship institution.

⁵⁷ Strevia, Juliana M. 'Notes on femicide/feminicidio and the limits of justice.' *Sortuz: Oñati Journal of Emergent Socio-Legal Studies* 12, no. 1 (2022): 103-128.

Chapter Five: The Aftermath of Princess Senate Gabasheane Masupha and the Struggle for Matriarchy and Kingship Institution

5.1 Cultural and Societal Responses to the Struggle

King Moshoeshoe I, who founded Lesotho in the late 1800s, established the traditional chieftaincy structure to unite lesser tribes into one ethnic identity. The nation has around twenty-two principal chiefs, most of whom are of Moshoeshoe descent. The chieftaincy consists of the King (now King Letsie III), main chiefs, ward, and village leaders. The cultural norm in chieftaincy institutions has only enabled females who married into the institution to inherit the position of acting as regents for their sons due to the rights granted by marriage. However, it has continued to leave the daughter in the cold, as children are cared for by their siblings. During one interview, Princess Senate expressed her concern about the status of women who marry into royal families and then obtained positions through marriage, saying, “My mother is not of royal blood, but she was allowed to have a seat in the chieftaincy; why can't I, the daughter of royal blood, have a share in my family legacy”? She explains that her great-grandfather recognised the value of a female child and chose Senate Letsie as her father's successor. Senate was more intelligent than her brothers, and Moshoeshoe recognised the importance of intelligence in leadership roles.¹

Only society may modify certain things, such as chieftaincy and inheritance because they are based on cultural and traditional norms. People in cities may talk about fifty-fifty equality with men, but this is not coming from the grassroots and being expressed as a single voice of the masses who demand change through the legislative and courts since the norms have become the laws.² According to one Refiloe, chieftaincy is an old institution whose structure has always been

¹ Interview with Senate G. Masupha Ha-Mamathe 10th March 2024

² Interview with Honorable Mosena Roma 8th March 2024.

recognized as primogeniture and changing that will upset a lot of things that we should be mindful of.³ If they wish to incorporate women in everything, society determines what is good and harmful for them to regard as the norm. According to Refiloe, Lesotho, like many African countries, maintains patriarchal norms.

The increasing conversation around the participation of women in chieftaincy and the shift to matriarchal governance inspires fascinating arguments. While this concept may immediately pique interest, it requires a thorough analysis of its intricacies, potential flaws, and repercussions. Giving women access to chieftaincy, particularly through marriage, calls into question our notion of marriage itself. Historically, chieftaincy has been passed down through male lineage, with a single surname. However, granting chieftaincy to a daughter who marries another clan interrupts this bloodline and may result in rival claims to chieftainship. While viewed as a step toward female empowerment, this trend creates confusion and impracticality, undermining established conventions of sustaining chieftaincy among rightful successors and perhaps disrupting communal harmony. It is also worth mentioning that not all women embrace such reforms; some remain loyal to established structures that they regard as oppressive, compounding the situation even further.⁴

This is an extremely delicate matter that requires a clean head. Ms Letima of the GEM Institute presented a nice tale about her foreign acquaintance, who told a very intriguing story about African chieftaincy. She informed me that her buddy asked her what would qualify him for citizenship in Lesotho. After giving him a complete scenario of all the data required for a person to obtain citizenship, he asked her if he qualified to be a chief today. She immediately replied, “No!” Now her buddy replied to her, “My friend, you are capable of responding why Basotho are still in denial

³ Interview with Refiloe Roma 20th March 2024

⁴ Interview with Koali Roma 20th March 2024

to offer a girl kid chieftaincy because of the grounds surrounding the immediate “NO” she amended without even considering the implications.⁵ She just meant that certain things are intended to be because we have allowed them to function as they have for a very long period, and the route out is really difficult.

Chief Lerotholi noted that this must be carefully considered since some chiefs work hard for their daughters to have better houses and futures, but it appears that they work as hard for their brothers' male offspring to inherit what they have. It appears that having a girl child is a sin, but it is not. No child chooses to be born in the gender they are, but this inheritance reduces the value of a girl child to that of a boy child, and it is also a source of humiliation for some chiefs who have only girl children and harass their wives who are bored with only girls.⁶ If this is not clarified by legislation, it effectively validates the notion that a girl kid is only good enough to carry children and care for the family, rather than being capable of anything else. Masupha, on the other hand, stays faithful in her fight for succession and equality, claiming that patriarchy is so deeply ingrained in our society that women accept it as a normal way of life and continue to impose it. According to Mofumahali, the above statement appears to dig deeper into our society because women themselves support the fact that men are given power and authority over them. If they are unable to untie the chains of patriarchy to which they are bound, it makes it difficult to prepare for a future in which a girl child has equal rights.⁷

Masupha states that she is hoping that her persistent advocacy and how the people have been continuing this revolution of empowering female kids would have a beneficial influence on people's awareness. The pace at which non-governmental organizations and states with whom

⁵ Interview with Ms Letima Roma 8th March 2024

⁶ Interview with Chief Lerotholi Roma 8th March 2024

⁷ Interview with Mofumahali Masupha Berea 26th February 2024

Lesotho has diplomatic ties are collaborating to highlight the necessity of giving a female kid an equal share and chance as a boy child.⁸ This initiative serves as a reminder of the Senate's legal struggles to acknowledge a girl child. As a result, several groups have launched awareness campaigns in support of the girl child and her human rights, as well as collaborative initiatives to address girl child concerns. This has resulted in Lesotho being part of the United Nations countries that celebrate, the 11th of October as International Day of the Girl Child, to promote girls' empowerment and the realisation of their human rights while exposing the issues that girls throughout the globe face.⁹

Although Lesotho has made achievements in improving the lives of girl children, much more work needs to be done before they can reach their full potential. Girls and young women continue to encounter a variety of difficulties that impede their lives, including early marriages, unexpected pregnancies owing to a lack of access to health care, child labour, and gender-based abuse. The Southern Africa Litigation Centre (SALC) discovered that in Lesotho, chiefs are part of the government institutions and perform a variety of political, economic, and social duties. They promote their people's welfare and interests, ensure public safety and order, assign land, and settle disputes. Excluding daughters from chieftainship denies women equal representation in decisions about managing and allocating community natural resources. This exclusion is problematic because it denies communities the advantages of their participation while also depriving them of the leadership and creativity that daughters may offer to a community. The Centre requested the government to alter Section 10 of the Chieftainship Act to grant daughters the same succession

⁸ Interview with Princess Masupha Ha-Mamathe 9th March 2024

⁹ Phakamisa, Siyothula, "South Africa's Foreign Policy: Conflict Prevention in Africa", PhD diss., 2007.

rights to chieftainship as males. Such an amendment would fulfil the country's goal of ensuring women's equal participation in politics and public life.¹⁰

5.2 The House of the Senate and the Struggle

Chieftaincy has a long history in Lesotho and many other African countries. Before Moshoeshoe 1 assumed control in the 1820s, each village was led by a chief with varying powers based on military might, cattle ownership, and charm. Chieftaincy increasingly became official, with local chiefs handed control over a vast portion of the nation, the majority of whom were Moshoeshoe 1's sons, grandchildren, and successors. Lesotho's chieftainship consists of twenty-two Principal and two Ward Chiefs, also known as Independent Chiefs, who are nominated by the King and have the same status as the Principal Chiefs. Four of these 22 Principal and Ward Chiefs are women who serve as regents over their male relatives. Only three of the 22 are unrelated to Moshoeshoe 1, but they had some kind of alliance with their progenitors.¹¹

Lesotho's Senate is made up of 22 paramount chiefs, with just one, Khoabane Theko, principal chief of Thaba-Bosiu, supporting Masupha's struggle. Theko believes that a girl kid does not choose to be born a girl, hence the laws that discriminate against her are wicked. He went on to underline the inadequacy and hypocrisy of a system that recognizes female chiefs who inherit the position from their deceased spouses but denies it to female offspring. We don't consider a female child's intellect and what she may contribute to the chieftainship if allowed to lead. The other principal chiefs maintain established cultural traditions, claiming that in Basotho culture, a woman marries the man's family. As a result, any future offspring belong to his clan. Complications in

¹⁰ Staff, Writer, "Increased Recognition of Women's Right to Chieftainship in Southern Africa", *Southern Africa Litigation Centre*, 9 November 2022.

¹¹ Pius, Tanga, T. "The Women are Coming': Women's Participation in Lesotho Local Governance." *Advancing Women in Leadership* 27 (2008): NA.

succession may emerge if an unmarried female chief subsequently marries. They emphasized that it cannot work the other way around. Principal Chief Peete Lesaoana Peete of Koeneng and Mapoteng said that if a girl child receives the chieftainship, she will take it away from the family when she marries, thereby derailing the royal bloodline. She cannot marry a man from her family. That is culturally forbidden.

List of Principal Chiefs and their Wards

Names of Principal Chief	Area of Chieftaincy
Lerotholi Leshoboro Seeiso (M)	Likhoele
Seeiso Mitchell Maama (M)	Ha-Maama
Anna Nthupi Bereng (F)	Rothe, Masite, Serooeng, Letseng, Kolo Ha-Mohlalefi and Thaba-Tseka Ha-Ntaote
Sempe Gabasheane Masupha (M)	Ha-Mamathe
Seeiso Nkuebe (M)	Quthing
Lerotholi Mathealiara Seeiso (M)	Mokhotlong
Seeiso Bereng Seeiso (M)	Matsieng
Nthati Bereng (F)	Phamong
Khoabane Theko (M)	Thaba-Bosiu
Joel Motsoene (M)	Leribe
Moholobela Seeiso Moholobela (M)	Matelile
Qeto Sekonyela (M)	Malingoaneng
Mojela T. Makhaola (M)	Qacha's nek
Tumane K.T.Matela (M)	Makhoakhoang

Mamolapo Majara (F)	Ha-Majara
Retselitsoe Mopeli (M)	Botha-Bothe
Khoabane E. Mojela (M)	Tebang
Peete Lesooana Peete (M)	Kueneng
Pontso Seeiso Mathealira (F)	Tsikoane
Moeketsi Moletsane (M)	Taung
Thato Mako Mohale (M)	Tajane
Bereng Griffith Api (M)	Ha-Ramabanta

Figure 7: List of Principal Chiefs and their wards from NUL Archives

Professor Molapo, as a chief, stated that the law exists to lead people and provide order. The stipulations stated in the Chieftaincy Act have a valid basis for how the Lerotholi legislation operates. The statute safeguards the lineage by keeping the chieftaincy with the Koena clan and enabling the female child to inherit the chieftaincy if they marry, which would imply that their children might eventually take the crown. However, he agrees that the world is dynamic; a girl child, at the end of the day, is still of royal blood, and allowing her to lead with specific provisions, such as those Moshoeshoe gave to Senate Letsie, is still food for thought for Moshoeshoe's sons, as these are all up to them to decide. He noted how adhering to ancient customs may often impede development toward greatness, as the worry of allowing this ritual to derail how a female child can bring about transformation in society.¹²

¹² Interview with Professor Molapo Roma 29th April 2024

5.3 The National Assembly and the Struggle

The Court of Appeal asserted that the contents of “Masupha’s” case could be solved by the parliament as the laws and views of Basotho matter the most when it comes to their traditions and customs. Justice Mahase wrote a concurrence in which she reasoned that though the Chieftainship Act does discriminate against the applicant not only as a daughter but also as an unmarried woman the Parliament left no ambiguity in its intention for male-only succession when it passed the Chieftainship Act and thus the legislature should be deferred to in this case.¹³ Both the government and the court have a responsibility to offer remedies to redress injustices and promote the ideals that underpin an open and democratic society, such as equality, human dignity, and freedom. If this prejudice is legal, it can only be upheld through the legal system. This instance was not personal to Masupha, but it served as a wake-up call for the proper individuals to consider the reforms that the community is pressing them to make, Masupha stated.¹⁴

Lesotho enacted a Gender and Development Policy in 2003, which provides a policy framework for gender mainstreaming in development. The policy commits the government to ensuring that all areas of development consider and solve gender disparities that pervade Basotho society. In tackling gender equality, the strategy reaffirms the government's commitment to decentralizing services for the poor, particularly marginalized communities who cannot afford basic developmental services.¹⁵ Princess Masupha says that disparities exist in the social, legal, cultural, economic and political domains. The strategy outlines ways to achieve gender equality in both the public and commercial sectors. Lesotho pledges to ensure gender equality in all sectors of

¹³ C OF A (CIV) 29/2013

¹⁴ Interview with Princess Senate Ha-Mamathe 8th March 2024

¹⁵ Keiso Matashane-Marite, "Women's Rights and Participation-Including Women's access to Land and Inheritance, and the Role of Lobbying and Grassroots Organisations in Lesotho." *Bangkok, Thailand: United Nations, Division for the Advancement of Women* (2005).

development by implementing policies that promote equal opportunity for men and women, as well as boys and girls.¹⁶ Advocate Thabane emphasizes that the Administration of Estates and Inheritance Bill is expected to promote the welfare of women and girls in Lesotho. For decades, women and girls faced discrimination just because they were women.¹⁷

5.4 Legal Resolutions and Matriarchy

The Senate case is an ongoing effort to acknowledge girl children in the country. Princess Senate G. Masupha stated that the effort was not just for her to keep her position as chief, but also for the country to defend the rights of girls through the Constitution, just as it did for males.¹⁸ In 2014, the Lesotho Court of Appeal ruled that Section 10 of the Chieftainship Act was constitutional. After exhausting her local remedies, Ms Masupha, FIDA-Lesotho, and SALC decided to pursue the African Commission on Human and Peoples' Rights, citing Lesotho's duties under the African Charter and the Maputo Protocol. Gender inequality in chieftain succession is a problem in several SADC nations, not only in Lesotho. This Masupha lawsuit provides an important opportunity for the African Commission to clarify the duties under its multiple treaties for countries to eradicate gender discrimination in chieftainship succession.¹⁹

During the 2024 International Women's Month celebration, the GEM Institute, a film and arts production company, created a short film titled "Cry for My Daughter." The film depicted the challenges that a girl child and females face at the grassroots level as a result of unequal power distribution, which is especially prevalent in chieftaincy and inheritance. Ms Letima, the production director, stated that this is an issue for many young girls in Lesotho who are unable to

¹⁶ Interview with Princess Senate Ha-Mamathe 8th March 2024

¹⁷ Interview with Advocate Kuena Thabane Roma 8th March 2024

¹⁸ Interview with Princess Senate Ha-Mamathe 8th March 2024

¹⁹ Staff Writer, "Increased Recognition of Women's Right to Chieftainship in Southern Africa", Southern Africa Litigation Centre, 9 November 2022.

openly articulate their concerns due to a lack of a platform to do so.²⁰ When she asked me how much I would charge for the video, I couldn't put a price on it because of how instructive it was, and I believe all ladies in the nation must have access to it since it may sensitize them on how to solve their difficulties and boost knowledge. According to Princess Masupha, this video, like other scholarly writings about her case, is crucial and gives hope that the struggle was not in vain because it was about women realizing their significance in the communities in which they live.²¹ According to her, “every area of society has a stance on the problem since it impacts us all”.

Patriotism is a personal decision; an individual chooses how he or she feels about particular aspects of life. It is one's own choice to love her nation. Giving women what they want is fair, but what they can do in the future is totally up to them to cope with. They want to be treated similarly and given equal opportunities without being evaluated based on their gender, thus it is ideal to provide them equality when they feel prepared to face anything, according to Dr Ramakhula. We still have female principal chiefs who have been acting on behalf of their husbands and sons for a long time, which means they continue to make executive choices about the nation's destiny, so why not give them complete responsibility? We have high court justices and female ministers who have the same responsibilities in those places as their male counterparts, so why deny girl children responsibility in chieftainship institutions if the country values equality in all aspects of life?²²

Lesotho is not an exception to the globe; some international norms must be acknowledged because the world is dynamic. People must live in a free and just society where all residents are protected and treated properly in the courts of law. The law exists to protect and bring others into the country, and the girl child must be no exception. It is a rallying cry for the entire international community

²⁰ Interview with Ms Letima Roma 8th March 2024

²¹ Interview with Princess Masupha Roma 12th April 2024

²² Interview with Dr Ramakhula Roma 25th February 2024

to unite to put an end to harassment of girls and women on all levels of society.²³ The European Union in Lesotho emphasizes the importance of decent labour and gender equality. The ambassador stated that they felt it was appropriate to advocate for women's and girls' empowerment through the investment in Women Initiative, given that the 2024 topic for Women's Day was investing in women and accelerating progress.

Refiloe emphasized that while matriarchy is an excellent concept in theory, implementing it in practice may be difficult given Lesotho's strong patriarchal roots. We may need to empower women, but putting it into practice and bringing equality to reality would necessitate several changes. The country's structural construction is based on how the country is managed under the chieftaincy institution, which is where the Kingdom of Lesotho originated. Many things would be removed to recreate how the matriarchy must fit into the cores that support the national norms and traditions that have made this country a Kingdom.²⁴

He goes on to suggest that women are the tool of their destruction, and that if there are more women than men in the country, why can't they elevate one woman to a higher position, such as running a political party with a female-dominated executive board? If they cannot support one another, how can they expect males to lead them to a matriarchal society if they are unable to fight for their goals? Lesotho is a Christian country where women remain obedient to their husbands as the Bible prescribes, but if we provide a complete matriarchal society, the foundation of marriage would be undermined since females will now be equal partners in marriage. Does the fact that the surnames currently in use in the country stem from the patriarchal side imply that when equality is sought,

²³ Interview with Mrs. Paola Amadei Roma 8th March 2024

²⁴ Interview with Refiloe Roma 21st February 2024

the surnames will be two, one matriarchal and one patriarchal? These are some of the elements to consider while discussing equality in all aspects of life.²⁵

Women, on the other hand, are still fighting for equality, for fair and equal treatment regardless of gender. Miss Mosala stated that “while there is a long road ahead to achieve equality for all citizens, women must experience the freedom of having an equal portion of the throne. Senate G Masupha's case was not hers; it was a scream for a daughter to get a piece of her father's property”. We were born from the same parent, so why should we suffer disparity in terms of what both of our parents have? This is so unfair to a girl child that we end up with aunts who are so bitter that they constantly clash with their brother's wives because they see them as the ones who are mostly enjoying their family's fortune and leaving a girl child out in the cold.²⁶

She goes on to add that women should have the freedom to have a say in matters they are entitled to. If want the throne and are willing to possess it, they should be given the option to do so; whether they will utilize it productively or adversely is a topic for another day. This suggests that even males did not realize they had power until they were told, therefore if women feel helpless, give them power since the issue remains as to why their power and freedom were taken away in the first place, and what the threat was.²⁷ During the 2024 seminar for International Women's Day, a lot of thoughts were expressed. Dr. Kolobe from the Department of English stated that “people are working very hard to guarantee their children's future, yet the cry remains: we do not want to be equal to men because biologically. They are physically stronger, but we want to be treated equally in areas where we can both contribute, such as job roles and to be given the same opportunities that life offers us.” She highlighted that equal rights are human rights and that every individual is

²⁵ Interview with Refiloe Roma 22nd March 2024

²⁶ Interview with Ms Mosala Roma 24th February 2024

²⁷ Interview with Ms Mosala Roma 24th February 2024

entitled to fundamental rights and freedom, including equal opportunity in education, social, economic, and political life, free of gender discrimination or impediments.

Even though Princess Masupha's petition was denied, however, there was an appeal a year later, with the judges stating that modernizing the regulation was a matter for Parliament. This was supported by the words of the deputy speaker of parliament, Honourable Tsita-Mosena, who stated that the parliament passes or makes laws that the community down there is usually demanding; if the community understands its power to influence how the legislature handles acts and provisions passed, it can use it wisely. The parliament is primarily governed by what the community demands; nevertheless if the people continue to politicize anything that may bring about change, the parliament will struggle to see how critical problems are.²⁸ The customary laws are developed from Basotho traditional norms, and only they have the authority to amend them if they no longer serve the intended purpose.

It is unfortunate that as individuals gain more information and realize they reside in Maseru or urban regions; they speak negatively of our customs. This was said by Nkhono Nkole as she describes how people nowadays talk about equality as if they all have a part and may freely express themselves regarding norms that have served as the foundation of society for as long as chieftaincy has existed.²⁹ But Damane emphasized that laws are there to fit the said era, to accommodate the life of that time, but if we do not see them fitting to our time, it is still our responsibility to change them so that they change with time and meet the standard of living; we cannot use laws that were relevant in the Lifaqane era during the fourth industrial revolution.³⁰

²⁸Interview with Tsita-Mosena Roma 8th March 2024

²⁹ Interview with Nkhono Nkole, Berea 25th February 2024

³⁰ Interview with Damane Ha-Thetsane 20th February 2024

According to the United Nations Children's Fund (UNICEF), in practically every nation, patriarchy and power dynamics provide boys an edge over girls in most fields. According to the organization, social and gender norms limit adolescent girls' access to public spaces, socialize girls to be docile and obedient 'good girls,' and reinforce perceptions that girls' appearances, potential and actual roles in care work are valued more than their studies in school, business leadership, or policymaking. This different route is laden with complex problems and interrelated violations of girls' rights. As a result of patriarchal processes at every level, from formal governmental institutions to community norms, family behaviours, and individual attitudes, girls are left behind on various levels.³¹ Lesotho's Court of Appeal has reaffirmed that women are still considered second-class citizens.

Lesotho has made great progress toward gender equality in recent years, including the elimination of male marital dominance. However, this decision sends a clear signal that it is still lawful to discriminate against women just because they are women.³² The Court ruled that women who marry into royal families have the right to accede to chieftainship, either as individuals or as regents. The Court emphasized that the disparity is between married and unmarried women, therefore the petitioner may be better off claiming discrimination based on marital status. The Court stated that chieftainship is an undemocratic system in which daughters, illegitimate sons, and second-born sons, among others, are not allowed to succeed. As a result, not all men or boys are eligible for chieftainship in all situations.³³

³¹ Matseliso Phulane, "Joint Efforts to Address Girl Child Challenges", *the Report*, 12 October 2023.

³² Tefo. Tefo," Court Seals Senate's Fate", *Sunday Express*, 21 April 2014

³³ www.southernafricalitigationcentre.org

Chapter Six: Summary and Conclusion

6.1 Summary

The case of Princess Senate Gabasheane Masupha has brought significant attention to the issues of matriarchy, kingship, and succession in Lesotho. The debates and legal battles surrounding her struggle for the right to inherit chieftaincy have revealed deep-seated views and varying perspectives among both the general populace and the chiefs. This summary is based on the following findings: a sector of the public, notably the progressive and younger generations, favours gender equality and the concept of a female child inheriting the monarchy. They argue that succession should be based on capability and leadership qualities rather than gender. Conversely, many people hold traditional views that prioritize male succession as a means of preserving cultural and customary norms. They believe that allowing women to inherit the throne could disrupt long-standing traditions and social structures. Some community members are concerned about the practical implications of changing succession laws. They worry about potential conflicts and the stability of leadership transitions if established customs are altered.

Chieftaincy has traditionally been predicated on intelligence, or a leader's attitude toward their subordinates. Moshoeshoe established chieftaincy in Lesotho; he was a kind man who cared about his followers' concerns.¹ The days when chiefs were chosen based on the number of subjects they commanded have passed, and he now stands a fair chance of defeating the enemy. Masupha Gabasheane claims, "We don't consider the creative abilities of a girl child and what she may contribute to the chieftainship if allowed to lead if we continue to consider females as commodities, we will continue to discriminate against them by thinking of them as just good for their wombs".²

¹ Letholetseng Austeria Ntsike, "An African leadership paradigm: the missing link for productivity and empowerment-the case of Lesotho". PhD diss., Stellenbosch: Stellenbosch University, 2001.

² Interview with Senate G. Masupha 27th May 2024 Ha-Mamathe

This is proof that people now understand the Senate’s battle. Masupha thinks this is also a learning opportunity for her. Their experiences show her that her condition is not just happening at home, but also in my community.³

In Lesotho, a large majority favour gender equality in hiring, property ownership, and political leadership, including the daughter’s ability to ascend to chieftaincy. However, a sizable minority believe that female candidates for elected office are more likely to face criticism, harassment, or family issues. According to a study performed by Afro Barometer, there is growing support for providing females the same rights as sons to accede to chieftaincy. More than six in 10 Basotho (63%) endorse female succession, up from 38% in 2014 and 48% in 2017, a remarkable shift in attitudes on a culturally significant issue in Lesotho. Even males (53%) now favour equal rights of succession for princesses, but they are far less inclined than women (73%) to do so. Citizens with no formal education (56%) are behind those with at least elementary education (63%–64%) in supporting equality for princesses, although support for female succession is equally high in rural and urban locations.⁴

The struggle has sparked widespread debate on gender roles within Basotho culture. While there is a growing acceptance of female leadership, deeply entrenched patriarchal attitudes still pose substantial challenges. The response from the House of Senate has been important in shaping the outcome of Masupha’s struggle. The division within the Senate, with some members advocating for the preservation of traditional patriarchal systems, while others support reformative measures to include matriarchal principles in succession laws. The House of Senate’s divided stance

³ Puseletso McPherson, “Economic cost of gender-based violence against women and girls in Lesotho”. LLM diss. Roma: National University of Lesotho (2023).

⁴ Mamello Nkuebe, "Basotho endorse equality for women, including the right of a princess to succeed as chief", *Afrobarometer Dispatch*, no.571, (2022).

underscores the broader societal ambivalence towards gender reforms. The support from progressive Senators has been crucial in advancing the discourse on gender equity within the chieftaincy institution.⁵

6.2 Conclusion

Based on the findings of the research several suggestions can be proposed to address the intersection of matriarchy, patriarchy, and the chieftainship institution. The advocacy for the formal recognition and integration of matriarchal principles within legal and constitutional frameworks governing chieftainship. This includes ensuring that customary laws that uphold matriarchal values are respected and supported. The stakeholders should promote educational awareness programs aimed at highlighting the historical contributions and contemporary relevance of matriarchal leadership within traditional governance structures. This can help challenge patriarchal biases and foster a more inclusive understanding of leadership. Giving memorial lectures and recognition where necessary to give people information about their contributions to the history of nations. There is a huge need for legal reforms that amend existing legislation, such as the Chieftaincy Act, to explicitly acknowledge and protect matriarchal practices and leadership roles. This could involve amendments that ensure equal representation and participation of women in decision-making processes related to chieftaincy.

Basotho should invest in capacity-building initiatives for women leaders within chieftaincy institutions. This includes providing training, mentorship, and support to empower women to effectively participate and lead in traditionally male-dominated roles. This can lead to community engagement that fosters community dialogues and consultations to discuss and implement

⁵ Relebohile Tsoamotse, "Test Administration of Estates and Inheritance Bill 2024", *Public Eye*, 7 April 2024

inclusive governance practices that respect both matriarchal and patriarchal contributions. This can facilitate consensus-building and strengthen social cohesion within communities. The country should be engaged in the promotion of gender equality in leadership roles to encourage recognition and integration of women in leadership positions within the chieftaincy institution. This can be achieved through policy reforms and community awareness programs that highlight the historical contributions and capabilities of women leaders such as Regent Chief Manthatisi Sekonyela and Regent Paramount Chief Mantšebo Seeiso.

There is a need to establish initiatives to document and preserve the accomplishments of women in the chieftaincy institution. This could include creating archives, publishing biographies, and integrating these histories into educational curricula to ensure future generations recognize and learn from these influential figures. The initiative can lead to the development of support systems such as mentorship programs, leadership training, and networks, specifically for women in traditional leadership roles. These systems can help address the unique challenges faced by women and empower them to effectively lead and contribute to their communities.

A leader is a leader because of the people. The community engagement programs are to be implemented to raise awareness about the importance of women's roles in leadership and the historical context of their contributions. Workshops, seminars, and public discussions can help shift societal attitudes and reduce resistance to female leadership in traditional roles.⁶ Lesotho has to strengthen, develop, and enforce laws that explicitly support gender equality in traditional leadership roles. These laws should address the gaps and ambiguities in existing legal frameworks

⁶ Interview with Sempe Masupha Ha-Mamathe 27th May 2024

that hinder women's participation in chieftaincy. The amending of the Chieftaincy Act and other related legislation to ensure they are in alignment with constitutional principles of gender equality

There should be public awareness and advocacy. Launch public awareness campaigns to educate communities about the legal and cultural rights of women to participate in traditional leadership. The community should have a clear picture of the rights and their rights regarding culture and norms in traditional leadership institutions. Media as a source of information should be engaged and civil society organizations, in advocacy efforts to keep the issue of women's leadership in the public discourse and hold authorities accountable for progress. Promoting initiate widespread educational campaigns to raise awareness about the historical and cultural significance of matriarchal principles in Basotho society. This can help reduce resistance and foster a more inclusive understanding of gender roles. Culturally each gender was assigned an important leadership role, this campaign can help people to understand the role Lerotholi Law has on Basotho as the foundation for their norms and traditions.

The House of Senate which is the upper house of Parliament, is governed by Lerotholi law, this law is a traditional law that governs Basotho. Organising forums and discussions within the House or Senate to bridge the gap between traditionalists and progressives would encourage open dialogue to find common ground and develop consensus on gender-inclusive succession practices. This would make the people have open discussions within their areas through their chiefs. The National Assembly should strengthen legislative support for gender equity. This house could ensure the continued support and advancement of gender equity legislation. This includes not only the Administration of Estates and Inheritance Bill but also other laws that promote women's rights and participation in governance. The elected members of this house know very well what the actual

needs of the people are, they were elected through the mandates that their parties had and people knew whom to elect to represent to answer their needs.⁷

There should be a conducive interrelationship that can bring harmony between Customary and Constitutional Law which could lead to a better understanding of how the Chieftaincy institution is organised. Working towards a harmonious integration of customary law with constitutional principles, ensuring that traditional practices align with modern standards of gender equality. This could involve regular reviews and updates of customary laws, ensuring the views of the nation on how we should progress in traditional law. There should be encouragement of inclusive governance practices that recognize and integrate matriarchal elements within the traditional leadership structures. This could involve appointing more women to advisory roles and decision-making positions and giving them the morality to lead. Increasing public participation in discussions about succession and governance reforms will make the community feel included and have ownership and never question some of these decisions. The engagement of the community can help build consensus and support for gender-equitable practices, as the impacts of governance are seen at the grassroots.⁸ It is of great importance that the government invest in strengthening, the capacity of institutions to support and enforce gender equity. The Chieftaincy institution should have full control of financial support that would allow them to have community gatherings to clarify matters concerning traditional governance.

⁷ Interview with Tsita-Mosena Roma 8th March 2024

⁸ Interview with Khoabane Theko Thaba-Bosiu 25th May 2024

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Amadei Paola	55	EU Ambassador to Lesotho	Roma	08 th March2024
Anonymous	52	Political Analyst	Botha-Bothe	19 th January2024
Damane Hlomelang	46	Taxi-Driver	Ha-Thetsane	16 th February2024
Koali Refiloe	27	Linguist Researcher	Roma	20 th March2024
Leotla Thembi	24	Law student	Roma	06 th December2023
Lerotholi Mohlolo	56	Chief and Commissioner of Refugees Lesotho	Roma	08 th March2024
Letima Mpho	45	Director GEM Institute	Roma	08 th March2024
Mafereka Makalo	46	Farmer	Ha-Rampai	20 th December2023
Majoro Kefuoe	25	Political Science Graduate	Botha-Bothe	20 th February2024
Makeka Malerato	67	Tailor	Botha-Bothe	16 th December2023
Mapono	76	Pensioner	Ha-Thetsane	16 th February2024
Maseretse	87	Pensioner	Berea	12 th -02-2024
Masupha Gabasheane Sempe	66	Principal Chief of Thupa- Kubu,Joradane and Ha-Mamathe	Ha-Mamathe	27 th May2024
Masupha Gabasheane Senate	46	Ambassador in Germany	Ha-Mamathe	06 th March2024

Masupha Mmasekoati	47	Area Chief of Lekokoaneng	Berea	26 th March2024
Matela Matela	48	Driver	Maseru	19 th November2023
Mathabo	62	Retired Teacher	Butha-Buthe	22 nd December2023
Matobakele Matela	58	Deputy commander of Lesotho Defense Force	Roma	25 th June2024
Molapo Joang	53	Area chief of Maputsoe and former member of Parliament	Maputsoe	06 th May2024
Molapo Setsumi	55	Chief and lecturer	Roma	29 th April2024
Moneuoa Limpho	25	Law Graduate	Butha-Buthe	29 th November2023
Mosala Mandlovu Lerato	25	Linguist	Roma	23 rd February2024
Nkole	76	Pensioner	Berea	25 th February2024
Peete Lesaoana Peete	46	Principal Chief of Kueneng	Kueneng	26 th May2024
Ramakhula Thabang	38	Law Lecture	Roma	23 rd February2024
Seeiso Leshoboro Lerotholi “Thoolo”	64	Principal Chief of Likhoele	Mafeteng	15 th May2024
Teboho	56	Farmer	Ha-Mamathe	27 th May2024
Thabane Kuena	60	Lawyer	Roma	08 th March2024
Thabane Motlatsi	70	Retired History Lecture	Roma	07 th March2024

Theko Khoabane	65	Principal Chief of Thaba-Bosiu	Thaba-Bosiu	21 st May2024
Titis Kekeletso	37	Developments Researcher	Roma	23 rd November2023
Tsita-Mosena Tsepang	50	Deputy speaker of the National Assembly	Roma	08 th March2024

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