



Work for Justice

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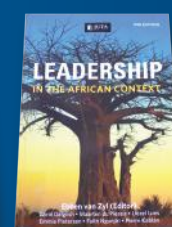
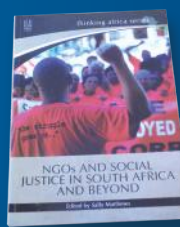
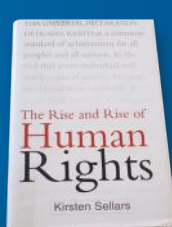
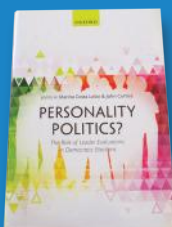


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Editorial Comment

Passing legislations to laydown foundations and legal frameworks of human rights respect has never been a bigger problem in Lesotho. A challenge that beset our country is enforcement of statutes that protect human rights. This particular challenge was quite prevalent in decades, this is despite of the fact that in 1993 the country had managed to reclaim constitutional democracy subsequent to the dispensation of a single party state and military junta. Hitherto a number of human rights statutes ranging from protection of indigenous linguistic minority communities' and rights to establishment of Human Rights Commission yet to be implemented.

The problem circumscribing enforcement of human rights statutes cannot just be mental gymnastics as analysis indicate that in fact human rights violations are basically perpetuated by deficit in the implementation of the statutes. Notwithstanding that, the deficit in the implementation of statutes further emanates from issues of inadequacy and weakness of human rights institutions compounded with misallocated political will and weak judiciary populated by politically subservient judicial officers.

The fact that existing human rights institutions are significantly weak finds its manifestation in truism that political decisions of the executive branch of government together with judiciary seemed to be captured by powerful political figures therefore not giving any meaningful assistance to human rights organisations. One of the observable consequences of this particular posture of the governments and courts of law are an increasing statistics of reports of torture done by state security establishment in the country, as there is no strong condemnation. Recourse to torture appears to be the rule of the day rather than exception as suspects are often subjected to it by police either during criminal investigations or maintenance of public order.

The irony is that public order is a requirement of protection of human rights, and it is basically the primary function of a police officer. In the line of duty to maintain public order, there are human rights violations that are always comprised. The balance between public order and protection of human rights has been a challenge the police always face. This dichotomy places the police in a delicate situation in the field of human rights. Nevertheless, there are arguments raised in this volume

which bring into question the police modus operandi in providing public order and maintaining respect of human rights. There are propositions from some of the members of civil society movement calling for foreign humanitarian intervention in human rights violations. Whilst this could be an interesting debate, the tricky part emanates when the state does not want such intervention. One question that can be raised is what should be a point of departure in the scenario where there is resistance from government? Fight against human rights violations – especially torture basically is a war to security agencies because they notoriously enjoy comfort laxity of unimplemented human rights statutes.

On the flipside of the war against human rights violations there must be tangible economic development programme channelled towards disadvantaged and poverty stricken communities. The disadvantaged communities in the context which TRC works are peoples affected by large development projects such as Lesotho highlands water projects (LHWP) and extractives industries. The majority of these projects are located in the highlands and rural communities.

The economic development programmes that could be initiated by large development projects are corporate social responsibility (CSR) projects. The CSR projects can be economic stimuli of local economy of the highlands communities. However, information related to the CSR is very much limited among majority of stakeholders especially the affected communities. There are propositions in this edition that call the government to play a more active role that goes beyond providing the legislative framework in facilitating access to information.

In the period of five years (2012 – 2017) Lesotho has had three parliamentary elections, and local government elections. The parliamentary elections in this short space of time did not only experience a perpetual decline in electoral participation but they also witnessed low participation of women in the process. The low women electoral participation is further reflected in low presence of women representatives in the national assembly of the 10th parliament. Perhaps this observation of poor women participation in electoral processes is a wakeup call to reflect on affirmative action initiatives in built in the electoral system. There are various arguments contained in this edition of Work for Justice which provides explanation of the phenomenon.



**Transformation Resource Centre
Director Tsikoane Peshoane**

Subsequent to local government elections held on 30th September 2017, Independent Electoral Commission (IEC) has indicated that electoral apathy towards local government elections was very skewed compared to parliamentary elections. There are arguments that the Local Government is actually a failed project that needs to be overhauled. However, this edition of the Work for Justice contains contextual analysis of service delivery issues in local councils, of which TRC wants to highlights going forward. Of course the Centre wants to underscore issues of poor performance, autonomy and fiscal decentralisation.

On issues of climate change there are discussions raised in this volume that bring into question consultations done in the process of building a National Climate Change Policy. The policy is intended to guide and coordinate all activities of the state and different stakeholders with the aim to respond to climate change in Lesotho. There are gaps identified in the consultation process as well as policy ideological orientation that need to be review.

This issue of Work for Justice is dedicated to the **European Union (EU)** delegation in Lesotho. The delegation is not only a development partner but also a true friend of TRC. The EU has made a huge contribution to TRC advocacy programme for the establishment of Human Rights Commission (HRC) in Lesotho. The Centre is further hugely indebted to the **Bread for the World, the Sisters of the Holy Names of Jesus and Mary** as well as **Open Society Initiative for Southern Africa** which are long standing partner in all our endeavours to make Lesotho a better place.

Tsikoane Peshoane

Editor in Chief

THE NEED FOR AN ELABORATE HUMAN RIGHTS COMMISSION IN LESOTHO: Critique of The Lesotho Human Rights Commission Act

Mokotsolane Rapelang Mosae

Abstract

Providing for human rights in national statutes usually poses no problems. Implementation and enforcement is often where the greatest headache lies in most nations. Lesotho itself is no exception to this: The Constitution of Lesotho provides for fundamental human rights. However, this has not prevented human rights violations that run rampant in the country. There are several reasons why human rights may be provided for, but not enforced. These include: technical blockages, a lack of effective institutions or the existence of weak institutions only, and the lack of political will to implement human rights, with differing degrees. The paper aims to dissect the need for a Human Rights Commission in Lesotho and whether the proposed Human Rights Commission in Lesotho possesses the required capacity to adequately enforce and protect human rights in the country.

Introduction

Human rights institutions are an essential feature in any properly functioning democracy. They play an important role in the promotion and protection of human rights. Some scholars (Chris Maina Peter, 2009) believe that where democracy truly reigns, it is not necessary to have institutions exclusively dedicated to the promotion and protection of human rights. They state that government institutions like democratically elected president and parliament and an independent judiciary can perform this mandate. While this seems attractive, history has proven that not all democratically elected institutions serve human rights. It is thus necessary to establish an independent body with the sole mandate of protecting and promoting human rights and the requisite ability to carry out the said mandate.

This paper seeks to analyze the need for a human rights commission in Lesotho and whether the human rights commission proposed by the Human Rights Commission Act of 2016 answers this call. The paper in achieving its intended purpose will examine the content of the Lesotho Human Rights Commission Act, the way it was passed and the prevailing circumstances during the period on which it was passed. The paper will further examine a successful Human Rights Commission in the region with a view to compare it with that of Lesotho, the findings herein will form the premise on which the conclusions will be based.

Lesotho Human Rights Commission (a case in point) Civil society challenge

It is worth noting at the onset that The Human Rights Commission is currently being challenged in the constitutional court of Lesotho (*DPE and TRC v The Speaker of the National Assembly and Others CC 2016*). In this case, Development for Peace Education (DPE) and Transfor-



TRC Human Rights Officer Lepeli Moeketsi sensitising youth-based community organisations on Human Rights Commission during a workshop held in Mo-hale's Hoek

mation Resource Centre (TRC), are primarily challenging the way in which the Act was passed. DPE and TRC argue that the Act was passed by only one house of parliament being the National Assembly. They further argue that this Act is unconstitutional as the principle of public participation was not adhered to when the Act was passed. The clerk of the National Assembly recalled the Human Rights Commission Bill from the Senate, stating that the time for Senate to deliberate on the bill had lapsed.

DPE and TRC contend that consultations had not been carried out with all stakeholders, particularly the public, before the Act was passed and that violated the democratic principle of public participation in state affairs.

Non-compliance with the Paris principles

Human Rights have been a core concern of the United Nations since its inception (OHCHR, 2010). It is for this reason that the United Nations has been working tirelessly to find a winning formula for the respect and enforcement of human rights.

It is however worth noting that the governance of human rights is complex and diffuse. All parts of government are involved, together with other kinds of national institutions and civil society. The UN has been extensively involved in establishing and strengthening National Human Rights Institutions. This is a priority for the Office of High Commissioner for Human Rights (OHCHR) as well as for other parts of the UN such as the United Nations Development Program (UNDP) (see for example the High Commissioner's strategic, management plan 2010- 2011 and the UNDP strategic plan 2008 – 2011).

Due to the UN's efforts, there has been a growing number of National Human Rights Institutions. This has been both a blessing and a curse. There have been successes accruing from this growth as well as challenges, both substantive and operational (OHCHR op. cit). One



Some of the victims of police torture during their meeting with TRC

of those challenges is the need for minimum standards so that national human rights Institutions, regardless of their structure or mandate can be assessed fairly and accredited. It is against this backdrop that the Paris Principles were devised. The accreditation process under the Paris principles is the responsibility of the International Coordinating Committee of National Institutions for the promotion of human rights.

The Paris Principles are not binding to a state; however they are a benchmark on which Human Rights institutions' efficacy is measured. The Paris Principles provide the foundation for National Human Rights Institutions (Aichele 2010)

The Paris principles identify six main criteria that national human rights institutions should meet, to be successful (OHCHR op.cit), these are:

- Mandate and competence: a broad mandate based on universal human rights standards;
- Autonomy from government;
- Independence guaranteed by statute or constitution;
- Pluralism, including through membership and/or effective cooperation;
- Adequate resources;
- Adequate powers of investigation.

For purposes of the Lesotho Human Rights Commission, focus shall be paid to only two of the six criteria, being autonomy from government and pluralism.

Autonomy and independence

The Paris Principles require national human rights institutions to have sufficient funding to have their own premises and staff, to be independent of the government. Independence should also be reflected in the appointment and dismissal procedures of officers of the human rights institution. (OHCHR op.cit) gives a procedure for appoint-

ment which ensures independence; parliament should be part of the formal selection process to make it more credible and transparent. It can develop a shortlist of candidates, which is then submitted to the executive for consideration and final selection, or it could consider and select from a shortlist of candidates prepared by the executive.

According to the Human Rights Commission Act of Lesotho (section 6), the chairperson of the commission, the deputy chairperson, and the commissioner, are all appointed by the King on the advice of the Prime Minister. This provision places all the powers of appointment on the Prime Minister as the leader of the executive branch of government. Nothing in this section places a burden on the Prime Minister to undergo a transparent process as the appointment is made by him through the King, as his advice is binding on the King. This clearly threatens the independence of the Commission as it gives the Prime Minister leeway to stack the Commission hence threatening the independence of the commission.

The removal from office also leaves much to be desired as the Prime Minister is the one responsible for selecting and setting up a tribunal responsible for investigation of the conduct of a member of the commission and subsequent removal (Section 10(3)). The Act further gives the Prime Minister the power to suspend a Commission member pending the finalization of investigations against him or her. It is imperative to note that all these powers are given to the Prime Minister to exercise, without imposing any duty on his part to consult.

It is thus clear that pertaining to independence, the Act has created a situation where the Prime Minister has all powers to hire and dismiss Commission members. This is a clear challenge on the independence of the Commission, as it makes it easy for the Prime Minister as a politician to appoint members whom he may choose without carrying out any consultations.

Pluralism

The Paris Principles require that; “the composition of the national institution..., whether by means of an election or otherwise, shall be established...to ensure the pluralist representation of the social forces (of civilian society)...,” particularly by powers which enable effective cooperation to be established with, or through the presence of, representatives of: (a) non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) trends in philosophical or religious thought; (c) universities and qualified experts; (d) parliament; (e) government departments.

According to the Sub-Committee on Accreditation of National Human Rights Institutions, in its general observations (Para 2.1), pluralism can be achieved through the composition of the National Human Rights Institution, by ensuring the following;

- That members of the governing body represent different segments of society as referred to in the Paris principles;
- Pluralism through the appointment procedures of the governing body of the national institution, for example, where diverse societal groups suggest or recommend candidates;
- Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- Pluralism through diverse staff representing the different societal groups within the society.

The Lesotho Human Rights Commission has been structured in a manner resembling most public offices in Lesotho. It seems to be designed in such a way that it will be aloof, and this goes against the tenets of an effective human rights commission as it violates the principle of pluralism. The Act undermines the principles of pluralism from the manner of appointment of the commission itself, which is appointed on the advice of the Prime Minister as pointed out above. The Act should have made the appointment to be made after consultation with civil society through its representative, perhaps in the case of Lesotho that representative could be the Lesotho Council of Non-governmental Organizations (LCN).

This would show inclusiveness and foster good relations between civil society and the human rights commission. A Human rights commission cannot be effective if it is perceived as merely a government structure, rather than a refuge for the oppressed and marginalized. This can only be achieved when it is seen to be working hand in glove with other organizations dedicated to human rights promotion and protection. The Act ought to have established a formal working relationship between the commission and civil society, failing which; it should have included civil society in its appointment procedure.

The current Act makes it difficult to separate the commission from the government, and that in turn makes it particularly difficult to trust the commission would act decisively against the government should the need arise. An effective human rights commission is one that can act

against whoever violates human rights, without fear or favour. The Paris Principles were formulated to ensure this, the fact that the Human Rights Commission Act does not comply with the Principles in material terms, is a cause for concern over its effectiveness.

The relationship between Human rights institutions and the state is one that requires political maturity as well as tolerance. This is particularly because human rights commissions ought to be independent of the state while the state at the same time must fund it (Peter 2009). The absence of either independence or funding can lead to the commission becoming a toothless bulldog. It has also been seen above that plurality also has a bearing on the efficiency of the commission, and it too requires political maturity if it is to exist.

Comparative perspectives for South Africa

Africa ranks among the highest human rights violators in the world (Schlein 2011), at the same time Africa has one of the largest numbers of Human Rights institutions, with about 31 countries having established human rights institutions. This demonstrates that not all human rights institutions possess the necessary capacity to effectively address human rights violations.

It is imperative at this juncture to examine a successful human rights institution with a view of analyzing its inner workings and its compliance with the Paris principles as a winning formula in a human rights institution. For purposes of this paper an examination shall be on human rights institutions in Africa.

The South African Human Rights Commission (SAHRC) (a case study)

According to Peter 2009, the SAHRC is one of the most respected human rights institutions in Africa. It is well funded by the state, enjoys considerable independence, and commands a lot of respect from the population in the country.

The SAHRC was established in 1995, following the coming into force of the Human Rights Act (Act No. 54 of 1994).

Independence

According to Section 193 (4) (a) of the Constitution of South Africa (Act 108 of 1996), members of the SAHRC are appointed by the President on the recommendation of the National Assembly. Furthermore, a member of the Commission can only be removed from office after the passing of a resolution by the National Assembly for his or her removal. This resolution can only be passed by a two third majority of the National Assembly. It ought to be noted that removal can only be due to the following reasons, misconduct, incapacity or incompetence.

The procedure of appointment and removal in the SAHRC is strikingly different from that in Lesotho; the difference is on the fact that the head of state does not possess the powers to decide who sits on the commission and who is removed. The fact that the president in South Africa has to consult with the National Assembly gives independence to members of the commission as they know they do not owe their appointment to an individual, the stringent removal procedure which cannot be bypassed by the head of state also gives the commission of independence by

giving security of tenure to its members.

The Paris principles on independence have clearly been complied with in the appointment procedure. The procedure clearly gives transparency to the appointment procedure which in turn clothes the commission with the requisite independence.

Success of the SAHRC

The SAHRC is said to have one of the most active tribunals, what is particularly impressive is the fact that the SAHRC has dealt with majority of the issues listed in the South African Bill of Rights. It has dealt with issues relating to access to information (*Brian Williams v Department of Labour*, 1999), children (the *Crawford College case*, 2000), education (the *case of Rastafarian learners*, 2000), and freedom of association (*initiation ceremonies case* 2001) as well as issues relating to freedom of expression (*Federal Council of the National Party v Maharaj Kasrils and Mokaba* 1997). This list is far from being exhaustive; it is just a glimpse of the impressive work the SAHRC is doing.

In 2012 the SAHRC was re-accredited “A status” by the Sub-Committee on Accreditation (SCA) (19-23 November 2012), symbolizing the SAHRC’s full compliance with the Paris Principles.

The SCA noted that the selection and appointment procedure followed in the SAHRC is transparent and participatory, noting the participation of the parliament ad hoc committee in the appointment. It also noted that in practice the vacancies in the SAHRC are advertised widely and the process includes broad consultation with diverse social forces.

The SCA emphasized the requirement for a clear, transparent and participatory process that ensures merit based selection, and promotes the independence of, and public confidence in the senior leadership of a national human rights institution. It also encouraged the SAHRC to advocate for the formalization of aspects of the selection process in relevant legislation, regulations or binding admin-

istrative guidelines.

The SCA emphasized the importance of a fixed term of appointment as it is of fundamental importance in promoting the independence of the SAHRC and the security of tenure of its members.

Section 184(1) of the South African Constitution gives a general mandate to monitor and assess the observance of human rights; the SCA however cautioned that as much as the SAHRC interprets its mandate broadly, that was not enough because the lack of a specific legal power has the potential to limit its ability to perform its promotion and protection mandate, specifically in monitoring places of detention. The SCA therefore encouraged the SAHRC to advocate for changes to its legislation to provide a clear power to make unannounced visits to all public and private places of detention and confinement.

The SCA also noted that there were no provisions in the legislation requiring individuals, government, or public bodies to formally respond to its recommendations and reports, it therefore recommended advocating for legislation requiring that government and other bodies respond to the recommendations of the commission.

From the preceding paragraphs, it can be understood that the Lesotho Human Rights commission proposed by the Act fails to meet the standard for an effective human rights commission even on paper, however the situation becomes even more disappointing when one considers the factors under which it was passed.

Factors before passing of the act

The Human Rights Commission Act was passed during a time when the Basotho society had been deeply polarized by allegations of human rights violations by the government. It came after a Commission of Inquiry by SADC popularly known as the Phumaphi Commission concluded its work and made its recommendations and findings.

The Commission was on to the death of Lt. Gen



Families affected by extra-judicial killings and enforced disappearances share their experiences during human rights session organized by TRC

Maaparankoe Mahao who was gunned down in his home village of Mokema just on the outskirts of Maseru. Mahao had been appointed the commander of the LDF by the former Prime Minister Dr. Motsoahae Thabane. However, upon assumption of office Dr. Mosisili removed Mahao and appointed Lt. Gen Kamoli. After these the Army went on what could only be termed a purging spree where all soldiers expected to have been loyal to Mahao were arrested and detained on charges of mutiny.

Mahao was also killed in what the government termed a “sanctioned operation”, Mahao was said to have been shot because he was resisting arrest. The Phumaphi Commission was thereafter sent to Lesotho to enquire into the circumstances surrounding his death.

The Commission made recommendations which the government did not follow, the government even went to the point of saying the recommendations were not binding. This sparked anger from the international community which saw USA even threatening non-renewal of the African Growth and Opportunity Act (AGOA).

The Human Rights Commission Act was passed during this time when Basotho were divided in their view on the government of the day. The Act is supposed to deal with issues affecting every Mosotho, and if it is to be respected it ought to be seen by the vast majority of Basotho as their own Act and this could have been achieved through public participation. The Ugandan Human Rights Commission (UHRC) is respected and accepted by Ugandans because

Ugandans in all levels of society were consulted before its adoption (Peter, 2009). This was particularly important after the forms of Dictatorship Uganda had suffered

Conclusion

The Human Rights Commission proposed by the Act fails dismally on very integral issues of independence from government and pluralism. The Act further fails in the way it was passed wherein public participation was denied before the passing of the Act. It is thus very hard to respect the commission born of such an Act. It is easy to provide for rights but quite difficult to implement them, the fact that the founding legislation (Human Rights Commission Act of 2016) is weak makes it an unbridled task to have faith in it.

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TORTURE HAS NO PLACE IN OUR BUDDING DEMOCRACY

Lepeli Moeketsi

Abstract

Torture is a widespread phenomenon, in Lesotho, Africa and elsewhere, despite the many conventions, resolutions and other international, regional and domestic declarations and laws prohibiting it. In Lesotho torture is still prevalent despite the fact that it has been categorically prohibited by our legal frameworks. Recourse to torture appears to be the rule rather than the exception in Lesotho where suspects and accused are systematically subjected to it by the police. In principle, the police represents the public authority. It is one of the main lines of contact between the citizen and the state, which holds among its prerogatives a monopoly in the use of legitimate force. As such, the function of the police officer is carried out in a context of intrinsic tension between, on the one hand, the need to maintain public order, which is necessary to the

protection of human rights, and, on the other hand, the obligation of absolute respect for the person. While, on the one hand, the police is one of the agents of protection of citizens' rights and peace, it is also exposed to the danger of violating human rights. This dichotomy places the police in a delicate situation in the field of human rights. The manner in which it fulfils this role and operates in this field is crucial, as the proper functioning of the police is an essential element in the full implementation of human rights. Indeed, while a poorly trained, poorly equipped, badly organised and "ill-defined" police force is liable to violate human rights, one which operates with objectives adapted to needs and with clear values is more likely to give better service to society and to consolidate access to human rights for all citizens.

Introduction

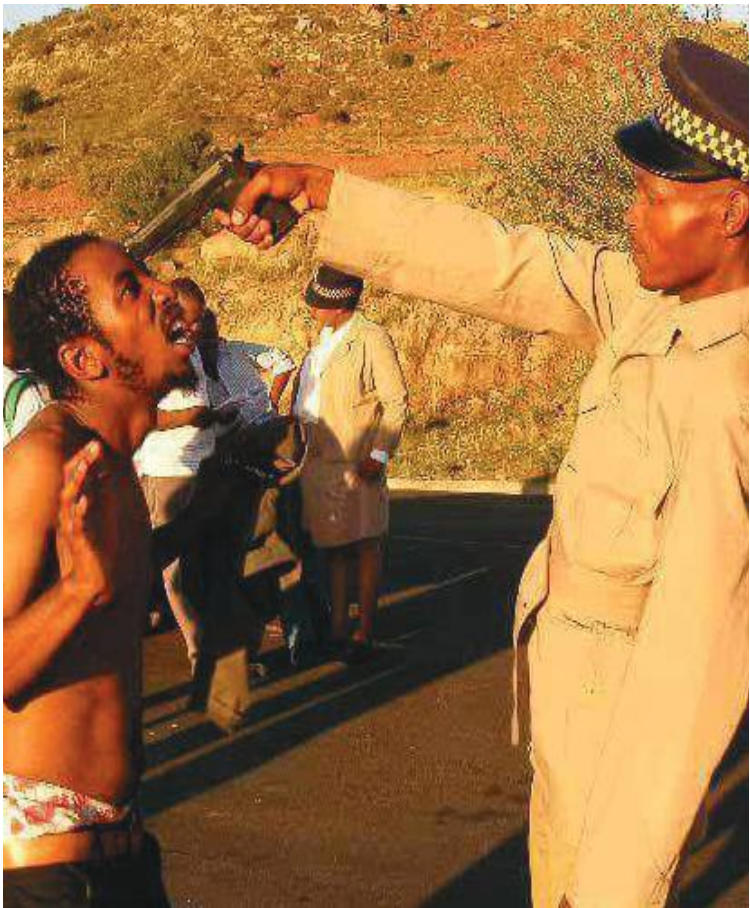
In Lesotho, like most African countries, police investigators use coercive methods on the suspects amounting to torture or other ill-treatment to extract confessions, statements, and other information from the suspects. On the 28th January 2017 the Lesotho Times newspaper carried a horrific story of a 53 year old Mokoto Lentsoe who narrated a harrowing account of his ordeal at the hands of the members of the police special operations (SOU) who allegedly assaulted him and 14 others in 2011. Another incident is the case of Commander, Lesotho Defence

Force and Others v Letsie (C of A (CIV) 28/09) [2010] LSCA 26 (22 October 2010) Where Tlhoriso Letsie who is a member of the Lesotho Defence Force was arrested, detained and tortured by members of the military Intelligence and the police.

Suspects are often denied access to lawyers and family members. Depending on their compliance with the demands of investigators, suspects are punished with denial or access to water, food, light, and other basic needs. This article seeks to delve into issues surrounding torture, legal frameworks put in place to safeguard against



Members of the LDF handcuffed, leg-shackled and subjected to torture by their colleagues



torture and outline some incidents of torture in Lesotho. The article will conclude that torture and ill-treatment are morally and legally wrong as they undermine civil liberties and constitutional values and that they have no place in our society.

Torture includes such practices as searing with hot irons, electric shock treatment to the genitals, cutting out parts of the body such as tongue, entrails or genitals, severe beatings, suspending by the legs with arms tied behind back, inserting a needle under fingernails, making a person crouch for hours in the 'Z' position, waterboarding, denying sleep for days or weeks to name but few (Seumas, 2017).

The above-mentioned are some instances of torture, now our concern is the definition of torture. What is torture? The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him (sic) or a third person information or a confession, punishing him (sic) for an act he (sic) or a third person has committed or is suspected of having committed, or intimidating or coercing him (sic) or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (Article 1: 1984).

A distinction is made between torture and inhumane treatment, albeit torture is a species of inhumane treatment. This is so because some treatment might be inhu-

mane without being sufficiently extreme to count as torture. In the like manner, some inhumane treatment does not involve physical suffering to any great extent and is therefore not torture, properly speaking. Some forms of the infliction of mental suffering are a case in point, as are some forms of morally degrading treatment.

So torture is:

The intentional infliction of extreme physical suffering on some non-consenting, defenceless person, and the intentional, substantial curtailment of the exercise of the person's autonomy. The purpose or point of torture is: to obtain a confession, information, to punish and coerce the sufferer or others to act in certain ways.

Scholars such as Davis and Sussman (2005:26) are of the view that in general torture is undertaken for the purposes of breaking the victim's will. Will here must be conceived as "the faculty of conscious and especially of deliberate action; the power of control the mind has over its own actions" (Dictionary of Philosophy). Breaking the victim's will is a purpose central to the practice of torture and achieving that purpose if very often a necessary condition for the achievement of the other four abovementioned purposes (Seumas:2017).

The overall purpose of this paper is to persuade state security agencies, especially police service, and the military force in Lesotho to execute their duties with respect for human rights and the rule of law. Many state security institutions in Africa are already trying to integrate a human rights thinking into their work; it would seem evident that positive human rights changes with respect to the security agencies are considerably more likely to occur if such agencies, like police services, have an understanding of how to integrate a human rights thinking into their work and become drivers of those changes. Our security

agencies in Lesotho must be in the forefront in ensuring that human rights are always respected, promoted and protected when they execute their constitutional mandate. The paper also seeks to urge the government of Lesotho to ensure that in the execution of their duties, police fully comply with the respect for human rights and the rule of law and that they are fully equipped to efficiently conduct investigations.

Legal frameworks prohibiting torture

The Universal Declaration of Human Rights (UDHR) which is a milestone document in the history of human rights opens with a statement recognising “the inherent dignity and of the equal and inalienable rights of all members of the human family .” (UDHR:1948).

Lesotho is a state party to Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) which also provides for “the rights being derived from the inherent dignity of the human person” (CAT: 1984). A human being has the right to be valued, respected and to receive ethical treatment. It is a fundamental moral and legal right.

The African Charter on Human and Peoples’ Rights, which Lesotho has ratified, provides that; “every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status” (African Charter, Article 5: 1981). Article 5 deals with a range of rights and obligations which form part of the wider commitment to respect the dignity inherent in every human being. It recognises that there is a mutually reinforcing link between the right to dignity and the absolute prohibition of torture and other ill-treatment.

The Constitution of Lesotho (1993) provides for freedom from inhumane treatment under section 8.

Lesotho’s Criminal Procedure and Evidence Act, in an attempt to safeguard, amongst others, against confessions extracted by torture or ill-treatment, provides that “Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence . . . be admissible in evidence against such person provided the confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto” (section 228(1): 1981).

Incidents of torture in Lesotho

Although the Constitution and law expressly prohibit such practices, there are reports of torture and cruel, inhuman, or degrading treatment or punishment by the Lesotho Defence Force (LDF) and the Lesotho Mounted Police Services (LMPS). This is according to the Lesotho Human Rights Reports of 2013, 2015 and 2016 by the United States Department of State.

The Transformation Resource Centre (TRC) received reports of human rights violations over the years, but for the purposes of this article we shall focus only on those which happened between 2015 and 2017. These reports were documented and reported at the 57th, 58th, 59th and 60th Ordinary Sessions of the African Commission on Human and Peoples’ Rights held in Gambia and Niger. The

following are some of the incidents of human rights violations which TRC interviewed the victims and affected families;

On the 29th July 2015 police officers invaded the village of Vuka-Mosotho in the district of Leribe at about 5am. Police officers took men of the village to Thabana-ea-Lipitso where they were made to roll on the ground and beaten with sticks, kicked and made to sing. The reason for their torture was that they refused to accept a prominent businessman when he imposed himself on the villagers as their new chief. The same incident happened in Ha-Mohohlo, Taung, in the district of Mochale Hoek where women and elders were forced by police officers raiding their village to roll and were beaten while rolling. The purpose was to force the women and elderly to reveal where their husbands and sons were hiding. They were suspected of “Litotomeng” killings.

On the 31st August 2017, police officers assaulted members of the Letlama group in Ha-Mofoka. They were made to lie down and were severely tortured. One of them was allegedly shot by the police and was later found dead with part of his flesh from his face missing.

Residents of Lihobong on the 17th April 2016 because had clashes with the Lihobong Diamond Mine emanating from the mine’s failure to fulfil some of its promises to the residents. Four residents involved in the protest were beaten with sticks and rifle butts and detained at Botha-Buthe Police Station for more than 48 hours.

On the 4th April 2016, ‘Mamoleboheng Besele who is a resident of Lebakeng in Qacha’s Nek had conflict with her family. She was transferred to the village chief who also transferred to Ha-Molomo Military Base located at Lebakeng in qacha’s Nek district. She was severely beaten with a spade, sticks, and whip by the members of the LDF deployed in Ha-Molomo.

TRC also received reports between May and July 2015 that there were soldiers who were being kidnapped for their alleged involvement in a mutiny plot. These soldiers were subjected to unimaginable torture by their colleagues at Setibing Military Base. They were forced to confess to the mutiny plot and implicate others.

There is further an incident where police constable Mokalekale Khetheng was arrested by his colleagues and was forced to disappear from the public by police authorities. After the fall of Dr. Pakalitha Mosisili’s regime, the new Dr. Thomas Thabane’s led coalition made investigations which led to the finding of PC Khetheng even though he was found dead. It was revealed that PC Khetheng was tortured and killed allegedly by his colleagues. His body was placed amongst unknown bodies at the morgue and he was buried with them by the state during Mr. Mosisili’s led coalition government. Exhumation was made and his body was hidden beneath three other bodies on top of his.

There are further unconfirmed reports that he deputy leader of the Lesotho Congress For Democracy was tortured during his interrogations by police in August 2017. Mr. Ts’eliso Mokhosi who is a former minister of defence is suspected of complicity in the murder of the above-mentioned PC Khetheng. He alleges that he was forced to make a confession and subjected to severe torture by the police. The allegation which SADC Ministerial Double

Troika fact-finding mission to Lesotho has queried on the ground that there was no evidence to back up Mr. Mokosi's allegation of torture (Kabi2017). There are other individual incidents of torture at the hands of the state institutions which due to time and space limitation cannot all be included in this article but can be accessed at TRC Offices.

Moral wrongfulness of torture:

According to Seumas (2017), at least two things are inherently morally wrong with torture;

First, torture consists in part in the intentional infliction of severe physical suffering – typically, severe pain; that is, torture hurts very badly. For this reason alone, torture is an evil thing. Second, torture of human beings consists in part in the intentional, substantial curtailment of individual autonomy. Given the moral importance of autonomy, torture is an evil thing – even considered independently of the physical suffering it involves.

Given that torture involves both the infliction of extreme physical suffering and the substantial curtailment of the victim's autonomy, torture is a very great evil indeed. Scholars like Davis argue that torture is a greater evil than killing or even murder. He argues that "both torture and (premature) death are very great evils but, if one is a greater evil than the other, it is certainly torture" (2005:165). Sussman holds that "yet while there is a very strong moral presumption against both killing and torturing a human being, it seems that we take the presumption against torture to be even greater than that against homicide" (2005:15). Surely, torturing a human being to death is worse than murder itself, for it involves torture in addition to murder. Seumas compares torture to killing in that both interrupt and render impossible the normal conduct of human life, albeit the latter – but not the former – necessarily forever. But equally during the period a person is being tortured (and in some cases thereafter) the person's world is almost entirely taken up by extreme pain and their asymmetrical power relationship to the torturer, i.e. the torture victim's powerlessness. Indeed, given the extreme suffering being experienced and the consequent loss of autonomy, the victim would presumably rather be dead than alive during that period. So, as already noted, torture is a very great evil. However, it does not follow from this that being killed is preferable to being tortured. Nor does it follow that torturing someone is morally worse than killing him.

The conclusion to be drawn is that torture is not necessarily morally worse than killing (or more undesirable than death), though in many instances it may well be. Killing is an infringement of the right to life and the right to autonomy. Torture is an infringement of the right to autonomy, but not necessarily of the right to life. Moreover, torture is consistent with the retrieval of the victim's autonomy, whereas killing is not. On the other hand, the period during which the victim is being tortured is surely worse than not being alive during that time, and torture can in principle extend for the duration of the remainder of a person's life. Further, according to our adopted definition, torture is an intentional or purposive attack on a person's autonomy; this is not necessarily the case with killing. Finally, torture

can in principle involve the effective destruction of a person's autonomy.

Wrongfulness of evidence by torture

We have delved into the inherent wrongfulness of torture from the moral perspective. Now we shift our focus into the legal perspective of torture, specifically evidence obtained by torture. Torture as understood from the legal perspective concerns not only the procedural right to a fair trial as provided in the Constitution of Lesotho, but also protection from the abhorrence of torture itself. As a general principle, evidence obtained by torture is excluded because it compels an accused "to hang himself by the words of his/her own mouth in violation of the principle against self-incrimination which underpins the principle of fair trial" (Owori).

Owori distinguishes between two approaches that would render confession either admissible or non-admissible; reliability principle and due process principle. Reliability principle is concerned with the way in which the evidence was obtained and the extent to which the reliability of the evidence is affected. Only reliable evidence is admissible; unreliable evidence should be excluded. However, the reliability principle allows evidence which has been obtained illegally or improperly to be admissible so long as it is reliable (Monaghan,2015). Thus, the fundamental shortcoming in the reliability principle is that it fails to protect the rights of the accused. Indeed the reliability principle cannot be reconciled with the provisions of the constitution where it provides for fundamental human rights.

Due Process Principle "does not deny that the main purpose of any trial is to determine the truth of the charges preferred against the accused and that it takes reliable testimony to establish that truth. It, nevertheless, rejects the pursuit of that truth at all costs" (Owori:2013:74). Promotion and protection of civil liberties and human rights values must take precedence at all times. Under the due process principle we have two other principles; protective and disciplinary principles.

The protective principle provides that evidence should be excluded where the police have treated the accused in a way which infringes his/her fundamental human rights. This principle has been known as "excluding evidence as protecting rights" (Ashworth 1977:726). Evidence extracted by means of torture must be excluded in court whether it is true or false. Admissibility of such evidence would undermine the constitutional values of fair trial to compel an accused to convict him/herself by the words of his/her mouth or the conduct of his/her person. The protective principle thus argues that an infringement of an individual's rights (in the broad sense that s/he is denied something to which s/he is entitled or subjected to treatment which is improper, torture in particular) supplies a prima facie justification for the exclusion of evidence obtained as a result of that infringement.

Disciplinary principle seeks that evidence which has been obtained illegally or improperly, through torture in our case, should be excluded in order to discipline the police and deter them from future violations of the law or breaches of the Codes of Practice. The police must

obey the law while enforcing the law. The idea behind this principle is that “the court should use its position to discourage improper practices in the investigation of crime” (Ashworth 1977:723).

As Owori puts it, any confession improperly obtained from an accused by improper means such as torture, must be excluded in order to send a clear message to both errant and potentially errant police officers that they will not benefit from the fruits of their improper methods (75: 2013). This has the effect of ensuring that the police meet certain standards of investigative behaviour.

Conclusion

Torture is a crime both at national and international law; it is absolutely prohibited and cannot be justified under any circumstances. Although the prohibition of torture is internationally accepted, torture and ill-treatment by the government through its security institutions; army, police, national intelligence and correctional service is still rampant in Lesotho.

In the case of police torture, the law forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also of the strongly felt attitude of our society that important human values are sacrificed where police in the course of securing a conviction, wrings a confession out of an accused against his will. This practice must stop and police must adopt investigative standards which respect, promote and protect human rights at all times.

On the issue of the army tortures and ill-treatment; by refuting the allegations made by the soldiers accused of a mutiny plot that they had been tortured by their colleagues, the government breached its obligation under the Robben Island Guidelines on Prohibition and Prevention of Torture in Africa which compels States to investigate the matter “whenever a person who claimed to have been or who appears to have been tortured or ill-treated makes such allegations” (Rule No. 17).

The former government led by the Prime Minister Paka-litha Mosisili in the case of the soldiers accused of mutiny was more than just aware about the allegations of torture as evidenced by the fact that there were media reports on the issue and information was shared through communications by civil society organisations such as Transformation Resource Centre (TRC) which raised concerns regarding torture against the soldiers accused of mutiny on 21 May and 22 June 2015.

The government led by Prime Minister Mosisili was further aware of allegations of torture in that in June 2016 the victims wrote a letter to the then Prime Minister asking him for the establishment of a commission of inquiry into their arrest, torture and ill-treatment at the hands of the army.

The then Prime Minister Mosisili rejected that call. The rejection was made despite the fact that SADC Commission of Inquiry on the situation of Lesotho, explicitly mentions that some of the accused said that they were tortured by security forces and were forced to make statements implicating other soldiers (SADC Report, 2015).

Moreover, the former premier rejected the call to investigate allegations of torture despite the Court of Appeal in *Jobo and others v Commander of Defence Force and Others* (2015) confirmed that the detainees had been subjected to torture and inhuman and degrading treatment.

It is important to reiterate the Mandela Guidelines and remind the government of Lesotho that where allegations of torture are made, the state is under an obligation to investigate allegations of torture and should promote the domestication and implementation of national and international human rights standards which provide effective and enforceable remedies for torture victims. The right to a remedy and reparation is a basic human right and it is enshrined in every international human rights treaty and has been recognised by an array of international tribunals.

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COMMENTARY ON THE RELATIONSHIP BETWEEN HUMANITARIAN INTERVENTION AND HUMANITARIAN LAW.

Mabusefetsa Lenka Thamae

Abstract

The reason for the discussion of Humanitarian Intervention serves two purposes: In the context of Lesotho this Humanitarian Intervention debate has been triggered by rampant violations of fundamental human rights in Mosisili's government. The vitriolic violation of human rights in Lesotho has been a motivation to write on the concept of humanitarian intervention. The political and security problems that face Lesotho have a potential of luring foreign forces to enter Lesotho through Humanitarian Intervention to save the nationals from the state power. The other motivation is the Mosisili's government refusal to implement SADC recommendations on the claim that they were sovereign.

The second reason for the discussion of Humanitarian Intervention is purely academic. If foreign forces enter Lesotho through Humanitarian Intervention citizens should already be having a deeper knowledge of the concept of humanitarian intervention and understanding of different aspects of Humanitarian Intervention.

The article defines humanitarian intervention and humanitarian law and argues whether humanitarian intervention applies to states claiming to be sovereign. It makes a short historical background on humanitarian intervention and in the process explains the concepts of sovereignty, non-intervention and self-determination. The two types of humanitarian intervention, which are authorized and unauthorized interventions will be explained. The difficulty of humanitarian intervention because of the concepts of sovereignty, non-intervention and self-determination, is highlighted.

INTRODUCTION

The article intends to give a brief overview of both Humanitarian Law and Humanitarian Intervention. The emergence of humanitarian intervention will also be highlighted. It will make introduction to the humanitarian intervention as well as the discussion of the concepts of sovereignty, non-intervention and self-determination. The article will further discuss the relatedness of humanitarian intervention and international humanitarian law. These two terms are given meaning through international Law approach. The Humanitarian Intervention will be highlighted and made clearer through discussion of the two types of humanitarian interventions.

From the onset the articles recognizes the difficulty of a Humanitarian Intervention because of the concept of **sovereignty; non-intervention** and **self-determination**.



AN HISTORICAL BACKGROUND TO HUMANITARIAN INTERVENTION

The concept of humanitarian intervention can be traced to the 13th century Philosopher, St Thomas Aquinas, who argued that a sovereign had the right to intervene “in the internal affairs of another when the latter mistreats its own subjects beyond the limits of what seems acceptable.” (Tesen, 2006: 93). Hugo Grotius, who is presumed to be the father of international law weights in the argument of Aquinas by stating that if a tyrant “should inflict upon his subjects such treatment as one is warranted in inflicting, the exercise of the right vested in human society is not precluded”. (Teson, 2006:93).

A Swedish Ambassador to Germany, Carl Tham, is cited in Simons (2003: 03) as stating that “the concept of humanitarian intervention emerged in the 1990s, against a background of civil war and atrocities in a number of regions. In all these cases, vast segments of the population were oppressed, tortured or murdered. In Rwanda more than 500,000 were killed within the space of three months. It was genocide, but the international community did little to stop it.”(Carl cited in Simons, 2003:03).

A number of scholars think that it is high time that the world stood firm against atrocities that shock human conscience. As a result, they are proposing amendments to the international law. Even the Secretary General of the United Nations feels and suggests that “the international community has the right to intervene and should intervene to protect vulnerable groups in cases of immediate, severe and large-scale abuses of human rights or genocide.” As a matter of fact, “to employ military force in extreme situations of abuse is not necessarily inconsistent with the spirit of the UN Charter and international law, they argued, if such an intervention has the backing of a Security Council resolution.” (Carl cited in Simons, 2003: 03).

One such example of humanitarian intervention was

carried out by the North Atlantic Treaty Organization (NATO) in 1999 in Kosovo. Although this intervention was not sanctioned by the Security Council, (a thing which may open other problems), it was felt that NATO intervention in Kosovo was a legitimate one. In fact, the Independent International Commission on Kosovo did affirm this point of view. The Commission felt that the “action was legitimate because diplomatic means had been exhausted and because it was necessary to put a stop to the Serbian atrocities and oppression of the Albanian Kosovars...” (Teson, 2006:93-113).

The Humanitarian Intervention is therefore, defined as a *“threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.”*(Simons, 2003:3).

Sovereignty of states

The states are sovereign when they are independent and when they are under no external authority that dictates terms. According to Posse (2012) sovereignty is defined through legal and normative aspects; these two aspects look at states as having control over territory and its people. When states are sovereign it means they are not “subject to any higher political authority.”(Posse, 2012: 116).

The very concept of sovereignty means that other states recognize under international law that such a state exists, therefore, there should be no interference its internal affairs; in this case the concept of non-intervention applies. The prohibition of intervention “is a corollary of every state’s right to sovereignty, territorial integrity and political independence.” (Oppenheim’s International law,1992, 428-449). The United Nations Charter emphasizes this point: “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” (Posse, 2012: 116).

Non-intervention

The concept of non-intervention is closely related to a sovereignty concept in that the sovereign states should not be interfered with because they are independent territorial units. According to Posse (2012) attempts to apply laws and policies across the borders are seen as illegal and aggressive moves of extra-territoriality. According to the United Nations Charter, article 2(4), states are prohibited from the threat or use of force in the pursuit of their international relations. Article 2(4) expresses this point of view in this manner:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations. (Kmacioglu, 2005:17).

The article also constraints states from resorting to self- help principle in the pursuit of their interests. The UN Charter in article 2(6) argues that non- intervention applies to non-Members of the UN as well. This is done according to the mandate of the UN of maintaining international peace and security. Any disputes among UN members and non-members should instead be brought to the attention of the Security Council or of the General Assembly. Another article of the UN Charter, article 2(7) also emphasizes the principle of non-intervention. This is ably expressed in the following:

Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter but this principle shall not prejudice the application of enforcement measures under Chapter VII. (Kmacioglu, 2005:23).

Self determination

Self determination speaks to groups or societies wanting to become independent and charting their own ways. The era of post Cold War collapse gave rise to hundreds of ethnic societies who wanted autonomy, self rule and independence.

Self determination is covered by international law giving rights to groups which want to secede. According to Roepstorff (2013) strong and powerful sentiments of nationalism have acted as spring board for self-determination claims. Smaller societal groups often have hopes for freedom and independence. Self determination may be occasioned by non provision of service delivery and the neglect of economic aspirations of these smaller groups. This yearning for freedom and independence is sought after even through the force of arms in some situations such as the Kurds in Iraq; Tuorey in Northern Mali; the Afar in Djibuti; Omoros in Ethiopia and Saharawi in Western Sahara.

Stressing the relatedness of international humanitarian law and humanitarian intervention

International humanitarian law is the branch of customary and treaty-based international positive law whose purposes are to limit the methods and means of warfare and to protect the victims of armed conflicts. It is this international humanitarian law that gives mandate to international community to intervene where there are rampant violations of human rights within states. When international humanitarian law is so applied by the United Nations Security Council, then humanitarian intervention becomes obligatory as was the case in Kosovo and Rwanda in 1999 and 1994 respectively. The violation of international humanitarian law constitutes a grave offence, and those in breach of this important law are normally directly held accountable. It is therefore, the requirement of this law that states should prosecute the behavior constituting war crimes. If a particular state fails to punish the perpetrators of heinous crimes, the next level of international criminal tribunals may be sought,

All human beings are born free and equal in dignity and rights.



while the final step of intervention is that of International Criminal Court, which is a “permanent body, whose role is to prosecute what the international community as a whole considers, the most serious misconduct, including war crimes.” (Carl, cited in Simons (2003:03). The humanitarian intervention gives weight to the 1949 Geneva Conventions, which have outlined human rights violations which shake the human conscience.

There are two types of humanitarian intervention. One is authorized and sanctioned by the UN, and the other is unauthorized because it is not sanctioned by the UN. According to Teson (2006:107) the intervention sanctioned by the UN is done under authority of Chapter VIII of the UN Charter. The unauthorized or the unilateral military action against another state for violations of fundamental human rights is problematic as some state may do so in order to plunder the resources of that particular state. Care is therefore necessary in the execution of humanitarian intervention not sanctioned by the UN.

When states execute humanitarian intervention they must do so under certain principles. Teson (2006) argue for these principles. Teson (2006:94-107) argues for humanitarian intervention. According to the author there are eight principles that make humanitarian intervention necessary. These are: (1) governments are mere agents of the people, therefore, their international rights are obtained from “the rights and interests of the individuals who inhabit and constitute the state.” (Teson, 2006:94-107).

(2) The tyrannical governments forfeit the protection afforded them by international law; (3) all persons have human rights that governments have to respect at home and abroad as their obligation; the right of humanitarian intervention provides states to rescue the victims of tyranny or anarchy. (4) A justifiable intervention must be intended to end tyranny or anarchy. (5) Humanitarian interventions are governed, like all wars, by the doctrine of double effect. (6) In general, only severe cases of anarchy or tyranny qualify for humanitarian intervention. (7).

The victims of tyranny or anarchy must welcome the intervention. (8). Humanitarian intervention should preferably receive the approval or support of the community of democratic states.

Conclusion

Non intervention, self-determination and sovereignty have come under check by processes of globalization, but in particular, by humanitarian intervention under humanitarian international law. The concepts of non-intervention, self determination, sovereignty and humanitarian intervention, have been defined and explained.

The issue is that in certain circumstances the international community does intervene in states' affairs, where there is a gross violation of human rights. The humanitarian intervention, whether sanctioned by the United Nations or a unilateral action of states, seems to be acceptable by the international community on the proviso that the eight principles by Teson are followed. Therefore states can intervene for humanitarian purposes, and must intervene to secure the rights of the people in other states where there are gross violations of these peoples' rights.

The concept of sovereignty cannot therefore be invoked by Lesotho and by other states because the same sovereignty serves the people, and those that violate it cannot hide behind the shield of sovereignty principle! Therefore, the SADC recommendations cannot be seen as intrusion into Lesotho' sovereignty. It has been the right thing to do because Lesotho seems unable to arrest issues of impunity. The international community cannot watch when human rights are violated in Lesotho and anywhere in the world.

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CONFRONTING LESOTHO'S TORTURE AND KILLINGS BY STATE SECURITY INSTITUTIONS

Likopo Mokhele

Abstract

Lesotho experienced a transitional democracy from single party rule to coalition government in 2012. Basotho should have been excited by the representation of diverse views of the public as leaders were part of the ruling government. However, a turn of events were seen as security agencies became entangled with politicians. This paper unravels the hideous crimes state security agencies have committed. The manner in which security agencies have violated human rights is chiefly due to political power, impunity, undermined rule of law and ineffective justice system. Unless these issues are confronted adequately, state security agencies will continue to contribute widely to the use of torture, cruel, inhuman or degrading treatment and arbitrary killings without facing prosecution while these institutions were mainly established to protect and to serve the public and the state.

Introduction

Allegations of excessive use of force and lack of accountability by state security agencies are a major concern in Lesotho. Cases of torture, arbitrary arrests and killings have been reported for years without perpetrators being effectively tried by the courts of law. The Bureau of Democracy, Human Rights, and Labor (2015) reports that in March 2015, 3 young boys reportedly went to assist another boy who claimed to be under attack at Thaba Bosiu.

They brought back a gun confiscated from the attacker and presented it to the chief of Ha Ramotsoari. Police at the "Flight One" police station at Mazenod collected the gun and after a few days had the boys report to the police station. When they did, police ordered them to strip naked, tied their hands and feet with handcuffs, hit them with a knobkerrie (club) on the buttocks, and suffocated them with a tire tube. One of the boys, Mohau Taleng, died during the torture. Police claimed Taleng died during questioning. The father claimed the left side of his son's skull (between the ear and the eye) was smashed inwards. According to a police spokesman, investigations continued.

Furthermore, Lesotho witnessed one of the grave and abhorrent chains of ill treatment, torture, arbitrary arrests and killings emanating from the Lesotho Defence Force (LDF). In May and June 2015 after an alleged mutiny plot, The LDF commander Maaparankoe Maho was accused of prompting a mutiny conspiracy which later resulted in his assassination by his junior colleagues who claimed that he had resisted arrest. Unfortunately the fate of his co-accused resulted in extreme torture. The Bureau of Democracy, Human Rights and Labor (2016) indicated that the detained Lance Corporals Toma Jobo and Pit-

so Molefi were brought in court chained. Molefi showed the court the injuries on his wrists and complained about neck and kidneys ache. Jobo complained about chest pain, back pains and swollen wrists. He also told the court he was denied his antiretroviral (ARV) medication. The detainees claimed they had been severely tortured through various means.

There are many other reports linked and unlinked to these cases which have surfaced regarding LMPS and LDF's atrocities but much has not been done in terms of the administration of fair trial regarding what they have committed. Therefore granting impunity for human rights violators. However, there are no significant human rights institutions that uphold the rights of Basotho as their sovereignty is undermined by the government.

The recent human rights commission act also undermined the autonomy of the institution as it is under direct and excessive influence of the Prime Minister. This article focuses on the security agencies' conduct in committing crimes against humanity with the discussion resting on four main factors: political power, access to justice, rule of law and impunity.

The foundation of legal frameworks

Post the world war, countries came together and made a series of conventions and declarations in order to uphold human dignity, liberty and respect around the world as well as to restrain government powers. This initiative brought about the development of international bill of human rights which is made up of a number of conventions.

To name those significant to this paper as according to Amnesty International & CODESRIA (2000) are the Universal Declaration of Human Rights (1948) and International Covenant on Civil and Political Rights (1966). Lesotho showed willingness to fulfil the human rights agreements by virtue of becoming a member state of the United Nations General Assembly and ratifying the treaties.

The International Covenant on Civil and Political Rights (ICCPR) (1966) Article 6. 1 provides that 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'. Arbitrary killings which are extra judicial executions carried out by governments continue to trouble Lesotho's democracy. The United Nations also introduced the Convention against Torture (CAT) which defines torture as an act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as;

- *Obtaining from that person or a third person information or a confession,*
- *Punishing that person for an act he/she or a third person has committed or is suspected of having committed,*



Members of the Lesotho army and police marching in Maseru

- *Intimidating or coercing that person or a third person,*
- *For any reason based on discrimination of any kind*

Lesotho as signatory to the international conventions. In its laws the country guarantees and has framed the bill of rights to systematically become fundamental human rights and freedoms. The constitution of Lesotho section 5 (1) provides that “every human being has an inherent right to life. No one shall be arbitrarily deprived of his life” and section 8 (1) states that “No person shall be subjected to torture or to inhuman or degrading or other treatment”. Nonetheless, state security agencies since from afar continue to commit torture, cruel, inhuman or degrading treatment and arbitrary killings at the expense of human rights respect and wellbeing.

Political Power

Although human rights are not absolute, Lesotho's state actors and security agencies continue to undermine this bill of rights. The cause of these atrocious human rights violations can be attributed to the colossal political power Basotho politicians have, ineffective criminal justice, impunity, and compromised rule of law.

Although, countries formed an international coalition in order to curb many crimes against humanity that occurred globally, state administration still ooze overwhelming power to demand, direct and determine the actions of state security agencies and whether security personnel are punishable or not. Trust is also an important component that cannot be ruled out amongst government leaders and the opposition.

Consequently, state security actors become repressive tools of those that have power over those that do not. Leaders were also law unto themselves and had no obligation to account to any external institution in the past. These factors contribute to the significant hostility for African states, Lesotho being no exception to give up powers to higher authority that is ascending compliance to the standards established by the universal world.

However, many states conform to the human right treaties so that they are acceptable to the world holistically. The challenge is states independently self-determine the manner in which security agencies will operate without nec-

essarily honoring the treaties especially if they are not enforceable. Rights are violated and security personnel commit these human rights violations with confidence that they will not be charged. Sometimes they feel it is necessary to torture, arbitrarily arrest or assassinate suspected criminals in order to extract information during investigations. Regardless of the circumstances, the actions should be prohibited because some of the suspects are framed, innocent or targeted by the institutions.

Even so those that are guilty deserve free and fair trial before they can be persecuted. On the other hand, Buha argues that given the potential value of torture militarily, scholars and politicians have crafted various arguments to justify torture legally and morally. Among these arguments, one asks why we fear permitting torture in designated circumstances when many legal regimes openly permit certain forms of killing.

Although often unexamined, the argument raises a good point: what exactly makes torture unconditionally prohibited, while practices that inflict greater physical harm remain fixtures in many jurisdictions? He further argues that three forms of killing are currently legal. First, international law and nearly every moral theorist recognize some version of a “just war.” Second, several states impose capital punishment.

Third, many jurisdictions allow law enforcement to use deadly force against fleeing suspects of dangerous crimes. Each of these practices involves legal killing. How, then, does one justify a regime that simultaneously bans torture and authorizes these killings? Mark argues that torture should be permitted because it results in less physical harm than legal killing.

However repulsive the practice may be, torture usually leaves the victim alive to see another day. If killing is sometimes permissible, analogical reasoning suggests that torture ought to be sometimes permissible as well (Buha: 2010).

Still, other scholars Thomas Hurka and Michael Walzer may support these actions but they are with no doubt destructive and should be prohibited. The actions of torture and arbitrary killings ruin the lives of many as some are left permanently injured or killed. The state security actions claim more lives each year without thorough en-

gagement of the justice system. The ignorance of these dehumanizing actions will cause chaos in Lesotho as well as the inherent instability. This is a culture that must be done away with as each incoming government is characterized by the use of ill-treatment, force, torture and arbitrary arrests and killings. The country has witnessed over 23 soldiers fleeing in the country as well as opposition leaders in May 2015 claiming fear of their lives.

This year Lesotho Congress Party leader Mothejoa Metsing fled the country in August after the arrest of his deputy leader Tseliso Mokhosi for the murder of Mokalale Khetheng. Mr Mokhosi had alleged that he had been tortured in police custody (Muzofa: 2017). This is the wheel of many human rights violations committed by politicians in power along with their allied security agencies.

The chain of human rights abuses will continue to plague Lesotho due to the systematic practice the police and the military have adopted to terrorize others for different political agendas. Torture, cruel, inhuman or degrading treatment and arbitrary killings also torment many other African countries such as Zimbabwe, Nigeria, Congo, Angola, Cameroon, South Africa and many more.

In Nigeria, military and other security forces embarked on a campaign of violence against peaceful pro-Biafra protesters –resulting in the deaths of at least 100 protesters during the year. Similarly in Cameroon, more than 1,000 people – many arrested arbitrarily – were held in horrific conditions and dozens died from torture, or disease and malnutrition. During the fighting in the southern Equatorial region, armed forces, particularly government soldiers, committed human rights violations including targeted killings and attacks including against humanitarian personnel (Amnesty International 2016/17 report).

Access to Justice and Delivery

Numerous cases have been reported on police and army brutality, ill treatment, arbitrary arrests and killings which have not yielded tangible results. Equality before the law is non-existent as security agencies' officials are rarely tried. However, the present day government has taken a step in prosecuting army and police officials suspected of human rights violations or hideous crimes that occurred during the tenure of Tlali Kamoli and Molelehi Letsoepa who has currently fled the country after being accused of criminal charges.

The charges are related to failure to probe Sub-Inspector Mokheseng Ramahloko's fatal shooting, Lt-Gen Mahao's killing including that of Police Constable Mokalale Khetheng (Kabi:2017). Still, the government's actions are commendable but the question remains whether the actions are taken genuinely to apply the rule of law and deliver justice or to avenge the many maltreatments they underwent when they were the opposition and not in power.

The government is also under immense pressure to please the international partners as failure to commit to requirements may chase investments away and many other benefits the country enjoys. Although the government has much influence upon its subjects and territory but the pressure from international institutions is unde-

niable. Internal developments in many states have been much influenced by international law and institutions, as well as by pressures from other states trying to enforce international law (OSISA 2009:5).

However, Lesotho has lacked transparency and persuasion to promote and respect human rights in the country. One of the accountability mechanisms is the powers of the judiciary to review government administrative decisions which has failed in this regard due to excessive government interference in judicial matters. Equality before the law in this case is highly undermined.

Rule of Law

It is very disappointing that the human rights oversight institutions such as the Police Complaints Authority (PCA), Ombudsman, Directorate on Corruption and Economic Offences as well as the imminent human rights commission are toothless dogs that do not benefit the public significantly. The institutions are overly polluted by political officials' influence particularly the Prime Minister.

Therefore, their independence and impartiality are highly doubtful. They have been weakened by the allocation of inadequate resources to effectively investigate, try and prosecute where possible. Further, the courts of law are also the politicians' playgrounds. The appointment of judges undermines the justice system altogether as each and every political leader that assumes power removes and appoints members of the judiciary as they see fit.

This means the members are not appointed upon merit but upon government official discretion. The system faces a number of challenges that include; backlog of cases, inadequate resources and a biased jury. Judicial independence is one of the cornerstones of the administration of justice and the rule of law. Although the Constitution of Lesotho proclaims judicial independence, in practice such independence is challenged by a number of factors.

The first is limited independence of the Judicial Service Commission (JSC), the body vested with the exclusive constitutional mandate to recommend individuals for judicial appointment. The JSC is composed only of the Chief Justice, the Attorney General, the Chairperson of the Public Service Commission and a retired judge. All members of the JSC are, therefore, people who were appointed to their positions by the Prime Minister (OSISA, 2013:9). Courts have a problem with politically motivated lawlessness (Lesotho Justice Sector 2004:33)

Impunity

The government officials and security agents are immune to justice and fair trial. Those guilty of torture, cruel, inhuman or degrading treatment and arbitrary killings are hardly prosecuted and get away with these crimes. The families affected are not compensated or provided with significant reparations to ease the pain.

There are no concrete statistical data that indicate the rate at which these crimes are carried out in the country and the number of people tried by the courts of law for their actions. Officials and colleagues cover up the criminal activities and do not expose one another. There was an incident when the army was in conflict with the Prime Minister Tom Thabane in the first coalition government

in 2012. The symptoms became pronounced when the homes of the Prime Minister's partner, Liabiloe Ramoholi and Commissioner of Police, Khothatso Tšooana were bombed on the 27th January 2014. The main suspects to the crimes were 8 military personnel of which the then commander Tlali Kamoli refused to hand over to the police for interrogations (Mohloboli:2014).

Silence is a principal accomplice of torture. When the perpetrator is a police officer or soldier, other officers frequently witness the crime but remain silent. The failure to report what they saw or heard is an often insurmountable obstacle to combating torture and crucial contribution to continuing impunity (Amnesty International, 25:2000). Amnesty International highlights that those who torture, order torture or fail to intervene in torture escape without ever being investigated, prosecuted, tried or punished.

This demonstrates the widespread failure to give victims of torture the rehabilitation, compensation and other forms of reparation they need and deserve (Amnesty International, 17:2000). On the other hand, a cursory retrospective shows that many policy-makers have found ample reason to avoid international trials. As it is usually the case, political calculation precedes reference to legal rules.

As Levi writes, "politics decides who the lawmaker and what formulation of the law shall be; law formalizes these decisions and makes them binding. This distribution of functions make them law dependent upon politics Psyche (2006:91).

Conclusion

Lesotho must confront its state security actors' use of torture, cruel, inhuman or degrading treatment and arbitrary killings perpetuated by ineffective access to justice, weak rule of law and impunity. These issues must be addressed through a mechanism that will ensure that transparency in accessing justice both by culprits and victims is exploited regardless of political or social ranking.

Lesotho 's embroilment in various human rights violations is a generational curse that seems to manifest in a number of ways therefore leading to uncontrollable dreadful actions with some influence coming down from those in power. However, these issues do not confront Lesotho alone but many other states in Africa and beyond. Lesotho's ratification of the ICCPR on the 9th December 1992 but not the optional protocols to the covenant means the human rights committee may not receive communications from individuals complaining about violations of their IC-CPR rights and by not ratifying the second optional protocol Lesotho avoided taking obligation to abolish the death penalty; therefore it still remains on the statute books.

Lesotho's ratification of the CAT declaration retains corporal punishment and the death penalty but both forms of punishment constitute inhuman or degrading treatment or punishment (Lesotho Justice Sector, 2004). This shows that there are weak actions taken by Lesotho to make national laws and practice compatible with the country's commitment under the treaties. Perhaps the constitutional reforms that Lesotho is heading for will help review and strengthen legislation adequately. Human rights oversight institutions should be granted autonomy and adequate resources to effectively investigate and prosecute the guilty.

The country should also seek the technical support to improve investigation methods that will not involve the use of inhuman actions and those guilty should be prosecuted.



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STRATEGIES FOR SUSTAINABLE RURAL ECONOMIC DEVELOPMENT FOR MINES AND DAMS AFFECTED COMMUNITIES IN LESOTHO

Retšepile Mofokeng

Abstract

The improvement of the quality of life of the Lesotho rural community through sustainable economic development is essential in the pursuit to alleviate poverty. This requires a strong support of effective productivity enhancing policies. The argument made here is that, rural economic development should be prioritized, especial in the communities affected by large development projects. The communities should have clear and feasible strategies which are supported by lucrative policies. It is of great importance that governments of Lesotho help rural communities understand their strengths and weaknesses and with the feedback should lay out a foundation of sustainable business ideas. The rural communities should be empowered with knowledge and skill to come up with good entrepreneurial ideas and produce competitive products.

Introduction

Sustainable rural development is the center to the achievement of Sustainable Development Goals (SDG). With poverty being overwhelming in the rural areas, a strategy for rural economic development is fundamental moving towards reaching the SDG's. Economic development of the rural communities, the circulation of money within these communities and the ability to produce and trade is essential for poverty eradication. Livelihoods approaches are an essential lens on questions of rural development. However, these need to be situated in a better understanding of political economy.

Since the introduction of the Millennium Development Goals (MDGs) which have been succeeded by Sustainable Development Goals (SDGs), literate Basotho and governments have been talking about sustainable development endlessly. One wonders if there has been only lip service to the term or if there has been sustainable development happening for Basotho. The following SDGs are vital in the achievement of Sustainable rural economic development (SRED), and these are, SDG 1: end poverty in all forms, 2: end hunger, achieve food se-

curity and improve nutrition and promote sustainable agriculture & 3: good health and well-being, ensure healthy lives and promote well-being for all at all ages (United Nations: 2015). It is important for SRED to spring out of the rural Basotho who are the 'front liners' of extreme poverty and number one recipients of negligence and violation of socio-economic rights by governments and investors.

Different ways to sustainably reduce poverty in rural Lesotho have been thought about, designed, and implemented for years yet poverty is still one of the problems Lesotho has to address. This means, the country has been failing over and over again from ways used when trying to address the problem of poverty. A worrying aspect of failure to achieve Sustainable Development Goal for rural Basotho is that, there is lack of will power to achieve it. A lack of political will to achieve sustainable rural economic development in particular, has exposed rural communities to inescapable poverty.

Korten (1990) Argues that, people should be the center of development initiatives. This means that every time development projects are designed, the well being of people should be what propels every detail of the design of such projects. In a country where citizens are not put in the center of development plans and policies, failed strategies are recycled. More failure becomes that country's ultimate success and this is a problem Lesotho has encountered for many years. It is therefore critical and of great value to coordinate rural development initiatives that contribute to sustainable livelihoods through efforts at the global, regional, national and local levels, Which means that strategies to deal with rural development should take into consideration the remoteness and potentials in rural areas and provide targeted differentiated approaches.

Lesotho has had enough experience in failure so far. It would be fair to say as a nation, Lesotho's have weaknesses have been identified are and areas of weakness can be fixed. It becomes clear when a rural development initiative is going to fail or not. Lesotho is in a better position now to do things differently, willingly and with aspirations of success. However, to achieve this, sustainable

rural economic development concept should be highlighted at all times when policies are designed and adopted. Past strategies should be reviewed and assessed if what have been used to pave way for sustainable rural economic development are the right strategies. This paper therefore aims at looking at a different way Lesotho can address poverty reduction and rural community empowerment. This paper argues that Sustainable rural economic development is the starting point to successfully eradicate poverty in Lesotho.

Components for strategizing

A strategy is a plan that connects available resources, organization, human resources and financial security in a well thought out sequence and combination to achieve a desired objective. A strategy for sustainable rural economic development should be treated as such. Therefore, to achieve sustainable rural economic development in Lesotho the following components must be entangled,

- (1) A clearly understood objective
- (2) An articulate plan for achieving the said objective
- (3) An ability to mobilize and manage resources in agreement with the plan
- (4) An understanding of how actions taken to support the plan can be projected to interact with the context in which the action is taking place.

When these components are firmly connected, effective strategies for sustainable rural economic development will come up. We first have to (a) building new economic strengths for rural Lesotho, (b) developing effective markets for rural Lesotho (Norman. J, 1993).

Strategies for SRED

Norman further argues that, when new economic strengths are built, the next step would be to develop new competencies. The focus of this strategy is to build proportional economic advantage in a new product within an existing industry. However, distance from markets remains a major obstacle for Sustainable Rural Economic Development. The products and services are often costly because they are difficult to transport. Further, lack of access to technology leaves rural producers cut off from information on inputs and products markets (1993).

If Lesotho rural community develops new competencies, they are more likely to produce goods and services that have better advantage over the competing products. This means that they can produce goods and services of high quality, unique and with a creative edge which meet Lesotho's specialized need. Lesotho Rural Community can create their own market for their own goods which overcome transportation cost.

Developing effective markets is crucial because the production of competitive goods and services will only work if Lesotho rural communities are able to sell what they produce. The Lesotho Rural communities have a better chance of sustainable rural economic development only when they are given a break through to sell to high-value markets, therefore it would be very important for the government of Lesotho to help position these communities to develop an ability to sell to these markets. Further, the vital ingredients to developing an effective and sustain-

able rural marketing response are (a) an understanding of marketing strategies and opportunities (b) having the ability to create and implement those strategies (c) always being on the lookout for a new emerging need in the markets (Ottar, 2006).

To achieve a sustainable rural economic development, the rural producers have to be capacitated and equipped with competencies and elements for a creative marketing. They should be able to analyze emerging trends in the market place; they should be able to creatively design new unique products.

Tool vs. strategies for SRED

Most often than not, the government of Lesotho, as well as investors who come to Lesotho with their own interests and often burdened with the title of "developers" fail to differentiate between a strategy and a tool for a strategy. But sometimes they do know the difference but lacks the dedication to sustainably development, but would rather "get it over and done with" and save money. They often use education as a strategy. Education is not a strategy for Sustainable Rural Economic Development but a tool.

Therefore, it has to be integrated with other tools to form a strategy for Sustainable Rural Economic Development. Knowledge and skill are deeply embedded in the strategies for Sustainable rural economic development and are of critical importance; however these are void of Sustainable rural economic development on their own. Infrastructure development is also a tool for strategy that is often taken for a strategy by third world government Lesotho included and "developers".

For example Letšeng Diamond Mine handing over the Maloraneng Lodge to the mine affected people of Maloraneng village. Building a metal shearing shed for the people of Maloraneng does not help much. Those alone cannot be expected to keep Lesotho on the right track towards a Sustainable rural economic development. It is important to strengthen the base of physical infrastructures for a Sustainable rural economic development or else infrastructure just like education is devoid of strategic development in itself.

Approaches for strategizing

Sustainable rural economic development is possible to achieve. There are simple approaches to take for an effective and successful Sustainable rural economic development. First, there is need for political will to strategize.

This is by far the most difficult and important approach. It is very difficult for the government of Lesotho to adopt a strategy and stick with it long enough for it to produce the desired outcome. This is very common in the area of economic development policy making. It would be very important for the government of Lesotho to be willing to develop rural economy, to sustain it by supporting rural producers with rewarding economic policies.

It is also at the core of Sustainable rural economic development to understand the need. It is very crucial to understand the context of the rural communities. It is important to begin by, (1) Understanding how the economy of the rural community works, (2) understanding the program

effectiveness because no program is appropriate for all situations. For these reasons, it is important to know the tools, the policies and programs and when and how to apply them. Finally a combination of knowledge/education and policy should be applied as this is of crucial importance for Sustainable Rural Economic Development (Norman, 1990).

Another fundamental approach for Sustainable rural economic development is *the capacity to cooperate*. Working effectively with other organizations with an interest to contribute to rural economic development is vital for SRED. The organizations may be private or public and have the same capacity. Networking with others with the same goal is very important. This is because the scarcity of resources demands a cooperative approach for a successful Sustainable Rural Economic Development. Individual efforts cannot succeed.

Rural Economic Development in Lesotho

In a quest for Sustainable rural economic development for communities affected by dams in Lesotho, government have developed community development projects in the name of communal compensation and Corporate Social responsibility which are meant to sustain communities for generations to come.

This is in alignment with the World Commission on Dams(WCD) recommendations that dam projects should live the lives of communities they settle among, elevated to be better than they were before (World Wide Fund for Nature). The WCD emphasizes that communities should not be left worse off in poverty than they were before. This emanates from the fact that, as these projects settle within communities, property that has been sustaining the lives of rural communities is lost to digging and construction of structures needed for the operations of the projects.

Their livelihood is destroyed, therefore development projects must create alternative livelihood for these communities. Lesotho's mining sector has recently adopted this recommendation by the WCD.

Compensation for communities affected by mines and dams projects comes in two forms. There is individual compensation where people are compensated individually for their individual property lost, namely, fields, fruit trees, private forests and cracked houses from blasting as construction progresses.

The second form of compensation is communal compensation. This is compensation for communal property such as communal forests, communal grazing land, water sources, natural ponds, medicinal plants, rivers and streams. If all these were beneficial to a community before the arrival of a project in the community and if all these were no longer benefiting the community after the project settles within a community, such a community should be compensated for the loss of property that sustained them socially and economically.

In as much as communal compensation is expected to sustain thousands of generations to come, the question is: Is it possible? With the way our development projects and government try to develop and sustain rural economy, this compensations provided to communities will not last for as long as expected. Let us take an example of Metolong water supply. The Metolong Authority has creat-

ed an investment plan called Ratau A02 community development trust Company (LTD) for all communities affected by the Metolong dam project. This has been made possible by the communal compensation money allocated for communities. A short description of how it works is that the money is kept in a bank account created for the Metolong community under the above mentioned name.

Community members loan the money to start up businesses either individually or collectively. They are to come up with good, feasible business plans as one of the requirements for the loan application to go through successfully. One should bear in mind that, (1) the money belongs to these communities yet they have to struggle and explain themselves in pages and pages of business plans to access the money.

Again, (2) A large part of the population living in these communities which are the beneficiaries of the compensation, uneducated and has no capacity to write a business plan and (3) the communities are constituted by a lot of elderly people whose livelihoods and economy are sustained by livestock. Finally, (4) the most important question is, do these people have the will to venture in to the business world and what happens to those who cannot succeed or who do not have a passion for business?

Metolong Authority has provided education on how to write business plans for the old people of whom most of them are 65 years old and above. This is an example of tools being used as strategies for Sustainable rural economic development in Lesotho. Education and bank loans are used as strategy for Sustainable rural economic development. There is also a reflection of a lack of political will; this has been done just to get the process over and done with.

The Lesotho Highlands Development Authority (LHDA) has also had its fair share of wrong interpretation of strategies for Sustainable Rural Economic Development with the first phase of Lesotho Highlands Water Project (LHWP). Cooperatives were introduced by LHDA. They were formed with communal compensation money for the LHWP Phase 1 affected communities. Various teaching and learning sessions on how cooperatives operate were carried out for communities involved.

Cooperatives eventually failed. In this example we see tools being used as strategies for Sustainable Rural Economic Development. Lesotho Highland Development Authority's compensation policy regarding communities that will be affected by Phase 2 states that compensation for lost property will be provided for 50 years only. This is mostly communal compensation and food compensation.

The reasoning behind is that it is expected that these communities will have developed different livelihood activities from the current ones after 50 years. What this means is that in the next 50 years, the LHWP affected communities will no longer depend on ploughing and cattle rearing as a way to survive.

Conclusion

The point being made in this paper is that, affected communities should have strategies for Sustainable Rural Economic Development. Moving towards this the following questions must be answered,

(1) What sustainable rural economic development project

can these mines and dams affected rural communities undertake to sustain the communal compensation money so that hundreds of generations after them will find and benefit from it?

- (2) Do they possess the needed capacity and competencies to sustain such development project? E.g. Is the Maloraneng community holistically ready to venture in to the business world of marketing and advertising?
- (3) Is the Maloraneng community well capacitated to provide unique products and services with a creative edge which will give them advantage over the competing products?
- (4) Is the market suitable for the desired products?
- (5) Is there a political will from our government to give these rural producers a breakthrough by supporting and positioning them to where they are able to sell to high-value markets?

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CORPORATE SOCIAL RESPONSIBILITY IN THE MINING SECTOR OF LESOTHO: AN INTRODUCTORY ANALYSIS

Matseliso Mota



Noebejara Tau (right) and his wife was retrenched from the mines after being diagnosed with silicosis

Abstract

The article seeks to find out what the mining companies communicate to their stakeholders on the internet insofar as sustainability reports or corporate social responsibility is concerned. More emphasis is put on how such reports are communicated, their level of details and channels used to allow engagement between stakeholders. The argument is that the dissemination and the accessibility of such reports would ignite debate on social responsibility of the mining companies, necessitating CSR to respond to the local economy of the communities in which the mining companies operate. This is a desktop

study and it uses different mining company's websites to review the sustainability reports. The findings reveal that the mining companies to some extent, are prepared to develop, disseminate and implement CSR initiatives, While the government is playing a limited a role towards creating a conducive environment that enables stakeholder engagement. The paper concludes that if a favorable CSR environment is created, CSR could potentially play a crucial part in the creation of the local economies. As a result, This article makes a recommendation to the government to take a more proactive role that goes beyond the legislative framework.

Keywords: Corporate social responsibility, government, sustainability reports and mining.

Introduction

Corporate Social Responsibility (CSR) has attracted a lot of attention in the past few years and a lot of countries are responding to this call. For example, several countries in the north and the south are continuously strengthening their regulatory systems to accommodate CSR practices; companies are constantly developing, disseminating and engaging in CSR dialogues, while the Non-Governmental Organisations (NGO's) are partnering with governments to create awareness on CSR as well as monitoring and evaluating CSR initiatives. In such countries, governments and NGO'S (Non-Governmental Organisations) pride themselves as being both the promoters and the practitioners of CSR.

In Lesotho however, CSR practices seem to be promoted, shaped and influenced by global activities (International Labour Organization 2016, APRM 2007/2008) other than the government and the NGO's sectors.

This situation served as a rationale to analyse the status of CSR in the mining sector of Lesotho. The paper is interested in establishing if CSR reports are developed, disseminated (social reporting) and debated upon and in assessing the role of other stakeholders, especially the government in creating a supportive CSR environment.

It argues that if Basotho are to benefit from mining companies as important partners in meeting the development challenges ranging from economic development support objectives, to poverty reduction and the development of human capital as advocated by the policy makers, all stakeholders, both internal and external must play a proactive role by providing an organized, supportive CSR environment and guidelines.

It is in this context that the paper also establishes the role of the government moving forward. Most importantly, the paper supports Marinko et al, (2014) that countries that strongly support CSR achieve higher economic performance.

While this paper seeks to ignite debate on the role of the mining sector on CSR, it has a modest ambition; it is viewed as a beautiful start, as merely a brief beginning with far more work to be done. The paper starts by giving a historical background on CSR, the second part discusses CSR in the mining sector and the third discusses the findings and the forth part concludes.

Historical development of CSR notion

The relationship between society and business is not a new phenomenon. Whether small or medium, a business hosts its operations within society, and in return, society expects businesses to show responsibility for aspects of its operation. In developed countries, such as the United States of America and part of Europe, the failure of business to fully take care of their responsibilities gave rise to Corporate Social Responsibility (CSR)

movement. As argued by Aguero (2002), when CSR gained prominence around the 18th century, it took more of a reactive stance (Reacting towards scandals, market disruption and international development disasters) pressuring companies into becoming more environmentally and socially responsible.

Because of this movement, the world has in the past years witnessed a radical transformation in the way businesses operate as companies are becoming increasingly aware of the impact of their activities.

In the 1990's, business attention was focused on external and internal communication of the firm's policies (strategies) and commitments on CSR.

Recently however, debates are on whom companies are expected to have responsibility on. Van Marrewijk, a prominent scholar on this issue, put emphasis on three approaches to CSR. According to Van Marrewijk (2003), shareholder approach, stakeholder approach and societal approach are the common approaches often referred to in CSR literature.

Shareholder approach argues that the goal of the company or shareholders is to make profit. Some advocates of this approach go as far as arguing that the only responsibility companies have is to obey the law of the land (Carr, 1996). The argument behind this is that socially responsible activities are the role of the government.

Friedman (1970:32-33) eloquently put it as "The responsibility of companies is to make much money as possible while confirming to the basic rule of society both embodied in law and those embodied in ethical custom".

On the other hand of the spectrum is the stakeholder approach which transcends from the shareholders' approach. Proponents of stakeholder approach argue that companies should not only be liable to their shareholders, but should also take into consideration the interests of all its stakeholders who might be affected by the company's activities (Van Marrewijk 2003).

Whitehouse (2006) takes this argument further by making a distinction between external and internal stakeholders. He argues that internal and external stakeholders are mutually dependent. The distinction between the two is that internal stakeholders are part of, and are heavily dependent on daily operations that limit a company's relative strength and weakness on a market, while external stakeholders constitute the framework of company that may affect the company's opportunities and threads.

Under this approach a company is accountable to all its internal and external stakeholders.

Who are these stakeholders? Although this list is not exhaustive, Deetz, (1995, 50-51) states that besides the shareholders, internal stakeholders could be workers, management, and board of directors, while external stakeholders could include the host community, competitors, regulatory agencies, the media, professional society and society at large.

Lastly, Van Marrewijk (2003) make mention of the societal approach to CSR. This approach argues that companies should operate in a way that serves and satisfies

the needs of society. This means that companies are responsible to society, of which they are integral part.

Conceptualizing the notion of CRS

Several scholars seem to agree that defining CSR is a difficult proposition (Whitehouse 2006). The argument behind this is that CSR is context dependent. However, most of definitions integrate the three dimensions, which are: economic responsibility, environmental responsibility and social responsibility (Carroll A, 1979).

On the other hand, some scholars add human rights, product responsibility and corruption components to the definition. Nevertheless, the Commission of the European Communities (2006) definition is the commonly cited definition in CSR literature. It defines CSR as a concept whereby companies integrate social and environmental concerns in their business operation and in their interaction with their stakeholder on a voluntary basis.

Closely related to this definition is the classical definition of sustainable development as development that meets the needs of the present without compromising the ability of the future generations to meet their own. Against this backdrop, it has been argued that CSR has potential to contribute to sustainable development.

For the purpose of the study, I apply Tarla R, definition of CSR (Cited in May S, Cheney G, and Roper J, 2007), because it depicts the strong link between CSR and sustainable development. He argues that a socially responsible company is the one which:

- ✓ Recognizes that its activities have a wider impact on the society in which it operates and that development in society in turn impact on its ability to pursue its business successfully
- ✓ Actively manages the economic, social, environmental and human rights impact of its activities across the world basing these on principle which reflect international values, reaping benefits both for its own operations and reputations as well as for the communities in which it operates.
- ✓ Seek to achieve these benefits by working closely with other groups and organisations, local communities, civil society, other business, home and host communities (Article 13:2002)

An overview of CSR in Lesotho mining sector

A glimpse at the mining and extractive sector reveals that diamonds are the main economic minerals in Lesotho and in 2008, diamonds production contributed almost 7% Spilpunt (2007:4). In recent years however, diamond mining has grown and it accounts for nearly 7.7% of Gross Domestic Product (GDP) and it is estimated that the growth will reach the high of 10% by 2020 (Solomons I, 2016).

This is very significant to Lesotho's economy given the high unemployment levels, high inequality and poor infrastructure the country is facing and more importantly, the situation will enable the companies to give more back

to the communities in which they operate.

On the CSR agenda, Lesotho, compared to other Southern African counties has had a low external stakeholder CSR dialogues and debates. This is reflected in the number of local CSR publications and sustainability reports accessible. However, the last two decades have witnessed a series of changes that undoubtedly have had an impact on CSR practices, namely globalization and privatisation. Globally, the Gem Diamonds and Firestone Diamonds infiltrated the Lesotho mining sector. This move has brought with it several changes which affected the practice and the role of CSR in the mining sector. Firstly, like in any other country, these global companies are the first in the Lesotho mining history to have commissioned a CSR needs assessment study and initiated social reporting on CSR activities (sustainability reports). Social reporting provides information on company's practices and allows stakeholders to offer feedback. In this way, social reports are advocated as mechanisms for dialogue between companies and society. Thus, through social reporting, an ongoing cycle of interaction between companies and stakeholders is created and enabled (Hess, 1999). However, Hooghiemstra (2000) warns us that although social reporting could be considered a decisive tool for showing transparency demanded of companies, reporting itself is no guarantee of transparency.

Social reporting in the mining sector

The De Beers Group

The involvement of the multinational companies in Lesotho mining sector is not a new occurrence. According to the Economic Review Paper (2007), De Beers PTY LTD, a global diamond company, started its operation as far back as the 70's. However, due to non-profitability, the operation closed within just six years of operation. The online literature available on De Beers Group operation however does not share or indicate information on sustainability reports and social responsibility.

In 2004, Gem Diamonds, a British based global diamond mining Company re-opened the diamond mining activities in Letseng. To measure up to the expectations of the global shareholders and remain competitive, Gem Diamonds must improve its CSR standards. Towards achieving this, the Gem Diamonds after three years in operation became the first mining company in Lesotho to commission a participatory CSR needs assessment study (APRM 2007). This pioneering approach has since 2008 until the present day informed the development and implementation of Gem Diamonds CSR sustainability report. A look at Gem Diamonds sustainability report reveals that it meets the OECD/GRI reporting format. The report shows;

Gem Diamonds

- ✓ The profile of the cooperation
- ✓ how its objectives and vision of the company are being fulfilled
- ✓ it covers environmental impact and possible risks as-



478-carat white diamond discovered at Letseng Diamonds

- ✓ information showing how the company is doing in the protection of the environment, how it is doing in its relationship with its employees and the surrounding community
- ✓ what specific events and projects in the sphere of CSR did the company undertake, and what events and projects it is planning, including anticipated benefits and results.

The reports are produced annually and all the information contained in the reports are available on Gem Diamonds website which is www.gemdiamonds.com. It could be argued that the regularity and the accessibility of these reports will bring non-financial benefits such as transparency increase stakeholder involvement, and strengthen the company image among different groups of stakeholders (Vexlerpva, 2008).

The table below presents Gem Diamonds policies and indicates the percentage allocated for.

Table 1: CSR Focus area/activities

Categories	Percentage spread/allocation
Medical and Health	21%
Education	27%
Infrastructure	18%
Small and Medium Enterprises	29%
Regional Environmental Initiatives	0%
Donations	5%
Total	100%

Source: Gem Diamonds Sustainable Report 2016

Firestone Diamonds

Firestone Diamonds (of the United Kingdom), began diamond mining in 2010 when it acquired the Liqhobong mine. In 2011, it started its pilot mining project and in July 2011, it commenced mining construction, with the aim of building and operating a world class mine. Operations commenced in October 2016.

Firestone Diamonds online publications website, do not provide detailed information on sustainability reports. It does however indicate that the company has carried out a variety of community projects, ranging from repairs of town infrastructure such as roads, to the donation of sports equipment to local schools.

The Lesotho government position on CSR

There is substantial evidence that governments around the world have begun to take on a CSR agenda. The Lesotho government is not an exception in this case. When reviewing government initiatives towards CSR, the following are very evident:

- ✓ That a company or cooperation should recognize that its activities have a wider impact on the society it operates (Amongst other things, the mining lease agreement stipulates the mining companies should spent 1% of their dividends on the upliftment of the affected communities).
- ✓ The government also supports that the mining companies should take account of the economic, social, environmental, human rights and labour rights impact of its activities.

These, the government regulates through the following frameworks, Section 36 of the Lesotho Constitution, the Mines and the Mineral Act 1981, the Environmental Act of 2008, the Water Act of 2008 and the Labour Code Order 1992 and amendments. Over and above the prescribed frameworks, the government has to-date, estab-

lished the Ministry of Mining whose main mandate is to regulate the Lesotho's mining industry.

Discussion

The role of government in CSR

Based on insights from the literature review, Lesotho government was identified as one of the stakeholders capable of influencing mining companies to practice and promote CSR in Lesotho.

When evaluating the government effectiveness in carrying out this mandate, the findings revealed that the government is not actively involved in CSR activities and it is not committed in encouraging the international mining companies to adhere to CSR principles such as those contained in OECD (Organisation for Economic Cooperation and Development) and The International Labour Organization's Fundamental Principles of Rights at Work.

The non-adherence principle is illustrated by the absence of the National Contact Point (NCP) office in Lesotho, which should be responsible for making OECD guidelines known. In summary, one could argue without doubt that in any economy, government initiatives or regulations are essential for creating an enabling environment for private sector development that diminishes risks, lowers costs and barriers to operation and raises rewards and opportunities for competitive and socially responsible private enterprises (Singhal, 2014).

Indeed, several case studies that reveal best CSR policies have also reflected the prominent role the government has played towards their success. In South Africa, for example, Bu Sacca (2013) shows that CSR has been treated or used as a vehicle for restorative justice; to address the legacy of apartheid especially in the mining sector. To achieve this, the South African Government

took different steps ranging from:

- ✓ amendments of legislations
- ✓ the development of BEE initiatives
- ✓ the creation of skills and educational programmes and economic growth policies
- ✓ the application of the King Report on CSR (South Africa King Report 111)
- ✓ adopting and implementing different guidelines for multinational companies which include but not limited to the following: (1) The United Nations Global Compact, (2) The International Labour Organization's Fundamental Principles of Rights at Work, (3) The Rio Principles as well as (4) OECD guidelines
- ✓ Warranting, where South African government publishes good CSR practices Brokering

In a similar manner, due to its high poverty and inequality levels, the Indian government in 2010 declared CSR mandatory for more than 200 public sector undertakings, encouraging them to spend 2% of their net profit on CSR (Mackenzie R, 2013).

If Lesotho government has an interest towards developing the CSR movement, it has a lot to learn from South Africa, India and other countries, and only copy what is applicable to Lesotho's situation.

Social reporting- sustainability reports

The sustainability reports of both companies reviewed displayed an extensive understanding of CSR concept. This understanding is reflected mainly in Gem Diamonds CSR policies, as it could show an array of responsibilities ranging from economic, social/philanthropic and environmental.

The findings also reflect that Gem Diamonds is more receptive to the business and society approach of the literature reviewed above. Gem Diamonds has been



Lesotho produces the highest quality gem diamonds, consistently achieving the highest price per carat of any kimberlite mine in the world

able to carry out a comprehensive, participatory needs assessment prior to formulating its own CSR policies. This has put the company in a good strategic position as it became aware of the needs and shortcomings of the communities within which it operates and of the Basotho nation in general.

One can conclude that the types of programmes developed are therefore the combination of short-term as well as long-term goals which are essential for promoting growth and inclusive development.

Communication – does it develop the CSR agenda?

How CSR activities have been communicated to external stakeholders by the two companies proves to be more of an informing process rather than an involving one. Carried out in this manner, the companies will fail to achieve non-financial benefits of CSR such as maintaining good relationship with external stakeholders and positive media coverage to mention a few.

To achieve these non-financial benefits, the two companies need to be involved in a two-way communication process defined as an ongoing, interactive sense giving and sense making process.

It is also important for the two companies to distinguish between having a right and a place to say something and having a process to positively affect decisions.

If these mining giants cannot differentiate between the two; it is safe to argue that CSR reports have been, and will continue to be used to influence reputation and good image as opposed to being developmental. If this is a case, it becomes important for stakeholders, especially the media and the NGO's to identify true social responsibility initiatives as opposed to those exclusively concerned with the image benefit.

In this way, Basotho will be able to differentiate between symbolic and substantive CSR initiatives. This in turn will enable interested Basotho to continue shaping the CRS agenda.

Conclusion

In conclusion, it could be argued that different mechanisms for promoting the development of CSR initiatives are a possibility in Lesotho. What is more interesting and even more promising is the extent to which global mining companies are prepared to develop, disseminate and to some extent implement CSR initiatives. This does not mean that the mining companies do not have challenges moving forward.

They do have a lot of challenges, such as finding appropriate communication strategies as well as putting communication structures in place, and not forgetting to reflect complete information on CSR strategies. However, they have so far displayed an excellent point of departure for "getting there"

To enable the mining companies to "get there", the government on the other side must play a proactive role. It must move beyond its legislative framework, and move towards implementing other initiatives as prescribed in

chapter 3.

I hope there will be many more studies looking at CSR from both the global and the local company's perspective in the future. Such studies will play a significant role in shaping up the CRS agenda in Lesotho, thereby improving the CSR environment and contributing to increased economic growth.

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WOMEN'S LOW PRESENCE IN THE NATIONAL ASSEMBLY (10TH PARLIAMENT): WHAT COULD HAVE GONE WRONG?

Mamello Rakolobe Lebesa

Abstract

Although the country is a signatory to international protocols on gender equality and has consequently put in place institutional and legal frameworks for the protection of women's political rights, women's political participation is unsatisfactory. In this paper, I provide possible explanations of the low presence of women in the national assembly post 2017 national elections. I further determine strategies that need to be employed to address the problem. I employ secondary data and argue that the violation of women's security rights and multiple forms of violence against women could have inhibited women participation in politics. Additionally, the affirmative action measures in place are insufficient in increasing the number of female MPs.

Introduction

Notwithstanding the country's ratification of several international, regional and sub-regional treaties, and the establishment of local institutional frameworks concerning political participation of women as a political right, little progress has been achieved in bolstering women's presence in decision making positions in general and in the National Assembly in particular.

In 2016, women population in Lesotho was 50.8 percent (UN Department of Economic and Social Affairs: Population Division, 2017). However, they make up only 23 percent of the Members of Parliament (MPs) after the 2017 general elections. Women made up only 30.2 percent of the candidates vying to be elected in the 2017 parliamentary elections (Kabi, 2017). Most of them fell through the cracks hence their inadequate presence in the national assembly.

This falls short of the 30 percent quota as espoused by the country's *Gender and Development Policy* of 2003 and the 50 percent target by Southern African Development Community (SADC) Gender and Development Protocol. The purpose of this paper is to explain briefly the causes of the low participation in 2017 elections.

This approach will consequently facilitate the understanding of the extent to which the country has integrated the human rights-based approach in addressing women's low participation in public decision-making bodies.

The paper begins with the conceptualisation of women political participation as a human right followed by a review of the country's efforts to redress women's low participation in public decision-making at policy and practical level. The penultimate section presents a brief explanation of the reasons for the low participation of

women in Lesotho politics and this is followed by a conclusion and recommendations.

Conceptualising of women political participation as a human right

Participation in all stages of development is grounded in the first article of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The treaties require state parties to safeguard equal civil and political rights for men and women and to guarantee individuals economic, social, and cultural rights respectively.

Furthermore, the Declaration on the Right to Development states that people not only have an inalienable right to development, but also to "active, free and meaningful participation" in the said development. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), this right involves expressing policy ideas, choosing policies, implementing, monitoring and evaluating policy.

Participation in politics means individuals engagement in political processes such as elections campaigns, voting, contesting in elections, joining political parties and to influence decision-making process through public debate, and dialogue with the representatives and to hold public office at different levels of governance (Kassa, 2015).

There are a number of arguments for the participation of women in politics. Firstly, the justice argument posits that women account for approximately half the population and therefore they should be represented as such; secondly, the experience argument points out that women's experiences and interests differ from the men's and need to be articulated and placed on the policy agenda by women themselves.

Furthermore, women have a right to actively participate in the implementation of policies; thirdly, the symbolic argument stresses that female politicians act as role models for other women, and will attract other women to the political arena; fourthly, the critical mass argument states that women are able to represent women's interests when they make up a certain number in decision-making bodies; and fifthly, the democracy argument asserts that the equal representation of women and men is essential in the democratization of governance in all nations (Kassa, 2015).

In the same vein, (GI-ESCR, 2004) adds that participation is premised on the fundamental principles of human rights emphasizing that it is essential for individual autonomy and self-determination as people have a right



National Assembly of Lesotho buildings

to partake in decisions which affect their lives. For the purpose of this paper, participation of women in politics means women's participation in elections as candidates and as MPs. As a result of the above arguments the government of Lesotho is a signatory to the following international protocols and has put in place some institutional frameworks to redress gender inequality in politics.

Institutional and legal framework for the protection of women's right to political participation

Lesotho is a signatory to a number of international, regional, and sub-regional conventions for protecting women's human rights in general and political rights in particular.

The international covenants include the 1948 Universal Declaration of Human Rights which facilitated the drafting of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together these three constitute International Bill of Human Rights. The International Covenant on Civil and Political Rights guarantees among others, the rights to citizenship and political participation.

The International Covenant on Economic, Social and Cultural Rights guarantees among others, the right to work, health, education, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, and rights relating to culture and science.

Subsequently, in 1979, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly in 1979 which mandates member states to repeal laws, practices and customs that discriminate against women.

Lesotho ratified CEDAW on the 22nd August 1995. Article

7 of the instrument guarantees the right of women to:

- vote in all elections and public referendums and to be eligible for election to all publicly elected bodies,
- participate in the formulation of government policy and its implementation, to hold public office and perform all public functions at all levels of government, and
- participate in non-governmental organizations (NGOs) or associations concerned with the public and political life of the country.

Article 8 requires State parties to "take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

The country has also endorsed the Beijing Platform of Action which focused on full recognition of women's rights and fundamental freedoms".

At the continental level, Lesotho has on the 10th February 1992, ratified the African Charter on Human and People's Rights, 1981. The country is also a signatory to the Protocol on the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003. Article 9 of the Protocol seeks to ensure that state parties:

- Take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures.
- Safeguard increased and effective representation and participation of women at all levels of decision-making.

The country has also on the 30th June 2010, ratified the African Charter on Democracy, Elections and Governance, 2007 which among others, requires state parties



King Letsie III addressing Parliament

to promote gender equality in public and private institutions.

The other instrument is the Southern African Development Community Protocol (SADC) on Gender and Development, 2008 which obliges member states to promote gender equality and equity by 2012.

Article 2 commits states to harmonise national legislation, policies and programmes with relevant regional and international instruments that aim to empower women and girls so as to bring about gender equality and equity.

Additionally, article 12 serves to oblige state parties to ensure that, by 2015, at least fifty percent of decision-making positions in the public and private sectors are held by women. The country is also a signatory to the New Partnership for Africa's Development (NEPAD) provisions for gender equality.

Locally, chapter IV of the 1993 *Constitution* provides all citizens have the right to political participation. *Section 18 (3) of the Constitution* clearly denounces discrimination as unconstitutional. The Bill of Rights of the Constitution provides for equal political participation as well as appropriate measures that promote equality of opportunity for disadvantaged groups in society. It prohibits discrimination on the basis of sex, religion, race, or other status.

Furthermore, the country has put in place some affirmative action measures at the national and local level elections. It enacted the *National Assembly Electoral Act, 2011*, that requires political parties to ensure the equal number of men and women on proportional representation lists.

This has obliged parties to submit lists in which men alternate places with women. However, men almost always take the number one position in all the political parties' lists. Additionally, the country passed the *Local Government Elections Act No 42 of 1998* which was also

amended by the *Local Government Elections Act No 75 of 2004* that sets aside one-third of the local council seats for women.

Since the country employs First-Past-The-Post electoral system at the local elections, one third of the Electoral Divisions were reserved for women in the 2005 local government elections (Sekatle, 2010). The government amended the *Local Government Elections Act of 2004* prior to the 2011 local government elections.

The amendment provided for the distribution of one-third of the seats for women in all councils across the country not only for certain constituencies. Therefore, every council is required by the law to have about 30 percent female councillors (GenderLinks, 2012).

Furthermore, the country established the Ministry of Gender, Youth, Sports and Recreation (MGYSR) in 2003. It has a gender department whose mandate is to coordinate, create awareness and monitor gender mainstreaming of national and sectoral policies, development plans and programmes with emphasis on poverty, education and training and governance. In addressing the gender disparity, the MGYSR has assisted the country to execute international protocols through the formulation of the *Gender and Development Policy* in March 2003.

The policy sets out to improve women's political participation, empowerment and to create a favourable environment for mainstreaming gender in the public sector. MGYSR has also advocated for the implementation of Lesotho's commitment to the SADC threshold of 30% female representation in the legislature and other decision-making institutions (AFDB, 2005).

Based on the above instruments, the country is making strides at the policy level ratifying international protocols. However, most of the protocols have not been domesticated. The above efforts have not translated into sig-

nificant enjoyment of political rights by women as their political participation is still low. The following section presents the possible explanations to low women political participation in the 2017 national elections and in the 10th Parliament.

Possible explanations of low women participation in 2017 national elections and in the 10th Parliament (National Assembly).

Women face social, economic, cultural, and security deprivation and these inhibit their participation in politics (Letuka. P, 2004). The women's economic, social, safety and cultural situation is daunting in Lesotho.

Generally, women's safety is wanting as there are high rates of gender based violence as portrayed by the high numbers of court cases of violence against women and this could inhibit women's free movement to engage in election processes such as election campaigning (Matlho, 2012). The following incidents present some of the possible causes of women's low political participation in the 2017 National Assembly elections.

Insecurity of politicians

Additionally, Lesotho political landscape is characterised by insecurity. For instance, after the 2015 national elections, leaders of All Basotho Convention (ABC), Basotho National Party (BNP) and Reformed Congress of Lesotho (RCL) who is a woman went into exile for about two years.

They came back a few months before 2017 elections. This could have discouraged women to participate in elections and consequently to be MPs as Lesotho politicians seem to live in fear. There is a violation of the right to security on which the right to political participation is dependent.

Intra-party violence

Moreover, intra-party conflicts could have threatened women from participating in politics. For instance, the RCL intra-party conflict resulted in the loss of property through arson by Machabana Lemphane Letsie, a member of the party who was mediating in an intra-party conflict (Sunday Express, 11, October, 2016). Such an incident gives an impression that women politicians are prone to politically motivated attacks and can discourage women to take part in politics. Verbal violence also ensued among Democratic Party (DC) factions, namely Lithope and Lirurubele whereby the DC youth league president threatened to expose the DC women league's president, Dr Matumelo Sekatle's personal secrets (Ntsukunyane, 2016). Additionally, there was a spate of physical violence that besieged the 2017 pre-election primaries and that could have scared women from participating in elections. For instance, there was a physical violence in the Koro-Koro constituency between Alliance of Democrats (AD) candidates during the primaries which

resulted in the death of one individual (Ntaote, 2017).

Insufficient affirmative action measures at the National Assembly

Lastly, Lesotho has not done much at the practical level to ensure that rights holders enjoy their entitlements. The country is visibly offering support through affirmative action in the form of a quota system that has been put in place only for the local government elections. As a result, the women participation at the local government elections and as local councillors has surpassed the 30 percent target by the United Nations and is approximately 50 percent as required by the SADC Gender Protocol as women's presence in local councils stood at 59 percent and 49 percent after 2005 and 2011 elections respectively (GenderLinks, 2012). However, the situation at the national level is worrisome, and this is a result of the gender equality provisions that only apply to the Proportional Representation (PR) seats. The PR part of the Mixed Member Proportional Representation (MMP) accounts for only 40 out of the 120 seats, while the remaining 80 seats are allocated through the first past the post system (FPTP). This offers a limited space for women candidates as political parties seem to be fielding mostly male candidates for constituency seats. Another disadvantage regarding the PR list is that when a woman vacates her position for whatever reason, she gets replaced by a man who is next on the list. This implies that the already low numbers of women in the national assembly are at risk. This could then worsen the violation of women's right to equal participation.

Conclusion and recommendations

Essentially, women's right to political participation continues to be violated in the country. Their participation in politics is low despite the country's adoption of international, regional, sub-regional and local institutional frameworks. This is because the country has enforced cosmetic measures to safeguard women's political rights. Women are still deprived of security, economic and social rights which are required for the attainment of political rights and this discourages women to take part in politics. In order to arrest the problem, the country should commit to ensure the respect of women's right to political participation by:

Firstly, amending the National Assembly Elections Act to require political parties to field women candidates in 30 percent of winnable constituencies. This will address the inefficiencies in the present arrangement whereby women's presence in Parliament is facilitated through PR lists. The low level of women elections candidates and MPs indicates that the PR lists are insufficient.

Secondly, women right to safety and protection from all forms of violence should be prioritised. This could be achieved by expediting the establishment of the human rights commission and imposing harsh punishment on



Women collect water in the village of Ha Rantisemane in Thaba-Tseka

those who violent women's rights.

Thirdly, the government, academics, political parties and Civil Society Organizations should embark on a comprehensive political skills training for all women politicians. The training should cover areas such as campaigning, public speaking, leadership etcetera. They should also sensitize policy makers about political participation of women and need to view it as a human right.

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TWELVE YEARS OF LOCAL GOVERNMENT SYSTEM IN LESOTHO: What performance track record?

Professor Motlamelle Kapa

Abstract

When Lesotho held its first post-independence local government elections on the 30th April 2005, citizens should have been excited that their public service delivery concerns were to be addressed as the new system would, arguably, respond more quickly to their needs than the central government. The country is to hold on the 30th September, 2017, the third round of local councils' elections. It is perhaps justifiable to take a cursory look at how the councils performed in providing services to their communities as I do in this paper. I find that the performance of the councils has been disappointing largely due to lack of functional capacity and lack of autonomy from the central government. Unless these two issues can be addressed effectively, Lesotho's local government system will remain only a source of employment for councilors (though not a bad thing in itself) rather than being a public service delivery instrument it was otherwise rhetorically created to be.

Introduction

On the 30th September, 2017, Lesotho will held its 3rd local government elections. With the first of these elections held on the 30th April, 2005, the local government system has now completed 12 years, thus making it possible to make a cursory assessment of the performance of the system in terms of providing services to the citizens in their respective villages, as mandated by the constitutive legislation.

The thrust of this article is to make such assessment, reflecting on two key variables: autonomy and capacity of the system. In terms of methodology, I use secondary sources, drawing insights from one key source (which documents and captures the experiences, challenges and prospects of successful decentralisation process on the African continent) from the African Association for Public

Administration and Management (AAPAM) publication: *Citizen Engagement and Service Delivery* (2013), which is a product of the 33rd Roundtable Conference held in Lilongwe, Malawi, in 2011. I also use some locally-produced material and government documents.

The value of local government

While there are other approaches to establishing local government systems, Lesotho attempted to introduce the system based on the principle of power devolution. Although defined in many ways, devolution is characterised by four (4) major changes, viz, (1) creation of new sub-national jurisdictions at regional or local level; (2) the generalisation of elections by universal suffrage to cover all sub-national jurisdictions; (3) transfer of authority with sufficient financial resources for sub-national jurisdictions to carry out functions assigned; and (4) the removal of the prior supervisory role of the state representatives, and the institution of legal administrative control, and control of budgets (Dada, 2013:50).

Local government is valuable in two senses: economic and political. Economically, it has a potential, *inter alia*, to solve local economic problems by "speeding up development, improving service delivery, attaining efficiency and economic growth". Politically, it has a potential to institutionalise democracy and widen the space for citizens' participation in public policy-making process and to provide more responsive services to the local aspirations based on local peculiarities (Kessy, 2013:33).

To effectively carryout its mandate, local government system has to have two critical but often lacking features. One is functional capacity in terms of qualified personnel, adequate equipment, effective management systems, accurate and comprehensive local data requisite for planning processes, public financial management, project management, programme monitoring and evaluation (Dada, 2013). Yet capacity of local authorities is a

function of fiscal decentralisation; a process involving the transfer of financial resources from central government to local authorities and the extent to which local authorities themselves are able to make decisions over the use and management of those resources as well as locally generated resources (ibid:55). However, there is a paradox here of which should come first between power and capacity (Dada, 2013; Ahwoi, 2013). The point is that capacity versus power is a matter of “a chicken-and-egg” in that local authorities need capacity, which they cannot have without power. In other words, the question becomes: which should come first between capacity and power?

Governments are generally reluctant to devolve power before capacity. Yet without that power, there is no basis on which local authorities can gain experience needed to build capacity, and there is no basis on which they demonstrate that capacity has been gained (Dada, 2013:56). For Ahwoi (2013) the question is whether to transfer functions in order to build local capacity or to build local capacity in order to transfer the functions.

His answer to the conundrum is that capacity building programmes must be part of all decentralisation programmes, noting that the reason any system is centralised is because it has the best personnel at the centre. Thus for decentralisation to succeed, there is need to create new set of best personnel at the local level. Where there is local capacity, it must be used; where there is trainable local capacity, it must be trained; and lastly, where there is no local capacity, it should be transferred from the centre or recruited (ibid: 93).

Another critical feature for the effectiveness and efficiency of local government system is autonomy. According to Ahwoi (2013:92) African politicians do not have political will to decentralise because decentralisation involves diminution and loss of political power from the centre to the

local authorities. They find it less prudent to lose some of the power “that they have spent money, time, resources and effort to acquire” (ibid). Thus decentralisation leads to serious conflicts within ruling parties more than between governments and opposition political parties, as ministers prevent their sectors from being decentralised.

In public, however, the excuses of governments not to effect decentralisation and fiscal decentralisation, in particular, may be many and varied. But the common of these include the arguments that decentralisation through devolution is not workable because there is no capacity at the local level to manage substantial funds; there is no expertise at local level to design and manage programmes and projects (ibid).

Yet devolution would imply that the enabling legislation ought to transfer adequate power and resources to the local authorities to effectively deliver public services. In this way, local authorities would be empowered to determine their own destinies and use devolved and own resources in ways they decide to do. But local authorities in Africa generally lack autonomy in terms of decision-making powers, rule-making, enforcement, adjudication and implementation (Dada, 2013:56). How then does Lesotho’s context compare with Africa in regard to these general challenges?

The Lesotho context

The rationale for the introduction of the local government system and the attendant challenges, in Lesotho, are no different from those above, namely, capacity and autonomy. The origins of the local government are in the policies of the Basutoland Congress Party (BCP), which committed itself to ensuring the establishment of local councils and facilitating a democratic relationship between the central and local governments (Basutoland



Voters queue to cast their votes at a polling station in Semonkong

Congress Party Manifesto, 1993:7).

Upon assuming state power after winning the 1993 elections, the BCP government developed the *White Paper on the Establishment of Democratic Local Government, 1996*, whose objectives were to:

- Deepen and widen access to the structures of Government in Lesotho, and give the electorate greater democratic control over development processes and make public institutions more accountable to elected representatives,
- Move decision making, resource allocation and district level planning and local development and public services physically closer to the people, and
- Distribute GOL's [Government of Lesotho] human, institutional and infrastructural resources and capacity equitably across the country (Government of Lesotho, 1996:1-2).

The *White Paper* was to lay the basis for the local government law, the *Local Government Act, 1997*, which together with *The Constitution of Lesotho, 1993*, provide legal and constitutional framework for the local government system. *The Constitution of Lesotho, 1993* (106) (1) empowers Parliament to establish local authorities with powers to determine their own affairs and develop themselves both in rural and urban areas of Lesotho.

The Local Government Act, 1997 (4) establishes the local authorities at four levels, viz, Community, Urban, Municipal and District. But the actual establishment of the local government authorities came after the 30th April 2005 local government elections, within the framework of both the *Local Government Elections Act, 2003*, and the *Local Government [Amendment] Act, 2004*.

In terms of the membership, each Community Council is composed of fifteen (15) popularly elected members and two (2) gazetted chiefs. The Urban Councils comprise of thirteen (13) popularly elected members and not more than two (2) gazetted chiefs. The Municipal Council is made up of between eight (8) and fifteen (15) elected members and not more than three (3) gazetted chiefs. In all cases, the chiefs must be "nominated" by other chiefs in each of the Councils.

The Local Government Act, 1997, empowers local authorities under *Schedule II*, to perform the following functions:

- Control of natural resources (sand, stones) and environmental protection prevention of dongas and pollution);
- Land and site allocation;
- Provision of minor roads and maintenance of bridle paths;
- Grazing control;
- Water supply;
- Market provision and regulation;
- Burial grounds

Capacity and autonomy challenges

But the functions above as stipulated in the *Act*, notwithstanding, the performance of the whole local government system, since its establishment, has been disappointing. Local authorities throughout the country

generally have no capacity to carry out the above legal functions.

For example, in each of the Community Councils of Mazenod, Mohlakeng, Makhoarane, and Lilala respectively, there is a tiny bureaucracy composed of council secretaries, who are also heads of the executive branch of the councils and responsible for the overall management of the councils' affairs. The secretaries are BA degree holders in most cases. Below the secretaries are clerical assistants followed, in the hierarchy, by office assistants, and lastly in some cases drivers. Other than general managerial and administrative skills, councils suffer extreme lack of technical expertise to effectively carry out the functions listed above (Kapa, 2010).

One key function for all the councils is land and site allocation, which was at one point suspended by the central government on the grounds that it was to provide physical planners with requisite technical skills to work on sites allocated in all councils country-wide. This move frustrated the councils because carrying out this crucial function had to stop putting them under immense public pressure (Kapa, 2010). Even for road construction function, the councils were frustrated as, in some few cases where this had already been started, it got delayed, such as in the Mohlakeng Community Council.

The cost of road construction project was M1.6million but the council had M173, 000 or only 10.8% of the total cost. Besides, the council had no technical expertise to run the project leading to its delay. The council had to wait for the central government to provide civil engineers and surveyors (ibid: 177). Pratchett *et al* (2008:15) find that the central government has not as yet decentralised the key functions and appropriate accompanying resources to the councils throughout the country generally.

The councils depend "highly" on the central government for fiscal revenue, which comes with "strings attached", thereby denying the councils power to decide on its expenditure. Besides, the councils are not able to raise sufficient revenue locally. Even when they have made some collections, these are taken over by the central government (Pratchett *et al.*, 2008:15). The key message here is that councils have no capacity to discharge their legally mandated functions.

Although the model of decentralisation adopted in Lesotho is by devolution as defined above, and this, in theory, ought to grant councils some degree of autonomy from the central government, there is a huge disconnect between theory and practice. Councils have no autonomy to decide what projects to implement and how. In the case of Mohlakeng Community Council, again, the central government took away without consultation the already meagre financial resources allocated to the Council to purchase road construction equipment and trucks (ibid: 178).

In some cases, the funds allocated to councils by the central government come too late into the financial year and they cannot be used. Even though the councils are empowered by law to generate own revenue for local use, in few cases where this has been realised from small fines imposed on the communities through grazing fees,



Elections in Lesotho: ballot box with voting paper

this is appropriated by the central government.

In some cases, the problem also comes from the self-perception of the councils themselves in that they do not regard themselves as autonomous agents of their communities but as subjects of the members of parliament (MP) for the constituencies under which they fall. One incidence was when the Lilala Community Council delayed a project on land reclamation brought to the council area by the Ministry of Land Reclamation because the project had to be approved by the MP (ibid:184). Ideally, as an autonomous entity, the council did not have to seek the approval of the MP for the project but it did. In sum, this indicates how on the ground the autonomy of the councils has been diminished by the central government and some councils' own self-perception about their autonomy.

As Lesotho goes to the local government elections after 12 years of local government system, challenges of capacity and autonomy, with their adverse effect on service delivery, remain. However, the government has been aware of these challenges and attempted to address them through adopting in early 2014 a *National Decentralisation Policy, 2014*.

This document acknowledges that, while the country has been able to maintain elected councils at district, urban and community levels in eight years, "...these councils have remained under-funded and not structurally supported by a clear administrative and service delivery framework" (Government of Lesotho, 2014:xi).

The main objective of the government through this *Policy* is to "deepen and sustain grassroots-based democratic governance and promote equitable local development by enhancing citizen participation and strengthening the local government system, while maintaining effective functional and mutually accountable linkages between central and local governments entities"(ibid).

Specific objectives of the *Policy* are listed in the document, but, for the purpose of this paper, they include enhancing local autonomy by ensuring local government

institutions are sustainably capacitated and organised with a strong collective voice (ibid: xii).

The *Policy* further identifies key areas of focus and action and these include adoption of devolution as the model of decentralisation; establishing local governments with autonomy and executive authority; fiscal decentralisation and prudent public financial management (ibid). Adopting a relatively good policy, such as this, and implementing it are two different things. The *Policy* has not been implemented, probably because of political and security instability that have bedevilled the country from mid-2014 to date.

Conclusion

Lesotho introduced local government 12 years ago as a vehicle for service delivery within the mandate provided for in the *Local Government Act, 1997* but the performance of the system has been disappointing. The key challenges have been lack of capacity and autonomy on the local authorities to discharge their legal mandate. The new councils, following the 30th September, 2017 local government elections, will inherit such a system.

However, this is not the challenge confronting Lesotho alone as the literature in the paper has shown but the rest of Africa. Aware of these weaknesses, the government adopted a new *National Decentralisation Policy, 2014*, which, however, has not been implemented. Whether or not the post-2017 elections coalition government will own the policy and implement it, remains to be seen.

But unless the government can move swiftly, as it should, in the implementation of the *Decentralisation Policy, 2014*, which appears on the face-value to be a useful tool for addressing the capacity challenges and autonomy issues confronting the local government system, the 30th September, 2017 local government elections will, most probably, produce structures that add very little value, if any, to the citizens in terms of service delivery other than providing jobs to the councillors to be elected.

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A REVIEW OF LESOTHO NATIONAL CLIMATE CHANGE POLICY

Hlalele Hlalele

Abstract

There is consensus in Lesotho that climate change is a reality that has to be addressed and the government has shown some level of commitment by developing a National Climate Change Policy. The policy is intended to guide and coordinate all activities of the state and different stakeholders aimed at responding to climate change in Lesotho. A review of the policy is made to highlight gaps that has been identified in the consultation process which made some parts of the document weak and bias. A desk review of the contents and action participation during consultation and validation workshops on the policy had been adopted as strategy by the Transformation Resource Centre to highlight the niches that exist. It also challenges consultation to be construed as public participation. The case in point is the non-participation of the transport operators yet the sector is one of the key areas the country needs to mitigate and adapt to climate change. This article shows that the policy is following the neoliberal path which creates myths about technology transfer in foreign direct investments as opposed to eco-socialism which embraces social justice. It is concluded that the policy needs to be reworked to address the clearing gaps.

Introduction

Climate change is defined as a condition of change in weather and climate patterns caused by the depletion of the ozone layer as a result of emission of greenhouse gases (GHG) mainly carbon dioxide and methane in to the atmosphere (Kalusopa & Shindondola-Mote, 2014). The sources of GHG are mainly fossil fuel in the form of coal, gas and oil (Cock, 2010). Climate change is witnessed by droughts, torrential rains resulting in mud-slides and floods across the globe.

These devastating conditions have disrupted the social setting of international communities and caused states to respond to the crisis by forming Intergovernmental Panel on Climate Change (IPCC) to lead in researches that guide the United Nations and member states on climate change. It is in this note that the government of Lesotho through the Ministry of Energy and Meteorology is developing a National Climate Change Policy (NCCP).

This article is the review of the draft policy of the NCCP in an effort to indicate gaps before it can be finalized. The NCCP is a very vital document for the country because climate change will impact more severely on the poor and the vulnerable groups of the society. The bulk of the review is on the extent that the Lesotho Meteorology Service (LMS) and its agents handled public participation process which is alluded to in document. The opinion expressed here shows that there was no public participation but consultation which are completely two different processes.

Theoretical framework

Within the forces that are responding to climate change there are two major dichotomies, the people centered approach advocating for creation of millions of decent green jobs and a just transition to low carbon economy.

The other side sees climate change as an opportunity to maximize proceeds leading to green capitalism through innovation of new technologies that do not necessarily encourage a shift to low carbon economy but allows companies to do 'business as usual' like carbon capture solution (Democratic Left Front, 2011).

The LMS policy is inclined to the capitalist route which embraces participation of the private sector for the development of technologies and transfer of skills to the people. This article reviews the NCCP from eco-socialism thinking as it ensures social justice for the communities which are on the receiving end of these conditions which they did not contributed to its creation but also ensures social production and society's needs (DFL, 2011).

Executive Summary of the NCCP

Indeed the draft policy indicates that the government of Lesotho has taken steps to address climate change and the most recent document cited is the national strategic development plan (NSDP, year). The NSDP touches lightly on mitigation of GHG without any specific targets set on reduction and sectors.

However the NCCP sheds more light on generation of green power (electricity) by wind. Nevertheless there is a wrong perception created that hydropower produces 100% clean energy, which is not the case because there is methane generated from metabolism of the flora inundated by water. Besides the hydropower generated from Muela, Lesotho Electricity Company (LEC) imports not less than 37.12% of electricity used in the country in kilo watt hours (KWh) from Eskom and EDM Mozambique (Lesotho Electricity Company, 2016). Electricity from Eskom is generated from coal.

A clarion call has been made in 2.5.4 Climate Finance and Investment Framework to the private sector to facilitate investment of funds on the new technologies in response to climate change: because there are several challenges in the UNFCCC funding mechanism. The most preferred sources are from the national budget, private sector finance and foreign direct investments (FDI) and from carbon trading.

The NSDP take a clear neoliberal route of carbon trading; in the executive summary part v: *Reverse Environmental Degradation and Adapt to Climate Change: Sound environmental policies and land use planning can make a significant contribution to long term sustainable economic growth. To achieve this there is need to: (iii) improve national resilience to climate change; (iv) increase clean energy production capacity and environment friendly production methods and explore carbon trading*" GOL, (2014, pp. xxx, 30). Carbon trading means purchase of the pollution space of a developing country

by a developed country. The transaction is done by sponsoring green energy efficient technology or receiving the funds after configuring the annual sum of green tax from green development fund. Indeed carbon trading has some advantages of bringing new technologies to developing countries but it allows the developed countries to continue with business as usual trajectory.

Climatic aspects in the NCCP

The NCCP puts very mildly the possible weather patterns that may be experienced in the country without underlining the more severe ones and with most frequencies. Lesotho cannot experience floods like in Canada and Australia, mudslides similar to those of Brazil and China but can be challenged by storm water during torrential rains due to poor roads constructions and siltation phenomenon resulting from the country's geographical terrain (Cock, 2010; COSATU, 2011).

Similarly the effects of drought are not clearly articulated as these affects directly the Lesotho Highlands Water Project which generates 2.8% of gross domestic products (GDP) (Government of Lesotho, 2017). These would also affect the hydropower generation from Muela Hydropower Plant (MHP).

These would affect the consumers of energy adversely, because in 2015 the cost of a portion of 35.83% energy imported from EDM Mozambique and Eskom made 82.73% of the total energy purchase by LEC (LEC, 2016). The lower the productivity from MHP the more energy will be imported from abroad and the more it will cost. Picture 1 shows the lowest level of Maliba mats'o ever

er only less than 1% while grass is 61%, invading species makes 12% and shrubs occupy 8%, wetlands 0.1% and the remainder is cropland (Chakela, 1999; Mokuku et al, 2004). Grassland biome is dominated by different types of grasses as opposed to trees.

The planting of exotic trees began with the missionaries in 1855 and was continued through the colonial period to the present day but had not seen considerable impact (Chakela, 1999). There are a number of factors, social, political and natural circumstances attributable to this failure.

Climatic conditions are extreme cold temperature in winter with snowfall and very hot in summer characterized by erratic rainfall. On average there is low annual rainfall of about 700mm which does not support the growth of trees. The indigenous trees that are found in Lesotho are thorny shrubs and narrowed leaves trees that are evergreen and does not draw a lot of water for their survival and can grow from rocky areas that are mostly arid throughout the year.

Considering these types of flora as carbon stock to mitigate climate change is to put stress on them. Though not expressly stated in the NCCP the tune of the document is taking the neoliberal path of reducing emissions from deforestation and forest degradation (REDD).

This approach supports the establishment of forest plantations which prevents growth of grass and draws a lot of water from the ground. Lesotho Woodlot Project has resulted in some springs drying out (Chakela, 1999). The other challenge of the REDD is the harvest period which is lamented for using of energy when producing timber,



Malibamats'o River at Pelaneng

since the completion of Katse Dam.

Forestry

The NCCP has erroneously put forestry in the same bracket as range when identifying key sectors to be adversely affected by climate change despite correctly considering the country as a grassland biome. Trees cov-

er only less than 1% while grass is 61%, invading species makes 12% and shrubs occupy 8%, wetlands 0.1% and the remainder is cropland (Chakela, 1999; Mokuku et al, 2004). Grassland biome is dominated by different types of grasses as opposed to trees.

Transport

Whether there is sufficient infrastructure or not the number of vehicles increases the concentration of GHG to the ozone layer. The NCCP is lacking in indicat-

ing how much the contribution of the transport sector to the national carbon footprint was. The transport sector is very critical to analyse because the number of vehicle increased significantly towards the turn of the 21st century.

The establishment of Sotho Auto Development Industry firm in the 1990s saw a steady increase of vehicles imported elsewhere apart from the Republic of South Africa. With the growth of internet and electronic financial services there was a purchase boom in the middle of the first decade in the millennium 2000.

The National Traffic Identification System (NATIS) shows that in Maseru a total of 11 281 vehicles have been newly registered between January 2015 to December 2016 (Roads Directorate, 2017).

District	Number Plate	Number
Maseru	A, AA-AZ, M, MA-MZ, R	49 057
Bothabotho	B	9 840
Leribe	C, CA- CT	23 086
Berea	D, DA- DH	16 992
Mafeteng	E, EA-ED	14 994
Mohale's Hoek	F	9 000
Quthing	G	8 000
Qacha's Nek	H	3 041
Mokhotlong	J	2 600
Thaba-Tseka	K	3 611
Government	X,Y,W	1 200
Total		161 419

Table 1. Figures are computed from vehicle registrations.

The number of vehicles registered in Lesotho are approximately 161 000. The ascending gradient in the automotive imports is attributable to the low price of import cars from abroad (Asia) as opposed to higher locally manufactured import cars from South Africa (Flatters, 2005).

The majority of these cars are used cars which raises a number of concerns: firstly there are no emission standards to certify the cars are road worthy and environmentally friendly. Secondly, a considerable number of them are used for public transport (short distance taxis popularly called 4+1) thus fast track their wear.

Thirdly the bulk of the vehicles are used daily for private business as such they consistently blow the atmosphere with exhaust fumes and cause traffic congestion. The absence of clean, efficient, safe reliable public transport is attributable to the need by individuals to purchase their own private cars.

Indeed the NCCP in Policy Statement 11: *Promote Low-Carbon and Climate Change Resilient Transport Systems* can be said to be responding to some of the challenges in the transports sector. The critical part about transport sector is that it is at the core of our economy and most importantly the majority owners are the citizens of the country. The realization of this policy statement needs careful consideration (which has been missed) by the state lest it unravels the crippling economy.

Methodology

The NCCP is utterly misdirected to consider consultation and participation as one and the same process

whereas it is not the case. Consultation is more about considering the views of another without necessarily reaching a common ground; this is drawn from Arnstein's "ladder of citizen participation" (1969). Cogan, et al. (1986) also illustrates public inputs as a passive phase of public participation.

In consultation the views of the party being consulted are not binding to the consultant, Arnstein consider it as tokenism. It is often observed that the consultant is in a way communicating intensions in search of any fundamental obstacles which in their absence continues irrespective of the concerns raised. Contrarily in the "ladder of citizen participation" public interaction tenet is ownership of the process which leads to ownership of the decision. Thus the two processes have different outcomes.

The NCCP in the executive summary state that "this policy is a result of intensive consultative discussions with different stakeholders in our community...". This implies that the process was accommodative to a number of role-players in the broad climate change agenda who have running projects.

The listed role-players range from government departments, development partners, NGOs and private companies. The policy does not show how the LMS is coordinating activities of individual NGOs and private companies so that they are compiled and recognized as from the mountain Kingdom so that net benefit of this initiatives trickle down to grassroots. The trickle-down effect can reduce the price of components or sponsor a new technology.

It is worth noting that both public transport operators and labour unions have not been participating in the two workshops held by the LMS. Their non-participation was raised as crucial because it is attributable to ownership of the policy and its subsequent activities. This does not suggest that consulted participants can claim ownership of the policy, especially when their concerns were not addressed.

Transport sector is supposed to mitigate and adapt to climate change for this to occur smoothly the operators should own the process. The bulk the working class use public transport any changes arising from climate change response would affect them adversely.

There are two scenario to this; the first one is that the implementation of the NCCP will switch to be government programme that will require shift to low carbon mode of transport such as buses or tram trains. This programme will be implemented by the Ministry of Public Works and Transport which has not been in the driving wheel. Undoubtedly the transport operators and 4+1 and mini-bus drivers will resist that paradigm shift.

The introduction of bus rapid transport (BRT) system in South Africa was met with fatal resistance because it was seen as taking bread away from the table (Dibakwane, 2012). In 2007 the government of Lesotho introduced Lesotho Freight Bus services in the urban routes in Maseru and that saw massive bloodshed resistance (Moea, 2017).

The second scenario is that workers especially the textile sector will be stranded because the number of buses may not meet the demand upon introduction. They may not reach areas where the taxis and mini-bus are used to reach because of infrastructure development and com-

petition. The therapeutic manner in which government of Lesotho implement policies would result in more chaos for the vulnerable and marginalized groups.

For proper public participation to occur the LMS should have appreciated that climate change agenda is a very complex subject. These required sensitization of key stakeholders such as transport operators and the labour movement before the policy discussions so that all were at par. Their non-participation is attributable to lack of information about the issues involved in the policy.

Guiding principles

The NCCP claims to embraces the United Nations Framework Convention on Climate Change (UNFCCC), Sendai Framework and Paris Agreement principles of social equality, respect for human rights, and people oriented approaches; even though the route to that is led by private capital. The question is whether a common good of society is attainable through privatization as opposed to nationalization.

Definitely, private capital would be looking to monopolies in the climate change response initiatives so as to maximize proceeds. It is a mammoth task for the government of Lesotho to strictly apply the principles of precautionary rule and polluter pay principle as these are meeting challenges in the extractive industries.

The Lesotho Highlands Development Authority (LHDA) made a shocking presentation on the pollution of water into Malibamats'o River by both Kao and Lqhobong mines in 2015/16 (LHDA, 2017). The Kao mine operated by Storm Mountain Diamond had sewerage spillage resulting from collapse (GOL, 2017). None of these principles were applied before and after any of these incidents.

Climate Finance and Investment Framework

The dire need for financial resources to respond to climate change should not render the state vulnerable and subject it to perpetual rent-seeking situation whereby any form of investment or funding even if it does not bring

sustainable benefits is accredited.

The initiatives listed under Table 4: of the NCCP, from business, Local and International NGOs investing in GHG mitigation Projects in Lesotho, has shortfalls in that they are mostly finished products which are for resale; Only Africa Clean Energy products are assembled in the country this means most projects are failing to create decent green jobs. In the cases of stoves, they are very expensive; there is no link between the price and the carbon trading that occurs.

These means the company is doubling the proceeds from the manufacturing sales and from carbon trading. Secondly, the type of technology that has been used is not the highest standard but just improvement on energy efficiency. This component did not bring any innovation because the Appropriate Technology Section under the Ministry of Communications Science and Technology identified such gaps in our rural communities. However the rent-seeking tendencies were the ones which led to the approval of private projects for carbon trading than improving the local initiatives.

Lastly, the public private partnership (PPP) in climate change response can be a very good initiative if done on the basis of equity between the state and private investors. It should not be rendered useless by laissez-faire policies which dictates that the state should not interference with the running of businesses.

The Queen 'Mamohato Memorial Hospital is a case in point of failed PPP. The government cannot intervene when proper services are not provided to the people. The other extreme can be failing to do the regulatory duty of the responsible government department, an authority or a tribunal due to protecting vested interests.

Technology development and transfer

Different forms of foreign direct investment (FDI) have come and gone with the rhetoric rhythm that their establishment would bring new technology that would be transferred to the people of the land through formal and



Lesotho facing drought due to climate change

on-the-job training.

There is no exception in the response to climate change that shows structural change towards implementation. For instance, Philips (PTY) LTD was established in 2009 as an electrical components manufacturing company. Amongst its components were energy saving bulbs which were features of climate change response. It closed down in 2014 its only remnants are visibility bags written Philips, the promised skills and technology transfer are nowhere to be seen.

The Africa Clean Energy (PTY) LTD (ACE) is manufacturing wood saving stove as a response to climate change under carbon trading. ACE is just like any other firm which cuts, make and trims clothes in the Thetsane Industrial Area because it assembles the 'the smokeless' cook stoves under the custodianship of the Lesotho National Development Company.

All the materials that makes the stove except the galvanized sheet metal are finished products to be assembled, thus lost job creation and technology transfer opportunities. The only change that occurred in the export processing zone post the establishment of the Philips (PTY) LTD are that manufacturing companies are able to sell their products to both local and international markets.

The Cochoabamba people's summit declaration is a more viable route to attain technology transfer than the Kyoto Protocol's CDM or its future successor; the United Nations Industrial Development Organization (UNIDO); South-South transfer of technology; embraced by the NCCP. The people's climate agreement seeks historical ecological crisis redress.

Youth

Indeed the major challenge to the youth is high unemployment which, according to the Global Wage Report of 2012/13, 12% of the global youth aged 15-24 are no longer reflected in the statistics due to disillusionment. The establishment of companies making raw materials for climate change project than having them as finished products would create green decent jobs for the youth as opposed to the current status quo. The state needs to seize the moment and make climate change employment of last resort to curb the crisis of unemployment.

Conclusion

The policy needs great improvement to represent the voice of the people than that of technocrats so that it responds to the needs of the country in a sustainable manner. Failure of the policy to be people oriented would result in climate change being like any past developmental theory that has not brought any economic change to the country and its people. Indeed when developmental programmes come they come with consumable resources which will be found in the archives as reports.

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About TRC

Transformation Resource Centre is an ecumenical organisation dedicated to the promotion of justice, peace, good governance and participatory development. Established in 1979, TRC's main focus is to empower communities to take lead in advocating for the development that aims to better lives. Through structured programs, 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/topics (including linkages with concerns of different social constituencies – men, women, youth, prisoners, language and other national minorities etc.
- II. Research and document national (primarily) and related regional, continental and international developments in thematic areas (Research and Documentation).
- III. Analyse policies, current trends and possible directions and advice policy makers and other identified stakeholders and actors in order to improve policy (policy analysis and input)
- IV. Educate and provide new information perspectives, etc (Education and knowledge dissemination)
- V. Train and build skills base to be used for developmental and transformation purposes (skills and capacity building)
- VI. Develop, create or contribute to new knowledge and understanding through discussion and debate (knowledge exchange/ dialogue stimulation)
- VII. Provide services that help and enable clients solve their own problems (service and voice/ advocacy).

Programmes

Democracy and Human Rights

The focus is to strengthen public understanding, appreciation and participation in democracy. The programme focuses on civic education for citizen empowerment. It further enhances public participation and understanding in local governance, conflict resolution, parliamentary affairs and human rights.

Social and environmental justice

The primary focus of the program is to advocate for justice on water and environmental issues that affect communities in Lesotho. It is through this programme that TRC fights tirelessly for the economic rights and compensation for individuals and communities affected by the Lesotho Highland Water Project. Commendable strides have also been taken in the mining area. TRC continues to keep an eye on the water and environmental projects; the right to free water, clean air and environment.

Information and Resource Centre

The program communicates TRC activities to the world. It also serves as a hub for information exchange between TRC and the rest of the world.

Library and Resource Centre

The program is the core of TRC's identity as a resource centre for justice, peace and participatory development in Lesotho. It is a repository of knowledge accessed and used by TRC team, students and policy-makers to broaden their knowledge on different issues. It manages a variety of books, videos and other materials available for use by groups and individuals working in a wide range of fields.

TRC Funding Partners

BfdW/BftW Brot für die Welt

EU European Union (Delegation of the European Union to the Kingdom of Lesotho)

SNJM Sisters of the Holy Names of Jesus and Mary (Roman Catholic Order)

Open Society Initiative for Southern Africa



Supported by





Physical Address

**Transformation Resource Centre
No 1 Oak Tree Gardens,
Qoaling Road, Old Europa
Maseru Lesotho**

Postal Address

**P.O. Box 1388, Maseru 100
Tel: +266 22314463, Fax: +266 22322791
Email: [likopo.mokhele @trc.org.ls](mailto:likopo.mokhele@trc.org.ls)
Website: <http://www.trc.org.ls>**