



NATIONAL DIALOGUE FORUM ON:

“STRENGTHENING INSTITUTIONS OF DEMOCRACY”

Hosted by

TRANSFORMATION RESOURCE CENTRE

At

‘MANTHABISENG CONVENTION CENTRE

7 – 8 DECEMBER, 2017

MASERU

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1. THE OPENING SESSION

1.1 Prayer

The proceedings opened a prayer led by Mr Emmanuel Makubakube of the Christian Council of Lesotho.



1.2 Welcome Address & Laying the Purpose of the Forum




The participants were welcomed by the Deputy Chairman on the Transformation Resource Centre (TRC), 'M'e Deliwe Khambule who also laid down the purpose of the forum as being to place the non-state sectors on a footing to participate in the anticipated national reforms, in respect of strengthening the institutions created

by the Constitution and subordinate laws for purposes of exercising oversight over the administration of national affairs. She expressed hope that the national reforms project, and the present preparatory exercise, would be handled with humility, commitment, integrity, and

honour they deserved. She said the role players and observers of this momentous conjuncture in the national history were privileged to live through it; as it presented golden opportunities to tailor a future that was better than the one bequeathed to the current generations. This privilege would better be seized and exploited to build a lasting legacy of civilised co-existence, than wasted on finger-pointing and trading of accusations about who it was that brought us to this point. The forum was designed to bring together under one roof the Directorate on Corruption of Economic Offences (DCEO), the Office of Ombudsman, the Police Complaints Authority (PCA), and the Judiciary so they could speak to representatives of non-governmental organisations, civil society, opposition and government about how they served the public, the challenges and joys of their everyday work, ways in which the public had access to their services for improvement of their lives, and how these institutions were preparing to contribute to the reforms and use the reforms opportunity to improve themselves and their efficiency and effectiveness.

1.3 Solidarity Message

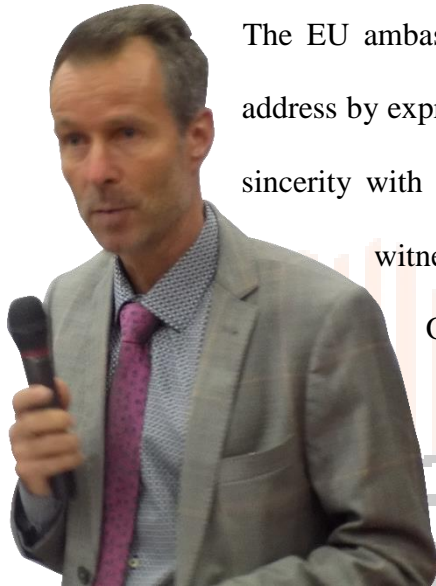
The General Secretary of the Christian Council of Lesotho (CCL) Ntate Emmanuel Makubakube in his remarks said it was common to view democracy as resting on the supporting institutions that are created by supreme and enabling laws of a country, but the rulers who were designated custodians of these institutions everywhere took pleasure in the weakness of such institutions. This was because such weaknesses allowed and enabled those in power to appropriate national resources for private benefit and avoid accountability for their excesses. This in turn led to cycles of instability, witnessed most recently in Lesotho in the governments that fail to run their full term of office. The National Vision 2010, the National Strategic Development Plan (NSDP) and supporting documents speak explicitly of the imperative of strong institutions and visionary leadership for the realisation of their stated objectives. He observed that recently the minister of justice stated that there were too few



judges on the bench; and when the administration of justice was weak, people lost faith in the system and resorted to their own means for redress in conflict situations. On the other hand, he said, the DCEO was starved of resources, unskilled for the emerging challenges of the day, and stationed solely in the capital – whereas the perennially skewed distribution of resourced and opportunities, and their appropriation by devious means, pitted citizens in vicious cycles of bitterness. It was therefore no wonder the corruption index of the country had worsened in comparison to previous years, while the fruits of democracy continued to be vitiated, poverty escalated, and instability spiralled. Whereas Agenda 2063 says by 2030 Africa will be prosperous and peaceful, that there will not be a single bullet on the continent, our record was worsening. He regretted that Parliament was very weak in its grasp of the NSDP, it didn't hold the Executive accountable, it was being helplessly dragged by the latter every which direction it wished, whereas it should ideally be the eyes and ears of the nation. Regarding the security sector, he said whereas the fundamental role of a government was to protect its nation, through the security forces, the overlap of their mandates in law in the Lesotho led to squabbling and confrontation over mandates, compromising human security in the process. He concluded by calling on all present to stand up, and “to make our mark now. When these institutions are strengthened, we'll have the Lesotho we want”.

The session's director of proceedings, Ntate Tsikoane Peshoane, remarked that whereas Africa had about half of its population as young persons, the youth were left wondering at the tailoring of the frameworks and covenants like the Agenda 2063 by elderly persons who would in greater probability not be around when those dates came to pass; and that these dates were pencilled far from now whereas the youth needed the benefits of such commitments today.

1.4 Keynote Address



The EU ambassador His Excellency Ntate Christian Manahl began his address by expressing his admiration for the enthusiasm, commitment and sincerity with which the Basotho took to these dialogues, recalling his

witnessing the Lesotho Council of Non-Governmental Organisations (LCN) national dialogue on the lessons of the

June 3 snap elections and preparation for the forthcoming reforms, in comparison to his experience of similar exercises in other contexts. He proceeded to state that

democracy was not a monopoly of any one nation or culture, it was inbuilt to humanity across ages and places, and the best European models of democracy had borrowed substantially from Middle East history. Every case had its own virtues, and also its own tragedies to share as instruction of wisdom to the world. No single national constitution was more democratic than another; the constitutions of the US, the Islamic Republic of Iran, and the Kingdom of Thailand were all democratic in their own ways, and had their own blemishes too. As such the Basotho would be well advised to follow their own traditions in going about constitutional reforms, while also avoiding the trap of being caught in unquestioning worship of tradition despite its failure to march with the challenges of the moment. Without ignoring the uniqueness of each individual society, he suggested, the following were recognised as universal principles of democracy: (1) respect for basic human rights, including those of speech and association; (2) these association rights should also extend to labour rights, which have made great advances in firming democracy in countries like Brazil; (3) tolerance for diversity and protection of minority rights; (4) regular, free and fair elections on a universal



suffrage; (5) separation of powers and independence of institutions; (6) impartiality in public affairs.


Regarding the Lesotho process, he advised it would be wise to start with reform of institutions, and come to constitutional reforms as the last. The British did not have a written constitution but very strong values and traditions, which made them different and better off compared to many societies which a shining constitution but little respect for its content. The Ambassador added, “Yet a good constitution is an effective framework for peaceful resolutions of problems”. He advised that the process was best done inclusively and transparently. In that connection the EU was encouraged by the official reports that the Government was earnestly pursuing the three self-exiled parliamentary Opposition leaders to come back home on mutually acceptable terms and take part in the reforms; and said their reported demand for stay of the mooted litigation against them could be granted subject to their undertaking to allow the government to run its full term, contrary to their recently announced contemplation of a motion of no confidence. The cases against them, however, couldn’t be taken as cancelled on the strength of political compromise alone, thereby promoting a culture of impunity. He concluded by reiterating that the reforms process needed stability, inclusivity and transparency.

1.5 Message of Endorsement

His Excellency Ntate Niyonzima Salvator, the UNDP Resident Representative and UN Resident Coordinator told the audience that he had only a limited acquaintance with the history of Lesotho, but he had been told it was a



mixed picture of pain and joy, like any other society’s story: (1) the seven-year military rule of 1986-93 was followed by a smooth transition to civilian rule (2) the general elections of



1993 and 1998 were followed by post-elections protests of differing degrees of gravity; (3) the constitutional reforms of 2002 ushering in the Mixed Member Proportionality (MMP) electoral model increased the number of parties in Parliament and did away with rapid party splits and post-election frictions, but it also presented challenges for consensus-building in newly-cobbled coalition governments that broke before running their full tenure. Closely related to this reality, the ongoing arrests and arraignment of members of the Lesotho Defence Force (LDF), and the landing of the SADC Contingency Force in Maseru recently were also witness of the continuing shakiness of national security. Without the reforms, the national development agenda could only stagnate, and in that process the independence of oversight institutions should be jealously guarded. The reforms must therefore enjoy acceptance and ownership of the Basotho and national consensus on what should be changed and why it should be. The principal question from the outset and throughout this journey should be, “How can the Basotho be the drivers of this process? To that end, dialogues like this one must also be taken out to the districts.” In this connection, the UNDP had been supporting endeavours of inclusiveness and good governance through strengthening institutions including the DCEO, the Independent Electoral Commission (IEC), the Parliament, the Ombudsman, leading to improvement of electoral systems, and supporting a human rights infrastructure. There were still outstanding challenges in this partnership especially slow delivery of agreed outcomes, weak constitutional, policy, and institutional frameworks; the challenge of overlapping mandates, and limited financial resources; but the future could only be brilliant with the progress realised so far.

1.6 Official Opening

The Government Secretary Mr Moahloli Mphaka said he could only be brief, for short notice, and proceeded to proffer the government's commitment to the reforms



agenda, pointing out that the Coalition Government Agreement stated among others that government would “undertake constitutional, political, security and administrative under an independent and inclusive reform process”. Toward this end, he said, the government was already 99.5 percent to completion of a roadmap for the process; and the nation would soon be invited on board. Government was as yet undecided as to whether to refer the roadmap first to Parliament or to a multi-stakeholder dialogue forum upon its completion. The outline of the roadmap featured the originally identified five focus sectors of parliament, judiciary, public service, security forces, and the constitution; to which the government had in its wisdom since added economic reforms, as a bedrock of prosperity and eradication of instability. Once government had consummated the roadmap, the stakeholders would be updated accordingly, the Government Secretary assured the audience; further counselling that in a highly polarised society like Lesotho only change of mindsets and attitudes could achieve real change. At the end of the day the political level, being the government, would determine the technical level, that is the makeup of personnel and structures to service the delivery of reforms on daily basis.

The session's director of proceedings, Ntate Tsikoane Peshoane made an observation that it was doubtful that the public had been sufficiently mobilised and sensitised about the reform process, yet every other time when a public concern was raised, the answer was that the




reforms would address it; yet everyone was left in the dark as to when those reforms would commence.

Deliberations on the Session

Besides whether the template of constitutional reforms would be the 1966 independence text or the 1993 “redemocratisation” text, questions raised to the Government Secretary revolved around inclusiveness, whether groups like the blue collar and migrant miners would represent themselves directly in the process; and the place of the self-exiled main opposition leaders therein. The Government Secretary answered that government “wanted these reforms as early as yesterday. It is still pursuing the leaders outside the country, with the assistance of the SADC Oversight Committee and other role partners. The fate of the different groups, and the constitution, can only be determined by the reform process itself”.

2.0 Presentation by Representatives of Democracy Institutions


This section offers the presentations made by the representatives of the Directorate on Corruption and Economic Offences (DCEO), the Office of the Ombudsman, the Police Complaints Authority (PCA), and the Judiciary. The divergences in their career from formation to date aside, all the oversight institutions, besides the courts, registered five points of common fate, namely (1) they were all legislated into being between 1996 and 1999, a transition period in the post-1993 return to constitutional rule; (2) the majority came into being many years (4-5 years) after the passage of the laws creating them; (3) they all answered to a minister for reporting purposes, with the exception of Office of the Ombudsman; (4) they all boasted operation independence without any interference, with the exception of the PCA; and (5) they all had had resource and skills shortages, and didn’t have any representation outside the capital.



2.1 Directorate on Corruption and Economic Offences (DCEO)


The Director for Public Education and Corruption Prevention Ntate Litelu Ramokhoro, kicked off his talk by stating that the Directorate was in the week of commemorating the World Anti-Corruption Day marked as 9 December each year; for which there was going to be a cross-city anti-corruption walk in Maseru, with the theme of (i) “United Against Corruption for Development, Peace And Security” – where the Prime Minister was expected to give a speech of government commitment. This activity was preceded by a Corruption Awareness Symposium in the capital where the Acting Prime Minister among others pointed out, as was repeatedly said in this present forum, that unfortunately the government’s communication to the public about reforms had been very weak.

The Directorate, he said, felt blessed to be part of the reforms dialogue processes; to share its desires and make its own contribution to the process. After stating that the Directorate was established in 2003 under the Prevention of Corruption and Economic Offences Act of 1999; he explained that it was mandated to prevent and combat corruption and economic crimes; and since 2008 it was also supported by the Anti-Money Laundering and Proceeds of Crime Act, which expressly named the DCEO as the anti-money laundering authority. In going about its mandate, it used a classical three-pronged approach consisting in (i) public education on the evils of corruption; (ii) prevention through advising on the weaknesses of systems and operations that might be prone to corruption; and (iii) investigation of cases of alleged acts of corruption. The public education/awareness campaigns are geared towards educating the public against corruption and thereby enlisting and fostering public support in the fight against corruption. In prevention, the Directorate examines the practices and procedures of public (and lately also private) bodies with a view to strengthening their operational systems so as to reduce the opportunities for corruption, in terms of international

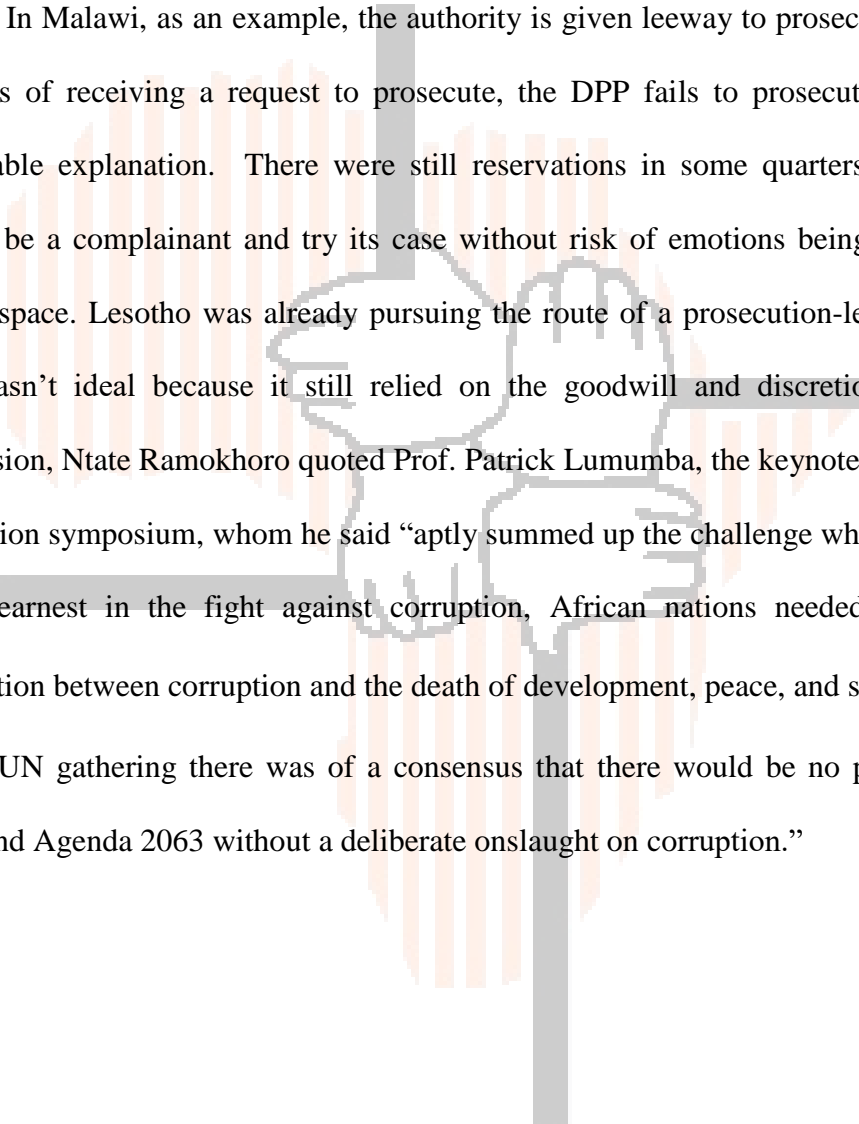


law and practice. The Directorate can receive and investigate reports or initiate investigations on its own. In its routine work, upon completing an investigation, it proceeds to prosecute via the office of the Director of Public Prosecutions (DPP); but it doesn't depend on the DPP staff to do so, since that office has seconded to DCEO some prosecutors who were then given specialised training. It simply obtains consent of DPP to carry out their work, and so far they hadn't failed to get cooperation of that office.

In relation to reforms, he said the public wished for the Directorate to be independent and be a creature of the Constitution, not a product of a subordinate law which can be repealed in a stroke by politicians and thereby do away with the body. As an example, in Zambia the president tried to overrule the anti-corruption body and was overcome by its entrenchment in the constitution. Bodies like this one are looked upon as “agents of their master”, being the government of the day; or as hunter's dogs of the previous rulers, used to destabilise the incumbent government and frustrate the discharge of its mandate or divert attention from those predecessor's own wrongs committed while in office. He noted that the Director General's appointment by the prime minister (whereas the two deputy directors are appointed by the Public Service Commission) without any process or intervening statutory bodies before such appointment is executed, and that he answered to the minister and not to Parliament, potentially compromised the integrity of the office. That office's security of tenure, over the five years' renewable term, was nevertheless formally assured since s/he could only be removed through a tribunal on suspicion of any deficiency like infirmity or wrongdoing. The minister and prime minister are unilateral decision makers with partisan political interests, however good-natured they might be. In an ideal situation, the director opined, the reporting lines should require that the Director General should report to Parliament through the relevant portfolio committee. Most countries where the anti-corruption authority didn't enjoy powers to prosecute, the operatives weren't happy with the

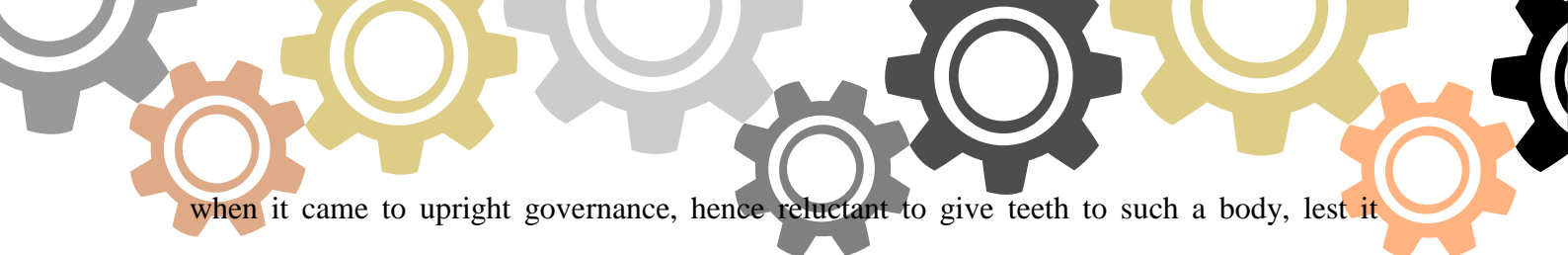


situation as the national prosecution branch might be susceptible to manipulation by the government. The presentation appraised the audience that current trends globally were towards direct prosecution by the anti-corruption authorities – where the cases of successful transition to this arrangement were all reporting positive results. This was where the DECO wished to be, and the government had already accepted to table a draft law to make this end a reality. In Malawi, as an example, the authority is given leeway to prosecute directly if, after 30 days of receiving a request to prosecute, the DPP fails to prosecute without giving a reasonable explanation. There were still reservations in some quarters that the authority cannot be a complainant and try its case without risk of emotions being imported into the public space. Lesotho was already pursuing the route of a prosecution-led investigation but that wasn't ideal because it still relied on the goodwill and discretion of the DPP. In conclusion, Ntate Ramokhoro quoted Prof. Patrick Lumumba, the keynote speaker at the anti-corruption symposium, whom he said “aptly summed up the challenge when he proposed that to be earnest in the fight against corruption, African nations needed to start seeing a correlation between corruption and the death of development, peace, and stability. Indeed at a recent UN gathering there was of a consensus that there would be no progress in Agenda 2030 and Agenda 2063 without a deliberate onslaught on corruption.”



A question was posed why former rulers were charged only once they were out of office and not while incumbent. To which the Director said that was only a wrong impression, whereas reality was that there were several incumbent politicians, including at the highest levels of political authority, who were indicted over time, including in recent years; whereas the late prosecution of cases was explainable by “reasonable” delays caused by the hefty workload and lack of expertise in sometimes investigations. The ultimate whistle-blowers and witnesses in such cases usually sit over them and “spill the beans” only when they fall out with their erstwhile co-operators. To a query on whether the reporting directly to Parliament would make the Directorate any better acquitted whereas the House itself, the Cabinet and the Judiciary were already corrupt in their own selves, the Director said the presence of that framework was useful so that deviant or deficient individuals did not hide behind insufficiency of frameworks nor become saddled guilt with that doesn’t rightly belong to them. In respect of the fact that unlike the parliament’s declaration, the DCEO register was kept secret as witnessed by its refusal to disclose the mere names of the 11 ministers who were “celebrated” as having declared their wealth recently, the Director explained that it was because these were early stages of the process but things would soon change, and citizens would even be able to file their asset declarations online. The authority was expecting the parliamentarians and judges, to declare assets too; the ministers and Principal Secretaries have laws guiding them, whereas the cabinet and parliamentarians do not, are more exposed and without guidelines for their conduct; and they needed the safeguards provided by the DCEO frameworks more than anyone else.

The Director said Parliament knew well the challenges of the DECO. Each incoming government and parliament were briefed about them through induction sessions, their own invitations, as well as DCEO’s own initiate. He decried that the rulers were self-doubting




when it came to upright governance, hence reluctant to give teeth to such a body, lest it turned on them. Unsurprisingly by 2010 the Office had a mere 23 staff inclusive of support personnel; and under the 2015/16 Bidvest government fleet management scheme the authority had only one car. This financial year (2017/18) its budget was increased 40 by percent, as a result of which among others it had been able to purchase 13 cars. Whereas expert advice had suggested that Lesotho needed roughly 400 staff to effectively face up to its legislated mandate, but it currently had only roughly 60 headcount of personnel including support staff. In SADC, countries like Namibia, Botswana, have regional offices across their national territories. In places like Hong Kong and Taiwan, they tell a story that initial investment in the necessary anti-corruption infrastructure can be high but the returns on that investment are infinitely higher than any resources foregone in putting together that regime; it is more than commensurate. The presenter wrapped up by saying there were cynical or opportunistic justifications for prosecution of corruption in our communities, that refer to the Bible and say depravity belongs to the Original Sin, man is everywhere chained to sin and will never be unchained from it – whereas it all depends on human will, and any a society have long expelled that scourge from their midst.

2.2 The Office of the Ombudsman

The Ombudsman Adv. Leshele Thoahlane for the Office started by stating that it was established per the Sections 134 and 135 of the Constitution, and the Ombudsman Act of 1996; and it was essentially mandated to defend the public against the bureaucracy, and ensures respect for the rights of the citizens. It is not subject to direction or control of any person or authority. In that state it is charged with handling matters in the areas of (i) injustice; (ii) maladministration; (iii) human rights violations; (iv) corruption; and (v) depletion or destruction of the environment.

All these areas have their specialised ministries or agencies with technical personnel dealing with them, e.g the DCEO and the CPA represented here. The Ombudsman intervenes only where they do not go about their tasks in a manner satisfactory to public good, s/he doesn't take over their job and deliver their mandate to a dissatisfied public. The public was often frustrated from being sent from pillar to post by these agencies, and found themselves thrown into arms of the Ombudsman or referred to it by these agencies themselves. With the powers vested in him/ her, the Ombudsman can enter and inspect public places like hospitals, mental asylums, prisons, barracks, etc. His / her decisions are time-bound; they have to be enacted by the named agencies timeously to afford remedy to the aggrieved members of the public. Further action can be taken. The Office releases annual reports of its activities and of the performance of the Ombudsman as a person, in the act of redressing public grievances, and safeguard their views, liberties and the indisputable right of citizens to complain.

The Ombudsman emphasised that without safeguarding the right to complain, the Office couldn't fulfil its mandate, and the citizens wouldn't enjoy the fruits of its existence for enhancement of their welfare. He said this right was not of any lesser weight than any other right - all rights are equal, indivisible, and interdependent. Fulfilment of one right might be



dependent on fulfilment of another. To do its effectively the Office must enjoy widespread acceptance of its decisions, conduct business fearlessly, transparently, impartially, and boldly. Public impressions matter, and must be carefully managed. There must be effective, public execution of the Ombudsman's business, in a manner that is widely known to every concerned onlooker. Its personnel must be professional, know their work, be of high technical standards, not attract suspicion of fraud, carelessness, and their message to the public must inspire confidence.

The chief of the Office said it undertook widespread publication of its existence, functions, and work; through putting up stalls at public events, holding public meetings (*lipitso*) through the chiefs, and live phone-in radio talk shows. The Office's workload had increased substantially with the arrival of giant developmental works and projects like the Lesotho Highlands Water Project, where communities have to be compensated for loss of their means of livelihood, and projects often took them as fortune seekers whereas they were disrupted and alienated from their natural wealth and way of life. It was mostly through the parliamentarians that the Office received such complaints, yet it also had to report to Parliament at the end of the day. The effectiveness of the Office was lately hamstrung by the short life of the Parliament due to political instability, where the reports forwarded to Parliament were caught by the early sunset of the government.

Challenges


The Ombudsman outlines the following as among the outstanding challenges currently confronting the Office: the Office

- Non-implementation of Ombudsman's recommendations
- People are slow in uptake of experience, become experts in their given tasks
- The Office does not have specialised personnel to investigate some of the cases within its mandate that are brought to it.
- Frustration and despondency of the public about the usefulness of the Office
- Cabinet is placed outside the mandate of the Office, though that is precisely where a lot of rot could be brewing.

2.3 The Police Complaints Authority (PCA)

Ntate Mathealira Mosae, an investor in the Authority, presented its case. He said the PCA was created as an external accountability system to address

impunity in the police service, complementing police investigations, internal discipline, the criminal justice system and legislative oversight. It was established in accordance with the Lesotho Mounted Police Service Act of 1998, and came into being in 2003. It is made up the chairman and three members, appointed by the Police Authority (the minister of police), on such terms and conditions as s/he may deem fit, meaning there were no legislated terms and conditions of service. Its staff whose qualifications are similarly not prescribed are appointed by the Public Service Commission. It is empowered to investigate any complaints referred to it by the Police Authority or the Commissioner of Police about the conduct of a member of



the police force. The public do not have a direct access to the Authority, and it cannot initiate any investigation, has to wait for a case to be referred to it by those named in the law. Referral can be delayed or denied on the discretion of those empowered to initiate it. As the Authority the investigators didn't know the fate of such investigations as the reports were given to the authority issuing the instruction / directive, and they rarely received any feedback or reports; whereas only the minister had discretion to act on such reports. Ntate Mosae referred to an adage that, "A chicken will never get justice in the hawk's court", to emphasise that it didn't make sense for members of the public to complain to the police, and await police sanction for processing of their complaints, against the police itself. He cited the 2010 UN Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions report, where he states that when police weren't subjected to external oversight, citizens were reluctant to report their excesses to them, concealment and falsification of facts and refusal to prosecute, or resort to slight reprimands even in grave cases involving murder became a norm.

As an example of an inspiring best practice, Ntate Mosae remarked that whereas the Act doesn't state what the purpose of the investigations should be, a 2009 Opinion of the EU Commissioner for Human Rights on the Effective and Independent Determination of Complaints Against the Police says it must (i) address public grievances, and facilitate access to the right of an effective remedy; (ii) provide police with feedback from members of the public with direct experience of police practice, (ii) identify police misconduct and provide evidence in criminal proceedings, disciplinary proceedings and other management issues; (iv) set, monitor and enforce policing standards in association with the police and other regulatory bodies; (v) and learn lessons about police policy and practice. These processes are meant to supplement, not replace existing criminal, public, and private legal remedies. It would be remiss however to expect little "routine" misunderstandings between police and members of

the public to be referred for time-and-resource consuming investigations, also delaying resolution of “easy” complaints.

He further told the audience that since its formation the PCA had suffered a high turnover of staff and its own members; and as of now it has only the chairperson and not its prescribed two other members – so that technically it doesn’t exist. It had no stated visions, remained holed in a small office in Maseru only, and hadn’t had any noticeable impact on police conduct.. Its annual reports did not provide information to gauge performance and impact. Formerly this Authority was under the Ministry of Home Affairs where the police used to be placed, but now under the newly-created Ministry of Police, which complicates its mandate even further: the minister, principal secretary and his deputy, and the PCA Chairperson are also all police, which pits the PCA staff against their masters, and also poses a conflict of interests.


2.4. The Judiciary



Justice Semapo Peete, the chairman of the troika of Judicial Reform Committee set up by the Chief, told the forum that his committee’s contribution to the reform agenda was centred on Chapter 11 of the Lesotho Constitution, dealing with the structure of the courts; and they

had learned useful lessons from the structuring of the constitutions of several countries including Zambia, Namibia, Zimbabwe, Kenya and Tanzania. He pointed out that it was common knowledge that the 1993 constitution didn’t cover all the political, economic, and social exigencies of today. The judiciary has faced severe challenges despite the entrenched sections of the Constitution protecting and safeguarding its independence and enjoining the government to uphold it. Lesotho as a member of SADC, AU, UN was bound by the

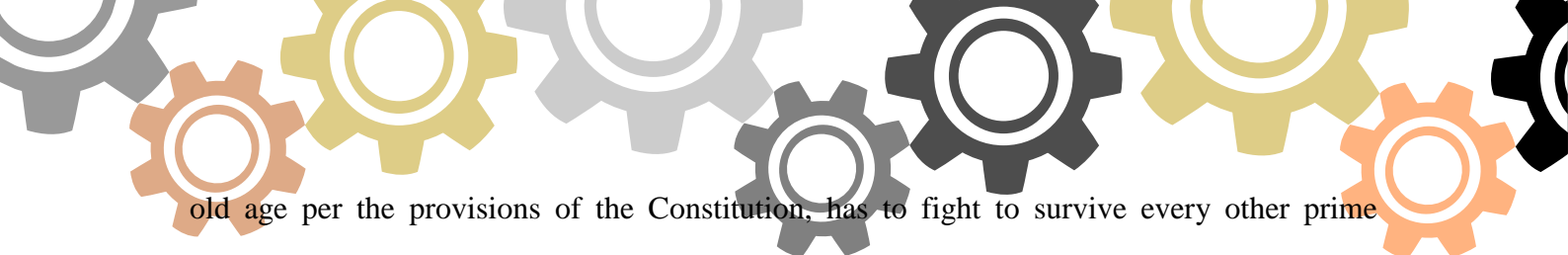
conventions, protocols and other covenants relating to functions and status, specifically independence, of the judiciary as propagated by these bodies. The independence of the judiciary, which is frowned upon as self-control outside the state, is simply absence of undue influence or interference, not captured by political parties or cabinet, but only subject to the oath that judges take to administer justice without fear or favour. Justice Peete observed that in South Africa there was currently a popular talk of “state capture”; and friends of justice didn’t want to see “judiciary capture” in Lesotho; adding that the judiciary was an organ of the Lesotho democratic state characterised by three legs assuring checks and balances under the ethos of constitutional supremacy, i.e where all these organs are subordinate to provisions of the constitution, rule of law, and a culture of human rights. The contemplated reforms were going to address the politicisation of the appointment of the Chief Justice and the President of the Court of Appeal, which had ignited challenges in recent years. They would lay the foundations for a new relations between the Executive and judiciary and the public. He said the exercise aimed at long-term reforms but he could not disclose everything that was in their sights. The jurist said the chairman of the SADC Oversight Committee to Lesotho, Justice Werema of Tanzania had addressed leaders along all stakeholders, e.g the Law Society, opposition, and the EU head of delegation had promised to sponsor a stakeholders’ dialogue on the judiciary reforms, which could be held in early 2018. He noted the need to make the Judicial Service Commission (SJC) which appoints judges more inclusive by including in it stakeholders the NUL law faculty, the Law Society, and civil society representative, to lend more authority, legitimacy before the name of the head of court is sent to the king to approve, it would also be preferable to put it through the two Houses of Parliament for scrutiny, debate, and blessing – a practice which was already followed in countries like Malawi. It was not the idea of the Judiciary Reform Committee that the judiciary should be turned into an ivory tower far reformed from the government whereas it was in reality a state



organ and a very powerful arm of government. A broad-based SJC could easily perform the function of advising the King. There was need for a new structure of courts that would accelerate delivery of justice, by placing High Courts in satellite towns like Maputsoe Pitseng, Semonkong, Morija, Roma; and establishment of A Judicial Complaints Commission (JCA), and a Judicial Training Institute for training of career judges. It was being proposed that the Chief Justice must sit in the Supreme Court in the capital, but there should be created positions of Judge President who sits in the regional high courts. The reforms committee had since advised for a launch of a website where all these and other matters and concerns pertaining to the courts would be widely debated with the unlimited participation of all interested persons and groups.

The reform committee was also concerned about the role of civil society, community-based and other recognised formations in bringing legal action relating to Chapter II of the Constitution, on the Bill of Rights. Whereas Chapter 23 invests the power to protect these rights in the high court, the *locu standi* provision still frustrated a full realisation of this protection of the courts by the have-nots in community. He said his team had looked at Section 38 of South Africa's constitution, which is quite inclusive, allowing for vicarious taking of cases on behalf of groups affected by state or other agents' action, and taking up cases for persons or groups / communities that are powerless in terms of resources and knowledge of their inalienable rights, which isn't the case in Lesotho – the absence of which and undermines full enjoyment of constitutional rights. Justice Peete further noted that the question of impeachment, which has been a thorny subject in the Lesotho judiciary recently, reaching back to political interference in the independence of courts thanks to politicians' involvement in the appointment of the heads of courts, was also crying for urgent attention.

This was even more challenging in the context of the short-lived governments of today, where the poor judge who was supposed to enjoy security of tenure till retirement at grand




old age per the provisions of the Constitution, has to fight to survive every other prime minister instead of focusing on firming the administration of justice.

Deliberations on the presentations

Hon. Advocate Lekhetho Rakuoane, MP updated the plenary that the National Assembly had since revised its Standing Orders to allow for reinstatement of business which remained unfinished at the point of termination of a preceding parliament to be prosecuted in the current parliament; thus addressing the concerns of the Ombudsman. Under this revision two laws had already being “resurrected”. He noted that Sections 118 – 132 of the Constitution targeted for reform by the Judiciary Reform Committee of the Chief Justice might not be changed without a referendum – on which a law still had to be passed, though it was contemplated in the Interim Political Authority of 20 years ago - because they were entrenched to protect the sanctity and independence of the courts.

The Ombudsman and Hon. 'Mamakoae Ramakoae posed query whether the constitutional requirement for two-thirds majority and referendum couldn't be suspended as a stop-gap measure; given that the country was currently on a fast track of SADC-prescribed reforms. Justice Peete said his team was looking at the Commonwealth guideline for appointment of chief justices, which included qualities of leadership and integrity. Eligible persons should apply, and contest openly, make public presentations of their candidature's worth, and take question from a motley audience of professionals, experts, civil society, NGOs, and the public; to attain meritocracy on the bench. A question was raised whether appointment of the judiciary should await the revamp of the judiciary and completion of the reforms. Justice Peete responded that the entrenched sections protecting the courts wouldn't in good conscience be rejected by the public in a referendum.



He noted that Botswana with a smaller population than Lesotho had about 10 judges, Lesotho needed some 10 more. The regions outside Maseru needed at least five (5) judges each. Case backlog remained huge among other reasons because the magistrates weren't mandated to handle cases such as murder, despite ample abundance of very highly qualified lot of them who were equal to the task, which was already the case in South Africa. He said all the courts should follow the exemplary trend set by the Directorate of Disputes Prevention and Resolution (DDPR) where the turnaround time for a case, from when it is filed to its completion, is set. Acting Chief Justice, Ts'eliso Monaphathi J, said the engagement must move from structure to efficiency of the courts. The Labour Court should be answerable to the Chief Justice like all other courts, but the Ministry of Employment and Labour was adamant that it was going to keep it in its fold.

3.0 Thematic Expert Breakaway Sessions

The experts / resource persons, were tasked to make independent analysis of the state of the five institutions (including the Office of the Auditor-General which didn't make own presentation on the first day); give their own take of the requisite reforms, and assists thematic group discussions to focus subsequent deliberations and resolution-cum-recommendations to Government. In the sections that follow these are presented in blocs of each theme / democracy institutions; but the plenary discussion were not so neatly demarcated, and cut across all of them.

3.1 Office of the Auditor-General




The session was facilitated by ‘M’e ‘Makatleho Mohasi, the TRC Programme Officer for Democracy and Human Rights. The resource person was Ntate Sam Mphaka of the Lesotho Institute of Accountants, who began by explaining that to understand the mandate, functions, and manner of working of the Office of the Auditor-General (OAG), one had to first understand the work of the Office of the Accountant General - and it was there he began his presentation. He pointed out that in the Public Finance Management and Accountability (PFMA) Act 2011, the Accountant General is mentioned only once, defined as the Head of the Treasury. Instead the law details the duties of the Minister of Finance, and it is only in the Treasury Regulations of 2014 that the Minister’s functions are delegated to the Accountant General, being:

1. Keeping of proper books of public account
2. Ensure existence and effectiveness of internal control system
3. Proper collection of public revenue and proper investment of public funds
4. Proper management of public finances
5. Prepare periodic consolidated public financial statements in accordance with international public sector accounting standards
6. He will ensure the audit of the consolidated public financial statements by the Auditor General and submit the same to the Parliament.

The speaker expounded that the Accountant General discharged these tasks at the or on the points called Spending Units - and every unit, organ, or institution that received money from public coffers automatically became a spending unit. For each Spending Unit, the Minister designates a Chief Accounting Officer (CAO) by letter of appointment that clearly spells out the terms of reference of such appointment, in accordance with the law. Though it is common to take the Principal Secretaries of government ministries as such accounting officers, that isn't automatic and doesn't come "naturally" with the status of being the chief executive officers of the ministries - they have to be designated by the Minister according to the law. The CAOs' job is to safeguard all the finances of the spending units, keep proper books of accounts, prepare periodic - quarterly and annually - financial statements of their own spending units and submit them to the Accountant General for consolidation. The consolidated annual financial statements should further be submitted to the Auditor General for auditing. After the audit, they take them back to their respective ministers, for the ministers to report to Parliament. Every minister should present reports of all the spending units that fall under his ministry. However, this whole process is not happening prescribed and expected

Against the background of the foregoing, the resource person demonstrated that there was absolutely nothing that the Auditor-General could do if the Accountant General was not doing his job, and if the Chief Accounting Officers didn't do their duties. He informed the session that fortunately the Audit Act 2016 had since been enacted to establish the Office of the Auditor General (OAG) as an independent office and clearly stipulates the duties of the Auditor General as the head of the supreme audit office of Lesotho, and not subject to the direction or control of any authority in discharging his / her functions under the Act. For the first time this also makes him / her answer and report to Parliament and not to the Minister. S/he has the power to audit the



government, executive and judiciary, plus all the state entities. The incumbent cannot be removed except through institution of investigations by a statutory tribunal.

After auditing the financial statements of the Government, the Auditor General prepares a report and gives out his or her opinion before reporting to the Parliament. S/he can also audit the performance of the spending units, whether the ministry for example is doing its job accordingly, not necessarily the financial statements; as well as environment audit, forensic audit and any other audit s/he deems necessary, usually referred to as inspections. All the staff of the OAG are required to disclose all material facts that may affect their independence, and potential conflict of interest, subject to penalties if they fail to do so. The OAG is still save from potential blemish of implication in financial impropriety because s/he doesn't control his/her Offices finances. The Deputy Auditor General is appointed by the Minister to manage them, and keep proper books of accounts, then submit them to an independent auditor appointed by the Minister.


The OAG is also empowered by law to maintain an Audit Revenue Fund, where anyone of good will can make a contribution in the interests of growing and strengthening the Office. In conclusion, the speaker suggested that given the massive workload prescribed for it by the law (including all government projects, embassies, local government councils, etc.), it might be wise to prescribe in the law that the OAG shall commission the audit of a specific class of spending units to independent professionals and firms, alleviated the workload burden and increase the Office's efficiency. Whereas such commissioning of work was already provided for, it might be necessary to make it mandatory.

The main queries and contributions that arose in the ensuing discussions are summed as follows:

- Why is the Auditor General office still under the Ministry of Finance despite the 2016 conferring independence on it?
- Why does she still report to the minister, as evidenced by the submission of the 2016 report to the Minister?
- Parliamentarians hardly read or interrogate the Auditor-General's reports, which are normally just dumped on their lap as formality but never tabled in the House.
- How could the voluntary contributions to the Audit Revenue Fund be protected against being used by supposed do-gooders for ulterior motive?
- The Accountant General has to be strengthened in the law unlike now where s/he has no established office, no autonomy; even the department s/he heads is under the control of, and subordinated to, the Principal Secretary. Yet even that wouldn't suffice without a change of mindset on the part of the power bearers arrested by the old ethos of centralised control of things. There were as yet no specifications of the required qualification for occupants of the offices of Accountant General and Auditor General, and their deputies. Luckily, the Accountants Act, which controls the profession the same way as the Law Society Act controls lawyers, clearly prescribed the qualifications for these designations

After deliberations the groups agreed to forward to the plenary the following recommendations

1. The non-adherence of the spending units to prescribed reporting schedules must be addressed and remedied.
2. The Office of Accountant General must be created in the PFMAA, instead of its current cursory mention in the law.
3. There must be established The National Treasury as a separate and independent institution, like in many countries, not merely a department of the Ministry of Finance.
4. The PFMAA should specify that the two offices of Accountant General and Auditor-General shall require qualifications prescribed by the Accountants Act. The Lesotho Institute of Accountants (LIA) as the custodian of the Act could be at hand to provide advice, assistance and support where necessary.
5. These institutions of Accountant General and Auditor General, and those related to them, should be inducted into the currently trendy world outlook and useful ethos of “*The Learning Organisation*”, involving adoption of the values and incline of a changing, adapting and self-renewing organisations that step up to facing emerging challenges not amenable to old practices. The handlers of these processes detailed in the presentation could be needed to be enrolled on “change management” workshops and exercises, which had proven highly profitable in other contexts.
6. The OAG and other institutions shouldn’t only report to Parliament as though merely to perform a formality of satisfying a requirement; they should also account to



Parliament. It was observed that the offices like Auditor General, DCEO, Police Attorney General were co-opted onto the Public Account Committee (PAC) - but they didn't themselves account to the House whereas the PAC was its arm.

7. The Audit should prescribe that the Office of Attorney-General commission independent auditors for certain classes of Spending Units.

3.2 Directorate on Corruption of Economic Offences (DCEO)

Under facilitation of 'M'e 'Makatleh Mohasi of TRC's democracy and human rights desk, the session received presentation of Ntate Nthakeng Selinyane, of Pulse Communications. He said since the technical presentation on the history, legal framework, and routine functions of the Directorate had already been discharged by the office's representation in the plenary, he was going to speak to the agenda for reforms and suggest the roles and places of civil society and political activists against the provided background, and with the help of the prevailing scenarios and the opportunities availed by existing frameworks.


He said while the time taken to establish the Directorate after passing its law left many doubting government's commitment, there had been noticeable progress up to roughly 10 years ago when momentum was lost, but the future looked bright. The government had improved on a number of things which would be mentioned and further discussed in the session. Mr Selinyane proposed that the mood for reforms which reigned in the country, embraced by all role players, presented a momentous opportunity for the anti-corruption activists and the Directorate to bring their baggage of changes towards increasing the efficiency and effectiveness of this body, to free it from the constraints that might still be holding it back technically and politically, and to open the routes for planting it in "clean community", and plant that community in it. "The current government's expressed commitment to fighting corruption is very well known; and on that platform it can easily be



held to the universally held standards of combatting and eliminating corruption”, the speaker concluded in introduction.

The presentation then turned to advising the audience on the international anti-corruption instruments to which the country has subscribed by way of signature and ratification, so that non-state actors can exploit these commitments in expanding the public space for war on corruption. The 2001 SADC Protocol Against Corruption, the 2003 AU convention on Preventing and Combatting Corruption and the 2003 UN Convention on Corruption, have all been ratified by Lesotho. Indeed in the case of the SADC protocol, the observers say it took record time from its design to ratification and coming into effect - witness to the regional governments’ commitment to fighting the scourge of this rot. For the implementation of the SADC Protocol, there was developed the SADC Regional Anti-Corruption Program (SRACP) whereby all member states are required to have similar anti-corruption laws, which of course may differ with words but should have the same provisions. The universal aim is to detect, investigate, publish, and eradicate corruption. For overseeing the execution of the SRACP, this roadmap also established the SADC Ant-Corruption Committee (SACC) to which all countries answer for regular report to SADC structures.


The SACC helps national anti-corruption committees to develop national strategies, capacity building for the media, civil society, NGOs and the courts and prosecution to comprehend the nature of corruption and handling of its combatting by difference role players in their various vocations. The media, civil society, and NGOs are explicitly named as partners in the fight against corruption, and SACC is enjoined to help national anti-corruption bodies to evolve strategies for their involvement - a specific entry point for the likes of TRC and other non-state actors to *demand* their space therein.



To demonstrate Lesotho's progress, the resource person said in just five years of the DCEO coming into being, the country made tremendous strides in the enactment of supporting legislation. A 2004 study on harmonisation of anti-corruption laws in the region found that Lesotho was at variance with the Protocol requirements in some 10 areas, second only to Namibia with 11, while South Africa, Tanzania and Zambia were ranging between 6 and 8 deviations, with Malawi and Zimbabwe with lowest number of shortcomings at 3 and 4 respectively. By 2008 when the anti-money laundering law was passed, Lesotho had gotten rid of six (6) of its 10 deficiencies. The Prevention of Corruption and Economic Offences (Amendment) Act of 2006, the Supporting legislation has been put in place, including the Public Procurement Act, 2008 and Anti-Money Laundering Act and Proceeds of Crime Act of 2008 enabled the DCEO to address (1) disclosure of wealth, (2) extension of its mandate to cover the private sector, and (3) misuse of power to award undue material benefit, even if the person misusing office were not personally benefitting; while (4) provisions for seizure and confiscation of wealth gained through from corruption; and (5) comprehensive public procurement law was already in place; and (6) public education and awareness strategy and roll-out plan and activities were in place.

The following areas were still outstanding: (i) the public information bill was still in draft form where it has remained four governments later including three coalition governments, since it was hammered for passage; (ii) civil society, NGOs and media involvement; (iii) law dealing with corruption by officials of foreign governments; (iv) law dealing with extradition of corruption suspects, judicial cooperation, and legal assistance; and strengthening of anti-corruption institutions.

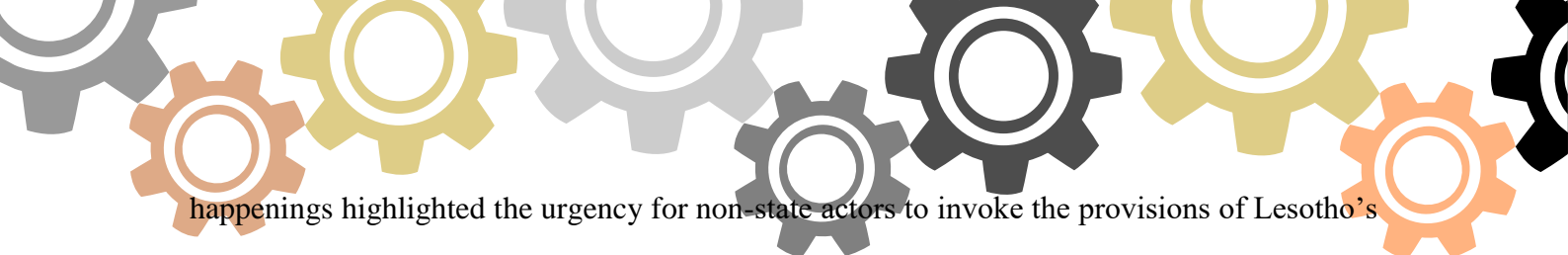
Turning to the effect of corruption on good government and development, the speaker observed that it was important that participants in non-state actor groups used the internationally agreed, and Lesotho-adopted frameworks and instruments to demand



accountability and fight for their place in the national anti-corruption struggle; and that there was no stronger weapon in this regard than knowledge and command of information. In this connection, he was it was unfortunate that the Access and Receipt of Information Bill had been canned for nearly 20 years, and all complexions of governments had come and passed without daring to pass it into law, whereas like light to crime, information and transparently that to helps to enforce is effective repellent of corruption. He said a number of studies ha indeed shown that corruption was much lower in countries where there was free flow of information and media freedom was vibrant.


The ambiguity of government commitment noted the DCEO in the plenary presentation was consistent with the determination to maintain a shroud of secrecy on national business evidenced by non-enactment of the public information; without which fighting would remain an uphill struggle. The pitfall of this omission clearer than when the notorious fallout in the Lebelonyane case where claimants to government fleet lease and management tender award were threatened with charges for stealing state secrets when they adduced records of the assessment panel to support their case. The tender was later cancelled and cabinet opted for a hybrid procurement model of buying half fleet requirements and hiring the other half, and simultaneously awarded South Africa's Bidvest without calling for bids, triggering a spiralling indignation from the nation and Lebelonyane who protested they were snubbed for refusing to pay M4 million bribery solicited finance minister. The then deputy prime minister said this was responsible for breaking up the government and triggering snap election. That (former) minister has since been indicted by the DCEO, and the manner of award of the contract is also under probe. Bidvest had earlier been out of bidding since it was similarly gifted the same contract on a six-month stint, supposedly as a stopgap measure following an acrimonious breakdown of talks with another South African company whose contract expired

as the new government was assuming office. The speaker remarked that this string of



happenings highlighted the urgency for non-state actors to invoke the provisions of Lesotho's commitment to the SADC frameworks as shepherded by the SACC, and their place therein, to demand the passage of the public information law to enable them to perform their roles accordingly, check the government, and intervene timeously where deviations set in. The DCEO was also required to (a) develop mechanisms for improved reporting of corruption (via hotlines and other mechanisms), and protection of whistle blowers and witnesses, (b) maintain a database of blacklisted, corrupt individuals, businesses, and institutions to restrict them from holding public office via election, nomination or election; and from doing public business. The non-state actors are entitled to demand the materialisation of these provisions.

The known limitations notwithstanding, the resource person observed, interaction with DCEO revealed that it didn't have problems of accessing any government offices to execute its work. It also didn't face any intimidation or interference from government, and its head though on fixed contract enjoyed security of tenure, but it was felt greater independence could be assured by appointment and removal through a regime of parliamentary process. It said it never encountered non-cooperation from the national prosecution authority, though it sometimes faced subtle sabotage. For example the DPP advised against charging the former finance minister over the notorious Bidvest scandal, saying it would send a message of pandering to partisan politics if it happened in the midst of snap elections campaigning; but he at the very same time charged the main opposition leader with insulting the king. When the Principal Secretary in the Ministry of Finance earlier reported he had been warned by the Director General of the DCEO not to sign the (second) Bidvest deal because it was potentially corrupt, the latter was promptly summoned to a meeting of seven ministers where he was pacified without expressly suggesting that he backed off or directly threatening him. The minister promptly followed that gesture with naming the Director General as Makhaola Qalo,



a widely feared, mysterious, “know-all” social media figure which claimed to spill top state security secrets, unearth and publish corruption adventures of the ministers. It was the view of the DCEO that it would benefit from answering directly to parliament and not the minister, and from being given powers in law to prosecute directly instead of going through the DPP’s office.

The government has already acceded to tabling the draft law giving autonomy to the Directorate. Once established as a stand-alone office, this would allow it to control its own budget and work according to the pace and pattern required by the nature of work, not be hamstrung by long-drawn processes and be exposed to leakage of its mooted operations which required secrecy and swift action. The extension of its remit to cover the private sector also imposed new skills challenges over and above the existing ones. While absence of public information law limits the potential of media, civil society and NGOs to contribute to combatting corruption; the Directorate felt the existing supportive legislation was sufficient to enable then discharge its mandate until now. Standing partnerships were maintained with the Lesotho Revenue Authority (LRA) and the Lesotho Mounted Police Service (LMPS), and interagency teams regularly worked on the cases, with notable success.

The Directorate, however, decried the government’s customary donor-dependent project approach to fighting corruption and slack political. Budget and manpower constraints had rendered the public education and awareness spreading activities dormant. An EU-supported project of establishing District Anti-Corruption Committees which was very effective in drawing attention to the deleterious effects of corruption and lessening its incidence, died a natural death when the funding schedule reached its end; and it was due for resuscitation only thanks to another round of commitment from the same benefactor, after loss of steam in the communities. Substantial increase in the current year’s budget to the Directorate, and



preliminary acquisition of logistics like vehicles and projected increase of staffing, held a promise of a brighter journey ahead.

Deliberations and Recommendations

After the group's discussions teasing the points raised by the presenting, and canvassing many others, the following were agreed as recommendations:

1. The appointment of the Director General should be a public process done through a portfolio committee or ad hoc committee that will call nominations, hold public interviews by committee, and forward name to parliament, then to His Majesty the King on the advice of Prime Minister.
2. The DCEO must be inserted and entrenched in the Constitution to protect it from arbitrary abolition by the cabinet
3. The Directorate should be given sufficient manpower, skills, and legal competence to prosecute its cases without having to obtain the permission of the DPP to do so.
4. Given the urgency of fighting and eradicating corruption, there should be established a special Corruption Court.
5. The Directorate must report directly to the Parliament through a portfolio committee.
6. Priority should be placed on recruitment of world class, skilled, technical personnel to enable the Directorate to perform the functions assigned to it by law.
7. With the increased budget, the Directorate should move swiftly to establish offices, and the District Anti-Corruption Committees and other ancillary structures should be established without as part of regular national institutions, not on project basis.
8. There must be immediate acceleration of disposal of existing cases, and visibility of the Directorate, through provision

3.3 The Police Complaints Authority (PCA)

This subject was spoken to by Advocate Lekhetho Rakuoane, MP who also introduced himself as a member of Parliament's portfolio committee that oversees police issues; which put him in good stead to talk on the matter at hand both with a critical eye and first-hand experience of the challenges. Speaking to his prepared text titled "Police Complaint Authority as a Civilian Oversight Mechanism", he explained that the 1993 Constitution of Lesotho established the Defence Commission as the key institution to oversee the security sector; but it was modelled in a way that civilians did not have much role to play therein, whereas the Lesotho Mounted Police Service Act of 1998 enabled the minister of police to be the ultimate authority over the police.

He said the police service Act established the Police Complaint Authority in order to ensure accountability of the police to the minister however the accountability was not extended to the public at large through an independent authority which allows direct access and involvement by the citizens. Adv. Rakuoane went on to explain the rationale for the establishment of a police complaints system through what the PCA's mandate is and his points were as follows: (i) the PCA should ensure that there is an accountability mechanism in place to allow citizen oversight on complaints over police; (ii) the law enforcement officials should be held accountable; (iii) an effective complaint system offers fundamental protection against a culture impunity; (iv) it is a human rights protection mechanism that will prohibit the use of torture and protect the right to life; (v) it facilitates and demonstrates responsiveness and scrutiny over alleged acts of criminality on the part of the police; (vi) the complaint authority deals directly with the problematic issue of who investigates the



investigators; (vii) it is to some extent a sort of human rights commission dedicated to the police.

He commented that the appointment of the Chairperson of the PCA by the minister, who also had the power (alternative to the Commissioner of Police) to refer cases to the PCA for investigation, and to receive and dispense with its reports as he liked, was problematic. It was reported that of late only the chairperson was a full-time member of the Authority while others are part-time. It was observed as disturbing that even members of parliament were appointed as members of the PCA in later years, in violation the principle of separation of powers. The Authority, however, has powers to summon persons to give evidence before it.

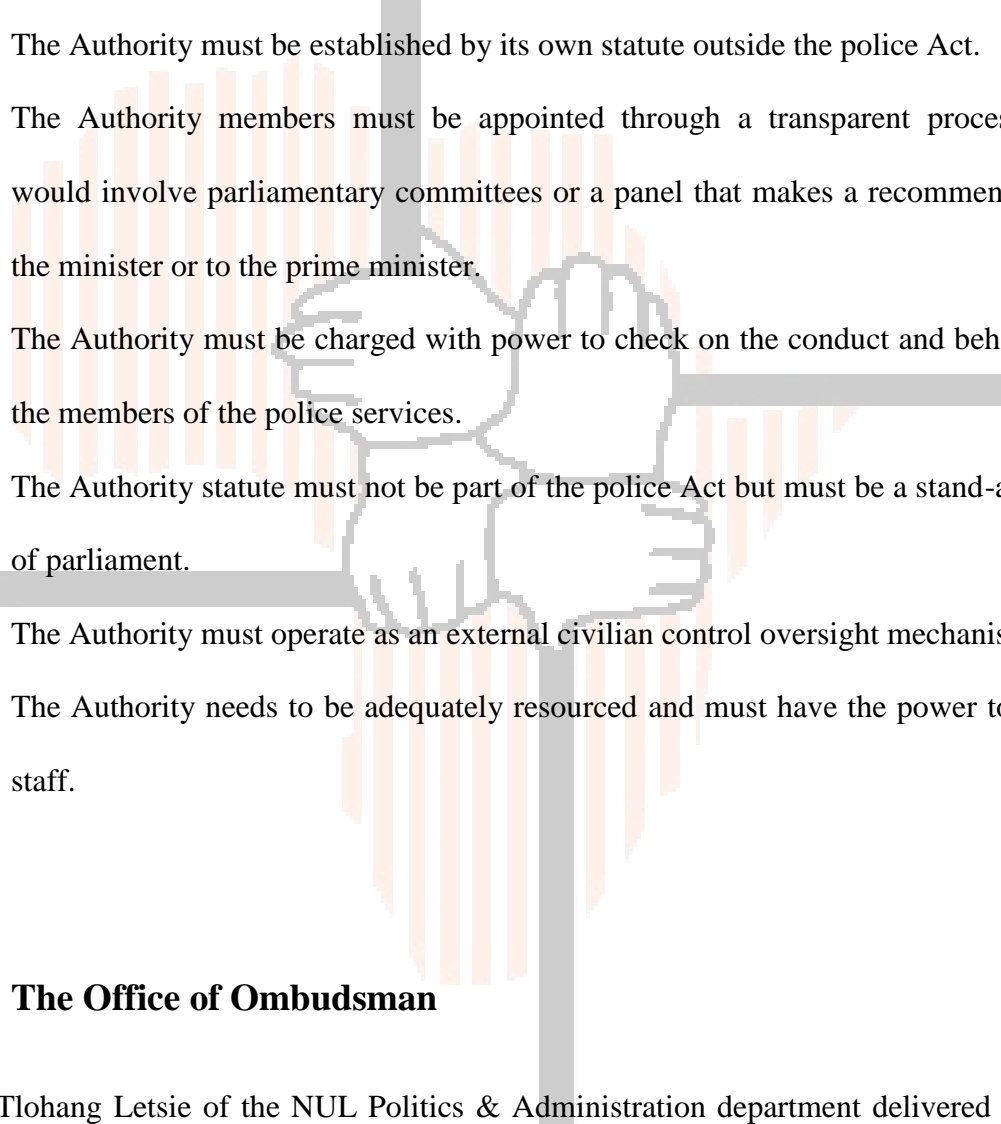
Shortcomings of the Lesotho police complaints authority

- Appointment of members is not transparent, and can be used as a patronage tool by the government; and its membership can be abused by the ministers.
- The Authority is not allowed to deal with complaints from the public directly, it only deals with complaints that are referred to it
- There is not provision that guarantees independence, and non- interference in the business of, the PCA.
- The government and other organs of the state are not required to protect the independence and impartiality of the PCA in the exercise and performance of its functions.

The presenter's recommendations




At the end of the presentations the resource person came up with the following recommendations:

1. The PCA must comply with the key principles of effective investigations namely: independence, promptness, public scrutiny, victim involvement and resource adequacy.
 2. The Authority must be established by its own statute outside the police Act.
 3. The Authority members must be appointed through a transparent process which would involve parliamentary committees or a panel that makes a recommendation to the minister or to the prime minister.
 4. The Authority must be charged with power to check on the conduct and behaviour of the members of the police services.
 5. The Authority statute must not be part of the police Act but must be a stand-alone Act of parliament.
 6. The Authority must operate as an external civilian control oversight mechanism.
 7. The Authority needs to be adequately resourced and must have the power to employ staff.
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3.4 The Office of Ombudsman

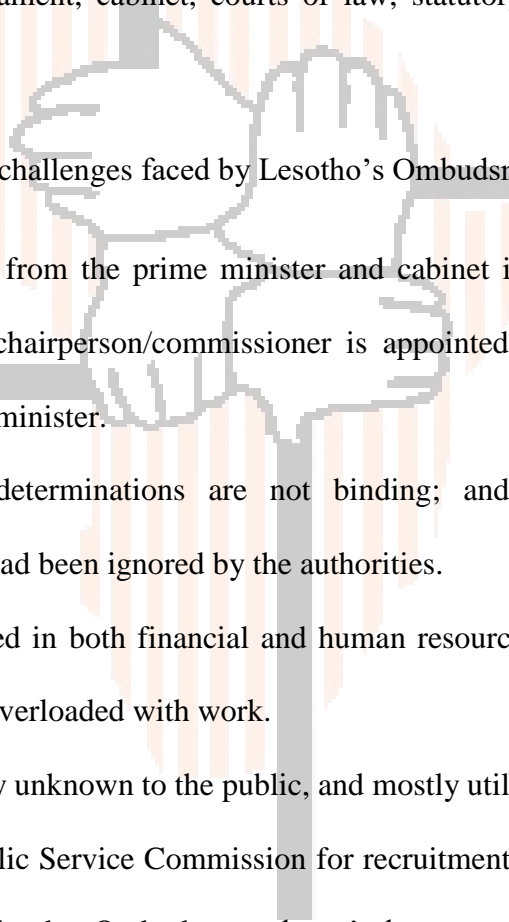
Ntate Tlohang Letsie of the NUL Politics & Administration department delivered this part. After giving a brief background of its origins in early 19th century Scandinavia, Mr Letsie posited that the Ombudsman exists under democratic governance distinguished by the principle of separation of powers; where it complements separation of powers, and safeguards public interest and human rights through protection against the bureaucratic agencies. It might be appointed by the legislature or the executive as in the case of Lesotho;

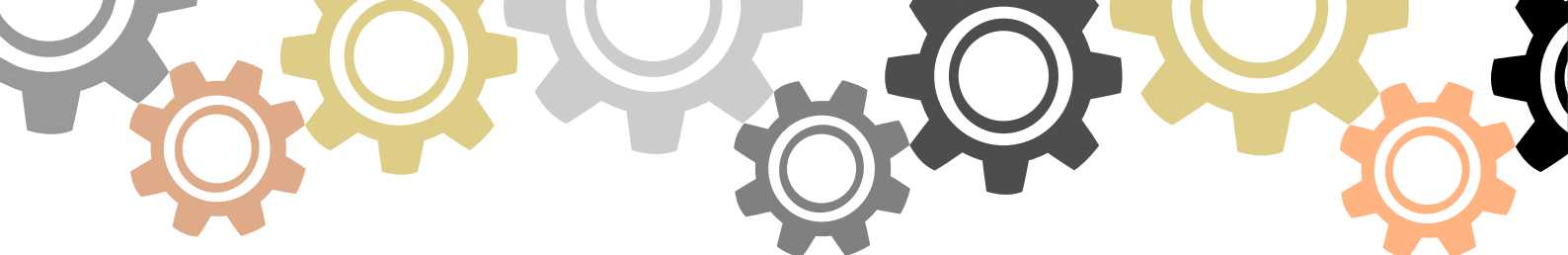


and in the Lesotho the security of tenure and independence are guaranteed by a prescribed, difficult procedure for removal of the Ombudsman.

He summed up the functions of the Ombudsman as (1) to receive and responds to public complaints against administrative agencies and government holding them to account; (2) to make appropriate recommendations to relevant authorities; (3) to provide an alternative to the expensive and tedious judiciary process, which might not be afforded by everyone. It can perform any other duties as may be conferred by an act of parliament; but it cannot investigate the king, parliament, cabinet, courts of law, statutory tribunals and the public service commission.

Mr. Letsie summed up the challenges faced by Lesotho's Ombudsman as follows:

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- i. Lack of autonomy from the prime minister and cabinet in terms of operations and perception as the chairperson/commissioner is appointed King in accordance with advice d the prime minister.
 - ii. The decisions / determinations are not binding; and evidence showed some recommendations had been ignored by the authorities.
 - iii. It is under-resourced in both financial and human resources terms; and its available staff is reportedly overloaded with work.
 - iv. It remains relatively unknown to the public, and mostly utilised by civil servants.
 - v. It relies on the Public Service Commission for recruitment of its staff and this delays appointments; while the Ombudsman doesn't have any input in the recruitment process, and appointments are at times not most appropriate for the job.
 - vi. It functions overlaps with those of other democracy protection institutions including the Police Complaints Authority (PCA) and Directorate on Corruption and Economic Offences (DCEO).



The resource person's recommendations


Against the background of the foregoing, the recourse person concluded his presentation with the following recommendations:

1. The manner of appointment of the Ombudsman should be changed, to make it inclusive and transparent by involving input of civil society and other sectors of interest.
2. The Office should be given autonomy to appoint its own staff and control its own budget.
3. The scope of work of the Office should be broadened, to give powers to investigative powers scope to cover cabinet, Public Service Commission.
4. The Ombudsman's decisions should be made to be binding.
5. A way should be found to close the overlaps in the functions of the offices of Ombudsman, the DCEO, the PCA and planned Human Rights Commission.

Summary of Plenary Discussions

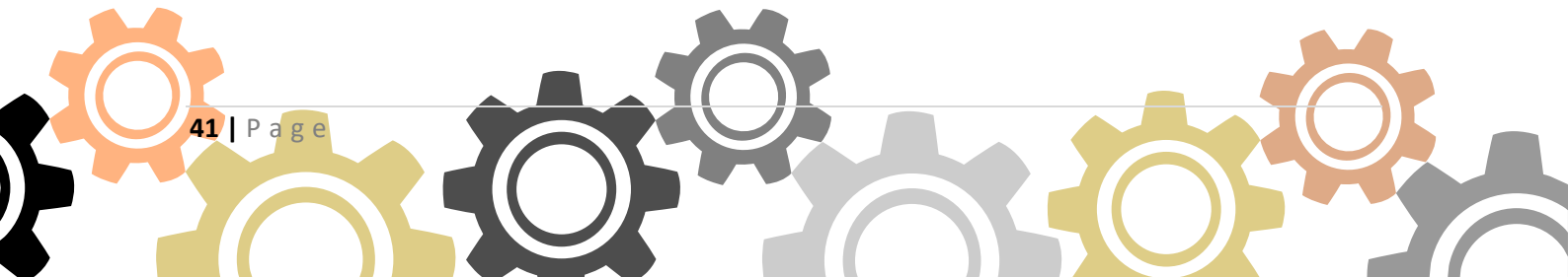
Participants noted the overlapping of mandates among the three institutions of PCA, DCEO and Ombudsman. It was resolved to recommend that these institutions should control their own finances, recruit their own staff and be able to execute decisions without having to consult with the ministers; and should report to the portfolio committees of the parliament.

It was also raised that all these institutions must be allowed to do their own investigations without having to wait on being given a case because their main duty is to enhance democracy for the people by the people through the support of the government.



It was also agreed that these institution must be non-partisan to avoid being the property of the ruling government and mostly the Ombudsman should importantly command compliance from other offices while PCA should have enough autonomy to summon individuals for questioning.

Recommendations from the Plenary Session


1. The PCA and the Ombudsman must be independent and be accountable to the parliament.
 2. Both the PCA and Ombudsman must have branches all over the country.
 3. Appointment of the commissioner/chairperson of these institutions should be carried out in a manner that is clear and credible, preferably through an appointments committee of the Parliament.
 4. They (chairperson/commissioner) must be hired on a fixed term.
 5. Each institution must have a clear mandate so as to avoid overlapping of duties.
 6. There should be regulations that will guide these institutions.
 7. They must all be publicised and promoted in order to be known by the public and services offered by them.
 8. There should be oversight unit/commission that will evaluate the work of the chairperson/commissioner.
 9. Both institutions should submit report to the parliament and the minister. (On this point some argued that reporting to the minister will give him/her power over the institution all over again).
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3.5 The Judiciary

The Democracy and Human Rights programme office of the Lesotho Council for Non-Governmental Organizations (LCN) Ntate Rapelang Mosae facilitated this session; while Judge Semapo Peete of the Lesotho High Court and National University of Lesotho (NUL) principal, Professor Nqosa Leuta Mahao were co-presenters. Kicking off the session, Judge Peete iterated that he was chairman of the Judicial Reforms Committee, established by the judiciary to position itself for participation in the reforms process and weigh its options in the mirror of what they considered best practices elsewhere – and in that regard they had come up with a draft framework modelled along the contours of the South Africa constitution.

He said the judiciary was disturbed by recent crisis in the judiciary as evidenced in the debacle involving the Chief Justice and the President of the Court of Appeal; and emphasized that only the protection of the independence of the judiciary would avert such harmful consequences. This impartiality, according to Judge Peete, “would begin by restructuring the entire court system in Lesotho, and abolishing the out-dated colonial system”. Revamping the structure and administration of the judiciary would entail adoption of a pyramid structure wherein the highest court would be *Supreme Court of Appeal (SCA)* headed by the Chief Justice, and having the high court not only in Maseru but also in the southern and northern parts of the country. Restructuring the judiciary would also involve opening up and making broad-based the Judicial Service Commission (JSC) encompassing the Law Society, Faculty of Law at the NUL, and most importantly, Civil Society; while it could provide a platform for the business sector to engage the judiciary.

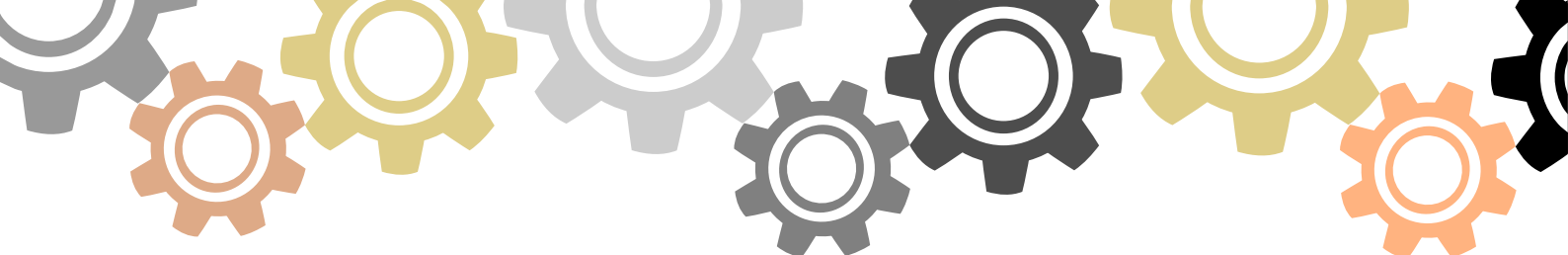
Furthermore, the end of this envisaged reforms journey would include Judicial Complaints Authority (JCA) which would be guided by a code of conduct guiding judicial officers, where the public would lodge queries on bad service; and a Judicial Training Institute (JTI) whose



mandate would be to empower judicial officers with skills and knowledge on continuing basis. Judge Peete presentation further touched on the thorny issue of recruitment of judicial officers. He lamented that the process of appointment of the Chief Justice had a number of handicaps within it, including out-dated guidelines and huge political interference wherein the Prime Minister solely advised the King to appoint his preferred candidate. Whereas this dark cloud only overhung the Chief Justice's appointment, the entire judicial sector was laden with appointments which were not open and transparent.

Against this backdrop, Judge Peete recommended that in future the Prime Minister should consult with the Judicial Service Commission (JSC) or the Constitution should completely remove the responsibility of appointing the Chief Justice from the executive and allow the JSC to directly advise the King to appoint the preferred candidate. The appointment of all judicial officers should be inclusive, open and transparent. And most importantly, Parliament should play a role in the recruitment process. Judge Peete further pointed out a need to increase budget allocation of the judiciary, bemoaning the fact that the Lesotho Defence Force (LDF) enjoyed better resource allocation than the Judiciary. He further spoke to the subject of 'citizenship of the Chief Justice', and suggested that it should be a requirement that the Chief Justice should be a Lesotho Citizen.


For his part, Professor Nqosa Mahao noted that the current judicial system had produced a lot of palpably incompetent judicial officers. He decried the fact that foreign judges and lawyers were still recruited to provide services in Lesotho, thereby blocking career development of local professional; and charged that the process of conferring the honour and title of King's Counsel (KC) was not transparent. For the most part, Professor Mahao presentation spoke to same issues that were discussed by Judge Peete. The discussion was constrained by time and had among others as recommendation the expansion of jurisdiction of the magistrate court, and having constitutional court to oversee constitutional matters.



Plenary deliberations and recommendations

Due to time overrun, there was no space for thematic group discussion of expert presentations. The session itself was, however, highly interactive, and intensively infused with group members' experiences and acquaintance with practices elsewhere. What follows below is a sifting of emerging points and adopted recommendations as emphasised in the plenary deliberations after presentation of the group report:

1. There is an urgent need to cleanse the courts, and make sure they are insulated from political influences, and they in turn stay out of politics. To this end, the appointment of the heads of main courts like the Chief Justice and the President of the Court of Appeal should be seen to have no tinge of direct political intervention in it, unlike now where the occupants of these posts are appointed without any process except the Prime Minister advising His Majesty the King on the name of his preference. A transition must be wrought where an advertisement inviting interested persons to apply could be issued, and a competitive process rolled out by an extended and inclusive SJC, public presentations and interviews, and subjection to Parliament approval, before submission to the Head of State.
2. The SJC should be expanded to include other relevant role players, namely the civil society, the Law Faculty of the NUL, the Law Society.
3. The structure of the courts should change from the centralised colonial heritage, and take the High Court into the regions of the country outside Maseru. Such regional high courts should be presided over by a Judge President, while the Supreme Court



should be created as the highest court, and the seat of the Chief Justice who will be the seniormost judge and Head of the Judiciary. It should be a requirement that the Chief Justice shall be a Lesotho Citizen.

4. In the interests of accelerating the dispensation of justice, the Magistrate Courts should be allowed and empowered to handle some of the cases which are currently sole preserve of the High Court, like murder. Whereas there are already sufficiently experienced and wise magistrates to handle such cases, the system is clogged with a growing mountain of untouched cases because of the small number of judges.
5. The age-old custom of staffing the Court of Appeal (almost) exclusively with the retired and aged judges imported from South Africa, and their fellow lawyers to handle high profile state cases, should be expelled from the practice of law; it leads to blocking of career path for local practitioners and jurists.
6. The Constitutional Court should be established as a separate and independent court from the High Court; as opposed to current practice where members of the High Court bench tend to sit as Constitutional Court when cases of that jurisdiction arise, and revert to their regular roles thereafter.
7. The conferment of honours like Kings Counsel (KC) should be gone about through a transparent, predictable and testable procedure to protect the integrity of the legal profession.
8. There should be a Code of Conduct for judicial officers, and a Judicial Complaints Authority (JCA) to administer it under the SJC. This must be widely accessible to



members of the public who have queries about the way the judiciary goes about its functions in society.

9. There should be established Judicial Training Institute (JTI) to induct persons intending to make a career in the courts, and provide refresher courses and other forms and mechanisms of keeping jurists up to speed with latest international trends in the justice system.

4. CLOSURE

The TRC Director Ntate Tsikoane Peshoane thanked those in attendance over the preceding two days up to this point. He observed that the main talking point since the first day was the way that the “democracy institutions” seemed to have been assigned a weighty name, whereas they were merely government institutions, for it to use as it pleased, like any other. Now that the forum had resolved that the country moves to accountability of these institutions to Parliament; this was the message that the conveners and the government were given to take and run with. The resonant call for these institutions’ independence, and publication of their reports in advance to enable Parliament to run with these messages, was unmistakable in the plenary.

He noted there were calls to extend the mandate of the Ombudsman to the private sector, and for expansion of the jurisdiction of the courts below the high court for acceleration of justice; for the heads of these institutions to be subjected to thorough public and professional scrutiny on consideration for occupation of these offices – and that the powers to appoint them shouldn’t vest in a single head of government, but the people’s representatives in Parliament should also have a say in the consummation of this process. The report of these proceedings,

he said, would be remitted to the National Dialogue process envisaged to pave the way to the ultimate take-off of the national reforms process, and would inform civil society participation in that process, and agenda setting as such.

The Director said he recognised the attendance of the Members of Parliament, especially the Members of Portfolio Committees, and their energetic participation; urged the judiciary to come in larger numbers than Judiciary Reforms Committee chairperson Justice Semapo Peete and Acting Chief Justice Monaphathi. He thanked the heads of institutions and the delegates of political parties, resource persons and non-state actors' representation; urged those with power to exercise it with grace and generosity; and to turn away from the culture of killing everything that was created by one's predecessors, cautioning, "When a bird is alive, it eats ants; when it is dead, the ants eat it". The Government had postponed the National Dialogue twice without explanation, he concluded, but there could never be a perfect for a start, "we must begin with the little that we have. The government doesn't need to be asking itself whatever difficult questions it is asking in secret; it must come out and engage us, and get genuinely national answers to the challenges facing everyone of us, itself included".

Appendices

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