
**WOMEN'S ACCESS TO CREDIT: A CASE STUDY OF WOMEN MOHAIR
WEAVERS IN BEREA DISTRICT, LESOTHO**

By

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Abstract

In this study, the researcher, a Senior Gender Officer within the Economic Empowerment Division at the Ministry of Gender and Youth, Sports and Recreation, interrogates the state's support for Small Micro and Medium Enterprises (SMMEs) regarding women's access to credit in Lesotho. It is based on a case study of a group of women mohair weavers whose company called, *Hatoha Mose Mosali*, operates in the Berea District of Lesotho. Their selection was premised on the fact that the group has been operating since 1991 yet their business is still performing like a newly formed company and struggling to become profitable. Although access to credit is generally one of the major impediments within the SMME sector, it tends to affect women more than men, due to different forms of financial exclusion which render women incapable of accessing loans and unable to meet the loan requirements, especially that of collateral, demanded by commercial banks. The study assessed the efficacy of the Partial Credit Guarantee Fund (PCGF) scheme as government's strategy to improve access to credit by small enterprises, where the risk is shared between the four commercial banks operating within the country, government and its borrowers. The research engaged several approaches (including the human rights, actors and structures, sex and gender analysis and capability approaches) within the overarching methodology of the grounded women's law approach which takes the lived realities of women mohair weavers as the starting and constant reference point throughout the research to interrogate their relationships with the law, society and their operating environment. Qualitative data for the research emerged mainly from interviews with the women respondents as well as key informants including key government, bank and NGO representatives. The research findings revealed that the state's neutral or gender insensitive legal framework operates on the erroneous understanding that the problem of access to credit affects both men and women in the same way. Furthermore, the state's application of a formal approach to equality in measures that are meant to enhance access to credit such as the PCGF within such a framework has resulted in *de jure* (theoretical) as opposed to *de facto* (actual) equality and indirect discrimination against women. This situation exists despite the fact that the country has signed and ratified but not yet domesticated a number of human rights instruments that provide for socio-economic rights, especially CEDAW and the Maputo Protocol. Furthermore, the country's Constitution has classified socio-economic rights as non-justiciable having the status of principles of state policy which may be realised by the government at its discretion based on the availability of resources. The study therefore concluded that the state should conform to its commitments. This would ensure the realisation of socio-economic rights, through an engendered legal framework and the application of temporary measures. But most importantly the country should guarantee the effective implementation of laws and policies so that the rights do not remain just 'paper' rights but are equally realised and enjoyed by everyone.

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Declaration

I declare that this is my original piece of work, and I have acknowledged and referenced any information that was previously provided by any authors and researchers.

Signature

Date

Dedication

To my kids, Tlotli and Hlatsi, you are my inspiration, my angels, and you managed to enlighten my dull moments over the telephone though I missed you dearly. To my hubby 'Mr' thanks for your support and for filling in for me for our kids during my absence. Then lastly to my mother, Alice, my brother, Setho and my one and only remaining sister, Makopoi, thanks for making my coming here possible.

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List of abbreviations and acronyms

BEDCO	Basotho Enterprise Development Corporation
BPFA	Beijing Platform for Action
CEDAW	Convention on Elimination of All forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICT	Information Communication Technology
LNDC	Lesotho National Development Corporation
MSBDCM	Ministry of Small Business Development, Cooperatives and Marketing
MTICM	Ministry of Trade and Industry, Cooperatives and Marketing
OHCHR	Office of the High Commissioner for Human Rights
PCGF	Partial Credit Guarantee Fund
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
SME	Small and Medium Enterprise
SMME	Small Micro and Medium Enterprise

List of human rights instruments

African Charter on Human and Peoples' Rights

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Women's Protocol) (the Maputo Protocol)

Beijing Declaration and Platform of Action

Convention on Elimination of all forms of Discrimination Against Women (CEDAW)

CEDAW Committee's General Recommendation No 25

Equality and Human Rights Commission (2014)

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997)

SADC Protocol on Gender and Development

Universal Declaration on Human Rights

United Nations Economic Commission for Africa (2007)

List of local legislation

Constitution of Lesotho, 1993

Basotho Enterprise Corporation Act, 1980

Legal Capacity of Married Persons Act, 2006

List of local policies

Lesotho Gender and Development, 2003

Lesotho Macro Small and Medium Enterprises Policy, 2012

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Executive summary

Women play a crucial role in the economy of Lesotho as they dominate the Small Micro and Medium Enterprise (SMME) sector which contributes a lot in creating jobs for a significant portion of the active labour force. However, women's limited access to credit tends to be among the main impediments to the advancement or growth of their businesses. Their businesses often operate in a state of bare survival for years on end failing to reach the advanced stages of financial success.

This research was undertaken to assess government's support for the SMMEs in Lesotho. The objective of the study was to determine whether there is adequate support to ease women's access to credit within the SMME sector and whether there are appropriate supportive forms of legislation, policies and other measures in place. In addition, it assessed whether those policies and legislation are being enforced.

In most cases banks consider women's businesses to be risky, unlikely to succeed or to be profitable. Hence it is not easy for women to secure loans from formal financial institutions such as banks. Women are often financially excluded and are unable to meet loan requirements such as providing collateral. Instead they rely on alternative sources of loans or on loan sharks and money lenders who charge astronomically high interest rates.

This is true in the case of members of the *Hatoha Mose Mosali* (case study) which is a group of women who weave mohair in a district called Berea. They have been occupied in this business for over twenty years and yet their business is still at an emerging stage. Their products are sold mostly to tourists but they lack appropriate market linkages so that they can sell their products regionally. This is mainly due to their limited access to credit from commercial banks which would enable them to procure modern machinery and so increase production in order to meet the large local and regional demand.

The researcher gathered qualitative data through in depth interviews with key informants and other respondents. She also reviewed contemporary literature on access to credit as a secondary source of data. Further, she employed the women's law approach as an overarching approach that takes the lived realities of the Group's women respondents as its starting point. The approach enabled the researcher to establish the mohair weavers'

experiences in business and how they have been affected by the state's laws and policies. It compared the theory (what should be on the ground) with reality (what is actually on the ground).

The researcher also engaged the human rights approach to determine the state's compliance with its international and regional commitments. The actors and structures approach was chosen to establish whether actors, such as responsible government ministries, could be responsible for hindering progress. Furthermore, the sex and gender analysis approach was engaged to ascertain which sex is mostly affected by limited access to credit from formal financial institutions. In addition, the capability approach looked at women's capabilities, i.e., what they are able to do or are capable of doing; their creativity and their artistic talent and whether they have been enhanced through state support.

The findings revealed that there is inadequate support for these women, for instance, there is no SMME Act, only a government policy. The existing policy is quite gender neutral, and therefore government continues to apply a formal approach to equality in the Partial Credit Guarantee Fund (PCGF) scheme (a measure that was meant to ease access to credit), and this has actually resulted in indirect discrimination against women. Moreover, it was revealed that though the country has signed and ratified a number of human rights instruments some of which are specifically on women's human rights, such as the CEDAW and the Women's Protocol, most of their provisions have not been domesticated and become an act of the country's parliament.

Also worthy of note is the fact that the country has relegated socio-economic rights to the status of mere principles in terms of Chapter III of the country's Constitution called Principles of State Policy and their realisation is based on availability of state resources, hence they are not justiciable.

In accordance with Lesotho's commitment to the international instruments, the study therefore concluded that there is a pressing need for the state to fulfil its obligation to ensure the full realization of socio-economic rights of women either progressively or immediately as it does any other rights. As progressive realisation of rights is not meant to allow states to derogate from their responsibilities, but rather to allow them flexibility in the facilitation of

such rights, it is recommended that the state recognises socio-economic rights as being justiciable.

Further the state should engender the legal framework so as to ensure realisation of substantive or *de facto* equality. But most importantly there should be effective implementation of laws and policies so that they do not remain paper rights but can be realised and enjoyed by the rights holders. Likewise government should employ temporary affirmative measures in initiatives such as the PCGF in order to ensure that women who are presently the most prejudiced benefit on an equal basis with men.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Definition of concepts

According to the Merriam Webster Online Dictionary, ‘access’ means being able to acquire something while ‘credit’ refers to money that the banks or a business lends to a person and is expected to be paid back. For the purpose of this paper, however, ‘access to credit’ refers to more than just the ability of an individual to obtain credit; rather, it refers to the ease of access or the measures which are in place so as to ensure that an individual can easily access credit.

Todaro (2003) defines ‘economic development’ as an effort that seeks to improve the economic well being of individuals or the improvement of citizens.

‘Collateral’ is defined as the borrower’s pledge to a lender, to secure repayment of a loan. It serves as protection for a lender against a borrower’s default (Merriem Webster Online Dictionary).

‘Survivalists’ are microenterprises that are only able to generate sufficient income to provide for families but are unable to accumulate long term wealth. Most women’s businesses are classified as survivalists (Ministry of Trade and Industry Cooperatives and Marketing, 2008).

Small Micro Medium Enterprises (SMMEs) are normally determined by the number of employees employed and in Lesotho it is between 1 and 49 and their turnover or how much the business is able to generate per year (Cilo Consulting Report, 2011).

1.2 Relevance of the topic

As a Senior Gender Officer within the Economic Empowerment Division at the Ministry of Gender and Youth, Sports and Recreation, I have come across a number of women whose businesses are operating as survivalists. They are living hand to mouth and failing to improve because they are not able to access loans from formal financial institutions such as banks, but rather from money lenders and loan sharks.

Although money lenders are regulated their loans attract high interest rates. Worse than they are loan sharks who operate illegally demanding very high interests rates and enforcing strict terms like keeping their clients' passports, automatic teller machine (ATM) cards, etc., to ensure repayment. As a result those who do borrow from them often have the problem of repaying their loans due to their sky high interest rates and they often remain in a state of high indebtedness.

1.2.1 *Hatoha Mose Mosali*

*Hatoha Mose Mosali*¹ which is my case study is a typical example of a business which has limited access to credit from formal financial institutions. This is despite their proven determination to remain and persevere in the mohair business. *Hatoha Mose Mosali* is a formally registered company under the Companies Act (No. 25 of 1967) and it started weaving mohair in 1991. When the business was established there were 21 women, but later in 1995 there was a split and only four (4) members were left and later one member joined the Group.

They have been occupied in this business for almost 24 years yet their business is still lingering in the early stages of development. Their machinery, furniture and equipment are old and obsolete. The Group approached our office seeking financial assistance and this is what triggered my interest in finding out more about their challenges and just how they have coped and managed to stay in operating for so long. Although there is a saying in *Sesotho*, *moketa ho tsosoa o itekang*² this saying has not applied to the members of *Hatoha Mose Mosali*.

I was also intrigued by the fact that government established the Partial Credit Guarantee Fund (PCGF) scheme to assist in financing part of the collateral needs sought by small entrepreneurs. This research seeks to assess the efficacy of the PCGF in addressing the problem of access to credit and to establish whether there was prioritization of women by applying the provisions of article 4 of Convention on Elimination of All forms of Discrimination Against Women (CEDAW), as well as article 5 of the SADC Protocol on Gender and Development on special measures.

¹ Meaning, a woman should stand up and work or do something important.

² Meaning, we assist those who try to start something new.

Further, my interest was to find out whether the government's PCGF scheme has effectively taken into consideration issues of gender with regard to women's access to finance, given the fact that the Federation of Women Entrepreneurs even tried to establish a women's bank in 2012, having realised that access to finance is more of a problem for women than it is for men. The project however did not succeed because there was a lack of political will which meant that government was unable to assist with the \$1.3 million that was needed to start the project.

1.2.2 Establishment of the Partial Credit Guarantee Fund (PCGF) as a strategy to improve access to credit

The Partial Credit Guarantee Fund (PCGF)³ was an initiative originally meant to assist small businesses within the SMME sector by financing part of the collateral they needed to access loans from banks. It has ended up assisting well-established businesses. The initiative was established by the government in 2012 in response to the failure of many businesses in the SMME sector to meet the collateral requirements of the banks. Having realised that collateral is a major impediment to most small businesses, the government through the Ministry of Finance and the parastatal called Lesotho National Development Corporation (LNDC), made an agreement with the country's four commercial banks in terms of which the Ministry of Finance and the LNDC pledge either 50% or 70% of the collateral or security to try and ease access to credit for businesses.

Although the agreement was meant to ease access to credit for small enterprises, which in most cases are owned by women who often fail to meet the collateral requirements of banks, it was designed in such way that it ended up leaving them out and instead benefitted established businesses owned largely by men. While trying to address the problem, government applied the formal approach to equality with the underlying, yet erroneous, understanding that access to credit affects men and women the same way. They were not alive to the reality astutely pointed out by Dahl (1987) to the effect that:

‘Men and women live in society where they follow different paths, have different needs, such that they will be affected by the same issue differently and that the gender neutral legal machinery meets the gender specific reality.’

³ A fund that is meant to ease access to credit by sharing the risk between the bank, government and the borrower.

Hence it was imperative for the government to treat women differently from men with regard to the loans offered through the assistance of the PCGF scheme. Government's failure to apply a substantive approach to equality which recognises the fact that men and women are different and are affected differently by limited access to credit actually resulted in the indirect discrimination of the very women it was intended to benefit. Further government failed to apply temporary measures as provided by CEDAW (Article 4) and the SADC Protocol on Gender and Development (Article 5) as a crucial step in the realisation of *de facto* or substantive equality between men and women.

1.2.3 Statement of the problem

'For women to achieve the gender equality which is their right, the prevailing attitude towards economic and social rights must change. Economic and social rights must garner the same prominence and status as other human rights, and they (along with all human rights) must be given primacy over any other policy area, as stated in Article 1 of the Vienna Declaration of 1993, that human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments. States are first and foremost responsible to ensure that all human rights are respected, protected, promoted, and fulfilled'
(Office of the High Commissioner for Human Rights, 2005).

The SMME sector plays a crucial role in the economy of Lesotho as it employs over 200,000 workers, yet it faces major challenges which include, among others, unfavourable monetary and credit policies (Nthejane, 2008). Women own most enterprises within this sector and often their enterprises do not advance like those owned by men due to a number of reasons including their multiple role and caring nature where they end up mixing family and business needs and using money meant for their business to address family problems.

Cilo Consulting Report (2011) reveals that the SMME sector in Lesotho forms an integral part of the economy as it constitutes 85% of private sector. Despite the fact that some businesses within the sector are also formally registered (such as my case study), this sector is not adequately supported by the state. It is generally treated as though it is totally part of the

informal sector,⁴ which is normally neglected and does not receive the support it needs in order to thrive.

Hatoha Mose Mosali is a group of women which is formally registered, and has been occupied in weaving mohair for more than twenty years, yet their business is not thriving. This is due to the Group's many challenges, the most important of which is its limited access to credit due to the inadequate support (legislation, policies and other pertinent measures) it receives from the state.

It is argued that limited access to formal financial institutions often expose people to money lenders who loan money at exorbitant rates and leave borrowers in over-indebtedness (European Social Watch Report, 2010). This applies to Lesotho as credit is offered by money lenders and loan sharks at exorbitant interest rates and by commercial banks whose stringent loan requirements are not easily met by most small entrepreneurs. Although their interest rates are very high, it is easier especially for women to secure a loan from money lenders or loan sharks than from formal institutions such as commercial banks (Kaufman Levin Associates, 2014).

For instance commercial banks require one's business to be formally registered, to have financial statements audited by an accredited auditor, and most importantly is the fact that they do not accept just any kind of property as collateral. So a house has to be of a certain standard (they actually evaluate it). They also accept investment policies, cars, etc., but they do not accept things like a piece of land as collateral (Interviews with banks, 6 December 2015). Unfortunately the only large asset which *Hatoha Mose Mosali* owns and which they could offer as collateral is the site or land from which they operate, but it is not acceptable.

Government through the then Ministry of Trade and Industry Cooperatives and Marketing (MTICM) and Ministry of Finance have not really put in place an adequate legal framework and other measures to assist small entrepreneurs to access loans. Even initiatives that are meant to improve or ease access to finance such as the PCGF are not engendered. Hence women like *Hatoha Mose Mosali* who cannot meet the collateral requirements of the banks could not benefit through the assistance of that scheme. This is mainly due to the fact that

⁴ The informal sector forms that part of the economy which is not regulated by government and its activities are not included in the Gross National Product or in the Gross Domestic Product.

they are unable to meet the loan requirements including collateral, accredited audited financial statements and formal cash flow statements, just to name a few.

There was the need to employ the substantive approach to equality through the application of temporary measures as provided by relevant human rights instruments to address women's limited access to credit in order to bring fairness and equity to all. Sadly, the scheme had employed the formal approach to equality in the incorrect belief that challenges of accessing credit through the scheme were the same for both men and women.

Furthermore, the state failed to assist in the establishment of the Women's Bank by the Federation of Women Entrepreneurs, which hopefully would have helped to improve women's access to credit since the initiative was premised on the fact that women's access to credit from commercial banks is constrained. Political will was necessary as it is a crucial element in development because if those in power do not support a certain idea, even if it is important, it is extremely unlikely to succeed.

In addition, the 1993 Constitution as the supreme law has classified socio-economic rights under the Principles of State Policy which means that they can be realised progressively based on availability of state resources; also, they are not justiciable. Furthermore, access to credit has been provided for under the Gender and Development Policy, 2003 and Micro Small and Medium Enterprises Policy, 2012 (MSME Policy). They are however gender neutral as they have not provided specific strategic measures to address the gender specific needs of women with regard to access to credit.

Furthermore, there is no Micro Small and Medium Enterprises Act to further enforce what has been provided in the Constitution's National Objectives. This is in spite of the fact that a number of human rights instruments on socio-economic rights provide that as a member, Lesotho should conform to their provisions either through legislation or other measures.

Hence it is against this background that I found this study worth pursuing so as to assess the level of the state's support for SMMEs and to unearth the reasons behind its failure to support this sector despite its critical contribution to the economy. Further I sought to establish how limited access to credit affects businesses like *Hatoha Mose Mosali* as well as to assess what

capabilities they do indeed possess and to find out what has been keeping them afloat for all these years.

1.3 Objectives of the study

1.3.1 Overall objective

To determine if there is adequate support or an enabling environment for SMMEs, including appropriate legislation and policies and other measures in place.

1.3.2 Specific objectives

- To find out whether the government through the Ministry of Trade and Industry recognises the socio-economic rights of small scale entrepreneurs.
- To ascertain if there are special measures aimed at easing access to credit for women entrepreneurs.
- To find out if mohair weavers know about their right to economic development.
- To determine whether mohair weavers are able to meet banks' loan requirements.
- To establish how members of *Hatoha Mose Mosali* have been coping.

1.4 Research assumptions

1.4.1 Overarching research assumption

1. Women mohair weavers have limited access to credit due to the state's insufficient support of SMMEs.

1.4.2 Sub-assumptions

2. Women mohair weavers produce quality products but they are not able to produce sufficient quantities to meet the large local demand or penetrate regional markets.

3. Women mohair weavers cannot easily access loans from banks to buy modern machinery to increase production because they are unable to meet the requirements set by banks, as there is no particular consideration for women regarding the specified loan requirements.
- 4.1 Service providers within the enterprise development sector are not reaching out to small entrepreneurs to inform them about the services they offer and how they can assist them depending on their specific needs.
- 4.2 Women mohair weavers do not have information about what the state's laws and policies on trade provide nor about their opportunities to access credit, e.g., from the PCGF.
5. Women mohair weavers rely more on alternative sources of income rather than borrow money from money lenders and loan sharks.
6. The Government, through its Ministry of Trade and Industry, Cooperatives and Marketing (MTICM), is not bringing about the realisation of women's rights to economic development because it has not put in place adequate supporting policies and legislation for SMMEs.

1.5 Research questions

1.5.1 Overarching research question

1. Are women mohair weavers failing to access credit due to the state's insufficient support for SMMEs?

1.5.2 Research questions

2. Is it the case that women mohair weavers produce quality products but they are not able to produce sufficient quantities to meet the large local demand or penetrate regional markets?

- 3.1 Are women mohair weavers failing to access loans from banks to buy modern machinery because they take no particular consideration of women regarding their specified loan requirements?
- 3.2 Are women mohair weavers able to meet the specified loan requirements set by the banks?
- 4.1 Are the service providers within the enterprise development sector reaching out to small entrepreneurs to inform them about the services they offer and how they can assist them depending on their specific needs?
- 4.2 Do women mohair weavers have information about what the state's laws and policies on trade provide or about their opportunities to access credit, e.g., from the PCGF?
5. Do women mohair weavers rely more on alternative sources of income rather than borrow money from money lenders and loan sharks?
6. Is the Government, through its Ministry of Trade and Industry, Cooperatives and Marketing (MTICM), failing to bring about the realisation of women's rights to economic development because it has not put in place adequate supporting policies and legislation for SMMEs?

1.6 Summary of chapters

This chapter set out the situational analysis and the rationale behind the study and it stated the problem and the reasons behind it. It also emphasised the objectives of the study and the assumptions that were tested in the field as well as the research questions that the study attempted to answer. The next chapter explains the methodological framework that was engaged and sets out its relevance and the research design outlines who was interviewed and why as well as the challenges encountered during the field research. Chapter three contains the literature review which covers contemporary opinions on women's access to credit and a discussion on international and regional legal frameworks and the state's level of compliance. When analysing the national legal framework focus will be placed on the identification of any existing gaps between what support should be and actually is given to women mohair

weavers. Further, there are deliberations on the situation of SMMEs world-wide and in Lesotho and their contribution specifically to the economy of Lesotho with specific reference to the feminist economists' perspective on women's access to credit. This will lead to chapter four which contains the study's main findings of the research based on its assumptions and in particular what was revealed as a result of the application of the capability approach to the women mohair weavers of *Hatoha Mose Mosali*. Lastly, chapter 5 will round off the research and present the study's conclusions which will be drawn from the overall discussions of the findings which will in turn justify the recommended actions which the study will finally propose.

CHAPTER TWO

2.0 METHODOLOGICAL FRAMEWORK

2.1 Introduction

The following chapter is an overview of the methodologies that were engaged by the study and the justification for the choice of that particular methodology and its significance in acquiring the relevant data for the study. It further discusses the research methods which include who was interviewed and why she/he was interviewed, as well the limitations or challenges that were encountered during the field research.

2.1.1 Human rights approach: Is access to credit a human right issue?

The research engaged with the responsible ministries which are the Ministry of Trade and Industry, Cooperatives and Marketing (MTICM), the Ministry of Small Business Development Cooperatives and Marketing (MSBDCM) and the Ministry of Finance to find out about the legal framework that supports SMMEs and whether it is being implemented. This is because access to credit facilitates economic development; therefore it is a human right issue in that there are human rights instruments that the state is party to that provides for the state to ensure economic development through access to credit, economic opportunities and participation which will facilitate financial inclusion and the right to information.

The human rights instruments make the state a primary duty bearer with an immediate obligation to fulfil these rights as they relate to women mohair weavers as rights holders. Therefore the approach attempted to assess the state's compliance in respecting, protecting, promoting as well as in fulfilling its obligation with regard to socio-economic rights of women mohair weavers. This is in accordance with Hellum's (2000) view that the human rights based approach places the individual as a holder of basic rights at the core process of development. It emphasizes the relevance of the whole array of human rights in the development process.

My overarching assumption was that women mohair weavers have limited access to credit due to the state's inadequate support of SMMEs and that (assumption 4.1) service providers within the enterprise development sector are not reaching out to small entrepreneurs to

inform them about services available to them or how they can assist them depending on their specific needs.

In terms of assumption 4.2, I assumed that mohair weavers do not have information about what the state's laws and policies on trade provide nor about their opportunities to access credit, e.g., from the PCGF and that (assumption 6) the government, through the MTICM, is not ensuring the realisation of women's rights to economic development as there are inadequate supporting policies and legislation for SMMEs.

In order to unearth whether there are any injustices or discrimination of any form in as far as women's right to economic development is concerned, I employed the human rights approach through which I vigorously interrogated the state's effort to realise the existing rights of women mohair weavers including their right to access credit, economic opportunities and information about them and their right to participation.

According to Goonesekere (2000):

‘The human rights approach involves analysis of a situation from a human right perspective and states' compliance to the human rights standards.’

Therefore I tried to assess whether the state is facilitating the realisation of these rights as they are already recognised by the human rights instruments. I established that the state is actually not fulfilling its obligation as it is not offering adequate support for the SMMEs either through the appropriate legal framework or the application of special measures. Furthermore, the state is not ensuring the effective and meaningful participation of women or the SMME sector's access to information.

The human rights based approach reveals the close connection between the right to resources which are necessary for livelihoods and the rights of individuals to take part in their allocation and benefit in a non-discriminatory and transparent manner. The state as the primary duty bearer should ensure this right (Nyamu-Musembi and Cornwall, 2004; Ikdal *et al.*, 2005; Andreassen *et al.*, 2006). The PCGF scheme has actually discriminated against women since the state has failed to ensure their right to participate in it or in the allocation of its resources.

I was also guided by the CEDAW and the Women's Protocol which consider that socio-economic rights require immediate fulfilment on the part of the state as primary duty bearer. This is not the case under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which for some reason allows states to fulfil these rights on a progressive basis depending on the availability of state resources.

The Committee on Economic Social and Cultural Rights (CESCR) General Recommendation No 3 (2009) puts forward that the rationale behind progressive realisation of socio-economic rights is not meant to give states an excuse to abandon their obligation; rather, they are expected to be effectively facilitated and realised within a reasonable time.

I discovered as a result of the research that even though these rights exist, the state is actually failing to ensure their realisation. The state is failing to effectively facilitate access to credit or information about it. Therefore the state through its relevant ministries is not ensuring the realisation and enjoyment of women's right to economic development.

2.1.2 Women's law approach: What are women's lived realities on the ground and how does the law affect women mohair weavers?

In an attempt to find out the lived experiences of women mohair weavers lived experiences, I had interviews with members of *Hatoha Mose Mosali*. In so doing, I learned about their experiences with the business challenges they have been facing ever since they started their business in 1991. The women's law approach as an overarching approach derived from women's lived experiences and takes women as its starting point, and tries to find out how women are affected by the law; it assesses rhetoric versus reality. It was therefore crucial to employ it as it enabled me to get the women's experiential data and how they are affected by the law.

According to Dahl (1987):

‘...in order to fully comprehend the underlying principle behind the laws and its impact on an individual woman, one has to start by understanding the role of law in the lives of women.’

Nyamu-Musembi and Cornwall (2004) critique the efficacy of the law and rights as an effective tool for development by highlighting the dissonance between having a right and

being able to access it. In other words, rights that are provided by the law do not necessarily translate into their realisation and enjoyment, as they often remain *paper rights*.⁵ Hence the right to credit even if provided in policies as is the case in Lesotho, does not necessarily mean women would automatically enjoy it, unless the state takes measures to ensure that such a right is realised and enjoyed.

As I conducted the interviews I learned how mohair weavers have been affected by limited access to credit and how it has prevented their business from improving even after many years of being in operation. I also learned about their capabilities and their artistic talent and what they need in order to operate effectively. I found out how they have managed to cope for all these years in business.

Since Hellum (1995) acknowledges that ‘the principle of taking lived experiences as a starting point is key,’ I realised that it was therefore imperative for me to discover the lived realities and experiences of members of *Hatoha Mose Mosali* in their business so as to come up with relevant recommendations in line with the situation of these women on the ground.

I had initially assumed that mohair weavers rely on borrowing money from loan sharks and money lenders whose interest rates are extremely high but when I entered the field, I actually learned that they do not borrow money from loan sharks. They explained that despite the fact that they cannot meet the banks’ requirements for loans, they are scared of loan sharks and so had developed other coping strategies. It also emerged that they also contribute to the operation costs of their businesses from their monthly wages. Another emerging issue was that they collaborate with other groups (forming Lesotho Mountain Crafts) and they exhibit their products at their gallery and pay the Group 30% from the proceeds of whatever they sell. It came out that instead of borrowing from loan sharks or money lenders they actually rely on other survival strategies.

Further I had assumed that mohair weavers use obsolete machinery as they cannot afford to buy modern machinery because they have limited access to finance and loans from banks, and as a result I assumed that the quality of their products is negatively affected. As I proceeded with my research, however, I discovered that actually the quality of their product

⁵ Meaning, rights that are just provided in laws and policies but are actually not realised and enjoyed.

is not affected negatively. Having realised that my assumption was challenged, I changed my focus and sought to discover whether they were able to produce a sufficient quantity of products to meet the large local demand and whether they could extend their sales into the regional market. Simply because their machinery was outdated had made me conclude that the quality of their work was negatively affected but it emerged that that was not the case.

Furthermore, the women's law approach enabled me to interact with the mohair weavers and probe into issues such as the ones related to assumption one (which is on limited access to credit) and to establish their specific needs. For example, I inquired as to what they needed and whether they really needed modern machinery or not. I asked them to tell me their wish list, i.e., what they really would like to have, where and to whom they wished to sell their products, whether they needed to expand their business and whether they needed to improve the quality of their products or produce more of them. I asked whether they were in need of new furniture and needed to expand their building and whether they utilized information communication technology (e-marketing) to market their products. I asked them about their intellectual property rights and whether their product has a trade mark and I discovered that that they knew nothing about such protection.

In the end I was in a position to determine whether the state is fulfilling its obligation to ensure the realisation of their economic rights either immediately or on a progressive basis.

2.1.3 Sex and gender analysis: Do men and women face the same impediments when trying to access credit?

In order to assess which sex is mostly affected by limited access to credit I sought to conduct interviews with representatives from the four commercial banks in the country, two money lending companies and with two loan sharks, my question being whether the clients who apply for loans are mostly men or women. This was intended to reveal whether access to credit is a gender issue and to establish whether there are more women than men who apply for loans from banks, loan sharks and money lenders and to find out if women face the same challenges as men while trying to access credit.

Sex is biologically determined while gender is socially constructed, and it refers to socially ascribed roles and responsibilities of men and women by society (Gender and Development Policy, 2003). More often than not it is women who suffer from being unable to secure credit

by virtue of their being women, and this is also true when it comes to accessing credit from banks as, unlike men, they are unable to tender the collateral banks require when they give loans. With the sex and gender analysis approach I tried to establish whether both male and female clients are equally able to provide collateral to banks or whether one sex is able to do so, while the other is not. In the case of money lending companies and loan sharks, the research tried to establish whether their clients are mostly men or women and also who, between men and women, were better able to service their debts and the reasons for any difference in that respect.

The purpose of sex disaggregated data was to find out if most women apply for loans from banks, money lenders or loan sharks and why they do so. Moreover this approach enabled me to find out if women who apply for loans experience the same challenges as men.

From my interviews with the key informants and beneficiaries of the PCGF scheme, I learned that limited access to credit has a greater impact on women than men. This is because I learned that more men than women approach banks and apply for and manage to secure loans. The LNDC and one of the banks revealed that more men than women benefit from their loans.

Further, one of my assumptions was that government did not give priority to women in the PCGF scheme and the findings confirmed that male out-numbered female beneficiaries and this was due to the fact that the scheme was not gender sensitive. Hence the scheme ended up benefiting men's businesses which were in a better position than those of women even without the assistance of the scheme. All this therefore showed that access to credit is indeed a gender issue in that affects one sex (female) more than the other (male).

As such the study proposes that a substantive approach to equality needs to be applied through the introduction of temporary measures in order to ensure that women benefit equally with men in accessing credit.

Further the sex and gender analysis approach revealed that generally more women than men borrow money from loan sharks and money lenders and they also have a worse repayment and default record than men. There are a number of reasons for this including the fact that women who are in business often fail to separate their business from their family interests as

they use money from and for their businesses to meet their family needs and their caring nature often causes them to fall into increasing indebtedness.

2.1.4 Actors and structures approach: What influence do actors and structures have on women's access to credit?

My overarching assumption was that women mohair weavers have limited access to credit due to the state's inadequate support of SMMEs. This assumption was based on the fact that generally the SMME sector is facing a lot of challenges and most businesses within this sector are not growing or improving. When I entered the research field I found out that the responsible Ministry was very fragmented and the SMME sector had been neglected. Before the establishment of the Ministry of Small Business Development, Cooperatives and Marketing (MSBDCM) in 2015, small businesses did not belong to a specific unit or department within the then Ministry of Trade and Industry, Cooperatives and Marketing (MTICM). Prior to 2015 SMME issues were dealt with by different sections depending on whether a certain business was thought to be related to that section. I also found out that there is no Act of Parliament covering SMMEs, there is only a government policy relating to them and it was developed in 2012. Hence the actors within the responsible Ministries actually hindered the progress of the SMME sector either through lack of legislation or their failure to clarify who is responsible for coordinating activities within this sector.

Further I had assumed that service providers within the enterprise development sector are not reaching out to small entrepreneurs to inform them about services offered and assist them depending on their specific needs and that mohair weavers do not have information on what the laws on trade provide as well as opportunities like the PCGF.

These two abovementioned assumptions were based on the fact that most women I had interacted with had actually said they had very limited interaction with the Basotho Enterprise Development Corporation (BEDCO) as an entity which is charged with establishing and promoting small businesses. It was also confirmed during my interviews that members of *Hatoha Mose Mosali* did not have sufficient information regarding opportunities, such as those available from the PCGF, which they said they had heard about on the radio but did not know how to access. Therefore the actors have failed to realise the right of women mohair weavers to receive information about economic opportunities and to benefit from them.

My last assumption was that Government through MTICM is not ensuring the realisation of women's right to economic development as there are inadequate supporting policies and legislation for SMMEs. This was based on the fact that the business environment for SMMEs is dominated by women most of whose businesses are not performing well, including those who have managed to stay in business for many years, such as *Hatoha Mose Mosali*. This appears to be because there seems to be a lack of support from the state.

The approach also established that the fragmented structures within the MTICM could be somehow hindering support for the SMME sector. I also discovered that the state has also failed to put in place concrete measures in line with the provisions of its own MSME Policy. The only exception is that of the PCGF which sadly has not been that effective as it has actually discriminated against women being those in most need of its assistance and the very people it intended to benefit.

2.2 Research methods

2.2.1 Techniques employed by the research

Qualitative data was gathered through in-depth interviews with key informants and other respondents in order to test the assumptions and to respond to the research questions. Further a case study approach was employed where *Hatoha Mose Mosali* was taken as my case study and then simple random sampling of the beneficiaries from the PCGF scheme, money lenders and loan sharks and the four commercial banks that are operating in the country.

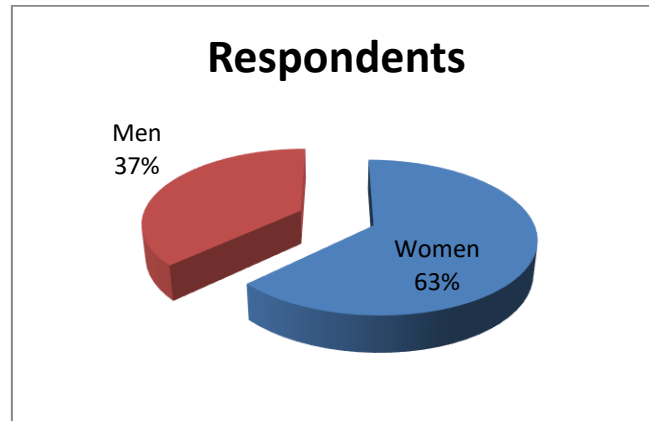
2.2.2 Sources of data

The study explored secondary data from reports, books, internet sources, relevant legislation and policies, while primary data was gathered through interviews with key informants and members of *Hatoha Mose Mosali* (case study) and other respondents such as beneficiaries from the PCGF.

The interviews covered both men and women who are service providers such as at the banks, loan sharks, money lenders, the Ministry of Finance, the MSEDCEM, BEDCO, and the LNDC, as well as members of *Hatoha Mose Mosali*, the Federation of Women Entrepreneurs and the beneficiaries of the PCGF scheme. Out of a total of twenty seven (27) respondents interviewed, seventeen (17) or 63% of them were women and ten (10) or 37% of them were

men. Figure 1 is a pie chart depicting the total number of respondents who were covered by the research and they include the key informants as well as other respondents.

Figure 1: Pie chart depicting the respondents involved in the research



2.3 Methods of data collection

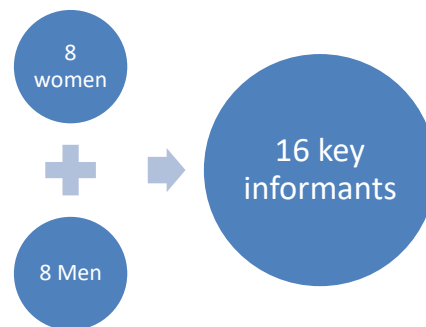
2.3.1 Experiential data

I used the knowledge gained from my profession as a Gender Officer through my interaction with women in business within the SMME sector during which I have learnt about their challenges, especially their financial problems which seem to be the main obstacle to advancing their businesses. I took as my case study *Hatoha Mose Mosali* as a typical example of a business belonging to women mohair weavers that was established more than 20 years ago, but has never been able to secure a bank loan because of its inability to meet the collateral requirements for a bank loan.

2.3.2 In-depth interviews with key informants

In-depth interviews were conducted with key informants within service providers such as the Ministry of Finance, the MSBDCM, the LNDC, BEDCO and loan sharks, money lenders and the four commercial banks. A total of 16 people were interviewed made up of 8 men and 8 women (Figure 2).

Figure 2: Diagram showing details of the key respondents



At the government Ministries (i.e., the MSBDCM, MTI and the Ministry of Finance) my aim was to find out about the legal framework that supports SMMEs and whether it is being enforced. My intention was to assess the state's level of support for the SMME sector through these Ministries. I was guided by the human rights framework where the right to economic development through access to credit has been enshrined in a number of human rights instruments which have imposed an obligation on the state to ensure that those rights are realised. Hence it was also crucial to determine if the available policies or legislation were implemented.

Further I wanted to find out from the Ministry of Finance whether they collaborate with the banks to draft the loan requirements for the loans that are offered under the support of the PCGF. I also wanted to establish if they give particular consideration to women since they are the most unlikely applicants to meet collateral requirements. Further, I wanted to know whether they have sex disaggregated data for the beneficiaries of the scheme.

I wanted to establish from the LNDC which businesses they deal with and what percentage of interest they charge on their portion of collateral under their deal with banks. I also wanted to find out the extent to which they are involved in the selection of clients that qualify for loans under the PCGF scheme. Furthermore, I wanted to know if they collaborate with banks in the drafting of loan requirements for loans offered under the PCGF scheme.

My interviews with the representatives of BEDCO were aimed at determining what it is doing to reach out to entrepreneurs as an entity in view of the fact that it is charged with the mandate of nurturing small enterprises; what training they offer to small entrepreneurs and whether or not their services are free. I also wanted to know the extent of their involvement in

the PCGF scheme and whether they have sensitized entrepreneurs about it. I was also interested in knowing about the kind of support they as a parastatal receive from government in view of the fact that BEDCO falls under the jurisdiction of the MSBDCM and I wanted to learn the size of their budget.

In respect of the four commercial banks operating in the country, Standard Lesotho Bank, Post Bank, First National Bank and Nedbank, the interviews were meant to uncover how far the LNDC and Ministry of Finance were involved in the PCGF scheme; whether they modified or reviewed their normal loan requirements for the ones taken under the PCGF; whether men or women comprised the majority of applicants for loans and the reasons given for denying any loans. I also intended to find out whether it was mostly men or women who failed to secure loans. In addition I enquired about their lending terms or requirements, interest rates and what kind of property they accepted as collateral.

As far as the money lenders and loan sharks were concerned, I wanted to find out about their lending terms, interest rates and whether their clients are mostly men or women. I also asked about the ability of their male and female clients to repay their loans and the reasons given for those who default.

2.3.3 Interview with members of Hatoha Mose Mosali

I was interested in finding out if *Hatoha Mose Mosali* has ever tried applying for a loan from any bank and whether they had managed to secure one and if they had been declined, what were the reasons. I also wanted to establish how their limited access to finance affects their business and whether they are able to produce good quality products to meet demands.

Further, I tried to find out whether they rely on loan sharks and money lenders and if so, the rates of interest they charge and whether it is easier for them to access loans from these sources rather than from the commercial banks. Further I wanted determine what other challenges they face apart from accessing credit and what has been keeping them afloat for all these years.

In addition, I tried to establish if they know about their right to economic development or what is contained in the laws and policies on trade in Lesotho; their relationship with BEDCO and whether BEDCO helps them in any way with regard to access to credit or any

other form of assistance. I also tried to establish if they knew about the PCGF and if so, how they learnt about it. Lastly I tried to establish what they need and would like and what kind of assistance they need to improve their business, bearing in mind that they have been operating for over 20 years, yet their business is still in the earliest years of its growth.

2.3.4 Interviews with beneficiaries of the PCGF scheme

The research engaged with the beneficiaries of the PCGF scheme to find out how they learnt about the scheme and whether in their opinion the PCGF has been really helpful especially to women. I also wanted to find out whether the loan application process was tedious and how long it took them to access the money. This information was important to triangulate with the data that I got from the banks, the LNDC and PCGF Unit.

2.3.5 Interviews with the Chairperson of the Federation of Women Entrepreneurs

Interviews with the Chairperson of the Federation of Women Entrepreneurs were conducted mainly to find out what led to the decision to open a women's bank in 2012, and why the idea failed. I was also interested in establishing whether they sought help from any government Ministries apart from the Ministry of Gender.

2.3.6 Observations

The observations I made were crucial as they enabled me to silently make my own judgement just by observing the environment. For instance at the office premises of *Hatoha Mose Mosali* the situation there says those women are in dire need of money. The room which is used as both an office and workshop is too small. It is also used as storage room and they eat there as well. The furniture and equipment are very old. Also at the MTICM after I was referred from office to office I realised that no special resources were set aside for SMMEs.

2.3.7 Desktop research

Desktop research involved consulting contemporary literature from reports, internet sources, books and other sources which were reviewed as secondary sources of data to find out the current situation on women's access to credit world-wide and in Lesotho. They also revealed the extent of the contribution SMMEs make to Lesotho's economy.

2.4 Limitations of the study

As stated earlier, *Hatoha Mose Mosali* started its business with 21 members in 1991 but in 1995 there was a split and only four (4) members remained. I was quite interested in locating some of the members who left to find out why they had done so. It would have been important to find out if they had gone on to join another group or established a new one after they had left. I had also intended to interview beneficiaries of the PCGF scheme from other districts but I only managed to interview a few whose businesses were around Maseru (where I was staying) because available funds did not allow me to cover other districts. Another challenge was the fact that some interviewees gave false or exaggerated information about some issues which meant that it needed to be triangulated.

2.5 Conclusion

This chapter focused on methodologies that were engaged in the collection of data and the reason for choosing a particular methodology and how it assisted in finding the relevant data. Further there were deliberations concerning the research design which included the sampling method used, the methods of data collection for the study and why they were used, then who was interviewed and their relevance to the study. Lastly, there was a discussion on some of the challenges encountered during the field research. The next chapter focuses on the existing literature on the subject, discussions on treaties that the state has ratified as well as the state's level of compliance, national legal framework, identifiable gaps and lastly a feminist economists' perspective on women's economic development.

CHAPTER THREE

3.0 LITERATURE REVIEW

3.1 Current knowledge and substantive findings

3.1.1 Introduction

This part will set out the contemporary literature from books, reports, internet sources and previous research relating to the subject of women's access to credit. It further discusses the situation of SMMEs around the globe and in Lesotho and their contribution to the economy of Lesotho as well as the impediments they face. It will further engage in discussing the international human rights instruments that the state has ratified, as well as the national legislation and state's compliance with regard to international and regional commitments. The last section discusses the feminist economists' perspective on women's economic development.

3.1.2 Situation of SMMEs worldwide and in Lesotho

'Throughout the world women, like men, are involved in a range of entrepreneurial activities.

They however tend to be concentrated to a larger extent than men in micro, small and medium sized businesses because of lack of collateral, their domestic responsibilities, limits on mobility and their limited financial skills. Women's lack of formal credit history and reputational collateral also constrains them'

(World Survey Report: The role of women in development, 2009).

In most developed and developing countries SMMEs are absolute drivers for the development of entrepreneurial capabilities and indigenous knowledge. They also serve as a reliable method for the achievement of economic objectives such as poverty alleviation and job creation. Despite their invaluable contribution to economies they often face a number of obstacles which lead to the collapse of some while others take many years to thrive and advance to a higher level (Basil, 2005).

While challenges within the sector are universal the fact is that women entrepreneurs by virtue of being women often find it harder to cope than men, and the situation is even worse for disabled women. The inequalities that have always existed when it comes to fair distribution of financial resources have always put women in a more compromised position

than men. Hence it is not surprising that in most parts of the world women often lag behind men in terms of realising and enjoying economic rights (Cilo Consulting, 2011).

In particular women's access to financial services is not easy as they are often not able to meet the required standards. This is despite the fact that some countries have put in place mechanisms aimed at improving access to finance. Most of these mechanisms (e.g., laws and policies) which are neutral (i.e., fail to take into account the specific needs of, e.g., women) often end up indirectly discriminating against women because they are applied with the erroneous understanding that issues affecting men and women's access to finance are the same when they are not, and, as a result, women's problems are not resolved (Fredman and Goldblatt, 2015).

Maas and Herrington (2006) argue that generally access to credit for women in Africa is very minimal compared to their male counterparts as very modest measures have been taken at international and national level to enhance it. About two thirds of businesses within the SMME sector are owned by women and they operate within the informal sector, although in some countries significant strides have been taken to formalise most of these businesses. The Mkoba Private Equity Fund Report (2015) reveals that within the African context in countries like Lesotho most businesses are not formally registered.

The MTICM Report (2008) and the World Economic Forum Report (2011) reveal that regardless of the SMME sector's major contribution to the economy of Lesotho, it actually faces a number of challenges which hamper businesses' growth and realisation of their full potential. A common challenge is limited access to finance which is worsened by lack of collateral for most small entrepreneurs, lack of domestic and regional as well as international markets, poor managerial skills, poor infrastructure and the lack of a conducive business environment. These challenges tend to affect individuals in different degrees for instance the disadvantaged groups are mostly negatively affected such as women, and people with disabilities. This situation exists despite the fact that in Lesotho, the recent budget speeches and the Poverty Reduction Strategy Paper have emphasised and pledged the need to improve the SMME sector.

The fact that most businesses within the sector are owned and operated by women emphasises the critical role played by women within this sector (MTICM, 2001). There is

therefore, an urgent need to address specific issues that hamper women's progress and address them accordingly.

Despite the fact that some businesses within the sector are formally registered such as *Hatoha Mose Mosali*, minimal support is being rendered to ensure that the sector thrives. Langwenya (2011) suggests that 'in order to ensure growth and sustainability of the SMME sector, there should be adequate support in terms of appropriate infrastructure, access to credit and markets and accessibility of capital.' However the problem does not lie in the absence of appropriate or engendered legal framework *per se* but rather in the area of implementation in that the rights which are conferred on women often remain 'paper' or *de jure* rights and are never realised and enjoyed by individuals.

Katsande (2011) maintains that the laws operating in commerce are generally gender neutral, and often promote indirect or *de facto* discrimination which leads to *de jure* equality meaning that rights are not really enjoyed by everyone. This is supported by OHCHR General Comment No. 20 (2005) which describes the indirect discrimination as laws and policies that seem neutral on their face but when implemented result in a disproportionate impact on men and women. This is the case with Lesotho's current MSME Policy whose provisions on access to credit are neutral and therefore likely to discriminate against women.

Moreover it has been observed that women have remained unbankable⁶ in most countries. For instance in Bangladesh, despite much effort to assist women for more than two decades, they still remain or are considered to be unbankable by the formal banking sector, and hence fail to access credit as easily as men (Mayoux, 2009). Women in Lesotho are similarly unbankable because of their exclusion from formal financial services, which often leaves them with no option but to resort to informal credit sources (Kaufman Levin Associates, 2014).

In addition a large percent of SMMEs in Lesotho are run by survivalists and have a very limited chance for growth and this is mainly due to a number of challenges faced by the sector, such as limited access to finance, lack of markets and linkages as most of these operators are only able to supply the domestic market and have limited access to government

⁶ Not likely to succeed or make a profit.

tenders. The use of information communication technology (ICT) is very limited and the use of the internet as a marketing tool is greatly under-utilized by the sector (MTICM, 2008).

Kanono (2000) also observes that most of the activities within the SMME sector are not regulated nor is their turnover included in the country's gross domestic product (GDP) and gross national product (GNP). This is despite the fact that some businesses, like my case study, *Hatoha Mose Mosali*, are formally registered and actually employ a large percentage of the labour force, as much as 66% which is actually more than that of the government.

Meanwhile government is failing to coordinate its activities or offer the much needed support required to nurture businesses within the SMME sector. A report by MTICM (2008) highlights that there is a need to clarify the responsibilities of different government Ministries and agencies which have been mandated to support the SMME sector and sensitise the public on how they can access support from such agencies.

This lack of coordination between relevant government departments was revealed during the field research when I was referred from office to office at the MTICM on grounds that the SMMEs did not really fall under a specific department but were basically dealt with however on an *ad hoc* case by case basis. It became clear that even BEDCO, an entity responsible for nurturing small businesses, is not really reaching out to the enterprises as it should.

3.1.3 The contribution of the SMME sector to Lesotho's economy

'SMMEs are a major driver of economic development as they absorb a larger portion of labour and provide the crucial business in many countries particularly in the aftermath of the 2009 global economic crises'

(Langwenya et al., 2011).

In its introduction, the Lesotho MSME Policy, 2012 acknowledges the contribution of the SMME sector as a main contributor to the economic development of the country through job creation, bearing in mind the high unemployment rate within the country. Hence the development of the SMME sector is considered critical in order to attain the country's broader development objectives like poverty reduction and job creation as well as enhancing the condition of women and indigenous investment.

A study by Kaufman Levin Associates (2014) reveals that most small businesses tend to be mainly survivalists who live from hand to mouth yet are resilient to economic setbacks. *Hatoha Mose Mosali* is a typical example of such survivalist businesses which are resilient to economic shocks considering the fact that it has been operating for more than twenty years. Even after its split in 1991, its few remaining members continued the enterprise despite the challenges and even devised coping strategies.

It is possible that the immediate and long term goals of an economy can be achieved through developing technology and enhancing or growing small enterprises. This means if small enterprises are fully supported they can contribute immediately to the economy by absorbing more of its labour force and providing an income for families. This in turn will enable people to pay taxes and to contribute to both the GDP and GNP of the country as well as provide long term economic benefits for the country (McCormick *et al.*, 1997 as cited by Kanono, 2000).

According to the Bureau of Statistics Report (2008), the SMME sector in Lesotho like that of most countries plays a significant role in addressing the escalating unemployment rate which in 2008 was 25.3% of the total population of about 2 million. This therefore means that the SMME sector contributes a great deal to the country's economy by providing much-needed employment to many who in turn generate incomes to sustain their families, and thus enable people to contribute to the tax pool.

The SMME sector is actually neglected since its business environment is not that conducive to the expansion or improvement of businesses and as a result, a business's ability to access finance becomes one of its major impediments to its growth and prosperity. Since the sector is, however, the backbone of Lesotho's economy, more support is needed from the state to ensure that it improves and its businesses become sustainable (MTICM, 2008).

Therefore there is an urgent need to address the challenges faced by this sector especially the problem of women's limited access to finance which is mainly the cause of their failure to expand or even worse closure of some businesses.

3.2 International human rights framework and national legal framework on economic development

Lesotho is party to number of human rights instruments that provide for socio-economic rights, some specifically for women, and which oblige states to ensure that socio-economic rights are realised and enjoyed equally by everyone. Lesotho therefore has an obligation to respect, protect and to promote these rights. Some of these instruments are legally binding. This means the country can be held accountable for its failure to implement their provisions, although some of them constitute 'soft law' or what can be regarded as recommendations. The country is also obliged to submit periodic reports on the progress it has made towards achieving the rights that are provided by these instruments.

In order for individuals to realise and enjoy their right to economic development, the state has to ensure access to economic opportunities and resources such as access to credit, access to information and the right to participation, financial inclusion and to achieve these goals, the state sometimes needs to enforce temporary special measures.

The Government of Lesotho has signed and ratified the Universal Declaration on Human Rights (UDHR), the International Convent on Economic, Social and Cultural Rights (ICESCR), CEDAW, the African Charter on Human and Peoples' Rights (ACHPR), the Protocol to the African Charter on Human and People' Rights on the Rights of Women in Africa (the Maputo or Women's Protocol), the Beijing Declaration and Platform of Action (BFPA), the SADC Protocol on Gender and Development and the International Convent on Civil and Political Rights (ICCPR).

Lesotho has not however domesticated many of the provisions of these instruments. She operates under a dualist legal system in terms of which international laws must first be domesticated as an Act of parliament before they can be applied nationally. By far the most crucial instruments as far women's human rights are concerned are CEDAW and the Women's Protocol as they regard such rights as immediate rights requiring their immediate realisation by the state which is not the case under the ICESCR which permits these same rights to be progressively realized based on the availability of the state's resources.

3.2.1 Principle of equality and non-discrimination

‘The crucial element of international human rights law is the principle of equality and non-discrimination, which requires every individual to be treated equally without any distinction based on sex, colour, religion or any other grounds’

(Iceland Human Rights Centre, 2007).

Article 1 of CEDAW (which is often referred to as the International Bill of Rights for Women) defines discrimination as any difference, or exclusion made on the basis of sex and that results in prejudice in the enjoyment of fundamental freedoms in political, economic, social, cultural and civil or other fields by women. Significant in the definition of discrimination by CEDAW is the fact that it is also concerned about the effects of discrimination (Bond, 2014).

Article 1 of the SADC Protocol on Gender and Development also defines discrimination as any distinction which results in impairing the enjoyment of human rights and freedoms in political, economic and cultural and other fields. Similarly, article 1(f) of the Women’s Protocol defines discrimination against women as any differential treatment whose effects compromise the enjoyment of certain rights by women.

Similarly, section 18(30) of the Lesotho Constitution defines discrimination as the application of different treatment to persons based on race, colour, sex, language, religion and other grounds, whereby persons of such description are not accorded the same privileges.

Discrimination can either be direct or indirect. Normally direct discrimination occurs when an individual is openly or obviously discriminated against or disadvantaged, say, simply by virtue of being a woman. Indirect discrimination is not immediately obvious however and is caused by the operation of neutral policies and legislation or as the result of the application of a formal approach to equality. A typical example is the introduction of the PCGF in Lesotho which was meant to assist small entrepreneurs by sharing the risk of debt between the bank, the government and the women SMME borrowers. This approach did not consider the fact that limited access to credit affects men and women differently. As women are generally unable to satisfy collateral requirements, the fund ended up benefiting more men than women. In addition, the legal framework that supports SMMEs, like the MSME Policy’s provisions, are neutral and are unlikely to address the specific needs of women in businesses.

This is despite the existence of the Constitutional provisions which clearly prohibit discrimination on any grounds.

CESCR General Comment No 20 (2009) noted that in most cases discrimination undermines the realization of socio-economic rights. This is because discrimination (whether direct or indirect) often improves the condition of some individuals while it prejudices others.

The principle of equality is provided for by article 2 of the UDHR which states that everyone, regardless of sex, colour, religion or other grounds, is entitled to the equal rights and freedoms provided in the Declaration. This therefore means that any individual, man or woman, has the right to enjoy their rights equally, including the right to economic development, which in fact is enjoyed more by men than women as they often have greater access to economic resources and credit than their female counterparts.

Article 2 of the ICESCR and article 26 of the ICCPR oblige states to ensure that all rights articulated in these instruments be exercised without any discrimination on the basis of sex, religion or any other status. CESCR General Comment No 20 (2009) emphasises that non-discrimination and equality as provided by article 2(2) of the ICESCR are the basic components of international human rights law and they are necessary in order to enjoy economic, social and cultural rights.

Further the Human Rights Committee's General Comment No 18 (2008) suggests that states should adopt legislation that complies with article 26 of the ICCPR, which stipulates that content of legislation adopted by states, should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant (General Comment No 18, para. 12).

Article 2 of CEDAW requires states to condemn discrimination against women in all its forms and to pursue proper means (e.g., appropriate policies) to eliminate discrimination against women without delay. The Equality and Human Rights Commission (2014) reiterates that article 2 of CEDAW has enshrined women's economic and social rights along with their civil and political rights and exclusively guarantees the protection of women's rights from discrimination and inequality.

At the regional level, article 2 of the ACHPR and the Women's Protocol also guarantees that every individual enjoys their rights and freedoms without any discrimination of any kind such as sex, colour, religion or any other status. Article 18 of the ACHPR specifically requires states to ensure the elimination of discrimination against women and children and protection of their rights. Similarly article 19 of the same instrument stipulates that all peoples shall be equal and enjoy the same respect and same rights. And article 22 specifies the right of all peoples to economic, social and cultural development, as well as the equal enjoyment of common heritage of mankind.

Article 6 of the SADC Protocol on Gender and Development requires states to review any legislation that discriminates on the ground of gender or sex. Article 17 stipulates that states should ensure equal access to opportunities for both men and women in trade and entrepreneurship and should recognise women's contribution in both the formal and informal sectors. Article 6(1) specifies that states should engender trade and entrepreneurship policies and article 6(3) requires state parties to introduce affirmative action measures to guarantee that women benefit equally from economic opportunities.

At the national level, section 18 of the Lesotho Constitution on Freedom from Discrimination provides in subsection (1) that no law shall have any provisions that are discriminatory in itself or its effects. Section 18(2) stipulates that no person shall be treated in a discriminatory manner in line with any written law or performance of public office.

3.2.2 Formal equality

Formal equality results from a formal approach to equality, which generally employs equal treatment to everyone regardless of prevailing circumstances. The formal approach to equality believes in equal treatment or opportunities for both men and women based on the understanding that anything less than that will discriminate against women. It fails to recognise, however, the fact that men and women are different and that some women are different from others and that they are affected by problems in different ways and to differing degrees. Hence this approach often results in indirect discrimination of women (EWRAW Asia Pacific Building Capacity for Change; Training Manual for the CEDAW).

This form of equality is often the effect of gender neutral laws, policies and other measures that fail to take gender concerns into consideration. This is what happened when the

government of Lesotho introduced the PCGF as an initiative that was meant to ease access to credit. It actually failed to take into consideration that it is mostly women who cannot afford to find collateral to meet bank requirements. As a result, when it was implemented, the initiative ended up benefitting more men than women.

OHCHR General Comment No 20 (2005) describes indirect discrimination as laws and policies that seem neutral on their face but, when implemented, result in disproportionate impact and effects. This applies to Lesotho's policies on SMMEs where its MSME Policy, 2012 only highlights (under Part 6.2.1) that access to credit is a major challenge and then proposes some strategies that are meant to address this issue. It then fails to recognize the fact that the issue affects women more seriously than men or to mention how women's access in particular would be enhanced. As a result the effects of such a policy are likely to bring about formal equality which results in the indirect discrimination of women.

3.2.3 Substantive equality

Substantive equality (which can also be referred to as *de facto* equality) is realised when policies and other measures put in place take note of the fact that people's problems are different and that such attempts to help them will affect people differently. This is because people are not homogenous even within a group such as women as they are affected differently; this means that their problems have to be treated differently. It recognises that often the policies and legislation that are put in place may be neutral in their written form and, therefore, appear non-discriminatory but then, when implemented, they fail to address the specific needs of the specific groups which they were intended and designed to assist. The substantive approach to equality is just as concerned with equitable outcomes as it is with equal opportunities (Marie, 2013).

Dahl (1987) posits that:

‘... as long as we live in society where men and women follow different paths in life and have different living conditions, with different needs and potentials, rules of law will necessarily affect men and women differently. The gender neutral legal machinery meets the gender specific reality.’

Hence there is a need to employ a substantive approach to equality in order to address specific problem areas for women so as to ensure that at the end of the day they do not suffer

from discrimination. The issue of access to credit affects men and women differently and in fact it is a more of a problem for women than men, the reason being that it is mostly women who cannot afford the collateral needed to secure loans from commercial banks. Hence there is a need to design laws, policies and other measures that address the problems women face accessing credit differently from men.

Bond (2014) recognises that although it was drafted at a time when feminist theory and advocacy promoted formal equality (which leads to indirect discrimination), CEDAW's provisions were more progressive as they are geared towards substantive equality. Consequently, the Human Rights Commission (2014) emphasises the significance of CEDAW's definition of discrimination is the fact that it is also concerned about the effects of discrimination, which are often discriminatory and lead to *de jure* equality as opposed to *de facto* equality or substantive quality. Hence article 2(e) requires states to take all appropriate measures to eliminate discrimination against women, while article 4 specifically provides for state parties to adopt temporary special measures aimed at accelerating *de facto* or substantive equality between men and women. It adds that these measures shall not be considered discriminatory and shall be discontinued when the objectives of equality are realised.

Further, article 2(c) of the Women's Protocol and article 17 of the SADC Protocol on Gender and Development stipulate that state parties should ensure that their legislation, policies, programmes and development plans are fully engendered. This is important because if they are gender sensitive it means women's specific needs will be catered for, and such actions will avoid indirect discrimination of any sex and are highly likely to result in substantive equality.

The CESCR (2005) explains that the main concern of substantive equality is the impact of laws, policies and practices and to guarantee that they do not uphold the disadvantaged position of a certain group but rather improve it.

In some instances the principle of equality may require states to employ affirmative action measures to eliminate situations that can perpetuate discrimination and result in formal equality (Human Rights Committee in General Comment No 18, the CESCR General Recommendation No 20 (2009)). For instance, the CEDAW Committee's General

Recommendation No 5 (1988) emphasises the need to apply temporary affirmative measures as provided by article 4 of CEDAW. The Committee noted that it is imperative for state parties to make use of the temporary measures more frequently in order to achieve *de facto* or substantive equality. This is what Lesotho should have done in the PCGF scheme in order to enhance the chances of women securing loans through the scheme.

Whilst the CESCR General Comment No 20 (2009) explains the value of Temporary Special Measures and makes clear that, in order to level the playing field, so to speak, and remove the historical disadvantages that women used to face, the affirmative action measures have to be applied and in such cases they are not considered to be discriminatory against anyone.

3.2.4 *Right to credit*

The United Nations Economic Commission for Africa (2007) posits that CEDAW tends to be the key women's rights instrument as it guarantees all aspects of women's property rights, including the right to land, credit and adequate housing.

Article 13(b) of CEDAW specifically provides that states should take appropriate measures to eliminate discrimination in economic and social spheres to ensure women's right to bank loans and other forms of credit. However, Lesotho's legal framework for SMMEs has not really addressed the problem of indirect discrimination against women caused by for instance the very policy (i.e., the MSME Policy, 2012) which is meant to improve their weaker status. So, while the MSME Policy emphasises the importance of providing access to access to finance, it makes no provision for how specifically women's access will be enhanced.

Article 14(2)(g) deals specifically with rural women and article 14(1) stipulates that state parties should take stock of challenges faced by them and appreciate their contribution to the economic survival of their families. Therefore the state should ensure they are accorded equality through access to loans and credit, marketing facilities and appropriate technology. This article basically deals with structural discrimination that occurs, for example, within a sector.

The Women's Protocol is yet another crucial women's human rights instrument as it also emphasises economic abuse in article 1(j). Article 13 requires states to implement legislative and other measures that guarantee equal opportunities for women in work and other

economic opportunities. Article 13(e) also emphasises the need to support economic activities of women especially those within the informal sector. This is where most SMMEs are operating and are mostly owned by women.

Further article 19 of the same instrument necessitates women's right to sustainable development and article 19(d) urges states to improve women's access to credit skills development and to ensure higher quality of life through the reduction of poverty. Article 25 provides for appropriate remedies when any of the women's rights provided in the treaty have been infringed. Moreover article 18(b) of the SADC Protocol on Gender and Development obliges states to review laws and policies that determine access and control of productive resources so as to ensure that women have equal access and rights to credit like men.

In addition, article 25 of the UDHR requires that states ensure an adequate standard of living and ensuring women's fair access to credit will definitely achieve this goal. The BPFSA specifies under its strategic objective A.2 (b) that states should undertake legal reforms to give women the right to economic resources such as credit. However it is worth noting that the UDHR as well as the BPFSA are what are known as 'soft' laws so they are not legally binding and it is often the case that states tend to ignore such recommendations as they know they are not legally binding.

At national level the MSME Policy 2012 (Part 6.2.1) has emphasised the fact that access to credit is a major challenge and has proposed some strategies that are meant to address this issue. Part 4(i) emphasizes the need to improve access to markets and (v) the technological capacities of SMEs. Likewise, Part 3.2 of the Gender & Development Policy 2003 (currently under review) provides for access to and control of economic resources such as land and credit. The current draft policy has also acknowledged that access to credit remains a major a challenge and has provided for strategies to improve it. It should be noted that the Legal Capacity of Married Persons Act, 2006 has removed the minority status of women which means that they are now on a par with men, and are therefore are able to access personal loans unassisted.

It should be pointed out that in a crucial long-term development plan document, the Lesotho Vision, 2020, the government has emphasised that access to credit and markets are major problems of the SMME sector. In section 2.3.5 the government has committed itself to create

good economic policies that will enable the country to prosper, and to ensure the development of the SMME sector.

Similarly, in section 5.1.8 under Strategic Objectives and Actions of the National Strategic Development Plan (NSDP) 2013/14-2016/17 emphasis is placed on the importance of MSMEs to the economy and suggestions are made for strategies that are intended to improve the sector. Limited access to finance, markets and information are identified as being some of the major impediments to the growth of MSME and the private sector. It stresses the need to improve access to credit to the sector through credit guarantee schemes, access to markets, providing information, improving linkages between financial institutions, business development services institutions and MSMEs as well as ensuring the administration of land and leasing laws so that borrowers can use land as collateral.

In addition to the legal framework and development plans, women's access to credit was also identified as a major issue of concern by the African Union. During the 2015 African Union Summit, the main agenda item was women's access to finance and it was emphasized that there is a need to value and improve women's contribution to the economy by putting in place enabling policies. In a statement made on behalf of the Chairperson of the AU Commission in Johannesburg, South Africa in (2015), on women's access to credit, Mrs Fatima Acyl, Commissioner of Trade and Industry, noted that women's access to credit is among the main components of the ten year plan on the 2063 Agenda of the Commission, and that there is an urgent need to domesticate the agenda. She also emphasized that the Chairperson wished to engage central bankers and the private sector in the struggle to improve women's access to credit. In addition, she noted the fact that the Chairperson stressed that it was now time to move away from using the term *micro credit* when referring to women's enterprises as there is nothing micro about women.

Therefore it is crucial for Lesotho to domesticate the provisions of key human rights instruments, especially CEDAW and the Women's Protocol, so that they can become part of national legislation. But most importantly the state should ensure that they are implemented effectively so as to ensure that the rights provided are realised and enjoyed equally by everyone.

3.2.5 *Right to information*

Article 19 of the UDHR provides that everyone has the right to receive and impart information and ideas. Similarly, article 9(1) ACHPR provides for the right to receive information by every individual. Article 25 obliges states to ensure the promotion of rights and freedoms through teaching, education and publication to ensure that the rights provided in the Charter are understood. This means that the state has a duty to ensure that citizens know and understand their rights and also be informed about the available opportunities.

Further, article 19(2) of the ICCPR lays down that everyone shall have the right to freedom of expression, which includes freedom to seek, receive and impart information. Similarly article 31 of the SADC Protocol on Gender and Development requires universal access to information communication and technology for all, and laws in the social, economic and political arena specifically to empower women.

Whilst the section 14 of in Chapter II of the Lesotho Constitution guarantees freedom for every person to receive information and ideas without interference, the country has failed to ensure this right as it will be revealed later in the findings.

3.2.6 *Right to participation*

Article 21(1) of the UDHR stipulates the right of everyone to participate in government either directly or through freely chosen representatives.

In its preamble, CEDAW acknowledges the importance of the effective and meaningful participation of women and notes that the complete development of a country is centred around the equal participation of women and men.

Article 7(b) of CEDAW similarly requires states to eliminate discrimination and ensure on equal terms that women participate in the formulation and implementation of government policies, to hold public office and perform public functions at all levels. If this is done then it would at least ensure that policies are engendered.

Article 25(a) of the ICCPR and article 13 of the ACHPR require that every citizen shall have the right and opportunity without any discrimination to participate directly or through a representative in public affairs. Therefore in order to ensure financial inclusion, women

should freely participate in financial issues so that they too can benefit from them in the same way as men.

Similarly, article 5 of the SADC Protocol on Gender and Development requires states to put in place affirmative measures in order to eliminate barriers that prevent women from participating effectively. Article 13(2) stipulates that member states should ensure equal participation between men and women in decision making, and article 15(1) further requires that state parties should ensure the equal participation of men and women in the formulation and enforcement of economic policies.

CEDAW Committee General Recommendation No 23 (1997) noted the importance of ensuring the equal participation of men and women in the formulation and implementation of policies and participation in public affairs at all levels as provided by article 7 of CEDAW.

Section 20(1)(a) of Chapter IV of the Lesotho Constitution provides that every citizen shall enjoy the right to participate in public affairs either directly or through a chosen representative. Therefore the state has to ensure that women participate equally with men in development plans such as in the formulation of policies so that their specific needs can be provided for in such policies.

3.2.7 Financial inclusion

‘Financial inclusion means that individuals or businesses have access to financial services and are able to effectively utilise them in a sustainable and well regulated environment’

(Consultative Group to Assist the Poor, 2015).

While delivering a speech on empowerment through financial inclusion in Mexico in 2014, the Managing Director of the International Monetary Fund (IMF), Christine Lagarde emphasised the need for ensuring financial inclusion for all. She argued financial exclusion affects people differently and that:

‘Access to finance has an important gender dimension, as women not only in Mexico but across the world, face a range of barriers in access to financial services. For instance, with limited property rights, women tend to own fewer assets than men. If you combine that with low levels of wages and labour

force participation, women are often left with insufficient collateral to obtain credit.’

She further noted that financial inclusion is a collective responsibility of both government and the private sector. But mostly importantly, government plays a central role of creating an enabling regulatory environment through appropriate policies as well as strengthening financial infrastructure by providing appropriate information in order to ensure greater inclusion (International Monetary Fund, 2014).

In addition the European Watch Report (2010) reiterates that financial exclusion is often linked with people’s knowledge, how well they are informed and their exposure to financial services. According to the report women’s chances of being completely excluded from financial services are twice more likely than men’s chances. Further the regulatory contexts, as well as government social and economic policy play a major role in hindering people from financial inclusion.

Therefore women by virtue of being women often face financial exclusion and fail to secure loans due to limited collateral or no collateral at all. But as the Managing Director of IMF has noted, it is actually the responsibility of the state to ensure an enabling regulatory environment that promotes greater inclusion especially for women.

3.2.8 Progressive realisation of rights

In its preamble, the ICESCR recognises the right to enjoy social, economic and cultural rights as well as civil and political rights. Article 2 provides for the progressive realisation of socio-economic rights particularly through legislation, and it is also dependant on the availability of resources.

However this does not mean that states should derogate from fulfilling their responsibility to ensure the realisation of these rights. In other words, states are still expected to facilitate the progressive realisation of socio-economic rights. But most importantly is the right to equality which can be met by ensuring that women’s rights are realised the same way as men’s rights. This right is not subject to progressive realisation but it is an immediate right, hence the state has an immediate obligation to ensure that women are able to enjoy their to right to equality with regard to economic and social rights. This is provided for by article 2(2) of the ICESCR

which requires states to ensure that the rights articulated in the treaty are realised without any discrimination (Chenwi, 2013).

This is where the substantive approach to equality and the indivisibility of rights takes precedence over the formal approach to equality and should be engaged in order to ensure the realisation of women's *de facto*⁷ right to equality, not just equality on paper or *de jure* equality. Further, article 3 of the above instrument provides for the enjoyment of economic, social and cultural rights.

Although states often take advantage of the progressive realisation of socio-economic rights and delay or disregard their facilitation, the intention for progressiveness was not to justify the failure of states to fulfil them. The CESCR (2005) argues that the notion of the progressive realisation of rights is a '*necessary flexibility device*' but it however does not mean that states should dismiss their immediate obligation to fulfil these rights. Hence states are expected to facilitate the realisation of these rights within a reasonable time.

Lesotho, however, is not really facilitating the progressive realisation of socio-economic rights which are not justiciable since they are provided for under the Principles of State Policy in the Constitution. Furthermore, the state has a Micro Small and Medium Enterprises Policy in place but no Act of parliament to implement the objectives contained in the policy. Therefore it is debatable whether the government is delaying its obligation to progressively realise women's right to credit. It can also be argued, as put forward by Chenwi (2013), that despite the fact that socio-economic rights have been recognised and guaranteed in a number of human rights instruments, their access has never been universal from the start.

3.3 State's obligation and compliance

While many states now include legal guarantees of non-discrimination and equality in their Constitutions, only a few states enshrine economic and social rights at the highest level of their national laws (OHCHR, 2005). The state bears responsibility for fulfilling its obligations as primary duty bearer in ensuring the realisation and enjoyment of rights by rights holders. However, most states often fail to fulfil this responsibility particularly as far as socio-

⁷ Meaning, the right is actually realised and enjoyed, it is not just a right conferred by the law.

economic rights are concerned as they often take advantage of the progressive realisation of these rights to justify their lack of action.

‘Ideologically socio economic rights are often perceived as being about social policy, benefits and welfare rather than accepted as legal entitlements; inadequate application tends to be viewed as social injustice not as rights’ violations. These evaluations lead some to conclude that economic and social rights are inherently non-justiciable.’ (Chinkin, 2000)

In terms of article 2(1) the ICESCR has provided for the progressive realisation of economic rights based on the availability of resources within a state. However Chenwi (2013) argues that the idea behind progressive realisation was not to allow states to derogate from such duties but what it means is that the state has a responsibility to facilitate the realisation of such rights over time.

Therefore ‘progressive realisation thus goes beyond achieving the minimum essential levels of a right; and beyond ensuring access to goods and services to improvements in access over time’ (Chenwi, 2013). Hence Lesotho as a signatory to a number of human rights instruments, some specifically on women’s rights, has an obligation to ensure that such rights are realised and enjoyed equally by rights holders.

As stated earlier the provision of article 2 of the ICESCR is not meant for states to take advantage of the idea of the realisation of rights over time; rather states are expected to ensure that such rights are met. As such, Lesotho has a responsibility to fulfil this obligation. However, the country is one of those countries that have not taken socio-economic rights very seriously. They are provided for as Principles of State Policy under Chapter III of the 1993 Constitution. It further stipulates that they can be realised based on the availability of resources, and this further makes these rights not justiciable, which means no one can even go to court and complain that their economic rights have been infringed.

Therefore the country is not fully fulfilling its obligation to respect, promote and protect these rights which are just as important as other human rights. Although access to credit as an economic right is specifically provided for in some human rights instruments, the country is actually not ensuring that it is fully met. The situation exists despite the fact the state is party to these human instruments that has provisions on access to credit. Since the state operates

under a dualist system where international laws has to be domesticated as an Act of parliament she has not done so as there are no particular laws providing for access to credit. There is only the MSME Policy of 2012 available and its provisions are neutral.

Yunus (2006) argues that if the financial institutions are failing to ensure access to credit then the state has a responsibility to fulfil and ensure that the right to credit is met. The state has an obligation to put in place policies and legislation as well as other measures that improve access to credit. Further it has a responsibility to mobilize financial resources and encourage or negotiate with banks and other sectors to help by providing soft loans to SMMEs and create other forms of micro credit schemes.

Another form of compliance is to ensure *de facto* or substantive equality in order to avoid indirect discrimination by applying temporary measures. The country has also failed to do this. For example, the PCGF could have but did not prioritise the unique needs of women who traditionally struggle to raise satisfy the collateral requirements of banks. There is also a need for timely or frequent reviews of policies in order to accommodate emerging needs and issues. An example is the 2003 Gender and Development Policy which has been languishing under review since 2011 to date and the fact that the MSME Policy was only developed in 2012 but there is not Act of parliament to give legal effect to its provisions.

3.4 Conclusion

This chapter basically reviewed the contemporary literature relating to the issue at hand from different sources. It detailed the situation of SMMEs around the globe, their contribution to economies specifically in Lesotho as well as the impediments faced by enterprises within this sector. It further engaged in deliberations on international human rights treaties that the country has signed and ratified and its compliance with them as well as the national legal framework. The chapter that follows contains an analysis of the findings based on the assumptions.

CHAPTER FOUR

4.0 RESEARCH FINDINGS AND ANALYSIS

4.1 Introduction

This chapter covers the main findings of the research, based primarily on the assumptions that I had before the field experience and what was found to be the real situation on the ground as well as how the research data was validated. It also highlights how the assumptions that were challenged during the field work were dealt with as they were not completely discarded but rather their focus was slightly adjusted. Further, there are discussions on the capability approach and the feminist economists' perspective on women's access to credit as well as deliberations on identifiable gaps in the national legal framework.

4.1.1 Inadequate State support for SMMEs; Easing access to credit

The overall research was premised on the assumption that there is inadequate support for SMMEs by the state. Therefore the main objective of the research was to assess the state's level of support for SMMEs and to unearth challenges that are faced by the SMME sector, specifically, women's limited access to credit. This was basically guided by the human rights approach, which involved the assessment of whether the state is fulfilling its obligation by realising the rights that are already recognised by several human rights instruments.

It is crucial to ensure women's access to and control over economic and financial resources to empower women and to attain economic development and gender equality. However, a lot of legal and socio-cultural barriers tend to hinder women's access to these services (World Survey on the Role of Women in Development, 2009).

Feldman & Francis (2003) define economic development as 'the development of capacities that expand economic actors' capabilities.' They further assert that while discussing economic development it is impossible to leave out the role that needs to be played by government, as it is the vehicle for accomplishing the common good.

Further Mayoux (2002) argues that there is a direct link between access to credit and economic development, in that if businesses were able to access loans they would be able to expand, create jobs and absorb more labour and then in turn contribute to the country's

economy. Hence there is a need for the state as a vehicle to achieve the common good by promoting access to credit so that individuals can realise and enjoy their right to economic development.

Improving access to financial services also plays a significant role in achieving some of the development goals such as the then Millennium Development Goals (which are now called the Sustainable Development Goals), particularly the reduction of poverty and improved health (IFAD, 2008). Frank (2008) emphasizes that urgent steps are required to address barriers that prevent women entrepreneurs from expanding their businesses and obtaining financial services from the state.

Yenus (2006) underscores the important fact that every poor person must be allowed a fair chance to improve his or her economic condition. This can be easily done by ensuring his or her right to credit. If the existing financial institutions fail to ensure that right, it is the obligation of the state and the world community to help find alternative financial institutions which will guarantee this fundamental human right. This is basic for economic emancipation of the poor in general and poor women, in particular.

Yenus argues that the right to credit is a human right and that if financial institutions fail to ensure its realisation, then the state as a primary duty bearer is duty bound to ensure that this right is met and enjoyed especially by women. This therefore means that if the financial sector in Lesotho fails to ease women's access to credit, then the state should devise strategies to do so in accordance with those human rights instruments such CEDAW and the Women's Protocol which are considered significant women's human rights instruments.

My main assumption was that women mohair weavers have limited access to credit due to the inadequate support SMMEs receive from the state. My findings confirmed this assumption for a number of reasons including the lack of collateral, lack of financial statements audited by an accredited auditor and unsatisfactory cash flow to ensure the repayment of loans which is a major consideration of banks. During the interviews some banks admitted that their main concern is the ability of a borrower to repay a loan; if their ability to service their monthly premiums is poor they are refused a loan as such a person is considered too great a risk. This point was emphasised by the Public Relations Officer of Lesotho Post Bank who said:

‘Though collateral is often a main obstacle to many clients but as the bank the most crucial requirement is clients’ ability to service their monthly premiums, then the security part will follow having convinced ourselves that the client will afford to pay his monthly premium.’⁸

Further the findings revealed that government through its relevant ministries has failed to pass adequate legislation to improve access to finance. Only the MSME Policy and the Gender and Development Policy have been put in place but no Act of parliament has been passed into law to implement these policies. The other factor is that these policies only suggest strategic actions that need to be employed to address the issue of access to credit within the SMME sector. They do not seriously consider how the issue has to be addressed with specific reference to women within the sector. The resulting challenge is that the gender neutral laws and policies often result in indirect discrimination or *de jure* equality as opposed to substantial or *de facto* equality.

Fredman and Goldblatt (2015) suggest that countries often engage in achieving equality before the law in a formal way, where focus is placed on treating everyone in the same manner. However even though men and women are equal before the law, women often lag behind in many respects, especially in social and economic terms. This highlights the weakness of the formal equality approach which fails to treat each problem differently and simply treats issues the same way in the belief that the degree or level of the problem are the same for all people.

The findings revealed that the government is actually failing to reach out to the SMME sector considering the fact that although *Hatoha Mose Mosali* has been operating for over 20 years (since 1991), it is struggling with the same sorts of problems encountered by a newly-formed business. Their office premises are not ideal. It is a small single room which is used as an office, workshop, store room and a place where their members also take their meals. This clearly shows there is a problem or gap that needs to be bridged, particularly by the government.

These women have shown a high level of commitment and dedication to this business. They have survived against all odds having started with twenty one (21) members in 1991 and continued in business since 1995 when a split occurred and 17 members left. The condition of

⁸ Interview at Lesotho Post Bank, Maseru, 3 November 2015.

their business clearly shows that they need support, so the million dollar question is, ‘What role should the government play to assist such people who are so capable and committed?’

The failure of the women mohair weavers to secure loans through the PCGF scheme is sufficient evidence that the state has actually failed to support businesses such as *Hatoha Mose Mosali*. In fact women mohair weavers did not know much about the PCGF. This means that BEDCO as the parastatal responsible for nurturing small businesses is not performing its role, just like the then MTICM and Ministry of Finance. They have actually failed to reach out to women and inform them about this opportunity.

When I interviewed and asked members of *Hatoha Mose Mosali* whether they knew about the PCGF scheme and whether they tried getting loans with its assistance, the Chairperson said:

‘We have actually heard about it over the radio but we did not know what to do in order to benefit from it. It was only last week that one of the officers from the MTICM was at the District Administration Offices telling us about some scheme though I think it is a different one, not this one you are asking us about.’⁹

Therefore their right to information is being infringed. Even my interviews with the beneficiaries from the scheme revealed that most people did not know much about the PCGF scheme, as some said they had learned about it from clients at the salon who happened also to be working at some of the banks; others learned about it at the bank, while one said he learned about it from a friend who is also in business.

Furthermore, during my interview with members of *Hatoha Mose Mosali* when I asked them whether they know about their right to economic development and that government has a duty to ensure that right is realized, this is what the chairperson said:

‘Au! We do not even know that we have a right to be protected by the state or government, because actually government is the one which disadvantage us in some instances. For instance, the Ministry of Tourism owes us a lot of money as we speak, as they would give us an order to supply them with our products

⁹ Interview with members of *Hatooa Mose Mosali*, Berea, 11 November 2015.

and as you know we supply before we get paid and government takes forever to pay.¹⁰

Therefore this means government through the responsible ministries and agencies is failing to offer the support that the SMME sector needs. They are even denying them the right to gain from economic opportunities as provided by the SADC Protocol on Gender and Development and the right to information as provided by the ACPHR and the ICCPR.

4.1.2 Machinery and equipment used by women mohair weavers



Figure 3: Photograph of the only spinning wheel owned by the Group



Figure 4: Photograph of a knitting board

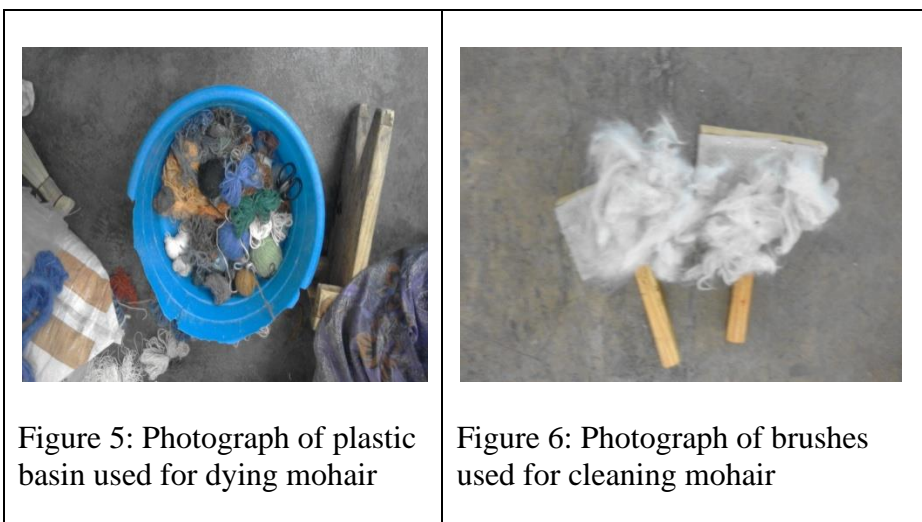
Figure 3 is a photograph of the only spinning wheel owned by *Hatoha Mose Mosali*. It is locally made model and used by the Group because they could afford to buy and it is easy maintain it. This confirmed one of my assumptions which is to the effect that the Group was using outdated and old machinery.

Figure 4 is a photograph of a knitting board, which is also locally made. It is leaning against a wall and being operated by one of the Group's members who is sitting on an old bench while next to her on the right (although it does not appear in the picture) are bags filled with unsorted mohair as there is no separate storeroom in the Group's premises.

¹⁰ Interview with members of *Hatoha Mose Mosali*, Berea, 11 November 2015.

I had initially assumed that the women mohair weavers use obsolete machinery as they cannot afford to buy modern machinery because they have limited access to finance or loans from banks, and that as a result, the quality of their products is compromised. It then emerged that it is not the quality of their products, but rather their quantity that is affected. So, I had to change my focus and concentrate on the issue of whether are able to produce a sufficient quantity of their products to satisfy demand. Then they disclosed that they are not even able to meet the large local demand which meant that they have to ask for assistance from other groups and then share the proceeds of the sale of their products proportionally. They further stated that they cannot extend their business and penetrate the regional market mainly because they have no contacts in the market and that they do not think they would be able to meet regional demands at the moment.

Figures 5 and 6 show some of the equipment used by these women. Figure 5 is a photograph of an old plastic basin which is used to dye the mohair thread, and Figure 6 is a photograph of two locally made brushes that are used for cleaning the mohair.



4.1.3 Monetary requirements: What do they need credit for?

‘By far women’s access to formal credit sources such as bank loans remains extremely low compared to men’s due to lack of regular income, inability to guarantee the loans and limited access to information. In many instances banks are reluctant to lend money to SMMEs because they fail to produce formal financial statements and audited accounts, hence it is crucial to improve auditing and accounting skills within the sector’

(Sacerdoti, 2005).

As the photographs of their machinery and equipment show (Figures 3, 4, 5 and 6) there is an urgent need for the members of *Hatoha Mose Mosali* to access credit. They explained that they need to procure modern machinery and equipment and be able to produce more of their goods to meet demand. Further they need to extend their building and have a separate storeroom as well as a bigger gallery which will enable them to display their products properly with other groups in order to attract more customers, especially tourists who happen to be their main customers.

One of my main assumptions was that mohair weavers cannot easily access loans from banks to buy modern machinery to increase production because they are unable to meet the requirements set by banks as there is no particular consideration for women regarding their specific loan requirements. As has already been stated, they have limited access to credit to buy machinery and equipment which means that they are using those shown in Figures 3 to 6. Further findings from my interviews with the banks revealed that they enforce their normal loan requirements, even in respect of loans associated with the PCGF scheme because as commercial banks, they are guided by their own policies which make no exception for the particular considerations of women.

Likewise, in my interviews with the responsible government Ministries, I discovered that the government did not apply any temporary measures to ensure that women benefit from the PCGF scheme on an equal basis with men. They could have but did not negotiate with the banks to at least try to ensure that women, the major owners of SMMEs, benefit from the scheme since it is they who are most often unable to meet the collateral requirements of banks. Sacerdoti (2005) argues that one way to improve access to loans for SMEs is a mutual guarantee fund where the risk is shared between the client and government and it has already worked in most countries to ease the difficulty of providing collateral. However, she warns that it should be properly designed and managed. Hence there is a need for government to take into consideration that limited access to credit is in fact a gender issue, as it affects women more than men, and then negotiate with banks to stimulate the growth of women's businesses.

Figures 7 and 8 are photographs of modern spinning wheels, and they cost around US\$1,300 each. Figure 9 is a photograph of a modern brush that cleans mohair and Figure 10 is a modern table-top knitting board which costs around US\$44 which can be placed on a table

unlike the one used by the Group which has to lean against a wall. As I interviewed women mohair weavers, they explained that they had been on a tour to South Africa (assisted by Action Lesotho) and had seen some more advanced machinery which they could not afford to buy. So they settled for the locally made ones which are cheaper (US\$113) and can be easily maintained locally.



Figure 7: Photograph of a modern spinning wheel



Figure 8: Photograph of a modern spinning wheel



Figure 9: Photograph of a modern brush for cleaning mohair

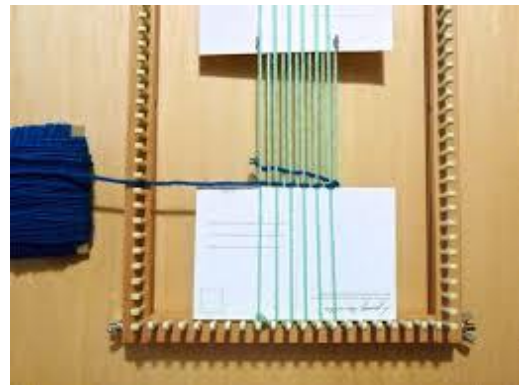


Figure 10: Photograph of a modern table-top knitting board

Further, the women stated that they collaborate with twelve other groups and have formed a larger group called Lesotho Mountain Crafts and they display their products together at their (the Group's) gallery with the intention of attracting more customers, especially tourists. They hope that if tourists come and find different products (as opposed to simply their own

mats or shawls) that would encourage them to pay a special attention to the Group's own products. However, the problem is that the gallery is very small, about 2 metres square. Therefore, they also stated that would like to expand the building. Figures 11 and 12 are photographs of the different products displayed at the Group's gallery.



4.1.4 Impediments faced by women mohair weavers in accessing bank loans

Bagel (2008) argues that if individuals are able to access small loans at reasonable interest rates they can start small businesses or improve already existing ones. However banks are reluctant to issue small loans and it is normally women who need and seek such loans.

I had assumed that mohair weavers cannot easily access loans from banks to buy modern machinery to increase production because they are unable to meet the requirements set by banks as there is no particular consideration for women regarding the specified loan requirements. During the interviews with banks I learned that banks do not just accept any property as collateral and land or a site is one of the forms of property that banks do not consider acceptable as collateral. For example, a house has to be of a certain standard (they actually evaluate houses before accepting them as collateral). Unfortunately, members of *Hatoha Mose Mosali* own property in the form of land as property that can be put up as security.

In addition banks require a business to be formally registered and to have financial statements audited by an accredited auditor. Most small businesses, however, do not hire auditors to do their books. Even members of *Hatoha Mose Mosali* explained that they cannot afford to hire an auditor to audit their accounts since they do not generate a large enough income to cover such an expense.

Another crucial loan requirement is a cash flow statement in order to assess a client's repayment ability or ability to service her monthly premiums. Some banks require the client to produce a statement which covers the last three months of business even they have been previously banking with a different bank. At Nedbank the Head of Retail and Distribution explained:

‘As the bank we do not lend money against security, rather we lend money against repayment ability, though it is true that we do ensure that in case of default we will be able to recover our money which is where the security or collateral comes in. We highly consider our clients’ ability to service their monthly premiums as one as one of the most important elements while issuing loans.’¹¹

From the interviews with members of *Hatoha Mose Mosali* it became clear that the Group satisfies one of the requirements for obtaining a loan and that is that it is registered. And just like other businesses within the SMME sector, the Group is challenged by the requirements of providing collateral, audited financial and cash flow statements. They explained that if they had to provide collateral in the form of money they could not afford to do so, as they use their monthly wages to cover the operating costs of the business.

Another factor is that the PCGF finances between 50% and 70% of the security while the rest is expected to be found by the client, and for *Hatoha Mose Mosali* it seems it would still not be possible for them to do so. The banks as well as the Ministry of Finance and LNDC argue that they do this in order to promote ‘a sense of ownership’ in the clients so that if a client does manage to secure a loan then they would be motivated to work hard to ensure that their business succeeds and the loan is repaid; this is less likely in a case in which 100% assistance is given.

¹¹ Interview at Nedbank, Maseru, 18 December 2015.

The Executive Director at the PCGF Unit gave an example of the Block Farming Initiative which was introduced some years ago to assist farmers with agricultural inputs and tractors and in which some farmers just failed to attend to their crops. There were rumours that some farmers said they did not care because it was the government's and not their money. So he emphasised that handouts are generally not sustainable initiatives as they sometimes give rise to irresponsibility and dependency. He explained:

‘Letsie, handouts are not sustainable. As government, the best we can do is to promote self-sufficiency and sharing the risk between us, the banks and the borrowers is very important. Though the problem is that these are commercial banks and their interests are high, so what is needed is to establish development banks, like the former Agric bank, though it collapsed at some stage, because they can offer credit at lower interest rates.’¹²

However there are occasions when there are women like members of *Hatoha Mose Mosali* who may not be able to raise the portion of collateral that is expected from them, yet who are deeply committed to their work by having endured in their business for many years under difficult conditions. There are situations where government acts as full guarantor of its loans, e.g., for parliamentarians' personal loans, in terms of the Loans and Guarantees Act, 1967 and the Statutory Loans Act, 1975. Therefore it is also crucial to consider doing the same thing for small businesses whose owners are in more need of assistance than parliamentarians.

Further, the findings revealed that although access to loans from money lenders and loan sharks is better than banks, their requirements are also a bit harsh. For example, the interest rates are quite high at around 20% to 25% from money lenders because the Central Bank has stipulated that they should not exceed 30%. The Central Bank does not regulate whether such interest rates are cumulative or fixed. In the case of banks, their interest rate is based on the banks' prime rate (which is the standard lending rate set by the Central Bank which is 11%) and then the banks decide on what extra percent of interest they will add depending on the type of the deal and the level of risk involved. Some banks explained that they can charge interest at the rate of the prime plus 4% or 7% at most.

¹² Interview with Executive Director PCGF Unit, Maseru, 8 December 2015.

As for loan sharks, their terms are even harsher because they are not regulated by the Central Bank at all as they are not formally registered like money lenders, so their interest rates can be as high as 30% or even 35%. The one that I interviewed said her interest rates vary depending on the amount of money borrowed. For amounts between US\$100 and US\$200, the interest rate can go up to 30% but as the debt increases, it can go down to 20%. I also learned that some loan sharks keep their clients' passports or ATM cards as a guarantee for repayment.

In addition, the study established that limited access to information is one of the major challenges for women mohair weavers, as I learned that service providers within the enterprise development sector (government and other entities, like BEDCO) are not reaching out as much as they should. The women explained that they did not know much about the PCGF scheme. They had only heard about it over the radio, so that means that even if the requirements for the PCGF scheme were flexible and favourable, women, like the members of the *Hatoha Mose Mosali* group, would not have benefited anyway since they would not have even gone to the bank. This was confirmed by the Head of Business Banking at Standard Lesotho Bank who stated during an interview that women do not have a habit of going to banks like men; men often just go into banks to enquire about their available services.

Moreover, the findings revealed that although women's businesses did not really benefit from the scheme, all the banks claimed that the scheme has been quite a helpful initiative in as far as collateral is concerned. They said that in the past, some clients would meet all the requirements but fail to provide security, and then fail to secure a bank loan. However, with the assistance of the scheme, banks are now able to help toward partial funding on behalf of clients and then clients who would previously have failed to get a loan, end up receiving one. They were unable to say whether the scheme has been beneficial to men or women, as they admit that they are not that gender sensitive and simply consider a client to be a client, regardless of whether they are male or female.

The members of *Hatoha Mose Mosali* explained that they did not know about their rights to economic development or that government has a responsibility to ensure that they enjoy that right. Although socio-economic rights are not justiciable in Lesotho, it does not mean that the women mohair weavers do not have a right to know that as citizens, the state is responsible to

protect and promote their rights. The government has also failed to realise their right to information about economic opportunities.

Another assumption was that women mohair weavers rely mostly on borrowing money from money lenders and loan sharks whose interest rates are very high. However, as I proceeded with the interviews it emerged that they do not rely on such loans, but rather fund their business operating costs from contributions they make from their monthly wages. This is supported by the Centre of Arab Women for Training and Research (2007) which observes that since women have limited access to formal finance, they often tend to support their businesses with funds from other, especially personal, sources such as from friends, family members or by reinvesting their earnings. This, however, has a negative impact on their families as the money that is supposed to cater for family needs goes into their business.

Then it emerged that they have actually devised coping strategies which show their determination and perseverance despite all the challenges they have faced over the last twenty years. They revealed that they also survive by receiving 30% of the proceeds of the sales of the products of other groups who display them at their gallery. The problem is that their gallery is too small to accommodate their products and this may be a turn-off for tourists who are the majority of their customers. They explained that they are unable to produce enough goods to meet even the large local demand to the extent that they have to ask for assistance from other groups, but the drawback is that they have to share the proceeds of any sales. They are also unable to penetrate the regional market although they desperately like to do, but cannot, firstly, because they do not produce enough goods to supply it and secondly because they have no links with the regional market. Further they added that they do not utilize ICT (e-marketing)¹³ for marketing their products because they do not know how to use it, and they cannot afford to pay for radio, newspaper or television advertisements.

They also stated that they have not registered for a trade mark to protect their products and in fact confessed they did not know about trademarks or their importance. They also disclosed that the training offered by BEDCO does not cover issues of access to finance nor does it link them to markets. And the fact that its training is not free has meant that cannot attend them all

¹³ Marketing products electronically.

the time. BEDCO explained that since it relies mostly on donor funding and is allocated a small budget from government, it cannot generally offer free training.

During my interviews with the banks, the LNDC and the Ministry of Finance it also emerged that the banks have a final say in determining who gets a loan. The banks assess applicants on a case by case basis and if they realise that a client meets all the requirements except security, then they lobby either the LNDC or the Ministry of Finance for partial credit. The LNDC and the Ministry of Finance have absolutely no influence over who will eventually be awarded a loan. This can be both positive and negative factor, in that, on the one hand, it minimises the risk of chances of politicising the scheme or exposing it to nepotism from the government or the LNDC, while, on the other hand, it gives the government no chance of prioritizing women, even if it wanted to do so. Hence the only way was to negotiate with banks to motivate more for women's businesses, though is not a guarantee in that banks would have decided not to motivate for more women or they would have failed to get more applications from women.

4.1.5 State's obligation: Oversight role of the state to engender the financial services sectors

The last assumption was that the government through the MTICM is not ensuring the realisation of women's rights to economic development as it is not providing sufficient supporting policies and legislation for SMMEs. The findings revealed that although government has the responsibility of regulating players in the financial services sector as well as engendering the sector, it is actually not effectively fulfilling that role. For instance, BEDCO is a parastatal which used to fall under the then MTICM; now it falls under the newly developed MSBDCM. Its core mandate as provided by the Basotho Enterprise Development Corporation Act, 1980, is to assist in the establishment and promotion of small businesses. It often fails, however, to prioritize women in its supporting activities such as the business training it offers. They give as their reason that they only receive a small budget from government and that they mostly rely on donor funding which normally has conditions attached to it. They further revealed that when they give training sessions no special preference is given to women although sometimes many women attend simply because they happen to dominate the SMME sector.

As for the banks, they say that since they are commercial banks they have to follow their policy guidelines, which means, as far as they are concerned, that a client is a client, whether male or female. Hence, they could not even say how many women benefitted from the PCGF scheme. In addition, the government itself has failed to apply temporary affirmative measures (as provided for by CEDAW and the SADC Protocol on Gender and Development) to enhance women's chances in the PCGF agreement with commercial banks. The government could have done more to lobby banks to give women special consideration when they are seeking partial credit loans from commercial banks in order to enhance their businesses.

As a result, the PCGF scheme has actually benefited more men than women. For instance, statistics from the LNDC showed that out of the businesses which have been assisted by the time this research was conducted, forty seven (47) businesses were owned by men, six (6) were owned by both men and women and only four (4) were owned by women.

At Standard Lesotho Bank, out of the fourteen (14) businesses that got loans through the PCGF scheme only three (3) were owned by women. The Head of the SMME Banking Unit explained that this was due to the fact that women did not come and apply for loans in as large numbers as men. He further explained that men have a culture of coming into the bank just to enquire about any available opportunities and then they take advantage of them when they are advised of them. This could mean that maybe most men who benefited from the scheme learned about it from the bank; but since women do not visit banks like men, they fail to acquire or take advantage of such information.

In addition it also emerged that the structure of the MTICM was fragmented which I discovered when I did the research as I was referred from one office to another as there was no specific section or department that dealt exclusively with SMMEs. This is in spite of the fact that, according to Kanono (2000), SMMEs play a very vital role in the economy of the country by virtue of the fact that they employ about 66% of its labour force.

4.2 Need for Lesotho's conformity to its commitments

Being a signatory to a number of human rights instruments on socio-economic rights, Lesotho is obliged to conform to her commitments. The state as a primary duty bearer has an obligation to respect, protect, promote and then fulfil its obligations. The obligation to respect

requires the state not to tolerate any practice, measures, policy or legislation that violate or infringe upon the rights and freedoms of individuals. While the state is also duly expected to avoid or prevent the violation of rights, this includes even taking measures to protect individuals from discrimination (Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 1997). Thus the state should respect women's right to credit and take measures to protect them from indirect discrimination that are normally fuelled by neutral laws and policies, such as the MSME Policy which simply provides for access to credit with no particular emphasis on how to ease access for women.

Further, the obligation to promote involves raising awareness among the general public about their rights as well as opportunities so that they can enjoy them (OHCHR, 2005). This means that women like the members of *Hatoha Mose Mosali* should be informed about their rights and economic opportunities such as the PCGF then they would be able to utilize such opportunities and benefit from them. The state's obligation to fulfil means that a state is expected to take measures to ensure the realisation of rights (Maastricht Guidelines 6). These measures can be temporary simply to remedy the existing situation as provided by CEDAW (article 4) and the SADC Protocol on Gender and Development (article 5) and this is what Lesotho should have done in order to ensure that women like the members of *Hatoha Mose Mosali* benefit from the PCGF scheme.

Access to credit for women in particular needs to be improved especially for small businesses within the SMME sector which normally faces the challenge of being unable to meet commercial banks' requirements for loans. This is where the state has an obligation to put measures in place that ensure the realisation of the right to access credit as an economic resource. If the government is able to act as guarantor and make access to loans easy for other sectors of society such as parliamentarians (in line with the Loans and Guarantees Act, 1967 and Statutory Loans Act, 1975), then it should do the same thing for businesses loans within the SMME sector.

Then sad fact is that the government acts as though the law provides that it should just pay off parliamentarians' loans and leave the matter there. What is supposed to happen is that the government as guarantor should settle outstanding loans with the banks and then recover what is still owed from those people, especially those who are still able to repay. It should follow that in the same manner as the state ensures that parliamentarians' access to personal

loans is made easy so should it also ensure the same ease of access to business loans for those in the SMME sector. The state has fallen a great deal short in its role to respect, protect, promote and to fulfil its obligations with regard to the socio-economic rights of women in particular.

4.3 Capability approach and women's coping strategies

The capability approach was pioneered by the economist philosopher Amartya Sen and philosopher Martha Nussbaum. They put forward that it 'purports that freedom to achieve well-being is a matter of what people are able to do and to be, and thus the kind of life they are effectively able to lead.' In a narrow sense it is an evaluation of an individual's life but broadly it involves more than just the well-being of an individual but also efficiency, agency and procedural fairness. It also engages in applying a holistic approach which looks at sets of opportunities available to an individual in order to thrive (Robeyns, 2003, as cited in the Stanford Encyclopaedia of Philosophy, 2011).

The approach is basically a theoretical framework that constitutes mainly two normative claims, firstly, that the liberty for one to achieve his or her well-being is of key ethical importance, and that, secondly, the liberty to attain well-being should be understood in terms of individuals' capabilities or abilities. Thus the freedom of an individual to achieve his or her well-being is of utmost importance as well as being given a chance through opportunities to realise his or her well-being (Sen, 1993, as cited in the Stanford Encyclopaedia of Philosophy, 2011).

Nussbaum states that:

'For the capability approach, the ultimate ends of interpersonal comparisons are people's capabilities. This implies that the capability approach evaluates policies and other changes according to their impact on people's capabilities as well as their actual functionings. For instance, it asks whether people are able to be healthy, and whether the means or resources necessary for this capability, such as clean water, adequate sanitation, access to doctors, protection from infections and diseases, and basic knowledge on health issues, are present' (Nussbaum, 2000).

Thus in the case of the right to economic development, this approach would look at whether women are able to realise their right to economic development and then it will look at whether they are able to easily access credit as a means to economic development.

The approach does not dwell on prescribed opportunities; rather it designates viable opportunities that may possibly be pursued by an individual. It is also imperative to appreciate that the capability approach is not just about poverty and development issues but can also be used as a framework for policy evaluations or inequality measurements (Crocker and Robeyns, 2009).

Further, the approach dwells less on the ends but more on the means to the ends, such as legal entitlements, availability of viable opportunities to individuals, since it questions whether an individual is in a position where she is able to pursue her means to her ultimate goal. Thus it assesses the capabilities that an individual has and then the opportunities that are available to boost that capability. For instance, in the case of women mohair weavers who are capable, artistic and creative and able to design different mohair products with different decorations, the approach looks at what opportunities are available to assist these women to enhance what they already have and what they are capable of.

Moreover, it is also crucial to make sure that initiatives such as credit programmes correspond and reflect the actual available opportunities and constraints for those programmes to work effectively. For instance, credit should be given to address issues such as infrastructure, market linkages and advanced machinery to assist women entrepreneurs to realise their goals (Diagne and Zeller, 2001).

In as far as the approach is concerned there is need to know the circumstances surrounding an individual, because as Sen uses 'capability' he refers specifically to a persons' abilities and other internal powers to an available opportunity that can be constrained by other social or environmental factors. Hence it is not enough to just know about what an individual owns without considering what could be the obstacles to her achieving anything (Crocker, 2008).

Likewise, Robeyns observes that the approach takes account of human diversity and acknowledges the use of the so-called '*information basis*' of assessments which includes dimensions that may be particularly essential to a certain group, and that can even reveal that

a certain group can end up being worse off than another (Robeyns, 2003). For example an assessment of the PCGF scheme as an initiative by the government to improve access to loans through financing part of the collateral, should have considered the gender differences which actually render women worse off than men.

In addition the capability approach provides information on the things that can be judged to assess how far an individual's well-being or development has progressed. This involves opportunities available to an individual to achieve things. It normally focuses on evaluation of functioning and capabilities of an individual (Crocker and Robeyns, 2009).

In the case of women mohair weavers, the capability approach looks at what such women are able of doing regardless of their surrounding circumstances. It then assesses whether there are opportunities that they can utilize to reach their goals. The approach then claims that these women are capable, have survived against all odds despite the various obstacles they have encountered over the past twenty years all of which manifests an element of determination, commitment and passion to succeed. Although these women had no opportunities to help them to thrive, they have actually proven themselves to be '*meketa e itekang*'¹⁴ and therefore deserving of opportunities to uplift them.

Further Sen (1993) argues that there is a connection between capabilities and freedoms, such that if individuals have the freedom to choose from available opportunities they can then utilize their capabilities. This is because 'capabilities as freedoms refer to the presence of valuable options or alternatives, in the sense of opportunities that do not exist only formally or legally but are also effectively available to the agent.' Hence members of *Hatoha Mose Mosali* needed available and accessible opportunities to utilise and develop their capabilities.

In their desire and passion to keep afloat for more than twenty years, the members of *Hatoha Mose Mosali* Group revealed their capability to survive by devising coping mechanisms or strategies. The fact that four of the current members of Group were among its founding members signifies their capability. In order to cater for the operating costs of the business they contributed from their monthly wages, though this has a negative impact on their family because the money is supposed to meet family needs. They also collaborated with twelve

¹⁴ A powerless person trying to help himself or herself.

other groups that are producing different products and form a bigger group (Lesotho Mountain Crafts which pays the Group 30% of their proceeds), as a strategy to attract more tourists and improve their market.

Therefore in order for Lesotho to ensure that women enjoy their right to economic development, she should avail them of the opportunities they need to help them utilise their capabilities and improve their well-being.

4.4 Theories on economic rights: Feminist economists' perspective on access to credit

Jackson (1992) argues that:

‘There has been a broad recognition amongst feminist economists and others that the underlying macro-economic structures which gave rise to the crisis of women in the first place, are the very same structures which also perpetuate restrictions of women’s economic opportunities compared to men’s.’

Some feminist economists argue that women have played a crucial role in development for a very long time, even before 1970s when the Women and Development (WAD) concept was developed, and yet their work has only managed to sustain international structures of inequality. And WAD just like women in Development (WID) tends to ignore the double day work that is done by women (Warning, 1988).

Feminists started critiquing the concept of development in the 1970s, and one liberalist feminist economist Ester Boserup in her book entitled ‘Women’s Role in Economic Development’ argued that development excludes women and she actually based her argument on empirical research done in Africa and highlighted that development programmes had implications for the participation of women. She observed that women tend to be included in policies as passive recipients or housewives while on the other hand men are included in training on technology and finance. Similarly socialist feminism came up with the concept of gender and development which applied a comprehensive perspective to the organisation of a society, its economic, social and political structure. Then the concept of gender and development, whose objective is substantial equality, put forward the idea that there is a great need for gender differentiated policies to ensure women’s access to economic resources (Aguinaga *et al.*, 2010).

The feminists' underlying assumption is that women's empowerment requires fundamental change in macro-level development agenda as well as explicit support for women in order to challenge gender subordination at the micro-level. Women's needs should be contextualized, and they should be clearly reflected in national legislation to ensure substantive equality. Hence access to finance by women should be clearly highlighted so as to ensure that women will benefit.

In addition Warning (1988) argues that 'investment in women's economic activities will improve employment opportunities for women and thus have a trickle down and out effect. Access to savings and credit facilities for women strengthens women's say in economic decisions of the household. This enables women to increase expenditure on the well-being of themselves and their children.'

4.5 Identifiable gaps in the national legal framework

Having noted in earlier chapters that the country has signed and ratified a number of human rights instruments that provide for socio-economic rights but has not domesticated most of their provisions, as well as the discussions on the main findings of the study, it has become clear that the state is not fully complying with its commitments. The country operates under a dualist system under which international laws have to be domesticated and made into an Act of parliament in order to for them apply at the national level. Therefore, the absence of a Micro Small and Medium Enterprise Act to enforce the government's MSME Policy's provisions is a concern because an Act is a legally enforceable instrument whereas a policy merely states the country's national objectives and is not enforceable.

Also, the Lesotho Constitution, the supreme law of the country, treats socio-economic rights under Principles of State Policy in Chapter III of the Constitution which means that they are not justiciable and in order for these rights to receive the recognition they deserve they should be included under justiciable rights or rather the state should facilitate their realisation within a reasonable time as urged by the CESCR (2005).

The Gender and Development Policy, 2003 is out-dated although it is currently under review and the review process has taken far too long having gone on since 2011. Therefore, there is a

pressing need for timely and regular reviews of policies to cater for emerging issues of concern.

The MSME Policy's provisions on access to credit are quite neutral and are therefore likely to result in the indirect discrimination of women in particular. Although it has highlighted access to credit as one of the major challenges facing the SMME sector, it has failed to propose helpful strategies that are specific to each sex. Likewise the initiatives or measures that are meant to improve access to finance for small enterprises, such as the PCGF scheme, have also been applied in a formal way and have ended up benefiting men and discriminating against women. The state has actually failed to apply temporary measures to ensure that women benefit on an equal basis with men.

Article 4 of CEDAW as well as article 5 of the SADC Protocol on Gender and Development require the application of temporary or affirmative action measures which should be stopped when the objective has been achieved. The application of these measures ensures the realisation of *de facto* or substantive equality. In fact the CESCR (2005) even justifies such measures and explains that they would not be considered discriminatory to any sex.

Further, Fredman and Goldblatt (2015) posit that it is important to address indirect discrimination in order to realise substantive equality which is more concerned about impact rather than equal treatment. Therefore, it was imperative for the state to apply the substantive approach to equality and apply temporary measures so as to ensure that the PCGF scheme would benefit both men and women equally. Similarly they further argue that there is a need to evaluate socio-economic policies in order to make the economy work for women. Hence it is imperative for the state to evaluate its economic policies so as to enable women to benefit on equal basis with men.

4.6 Conclusion

This chapter focused on the main findings of the research based on the assumptions and questions that were asked before the field research. The chapter highlighted women's experiences on the ground and how the assumptions were challenged and the actions that were taken. It has also emphasized the need for state's conformity to its commitments as well as the significance of enhancing women's capabilities or abilities in development. Further, it

highlighted the identifiable gaps in the national legal framework with regard to access to finance by the SMME sector. The chapter that follows will answer the research questions and then draw conclusions and recommendations based on the main findings of the study.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Based on the main findings of this study it is apparent that there is an urgent need to create an enabling environment for SMMEs through adequate support by the state in different ways. As it is, the state has classified socio-economic rights under Principles of State Policy in its Constitution, its supreme law, whose realisation is based on the availability of resources and they are not justiciable. This is in spite of the CESCR's General Commendation No 3 (1990) which highlights that the duty to progressively realise rights does not absolve states of their obligation but rather is intended to give them a measure of flexibility which allows them to facilitate the realisation of those rights within a reasonable time rather than immediately.

The state has committed itself to a number of human rights instruments some of which consider these rights to be immediate rights requiring immediate fulfilment and hence they expect the state, as the primary duty bearer of these rights, to ensure their immediate realisation. Sadly, the country has not really done very much to ensure that women in particular enjoy their right to economic development mainly through access to credit as an economic resource.

Prior to 2015 and the formation of the second coalition government the sector was actually neglected in that the then MTICM or BEDCO as a parastatal mainly established to nurture small enterprises had actually failed to do so.

However, it is hoped that as a result of the state's recent developments including the establishment of the MSEDCEM as an independent Ministry it will hopefully be in a better position to coordinate the SMME activities. Prior to 2015 and the formation of the second coalition government the sector was actually neglected. For example the then MTICM or BEDCO, the parastatal established to nurture small enterprises had actually failed to do so. Another positive development is the current coalition government's commitment to improve the sector and under B6, for example, it commits itself to supporting SMMEs through appropriate regulatory policies and access to finance. It has still failed to expressly acknowledge, however, the fact that these issues affect women more adversely than men and

that therefore women need to be treated differently from men so that they may both benefit equally.

Most important is the fact that the success of all these initiatives is highly dependent on the state's commitment and political will of those in power to facilitate the progressive realisation of socio-economic rights, to ensure not just the enactment but also the enforcement of legislation and policies and to apply temporary affirmative measures when necessary so that these rights can be realised and enjoyed equally by men and women.

5.2 Recommendations

The research attempted to answer the questions that were asked before the field work and draws recommendations based on what has been discovered to be the real situation on the ground.

The following questions were asked:

1. Are women mohair weavers failing to access credit due to the state's insufficient support for SMMEs?

As per the findings, the study concludes that there is indeed inadequate support of SMMEs by the state, as there is only an MSME Policy in place whose provisions are neutral and there is no MSME Act of parliament. This Policy is quite neutral, as it only highlights access to credit as being a major impediment to the businesses operating within the SMME sector. But it does not emphasise that it is more of a problem to women than men and therefore suggest, as it should, specific strategic actions to address the problem for women within this sector.

Likewise the PCGF scheme that was introduced to improve access to finance for small businesses by sharing the risk of loans between banks, the government and borrowers has also treated limited access to credit as though it affects men and women in the same way, hence the findings found that it had actually benefited more men than women, although it is mostly women who are generally unable to satisfy the collateral requirements of banks.

Based on these findings the following recommendations are drawn:

- (a) The state should put more effort into ensuring the realisation of socio-economic rights particularly with regard to women's access to credit, mainly through appropriate gender sensitive policies and legislation as opposed to neutral ones that often promote *de jure* equality and indirect discrimination.
 - (b) The state should enforce affirmative measures as required by article 4 of CEDAW and article 5 of the SADC Protocol on Gender and Development. This is in line with CEDAW General Recommendation No 5 (1988) which addresses indirect discrimination that normally results from gender neutral policies and formal initiatives, such as the PCGF.
2. Is it the case that women mohair weavers produce quality products but they are not able to produce sufficient quantities to meet the large local demand or penetrate regional markets?

From its findings the study concludes that women mohair weavers are able to produce quality products although the type of machinery and equipment that they use do not enable them to produce large quantities which means that they are unable to meet the large local demand. Furthermore, the women even noted that they do not think they can meet regional demands since they already have to seek assistance from other groups even to meet the large local demands.

Therefore the study recommends that:

- (a) Government should ease women's access to credit through appropriate policies as well as other measures so that they can procure appropriate machinery that would improve their productivity by enabling them not only to produce good quality products but also the right quantity of them in order to meet the large local and regional demands.
- 3.1 Are women mohair weavers failing to access loans from banks to buy modern machinery because they take no particular consideration of women regarding their specified loan requirements?

3.2 Are women mohair weavers able to meet the specified loan requirements set by the banks?

The research findings confirmed that women mohair weavers are indeed failing to access loans to procure modern machinery because they do not meet the specified loan requirements especially collateral as one of the key requirements for securing loans from banks. Further, there are no particular considerations for women regarding the specified requirements.

Hence it is imperative for the government to:

(a) Frequently apply affirmative action measures in order to achieve substantive or *de facto* equality. When introducing future initiatives similar to that of the PCGF scheme, the government should negotiate with banks to prioritize women's businesses.

(b) Establish development banks such as the Executive Director PCGF Unit within the Ministry of Finance emphasised during interviews in which he pointed out that the major problem lies in the fact that there are only commercial banks operating within the country. Since they are profit-oriented, government efforts to ease access to credit through flexible terms may not be easy. Hence the need for development banks which can offer credit on more affordable terms.

4.1 Are the service providers within the enterprise development sector reaching out to small entrepreneurs to inform them about the services they offer and how they can assist them depending on their specific needs?

4.2 Do women mohair weavers have information about what the state's laws and policies on trade provide or about their opportunities to access credit, e.g., from the PCGF?

It has become evident from the findings that service providers within the enterprise development sector are not reaching out to small entrepreneurs to assist them and as a result they have actually denied them their right to information. This follows from the fact that the women mohair weavers did not even know about the PCGF scheme and when they were

asked about their knowledge of their right to economic development they stated that they did not know that the state has a responsibility to ensure this right.

As such the study concludes that there is a need for the government to:

- (a) Fulfil its oversight role to ensure that entities like BEDCO which are charged with the responsibility to nurture small businesses are in fact doing so, and also to engender the financial sector in order to cater for gender specific needs.
5. Do women mohair weavers rely more on alternative sources of income rather than borrow money from money lenders and loan sharks?

Based on the findings, women mohair weavers rely mostly on alternative sources such as contributions from their monthly wages rather than borrowing money from money lenders and loan sharks even though this compromises their families' needs.

Therefore the study recommends that it is imperative for the state to:

- (a) Enhance women's access to credit especially from formal financial institutions where interest rates are reasonable by putting in place engendered laws and policies as well as other measures so women mohair weavers would be able to secure loans from banks and then avoid compromising their families' needs.
 - (b) Offer women mohair weavers training in managerial skills and record keeping as these are some of the prerequisites for securing loans from banks. This is also crucial as the Head of Small Business Banking at Standard Lesotho Bank even noted during the interviews that in some cases small businesses collapse due to a lack of managerial skills.
6. Is the Government, through its Ministry of Trade and Industry, Cooperatives and Marketing (MTICM), failing to bring about the realisation of women's rights to economic development because it has not put in place adequate supporting policies and legislation for SMMEs?

Finally the findings revealed that the government through its responsible Ministries is not conforming to its commitment to ensure the right to economic development particularly through access to credit, and it has also failed to put in place adequate laws and policies supporting the SMME sector.

Premised on these findings the study there recommends that:

- (a) The state should ensure women's participation in the drafting of laws and policies, because if women actively and effectively participate in development processes such as in policy formulation, then their specific needs will be catered for and it will also increase their chances of financial inclusion.
- (b) Civil society such as non-governmental organisations (NGOs) should take advantage of shadow reports and mobilise the international community's support to urge the state to comply with its obligations. In Lesotho, NGOs only write a shadow report if the government has written a state report concerning an issue. It is about time this culture stopped and that NGOs report regardless of whether or not the state has reported on a certain issue. NGOs are in a position to give a perspective different from that of the government who may either report or fail to report on certain issues in its reports. Such NGO reports can be helpful in the analysis of the impact of legislation and policies within a state.

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Appendix

Appendix 1: Certificate of incorporation of *Hatoha Mose Mosali* & the business loan requirements of some banks

	<p>REQUIREMENTS FOR LOAN – SOLE TRADER Application letter Confirmation Letter Cash flow projections for 12 months Financial Statements (prepared by a practising accountant registered with the Lesotho Institute of Accountants). Quotations Traders License Tax clearance Copy of passport Business profile CV Security in the form of an investment – 30%</p> <p>REQUIREMENTS FOR LOAN - COMPANY Resolution to borrow Confirmation Letter, addressed to the Manager, Standard Lesotho Bank. It should clearly indicate that payment will be transferred into your account at Standard Lesotho Bank. E.g. M5000.00 will be transferred into account number 0140098000001. Contract (if available)/Order Cash flow projections for 12 months Financial Statements (prepared by an accountant registered with the Lesotho Institute of Accountants). Memos and Articles of Association Certificate of Incorporation Traders License Tax clearance Copy of passport Company profile CVs of directors Security in the form of an investment – 30% to 40%.</p>
<p>First National Bank 6 month banks statements</p>	<p>Nedbank (For a company, proprietary ltd, close corporations pty ltd)</p>

<p>Audited financial statements Last management accounts as AFS are more than six month old Cash flow projections Resolution to borrow Collateral offer</p> <p>PostBank MOU and Articles of association Certificate of Incorporation Traders licence Tax clearance certificate Proof of identity documents of Directors Proof of physical address Account with PostBank for at least 6 months Last audited financial statements (signed by Director) 12 months cash flow projections Resolution to borrow Last management accounts are not more than 6 months Constitution (where applicable) OTHER Banks statement for other banks / bank report Company Profile Business plan (where applicable) PROPOSED COLLATERAL Property Insurance policy Investment policy Insured motor vehicle Co-guarantee Surety Up front deposit (30% of loan amount) Types of investments acceptable as collateral Treasury bills/bonds Fixed deposit 32 day Notice Account Other assets, e.g., shares</p>	<p>Audited financial statements Management accounts & debtors and creditors age analysis Cash flow statement (for new businesses/project as part of business plan) Previous bankers Public documents of the company (Reg Docs, Memos & arts) Balance sheet of Directors Management experience Board resolution Copies of passport Business plan/profile Securities held/proposed (cessions, pledge of funds or investments, registration of bonds, etc.)</p>
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