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**RESEARCH PAPER ON THE REVIEW OF THE
LESOTHO CONSTITUTION: FOCUS ON ECONOMIC,
SOCIAL, AND CULTURAL RIGHTS (ESCRs)**

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Executive Summary

1. Lesotho's Constitution: In relation to citizens' rights, especially economic, social, and cultural rights (ESCRs), the Constitution exhibits noticeable short-comings. First, most of the sections on citizens' rights are unenforceable. ESCRs, in particular, are not per section 25 of this Constitution enforceable by courts, and the domestication of the relevant conventions is dependent on the level of the country's economic prosperity and development. Civil and political rights are encapsulated in the Bill of Rights as part of the Constitution. These are enforceable, although the aggrieved people pay the cost of litigation as the government provides no assistance in this regard. The Constitution provides for the establishment of the Ombudsman (which has been established) for the purpose of protecting citizens against unjustifiable denial of certain rights to them by the government. Both the office of the Ombudsman and the institution of the Ombudsman are mostly ceremonial for the latter cannot legally enforce its findings against the state and violators of human rights. He can only recommend remedial action. Other than through the elected national assembly representatives, the Constitution offers no scope for citizens' participation in governance and related decisions in policy-making. It has no sections on the conduct of rulers stating punishment for misrule. The only weapon for the nation, in this respect, is not voting such rulers.

2. Ratified Conventions and domestication: Lesotho has ratified all the conventions and treaties discussed in the report; however, it has domesticated only a few of them. Those that have been domesticated are: International Covenant on Civil and Political Rights (ICCPR), International Convention on Civil and Political Rights (ICCPR) Convention on Elimination of All Forms of Discrimination Against Women, (CEFDW), Convention on the Rights of the Child (CRC), Convention on the Rights of Disabled Persons (CRDP). But, as noted in the report, related legislation does not meet all the demands of the convention. Examples include the survival of discriminatory traditions, taboos and customary laws (in the case of women), inadequate facilities in most schools for education of disabled children, and the lack of budgetary support for primary schools to enable children to fully benefit from the free compulsory education policy. Regarding civil and political rights, the Constitution has not made the ESCRs justiciable; defining them as principles of government whose implementation depends on the capacity of the country. As indicated in the report, these are critical to people's survival.

3. Reporting obligations: All these and other international treaties and conventions ratified by Lesotho are binding to the country, and periodic reports regarding progress of their domestication have to be submitted to the bodies that issued the instruments. Safe the 2006 report, Lesotho has not submitted reports on the ratified UN conventions for over two decades. The country has not reported to the AU about the progress achieved since the ratification of the conventions and treaties. The report reveals that parliament has no role regarding the ratification and domestication of international conventions, although members of parliament are free to demand explanations on these instruments and progress on their domesticated and compliance with them. But it has not done so is due to its weakness and perhaps ignorance as I have argued in the report. The parliament is the only force that has the constitutional mandate to hold the government to account or police its activities.

4. Status of the constitutional reforms agenda: the country has been under pressure from the SADC and Commonwealth of Nations to institute constitutional, security sector, and civil service reforms. However, there has been no progress, so far, in this regard. The present government that was ushered in after the June 2017 elections is expected to kick-start the process of reforms, and report on the progress to SADC at the end of November 2017. The process should be inclusive of all the stakeholders as per the demands of SADC, and the Lesotho government has declared that it would ensure that. However, it is not clear what type of participation is expected from each stakeholder and how many representatives each stakeholder will provide for the process. In other words, the procedures are yet to be developed, but they should be developed by the stakeholders that include the CSOs and other organisations outside government. However, as indicated in the report, there are no partners by tradition.

5. Hip between the government and CSOs: The two must cast aside this history and work together for the nation's best interests.

Abbreviations

1. ABC — All Basotho Convention
2. ADB/AD — African Development Bank/ African Development Fund
3. ACHPR — African Commission on Human and People's Rights
4. ANC — African National Congress
5. APRM — African Peer Review Mechanism
6. AU — African Union
7. BCP — Basotho Congress Party
8. BNP — Basotho National Party
9. CAT — Convention Against Torture
10. CCL — Christian Council of Lesotho
11. CEFDW — Convention on the Elimination of all Forms of Discrimination against Women
12. CRC — Convention on the Rights of the Children
13. CRDP — Convention on the Rights of Disabled Persons
14. CSO — Civil Society Organisations
15. DPE — Development for Peace Education
16. ESCR — Economic, Social and Cultural Rights
17. ICCPR — International Convention on Civil and Political Rights
18. IEC — Independent Electoral Commission
19. IESCR — International Convention on Economic and Social and Cultural Rights
20. LCD — Lesotho Congress for Democracy
21. LDF — Lesotho Defence Force
22. LHDA — Lesotho Highlands Development Authority
23. LMPS — Lesotho Mounted Police Service
24. MP — Member of Parliament
25. NCA — National Constituency Assembly
26. NEPAD — New Partnership for Africa's Development
27. NGO — Non-Governmental Organisations
28. OAU — Organisation of African Unity
29. PAC — Pan African Congress
30. PR — Proportional Representative
31. SACP — South African Communist Party
32. SADC — Southern African Development Community
33. SAIIA — Southern African Institute of International Affairs
34. SOMILES — SADC Observer Mission to Lesotho
35. TRC — Transformation Resource Centre
36. UN — United Nations
37. WTA — Winner-Take-All

Abstract

This report reviews the status of the constitutional agenda in Lesotho and the role of the civil society. It also reviews the short-comings of the Lesotho Constitution in relation to citizens' rights, especially the economic, social and cultural rights. Furthermore, it reviews the status of the international and regional human rights instruments in Lesotho, whether they have been ratified and domesticated, and the status of Lesotho's obligations on the international and regional human rights instruments. It then analyses how the constitutional short-comings have impacted on the lives of Basotho citizens and proffers recommendations on the identified short-comings and the role the civil society can play to pressurise the government to address the short-comings.

1. INTRODUCTION

In response to a request by the Southern African Parliamentary Support Trust's (SAPST's) financial assistance in Harare, Zimbabwe, this research paper reviews The Constitution of Lesotho 1993. In particular, it examines the shortcomings of the Constitution in relation to human rights promotion and protection, participation of people in decisions pertaining to governance, policy formulation, and law-making processes that affect and concern their fundamental human rights. It also assesses Lesotho's performance with regard to the domestication of ratified international conventions on human rights, generally and in particular, the economic, social, and cultural rights (ESCRs), through legislation in accordance with the requirements of the relevant conventions and associated declarations and protocols.

This review includes the analysis of the country's reporting obligations, regularities, and timeliness in submitting the required reports to the United Nations (UN) and regional bodies that issue similar binding conventions, declarations, and protocols for the enclave Kingdom as a member.

The mechanisms and state agencies policing and enforcing laws and policies meant to enable the enjoyment of human rights as listed in various international treaties and conventions, such as the role and influence of the civil society and/or non-governmental organisations regarding the ratification of and compliance with the demands of these instruments, are assessed in relevant sections of the report for their appropriateness, effectiveness, and adequacy.

The report is divided into nine sections. The first section briefly introduces, as above, the subject matter and purpose of the research project. The second shows the adopted and/or selected methodology and approach for the assigned task. The third proffers the meaning of human rights as a concept, value, and universal project, and its originators and pushers, including the instruments used in pushing it.

The fourth section provides the background overview of The Constitution of Lesotho 1993, its origin, nature, and shortcomings. It further analyses the implications of the shortcomings, with regard to the enjoyment of human rights, as listed in various international treaties and conventions ratified by Lesotho.

The fifth section addresses the status of the international instruments in Lesotho, namely the implementation of what they demand of member states, how they were implemented, measures used, and the questions and issues they raise.

In section six, the report examines the citizens' awareness of the instruments and their rights contained therein, how the citizens have positioned themselves for the purpose of maximizing on the benefits accruing from them; their interventions and opportunity to intervene, their right to participate in decisions regarding the international instruments, mode of participation, and barriers and hurdles.

The seventh section inquires whether the Constitution makes provisions for and guarantees effective participation by the CSOs, including identifying exclusionary clauses and other inbuilt problems and their consequences.

Section eight ponders and reflects on the constitutional reforms that Lesotho is expected to institute at the behest of the Southern African Development Community (SADC), Commonwealth of Nations, and other forces. Last, section nine concludes the report with general observations and recommendations.

2. THE RESEARCH REPORT: TASK, RESEARCH DESIGN, AND METHODOLOGY

This project was fortunately pre-designed for the researcher by the sponsors as an evaluative-specific issue and one-case-study type with a pre-defined focus subject and unit of analysis involving specific tasks to be performed by the researcher. The specific tasks that include the submission of the relevant report in the form of "a Constitutional Review Report," are:

- Review the status of the constitutional reform agenda in Lesotho and the role of the civil society;
- Review the short-comings of the Lesotho Constitution in relation to citizens' rights, especially the economic, social, and cultural rights;
- Review the status of international and regional human rights instruments in Lesotho and whether they have been ratified and domesticated;
- Review the status of Lesotho's reporting obligations on the international and regional human rights instruments;
- Analyse how the constitutional short-comings have impacted on the lives of Basotho citizens;
- Proffer recommendations on the identified short-comings and the role the civil society can play to pressurise the government to address these short-comings.
- Conduct a half-day seminar to discuss the Draft Paper with CSOs

The researcher performed and completed these tasks over a period of six to seven weeks. He adopted and used the method because of its appropriateness; in this case, a predominantly qualitative methodology, thereby sourcing and deriving the required data from publications of varying types — the Constitution and relevant pieces of legislation, official publications, country profile reports, research reports, newspapers, and books.

He organised group discussions for a half-day seminar that was held for this purpose on 2 August 2017 involving purposefully chosen representatives of diverse civil society organisations (CSOs) and/or non-governmental organisations (NGOs). The representatives were selected on the basis of their apparent awareness of Lesotho's rule and constitutional setting.

The number of organisations from which participants were selected for the seminar sent a total of 14 representatives. The seminar discussions yielded useful and additional data comprising information and facts as revealed by participants' comments, debates, and exchanges.

Observations, views, and suggestions of the participants provided valuable contribution to the research, drawing the attention of the researcher on issues whose importance and value were not apparent before the seminar was held. No serious hurdles were encountered by the researcher throughout the research activity.

3. CONCEPTUALIZING HUMAN RIGHTS

Human rights are “widely considered to be those fundamental moral rights of a person that are necessary for life with human dignity... are to be written into law and defended via courts of law” (Forsythe, 2006: 3-31). There are “those believed to belong to an individual and in whose exercise a government may not interfere... to which you are entitled to by virtue of being human” (www.humanrights.com/what-are-human-rights/). They are not gifts, but entitlements, yet accessed and enjoyed because there is an all-powerful authority or force that guarantees or protects them. This authority or force is the state; the responsibility to protect human rights lies with states or governments and such protection is assured through enactment and enforcement of appropriate laws, setting minimum standards (An-A'Naim, 2002: 15). Laws, and similarly enforceable rules, are recognised as the best and perhaps the only way to ensure that people enjoy their human rights. As Hamilton (2007: 1-2) observes, “within the contemporary legal and political framework, rights are legally and coercively enforceable entitlements...” Therefore,

enjoyment of human rights is possible only if there are laws guaranteeing this and if the laws that are enacted for the purpose of protecting human right are respected and consistently enforced by state authorities. By failing to enforce the relevant laws, states or the authorities concerned indirectly abet, encourage, permit, and tolerate the violation of human rights. Indeed, some of the countries accused of human rights violations may not have killed, tortured, or abused the victims, but failed to protect them. For the Development for Peace and Education (DPE) (2016: 4), violation of human rights is a “function of power... an act where the powerful use their position to inflict pain, deprive, or exploit those who are less powerful...; therefore,...human rights protection and promotion is an act of peace and respect for human dignity.” Yet human dignity is assured by promoting and protecting the right to development, as declared by the United Nations (UN) in 1986, as “an inalienable human right... every human person is and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development...” (SAIIA, 2007: 424). The OAU’s list of human rights encapsulates the following: equality before the law, equal protection of the law, respect of the dignity inherent in a human being, right to education, freedom to take part in the cultural life of one’s community, promotion of moral and traditional values recognised by the community as the duty of the state, and right to access the best attainable physical and mental health (SAIIA, 2007 Ibid: 187-189). Therefore, pursuit of and struggle to acquire education, freedom in its different forms, resources critical to human survival, and participate in economic, social, and cultural development, including ability to access health facilities are efforts at realising or enjoying human rights.

4. THE CONSTITUTION OF LESOTHO 1993: BACKGROUND, NATURE, AND SHORTCOMINGS

Lesotho is a democratic Kingdom with a Constitution that serves as a framework for governance and a source of authority and power for rulers and the state, with a Bill of Rights detailing a range of rights that the people residing in the country must enjoy without any hindrance. These are grouped in clusters of civil liberties and/or freedoms, and people’s or human rights are all supposed to be guaranteed or protected by a government or public authority. The underlying assumption is that there is a social contract between governments and the people whereby the right to govern is not a given, but is dependent on the rulers protecting the citizens who bestowed that right upon the rulers. However, some of the human rights listed in the Bill of Rights section of the Constitution are not justiciable. This presents an in limbo situation, perhaps until the government makes them legally claimable. This

category or cluster comprises a group of human rights styled the ESCRs. This cluster encapsulates the right to employment and a decent and dignified life to education and training, enjoyment of one's culture, development of such a culture, and participation in policy-making processes and development programmes.

The Constitution of Lesotho 1993 has been amended seven times since it came into effect 24 years ago. Yet save the one that expanded political participation by adding the proportional representation (PR) element to the erstwhile winner-take-all (WTA) electoral-parliamentary model, but these amendments have not corrected this apparent deficiency, namely making ESCRs justiciable. Their classification as second generation rights — binding for states only when circumstances and resources permit — has been used by rulers for their failure to make these rights justiciable, as noted elsewhere in this report. Yet many of the contemporary humanitarian disasters are directly attributable to policies that deny these rights.

The Constitution of Lesotho 1993 is a creature of and owed to the military that ruled the country during the period between 1986 and 1993. This is a document with no introductory preamble, preface, foreword remarks, or a message statement stating its aims and objectives. It is just an assemblage of chapters with myriad sections. For human rights and peace campaigners and advocates of development and reforms, it is an uninspiring piece of legislation. This leaves one to wonder whether Basotho are in fact ready to embark on the proposed reforms with a full understanding of their implications. The Constitution of Lesotho 1993 came into effect in April 1993 after the army had relinquished power to an elected civilian government. This was after 23 years of unconstitutional rule comprising Chief Leabua Jonathan's 1970-1986 *de facto* one-party government and the 1986-1993 military dictatorship.

The first of the two governments was a sequel to Chief Jonathan's suspension, in January 1970, of the national constitution of 1966 and annulment of the first post-independence elections where Ntsu Mokhehle's Basutoland Congress Party (BCP) had seemed to be the winner. Initially led by Major General Justin M. Lekhanya, who was ousted three years later by Major General Phisoane Ramaema, the second of the two regimes had emerged as an upshot of an apartheid South African inspired military coup of 20 January 1986. Apartheid South Africa precipitated this coup through pressure on Lesotho, which involved the border blockade that slowed movement into South Africa, military incursions and strikes on Lesotho, and economic sanctions designed to persuade Basotho to turn their backs against and cease to support the

Jonathan regime. Maqutu (1991: 252) blames the military coup on economic blockade, in particular, because it denied Lesotho's army the much needed petrol, thus forcing it to topple Jonathan.

In both administrations, civil liberties and other rights of the citizens were severely curtailed while human rights violations committed mostly by security agencies went largely unpunished (Pule, 2002:183). The people's opportunity to seek redress in the courts of law for violation of their rights also diminished. Basotho yearned for constitutional rule under the suspended 1966 Constitution. However, that Constitution was not immaculate, having been at the centre of the violent conflicts and political instability that ravaged Lesotho between 1966 and 1970. It did not unite the Basotho nation, instead it left "unresolved the status of the King in the government." (Maope, 1986: 22).

The military restored constitutional rule to the Kingdom and returned to the barracks in 1993, bequeathing to the Basotho nation and its country The Constitution of Lesotho 1993 that has since been both a framework for governance and supreme law of the land. However, the military's decision was mainly a response to the pressure from foreign aid donors and domestic and international civil society organisations (CSOs). Additional pressure came from the changing Southern African political landscape that saw the end of Nelson Mandela's 27-year incarceration in 1990, the release from detention of his fellow political prisoners, and unbanning of the South African liberation movements — the African National Congress (ANC), South African Communist Party (SACP), and Pan-Africanist Congress (PAC) — and a surge to majority rule in South Africa. These changes served as a warning to Lesotho's military rulers that they could no longer receive the support hitherto given to them by the apartheid regime as it was now crumbling.

The military rulers set in motion the process of steering the country back to constitutional rule in 1990, but they controlled, guided, and led the process that included the making of the new Constitution and the machinery for gathering the necessary information. That machinery was a military-appointed institution styled by the National Constituent Assembly (NCA). Three members of the NCA were appointed by the same authority to constitute and become members of a commission set up to solicit and gather the required data, through people's views at meetings held in different parts of the country. The people attending the public meetings were asked to give their opinions, preferences, and suggestions regarding particular issues believed by that commission as important for making the proposed constitution. The commissioners were three people comprising the NCA. They served as individuals rather than

political party or civil society representatives. They reported not to the NCA, but to the Chairman of the Military Council. The commission's findings and recommendations guided the drafting of what is now The Constitution of Lesotho 1993.

The military's Decrees and Orders that had shackled the nation, political parties, and civic organisations since 1986 by outlawing political party activity, public gatherings, marches, open-air meetings, and mass protests were still in force as the NCA was making the new constitution, which is now The Constitution of Lesotho 1993. The biases, deficiencies, and/or shortcomings in The Constitution of Lesotho 1993 are, therefore, no doubt largely attributable to the army's dominance in the constitution-making process and exclusion of political parties and other stakeholders like the CSOs or their freely-chosen representatives from such a process. The selection of the interviewees and members of the NCA and the commission gathering people's views was influenced by the military's preferences rather than by what would have been rational for the broad cross-sections of society. It ignored political parties and the CSOs in their varieties — academics, law society association, trade unions, farmers, traders, the disabled, bus and taxi owners, and youth and women organisations. Moreover, the draft constitution was never subjected to a vote or a referendum to gauge the nation's preferences and views.

The army's approach impeded effective participation by the civilian stakeholders for this important process. Yet the acquiescence of political parties and other social formations to the military's dictates regarding this project was no doubt a result of the political atmosphere during that time and the little room that it left them to manoeuvre. Political parties and the CSOs, in particular, were presented with two starkly contrasting choices — namely, participating in the project under the conditions set by the military or rejecting the invitation to participate. The latter choice would undoubtedly delay or even scuttle the process of a return to constitutional rule. Thus, the political parties and the CSOs settled for the first option, perhaps because this offered an escape route from over two decades of unconstitutional rule, hoping that their members who had been hand-picked and appointed to the NCA by the military would do the job.

The Constitution of Lesotho 1993 is a archetype authoritarian, control, law-and-order, and power instrument that predominantly projects the authority, functions, power, prerogatives, and rights of the rulers, state, and its institutions. However, its two chapters, respectively, contain the Bill of Rights and principles of government. The rest of its chapters are about the institutions

of the state and their authority, power, and how they should be exercised and enforced, and the mechanisms by which to enforce them. The authority and power institutions referred to here are the monarchy, chieftainship, council of state, executive, parliament, bureaucracy, judiciary, court martial, public service, judicial service commissions, Ombudsman, army, police, and prisons. The discernible goals of the makers of The Constitution of Lesotho 1993 are thus: ensuring a strong and effective government with stable institutions and less power and role for the people, their associations, and the civil society and other societal groups.

Notwithstanding its in-built Bill of Rights, The Constitution of Lesotho 1993 offers little or no scope for participation in law and the policy-making process by the wide spectrum of society, whose active groups are the CSOs and/or non-governmental organisations (NGOs). The Constitution of Lesotho 1993 treats these organisations as no more than interest groups, if not intruders or a nuisance that the government may or may not include in the decision-making and governance process. Parliament and the government have, in fact, ignored or invited these groups to participate in some of the public activities as it sees fit, whatever Section 20 of the Constitution says about the right of people to participate in government. Again, this seems to be having to do with the fact that The Constitution of Lesotho 1993 does not impose on parliament and government an obligation or duty to guarantee participation by people in policy-making processes.

Although it is a law, not just a framework and parameter for governing and governance, The Constitution of Lesotho 1993 does not specifically oblige those at the helm of state power to promote and protect human rights or to assist and protect the victims of human rights violations or abuses. The specific sections pertaining to the Bill of Rights entail no penalties; they either do not state the punishment for violations of listed human rights or the avenues and procedures to be followed in seeking redress for human rights violations. The absence of such avenues and procedures makes it difficult for people to seek remedies for violation of their human rights. Human rights violators and abusers in Lesotho could be taking advantage of this shortcoming.

There are other hurdles as well pertaining to claiming of human rights through litigation, namely the doctrines of *locus standi* and contempt of court. Judges insist that a person pursuing these rights in the courts of law should be legally entitled to do so, and that he/she stands to suffer demonstrable damage if his/her continues to be denied such rights. This means that only people who suffer as a result of violation of their human rights, not interested

organisations, can when seeking justice approach the courts. Condemning or criticising the conduct of individual judges, on the other hand, is contempt of court and a crime that attracts a jail sentence in Lesotho. A strong and rational argument, though, is that constitutions are operationalised not per their own clauses or sections, but vide the various laws enacted with the authority of such constitutions. Yet, as I have warned later in this report, people have not enjoyed their human rights because of the lack of laws guaranteeing the enjoyment of those rights.

Section 20 (1) (a) of The Constitution of Lesotho 1993 says that citizens “shall enjoy the right to participate in the conduct of public affairs, directly or through freely chosen representatives.” However, in a case in which the DPE sued the Speaker of Parliament and others for excluding it and fellow CSOs from taking part in the discussion of the Human Rights Commission Draft Bill, the Constitutional Court of Lesotho ruled in favour of the Speaker on the grounds that the section did not contemplate direct participation by CSOs in parliamentary discussions. The judgment is at variance with Article 27 (2) of the African Union Charter, which says that state parties shall, among others, commit themselves to “fostering popular participation and partnership with civil society organisations” (2007: 5). The judgment is one of the highlights of the inadequacy of The Constitution of Lesotho 1993 as a presumed defender of human and people’s rights, according to the DPE (2016: 6). The Bill has since been passed as law, that is, Human Rights Commission Act 2016 as per Lesotho Government Gazette No. 31, Vol. 61 of 3 June 2016. This provides (p. 530-531) for the setting up of a human rights commission to “monitor the state of human rights” in the country and in detention centres and to investigate human rights violations. The Act is fraught with controversy, though. First, the issue was not open to debate and discussion by the people or their representative organisations. Second, Human Rights Commissioners are appointed by the King on the advice of the Prime Minister. However, Lesotho prime ministers appoint their political party loyalists to such top positions. Therefore, the reforms teams will no doubt be confronted by, among others, this issue as they reform the country’s Constitution, public service, parliament, and security sector.

5. STATUS OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

Lesotho has ratified virtually all the international and regional conventions on human rights, and it is signatory to related treaties, declarations, and protocols; however, only those relevant to the study are considered here. The

international and regional organisations are those where Lesotho is a member and, therefore, is bound by their conventions, declarations, protocols, and treaties that it has ratified or signed. Some of the country's laws, perhaps the majority, are in fact to varying degrees and extents aligned to and have a tinge of the prescriptions of these international instruments. The international and regional organisations that formulate and issue such instruments are, in their hierarchical order, the United Nations (UN), African Union (AU) — formerly Organisation of African Unity (AOU) — Southern African Development Community (SADC), and New Partnership for African Development (NEPAD). Lesotho is a member of these organisations and has signed, as noted above, the majority of the instruments that these organisations have developed for ratification and domestication by member states. Having ratified them, therefore, the Kingdom is bound by these instruments and has to abide by what they say or prescribe, but it has domesticated only a few instruments that it has ratified, and in some cases, only incrementally and/or partially.

The UN, AU, SADC, and NEPAD are all concerned with and involved at different levels to varying degrees about the promotion and protection of human rights. For these organisations, promoting and protecting human rights amounts to assuring people of a decent and dignified life, while fighting poverty is essentially restoring dignity to the poor and deprived people. Thus, eradicating poverty is *sine qua non* to “the promotion of... the development of human and physical resources,” which in turn presupposes guaranteed partnership between the government and civil society organisations (NEPAD, 2002: 27) and both participatory people-centred development and fighting against poverty that degrades, demeans, and de-values human persons. Moreover, eradicating poverty is essentially restoring decency, dignity, and respect to poor people. More so, NEPAD (2002: 27) warned that: “poverty can only be effectively tackled through the promotion of the development of human and physical resources, and through guaranteed partnership between the government and civil society organisations.”

Here, I only highlight the status of specific international instruments (conventions and related declarations and protocols) that Lesotho has ratified and to the extent that they are concerned with the promotion and protection of human rights, particularly ESCRs, while pointing to the progress made regarding their domestication and integration into the national laws. As indicated earlier, I have borrowed definitions of some of these instruments to forge a conceptual analytic schema used in viewing human rights as the focus of this research report. I noted at the outset that the UN Charter is a framework and source of authority and legitimacy for all these international instruments. The 1948 UN

Declaration on Universal Human Rights predates all international instruments on human rights, and Lesotho is a signatory to and bound by it to promote and protect human rights through legislation. The declaration has since been followed and reinforced by a series of more issue-focused, specific, and incisive conventions that were also ratified by the Kingdom of Lesotho.

One of them is the Convention Against Torture (CAT), which prohibits all forms of torture against human persons, irrespective of age, sex, ethnicity, race, political and religious affiliation or social background. Torture falls in a group of human rights violations that are classified by the UN as crimes against humanity. Although it is a common law or crime against the state and that the police can arrest and bring to court, for trial, anyone found committing the crime, torture remains one of the most frequently reported human rights violations in Lesotho — wherein state agencies such as the police, army, and prison officers have reportedly been responsible for the majority of the violations, yet often not called to account. The Transformation Resource Centre (TRC), a leading anti-torture Non-governmental Organisation (NGO) and campaigner against crimes against humanity told the researcher that, in their current records, there are 15 murders and tortures allegedly perpetrated by the army and police between 2015 and 2017.

Torture is committed at and within myriad levels of the sectors of society such as family, village, town, school, prison, church, workplace, and within military, political, and other societal organisations, and in different ways — mental, psychological, and physical. It can, as in Lesotho and elsewhere, occur as a deliberate state-driven or sanctioned phenomenon. In Lesotho, the victims of state-driven or sanctioned torture have been invariably perceived critics and opponents of the incumbents of state power. In the main, opposition politicians with potential to win elections, some of the news media personnel working for local private radio broadcast stations and newspapers, newspaper columnists, reporters, editors, satirical commentators, and persons on social media — mainly whistle-blowers directing attention to the conduct of the regime and state institutions. The Lesotho Mounted Police Service (LMPS), are sometimes the perpetrators, as noted above, and the courts of law have seemed overwhelmed and being unable to cope with the number and frequency in occurrence or prevalence of these types of human rights violations.

Basotho women have historically and traditionally been regarded as minors, having neither the decision-making power nor right to inherit family property and to own land. Therefore, the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDF), which Lesotho has ratified,

comes as the antithesis of such tradition. The convention stresses, among others, that women should have the same rights to family benefits as men, and equality before the law, a legal capacity identical to that of men — same rights to freely choose a spouse, same rights to enter into marriage, same rights during marriage and dissolution, same rights to acquire and own property, etc. Lesotho has domesticated and given legal force to aspects of the Protocol on the African Charter on the Rights of Women and made the majority of such rights justiciable.

The Constitution of Lesotho 1993 and other national laws outlaw and prohibit discrimination against women. For example, discrimination in employment is countered by the Lesotho Labour Code and Public Service Act, both stressing equal pay and benefits for men and women doing similar jobs. The Lesotho Land Act of 2010, on the other hand, extends to women the right to inherit their deceased husbands' and parents' property and to access or own land. These are income generating assets, which women can use to make money, thus, providing them the opportunity to enhance the quality of their lives. That is, ensuring that they live decent and dignified lives as advocated by the convention. The Lesotho Land Act of 2010 addresses the shortcomings of its predecessor, the Legal Capacity of Married Persons Act of 2003, which was limited in both scope and application in that it focused on married women's rights only within their families.

However, the country has retained the Customary Law and Chieftainship Act together with the cultures and taboos that justify and perpetuate practices that discriminate against women. For instance, the Kingdom's Customary Laws (*or Laws of Lesotho*) and the Chieftainship Act that was enacted two years after independence, reserve the positions of King and Chief for male children. Basotho's cultural taboos, such as "no night travels and night work or staying outside homes at night" for women mourning their husbands and children are still legal and they are widely practiced. Unfortunately, various Lesotho governments have not seemed intent on interfering with these practices. Moreover, historically and structurally entrenched discrimination against women has lingered on. For example, gender-based division of labour within families, with inordinately increased working hours for women, and the burden on them performing multiple tasks in their families is a feature of Basotho women's lives. These multiple tasks include, but not limited to, bearing and raising children, washing and cleaning, gathering wood fuel, cooking, and weeding.

Moreover, domestic violence, where targets and victims are women, is still rife, and has seemingly continues unabated in Lesotho — partly justified by aspects of the *Bible* and the country's customary laws (called the Laws of Lerotholi), which assign minority status to a woman. Although this is a crime under the country's common law, not many victims have been bold to report it, probably believing that reporting it is against the customary and Bible teachings. But I have noted elsewhere that "The Laws of Lerotholi have benign aspects... protecting women against acts that dehumanise them... rape and other similar assaults on women are punishable under these laws" (Makoa, 1997: 7). In fact, where criminal conduct is involved in the enjoyment of culture, the common law, which is enforced by the courts of law, prevails and perpetrators are charged and tried by a civil court. As indicated earlier, however, law enforcement agencies have not seemed effective in reducing the rate of this crime.

But by and large, it could well be that wholly outlawing cultural practices and/or taboos, and perhaps the customary laws themselves, might also be in conflict with one of the goals of the International Convention on Economic, Social, and Cultural Rights (IESCRs). This is because the IESCRs treat development and enjoyment of culture as a human right that has to be promoted and protected like the rest, and Lesotho's apparently ambivalent stance with regard to fully domesticating the convention could be due to this seeming dilemma. Yet hesitance in giving the ESCRs force of law might be one way of perpetuating deprivation, suffering, and misery for the would-be beneficiaries if the convention was domesticated in that these "are the rights that embody the immediate and pressing survival needs of the people" (African Development Bank - ADB & African Development Fund- ADF, 2006: 30).

The UN Convention on the Rights of Disabled Persons (CRDP) is being complied with in Lesotho, although there are still gaps in the relevant policy that need to be bridged. Government efforts at meeting the demands of this convention are commendable, however. Furthermore, the Lesotho government gives priority to the welfare of disabled persons, in general, when it comes to employment and training in higher learning institutions. The policy is that both public and private sectors should provide, wherever it is possible, suitable, decent, and permanent jobs for disabled persons with varying disabilities. A notable experience of the government with disabled persons as useful members of society is the appointment in the last decade of a blind person to Senator in the Upper House of Parliament of Lesotho, and subsequently to cabinet minister.

However, there has been no significant effort, to date, on the part of government to extend training facilities for disabled people in all the rural schools and training centres in the country. The reason behind this is not apparent, but the excuse would possibly be the shortage of funds. There is no law compelling the government and private sector to create employment for disabled persons with varying qualifications and skills, even for those graduating from the institutions of higher learning — universities, polytechnics and professional training centres. More importantly, only a few school buildings are physically accessible for disabled people in Lesotho, whose mobility is dependent on their having wheelchairs. In fact, schools with adequate facilities for training disabled persons are all located in Maseru, the country's capital. Although they are supported by the government, the schools are owned by the Roman Catholic and Anglican churches. Moreover, the disabled are responsible for providing their own mobility and hearing aids that are necessary for them to fully enjoy their human rights, and white walking sticks, travel costs, and rent for those without their own houses.

This picture suggests that only a small fraction of the disabled persons fully benefit from the domestication of the convention. It has been, however, that “universal education cannot be implemented effectively if children with disabilities cannot access school buildings” (South African Institute of International Affairs – SAIIA, 2011: 7). Access to education by all of Lesotho's disabled persons has indeed been hampered by the lack of appropriate learning aids and infrastructure, notwithstanding the presence of laws that protect them.

Lesotho has free compulsory primary education, ostensibly to enable the government to meet the demands of the ESCRs and UN Conventions on the Rights of the Child (1989). However, the government does not provide budgetary support for church-owned primary schools, which is necessary for the maintenance of teaching facilities, breakdown and repair of damaged physical infrastructure and equipment, and supply of water. In many of the country's primary schools, the needed basic infrastructure is either lacking or in a poor condition; thus, not conducive for learning. The problem is more acute in primary schools that are located in remote rural mountainous areas and this is no doubt an impediment to a child's enjoyment of the right to be educated.

Over 90% of Lesotho's primary schools belong to churches and private owners. This category of schools lost the right to demand school fees from the children, thereby the capacity to maintain school buildings and other infrastructure in

good condition when the government introduced free compulsory primary education. School fees helped create a pool of funds which church-owned schools could use to repair damaged buildings, broken equipment, and infrastructure such as water supply pipes and toilets.

That the Free Compulsory Primary Education Act does not impose any obligation on the government to maintain the existing school buildings and infrastructure and provide facilities for disabled pupils in all the schools in the country is a threat to that group of children's right to education. The policy only led to partial domestication of the convention, often justified by appeal to the hyperbolic "subject to economic capacity" argument which is no more than an alibi for failure. The alibi makes it difficult, if not impossible, for the courts of law to decide against the government in the event of litigation. In fact, it points to the challenges and hurdles that have to be overcome in implementing the principles and prescriptions set out in the international conventions and the process of claiming human rights as a whole.

The judgment in the Constitutional Case No. 5/2016, wherein Lesotho's two NGOs — the DPE and TRC — challenged in court their having been denied participation in the formulation and debating the then Human Rights Commission Bill pursuant to Sections 20 (Right of citizens to participate in government) of The Constitution of Lesotho 1993, is instructive. It shows the difficulty of pursuing certain human rights as listed in The Constitution of Lesotho 1993 through the courts of law. Sub-section 1 of that section says (p. 35) that "every citizen of Lesotho shall enjoy the right: to take part in the conduct of public affairs, directly or through freely chosen representatives."

The Lesotho Constitutional Court ruled that: "right to participate in public affairs does not extend to thus participating — as of right in parliamentary proceedings, debates or portfolio committee deliberations" (Peete, Justice, et al., 2017: 23). The following instruments have also been ratified or signed and domesticated by Lesotho: the International Convention on Civil and Political Rights (ICCPR), African Charter on Human and People's Rights, 1992, African Charter on the Rights and Welfare of the Child, 1999, and the Protocol on the African Charter on the Rights of Women, 2004.

Major aspects of these instruments have been largely domesticated as per the Bill of Rights appearing as Chapter II of The Constitution of Lesotho 1993 and other laws, even though there are still some gaps that make it difficult for the full enjoyment of the rights by those who are supposed to be beneficiaries. Yet Lesotho last reported its compliance with the international instruments

to the UN in 2006, and it has not done so with regard to the OAU/AU's instruments since 1998. The non-reporting or delay in reporting is likely to continue because these two international organisations lack coercive powers that they could use in the event that persuasion fails.

The establishment of the Independent Electoral Commission (IEC), soon after the country returned to constitutional rule, is one of the measures taken to ease the enjoyment of human rights listed in the ICCPR. The IEC runs elections and manages the electoral process in an inclusive way that enables and eases participation by all stakeholders, namely political parties. It works in close cooperation with all the political parties in its register during elections and when it has to deal with any other matters with implications for elections and the electoral law. The IEC provides registered political parties with some money for electoral campaigning, but the amounts dished out are determined on the basis of the size of the parties that qualify for the grant (Makoa, 2010: 22-23). To this extent, therefore, the IEC is instrumental in enabling and facilitating enjoyment of human and people's rights as per the demands of the ICCPR. But the Lesotho IEC depends entirely on the government for budgetary support. So, its autonomy and degree of freedom are circumscribed and limited by this type of relationship. The Local Government Elections (Amendment) Act No. 5, which came into effect in 2016, has further whittled down the autonomy and freedom of the IEC. Amending the 1998 Local Government Act gives the power to declare election dates for local government elections, hitherto the prerogative of the IEC, to the Prime Minister, who is a politician and leader of a political party that has interest in the local government elections.

Lesotho has appeared to condone or tolerate serious human rights violations, and has been accused of being complicit in such violations. Recently, it was criticised, among others, for failing to institute criminal proceedings against the LDF members, who beat and killed a woman in a village in the Qacha's Nek district (Development for Peace Education – DPE, 2016: 10). The government dismissed the accusation as opposition propaganda designed to tarnish the image of the LDF. Another case involves police constable Mokalekale Khetheng's abduction and murder by his Lesotho Mounted Police Service (LMPS) colleagues (*Lesotho Times*, August 3-9, 2017: 2). The Khetheng case, which was similarly dismissed by the government, is being investigated by the present Thabane-led government. In fact, Lesotho's security agencies are known to have been responsible, to date, for a big chunk of reported cross human rights violations in the country, with governments being reluctant to bring the perpetrators to justice.

The OAU created, as a mechanism for policing and enforcing compliance with its Charter, conventions and declarations on Human and People's Rights, namely the African Commission on Human and People's Rights. But at the outset, the commission faced formidable challenges and problems that include inadequate resources — mainly financial and manpower. The commission also has not had enough political support from the OAU, now AU, in the form of increased authority and power to enforce its decisions. As a result, "its record on enforcement is poor." One analyst has argued that this has enhanced the importance of the international community operating through civil society organisations (CSOs) and/or NGOs in policing human rights promotion and protection in Africa (Joiner, 2006: 2021), Lesotho included. However, CSOs'/ NGOs' only weapon is political pressure that they can muster and exert on governments — public demonstrations, protest marches, lobbying member states or the AU itself, etc. Yet this strategy is not always adequate to persuade governments to react positively and adhere to the international standards or complying with them.

The police permit is a condition for staging public demonstrations, etc., in Lesotho. However, the police always impose restrictions on intended public demonstrations and protest marches. The police can even foil such demonstrations or marches by withholding the required permits. In sum, CSOs and NGOs lack the power that is crucial to securing states' and violators' compliance with the international instruments and standards.

Lesotho also established, under Section 134 (1) of The Constitution of Lesotho 1993, the office of the Ombudsman. The first Ombudsman assumed duty on 18 October 1993. However, the Act of Parliament detailing the duties, functions, authority and powers, and scope of the operations of the Ombudsman was only enacted and effected in 1996 as per the Ombudsman Act No. 9 of 1996. The Ombudsman investigates reports of human rights violations by administrative practices of the government or its agencies, and can also inspect detention centres and take action that remedies the problems, if any. However, the powers of the Lesotho Ombudsmen are limited. As the former Lesotho Prime Minister Mosisili said (2000: 13): "the Ombudsman does have some restrictions, he does not enjoy unlimited powers... there is a list of those authorities which may not be investigated, not even by the Ombudsman... King, Parliament, Cabinet, courts of law, statutory tribunals, and the Public Service Commission." ESCRs are also clearly beyond the competence of the Ombudsman because these appear in the Constitution as principles of government, which for the time being only guide governance.

The Lesotho Ombudsman has indeed proven ineffective with regard to incidences of human rights violations involving the state and its agencies. It has no power to probe and take action against the army and police. As I have noted elsewhere in this report, they are the ones responsible for the majority of human rights violations in the country. In fact, only a few victims, if there are still any, report violations of their human rights to the Ombudsman, who in most cases cannot help anyway. Not only does the Ombudsman's office have no real authority and power, but it is also poorly resourced that is unable to exercise the limited authority and powers that it has.

The Lesotho Ombudsman cannot advise or influence the government in relation to ratification and domestication of international conventions with implications or consequences for the job, maybe because this is outside the scope of his/her authority, duty, and power. This is ironic, though, given that the Ombudsman's business directly emanates from and involves handling the international conventions, treaties, and declarations ratified and/or signed by Lesotho. This shortcoming can be cured through an amendment of the 1996 Act No. 9, in order to increase the authority and power needed for the Ombudsman to address human rights violations. The constitutional reforms that the country is set to institute pursuant to SADC's recommendations will hopefully encapsulate reforming and increasing the powers of the institution of the Ombudsman with regard to the promotion and protection of human rights.

6. CITIZENS AND THE INTERNATIONAL AND REGIONAL INSTRUMENTS

Few Lesotho citizens and CSOs know about or are aware of the international treaties, conventions, declarations, and protocols, or just the international instruments — ratified or signed by the country — and the benefits that these instruments entail for them and their country. Demand and pressure for domestication of ratified international instruments have, therefore, been from the international community, CSOs, and the national elites; yet each of them have not always acted as a united force, but as factions that are divided politically.

The elite usually articulate such demands through “phone-in” conversations on radio broadcast programmes or by giving newspaper interviews and their similarly elite societal associations, which might have felt adversely affected by non-domestication of such instruments. However, not even the political parties, which are by definition the people's representatives and contestants of governmental power, have displayed sufficient knowledge and awareness

about these international instruments and the obligations that they have imposed on Lesotho.

Most Lesotho political parties and the masses supporting them have, in fact, seemed ignorant of and/or appear to be uninformed about the international organisations responsible for formulating and promulgating such instruments; thus, the attending to the principles and standards. Even those with some knowledge and awareness of the international conventions and ratifications by Lesotho have not seemed to care about their implications for governance, human rights, and the conduct of rulers.

A team of experts appointed by the ADB-ADF to evaluate Lesotho and configure its profile (2006: 5) have proffered an explanation for the above state of affairs. Among Basotho, supposedly the stakeholders, they have “low social consciousness about the government’s use of its power” and the absence of (my emphasis) “a formidable civic culture which is important in any democracy,” and the lack of strong civic organisations that are able to effectively participate in decision-making. There has not been in Lesotho, the ADB-ADF argues, “proactive promotion of people’s participation in decision-making and resource allocation, while protecting them from arbitrary action by the government and other forces” (ADB-ADF Ibid, p. 21).

The Constitution of Lesotho 1993 is, on the other hand, silent on international treaties, conventions, declarations, and protocols. It is equally mum with regard to the power and role of parliament in policing the government on ratification and/or signing of international conventions and treaties, and reporting on the progress concerning them. This has been left to the laws that might be made under the Constitution, which are lacking in some situations.

The above reflects the power of the executive vis-a-vis parliament and the civil society. The latter are relegated and even resigned to being junior partners in the political system. Yet this state of affairs is largely owed to the nature of the national Constitution that has created a powerful government with no obligation to report to the citizens about its international commitments and obligations and their implications for Basotho. The country’s Constitution does not require the government to report to citizens anything concerning these international instruments and their status in terms of domestication. While they have shown interest in what the government is doing and its obligations under the international treaties and conventions, on their part, the CSOs and NGOs have no formal established working relationship with the government; therefore, they have no “capacity to monitor the government’s transparency

and accountability...” (ADB-ADF Ibid, p. 26). The various governments in Lesotho have, so far, seemed satisfied with this informal relationship with the organisations, yet it is a stance that runs counter to Article 27 (2) of the AU Charter (2007: 5), which says that state parties shall commit themselves to, among others: “fostering popular participation and partnership with civil society organisations.”

7. THE CONSTITUTION OF LESOTHO 1993 AND CIVIL SOCIETY ORGANISATIONS (CSOs)

As stated earlier, The Constitution of Lesotho 1993 is as a wholly acceptable to both the Basotho nation and international community. Yet it has serious shortcomings that have been highlighted in the foregoing sub-section. It empowers the rulers and not the people, such that the latter and their organisations have been barely able to assert their claims and rights or influence government decisions. However, it is sufficiently liberal in terms of not impeding development and formation or growth of independent organisations, but instead, allowing them the freedom to operate in the country, rally support for their programmes, manage their own affairs, receive foreign aid, and forge links, networks, and partnerships with international organisations.

The Lesotho CSOs and NGOs operate or conduct their business in this liberal socio-political and legal setting, as offered by The Constitution of Lesotho 1993. Yet this does not give power or guarantee participation of the CSOs and NGOs in matters pertaining to governance or human rights promotion and protection. Rather, it only creates a space or climate in which various groups and individuals can interact, engage, and bargain with each other, and if need be, with the government, legislature, and parastatal organisations, when necessary. Such free space offers opportunity for CSOs and NGOs to bargain or negotiate their way into the constitutional reforms process that is set to kick-start in Lesotho.

The CSOs and NGOs have, nevertheless, been able to interact, engage, and indeed negotiate with the government. At times they have even sought to influence national policy, albeit without success, on every matter that they have brought to the attention of the government. They negotiated with the Speaker of Parliament, but without success, over the controversial Human Rights Commission Bill, which has since become the Human Rights Commission Act 2016. Also, the Lesotho Highlands Development Authority’s (LHDA’s) construction activities and some diamond mining ventures, through the government, led to, for example, the displacement of and resettlement

of communities around the areas intended for construction and mining, respectively. A prominent Lesotho NGO, the TRC, has negotiated with the LHDA over compensation of people who were displaced from the Lesotho Highlands Water Project (LHWP) dam area and resettled elsewhere in the country. The TRC, DPE, and LCN mostly do advocacy work, but have constantly addressed and exposed the environmental problems caused by the LHDA's activities, mining operations in their present or former homesteads, and government policies by engaging with the government and diamond-mine owners concerning the problems and hazards of their activities.

The CSOs and NGOs have thus been able to present themselves and actually served as the voice of the powerless by being the monitors of the government (governance process) and big companies' actions, which include the rate of human rights abuses in the country. These monitoring acts constitute the CSOs and NGOs cobbling links with the international community to alert them of the events that transpire in Lesotho that negatively impact on people's lives. At times, they collaborate with and solicit the needed support from the international community to pressurise the government to adopt or abandon particular policies. But this often brews confrontation with the government and ruling political parties. As a result, this has branded the CSOs and NGOs as fronts of the opposition. So, the relations between these organisations and the government, on one hand, and the ruling political parties, on the other hand, have not been free of tension. The CSOs and NGOs have, apart from observing elections, conducted voter education and trainings countrywide during the elections, but without seeking the government's permission. The government has grudgingly acknowledged their stakeholder status and accepts them as legitimate actors in the country's political system, as long as their actions and activities do not encroach into the sphere of the government's authority.

Indeed, governments in Lesotho have not, as a matter of official policy, shunned CSOs and NGOs. In fact, circumstances have forced both forces to work together when situations and episodes require them to do so. The Christian Council of Lesotho (CCL) has been able to assert itself as a key player in the public affairs of Lesotho, apparently because it is an organisation of churches that has significantly contributed to the development of the country since the colonial era. Owning most of the schools in the country, the churches have worked in partnership with the government concerning education and training and contributing to formulation of related policies. This has earned the CCL special recognition as an arm and/or organ of such partner churches. The CCL enables Lesotho's "big churches" that have formed it to address their common problems as a united force and to seek solutions that serve the

interests of its constituents while representing them and negotiating on their behalf. In the process, as the only national NGO recognised for this purpose, they conciliate and mediate serious political conflicts in Lesotho.

8. CONSTITUTIONAL REFORMS AGENDA

Although it is not, as yet, clear exactly when the reforms will start, Lesotho is set to embark on constitutional, security, and public sectors reforms as per the recommendations of several British Commonwealth of Nations Secretariats and SADC envoys who visited Lesotho after the country had experienced varying episodes threatening its peace and stability in the last five years. One of such episodes paralysed and eventually paved way for the collapse of the first-ever coalition government known in the country. This had been forged by three political parties — the All Basotho Convention (ABC), Lesotho Congress for Democracy (LCD), and Basotho National Party (BNP) — after the 2012 general elections that had produced a hung parliament.

The first of a series of such episodes was the bomb attack, in January 2014, allegedly orchestrated by members of the Lesotho Defence Force (LDF) on two houses in Moshoeshoe II, in Maseru, of which one is owned by then friend (now the wife) of Prime Minister Thomas Motsoahae Thabane. The deadlier of the attacks was the armed invasion by the LDF, on the night of 30 August 2014, of the three main police stations in Maseru, residence of the late former LDF Commander, Lt. General Mahao, and the State House or official residential house of the then Prime Minister. This incident left one police inspector dead after being shot by the attackers, which forced the then prime minister and one senior minister in the coalition government to flee to neighbouring South Africa. The Phumaphi Commission's recommendations have since become compulsory SADC decisions that Lesotho, working together with all the stakeholders, has to fully implement.

Opposition-targeted attacks and intimidation by suspected LDF members continued buffeting the country until after the 2015 elections that saw the return to power of Pakalitha Mosisili via a seven-party coalition government, which appeared to tolerate a wave of intimidation and violence by the LDF. Among notable cases of post-2015 election violence, the victims were the former and late LDF Commander, Lt General Mahao, who was brutally murdered by a section of the LDF on the pretext that he was resisting arrest. Also, the murder of a prominent Maseru businessman, who was a staunch member of the ABC and a critic of Mosisili's seven-party coalition government.

The envisaged reforms process, which is expected to be inclusive of all stakeholders, such as the CSOs, is to take place under the guidance and tutelage of the SADC. The SADC 2014 Observer Mission to Lesotho (SOMILES), headed by then South Africa vice president, Cyril Ramaphosa, recommended in its report — adopted and endorsed by the SADC and its several Double Troika Summits — that Lesotho should undertake security, constitutional, judicial, parliamentary, and public service reforms as remedies for the recurrent political conflict and instability in the country. Some of the recommendations were repeated in the Judge Phumaphi-headed commission of inquiry, which was set up by then Lesotho prime minister Mosisili, to investigate the circumstances that led to the death of Lt General Mahao. The latter had been murdered by a group of soldiers who claimed that he was resting arrest.

Prior to Lt General Mahao's murder, there had been in the country a wave of government-sanctioned arrests, detentions, and torture of members of the LDF who were suspected of plotting a mutiny. The contents of the Phumaphi Commission Report are an added pressure on Lesotho to reform the institutions of government, as mentioned in the foregoing. The SADC is set to oversee and guide the process (www.allafrica.com/views/group/main/main/id/00044408.html). Thus, this reforms project is, in a sense, no more than a compliance with the Phumaphi Commission Report recommendations that are geared mainly at solving security problems. Hence, it should not be a surprise if the project is not be comprehensive enough to address all the gaps and shortcomings of The Constitution of Lesotho 1993, especially sections pertaining to the ESCRs, for these were not the triggers of the problems that the commission had been set up to investigate anyway. That said, just before losing the vote-of-no-confidence motion in parliament, thereby the mandate to govern, the Mosisili-led coalition government had organised a workshop endorsed by the SADC for top civil servants and security sector heads. Nevertheless, no invitations were extended to the CSOs and opposition political parties, whose leaders were in exile in neighbouring South Africa. This sent a clear signal that the government was not ready to have an inclusive reforms process. What would have been its constitutional, security, and public sector reforms roadmap, as demanded by the SADC, was aborted by the coalition's defeat in the June 2017 general elections and consequent loss of state power. But it could well be that, had this not happened, the reforms process was set to be an exclusively government-driven project that would involve appointees drawn exclusively from the security forces, civil service, and functionaries of the political parties in the coalition government (<https://www.sadc.int/news/technical-workshop>).

Without the participation of all stakeholders, the much anticipated reforms will not solve the problems that they are meant to solve, according to SADC and the Commonwealth of Nations. But this implies that all such stakeholders would be willing to participate in these reforms process; yet there is certainly no guarantee for such an eventuality in a divided society like Lesotho's. The opposition is already issuing veiled threats of its non-participation. Also important is that while it is the only rational approach, the inclusivity that is encouraged by the SADC for a polarised nation like Lesotho, it could possibly lead to prolonged inter-group/party bargaining and battles that might delay the reforms process. Alone, however, the present government will not be able to ensure cooperation and harmony among stakeholders, most of which are political parties numbering approximately 30 plus.

Notwithstanding this possibility, the reforms to Lesotho's system of administration are nevertheless needed to particularly address the shortcomings and weaknesses that have been identified throughout this report. Lesotho needs a Constitution that not only facilitates a partnership between the citizens and the government, but also makes it mandatory for the government to be transparent in whatever it does — including its international commitments and obligations to promoting and protecting human rights, so as to formally forge a partnership with the people's organisations (CSOs, NGOs, and others) in its pursuit of developmental and social goals, while also enhancing the capacity of the parliament to oversee and hold the government to account.

More importantly, the reforms process must eventually lead to enforceability of the Bill of Rights and offer increased powers, authority, and autonomy to both the Ombudsman and IEC, whose responsibilities include ensuring that people enjoy their human rights. But it is unlikely that the reforms will begin soon, given the unresolved conflicts that have buffeted the country in the last five years. SADC has seemingly shied away from addressing these conflicts — possibly because governments are also protagonists and instigators of conflicts — leaving these conflicts to Basotho to resolve in accordance with the existing legal and normative frameworks. But these have not helped because they are not geared for conflict resolution and peace-making. The envisaged reforms should deliver, as one of their products, a constitution with in-built conflict resolution and peace-making mechanisms.

9. CONCLUSIONS AND RECOMMENDATIONS

This section brings together and sums up the conclusions, observations, and recommendations made in all the sections of this report. The Constitution of Lesotho 1993 does not ensure separation of powers — one of the hallmarks of democratic rule. Instead, power is skewed in favour of the executive. This shortcoming can be corrected by severing the government from parliament, such that the executive or government ministers are not only appointed because they are parliamentarians. The latter should not be ministers and assistant ministers. Also, the Prime Minister must be elected separately from parliamentarians. With this arrangement, parliament will cease to be subordinate to the executive; thus, enabling it to exercise effective oversight over the activities of the latter. The problem could also be tackled by clearly defining or delimiting the frontiers of the government's sphere of authority and power over the rights of citizens when it comes to governing, decision-making activities, and participation.

The ESCRs, which are listed as principles of government in the Constitution, must be made legally claimable for people whose lives would be in serious danger if they are denied these human rights. Furthermore, granting the ESCRs to such people must be mandatory for the government. Participation in decision-making and governance, as contemplated by Section 20, must be guaranteed by and be enforceable as per a specific clause of the section of the Constitution, and the government must take responsibility for enforcement. Consultation and partnership with CSOs and NGOs is important as a strategy for peace making, thus achieving political stability that is crucial to development. Institutions, whose work involves in one way or another, dealing with human rights must be strengthened via sufficient budgetary support, adequate infrastructure, staff, and equipment, and increased power, authority, and autonomy. Lesotho's system of rule does not punish rulers who fail to fulfil their mandate. An impeachment section needs to be inserted in the Constitution to enable the removal, by impeachment, of rulers who fail to fulfil their mandates that encapsulate ensuring a decent and dignified life for the population — via job creation, eradication of poverty, deprivation, and squalor. For example, Lesotho scored very low on “the Human Development Index in 2006,” — down from 127 in 1990 to 149 in 2006. It further dropped from the latter figure to 160 in 2015, out of 188 countries (www.hdr.undp.org/sites/all/themes/hdr_theme/country-notes/LSO.pdf).

The study shows that public institutions do exist that could effectively police violations of human rights, in general, and ensure domestication of international standards, but that the appropriate institutions are not empowered and/or sufficiently equipped to perform their tasks. These are the Parliament, Ombudsman, and Chieftainship. The three institutions are not adequately equipped to promote and protect human rights, though some of the human rights violations are in the remit of these institutions. For example, parliament has no role in the decisions made concerning the ratification of and ensuring the government is in compliance with the international instruments. Likewise, the other two institutions are not adequately empowered to deal with the challenges of their work. The power and role of these institutions must, therefore, be beefed up if they are to protect human rights, in particular, by amending the laws currently undergirding them. The controversial, yet important and much needed, Human Rights Commission Act must be reopened for parliamentary debate into which CSOs, NGOs, and other stakeholders can provide inputs for the Act, then it can be put into effect soon after amending it.

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About TRC

The Transformation Resource Centre (TRC) is an ecumenical organisation dedicated to the promotion of justice, peace, good governance, and participatory development. Established in 1979, the TRC's main focus is to empower communities and citizens to take the lead in articulating their positions and advocating for development that aims to better their lives.

The TRC works for and with communities to influence government policy decisions through a number of activities that

- I. Contribute to transforming the orientation, understanding, and management of public-interest issues;
- II. Research and document national (primarily) and related regional, continental, and international developments in thematic areas of its work;
- III. Analyse policies, current trends, and possible directions; and advise policymakers and other identified stakeholders;
- IV. Educate and provide new information and perspectives;
- V. Train and build skills base to be used for developmental and transformational purposes;
- VI. Develop, create or contribute to new knowledge and understanding through discussion and debate;
- VII. Provide services that help and enable clients solve their own problems.

Democracy and Human Rights

The focus of the programme is to strengthen public understanding, appreciation and participation in democracy; and supporting democratic institutions. The TRC has reached thousands of Basotho in the rural areas through civic education; and has been vocal in lobbying for the establishment of a Human Rights Commission. Recently, the programme widened its reach with the introduction of peace building.

Social Justice

The primary focus of the programme is to advocate for justice on water and environmental issues that affect communities. The TRC believes that economic activities are crucial for realising development while also including the interests and welfare of the public. The TRC has been fighting for the compensation and economic rights of individuals and communities affected by the Lesotho Highlands Water Project, and those affected by extractive industries.

Resource Centre and Media

This is a repository of knowledge accessed and used by the TRC team, students, and policymakers to broaden their perspectives on different issues. The Library has proved itself as the key source of important information on social, political, economic, and cultural issues in Lesotho. The programme also communicates the TRC's activities to the world.

The TRC carries analyses and commentaries on important national issues, and sets the agenda through public forums, regular journals, *Work for Justice*, and *Litaba tsa Lesotho*, as well as occasional papers and research reports.

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