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**LEFT OUT IN THE COLD: INTERROGATING THE INCLUSION OF WOMEN  
EMPLOYED IN THE INFORMAL SECTOR IN LESOTHO INTO THE FORMAL  
SOCIAL SECURITY SYSTEM**

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**By**

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## Abstract

The economic crisis in Lesotho has driven masses of its citizens from the formal to the informal sector in an attempt to sustain themselves. The author is a human rights lawyer and women's activist who is disturbed by the gross imbalances she has witnessed in the application and/or enforcement of rights and the distribution of resources between the diverse groups of the country's citizens. She was motivated to explore this subject in greater detail by her experiential data as a daughter of an informal sector worker, alive to the fact that in Lesotho the well-being of an informal worker or of his and/or her dependants is of little or no significance to the tax collector, who is truly only interested in the proceeds accruing from their actual businesses itself. Such thinking has led not only to a dichotomisation of the labour sector (into formal and informal) but also of the provision of social security social measures accorded to workers in each sector. Consequently, in the process, the inherent idea of human rights enshrined in the UDHR, ICSECR, ACPHR, amongst others, becomes illusory notwithstanding the fact that Lesotho is a signatory to these and other human rights instruments which support the promotion, protection and respect for human rights, all of which inspire the country's Constitution and labour regimes. Various methodologies including the women's law and legal pluralism approaches were utilised to secure a deep and meaningful insight into the lived realities and experiences of women working in the informal sector. The research was based on a review of primary and secondary sources of data to assess the discriminatory impact of the existing measures of the country's social security system in relation to women employed in the informal sector. It was qualitative based research, using random and purposive sampling. Most of the interviews were of the women themselves even though some male counterparts were also interviewed. The research exposed how institutions, such as the family, commonly cut across the two systems further compromising the position of women by imposing the entire burden of care on them. This paper concludes by making several recommendations and places emphasis on possible reforms on the country's existing laws and policies.

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## **Declaration**

I, Lebohang Leeu, certify that this dissertation is my original work; it is an honest and true effect of my personal research. I certify that the work has not been presented anywhere else before for any other thesis.

Signed.....

Date.....

This dissertation was submitted for examination with my approval as the University Supervisor

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## ***Dedication***

*This work is dedicated to my mother, Alice, and late father, Calvin, for the invaluable upbringing they gave me and the principles they instilled in me which helped to mould me into the woman I am today. Not forgetting my one and only child, my beloved daughter Nosipho Abigail, for her endurance during my absence, unconditional love and her constant reminder at the end of every call that 'Don't forget the path'...it really kept me going...Ngiyabonga Ngwane Elihle!!!*



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## **List of abbreviations and acronyms**

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DWP	Decent Work Programme
FIDA	Federation of Women's Lawyers
GDP	Gross domestic product
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MOL	Ministry of Labour
NGO	Non-Governmental Organisation
SACU	Southern African Custom Union
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
WLSA	Women and Law in Southern Africa

M = Maloti or Loti, Lesotho's currency; 1 Loti is equivalent to 1 South African Rand.

## **List of human rights instruments**

African Charter on Human and Peoples' Right ((Banjul Charter)

Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)

ILO Convention on Social Security (Minimum Standards) No. 102 of 1952

ILO Convention on Equality of Treatment (Social Security) No. 111 of 1962

ILO Convention on Social Policy (Basic Aims and Standards) 1962

ILO Convention on Injury Benefit C121 of 1964

ILO Convention on Invalidity, Old Age and Survivors Benefits Convention 1967 c129

ILO Maintenance of Social Security Right Convection 1982 c157

ILO Convention on Part Time Work Convention 175 of 1994

ILO DWP 2004

ILO Maternity Protection Convention No.3 of 1919

ILO Convention on Maternity Protection No.183 of 2000

ILO Declaration on the Fundamental Principles and Rights at Work, 1998

ILO Convention on Discrimination (Employment and Occupation) 1958

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

SADC Treaty, 1997

SADC Code on Social Security

Universal Declaration of Human Rights, 1948

## **List of national legislation**

Constitution of Lesotho, 1993

Labour Code Order No. 24 of 1992 (the Labour Code or the Code)

Labour Code (Amendment) Act, 1997

Labour Code (Amendment) Act, 2006

Labour Code Order (HIV/AIDS at Workplace) Guidelines, 2010

Old Age Pensions Act, 2005

Public Officers' Defined Contribution Pension Fund Act, 2008

Public Regulations, 2008

## **List of national policies**

National Strategic Development Plan 2012/13-2016/17

National Vision 2020

## **List of cases**

*Lesotho*

*Khathang Tema Baitsooli v Maseru City Council and another* CONST/C/1/2014

*Thabo Fuma v Lesotho Defence Force* Const/8/2011

*South Africa*

*S v Grootboom* 2001(1) SA 46(CC)

*United States of America*

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## **Executive summary**

The labour force in Lesotho is divided into two sectors, namely, the formal and the informal sector. This dichotomisation of labour is subsequent to the categorisation of benefits accruing to the formal sector which provide protection against those predicaments of life that cause income insecurities, such as death, old age, industrial sickness or injury, and maternity, and such protection is not present in the informal sector. The formal sector is state-regulated and characterised by labour relations that are based on contractual agreements between parties based on formal terms and conditions. It comprises the government as the sole employer and the private sector. The latter, the informal sector, denotes that part of economy run by those who endeavour to make ends meet through their own initiatives and enterprise. It often lacks government support. It acts as a safety net or network for unemployed people (Njenga and Nganibi). Labour relations in the informal sector are based on casual employment, kinships, personal and social relations. Workers in this sector rely on alternative strategies of survival such as traditional safety and self-organised networks to guard against the abovementioned shocks of life. Studies have proven that the majority of women operate in the informal sector and they are the most affected by it.

The research interrogates whether the present formal social security benefits accruing to the formal sector exclude women employed in the informal sector and whether this amounts to discrimination on the basis of work. It therefore aims to encourage the domestication and implementation of international and regional instruments in relation to the socio-economic right of social security that Lesotho has ratified.

Targeting women in the informal sector has exposed questions of culture and/or tradition with regard to social security; the issues of power dynamics and traditionally accepted practices in our society. The research engaged interviews to discover and reveal the lived realities of informal workers, especially women and to obtain their views on and insights into the issues of social security and the state's obligation to recognise, promote and protect socio-economic rights, their indivisibility and interdependence.

The research findings uncover the alternative survival strategies available to women employed in the informal sector which are largely based on the values and roles ascribed by

society. They reveal that women are not homogenous and that the nature of their work determines the type of social security they can access.

Furthermore, this study provides discussions on how the formal coverage excludes these women based on the nature of their work, the ineffectiveness of their devised alternative strategies of survival and the government's obligation to realise these rights.

The women's experiences, views and challenges in terms of predicaments are both short and long term involving maternity, sickness, injury, retirement and death all of which were very essential to this research. Finally, the research enumerates strategies and recommendations which respond to the problems or gaps exposed by the research findings and they mainly address the challenges facing the realisation of the socio-economic right to social security.

## **CHAPTER ONE**

### **1.0 INTRODUCTION AND BACKGROUND TO THE STUDY**

#### **1.1 Introductory note**

Employment is an important aspect of human survival and development. Traditionally, formal employment has predominantly been relied upon as the sole employer and guarantor of benefits. However, the upsurge in formal unemployment resulting from the economic crisis that has struck Africa, including Lesotho, has brought about a serious review of this orthodox perception. Over recent years the stagnation in the growth of the formal sector has meant that it has been increasingly unable to absorb and engage fresh recruits, e.g., university graduates. This has meant that many people have been deprived of their right to work in their chosen area of expertise, the guarantee of social protection, social identity and status (Bernie, 2002: 2). As a result the informal sector has presented itself as an alternative survival strategy for most people, especially women. It has become a place for them to sustain their livelihood.

There has always been a dichotomy between the informal and formal sector based on regulations, income and production. The formal sector is state regulated and covered by well designed measures of social security aimed at stabilising the incomes of its workers against the danger of income insecurity caused by life exigencies such as death, injury, maternity and sickness. Such measures do not exist in the informal sector leaving its many workers exposed and vulnerable to such life crises.

The prevailing system of social security fails to address the aforesaid economic crises since it covers only the formal and not the informal sector. This has resulted in the unfair distribution of resources to one class of people (i.e., those in the formal sector) to the prejudice of another class (i.e., those in the informal sector). So, while both sectors contribute to the national economy, the country's social security system discriminates against by excluding those working in the informal sector, especially women who form the majority of its participants. In response to this gap, the family, community and private saving clubs have become the main institutions for redistributing resources. The government has not taken any positive steps to address this disparity. Instead, it continues to enforce rigid clauses and/or prescriptions by failing to specifically provide for social security as a fundamental right; the right to work is considered a non-justiciable right and is relegated to that part of the



Constitution concerned with state policies. This is not in compliance with Lesotho's international human rights obligations.

The research then interrogates the dichotomisation in provision of social security measures that result in the exclusion of women employed the informal sector in Lesotho. An analysis and recommendations are made based on the findings.

## **1.2 Background of the study**

'Today I am not going to work, I am not well; am dizzy and cannot maintain my balance and my heart beats are very low. I do not have energy so I will rest a little maybe will feel better afterwards. This is better than going to the ever congested government hospital and die while awaiting help in the queue; wish I could afford a private doctor. This is a genesis of difficulties, with my son dead leaving me with orphans and my husband back home from the mines critically ill. What do I do with all these children? On the other hand, the business is not generating enough income, we do not have enough to eat or wear, the young ones are consuming my time to go work early and I tend to lose a lot of customers making it difficult to also pay rentals. To make it worse, the customs officers at the border are so vigilant these days when we try to smuggle out dresses and sell in South Africa for better profits because truly speaking we cannot afford the ridiculous revenue charges and/or bribes they demand from us. I just wish things were different.'

It is this anguish which my mother experienced almost every day while I was growing up and even now (my father's passing away adding to her existing troubles) that inspired me to address the issue of social security in relation to women employed in the informal sector. I experienced what it is like to be a dependant of an informal worker and how my mother and many other women in the informal sector suffered as a result of the impact of being excluded from the human right to enjoy social security benefits which should flow from the fact that they work. Their plight is made worse as a result of the cultural expectations and roles that society imposes on women.

My mother has been a tailor since before I was born, more than thirty years ago. Her income supplemented my father's salary from his work as a miner and used to keep our family of eight children. Even though my parents are semi-literate, they tried to give us the best education they could. Things took a turn for the worse when my father and brother died from critical illnesses; my brother had meningitis and my father suffered from chronic asthma. She took in and cared for my late brother's two orphans whose mother completely abandoned

them and disappeared immediately after my brother's burial. During his lifetime my brother was unemployed and my mother basically took care of his family. When he was sick and on his death bed, she would close her business to go and look after him. We would then suffer a lot. Sometimes we would sleep on an empty stomach and go to school hungry. I for instance would be expelled from time to time from school for lack of payment of fees. My brother passed away and my mother paid all his funeral expenses.

After four years asthma took a toll on my father's life immediately after I enrolled in Form A. My other siblings were still at school and the family came under immense financial pressure to continue paying for their education. The Ministry of Social Welfare provides social assistance to people in need of, e.g., school fees. Apparently, due to reasons most likely only known to our chief and his assistants, my brother's orphans and my younger siblings were denied the right to receive any such assistance. The social assistance offered by the government for orphans and other vulnerable children is means tested based on whether a candidate/s is recommended for such assistance in a letter written by their chief and his committee. It may be that the following facts prevented my relatives from receiving the necessary recommendation. My father managed to build a big house when he was earning good money as a miner in South Africa. He was a South African citizen and had a plot there where he occasionally stayed. My older sister (a widow with three children) is working in government, I am a lawyer in a well-known women's rights NGO and my mother is a tailor.

My mother was a member of a *mpate sheleng* (funeral scheme) called *Patanang ka Lerato* Burial Society in the village which could not help her during the two deaths in my family since she defaulted in her payments. The relatives could not help out and so we bore the costs of the burial. The villagers supported us by cooking food and brewing traditional beer at both burials.

What I learnt on the two optional courses in the Masters of Women's Law programme one called, Women, Labour, Social Securities and the other, Women, Commerce and the Law also inspired me to pursue this research. These courses gave me insights into the concepts and debates surrounding the undervaluation of work done by women in the informal sector, including the family, leading to discrimination on the basis of work, and gave me informed points of action to help assist the State in its mission to realise women's socio-economic right to social security in order to alleviate their poverty.

### **1.3 Statement of the problem**

Rising unemployment as a result of Lesotho's economic crisis has forced many people to turn to the informal sector to seek and sustain their livelihoods and it has become the largest contributor to the country's gross domestic product (GDP). However, there are many disadvantages related to this sector including the lack of state-provided security which is designed to protect its members from the shocks of life.

In Lesotho there are two kinds or divisions of work or labour in which a person can be involved, i.e., formal and informal. The state-provided social security system exerts a discriminatory impact against women entrepreneurs within the informal sector in that it only covers women in the formal sector; it excludes women from the informal sector. This is in spite of the fact that the right to social security is an internationally recognised fundamental right which must be universally exercised by all women. It is also protected by a blanket provision that prohibits discrimination against the enjoyment of the right on any basis whatsoever. There is, however, no uniform law in Lesotho which provides for the right to social security. While the country's Constitution does not explicitly provide for the right, its existence and justification can be confidently inferred from various provisions in the Constitution as read with the country's body of labour laws. In the Constitution it falls within the ambit of the state's policies which means that it is not considered a fundamental right and is therefore a non-justiciable right, i.e., one which cannot be enforced in a court of law.

Furthermore, the labour laws do make reference to a right to social security, but it applies only to the formal sector, not the informal sector. Women make up the great majority of this excluded sector which is characterised as being non-state regulated, low in production and skilled labour. In order to cover both the immediate and future shocks of life, women tend to rely on traditional safety nets and self-organised systems that often prove unreliable.

### **1.4 Definitions of keywords and concepts**

**The informal sector** comprises units involved in small-scale production, unincorporated, family-owned and unregulated by state law.

**The formal sector** is a state-operated economy characterised by: labour laws, taxation, employment, registration of enterprises, the monitoring of finances by the government and social security for its employees.

**Social security** is the protection which society provides for its members through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, invalidity and death; it includes the provision of medical care and the provision of subsidies for families with children (ILO, 1952).

**Informal social security** is a state's unregulated type of social security based on coping strategies devised by informal workers as an alternative means of survival.

**A traditional safety net** is a type of informal social security based on kinship or family ties and is informed by the principle of solidarity and generalised reciprocity to guard against both immediate and future predicaments of life.

**A self-organised net** is a type of informal social security based on a neighbourhood or a community or people from different locations who have mutually agreed to pool their resources together to guard against a specific contingency of life agreed to by its members. It goes beyond kinship and family ties.

**Formal social security** is a type of social security meant to protect employees within the formal sector against the exigencies of life, such as death, employment injury, sickness and protection during maternity.

**Labour rights** are the rights endowed on a human being on the basis of their capacity to work.

**Shocks of life/exigencies/contingencies** are events that happen in life that a person has not prepared for both physically and economically.

**Socio-economic rights** are rights encompassing social and economic rights as provided for by the International Convention on Economic, Social and Cultural Rights (ICESCR).

## 1.5 Historical context of social security in Lesotho

Social security/protection is described as a means taken by the state to cushion individuals against exigencies of life (Mosito, 2014). However, according to the definition provided by the International Labour Organisation (ILO, 1952: 102) which serves as a standard definition, social security refers to:

‘protection which society provides for its members through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, invalidity and death; the provision of medical care; and the provision of subsidies for families with children.’

Before dealing with the historical context of social security, it is imperative to give an economic review of Lesotho.

Lesotho means a land of the people who speak *Sotho*. It is also known as ‘the Kingdom in the Sky’. The lower-middle income country is located within and completely landlocked by Republic of South Africa. It has a total population of about 2,2 million people of which 51% are women (World Population Clock). It is governed by a constitutional monarchy and its social structure is patriarchal and patrilineal based on the kinship relation of family solidarity ties (Mosito, 2014). Lesotho draws its main revenues from SACU (ILO DWCP Report 2012).

In pre-colonial times, way back between 1824-69, the violent upheavals and conflict of the Difaqane wars (crushing/scattered) between various chiefdoms in Southern Africa created a great deal of insecurity. King Moshoeshoe I responded by gathering together numerous dispersed and traumatised people, formed a chiefdom and occupied a mountain called *Thaba-Bosiu* (Mountain at Night) as his centre of defence. He created a *Sotho (Basotho)* identity and unity which he used to repel external forces that threatened the kingdom’s autonomy and independence. This nation’s people used to live as hunter-gatherers. There were no labour laws which governed labour. Public labour excluded women; they were confined to their homes where they cared for their children, cooked and kept house. The economy was not monetary but based on barter system (Cobbe, 2015). In this time, the form of social security was based on the family and community solidarity.

Traditionally the *Basotho* had long based their social relationships with each other on the value of *botho* (meaning, mutual support and care) and that *letsoele le beta poho/ntja peli ha e hloloe ke sebata* (meaning, a nation cannot be defeated by a beast, e.g., poverty or any other predicament). They used a system of *Mafisa* where animals were loaned to poorer families to plough and support destitute families who would be allowed to return animals later but keep one of their offspring. In the case of *lefu ke ngoetsi ea malapa ohle* (meaning, death can happen anywhere) every person would make it his duty to help a bereaved family bury their dead. Out of this grew different forms of community support and services.

Between about 1833 and 1868, missionaries arrived and they introduced monogamy, Christianity and education. The *voortrekkers* (Afrikaans pioneers from South Africa) arrived, challenged the *Basotho* and took most of their arable land. Forced labour for minerals was introduced in South Africa and land taxes were imposed. Out of this emerged paid labour. As more and more men immigrated to work in South Africa, so the workload on women increased and they started to play a role in subsistence farming as well as continue to care for their families.

Labour laws and ordinances were introduced after the independence of Lesotho. A Proclamation was passed in 1964 dealing with gratuities where only the employer contributed towards a pension fund against any predicaments relating to employment. For instance, the Labour Code Order No. 24 of 1992 (the Labour Code or the Code) which is now the principal law of employment. However this law only regulates the formal sector; it excludes the informal sector where the majority of women work and now there are many laws addressing the predicaments in the formal sector.

## **1.6 Objectives of the study**

- (1) To determine who comprises the informal and the formal sector and find out what are the common predicaments affecting women in both sectors.
- (2) To determine the type of social security available in each sector to absorb the shocks of life.
- (3) To find out challenges faced by women reliant on alternative nets.
- (4) To investigate the constitution of membership of the nets and power dynamics within the nets.

- (5) To investigate any demarcation between the business expenditure and the family engaging the notion of the power relations and roles ascribed to women in the families.
- (6) To assess the level of women's knowledge about social security and investigate their level of awareness of the rights attached to it and determine their ability to demand them and seek redress in case they are violated.
- (7) To assess the ability of the judiciary to interpret socio-economic rights indivisibly and interdependently.
- (8) To assess and review Constitutional and policy provisions on the right social security and the right to work and whether they are being interpreted to include women in the informal sector.

### **1.7 Overarching assumption**

Most women in the informal sector in Lesotho are excluded from the formal social security system and this amounts to discrimination on the basis of work.

### **1.8 Overarching research question**

Are most women in the informal sector in Lesotho excluded from the formal social security system and does this amount to discrimination on the basis of work?

### **1.9 Research assumptions**

- (1) Most women are employed in the informal sector which is not covered by state provided social security.
- (2) Women in the informal sector rely on traditional and self-organised nets to absorb the shocks of life.
- (3) Traditional safety nets and self-organised systems rely on family cohesiveness which is now fragmented because of industrialisation and urbanisation.
- (4) Most women employed in the informal sector are situated within family businesses meaning that their contributions to traditional and self-organised systems do not benefit them because of the power relations operating within families.
- (5) Lesotho does not comply with its international obligations to uphold their women's rights to social security regardless of the dichotomisation of the labour sector.

### **1.10 Research questions**

- (1) Is it the case that most women's businesses are located in the informal sector which is not covered by the state provided social security system?
- (2) Do women in the informal sector rely on traditional and self-organised nets to absorb shocks of life?
- (3) Do the traditional safety nets and self-organised systems rely on family cohesiveness which is now fragmented because of industrialisation and urbanisation?
- (4) Is it the case that most women's entrepreneurial businesses are situated within their families meaning that their contributions to traditional and self-organised systems do not benefit them because of the power relations operating within those families?
- (5) Is there a need for Lesotho to conform with its international obligations to uphold women's rights to social security regardless of the dichotomisation of the labour sector?

### **1.11 Delimitation of the study**

My area of study was the capital city of Lesotho, Maseru, which is located in the district of Maseru. It lies along the Caledon River that separates Lesotho from South Africa. It has a population of 227,880 (Census, 2006). My interviews took place mainly on the streets along the city's main thoroughfare of Kingsway and main markets and surrounding streets in the cathedral area. I chose this location because it is here that the presence and growth of the informal sector is clearly visible, providing the majority of people, especially women, with an alternative means of survival which the formal sector fails to provide. My research covered street vendors to those in rented rooms. In addition, a few interviews were made in the districts of Leribe, Quthing and Berea just to compare the views and experiences of the informal workers in those areas.

### **1.12 Conclusion**

The notion of social security is not a new phenomenon in Lesotho. It emanates from a time before the labour sector was monetarised. The diversification of paid labour arrived with colonisation and this has led to the dichotomisation of the country's labour force. Several research objectives, assumptions and questions emanating from the statement of the problem were drawn up to guide this research delimiting the informal sector mainly in Maseru, the country's capital and most commercial city where a proliferation of informal businesses and



workers are mostly found. Comparative research was also done in a few districts and it was found that the situation is the same throughout the country.

This paper is divided into seven chapters. Chapter one deals with an introduction to the study and the motivation behind the research topic. The statement of the problem explains what women employed in the informal sector face when the informal sector is excluded from the coverage of the formal social security system.

Chapter two will discuss the methodological framework and methods adopted to elicit information from the respondents and challenges encountered during research.

Chapter three defines the notion of social security and what it entails. It further explains the formal sector and its social security system and what contingencies it covers. It also deals with instruments which encompass social security at international, regional and local level. It enunciates the government response and its obligation to provide social security to its citizens.

Chapter four explains the informal sector and the type of social security available to its workers. It also deals with the research's findings in relation to the research questions.

Chapter five elaborates on challenges caused by women's reliance on informal safety nets, namely traditional and self-organised nets. It also seeks to explain what type of social security is available their male counterparts in the same sector.

Chapter six discusses the right to social security and how it is linked to the right to work. The author lays a foundation based on an understanding of the right to work and correlates it to social security and what the state has done to comply with its international obligations.

Chapter seven deals with the research's conclusion and recommendations based on its findings.

## **CHAPTER TWO**

### **2.0 METHODOLOGICAL FRAMEWORK AND DATA COLLECTION METHODS**

#### **2.1 Introduction**

This chapter discusses the methodologies engaged to conduct the research and the methods of data collection used to unveil the realities and personal views on issues affecting women employed in the informal sector in relation to social security.

#### **2.2 Methodological framework**

##### ***2.2.1 Grounded approach***

The grounded approach requires the researcher to start the research with an open mind and take nothing for granted (Bentzon *et al.*, 1998: 178-9). She then uses such empirical knowledge to define the research problem and to propose interventions in order to address the problems that women face in the informal sector. Thus, I found that there were some serious circumstances which went beyond my assumptions. For example, on the issue of maternity, it emerged from my interviews that there were some women who, when they fell pregnant or had given birth, were forced to leave their new born babies almost immediately in order to return to their businesses so that they could earn money to survive and maintain their new enlarged families. This caused me to look further into the rights of the children of these workers. Thus I had to interview members of the Ministry of Labour and its Social Development Department concerning this apparent discrimination which now affected the children of these informal women workers. This exposed the exclusiveness of the state provided social security system in relation to women entrepreneurs in the informal sector. It also assisted me find out what continually emerged as a result of the application of the law and gave me a grassroots approach. It assisted me to discover that there is dichotomisation in the labour sector and the categorisation of the social security measures afforded in both sectors.

##### ***2.2.2 Women's law approach***

The women's law approach is a women-centred legal discipline which takes women's actual lived experiences and life situations as a starting point in order to understand their lives as well as their position in law and society (Kanyongolo, 2011).

This approach assisted me in revealing problems that women encounter with relevant laws, policies and implementation programmes. Thus it exposes the law in terms of sex connections which might not be apparent at first sight until the practical effect of the rule of law is observed (Stewart and Armstrong, 1990). In my interviews with the respondents I found out they are not aware of their right to social security and did not even know what it entails. Most of them were willing to accept the present situation since they thought they were not entitled to enjoy a better life. This category of women is excluded from the spectrum of labour laws in that benefits accruing to women in the formal sector elude women in the informal sector. This is the case despite the existence of Constitutional provisions which prohibit discrimination and guarantee the equal treatment for all citizens.

Furthermore this approach revealed to me that women are not an homogenous group.

The position of women at the low income end of the economy is well understood using the theory of Marxism which describes a system of patriarchy that through capitalism controls women's work and their reproduction. This is expressed in the form of a public/private divide in which men are placed in the productive and salaried work sector while women find themselves in unpaid and reproductive work (AHL, 2004). This divide has reinforced itself in the dichotomisation in the labour force and categorisation of the formal social welfare systems; the informal sector provides cheap labour and contributes to economic growth without significantly benefiting from it.

This approach made me see that the law is not appropriate for women and I was able to make recommendations that are inclusive of women in the informal sector. The definition of employee in the Labour Code Order No. 24 of 1992 (the Labour Code or the Code) excludes the informal worker, it based on a formal contract and provisions for pensions provided are based on contributions made by employers and employees and takes no account of the informal sector. This Act was enacted in line with the ILO Conventions as articulated in section 4 of the Code.

### ***2.2.3 Women's human rights approach***

The women's human rights approach examines the basic rights of women which are at stake and the corresponding obligations of the state as both bearer and guarantor of women's socio-economic rights which should ensure their implementation. It assisted me to determine

whether women are aware of their right to social security and able to demand it. Most of the women did not have a clear idea of what socio-economic rights were and had difficulty in explaining the meaning social security. It further assisted me in my inquiries as to whether the Lesotho Constitution or any other legislation relating to labour issues are in line with the international and regional standards prescribed by the human rights instruments in the realisation of women's right to social security. The Constitution of Lesotho does not embrace the indivisibility and interdependency of human rights. In fact it groups socio-economic together in chapter 3 and does not regard them as being fundamental but rather part of state policies which are not justiciable. Thus in Lesotho there are no effective remedies or redress available to women in case of the violation of such rights which are categorised under this section. To make matters worse, labour rights are not considered by the Constitution. There is not even a specific and clear provision in the Constitution on the right to social security. Such a right can only be inferred to exist from an interpretation of other provisions such as the right to life and right to dignity. This situation violates human rights instruments especially the African Charter which does not circumscribe any claw-back clauses and limitations to socio-economic rights as compared to political rights. It explicitly obliges member states to implement them immediately as opposed to progressively which is the approach taken by the ICESCR.

Therefore the call to re-conceptualize the right to social security to meet the needs of women is rhetorical if those who make such demands do not have tools to establish their case (Bentzon *et al.*, 1998).

#### **2.2.4 Legal pluralist approach**

The legal pluralist approach goes beyond the centralist meaning of the law (which gives pre-eminence to the state's laws and how they regulate people's behaviour) by also engaging other formal or informal sources of law such as statutes, norms, customary laws in order to facilitate a more critical investigation of women's legal position. This approach is based on the premise that if such other sources are not considered, the important issue of the dynamics between women and the law in this wider sense may go undetected. Thus I was able to learn that even though social security is an exclusive benefit, there are alternative strategies available which informal women traders access to protect themselves from life's contingencies even though not all women are able to enjoy the benefits of both nets. I also used this approach to understand the power dynamics and hierarchies in families and

women's participation within the alternative nets of survival in the informal sector. Therefore I was able to interrogate both systems as they affect women in the formal and informal sector.

This gave me a deeper understanding of discrimination against women as I saw the resilience of the institution unfolding and cutting across all sectors. This also puts a greater burden on women in the informal sector based on the flexibility of their work.

The approach assisted me in unearthing the relational nature of women in that even though they may be contributing to and making sacrifices for the nets, they do not themselves benefit from them although their dependants do. Most commonly men make themselves the main decision maker as to how the benefits are to be used. Most men interviewed were quick to say the women cannot enjoy the benefits themselves but that they should be used by the family. Traditionally, women are given subordinate positions. As a result, women have internalised this view and treat men as 'essentialist in society' while they, women, see themselves as being non-essentialist in society. This is espoused by Simone de Beauvoir in her theory of existentialist feminism. This theory offers insights into the relations between men and women that cut across cultural divides and gives a more nuanced explanation of women's position beyond culture, custom, religion or patriarchy. This position is perpetuated by the two roles which contribute to 'the otherness of women', namely, wifing and motherhood (Tsanga and Stewart, 2011).

Further, this theory illustrates that law has a discursive power; that law is not neutral; it can be negotiated to assign roles. It can include and exclude. In this case it determines which class of women can benefit from social security.

### ***2.2.5 Sex and gender analysis***

This approach focuses on the power relations at play in any given situation. It determines the roles played by men and women and how they affect women and their male counterparts differently. This assisted me in comparing what form of security is available to women in the informal sector compared to their male counterparts. Also, it helped to determine the role of men in the lives of women involved in the informal sector. It is here that I observed that most women sell perishables while men are involved in more valuable products. This determines to a large extent the kind of social security such women can afford.

I noted that women play a dual role of being expected to be both a housewife (caring for their home, children and husbands) and to wake up in the morning and go to work. Sometimes they do not even have money for transport having used it for their family's needs. Also in times of bereavement it is the women who take time off, leave their homes to help out caring for the sick and lose income from their businesses. This made me realise that the men in their lives need a serious lesson in sensitising them to women's needs, interests and issues as a result of deconstructing set roles and getting more involved with women and the disproportionately heavy load that they bear. This would help them in the development of women.

#### ***2.2.6 Actors and structures approach***

The actors and structures approach establishes perceptions that are embedded in different institutions and structures of our society. This is done by focusing on a woman and her relationships with men and with other women and the society to uncover what really influences her life (Bentzon *et al.*, 1998). It even helps to uncover the interplay between the law and other norms in society. It assisted me in unveiling the mindset of the law officials towards the informal sector and the protection of its women members. I was able to find out whether they are taking initiatives to realise the socio-economic right to social security. To my dismay, I found that nothing tangible is being put into practice on the ground, that there is no guarantee that the proposed changes which were launched ten years ago are adequate and that they largely exclude the informal sector based on the excuse that it is difficult to quantify salaries or contributions within an organised system. Further, the right to social security is divisibly interpreted against the international instruments which Lesotho has ratified. It also helped me to establish the historical method of social security and the underlying values that motivated it.

### **2.3 Research design**

This section explains the kind of methods used to adduce information from people themselves, getting their experiences and lived realities. It will also disclose the observations and experiences in the field. The research was predominantly qualitative and the interviews were conducted in *Sesotho*. The level of literacy varied between the interviewees.

### 2.3.1 *The sample*

The sampling was done both purposefully and randomly (Table 1). Observations were also made.

**Table 1: Showing the research sample**

<b>Name of sphere, associations or groups</b>	<b>Field</b>	<b>Female</b>	<b>Male</b>
Ministries and Parastatals	Ministry of Labour	10	4
	Ministry of Gender		
	Ministry of Finance		
	Ministry of Social Development		
	BEDCO		
	Small Business Development Co-operatives and Marketing		
Law	Clerk	1	1
Culture	Chief		1
Associations	Informal association		1
Clubs	Burial societies, cash clubs	10	12
Informal workers	Street vendors, tailors, bakers, butchers, boutiques, saloons, decorators, spazas	119	48
Civil society	WILSA, FIDA, HABITAT, CRS	2	2
<b>TOTAL</b>		<b>142</b>	<b>67</b>

### 2.3.2 *Purposive sampling*

Purposive sampling provided me with information from those who are acquainted with the concept of social security and its implications. It also helped to uncover emerging issues surrounding social security. I interviewed those engaged in relevant institutions and structures. I wanted to know how they view the phenomenon and what structures they have put in place to address it. Also the women gave me a glimpse into how they managed to curb the exigencies of life without the aid of comprehensive support from the government.

### 2.3.3 *Random sampling*

I engaged random sampling to adduce information from the women respondent themselves because I was interested in their daily experiences. This background information then greatly assisted me when I went on to interrogate their position in law and the extent to which the law covers and protects them. This was very important because it secured a more truthful insight into their realities than would be found by relying solely on secondary sources which are often at variance with grounded reality.

### 2.3.4 *Passive observation*

Passive observations or my own observations helped me to detect whether there were any discrepancies in the information I was given. It assisted me in triangulating the information I collected between the key informants and the informal workers themselves.

## 2.4 Sources of data

Table 2 shows the various categories of respondents.

**Table 2: Showing the categories of respondents**

Married women	80
Widowed women	14
Single	25
Men	48
Key informants	17

## 2.5 Qualitative data collection methods

The data was collected using the qualitative method as this saved me from the stress of compiling statistics and avoiding questionnaires which would have been time-consuming and awkward for most my respondents to complete because of the busy nature of their work. I drew data from various sources such as street vendors, market places, tailors in rented flats, salons, bakeries, decorators, butcheries and boutiques, *spazas* (small shops), traditional and self-organised nets, clubs and burial societies, churches, chiefs, families, informal associations, non-governmental organisations (NGOs), the courts and relevant ministries such as the Ministry of Labour and Employment, the Ministry of Small Business Development Co-operatives and Marketing, the Ministry of Finance, the Municipal Council and parastatals such as BEDCO.



### ***2.5.1 In-depth interviews***

In-depth interviews were mostly conducted with women in the street in order to find out as much as I could about what they knew about the research topic because I discovered that some of them did not feel free to talk about their alternative strategies in the presence of others. This setting appeared to provide them with sufficient privacy to talk about the subject and answer my questions. I discovered from these interviews that the women respondents did not know the meaning of social security or what it was all about. I wanted to know how they survived without receiving any support from the government either in cash or in kind. My questions were basically about their understanding of the concept of social security, its related rights and whether they were aware of the state's responsibility to uphold it.

A lot of them did know about it and simply did not believe me when I told them about the state's obligation towards them. Some had already given up and concluded that the whole issue had been politicized and that was the end of the matter. They confessed that even if they knew all about the issue there was nothing they could do because they did not have the money to tackle the government. This interview revealed that the government and relevant stakeholders were not doing enough to sensitize and raise awareness about this issue. This became my point of interrogation. I also interviewed their male counterparts and they gave me the same response they had no knowledge of what social security was all about.

### ***2.5.2 Individual interviews***

I conducted individual interviews to obtain insights from families as to the role of women and issues of social security. It is here that I found a lot of stereotypes to the effect that women are still expected to submit to men. I also used individual interviews to investigate the issue of family cohesiveness and how it is affected and fragmented by the influence of urbanisation and industrialisation. It also emerged that the recent effects of the El Niño caused draught and subsequent heavy rains have attacked subsistence farming and have forced women to leave their homes in search of jobs. Not all of them have managed to secure well paid or any work and so have failed to remit any money back to their families.

### ***2.5.3 Collective/focus group interviews***

The focus groups discussions and interviews assisted me to find out people's different ideas and experiences. It was through them that I discovered that the type of business that a person runs truly determines the kind of net they turn to help them cope with the exigencies they

face in life. For instance, from the focus group discussions I organised with women who sold vegetables and with those selling handicrafts, I discovered that the former mainly rely on more traditional safety nets, while the latter combine the two on the basis of the profits they make. It was here that I also learnt that the government is encroaching into the informal sector by forcing women who deal with handicrafts to pay for licences and rentals way beyond even their best earnings.

#### ***2.5.4 Influence of actors and structures***

Examining the influence of relevant actors and structures uncovered the interplay between the law and other norms in the society I investigated. It revealed how people's choices were influenced by various family, social, legal, religious (e.g., the Bible) and economic structures.

#### ***2.5.5 Observations***

Passive observation helped me to detect any discrepancy between the different sources of research data I recovered. It assisted me as I triangulated or verified the data between the key informants and the informal workers themselves.

### **2.6 Study limitation**

Despite my restricted financial capacity to pursue the research, most of my respondents were often busy towards the end of the week making it difficult to conduct interviews with them. As a result of the nature of their jobs, some respondents would often postpone their interviews with me until I had almost lost hope. Some of them would just ignore me while they continued with their work. Sometimes the vendors suspected me of being a government spy wanting to get them into trouble. Some expected me to buy their products in order to win their co-operation and when I did not they became hostile. Most respondents would not even allow me to take photographs of them. Some would even laugh at me and say:

‘You have important information but why do you choose me yet we are so many, pass me and go to others because my sister your friends have been here before you all this year, we help give them information and they forget us when they enter paradise’ (Maseru: November, 2015).

After experiencing several acts of rejection I decided to wear the T-shirt of my former employer, WLSA. I explained to the interviewees that I had no political motive, that I was not looking for clients and did not work for the government. I reassured them and from time

to time even them free legal advice about issues affecting their daily affairs. Some seemed to reject me outright and say, for example:

‘This is one of the women who advise us to divorce our husbands when they are beating us. Tell me are you even married *ausi* (girl) but anyway will listen’ (Maseru, October, 2015).

In essence, most respondents withheld valuable information because they were afraid of being interviewed. I also observed that some did not want to talk about their alternative strategies. I think that they thought that I was a donor or worked for a donor and that if they kept quiet I would give them free hand-outs or recommend them to donors.

The key informants were co-operative, especially those at the Ministry of Labour and Employment. I went to make an appointment with key respondents but the officer advised me to do the interviews right away. The officer responsible for social security even gave up her personal time and allowed me to interview her over a weekend and gave me all the information I needed. However, I could not secure an appointment with a relevant officer at MSMEs within I was looking for in the Ministry of Small Business Development Co-operatives and Marketing. I visited his workplace several times but he was not in and so I finally decided to interview the commissioner of oaths. This prevented me from interviewing a relevant respondent who could have given me valuable information. I wanted to find out more about whether the government is now using its mechanisms in the formal sector to force some informal workers to register, obtain licences and pay tax. I saw this as an example of unjust enrichment on the part of the government since the informal sector is excluded from benefiting from any form of social security measures unless possibly with the exception that when they reach the age of 70 years they could qualify for a universal pension.

When it came to interviewing representatives of the clubs, about three of them I targeted were not eager to talk to me. So I would target them during funerals and pretend to be interested in becoming one of their members. I would ask them questions that would not make them think that I was interviewing them. For instance, one club, *Ipopeng Limapo*, was rendering its services at the funeral of the father-in-law of one of my colleagues and it accepted male members.

## **2.7 Conclusion**

In the early days of this research I had my own preconceived ideas about the lived realities of women employed in both the formal and informal sectors based solely on secondary sources of information and the single story of my mother. However after using several different research approaches and methods I was able to find out a great deal more invaluable information about the situation on the ground from different respondents involved in different kinds of informal businesses. The following chapter will deal with the concept of social security and the formal sector. This helped me to understand the demarcation between the two sectors and the government's response which either confirmed or challenged my assumptions.

## **CHAPTER THREE**

### **3.0 SOCIAL SECURITY: WHAT IS THE GOVERNMENT'S RESPONSE?**

#### **3.1 Introduction**

Although Lesotho does not have any uniform law on social security, its existence may be inferred from various social protection measures found in diverse provisions within the country's laws. It should be noted from the preceding chapters that labour rights are not considered fundamental rights in Lesotho. However, the principal law of employment in Lesotho ought to comply with ILO conventions. The labour sector in Lesotho is divided into two sectors, namely, the formal and informal sector. The former is contract based, state regulated and affords guarantees and benefits for the work performed while the latter does not. This dichotomization of the labour sector also means that there are different categories of social security measures befitting women in each sector. This chapter will deal with the notion of social security. It will also discuss the formal sector and the kind of social security afforded to workers in the sector. It is first imperative to define the notion of social security before delving into any detailed discussion about the formal sector.

#### **3.2 Defining social security**

According to ILO Convention 102 of 1952, social security is defined as (a) the protection which society provides for its members through a series of public measures against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, invalidity and death; (b) the provision of medical care; and (c) the provision of subsidies for families with children (ILO, 1952: 102).

The purpose of social security is to promote the well being of all citizens and thus enables them to function as fully integrated individuals. This is based mainly on the ground of enhancing, preserving human dignity and promoting redistributive justice. The concept of social security allows a flow of resources from those who have power to those with less power ensuring that everyone enjoys an acceptable standard of living (Kaseke, 2004).

Social security is also a universal human right based on principles of social justice. This is illustrated in Universal Declaration of Human Rights, 1948 which stipulates in article 22 that:

‘Everyone, as a member of society, has the right to social security and is entitled to realisation through national effort and the international co-operation and in accordance with the organisation and resources of each state of the economic, social, cultural rights indispensable for his dignity and free development of his personality.’

Further, article 25(1) of the same instrument stipulates:

‘Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, and housing and medical care and necessary services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age and other lack of livelihood in circumstances beyond his control.’

It may be inferred from the above provision that the right to social security should be equally enjoyed by every human being without discrimination.

Social security is a socio-economic right provided by IECSR.<sup>1</sup> It obliges member states to take steps, through international assistance or cooperation and to the maximum availability of its resources, to take all appropriate means including particularly the adoption of legislative measures to achieve the progressive realisation of economic, social and cultural rights. The convention further recognises the right of every person to social security and social insurance.<sup>2</sup>

The family is considered to be the essential unit of society. States are obliged to protect and recognise the importance of the family as it is the natural and fundamental group unit of society and provides everyone with an adequate standard of living for himself and his family.<sup>3</sup>

The African (Banjul) Charter on Human and Peoples’ Rights provides for the right to economic, social and cultural development with due freedom and identity and equal

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<sup>1</sup> Part II, article 2.

<sup>2</sup> Article 3.

<sup>3</sup> Articles 10 & 11, ICESCR.

enjoyment of the common heritage of mankind.<sup>4</sup> The rights in this Charter are not circumscribed by claw-back clauses like political rights; instead the State is obliged to take immediate steps to implement them (Bosl *et al.*, 2009). Thus, States are obliged to have effective domestic remedies by providing an effective national legal system so that in the event of violation of an individual's economic rights, victims are able to seek and obtain redress under domestic law. Subsequently, any rigid classification of socio-economic rights which puts them beyond the reach of the courts would be incompatible with the principle of human rights which entails the indivisibility and interdependency of rights. However, in Lesotho, socio-economic rights (which include the right to social security) are enshrined in Chapter 3 of the Constitution and classified as not justiciable; this is incompatible with the human rights principle embraced by the human rights instruments to which Lesotho is a signatory.

Moreover, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa further obliges member states to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities.<sup>5</sup> It particularly obliges member states to establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it.<sup>6</sup> Moreover it encourages them to take measures to recognise the economic value of the work of women in the home.

Further, SADC Treaty 1997 obliges member states to adopt measures that ensure equal access and opportunities and benefits for women and men in trade.<sup>7</sup>

Furthermore, the SADC Code of Social Security fully embraces the right to social security and extends further the objectives in the Charter of Fundamental Social Rights in the SADC region which emphasises the importance of social protection. It defines social security generally and refers to social security programs that are directed at meeting a specific need, which are usually financed through contributions, and are available to beneficiaries on the basis of their participation and entitlements (although benefits are not necessarily

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<sup>4</sup> Articles 10 & 11, ICESCR.

<sup>5</sup> Article 13.

<sup>6</sup> Article 13(f).

<sup>7</sup> Article 17.

proportionate to contributions on an individual basis).<sup>8</sup> It is mainly designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, invalidity, old age and death.

Furthermore, the Code advocates for equal coverage of and access to social security – including equality in receiving social security benefits – between men and women.<sup>9</sup> It further obliges States to recognise the existence of informal modes of social security and encourages them to strengthen and rationalise them (by, for example, providing skills training and relevant forms of support) and to integrate them with formal modes of social security.

### **3.3 The Government's response**

The government of Lesotho is a signatory to all the above essential human rights instruments. However in Lesotho, international law does not automatically become directly applicable and first has to be domesticated through an Act of Parliament. The Constitution is the supreme law of the land and any law that is inconsistent with it cannot stand. Thus Lesotho follows a dualist approach in regard to the implementation of international law.

The laws in Lesotho *prima facie* appear to comply with relevant human rights instruments but this does not prove to be the case when the case in practice. For instance, while ideally all women ought to enjoy equal access and opportunities to trade, women employed in the informal sector, compared with those in the formal sector, are indirectly barred from enjoying this right. For instance, instead of enjoying the right to receive maternity benefits like women in the formal sector, women in the informal sector are forced to suffer a loss of earnings either because they must stop working and stay at home in order to look after their newborns or bring them to work where they look after them but run the risk of compromising their work performance.

The Constitution of Lesotho, the supreme law of the country, enshrines the fundamental human rights which every person in Lesotho is entitled to enjoy regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It splits human rights into two groups: Chapter 2 provides for Fundamental Human Rights and Chapter 3 provides for Rights that are non-justiciable and

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<sup>8</sup> Article 1.  
<sup>9</sup> Article 13.



form part of state policy and which may be realised according to the availability of the country's economic resources. It also important to note that in Lesotho socio-economic rights, e.g., labour rights, are not regarded as fundamental rights, rather they fall within the ambit of state policy whose fulfilment are allowed to be progressively realised. In addition the right to social security is not explicitly specified in the Constitution.

Social security protects the wellbeing of people by taking into account their right to existence and development both of which envisage their protection against the exigencies of life. Therefore it could be said the right to social security brings into play the right to life as provided for by the Constitution in section 5(1) which reads:

‘Every human being has an inherent right to life. No one shall be arbitrarily deprived of his life.’

Further, since it is provided in the Constitution that the right is enjoyable without any discrimination whatsoever, this also brings into play the right to equality in section 19 of the Constitution which provides:

‘Every person shall be entitled to equality before the law and to the equal protection of the law.’

And the right to enjoy freedom from discrimination is contained in section 18 which prohibits discrimination and further provides in subsection 3:

‘In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.’

Applying this to the right to life it can be said that the right to life is inherent to every human being because without life, in the sense of existence, it would not be possible to exercise rights or to be the bearer of them. Thus, the right to life entails the right to be treated as a human being with dignity and to live as a human being, to be part of a broader community and to share in the experience of humanity (Mosito, 2014).

In a nutshell, Lesotho's government should implement its undertakings both at the national and the international level in such a way that it upholds the rights of its citizens with equal treatment in all spheres including socio-economic rights without any discrimination. For instance, Lesotho makes a rigid classification on economic rights. These rights are enshrined in Chapter 3 of the Constitution as non-justiciable rights. This separates them from the fundamental human rights which are against the principle of interdependency and indivisibility of rights. This was enunciated in the case of *Khathang Tema Baitsooli v Maseru City Council and another* CONST/C/1/2014 in which a registered association of informal traders called *Khathang Tema Baitsooli* instituted an action against the Municipal Council for removing them from plying their trade in along the Kingsway Street, the capital's main thorough fare selling items to the public. Their claim was based on their right to earn a livelihood which they stated was incidental to their right to life and therefore resulted in the violation of their fundamental human rights. However the Court dismissed their appeal upholding the strict distinction between the two kinds of rights as they are treated by the Constitution. It clearly distinguishes between the two rights: the right to life is a fundamental and enforceable right found in Chapter 2; whereas the right to trade is non-justiciable or unenforceable as it is found in Chapter 3 and falls within the purview of state policy.

Further, such a ruling implies that Lesotho discriminates against granting women social security on the basis of their work because women in the formal sector enjoy receiving the state's social welfare but those in the informal sector do not.

On the basis of its human right obligations, Lesotho should not classify human rights into those that are fundamental and enforceable and those that are non-justiciable and unenforceable. In fact it should follow the example of its neighbour, the Republic of South Africa whose Constitution embraces and positively implements the socio-economic rights of its citizens. For example, in *S v Grootboom* 2001(1) SA 46(CC) applicant and others who were exasperated living in the appalling conditions of their informal settlement, moved on to a piece of private land. Having been evicted from there because of their unlawful occupation, they occupied a sports field and were evicted again and their property destroyed. They applied to the Cape High Court for an order requiring the government to provide them with adequate basic shelter or housing and their order was granted. The court held that all human rights are interrelated, political or socio-economic rights, and that one cannot enjoy one

without the other. Therefore, the state should take reasonable legislative and other measures progressively to realise this rights.

On a positive note, the government of Lesotho does provide, entirely at its own expense, a universal non-contributory pension (i.e., a pension to which the beneficiary does not make contributions), but it is only available to the senior citizens. Under Lesotho's National Vision 2020 and its Poverty Reduction Strategy Programme, the government enacted the Old Age Pensions Act 2005 for senior citizens. Under this Act, the government established a universal pension for senior citizens payable from the Consolidated Fund to the elderly to provide them some protection from poverty. This pension is only payable to those over the age of 70 and is not transferrable. Section 2 of the Act states:

‘A senior citizen means a citizen of Lesotho who is of the age of 70 years and above.’

During an interview with the pension officer, she stated that the pension is not available to those who are already benefitting from the Consolidated Fund such as civil servants as they would be benefitting twice from the same source. Also beneficiaries under the African Pioneer Pension Fund are also prohibited from accessing this fund. The pension is not specifically targeted at benefitting the informal sector but it does cover every Mosotho who has attained the age of 70.

Therefore workers in the informal sector can only benefit under this Old Age Pension Act once they reach the age of 70. The question is, however, how many people in this day and age survive to such a ripe old age? Such a question is pertinent bearing in mind that workers facing income insecurity of the informal sector are likely to age faster and die younger as a result of their sub-standard living conditions. How are informal workers expected to survive until the age of 70 before they can qualify and enjoy the benefit of the Act?

Some street vendors complained that due to their poverty they age rapidly and die prematurely, even before they reach 60. They therefore recommended that the government lower the age requirement of the Act from 70 to 59 for women and to 60 for men and that beneficiaries should also be entitled to receive children's grants just like their fellow South African neighbours.

Furthermore, the pension is not transferrable in terms of section 4(b) of the Act.<sup>10</sup> In other words, when the pensioner dies none of his dependants will continue to benefit under this Fund. Since many old people care for orphans who are sick and unemployed this only adds to their suffering.

Further, there is also an African Pioneers Pension established under the African Pioneer Act No. 2 of 1973 which was passed to benefit *Basotho* soldiers who voluntarily fought for the British in during World War 1 and 2. Only widows of soldiers are entitled to benefit from this Fund.

### **3.4 THE FORMAL SECTOR**

#### ***3.4.1 Defining the formal sector***

The formal sector refers to a state operated economy regulated by labour laws, characterised by taxation, employment, registration of enterprises, monitoring of financials by government and social security for its employees. It operates in terms of contracts or agreements.

#### ***3.4.2 Who comprises the formal sector?***

According to the Labour Code (HIV and AIDS at Workplace) Guidelines, 2010, the formal sector means the public and private corporate sector and comprises of enterprises and the professional self-employed that are accorded legal status and are regarded as legal entities. The formal sector is also characterised by large-scale production, incorporation, and the use of capital-intensive technologies (Bernabe, 2002).

The unemployment rate in Lesotho is 21.2% for men and 24.6% for women. In 2008 the labour participation rate was 72.6% for men and 53.3% for women (Labour Survey, 2008). The private sector makes up the largest part of the formal sector and is responsible for 30% of the country's total employment (Lesotho Country Report, 2012).

The principal law of employment in Lesotho is the Labour Code Order No. 24 of 1992 and it regulates the working conditions, including working hours, wages, death benefits, sickness, illness, maternity protection. However, it regulates and provides only for employees in the formal sector excluding employees in the informal sector. This law defines employment as:

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<sup>10</sup> Old Age Pensions Act, 2005.

‘Any person who works in any capacity *under contract* with an employer in either an urban or a rural setting, and includes any person working under or on behalf of a government department or public authority’ (Emphasis added).

### **3.5 FORMAL SOCIAL SECURITY**

Formal social security comprises measures meant to protect employees in the formal sector against income insecurities caused by the exigencies of life, such as death, employment injury, sickness and protection during maternity. It takes on various forms such as social insurance, social assistance and social allowances. It is state operated, depends on employer/employee contributions and is tax funded. However, it can also be non-contributory (SADC Code of Social Security). It can also cover those who are neither employees nor dependants of employees in the formal sector such as the old, orphans or other vulnerable children in the form of social allowances or assistance in the form, for instance, of old age pensions and orphan grants.

It has been pointed out above that discrimination of any kind has been prohibited in every sphere labour. This has been provided for by the Labour Code Order No. 24 of 1992. However, this law only applies to the formal sector. Section 5 of the Act prohibits discriminatory practices in employment, and seeks to eradicate unfair discrimination and to promote the achievement of equality. Section 5 stipulates that:

‘the application of any distinction, exclusion or preference made on the basis of...which has the effect of...impairing equality of treatment in employment or occupation is incompatible with the Code.’

The following are the various measures of social security I found out about during my interview with officers at the Ministry of Labour and Employment in Lesotho.

#### **3.5.1 Severance pay**

The benefit of severance pay is payable where termination occurs at the initiative of the employer, at the end of a contract of employment of fixed duration, or upon the resignation of the employee. In an interview with the labour officer, she indicated that where the contract of employment is terminated on the initiative of an employee or employer for economic reasons, the employee would be entitled to terminal benefits called severance pay. Severance payments are ‘meant to cushion the blow of unemployment, as a gratuity for services

rendered, and as compensation for employees who have lost their jobs through no fault of their own' (Mosito, 2014).

Further, severance pay is payable only to retrenched employees and employees who have not been dismissed for misconduct. However, where termination of employment is based on the misconduct of an employee, the employee will be summarily dismissed and forfeit their benefits. This is also provided in section 79 of the Code. It states that upon the termination of employment initiated by an employer or at the end of a contract, the employer must pay a severance payment to the employee.

Furthermore, in terms of section 8 of the Labour Code (Amendment) Act, 1997 if the employer operates a separate benefit scheme that provides for more advantageous benefits for an employee than those stated, the employer should submit a written application of exemption.

### ***3.5.2 Sickness / illness leave***

In my interviews with labour officers they said when an employee is sick they should take the initiative of providing a doctor's certificate recommending sick leave from a registered medical practitioner and avoid approaching 'fly by night' services so that their employer would grant them leave.

Section 123 of the Labour Code provides that in the case of absence due to sickness an employee is entitled to receive full payment up to 12 days over the next six months of continuous employment with the same employer; and thereafter leave may be half paid up to 24 days in 12 months. An employee is entitled to this payment during the first six months of their employment. Notwithstanding this, payments can only be paid upon production of a certificate of incapacity signed by a registered medical practitioner and provided the sickness has not been self-inflicted.

Furthermore, the officer stated that the epidemic of HIV/AIDS is recognised as an obstacle to development in Lesotho. It is estimated that the national level of infection is 23.3% which makes Lesotho one of the highest infection rates in the world. This has a very negative effect on a country like Lesotho which has such a small population. It drastically affects the labour force, especially those aged between 15 and 49 years of age. However, she continued that the

Ministry has put in place certain safety measures to protect such workers and ensure their well-being. She stated that that they are treated like any other employee without discrimination. This is supported by the provisions of the Labour Code (Amendment) Act, 2006 and the Labour Code (HIV/AIDS at workplace) Guidelines, 2010 which encourage employers to develop comprehensive and gender sensitive HIV/AIDS policies aimed at the prevention, treatment, care and support of those infected and ensure that such employees are not discriminated against or victimised in the workplace. That some employers are indeed complying with these provisions was confirmed by the few people I casually interviewed in different spheres of the formal sector who admitted that they are not discriminated against on the basis of their status and that their employers usually give them time off work to fetch their medication from hospital.

Such provisions protecting the rights and interests of HIV positive employees were upheld in the Constitutional Court case of *Thabo Fuma v Lesotho Defence Force*.<sup>11</sup> *In casu*, a soldier was recommended for retirement due to blindness caused by HIV/AIDS. He alleged that he had not been given a hearing and claimed that the action of his Commander dismissing him from work amounted to discrimination because, he alleged, other officers with the same blind condition (but not HIV positive) were given alternative duties. Therefore, he claimed that he had been discriminated against because of his HIV status. The court agreed with him and awarded him damages.

These same provisions should also apply to workers in the informal sector. However, I found that there is a difference in the application of these guidelines to both sectors. In the formal sector an employee would continue to earn their normal wage and sustain themselves during their absence from work due to sickness or a full blown HIV/AIDS infection. In the informal sector, however, should an HIV positive employee fall ill, they receive no financial support from the government apart from the provision of free ARVs from its ever-congested health care centres. Therefore, in the absence of such social security, a female informal worker is forced to close down her business and lose vital income to sustain herself during her absence while she recovers and/or fetches her medication. In most cases she has nothing to rely on.

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<sup>11</sup> Const/8/2011.

Members of the focus group I held with HIV/AIDS informal workers in Berea (Figure 1) also revealed that health workers, especially nurses, fail or refuse to distribute the food assistance they are entitled to receive from the World Food Programme set aside to support HIV/AIDS sufferers to enable them to take their medication since not all of them have enough food. They indicated that these nurses take these food provisions and give them to their relatives or sell them to members of their communities rather than distributing it to them to the AIDS patients.

**Figure 1: Photograph of a focus group discussion held in Berea**



### ***3.5.3 Public holidays and paid holidays***

The Labour Code entitles an employee alone working day off holiday to any on full pay in each month or continuous employment with same employer. Thus an employee is entitled to leave of 12 working days or as agreed by both parties.<sup>12</sup> Moreover, every employee is entitled to a day off with pay on every public holiday and if the parties agree that the employee works

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<sup>12</sup> Section 120.



on a public holiday then she is entitled to receive double her wage or they may agree that the employee be paid at the normal daily wage rate and be entitled to take a working day off at the normal rate of pay in lieu of the public holiday.<sup>13</sup>

#### **3.5.4 *Maternity benefits***

Since pregnancy cannot be detected in its early stages unless the woman informs her employer about it, it was only seen as fair for a woman employee to give her employer notice of her anticipated confinement. The labour officer I interviewed cautioned that an employer should not serve an employee with a notice of termination while she is in confinement.<sup>14</sup> Payments during this period lie within the discretion of the employer but since the Labour Code expressly provides that it should be read in conjunction with relevant labour standards, most employers do, as a matter of practice, pay their pregnant employees during this period.

Section 136 read together with section 133 requires a pregnant female employee to give notice of her anticipated confinement to her employer. She is entitled to six weeks maternity leave from the date of her confinement. However, those weeks can be extended if necessary. Her absence from work due to pregnancy is not deemed to interrupt the continuity of her employment which implies that she should continue to receive her salary even though this is not explicitly stated in the Labour Code. In terms of section 4, the Code is to be interpreted and applied in conjunction with relevant ILO Conventions and Recommendations. Therefore in this case this particular provision should be read with Maternity Protection Convention No. 3 of 1919 and Maternity Protection Convention No. 183 of 2000 which require payment in order to ensure that a working mother should be able to sustain and care for herself and her baby over the period immediately before and after her confinement. This is supported by article 25(2) of the UDHR which provides that:

‘Motherhood and childhood are entitled to special care and assistance....’

#### **3.5.5 *Unemployment (pensions/ provident/medical fund)***

A pension is a source of income that replaces part of the wages which are lost due to insecurities of life due to old age or early retirement. It is meant to stabilize the insecurity of income when an employee has retired which is generally at the age of 60 or earlier in cases of

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<sup>13</sup> Section 121.

<sup>14</sup> Section 136.

early retirement. However the respondent told me that the employee should contribute towards such benefits. Thus they come out of the payroll taxes.

In section 85(2), the Code allows for any deduction to be made from an employee's wages to any provident, medical or pension fund or any fund or scheme approved by the Minister. This is supplemented by Public Officers Defined Contribution Pension Fund Act, No. 8 of 2008 which defines a pensioner as a retired permanent public officer. Section 4 of this Act provides that contributions are to be made monthly into the bank account of the fund at the rate to be determined by the Minister. Furthermore in section 27 it states that in the case of retirement, an employee is entitled to receive 25% of their fund credit in the form of a lump sum cash payment and the remaining balance is used to purchase an annuity for her.

### ***3.5.6 Death/disability***

The Consolidation Fund even provides for disability and death benefits which shall be received by the beneficiaries of an employee. The Public Officers Defined Contribution Pension Fund Act, 2008 provides that whenever a member is declared disabled, he or she shall be entitled to benefits.<sup>15</sup> Further, it states that on the death of a member of the Fund, being an employee, the member's beneficiaries shall receive a death benefit.<sup>16</sup>

### ***3.5.7 Compassionate leave***

Compassionate leave is given to an employee in times of bereavement. This is given after the approval of the Minister who determines the number of days to be granted. This is provided for by section 79 of the Public Service Regulations, 2008:

‘The Minister in pursuant with Public Service Act shall...determine the number of days to be granted to an officer on compassionate grounds.’

### ***3.5.8 Retirement benefits***

Retirement benefits are those which an employee is entitled to receive when she retires. In this case the employee is entitled to a portion of his or her fund credit to the maximum of 25% as a cash benefit. The remaining percentage shall be used to purchase an annuity for him or her.<sup>17</sup>

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<sup>15</sup> Section 28.

<sup>16</sup> Section 30.

<sup>17</sup> Section 27, Public Officers Defined Contribution Pension Fund.

### **3.5.9 Injury**

This means injury sustained during the scope of employment. Lesotho established a workmen's compensation scheme under the Workmen's Compensation Act, No. 13 of 1977 requiring an employer to purchase insurance with a private agency to insure any injury sustained by an employee during the course of employment. However, the Act excludes the informal worker in that section 2(1) of the Act defines a workman as 'any person who has entered into, or works under a contract of service or apprenticeship with an employer.'

### **3.5.10 National Social Security Scheme**

Lesotho, unlike other countries such as South Africa, Tanzania and Zimbabwe, does not have a national social security scheme,. Efforts to enact laws that mandate and establish such a scheme have not yet materialised. In an interview with an officer in the Ministry of Labour (MOL), I learnt that the Ministry in accordance with the ILO Decent Work Programme of 2004 to enhance social protection, developed the National Development Plan 2012-2017. This Plan called for the establishment of a comprehensive and inclusive contributory national social security scheme for every employee in Lesotho. This includes its civil servants, employees in the private sector and migrant workers who work in South Africa whose inclusion is based upon the recognition that they receive inadequate social security protection upon termination of their employment.

This initiative is based on the recognition that the existing arrangement only provides some protection for medium to high earners in the formal sector, and so a separate fund was envisioned for those not covered. The scheme's main function is to increase labour mobility (since it is not job specific) and is hoped to stabilise the economy and prevent a brain drain from the country. The initiative is also intended to raise Lesotho's labour laws to international standards after realising that its current laws are outdated. The officer admitted that the anticipated scheme does not include workers in the informal sector on the basis that since the scheme is to be a contributory one, it is difficult to quantify their members' contributions as they do not earn or not have stable incomes. She said that it is intended that the informal sector will eventually be included in the proposed scheme after the Ministry devises a suitable strategy on how to absorb them into it. However, the Plan has not yet become law as the MOL is yet to conduct a pilot study in relation to the Bill which is yet to be approved by parliament.

During my perusal of their records, I discovered that the Plan to establish a social security scheme was launched years ago in the form of the 1995/97 Development Plan and in 1998/99 the government received financial assistance from the Arab Labour Organisation and the Arab Bank to draft a national security scheme policy in 2002. It failed as the ILO criticized its lack of equity and there is no guarantee that it will work now. The officer said their social security task team has presented a Bill to Parliament in relation to this initiative but it has not yet been approved.

She further related that her Ministry does not disseminate knowledge of labour rights to the informal sector; they believe that it is not part of their mandate but rather that of other Ministries, such as the Ministry of Constitutional Affairs.

### **3.6 Conclusion**

The concept of social security is considered a universal human right which realises social justice but its implementation within the country has always been characterised by the dichotomisation of the workforce into the formal and informal sector. Consequently, the type of work a person does (i.e., whether one works in the formal or informal sector) determines the type of social security one is entitled to access and enjoy. Social security has traditionally been predicated upon a formal or written contract of employment, hence, most social security measures only cover those employed by the formal sector. The following chapter will discuss the informal sector and what forms of social security are available to its workers.

## **CHAPTER FOUR**

### **4.0 THE INFORMAL SECTOR**

#### **4.1 Introduction**

The economic crisis that has befallen the country has resulted in an upsurge of unemployment which has left the state carrying the burden of having to sustain the livelihoods of many of its citizens. The previous chapter has shown how the state has unfortunately failed in its duty. Lesotho used to rely on remittances of income from their migrant workers, especially miners, working in South Africa but now it is faced with masses of their miners being retrenched with little or no social security on which to rely. The wives of these men have turned to seeking their fortunes in the informal sector as an alternative means to sustain their families.

#### **4.2 The informal sector**

##### ***4.2.1 Defining the informal sector***

The informal sector is defined as the set of ‘units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned’ (ILO, 1993b). According to the Labour Code (HIV/AIDS at Workplace) Guidelines, 2010 the informal sector is defined as economic units that are in law or in practice not covered or insufficiently covered by formal agreements. In general parlance, the informal sector denotes that part of the economy run by those who endeavour to make ends meet through their own initiatives and enterprise. It often lacks government support and labour regulations. The informal sector is important because it helps to alleviate poverty in that it provides a considerable source of income and employment in countries where formal employment opportunities are limited and social security is almost non-existent.

##### ***4.2.2 Who comprises the informal sector?***

The informal sector comprises units involved in small-scale production, which are mostly unincorporated and family owned, and using mainly labour intensive technologies (Bernabe, 2002). It is often characterised by unregistered activities or those which include various degrees of illegality such as escaping taxation, non-compliance with labour regulations, financial transactions outside the control of the state or banks (capital flight), lenders and smuggling (Njaya, 2014).

It acts as a safety net for unemployed people since they do not have a private income from a formal employment sector and no formal social security measures backed up by the state. Therefore, the informal sector provides a very important source of income and social security in the absence of formal social protection, and it may be an important source of economic growth (Bernabe, 2002: 56).

In Lesotho, the informal sector is often characterised by non-standardised relationships; labour relations within the sector are based on casual employment, kinship or personal and social relations rather than contracts, formal or written agreements, which provide formal guarantees against income insecurities caused by unemployment, old age, sickness, injury, death or maternity (Country Report, 2012).

The Marxist theory considers that the informal sector is exploitative in that it is an extension of the production network of large firms, providing a pool of cheap and flexible wage labour through self-exploitation and it subsidizes the formal economy by providing cheap goods and services to the labour force, therefore enabling large firms to pay extremely low wages (Bernabe, 2002).

### **4.3 What is informal social security?**

As a result of the government's exclusion of informal sector from its formal social security measures, workers in the informal sector have devised their own survival strategies to guard against the contingencies of life. These are referred to as informal social security nets and are available to those who operate informal businesses. This type of security is not formally regulated nor is it documented. It is family and community based. It is also based on kinship relations and the principle of social solidarity. However, it covers fewer contingencies than those covered by formal social security. It mainly covers death and excludes most of the other shocks of life. There are two types of social security in the informal sector namely, traditional safety nets and the self-organised nets. Both will be discussed in detail.

#### **4.3.1 Traditional safety nets**

Traditional safety nets are a form of social security which revolves around kinship and family ties. In this case the family feel a sense of belonging and togetherness by sharing risks and responsibilities. It is underpinned by the values of solidarity and generalised reciprocity

(Kaseke, 2004). Lesotho has a patrilineal system in which husbands are the heads of their families and women are considered subordinate to men. This has caused great stress to women employed in the informal sector since it is largely men who control the proceeds women generate from their businesses or the benefits they acquire from informal social security nets. In essence, according to Kasente, traditional social security systems refer to those forms of social security which have a close link to social tradition, and which are frequently very restrictive for members of the community on the basis of common law or custom (Kasente, 2004). The underpinning value of traditional safety nets is *botho*,<sup>18</sup> which is based on the social mind-set based on social symbiosis. This literally means that humanity makes all people human. Flowing from the value of *botho*, the *Basotho* also believe in the principle that joint effort can resolve social problems. They also have the following sayings, *motho ke motho ka batho*<sup>19</sup> and *ntja peli hae hloloe ke sebata*<sup>20</sup> (Mosito, 2014).

#### 4.3.2 *Self-organised nets*

Self-organised nets are those which are based on membership of a particular social group or community, including, but not limited to, family, kinship, age group, neighbourhood, profession, nationality, ethnic group, and so forth. Such nets are based on the principles of both solidarity and reciprocity, meaning that solidarity for each other is conditional upon reciprocity between members. So, if a member fails to pay their contributions they will lose their benefits. The incentive for such nets arises from circumstances imposed by social and economic change. For example, they come about when the family cohesiveness of traditional safety nets come under attack, fragments and break down as a result of various factors such as urbanisation and industrialisation (Kasente, 2002).

During my interviews with women involved in these nets, I learnt that net membership is quite balanced and that women members are not secretive and inactive but rather participatory and even occupy high positions of authority within such nets. For instance, in most *mechaellanos* (burial schemes), women become their treasurers and general secretaries.

Further, the women said contributions made to these nets are not used for their personal benefit but are used by most women to the benefit of their families not for their own

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<sup>18</sup> Meaning, humanness.

<sup>19</sup> Means a person is a person through other people.

<sup>20</sup> Means that a joint effort cannot be defeated by a beast.

enjoyment *per se*. They can be used for various purposes as agreed by members of the nets. For example, they could be used for education or general household upkeep or even simply to buy groceries. It covers a few contingencies also.

In my interviews I found out that club membership can be exclusively women or men or mixed. The clubs differ because their contributions and payouts differ from anything between M300 and M1,000.<sup>21</sup> These clubs are mainly orientated towards education, furniture or general household necessities. The respondents said the sharing of the proceeds of the net can be done daily, weekly or yearly. Nets do not cover maternity costs as members still rely on their families to help them meet these expenses. Unemployment, sickness or injuries are also not covered. If one of these contingences occurs to one of the members at a time when it is not their turn to receive any payout, then the member is forced to borrow money from the club at interest and they incur penalties if they do not repay their loan on time.

This is what I found during my interviews about how workers in the informal sector deal with life's contingencies and the extent of cover they enjoy from the informal social security measures.

**(a) Death/disability**

In my interviews, the bulk of respondents said that they rely mainly on their families. The resources of the extended family system are mobilised to support members who are exposed to crises which they cannot address on their own. The problems experienced by an individual as a result of exposure to a contingency such as the death of a member of his or her immediate family are shouldered jointly by the extended family. This is based on the social principle that children born within the extended family are not only reared and raised for the benefit of their nuclear family parents but also for the common benefit of the extended family (Mosito, 2014).

Some street vendors said they mostly rely on their relatives for support. They said normally when a relative dies they contribute towards their burial. Some pay between M300 and M500 which they give to the bereaved family. This is on top of the moral support they give and the time they spend staying with the family during a certain period of mourning.

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<sup>21</sup> M = Maloti or Loti, Lesotho's currency; 1 Loti is equivalent to 1 South African Rand.



Another family I interviewed said it is the youths in their family who together to bury their relatives.

Some said they are no longer many people left in the rural areas to assist them because due to the drought, people have abandoned their subsistence farming to look for jobs to supplement their income. They have either taken a long time to return home to help their families or do not earn enough money to do so. Therefore, this kind of support is deteriorating since most people are unemployed and have moved to town to seek jobs since they can no longer rely solely on subsistence agriculture which used to be the mainstay of the country's production which was badly affected by the El Niño drought.

Others said the traditional safety net is not reliable because it is often the case that during burials the less educated members of the family are burdened with most of the work. It is they who brew the traditional beer and do the cooking using firewood. Relatives from town, on the other hand, only arrive on the last day of burial and do very little or nothing at all. So those who live in the rural areas complain how unreliable their urban family members are and can become quite agitated and say such things as:

‘Those wearing these sharp heels shoes like they are going to plant pumpkin seed where ever they step think they are better because we are not educated they think black pots befit us. They come to funerals late. The money they donate earlier but fail to come and help even though they love to eat food who they did not know who prepared it when they are gaping their mouth in town.’

Some of the respondents told me their chief makes each family donate cartons of maize meal and M7.

Some have also joined self-organised nets such as *mpate shelengs* (funeral schemes). They said they make contributions to such schemes ranging from M25 to M150 per month. In times of bereavement the members give their support by providing tents, chairs, pots, contributions of up to M10 or M20 each, samp, candles, matches, salt and sugar, offer to help with the cooking at the burial and offer moral support. They further receive a cash payment ranging from M2,000 to M3,000 for a coffin.

Others said it is difficult to join this scheme since they do not make enough money and cannot afford to pay or to continue paying the required contributions. As a result they default in their payments and end up incurring penalties or losing their benefits. Some even borrow from loan sharks to pay off their debts and stay permanently in debt.

Some managed to join local insurance companies such as MKM, Alliance Group and Lesotho Funerals saying they find it more reliable than others. One lady said that she is tired of being told that ‘a rat has got in and made a hole in their money’, meaning the treasurer has failed to account for the loss of money based on the excuse that she did not really know what happened to the money and she got away scot free.

In the case of disabled people in the informal sector, they rely solely on their relatives and receive nothing from the government.

**(b) Food**

Some respondents said that they contribute M200 per month with a monthly subscription of M50 to buy food seasonally. Such schemes may be to help buy meat and paraffin in winter, to buy and share food at Christmas time. Some said during the year they lend the money interest so that they can buy even more groceries. However I found that not all workers can afford to be members of this type of scheme. Some said:

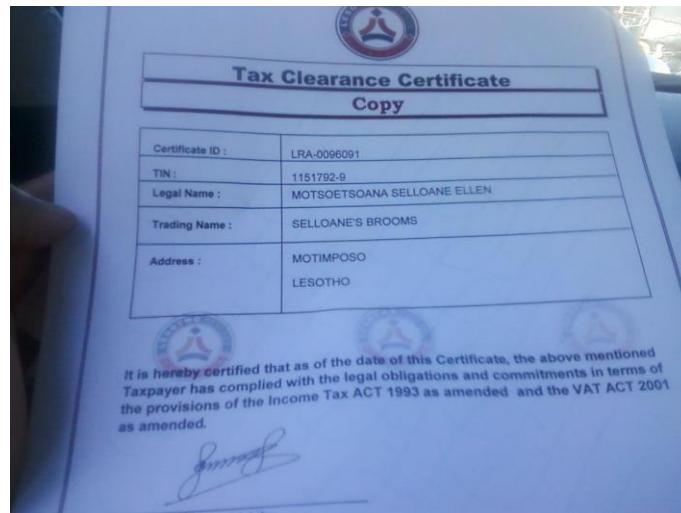
‘We do not make enough profit in the streets, taking into consideration that we must pay rents and commute from our place of renting to town. Most of the time we end up not having enough money to buy food, let alone clothing. We then call home to ask for food from their previous harvest.’

**(c) Injury**

There is generally no scheme to cover the costs, especially cash, incurred resulting from unexpected injuries occurring at work. Most of them rely on the free primary health care but in cases of emergency when injuries are serious and government hospitals are always congested, respondents said that they were forced to borrow cash from loan sharks and seek help from private health concerns. The women were chosen randomly but purposefully. Most of them sew for a living mainly making *lishoeshoe* dresses. One woman said that they struggle to make a living because the little that they make is used to pay their rent and the LRA which forces them to be registered and to declare and pay annual tax returns. This

affects them negatively since they end up having less money to take care of their family or themselves. This was confirmed by women selling handicrafts.

**Figure 2: Photograph of tax clearance required by Lesotho Revenue Authority for informal sector operators**



**(d) Sickness/illness**

In the case of illness, most respondents rely on their families for care and support. Life becomes very difficult for those who are unable to secure family assistance. Some even die if they do not have money for transport to travel to government hospitals. In my interviews with some men, they said that with their *mochaellano* money they are even able to pay for private hospital treatment as a result of their self-organised nets. They also said that they make enough money to pay for funerals, have joined *mpate shelengs* (funeral schemes) back home and have paid for funeral cover with Alliance in case of death. They also have roundtables where each member manages to hop home amounts of M7,000 per month. They feel government is obligated to help them since they are paying for levies and even tax for their materials when they cross the border.

**(e) Maternity**

Most women rely on their traditional safety nets for help with maternity issues. Some are helped by their mothers, grandmothers, sibling or aunts in caring for their newborns or contribute sorghum to make them porridge. But generally, during this period new mothers close their businesses because it becomes very difficult if not impossible for them to continue running their businesses and looking after their families as well as performing their added

responsibility of caring for their newborns. That is why most of them, if they can, leave their children at home and go back to their businesses to make a living.

Some said they cannot afford to hire a replacement to do their work while they are away looking after their newborns since their turnover is so small. Therefore, most of them often find themselves forced to take their newborns to work where the extreme conditions are harmful to them. All in all these women have nothing to rely on, only themselves and therefore they cannot afford to stop working.

**(f) Pension**

This sector does not have a pension for retirees. In fact informal sector operators do not retire; they work until they fall ill or die. The only pension they can access is the government's pension (discussed above) but to qualify a person has to reach the age of 70 and the fact is that very few people reach that age.

I interviewed women from the market selling old newspapers for M2 a roll which are used as toilet paper, for rolling and smoking *zolls* (rolled tobacco/dagga in newspaper) and by tailors to decorate *lishoeshoe* dresses. They said that the money they earn is not enough to cover a pension. Their business mainly helps them to provide for their family. All they can manage to do with their small income is to join burial schemes back in their home districts, where they contribute less in case of death. They do not have anything to cover them for other life contingencies. They stated they are very unhappy that the government has excluded them from receiving a pension to suit their predicament. They consider the present old age pension meaningless since it requires one to be 70 years to qualify for it. One asked me:

‘My sister, in this time of life, how many reach that age? People die fast as a result of these venereal diseases and even poverty itself makes one to age faster than their real age.’

The other women exclaimed with dismay:

‘My dear, a few can reach that age. This because we do not eat well and not well take of medical wise so we are always stressed causing us to look old even though we are still young in age’ (Maseru: December, 2015).

**(g) Leave/holidays**

Workers in the informal sector do not enjoy paid leave or holidays. Most informal sector workers even work on weekends except those who belong to different religions. If a worker does decide to take leave they are not paid for that day or period. I interviewed workers in hairdressing salons. They were used to attract potential customers as they walked by the establishments. They do not make much money and the majority of them are not able to join *mechaellanos* (burial schemes) due to lack of finance. One women worker said that winter and January, when children are going back to school, are bad times for business. Some are hired on a commission basis to attract customers and are paid between M10 and M15 for every customer they attract to the salon and has their hair done. They said they even work on holidays and weekends to make money.

They contribute to burial schemes and funeral policies at Alliance insurance. The women respondents I interviewed around malls confirmed most of the above and said their situation was worse as they also had to pay rent and tax annually. The women said they did not have enough customers because people said they were expensive and this was because they had to pay high rents and taxes. They state that they also deserve holidays. They cover for other contingencies.

**(h) Severance pay**

Since there are no contracts between employers and employees in the informal sector, most people are independent operators. This means that if a person decides to stop working they receive no severance pay. For instance, in my interview with a *spaza* (small shop owner), he said he does not report to anyone but himself. He said that if decided to stop operating that would be at his own peril. Most women informal workers confirmed this point. Some were quite old but vowed only to stop working if they fell ill or died.

**4.4 The implications of dichotomization for women employed in the informal sector**

International human rights have set a standard to which Lesotho should adhere since she agreed to be bound by them. The respondents seemed to be aware of the dichotomisation of the labour sector but were not sure what had caused it. They thought it was as a result of a political decision and therefore blamed it on government. They said that the government only

remembers them during the time of elections. They all more or less said the same thing. When I asked them about their knowledge about social security and related rights, they did not have any knowledge. They were also not even aware whether Lesotho had any international obligations in that regard. One respondent said:

‘I only hear over the radio when is announced that Minister so and so has boarded a plan to go overseas nothing much.’

Some said they were aware of the government’s different treatment of workers in the two sectors and that people working in government and/or factories receive certain benefits depending on the type of the work they perform. This lack of knowledge was basically because no one has ever taken the time or effort to teach them about such important issues. One respondent observed:

‘They only know us when it is time for elections, making a lot of promises they usually fail to keep.’

The Ministry of Gender, Youth and Sport’s District Officer indicated that it is not their responsibility to do this but that of other Ministries, perhaps the Ministry of Justice. Even MOL agreed.

**Figure 3: Photograph of an interview being held at the Ministry of Gender**



Other women also said that their business only earns enough for them to live a hand-to-mouth existence as they do not make enough money to save after settling their expenses. She added that all the proceeds of her business are used to benefit the family as a whole, including buying food and other household necessities as well as sending her children to school since the government does not pay fees at high school level.

#### **4.5 The state's obligation toward women employed in the informal sector in relation to social security**

Lesotho does not have a uniform law on social security. Its existence and application are drawn from various legal provisions which deal with social protection. Upon studying these laws it is clear that they reflect a dichotomisation in the labour force. In effect there are two kinds of social security: those which apply to the formal sector and others which apply to the informal sector. Employees in the formal sector enjoy various benefits which stabilise the insecurities of their income in case of death, sickness, injury, old age, retirement and maternity. These benefits, however, do not cover employees in the informal sector. They, therefore, have devised their own alternative means of social security to protect themselves against life's exigencies and they are known as informal safety nets.

The main objective of employment is for people to enhance and sustain their livelihoods. Formal types of social security cover only the formal sector which tends to employ fewer members of the population than the informal sector. This means that only a particular class of women, i.e., those in formal employment are covered by formal social security. It excludes another class of women, i.e., those in the informal sector. In other words, they are discriminated against on the basis of their work.

The State should provide social security for all its citizens and should not expect any entity, social or otherwise, to fulfil this important universal obligation. Its failure to do so (i.e., to provide formal social security measures to those in the informal sector) amounts to an unfair distribution of its resources in that a certain class of women (i.e., those in the formal sector) are benefitting to the prejudice of the majority (i.e., those in the informal sector) who are not.

On the basis of the underlying principle that human rights are inalienable, indivisible and interdependent, the state should not rely on its lack of economic resources as a defence or

rather an excuse for its current stance to deprive women in the informal sector of state-funded social security nor should the state label some rights as fundamental while others, such as social security, as non-justiciable and non-enforceable. This is because there would not be any rights without a bearer.

#### **4.6 Conclusion**

Lesotho's current formal social security measures fail to take into consideration the devastating effects its economic crisis has wrought on its workers in its formal labour sector who have been forced to turn to and have swelled the ranks of the informal sector. The state clearly appears to have abdicated its responsibility towards these informal sector workers in that while the state has enjoyed their large contribution to its GDP, it has failed to afford them the social security benefits they deserve. As a result informal sector workers have been forced to access alternative informal safety nets which have proved to be inadequate in that most of them only cover contingences such as daily food expenses and death. The following chapter will discuss more about the challenges faced by women who rely on these informal safety nets.



## **5.0 CHALLENGES CAUSED BY WOMEN'S RELIANCE ON THE INFORMAL SAFETY NETS (TRADITIONAL SAFETY NETS AND SELF-ORGANISED NETS)**

### **5.1 Introduction**

Notwithstanding the fact that the government has excluded informal workers from its formal based social security measures and thereby forced them to seek the protection of alternative informal safety nets, these nets pose their own challenges. Informal safety nets are a subset of the range of coping strategies that people adopt in response to episodes of acute food insecurity. They are a manifestation of the 'moral economy' in that they involve drawing from the social network of extended family, neighbours, and wealthy patrons, for assistance in times of need either with or without expectation of reciprocity. In essence, these nets are invoked in response to economic shocks and stresses (Devereux, 1999:5), including, for instance, income insecurity.

### **5.2 Types of traditional safety nets**

The essence of traditional safety nets implies that the wellbeing of an individual, especially in poorer households, depends not only on the individual's economic situation, but relies to a larger extent on the economic situation of the community (Benda-Beckmann, 1988). The nets are family and kinship based and are generally assisted based schemes. This means that a family provides assistance to those of its members who are unable to provide for themselves. Support provided may be in cash or in kind. These support systems operate on the basis of the principle of (traditional) solidarity. Thus each member of the family or kinship system assists a member in need of support even though there is no guarantee that the assisted member is able to reciprocate (Olivier and Kaseke, 2004). It has already been discussed in the preceding chapters that informal safety nets only cover the informal based workers. The traditional safety net is based on family and kinship ties.

### **5.3 Types self-organised nets**

Self-organised nets are neighbourhood or community-based informal social security systems that go beyond kinship and family ties. These may be in the form of schemes which cover burials, groceries, education, furniture, household utensils and blankets. Even though they have shown some viability, they are based on trust. But due to the fact that they rely for their

survival on cash contributions from their members, they are also affected by economic changes. This means that when informal women workers are unable to pay their subscriptions, they risk forfeiting their benefits or even losing their membership.

#### **5.4 The difference between male and female members of informal safety nets**

I observed that most men sell non-perishable goods while women sell perishables. This affects the amount of profit they make and their ability to replace their products. Generally they contribute towards the informal safety nets. However men extend their coverage by also subscribing to funeral insurance. They are able to give more money than women to the kind of *mechaellano* to which they belong. Furthermore, from the benefits they receive, men are able to afford to buy expensive items such as cars and plots of land.

#### **5.5 Factors affecting the consistency of the informal safety nets**

Informal safety nets provide a form of social security for workers in the informal sector. This assertion has however been challenged by various economic and social factors. Firstly, the element of family cohesiveness has deteriorated because of labour mobility and migration. Most people have left their rural homes to seek better paying work in towns where they end up establishing their residence, leaving it from time to time to visit their first homes on family business. This trend this has defeated the sense of togetherness which has been the underlying principle of sharing risks and pooling resources in times of problems.

Secondly, most people have changed their way of living because of the negative impact of the country wide economic crisis. They have moved from the notion of the extended family where they would shoulder and share the burden of family members together. As most people do not have enough money, they have now moved to a nuclear family way of living where people are far more concerned about their own immediate family issues and less about other further removed family members and affairs.

The value of generalised reciprocity is no longer of much importance since most people are becoming less and less interested in becoming fully involved in caring for each other. This has become apparent when urban dwellers attend functions in their original rural homes.

Furthermore, no ploughing for subsistence farming has taken place because of the El Niño caused drought. Less money earned from farming has meant that members have only been able to pay their contributions to traditional safety nets in kind as opposed to cash and this has weakened these forms of social security.

Informal safety nets also cover fewer contingencies than their formal counterparts. Most of the former only cover funerals, which means that in the event of other contingencies, such as illness, they are not funded at all or not funded in cash, but only in kind. This puts a strain on women since they now have to close their businesses and concentrate on efforts to overcome the contingency. It is because of this weakness or gap in informal nets that some people end up withdrawing from them.

The nets have no connexion with the government and they are not documented or regulated. They suffer from corruption and lack of accountability. When funds go missing those in control simply complain that ‘rats have made holes on members’ money’ or when it is time for cash payouts they find other excuses. When disputes arrive and the local chief is normally approached to adjudicate, they do not act impartially.

## **5.6 Sex and gender dynamics as barriers against women employed in the informal sector from enjoying the benefits of their contributions**

Furthermore, even though women work hard to contribute to informal safety nets they tend not to benefit from them; in fact, they become further burdened. For instance, in the case of traditional safety nets it becomes apparent that the system is patrilineal. In other words, the man is the head of the household and he makes decisions as what must and what must not be done. There is no reciprocity in this case. At funerals most of the work is done by women who do most of the cooking and preparing for them.

Traditional systems of social security have a tendency to exploit women for the benefit of other members of the extended family, with no guarantee of women’s own social protection (Kasente, 2002). This is most apparent with the issue of caring for others which is done mostly done by women. Women take care of the sick, their families and husbands (who also require that their wives satisfy their conjugal needs), they bear and take care of the children. As a result all the contributions women make end up benefiting family members. This is also

because women are relational in nature in that they sacrifice for other people and forget about themselves.

From most of my interviews I found out that most women still perform their domestic chores after a long day at work. Sometimes if they find their husbands at home they will refuse to help their wives. Caring is generally considered a social practice as opposed to a political issue for which the state can assume some responsibility. The social process of caring is characterised by the four kinds of caring, namely, giving care, caring about, caring for and taking care most of which is performed by women. The State abdicates its responsibility for such caring by shifting its responsibility away from itself and on to the shoulders of women (Sevenhuijsen. 1990).

I noticed the emergence of women-headed families where men are not the sole deciders of everything, but still women's contributions go to their families because of their relational nature. This comes down to the issue of access and control. Those women can make money but not actually enjoy its benefits due to the power relations within households.

During my interviews with the respondents concerning the factors that contribute to the challenges facing family cohesion, I found out that HIV/AIDS has emerged as an economic obstacle. It affects the membership of these nets. Many members are lost to this epidemic and women have to sometimes leave their work to care for the sick.

## **5.7 Conclusion**

Informal safety nets may act as safety nets for informal workers against the predicaments of life but they are often inadequate because they cover so few contingencies of life (unlike those in the formal sector). Informal safety nets are also weak and unreliable. The following chapter will discuss the right to work and try to contextualise it within the ambit of social security.

## **CHAPTER SIX**

### **6.0 CONTEXTUALISING THE RIGHT TO WORK AND THE RIGHT TO SOCIAL SECURITY**

#### **6.1 Defining the right to work**

Before defining this right it is important to define the concept of work. In general parlance, work refers to a productive activity for household or exchange (Tilly & Scott, 1978). Traditionally it was defined to include the supervision of an employer over an employee, working hours and the remuneration for services done. Nowadays work is gradually being defined in economic or realities is applied to get to seek who bears the risk of loss.

Work is critically significant to the individual and/or society at large. It has an economic, psychological, social and political nature; it enhances livelihoods and gives individuals self-fulfilment which builds sense of self-dignity and self-worth and acts as an important platform for building relationships (Gwisai, 2006). On this basis, work has been generally defined as paid work but that definition carries an inherent prejudice against women since they do different kinds of work, for instance, unpaid work to sustain their households and when it comes to the issue of social security, this kind of work is not recognised (Olivier-Kaseke, 2004).

The ILO Declaration on Fundamental Principles and Rights at Work (adopted in 1998), makes it clear that the right is universal, and that they apply to all people in all States - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity and social progress or to eradicate poverty.

In this context, it should be noted that a women's work and the income she generates from it is inseparable from her family. Therefore business expenditure is difficult to separate from household expenses. They are actually interdependent and traceable to the women's work pattern which starts in their household and moves to their place of work. They wake up very early to satisfy their men's conjugal needs, clean their home, bathe their children, cook and feed their family, go to work, and then return after a long day to resume their her household

duties. Moreover, her profits are meant to cover the costs of looking after her family and the household in general.

The right to work is a human right enshrined in article 23(1) by UDHR and applies to every individual without any discrimination whatsoever. Articles 6 and 7 of the ICESCR recognise the enjoyment of everyone to just and favourable conditions at work. Article 15 of the African Charter also provides for the right to work which entails that every individual has the right to work under equitable and satisfactory conditions. Moreover, article 11 of CEDAW recognises the right to work and states that it is an alienable right of all human beings. The Constitution of Lesotho provides for this right but creates caveats in that it is only protected by state policy and is not recognised as a fundamental right. The fulfilment of rights in this category also depends on the economic availability of resources. Even the ICESCR supports the progressive realisation of this right.

As indicated earlier, employment issues in Lesotho are governed by the Labour Code Order No. 24 of 1992. In this Code an employee is defined as in terms of contractual parameters, thereby excluding informal workers whose work relationships are essentially not defined by formal elements and characteristics.

## **6.2. Correlating the right to work with the right to social security**

The right to work and the right to social security are both socio-economic rights provided by human rights instruments. It should be remembered that human rights are interdependent. Therefore the recognition of one of the rights (to work) gives rise to recognition of the other (the right to social security). These instruments do not make any distinction between which workers who are entitled to enjoy social security (e.g., workers in the formal sector) and those who are not (e.g., informal workers); rather they provide that these rights apply to every individual regardless of their status. Since eventual income insecurity is a plain and simple fact of work, the right to social security provides a safety net to guard against such inevitability. It is this social security which protects the right to work as it brings about the sustainable development of a human beings.

Providing workers with social security increases their productivity and contribute to economic growth. This is on the ground that the informal workers right is somehow

jeopardised in their conditions and terms of their work does not provided much of the benefits and the loose a lot of profit trying to counter act the exigencies of life. Therefore these rights go together.

### **6.3 Impact of the exclusive coverage of formal social security on women employed in the informal sector**

The impact of the exclusive coverage of formal social security on women employed in the informal sector amounts to discrimination. The Constitution's very own act of classifying rights into some that are covered by state policy (such as the rights to work and social security) which are non-justiciable or unenforceable and others that are considered fundamental (such as the right to life) and which are justiciable and enforceable constitutes discrimination. This is confirmed by the relevant human rights instruments.

Further, article 7 of the UDHR provides for equality before the law and equal protection of the law which in effect condemns any kind of discrimination. This provision of equality before the law is contained in section 19 of the Constitution and section 18 provides for non-discrimination. The Constitution defines discrimination as affording different treatment to differentiate persons attributable wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

In this case there is discrimination on the basis of work since the formal sector is afforded benefits which are not available for workers in the informal sector. Thus a certain class of women is favoured over another class.

There are two types of discrimination, namely, direct and indirect discrimination. The former is overt or open discrimination which is apparent and obvious on the face of it to everyone. Indirect discrimination is not immediately apparent but reveals itself upon application when it gives rise to disparate treatment between those who should be treated equally and without discrimination. Thus it is the effect of practice that matters.

Section 5 of the Labour Code Order No. 24 of 1992 prohibits discrimination. It provides that any distinction, exclusion or preference made on the basis of sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation is incompatible with the Code.

The very definition of employee (and implicitly, work) in the Code (confined to formal contractual agreements between employer and employee) means that it can only apply to those employees who work in the formal sector. This means that it directly discriminates against women in the informal sector whose type of work does not fall within the above definition of employment.

The requirements for direct discrimination as laid down by Burger CJ in the case of *Griggs v Duke Power Co.* 401 US 424 (1971) denotes that in order for an applicant to prove direct discrimination she/he must establish a *prima facie* case against a respondent. In other words, the discrimination complained of must be overt and there must be a causal link between the respondent and applicant's actions. In this case, a group of employees at Duke Power Company took action against the company claiming it was discriminating against actual and potential employees on the grounds of race in its hiring and assigning of employees to its plant. Within the plant, black people were employed in lower level jobs and paid less while white people occupied higher positions and were paid more. Hiring and work assignment was conducted in terms of a policy requiring that those with higher levels of education to be transferred from lower level to higher level positions. While this seemed fair on its face, as a matter of practice, the racist laws and policies at that time denied black people access to the education they needed to qualify for such promotions. The court held that the company policy was held to be discriminatory against black people and was ordered to be removed.

Similarly in the present scenario, workers in the informal sector are directly discriminated against by virtue of the definition of employee (and implicitly, type of work they do) contained in the Code. In addition, the definition of the concept of social security as per the ILO Conventions is defined on the basis of a formal contract of employment which totally ignores the reality of thousands of workers within the critically and equally important informal sector in Africa, a direct product of the massive ongoing economic crisis which is decimating the once growing formal sector. The application of laws of work and social



security based on such narrow definitions has resulted in very unfair treatment against informal workers, taking into account that the informal sector in all its forms makes such a significant and growing contribution to the economy.

The labour laws are failing dismally to take cognisance of unpaid household work which also contributes to and subsidizes the country's economy by cutting expenditures. It is essential to note that this kind of work is done by women and is part of informal work. Such unpaid work brings into play the issue of the public/private domain where women are confined to the private (domestic sphere) doing unpaid household chores and bearing children while men work in the public domain earning a salary.

#### **6.4 Government responses: What is being done to protect these women?**

In spite of this on-going discriminatory treatment against members of the informal sector, the government has not taken any positive steps to remedy the situation. In fact it is making it worse. During my interviews in the MOL, I was told that the Ministry is initiating a plan for a national social security organisation which will be based on contributions but it will only benefit civil servants, the private sector and migrant workers. It will, however, exclude informal workers and the reason given was that it is difficult to quantify the amount informal workers could pay since their incomes are not stable. It was said they might be included in the long run should the MOL come up with a strategy to include them.

Instead of protecting the women in the informal sector by providing them with financial or basic social security, the government is impoverishing them further. For example, its Ministry of Trade charges up to M500 for a licence and monthly levies for women selling handicrafts as well as using strenuously encouraging more members of the informal sector to register in order to pay annual taxes.

**Figure 4: Photograph of government demand for payment required from women selling handicraft**

5533614

Issued to: SELLOANE'S BROOMS  
Trade Name

Operating from: SELLOANE ELLEN MOTSOETSOANA  
Individual owner in case of sole proprietorship, otherwise Name of Partnership, Firm/Company

MOTIMPOSO  
Street address - SEBAXA SA KHOEBO

MASERU  
Suburb/Zone/Village - MOTSE

Maseru  
Town / City

Business Category: Small Scale Industry | ARTS AND CRAFTS PRO

Business Products:

Date of first License: 17/12/2014  
DD/MM/YYYY


Should be renewed by: 21/08/2017  
DD/MM/YYYY + 1

License Fee Paid: 150 00  
Masi

Receipt Number: F097379  
Receipt No.

License Penalties Paid: 0 00  
Masi

LICENSE IS ISSUED TO THE PERSON/ENTITY AS



**Tax Clearance Certificate**  
**Copy**

LRA-0096091

16 F 097379  
114 258

Motsoetsoana

20.00 20.00 Pen Fee

of Security M

170.00

CASH CHECK

mentioned  
Tax ACT 1993 as amended and the VAT ACT 2001

**Figure 5: Photograph of government demand for increased penalties if women delay in paying their taxes**

## **6.5 The advantages for all if the state complies with its international, regional and national obligations**

If the state complies with its international obligations it will uphold the principles of human rights in terms of which every person's rights are protected, promoted and respected. Significantly, it will follow that informal workers will be recognised and included in legislative definitions pertaining to labour.

The activities of the informal sector will be well documented so that a more accurate estimate of their contribution to the economy will be established. This will boost their productivity and encourage co-operation between themselves and the government.

Also, if a broad definition of informal work is established so that it includes all the different kinds of informal work which have been hitherto overlooked, this will most likely mean economic empowerment for many women. So, if, for example, unpaid house work is given economic recognition, most women will be able to break their dependency on their husbands, make more decisions for themselves and take better care of themselves and their families.

Moreover, if maternity protection is afforded to women in the informal sector, more lives will be saved and mortality rates reduced since more women will have something to support themselves and their children during their confinement. This will help to prevent nursing mothers from having to return to work immediately after giving birth as a result of the push and pull factors of poverty and hunger. This often results as some mothers suffer birth complications which require them to undergo a prolonged period of confinement. As nursing mothers presently enjoy no reliable maternity protection benefits, they are bound to resume working and thereby risk harm to themselves and their newborns.

The government also stands to benefit as there will be less brain drain from the country and flight of capital. People will try to create business opportunities at home and stop going to South Africa and enriching the economy there with their ideas and buying and selling.

The state's compliance with its international obligations will also engender harmony between itself and other countries and make Lesotho attractive to international investment which will in turn promote economic growth.

## **6.6 Conclusion**

The definition of work has always been confined to include only a contract-based relationship between employer and employee. This has always excluded members of the informal sector which by its very nature is informal and not characterised by any formal agreements or guarantees against life contingencies. It is on the basis of this definition that a person's right to social security depends. The classification determines who has the right to protect their right to work and receive social security. This rigid classification constitutes a form of overt discrimination against informal sector women since it restricts their access to local remedies and redress when their rights are violated. Such a situation is incompatible with the principles of human rights, their interdependency and indivisibility, contained in the international human rights instruments by which Lesotho has agreed to be bound and consequently ratified. The present scenario necessitates interventions of an immediate and future kind in order to reconceptualise the existing laws to account for the needs of this category of women without exception. This will be presented in the following chapter which will make recommendations and conclusions based on this study's findings.

## **CHAPTER SEVEN**

### **7.0 CONCLUSIONS AND RECOMMENDATIONS**

This chapter will make conclusions and proposals for recommendations to be undertaken based on the findings of the research. This I make after my enquiries on my assumptions and the objectives of my research, having attained most of my first hand information from women and my key informants. I now will draw conclusions and propose recommendations and interventions (for now and in the future) based on the women's needs, experiences and actual lived realities of the law and practices.

#### **7.1 Conclusions**

From the findings the following conclusions were drawn.

- (1) That most women's businesses are located in the informal sector which is not covered by state provided social security to absorb the shocks of life

Available labour statistics confirm this conclusion and mere observation proves that the country's on-going economic crisis has seriously damaged the country and brought about huge social changes. More women have now become breadwinners which has not historically been the case. Due to the many retrenchments by South African mines of Lesotho miners whose incomes so greatly sustained domestic households, in addition to the diminishing yields from subsistence agriculture, women have left their homes to seek other means of survival and incomes and this they have found by working in the informal sector. The key findings, particularly those from the MOL, show that formal social security measures to protect the labour force only avail workers in the formal sector but not those in the informal sector. This means that the state is abdicating its responsibility to provide social security for all, and as a result, the shocks of life facing those in the informal sector fall on the shoulders of their families and communities and they are underpinned by the values of solidarity and reciprocity.

Moreover, this demonstrates the discursive power of the law. Law can be negotiated and drafted to include or exclude certain groups of people. The country's labour laws protect only the minority number of women who work in the formal sector but they exclude all those who actively participate in the informal sector. This has come about as a result of the application of the definition of employee in the country's laws, their limited concept and definition of

work and social security all of which apply only to those working relationships which are governed by formal contracts, i.e., only those existing in the formal sector.

- (2) That women in the informal sector rely on traditional and self-organised nets to absorb the shocks of life

Access to social security is bound up with formal contracts of employment which are non-existent in the informal sector. Therefore, in response to this direct discrimination on the basis of the kind of work they do, women in the informal sector have devised strategies in the form of groups or networks of people which are both traditional and self-organised to curb against the insecurities they suffer when they encounter the common shocks of life such as old age, sickness, maternity, injury and death. These nets are sometimes used at the same time or alternatively. The kind of work one does determines the kind of social security one can access in this sector. For instance, the findings showed that women who have butcheries, tailor shops and mobile restaurants are sufficiently well off to be even able to afford formal policies from traditional insurance companies as well as subscribe to traditional safety and self-organised nets in order to increase their benefits. At the other end of the spectrum, however, it was found that some women who are involved in less prosperous work cannot even afford to join self-organised nets. They tend to rely on traditional safety nets which are rapidly breaking down due to the country's deteriorating economic situation.

- (3) That traditional safety nets and self-organised systems rely on family cohesiveness which is now fragmented because of industrialisation and urbanisation

The nature of traditional safety nets means that they rely on family reciprocity and kinship ties. The burden of a loss is shared by the extended family or the whole society and that is why you see in Lesotho pictures of people coming together in solidarity in cases of death or any other shock of life faced by families. Even the self-organised nets are based on the principles of solidarity and reciprocity except that they are mutual and balanced, meaning that if a member defaults in their subscriptions they are penalised. Also, the fact that increasing numbers of people are leaving their villages or places of residence to look for jobs and better incomes has made it difficult for them to maintain the payment of their subscriptions to their informal safety nets. This has made these nets become economically unstable and unreliable. They are shrinking because they are losing members. The principle of reciprocity is breaking down as some members abuse the nets by behaving like free loaders. Management of the nets is sometimes corrupt and the high cost of corruption is passed on to other members in the

form of increased and excessive penalties and this also causes them to withdraw from the nets. I also discovered that the El Niño caused drought has negatively affected subsistence farming leaving most informal workers with almost no one to rely on.

- (4) That most women entrepreneurs businesses are situated within the family meaning that their contributions to traditional and self-organised systems do not benefit them because of the power relations operating within families

From the findings, I found out that most businesses operate on a hand-to-mouth basis. It was also difficult to separate business from household expenses. Also, the position of many women in the informal sector is influenced by both social and capitalist stereotypes which subordinate and exploit women. These influences have resulted in the state as well as women's own families failing to recognise the true economic value of their work in the home. Since men makes decisions for women, including what benefits they should receive, this results in women failing to properly benefit from their contributions to informal safety nets. I also found that women have a relational nature which means that they often sacrifice their own needs for those of others.

While the informal sector does indeed try to create alternative safety nets for women, they often end up not benefiting from them as a result of the power dynamics existing in their homes. This even applies to single women who are expected to consider the needs of others in their family and to account to their male figures including brothers, fathers or uncles.

- (5) That there is a need for Lesotho to conform to its international obligations to uphold women's rights to social security regardless of the dichotomisation of its labour sector

Human rights instruments are universally applicable in that the critical rights they expound and recognise are inalienable, indivisible and interdependent, meaning that a person cannot truly benefit from one right without the others. I found out that despite signing and thereby proving its undisputable intention to be bound by relevant human rights instruments which uphold the internationally recognised human right to social security, the government of Lesotho is in reality, i.e., on the ground, failing dismally to implement this right. On the contrary, it has put in place legislative obstacles by, for example, adopting a dualistic approach to international instruments which requires them to be first domesticated into local law before they can become enforceable. And, it has rigidly classified certain rights

particularly socio-economic rights, including the right to social security, in such a way that instead of having to realise the right of social security for all working women in the formal as well as the informal sector, the government has given itself the excuse that it need only realise the right if it has resources available to do so. Therefore, it constantly excuses its failure to realise the right by claiming that it lack funds to do so. As a result, victims are unable to seek redress and remedies when this right is violated. To make matters worse, the government is not making initiatives to sensitise and concientize women on their rights to social security. This as a result exposes these vulnerable women to, e.g., municipal evictions whenever it is considered that women who have legitimate claims are making a nuisance of themselves.

## **7.2 Recommendations**

From the above conclusions, the following recommendations are made:

- (1) The dichotomisation of the labour sector should be eliminated in so far as the provision of social security is concerned so that the government will no longer be able to continue abdicating its responsibility to care for its own citizens, families and communities. This move would help to redistribute resources and put an end to their current unjust distribution. As a result every person would be able to enjoy an acceptable and adequate standard of living.
- (2) Although the alternative informal safety nets are so helpful to members of the informal sector, they have their own shortcomings and cannot stand on their own. They need to exist alongside the formal ones since there are so many factors which are now challenging their viability such as drought, industrialisation and urbanisation. In addition, these nets only provide protection in respect of a few limited contingencies as compared to the social security measures in the formal sector.
- (3) There is a need for a comprehensive national social security scheme inclusive of the informal sector. This will also allow for labour mobility. Since all these types of social security affect the resilience of family, the government should take steps to value and recognise the existence of family and those who contribute to its survival and integrity. In particular it should recognise that women perform their household



work for no pay that that they should at least receive a respectable amount for the care they provide.

- (4) It should be accepted by most people that family and community cohesiveness is being increasingly undermined by the on-going economic crisis. Therefore every individual should be forced by the responsible authority to take care of their own immediate family members and not expect relatives to shoulder their responsibilities on their behalf.
- (5) The language of the Constitution should be made clear in order avoid incidences of the judiciary or any administrative body misguiding itself. For instance, the courts fail to read social security in the provisions relating to fundamental rights in the Constitution as well as principle of state policy. There is not enough sensitisation on the part of judiciary and administration.
- (6) To show its support for women in the informal sectors, the state should provide them with free training on how to increase their productivity so that they can generate funds to invest in protective measures against future income insecurities.
- (7) The government should consider trying to integrate the formal and the informal labour sectors. Such integration should preserve and strengthen the core values embedded in informal social security systems, namely that of self-help and solidarity. Ultimately, this would also help to foster the cohesiveness of groups and communities which is also one of the prerequisites for national development. This could help the family unit which, by its very nature, is difficult to coordinate or regulate. Such regulation should be flexible enough to allow for the smooth running of the sector. Such integration should aim at providing the basis for ensuring a minimum level of social protection for everyone in society, thus enabling everyone to achieve an acceptable standard of living.

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