

# Work for Justice

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November 2018



THE CONSTITUTION OF LESOTHO

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- Provide fixed term parliament
- Entrench Public Interest Litigation

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be desires and  
aspirations of  
the people

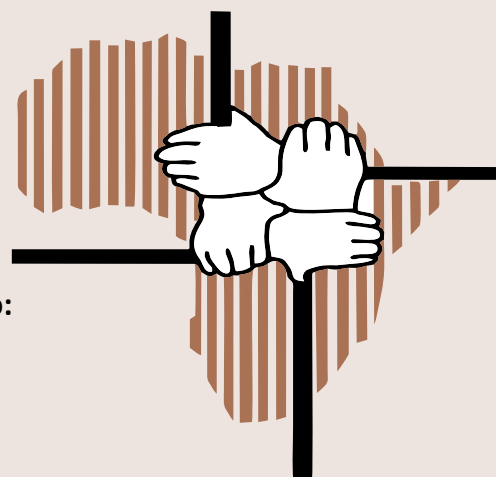
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## Editorial Comment

created socio-political and economic challenges of the country.

As a result the TRC played an integral role in advancing the constitutional reforms agenda. It advocates specifically on constitutional reforms; this is borne out of the understanding that the Constitution as a supreme instrument and the cornerstone of our democracy can solve ailments and deficiencies currently characterising our democracy today.

Additionally in December 2017 the Centre organised a dialogue themed ***strengthening of democracy institutions in Lesotho***. This dialogue was an exploration of issues related to Constitution and structural challenges characterising judiciary and oversight institutions in the country. One of the key observations we have underscored from this event was that all oversight institutions have a serious deficit in terms of governance and independence. Report that captures topics debated by various stakeholders from the dialogue is available to inform further debate.

Another important event the Centre had organised ***was inter-institutional security consultative session and security sector build – up dialogue for national reforms*** which was themed ***Constitutional Reforms for Better Protection of Human Rights***. These events brought together senior members of security agencies to discuss constitutional mandate, policy framework and challenges of their respective organisations. Out of the discussions consensus among stakeholders was reached that their issues of politicisation are not only an exclusive problem but it is a phenomenon that is deeply entrenched, of which it actually necessitate constitutional revision.

**O**n the 5th and 6th December 2013, Transformation Resource Centre (TRC) convened a National Conference to mark 20 years restoration of democracy in Lesotho. The National Conference was a culmination of activities executed by the Centre in its campaigns for New Constitution. Sentiments to have a new constitution emanated from phenomena such as snap elections; challenges in formation of coalition government and early collapse of those coalition governments. Arguably these phenomena seemed to be resultants of Mixed Member Proportional (MMP) electoral system which was first introduced in the 2002 parliamentary elections.

Another school of thought asserts that the collapse of coalition governments is a symptom that merely represents a fractured and ailing political paradigm created by the Con-

stitution of 1993 which is a replica of the independence constitution created by colonial masters. The problem could either be the electoral system and entire political paradigm, both postulations could be sound and valid but what is of paramount importance to TRC is that conclusions must be derived from public discourse, wisdom and ideas of ordinary citizens.

Thus the National Conference was meant to be a platform for public discourse on the performance of the Constitution in two decades of democracy. The conference design actually was meant to stimulate scrutiny of the Constitution, provide ideas in nation-building project and establishment of new democratic dispensation. This conference's objective was successfully achieved in terms of raising awareness that the country needs to have a constitutional reform which will address structural challenges, which consequentially

Despite the fact that there is tentative convergence of the views on diagnosis of problems of the country, TRC is much interested to get views of experts in the process of diagnosis as well as in the process of suggesting solutions to the problems. Hence, the purpose of TRC publications such as **Work for Justice** basically is to provide platforms for contestation of ideas in an effort to get best solution to the problems. Unlike the previous edition (of Work for Justice) which was focused more on State of Human Rights in Lesotho, this current publication brings insightful arguments in a wide ranging spectrum – national reforms and constitutional reforms process in particular.

Despite our views on emphasising on constitutional reforms have been influenced by fact we started national reforms campaign earlier than other sectors, scholars inside this issue give caution to balance efforts placed on generating ideas with political atmosphere and environmental issues entailed in the process. They have emphasised that it would be a fundamental mistake committed which might undermine the entire process, if there no balance between two factors, but the question is we need procedures to strike that balance. Under **“Design and process of constitutional reforms in Lesotho; Principles and challenges”**, the principles have been introduced which provide guidance in approaching the constitutional reforms, and give procedures and methods which intrigued further engagement on the two aspects – reform process and content.

With regard to security reform, there is narrative which has been advanced holistically in this Work for Justice which calls for full restructuring of the security sector in Lesotho in the upcoming national reforms. Some of the important propositions raised are found under

the topic; **“Security Sector Reform Process in Lesotho: Issues to be Considered”**. It speaks specifically to individual mandates of different security agencies, and questions about the size of army (Lesotho Defence Force) have also been raised in the debate. Logical conclusion we drawn from discussion is that there is no enough justification for having large army, which operates on a full time basis. Issue of powers of prime minister on appointment of army commanders and commissioners (of police and correctional services) without parliament vetting the appointments have been underscored as well. Notwithstanding that, TRC takes opportunity by urging government to consider that it is imperative to have **national security strategy** of the country before reforms could be implemented. The strategy will assist security reforms process to realign mandates of the security agencies with national aspirations. It will also be useful to define delimitations and overlaps between the army and police in their respective mandates in providing security and public safety.

Public Sector reforms is another topical issue that has been well argued in the article named **“The Politics of Public Service Reforms: The Quest for depoliticised public Service in Lesotho”**. Some of issues raised under this topic explain factors that commonly contribute towards failure of reforms projects in developing countries. In her article Rakolobe has agreed with position of Wilder 2009 that the reforms in developing countries similar to Lesotho usually have more political rather than technical challenges. The article critically analyse various pieces of legislations that have to be revised in terms of recruitment of top officials in public service. The analysis further brings in to light negative effects of wide scope of political discretion of Prime Minister in the recruitment processes. However, there is suggestion to

involve public participation in the reform process as an alternative which can redeem the negative effects of wide political discretion of the premier.

Despite there is a strong contestation of theories which describes process of how public service has evolved into current state of politicisation; the role of legislature in providing checks and balances to executive branch has also been questioned. Issues of executive powers of prime minister, incompetent ministers under Mosisili and Thabane’s administrations have been critically scrutinised under article **“Patronage vs Merit Based Recruitment in Lesotho Civil Service; What have we learned?”**. The author provided us ideas from American hybrid model where the elements of merit based and political considerations are together combined, and she further juxtapose this hybrid model with Swedish model that maintains clear distinctions between political appointments and merit based appointments in public service.

Similarly to Republic of South Africa (RSA), Kenya, Rwanda and Zimbabwe, national reforms were reactively born out of crisis, which was manifested in human rights violations and collapse of the systems of rule of law in the country. In the context of Lesotho, rule of law apparently was due to failure to uphold constitutionalism by three arms of government. Hence there are propositions advanced in the discussion of **“The road to recovery: Strengthening the accountability structures in Lesotho National Reforms Agenda”** which advocates for Public Interest Litigation (PIL) clause in the Constitution. The article calls for integration of National Assembly Standing Orders 54 and 76 into the Constitution or rather framing of Section 20 of the Constitution to be similar to RSA Constitution Section 38. At this juncture our view as an or-

ganisation of good governance and human rights is that perhaps before the Public Interest Litigation is introduced into the Constitution we urge drafters of new envisaged Constitution to give themselves time to understand from the beginning arguments contained in the debate of ***“The Right to Public Participation in Constitutional Reforms Process in Lesotho”***. Theoretical propositions have been raised in the article, of which highlight challenges of political environment circumscribing the reform process, deficiencies in public education on the reforms, weaknesses in administration of government and notorious tendencies of opposition parties which trivialise the value and importance of reforms by always using scapegoats why they would not take part in the reforms.

Despite the fact that consensus has been established in the public discourse that there is a need for consultative and inclusive processes of national reforms, there is also a glaring omission or lack of clarity on what should be the role/mandate of parliament in the process. In one hand politicians suggest that subsequent to public consultations Prime Minister must advise Head of State to call referendum of new Constitution. In another hand some suggest that Prime minister will advise Head of the State to call for popular vote of new Constitution after the parliament has sanctioned the Prime Minister. This controversy has been created by current Constitution as it does not give procedure to the effect of referendum. We have no specific provision nor statutes which provides steps and stages in terms of time and methods on how referendum must be invoked. However, more detail arguments have been raised in the publication which attempt to address the controversy, hence there is an interesting debate inside which is ***“Need for Comprehensive Regulation of Referendum Process in Lesotho”***. The question

of how and when does parliament come in reforms process has also been discussed at length with a view of striking a balance between strengthening representative democracy in Lesotho and also innovating tools that will enable citizens to directly participate in decision making process.

Lesotho in the past five years has used M721 Million of which some argued that the money should have been channelled towards roads and tourism infrastructures, economic stimuli packages and economic emancipation of local government structures. For general elections of 2012, 2015 and 2017 money used was M253 million, M220 million and M240 million respectively (Fobo: Moeletsi oa Basotho, 13th May 2018). This misappropriation of public funds has triggered academics to bring into question legitimacy of prime minister ousted by parliament through vote of no confidence in advising the King for dissolution of the parliament. All these debates have been traversed under the topic ***“Achieving Durable Constitutional Reforms in Lesotho: A need for Fixed Term Parliament”***. Similar issues of concern on public finance spending have further been highlighted in the article ***“Parliamentary Reform in The Kingdom of Lesotho”***. However, the emphasis in the latter is also on mechanism of peaceful power transfer from prime minister who lost vote of confidence to prime minister designate within the parliament.

As it has been indicated earlier that some propositions on reforms have emphasised the importance of equally concentrating on process and the content, some of stakeholders present a new position that challenge popular trajectory of the process of reforms. An observation is that general citizenry's attitude and behaviour hitherto apparently is counterproductive to the process. Henceforth there are propositions in

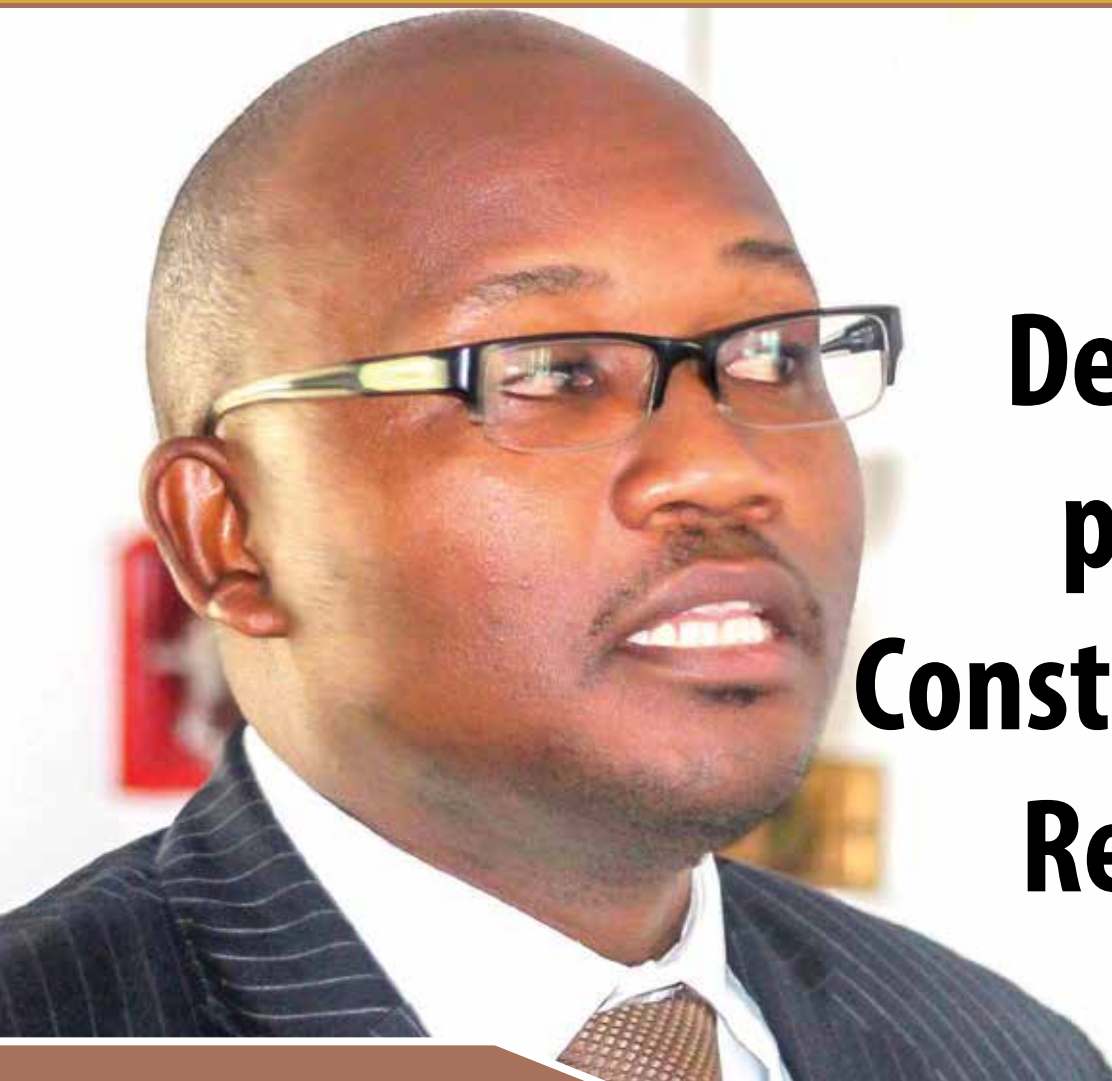
this publication under ***“Prerequisite processes and dialogue processes enhancing the efficacy and sustainability of reforms”*** which specifically urge for an urgent change of mind-sets before the process kick start. There is a strong position that it is very imperative that there must be a concentrated effort in building a critical mass that is free from chronic stress. There is also a proposal to pay attention in providing therapy that would heal the chronic stress that characterises our nation. Mafole, 2018 in one of his articles called ***“Transform and Transcend in Higher Levels of Human Consciousness (power)”*** argues that:

“The excessive distress that pervades our nation suggests that we feel threatened clearly needs to be healed and effective ways of managing it acquired. It is only when we have equanimity of mind and body that we are able to think properly and dialogue creatively and productively”.

Those are words of wisdom, however, in conclusion, on behalf of TRC we feel highly indebted to all contributors who always submit their articles for our publications like ***Work for Justice, Occasional Papers*** including ***Litaba tsa Lesotho*** (Sesotho newspaper). Your enthusiasm in supporting the Centre even though when no specific calls have made to you, always you give us incredible support. We believe that even small contributions you make assist TRC to contribute immensely in projects of national interest. Whatever small ideas you provide assist in our envisaged national reforms. It is in this light I become inspired by ancient Chinese philosopher Lao Tzu (Laozi) when he was saying: ***“Do the difficult things while they are easy and do the great things while they are small. A journey of a thousand miles must begin with a single step”***

By Mr Tsikoane Peshoane  
Editor in Chief





# Design and process of Constitutional Reforms in Lesotho:

By

Prof Hoolo 'Nyane

## *Principles and Challenges*

### **Abstract**

*The current Constitution of Lesotho was adopted in April 1993 as a bridge from the military rule into a new democratic dispensation. Ever since the dawn of “constitutional democracy” in 1993, the country has been rocked by incessant political conflicts. This post-military era has been punctuated by phenomena such as coups d'état, coup attempts, security crises or short-lived parliamentary terms.*

*Effectively, this new era has, by and large, been under the incubation and trusteeship of the international community such as the*

*Commonwealth, Southern African Development Community (SADC) and other international partners. The year 2012 marked the turning point in the development of the constitution in Lesotho. The country entered the era of coalition politics.*

*The challenges of managing a coalition exacerbated the inherent and historic constitutional challenges since 1993. These challenges fanned a frank admission among the stakeholders that a country has to embark on the reforms project. While there is a wide consensus about the need*

*for reforms, there is no agreement about the purpose for the reforms. Some want sectoral reforms such as security, parliamentary, etc; others want a holistic overhaul of the constitution.*

*Furthermore, the stakeholders are starkly divided over the design and process of the reforms project. This paper is a modest contribution in the debate about the design and process of the impending reforms project. The paper contends that the success and failure of this project turns on the design and process even more than on content.*

# I

## NTRODUCTION

Most of African countries started the constitution-making upon attaining independence and Lesotho is no exception. Those reform processes were largely done under the hand of the former colonial masters. After independence, some countries experienced (military) coups, civil wars and many other forms of constitutional crises. The constitutional reforms have provided opportunities for countries to make fresh starts and paradigmatic shifts.

The linchpins of these reforms have been the re-designing of the state and conflict management. The urge to institute a reform project is not the result of political rhetoric; it is necessitated by the real circumstances under which the country finds itself in. Political elites are often quick to find political fodder in reforms projects, like they do with all other societal ills.

The Lesotho Constitution of 1993 was adopted following the long haul of dictatorship interrupted by military junta (Mothibe, 1990). The constitution-making process was superintended by the same military junta that had usurped power in 1986. Similarly, the transition from the junta to constitutional democracy was under the hand of the military government.

Little wonder that the design embellishes weak civil-military relations (Matlosa and Pule, 2001) and the strong hangover of the army on matters of government. The transition was supposed to provide a break from the past that was marked by authority, abuse

of human rights and, much more importantly, government whose power did not derive from the will of the people. Unfortunately, an opportunity was missed to make the constitution which provides a clear break from the past ('Nyane, 2015). The country found comfort in the mere uplifting of the independence constitution, almost verbatim. According to Maureniek (1994) in an analogy referring to a similar project in the neighbouring South Africa:

If the new constitution is the bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification – a culture in which every exercise of power is expected to be justified...If the Constitution is to be a bridge in this direction; it is plain that the Bill of Rights should be its chief strut.

The fear of the draftsmen of the new 1993 Constitution to introduce fundamental changes to the British-based independence constitution came to be the greatest shortfall of the new design. The fundamental flaw of Westminster constitutional designs worldwide is the fusion of state organs – executive, legislature and, to a great extent, judiciary (de Smith, 1961). So the reason why institutions of government are not able to meaningfully place a check on the executive is arguably because of this underlying constitutional defect.

On top of the 'fundamental defect' of the design, other subsidiary defects have emerged as urgent, to wit: weak and unstable parliamentarism; weak civil-military relations leading to instability; executive omnipotence leading to weak and un-independent

judiciary; abuse of civil service to entrench political paternalism; poor accountability necessitated by weak oversight institutions and weak human rights framework.

The period 2014-2015 was marred by serious allegations of impunity which arguably impeded the reforms project in the two previous attempts. The Commission instituted by SADC in 2015 after the assassination of former army commander Maaparankoe Mahao further laid bare some of these incidences of impunity and strongly recommended that government of Lesotho should act firmly to investigate and prosecute those implicated (Phumaphi, 2015). The matter was compounded further by the arrest and exile of several army officers accused of mutiny in 2015.

The purpose of this paper is to critique the design and process of the reforms process since it started in the aftermath of the 2012 election. The paper seeks to demonstrate that as long as the process of reform is not prioritised, it is almost impossible to execute the project. The constitution-building exercise is an emerging area of study which has developed its own fundamental tenets. These tenets do not seem to be at play in the Lesotho project. The country is running a sporadic process which lacks clarity and design.

## CONCEPTUALISING CONSTITUTIONAL REFORMS AND THE GUIDING PRINCIPLES

As Fombad (2011) pointedly contends;

- ◊ In form and content, there is no ideal or standard constitutional design or model that

is irreproachable and unimpeachable nor one that will solve all problems for all time.

The majority of African countries have undergone at least three stages of constitutional development after the fall of colonialism. The **first** stage was the emergence of 'nationalist constitutions'.

These were post-independence constitutions that were drawn under the hand of colonial masters with the participation of nationalist leaders. The Lesotho constitutions of 1965 and 1966 fall in this category. The nationalist leaders were not so much interested in the content of the design for they were mesmerised and carried away by hand-over of power from the coloniser to them.

Hence, such constitutions bear all the hallmarks of the coloniser's constitution. With former British colonies like Lesotho, Westminster is the bedrock of their constitutional design. The **second** stage was the 'military juntas'.

In the majority of countries the post-independence designs collapsed, and an era of military juntas emerged. In most cases, the military deposed the nationalist leaders because the latter had morphed into dictators par excellence.

The African continent is replete with such examples like Ghana, Nigeria and Lesotho. The third stage became the emergence of 'modern constitutions'. When the armies retired to the barracks as a result of the pressure from the upsurge of new norms like popular will, constitutionalism and human rights the modern constitutions emerged.

Constitutionalism has evolved rapidly in the last two centuries. Therefore the need for constitution making and constitutions has been influenced by several factors.

According to Brandt et al (2011) the factors that influence constitutional reviews in Africa include, but are not limited to, the fall of colonialism and apartheid; the emergence of new states; the end of military regimes; the collapse of communism, liberalism and the creation of private markets; efforts to end civil conflicts; nation-building as a new state emerges and the consolidation of democracy as the military retires to the barracks or authoritarian rulers are deposed.

These purposes determine the orientation of the constitution, and often also the process by which it is made. Thus, a constitutional reform is a bridge from one system to the other (Mureinik 1994). The constitution-building and reform is a subject which has gained pre-eminence throughout the world. While the principles of constitutional reform are only emerging, some principles have gained general acceptance.

With the long experience of supporting constitution-making exercises through technical and financial support, the United Nations Organisation has developed certain guidelines for constitution-making (Note of the Secretary General Guidance, 2009). The Guidelines emphasise the cardinal role that can be played by constitution-making in political transitions and post-conflict peace consolidation.

The Guidelines identify key principles of constitution-making.

The first one is 'seizing opportunity for peace-building'. This principle re-emphasises the reform process as a healing and peace building process. It is virtually impossible to undertake the reforms project in an atmosphere of belligerence and animosity.

The second principle is 'ensuring national ownership' (Aukot, 2018). This principle asserts that the constitutional reform process is a sovereign process. This is the most important principle. Since reforms are generally expensive and technical, most of the countries – particularly poor countries like Lesotho – normally rely overly on external assistance. In that process the external partners end up arrogating the entire process, technically and financially.

This is why countries are normally encouraged to fund their own reform process, at least the core stages of the process.

The third principle is 'inclusivity'. The reform process is not only a multi-stage process but it is also a multi-stakeholder process.

The fourth principle is 'transparency'. This principle discourages the temptation that governments often fall into of designing the reforms processes alone, unbeknown to all other stakeholders.

While constitutional reform is an emerging area of study, experiences from other reform processes in Africa demonstrate that there are certain stages that have emerged as the key steps in the constitutional reform process.

Van Vliet et al (2011) adroitly identify four basic stages of the reform process. The first one is the 'preparatory stage'. The authors contend that:



♦ Constitutional reform processes tend to be characterised by tensions and a wide diversity of views and interests. Creating solid foundations at a preliminary stage helps to protect the deliberations from collapsing as a result of these inherent tensions (van Vliet et al 2011: 9).

This stage is indeed very critical because it is the one that sets out the objectives, principles, institutions and stages of the process. The roadmaps, which are not unilateral outputs of governments, are agreed at this stage. The second stage is the 'awareness raising and consultative stage' because empowered of the public before participation is the bedrock of genuine participation. In fact 'actively engaging an informed citizenry throughout the reform process contributes to the popular legitimacy of the revised or renewed constitution' (Id: 10). The stakeholders and the public are very important for this stage because they are the source of the content of what ultimately goes into the constitution.

Political elites or governments often cannot resist the temptation to smuggle their own sense of what should go into the new constitution at this stage, which is actually improper. It is very important that this process must appear credible and free from manipulation. It must wholly be superintended by a body acceptable to and agreed on by all the stakeholders.

The third and most important stage is 'content deliberation and drafting'. This is usually a technical stage for it involves the writing of the draft constitution.

However, care should be taken not to make the drafting process the exclusive preserve of lawyers and experts. The stage is still subject to general principles of constitution-making identified above.

The fourth and final stage is 'adoption and implementation stage'. The draft constitution is presented back to the citizenry and parliament for adoption. The referendum is an elective process and must subscribe to all the principles that govern credible and democratic elections. After the adoption of the new constitution then starts another equally tormenting process of implementing the new design through the change of institutions, attitudes and laws in order to align them with the new vision.

#### **THE CONTEXT AND PROCESS OF LESOTHO'S REFORM PROJECT**

While there is wide consensus about the need for reforms in Lesotho, there is no agreement about the purpose for the reforms. Some want sectoral reforms such as security, parliamentary, judicial, media and public service, while others want a holistic overhaul of the constitution.

As this conversation about reforms continues, political rifts continue to deepen. Currently, some leaders of opposition are in exile in South Africa and have pulled their parties from the project until their political issues are resolved. If there is anything impeding the progress of the reform project in Lesotho it is the lack of clarity on the design and process.

In the years spanning 2012-2014, the government of the day started the reform process with the

Commonwealth but the administration collapsed in 2015. In 2016 the new government started the process but it also collapsed in 2017.

In the run-up to 2017 election, political parties committed to the process by signing the Memorandum of Understanding (MOU). After election, the government unilaterally issued the Draft Roadmap (2017), under the auspices of SADC. While the stakeholders were still trying to make head or tail of the Draft Roadmap, government tabled the National Reforms Commission Bill (2018) in parliament. The Bill caused public uproar because it was a unilateral decision by government.

As a result, the Bill has today stalled in Parliament and government is strongly considering its withdrawal. In the meantime government is continuing sporadic consultations with various stakeholders using the civil servants 'task team', while stakeholders are pressing for the National Dialogue as the preparatory stage of the entire process.

This context paints a bleak picture about the reforms process in Lesotho. The reforms project is replete with 'false starts' since 2012. One of the causes with these 'false starts' is that it does not subscribe to conventionally accepted principles of a constitutional reform process as outlined above.

In response to international pressure, government is fumbling with the stages with a view to impressing the international community.

Currently, there are two critical outputs out in the public domain

without being subjected to the proper stage, namely; the roadmap and the Bill. As indicated above, these outputs belong to certain formal stages in the reform process; they are not unilaterally issuable by government because a certain donor is pressing for progress.

## CONCLUSION

The reforms process in Lesotho is under immense threat and the need to rescue it is urgent. The sooner the project is designed properly the better. The guiding principles of constitutional reforms are now fairly consolidated. There is no need to reinvent the wheel; just adaptation will rescue the project.

The so-called “Roadmap” must basically be based on these established principles and generally accepted phases of constitution-building. This clear fiddling presents the country with seem-

ingly insurmountable challenges with this process.

The first major challenge of this process is *lack of a design* of the process. The sporadic roadmaps that have been issued by ‘experts’ funded by donors since 2014 are only a sheer disgrace to the process.

The second challenge is that *political conflicts* continue to take root.

The third challenge, rather ironically, is the *international community*. There is a lot of international interest on the process which is not coordinated. There is a disturbing inclination in post-conflict countries throughout Africa to overly depend on foreign interlocutors for assistance to get out of debilitating crises. It is a common psychological trait for anyone immersed in a difficult position in Africa to seek external

assistance. With countries this trend is bad and depresses countries into problems than solutions. Lesotho seems to be no exception; the country seems to be hell-bent on seeking external assistance so much that its sovereignty is on the precipice.

The third challenge is *lack of expertise*. Technically the process has a lot challenges. There is lack of clarity about the purpose and the process of the reform. As a result, the process is likely to exacerbate rather than heal the political conflict riddling that society.

The fourth and most intractable challenge is *government unilateralism*. Government is bent on unilaterally presiding over the critical stages of the process. The fact that today government has been issuing critical outputs such as the Bill and the roadmaps is a threat to the process.

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By

Dr Tlohang Letsie

# Security sector reform process in Lesotho:

## *Issues to be considered*

### Abstract

*Lesotho prepares for a reform process that includes the security sector, among others. The focus of the security sector reform will certainly be more on the army than other security sector components as a result of the army's involvement in*

*the factors that necessitated the reform process. The country has in the past engaged in a number of reforms that have, however, failed to yield the desired results. There are therefore, important issues that the country has to take into consideration as a pre-requisite to a successful reform process.*

overview of the environment within which the reforms are likely to take place; specific issues to be considered and conclusion.

### Security sector reform (SSR): Conceptual framework

The concept of security sector reform (SSR) was introduced in 1997 by Clare Short, then Britain's Secretary of State for International Development. It calls for various tasks of security to be assigned to specific, accountable security sector bodies with each component of the security sector funded accordingly.

The three categories of security include: (1) national security which is concerned with external aggression and is mainly the responsibility of the army; (2) public security which concerns itself with the day-to-day law and order is the chief responsibility of police and other sectors such as intelligence services and the prison services; (3) citizen security which concerns itself with the exercise of human rights and remains solely the responsibility of law and

policy makers (civilian rulers). It is noteworthy that the three categories of security are highly related and complement one another.

As a concept SSR places emphasis on a number of considerations including;

1. an expansion of the definition of the security sector to include a number of government bodies (police intelligence services) rather than just the military;
2. a more clearly defined relationship between these security bodies;
3. a more clearly defined relationship between the security sector and the various institutions of a democratic state – the government, parliament, judiciary, and civil society; and
4. a more clearly defined relationship between national security objectives and budget allocations to the security sector (Harris 2010: 41).

There have been arguments among various scholars regarding who has to be involved in the SSR process

### Introduction

After a long wait Lesotho seems ready to embark on the multi-sector reform process. The reforms come as a result of both domestic and external initiatives. The international initiatives include calls by various organisations, including the Commonwealth, African Union (AU) and Southern African Development Community (SADC). Sectors earmarked for reform include the constitution, judiciary, parliament, public service and security sector. The focus of this paper will, however, only be limited to the security sector.

The paper is divided into various sections, including the conceptual framework of security sector reforms; an overview of the Lesotho's security reform attempts; an





Police and Lesotho Defense Force members during a peace march

with some calling for the process to be guided by international community while others favour local ownership.

However, arguments in favour of the local ownership of the SSR process have been gaining currency within the international development community (Donais 2008: 3). These arguments favour home-owned strategies in which outsiders just play an advisory role. SSR has to be a multi-stakeholder process with the incumbent government playing the leading role. Like with any other goal-oriented process, SSR has to have specific and realistic guidelines and timeframes that have to be adhered to.

### **SSR in Lesotho: An historical overview**

It is noteworthy that the eminent security sector reform process is not entirely new in Lesotho. The country has in the past engaged in various activities of SSR. It is also worth noting that the past processes have mostly centred around (but not limited to) the Lesotho Defence Force (LDF) because of its centrality in the developments that necessitated the reform process. The dominance of the LDF in this paper therefore, should not be interpreted as lack of relevance for the other security bodies. The following sections focus on the past security sector reform initiatives taken by Lesotho. The discussion starts by looking at the commissions formed and later the initiatives.

#### *The Masire and Mugabe Report (1994)*

Following the political instability of 1994 that resulted, among others, in the assassination of the then Deputy Prime Minister Selometsi Baholo by the members of the LDF, the Southern African Development Community (SADC) delegated former presidents Ketumile Masire and Robert Mugabe of Botswana and Zimbabwe respectively to mediate in the crisis. The two presidents compiled a report about the worrying security situation in Lesotho, particularly with

regard to the army. The report read in part that “the army should be re-structured, retrained and reduced in size. Several groups pointed out that a small landlocked country like Lesotho does not require a large standing army” (Mugabe and Masire 1994: 6).

#### *The Khoarai Commission (1995)*

Following the departure of presidents Mugabe and Masire in 1994, the Lesotho government established a commission of inquiry in 1995 to come up with a detailed report pertaining to the political disturbances of 1993 and 1994. The commission was composed of local personnel and headed by Bishop Paul Khoarai of the Roman Catholic Church. Part of the report by this Khoarai Commission read that:

LDF be employed in civil works, and this role be emphasised more than the defence role

Recruit technical and professional personnel

Quality of military leadership be improved by retraining and creating separate training programme for officers different from that of other ranks (Mohasoa 2014). *The Steyn Commission (2009)*

It is well-documented in the country that on the April 22, 2009 a group of 15 mercenaries from Lesotho, South Africa and Mozambique overpowered the soldiers on duty at the Makoanyane barracks and confiscated weapons before they stormed and opened fire at then-Prime Minister Mosisili’s official residence.

The Lesotho government later formed a Commission of Inquiry that was led by Justice Jan Steyn of South Africa to probe the attack. One of the main findings of the ‘Steyn Commission’ pointed out that the LDF was not adequately trained. *The Phumaphi Commission (2015)*

Following the assassination of Lt General Mahao by members of the LDF in June 2015, the Lesotho government invited SADC to establish a commission of inquiry to investigate the circumstances surrounding

the assassination. The was headed by Justice Mphaphi Phumaphi and commonly came to be referred to as the ‘Phumaphi Commission’ in Lesotho.

Amongst others, the Phumaphi Commission concluded that some of the security challenges in Lesotho emanate from the overlaps in the functions of the army and the police. Specifically this commission observed “that the LDF Act Section 5 (b) (ii) and (c) mandate the LDF to issues of internal disorder and maintenance of law and order as well as prevention of crime, which are commonly known to be police duties” (Phumaphi 2015: 56).

The Phumaphi Commission subsequently recommended that Lesotho institute all-encompassing reforms in search for lasting peace. One of the recommended reforms pertained to the Constitution and suggested that the deficiencies and overlaps in the constitution with regard to mandates of security institutions, be looked into urgently with a comprehensive strategy to reform them” (ibid).

Since the return to a democratic rule in 1993, Lesotho has engaged in a number of initiatives that were aimed at addressing security concerns in Lesotho. These include the following:

#### *The Formation of the Ministry of Defence in 1994*

Lesotho formed its Ministry of Defence in 1994 with the assistance of the United Kingdom. The aim was:

to preserve maximum operational independence for the LDF, while ensuring democratic accountability and the need for ultimate political strategic control of the army. This means that armed forces should refrain from involvement in politics other than through the constitutionally approved powers and civilians should refrain from attempting to inform operational matters and military discipline. .... The solution hinges crucially on civilian respect for military professionalism and military acceptance of civilian supremacy



(Molise-Ramakoae 2002: 173).

**The establishment of the Ministry of Defence was meant to ensure the proper civil-military relations in which the army would remain accountable to civilian authority. This was important for a country that had just returned from a military rule a year earlier.**

However, as the events of 30 August 2014 show, the Lesotho army at times harbours ambitions of influencing how the country is ruled. On the night of 30<sup>th</sup> August 2014 the army stormed Prime Minister Thabane's official residence only to find he had fled to South Africa. This attack had all the signs of a coup d'état.

#### *The Appointment of Heads of Security Sector Agencies by the Prime Minister*

In 1996 the Lesotho Parliament enacted laws that gave the incumbent Prime Minister sole powers to appoint and remove the heads of the armed forces. One of such laws was the LDF Act 1996. Section 12 (1) (a) of this Act states that "the King, acting in accordance with the advice of the Prime Minister shall appoint an officer to be the Commander of the Defence Force in whom the command and inspection of the Defence Force shall vest".

These new powers for the Prime Minister were provided for through the 1996 constitutional amendment of Section 145 (1) and has marked a departure from the earlier practice where such appointments or removals were the responsibility of the Defence Commission.

This Defence Commission consisted of (a) the Prime Minister as Chairman; (b) the Commander of the Defence Force; (c) the Commissioner of Police; (d) the Director of the National Security Service; (e) the Assistant Commissioner of Police; (f) the Deputy Director of the National Security Service; and (g) the Deputy Commander of the Defence Force" (Constitution of Lesotho, 1993: Section 145 [1]).

In relation to the process of appoint-

ment or removal of the Commander of the Defence Force, or any member of the Commission other than the Prime Minister, Section 145 (3) of the Constitution directed that the member concerned would not take part in the respective deliberations of the Defence Commission.

#### *The Engagement of the Indian Army Training Team in 2001*

Following the involvement of the army in the 1998 political unrests that necessitated SADC military intervention, Lesotho approached the government of India requesting a training team that would turn the LDF into a professional force. Subsequent to this request, the Indian Army Training Team (IATT) was deployed in Lesotho since June 2001. Despite the above-discussed initiatives that the country took from 1993, the security situation in Lesotho remains precarious with one component – the army – frequently intruding in civilian politics. This is one of the factors that will have to be considered during the imminent security sector reform process.

#### **The Current Situation**

A close security sector analysis in Lesotho shows that the proposed security sector reforms will take place in an environment that requires a cautious approach. The following are some of the features of the security situation in Lesotho presently: *The Politically unstable Lesotho where security sector agencies have intruded in civilian politics*

Generally, the political situation in Lesotho is highly unstable. This instability has, among others, affected the security sector with the army from time to time intruding in civilian politics. The latest of this undue intrusion has been in the form of the infamous 30 August 2014 events that saw the army raid Prime Minister Thabane's official residence in what had the features of an attempted coup.

#### *The Politicised security sector agencies*

The politicisation of the Lesotho

security sector has now become almost a norm. Though it began with the army, this politicisation has now come to affect all the components of the security sector. Focusing only on the army Matlosa and Pule (2001: 65) long noted that "as an institution of state, the Lesotho military has always been marred by controversy and steeped in intrigue. Its controversy spans from its politicisation and use by incumbent leaders as an instrument not only to ward off external threat, but also to emasculate internal opposition".

**The politicisation of the Lesotho security sector has been exacerbated by the laws that have given powers to appoint and dismiss the heads of the security sector components to the prime minister. It is worth noting that politicisation of the security sector, whether real or perceived, is dangerous and needs to be avoided at all costs.**

Following the enactment of these laws incumbent heads of the armed forces have in one way or another, rightly or wrongly, been associated with various political parties. For instance, former LDF commanders Tlali Kamoli and Maaparankoe Mahao have been seen by many people as having been associated with the Democratic Congress/Lesotho Congress for Democracy (DC) and All Basotho Convention respectively (ABC).

Lesotho Mounted Police Services former bosses Khothatso Tsooana and Molahlehi Letsoepa have been seen to be affiliated to the ABC and DC/LCD respectively. Currently Pheello Ralenkoane of the National Security Services is associated to the Basotho National Party (BNP), while the newly-appointed Commissioner of the Lesotho Correctional Services Thabang Mothepu is associated with the Alliance of Democrats (AD).

The implication of the above two points is that the security sector reform process is likely to be resisted by elements from both within the security sector agencies and politicians that benefit from the current



arrangements.

### *The Mostly inefficient and brutal security sector*

Lesotho's security sector has failed in recent times not to live up to expectations. The following examples attest to this claim. The escalating crime rate in Lesotho reflects serious inefficiencies on the side of the police. The infamous Lehlohonolo Scot's escape from prison (and other similar incidents) paints a gloomy picture for the Lesotho Correctional Services. The recent murder of the former head of the LDF Motsomotso has exposed the shortcomings of the intelligence services in Lesotho. Furthermore, there are reports of brutality waged on the public by both the members of the police and the army.

### *The Overlaps with the army seemingly taking over the roles of other components*

As rightly pointed-out by the Phumaphi Commission, the overlaps in the functions of the various components of the security sector pose a problem for Lesotho. This is mostly evident between the army and the police where the former from time to time performs what are commonly supposed to be duties of the latter. Similarly, the army has at times been unduly involved in the duties of the Lesotho Correctional Services. One such example is the case in May 2015 when "... soldiers drove into Maseru Central Prison and the LCS guards were told to leave the premises and hand whatever duties they were doing to the soldiers. The LCS warders complained that soldiers had taken their duties (See Lesotho Times 28 May 2015 p8).

### **Issues to be considered during reforms**

The planned security sector reform process comes as a result of the consequences that Lesotho would never want to face again in future. It is imperative, therefore, that the process becomes a success. This success can only be achieved if a number of issues are considered. These include

the following:

#### *Inclusiveness*

Though spearheaded by the government, the security sector reform process should be as inclusive as possible with various stakeholders playing a meaningful role. It is important that all the participants appreciate the importance of the reform process and subsequently work towards its success.

However, signs are that some sectors of the Basotho society – **particularly some opposition parties – want to derail the reform process.** The government needs to try as much as possible to bring these parties on board. However, should the parties persist with efforts to derail the reform process, the government will have to continue with the process without them. The buck stops with the government by virtue of incumbency and failure of the process will be interpreted by the same parties that have caused it as being one of the weaknesses warranting it to be voted out of office.

#### *Getting the priorities right*

All participants in the reform process have to bear in mind that the process is aimed at bringing a sustainable solution to the country's security problems. They, as a result, will have to get their priorities – both short-term and long-term – right. There will be a need to consider which, between national and public security, needs more attention. Such consideration might have to touch on the issues that seemed thorny in the past. For instance, there might be a need to review whether some of the security components are not redundant and whether the country cannot survive without them. However, such drastic decisions, if reached should not be 'emotional'. They need to be adequately planned for to ensure the economic security of their current members is assured.

#### *Civilianising secondary functions*

As a way of ensuring other types of human security the country might also have to introspect and decide

whether or not some of the functions performed by some components of the security sector remain well-suited within this sector.

For example, there might be a need to review if it is not necessary to have civilian bodies directly dealing with the rescue and emergency services – that currently appear to be the responsibility of the police. For instance, the country needs to have an operational paramedic system to deal with accidents. The involvement of the police during accidents should only be limited to issues of law and order. This will be in line with the call that security sector reform should ensure the clearly defined relationship between the security sector and the various institutions of a democratic state (Harris 2010: 41).

#### *Matching budget allocations with priorities*

The trend has always been that the budget allocations for the Ministry of Defence and National Security have always been far more than those of the Ministry of Police and the Ministry of Justice and Correctional Services. This has implied that the LDF has always received more money than other security sector components namely; Lesotho Mounted Police Services and Lesotho Correctional Services.

As noted earlier in this paper security sector reform has to ensure a more clearly defined relationship between national security objectives and budget allocations to the security sector (ibid). It will therefore be important for the security reform process to review the issue of budget allocations for these security sector components. It will be necessary to decide on different years for instance whether the country needs armoured vehicles or ambulances, and whether it needs police patrol cars or new weapons of war.

- ◊ Dealing with the overlaps in the functions of the security sector components

In line with the recommendation



Lesotho Defense Force members

that “the deficiencies and overlaps in the constitution with regard to mandates of security institutions, be looked into urgently with a comprehensive strategy to reform them” (Phumaphi 2015: 56), there is a need for the country to have a clearly defined procedure guiding the involvement of the army in the functions of other security components. **This is the case in other countries. For instance, in some countries such as El Salvador the army engages in**

**public security only at the invite of the president who also seeks the approval of parliament.**

◊ Reduction of politicisation of the security sector

One of the key factors that have necessitated the security sector reform process in Lesotho is the politicisation of the security agencies. The security sector reform process should therefore, among others, aim to

reduce the politicisation of this sector and bring back the nation’s confidence in its components. In doing this, participants should try to regulate the influence that political leaders have on the security forces. There might be need to review the legislation that empowers of the prime minister to appoint and dismiss heads of the security components. Repealing of such law might open doors for the resuscitation of the Defence Commission.

## Conclusion

Security reform process involves the assigning of various tasks of security to specific accountable security sector bodies with each component funded accordingly. Due to its centrality in the instability that necessitated the reforms, the Lesotho Defence Force will be the main focus of the reform process.

Various initiatives to confine the army to its rightful position – out of civilian politics - have in the past failed to yield positive results. It is for this reason that the planned reforms are going to take place in a highly polarised situation that is likely to attract resistance from some rogue elements of the army itself and, or derailment from the politicians benefiting from the status quo.

While it is the national process that needs to be inclusive, the reform process will have to be spearheaded by the incumbent government. The government will thus have to pay attention to striking a balance between inclusivity and progress. The deliberate absence of the former, as is likely to be the case, should never be allowed to derail the reform process.

A successful reform process should lead to future allocations that will see the security components financed according to their needs in a particular year in line with the general societal security needs, not just national security as the national budget allocations have suggested in the past.

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## Abstract

*Lesotho has been beset with political turmoil ever since independence. This has had negative effects on her socio-economic development. There is general agreement that one of the contributing factors is a public service that is highly politicised. To that effect, the international and local community agree on the need for constitutional, parliamentary and public service reforms.*

*The purpose of this paper is to examine the imperatives and politics of public service reform and, consequently, to propose an approach to put the reform process in action. I employ the secondary data collection method and argue that since the reform process is political, it needs to be handled carefully through the participation of all stakeholders to elicit their support and legitimise the process and the outcome.*

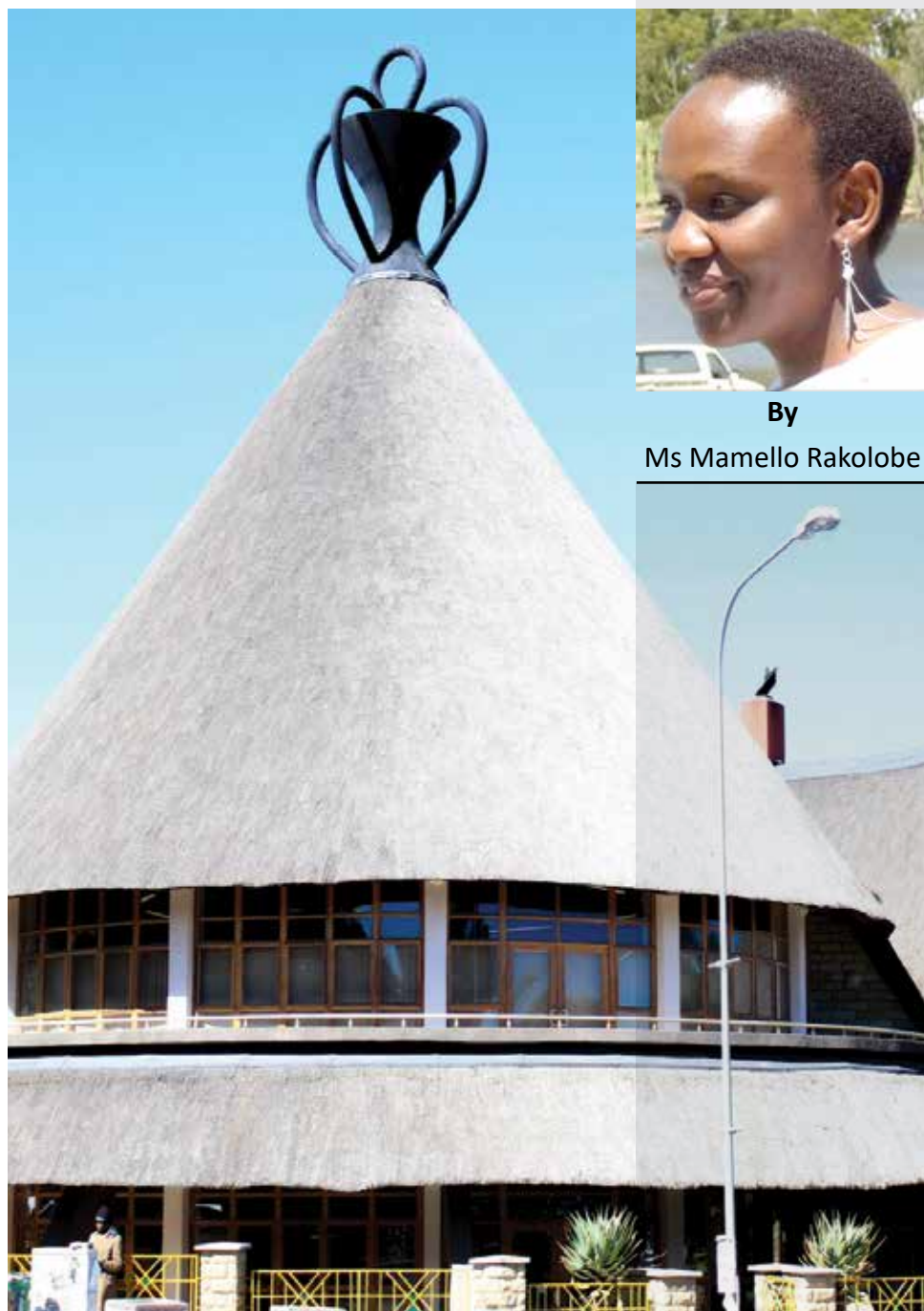
## Introduction

A country's socio-economic development is dependent on the character of its governance institutions. At the top of these institutions is the executive branch of government which is charged with the day-to-day running of government operations. The executive branch is staffed with public servants whose caliber is a determining factor in the efficiency of the government.

Lesotho's public service has been labelled as unprofessional, and

# The Politics of Public Service Reform:

## The Quest for a Depoliticised Public Service in Lesotho



By

Ms Mamello Rakolobe





Government Secretary Moahloli Mphaka, Prime Minister Tom Thabane, Deputy Min of Foreign Affairs Halebonoe Setšabi and Cabinet Administrator Adv. Makhetha Motšuari

politicised. (GoL, 2017). A politicised public service undermines the stability of state institutions. Additionally, the nature of the public service has been cited as one of the contributing factors to political instability of the country (Sejanamane, 2016).

As a result, there have been several calls from the local and international community to the effect that the sector needs to be reformed. For instance, the Commonwealth report by Prasad recommended that the public service needs to be reformed in line with international best practices for an apolitical public service. Additionally, the Southern African Development Community (SADC) Observer Mission to the Kingdom of Lesotho (SOMILES) and the SADC's Phumaphi Commission have emphasised the need to reform the public service together with other governance institutions. Even though the need and urgency for public sector reform cannot be disputed, the literature indicates that most reform initiatives in the developing countries have failed. A prime contributing factor to the failure of most public sector reform efforts has been the predominantly technocratic approach adopted by donors (Schacter, 2000).

The approach disregarded the fact that public sector reform, though it has significant technical aspects, is a social and political process which is influenced by human behaviour and local conditions (Schacter, 2000). There is no "one size fits all" process as reforms have to fit the context within which they are to be implemented. Additionally, and more importantly, public sector reform is an extremely political process and usually results in redistributive outcomes regarding resources and power (Chemouni 2017). The purpose of this paper is to examine the reasons for the need to reform the public service.

The paper goes further to elucidate the politics of public sector reforms and propose the approach that should be adopted in executing the reform process. This will be done through the use of secondary data that will be sourced from official government reports, newspapers and past research papers.

Therefore, the paper is divided into the following sections; the rational for reforming the civil service, the politics surrounding public service reform and the proposed reform approach.

These will be followed by the conclusion.

### **The rationale for civil service reform in Lesotho**

In agreeing with the Commonwealth's Prasad report, the SOMILES and the SADC's Phumaphi report, some scholars also share the same sentiments and indicate that the major reason the public service needs reforms is the fact that it is highly politicised which has resulted in a public service that cannot effectively contribute to socio-economic development. They argue that the politicised public service has also fuelled the incessant institutional and political instability in the country (Khasoane 2017, Thabane 2017, Sejanamane 2018). It is essential to explain what politicisation means, therefore the following section explains the phenomenon.

### **Conceptualising politicisation and the politics of public sector reforms**

Mulgan (1998) defines politicisation as any type of appointment which controverts the principles of a politically neutral public service. Politicisation can take several forms; firstly, policy-related politicisation which refers to appointment or dismissal of public servants based on

their known obligations to particular policy directions.

Secondly, managerial politicisation which manifests itself through the replacement of incumbent public servants during a change of government (Mulgan, 1998). This occurs even when there is no evidence of their incompetence but is simply done in order to enable imposition of government's authority in the public service.

Thirdly, party-politicisation which refers to a practice of appointing political party members to positions within the public service (Thabane, 2017). Among the three, the appointment of candidates with political background presents the strongest indicator of politicisation.

There are divergent views on the impact of politicisation on the public service. On the one hand, some authors argue that politicisation results in negative consequences in the public service. Peters (2004) points out that a politicised public service is characterised by inefficiency and limited continuity in delivering government programmes. It is also assumed to experience political consequences such as questionable fairness of government institutions in discharging their duties (Peter and Pierre 2004). In addition, politicisation of the public service leads to lack of trust in the senior officers with well-known partisan connections by the future alternative governments, and replacement of incumbent public servants during the change of government that is not competence based (Mulgan 1998). This definitely disrupts continuity in the public service.

Furthermore, political appointments to top positions daunts career public servants' anticipation for promotion to the top echelons of the public service (Pierre 2004: 49). Furthermore, Wescott (1999) also notes that politicisation of the public service has contributed to the deterioration of African public administration.

On the other hand, others argue that governments are reasonable in placing their loyalists in top positions to ensure receptiveness to the policies of the current government (Sossin, in Matheson et al. 2007). In the same vein, Peters and Pierre (2004:8) state that politicisation can be useful in the aftermath of one-party dominant system as the successor government may feel the urge to put its loyalists in top positions.

The conceptualisation of politicisation above indicates that the phenomenon negatively affects the performance of the public service. As a result, for efficiency and effectiveness, it is imperative to reform a politicised public service. However, the reform process usually faces impediments. Past research indicates that challenges to reforms are usually political rather than technical (Wilder, 2009). This means that the hurdles or slow pace in reforming governance institutions do not to emanate from insufficient technical knowledge regarding what needs to be done but rather they are predominantly political in nature. Wilder's 2009 research findings on the challenges faced in reforming Pakistan's public service in which the aim was to shield it from politicisation indicated that the reform process was slow because politicians benefited from its politicisation as they could use civil servants for their political interests.

Therefore, the politicians were not interested in reforming the public service. Additionally, Wilder (2009) pointed out that one of the most common form of political patronage is providing employment to political party loyalists. He notes that employment is the number one demand placed on politicians from their constituents and its political significance has been one of the major impediments blocking a number of public service reform initiatives.

Wilder (2009) went further to show that as much as politicians and sup-

porters benefit from the patronage system, the practice is also politically hazardous because most of the politicians in Pakistan decried that their time gets wasted on dealing with multitudes of jobs, promotions and transfer seekers as opposed to focusing on legislative priorities.

Political leaders find it tricky to execute public sector reforms because; on the one hand employment in the public sector is a valued private good that politicians provide in exchange for political support (Barrowman, 2015); on the other hand, public sector reform is a public good and therefore prone to the public good problem (Geddes, 1996). All members of a society - politicians and the general public - would benefit from a reformed depoliticised public sector, however the public good problem makes it unattractive for the politicians to embark on it. This is compounded by the fact that politicians are hesitant to relinquish the electoral support that results from providing employment to their supporters (Geddes, 1996). African political leaders in particular have perpetrated the use of the state resources to sustain their hold on to power Baraka (N.d). Bearing the above pros and cons of politicising the public service, and the politics of public sector reform, how does Lesotho fare as a country? The following section sheds light on the magnitude of politicisation of the Lesotho's public service.

### **To what degree has the Lesotho's public service been politicised?**

The *Constitution of Lesotho 1993*, the, the *Public Service Act 2005*, the *Defence Force Act 1996*, and the *Police Service Act 1998* have left recruitment of some of the top public officers in the hands of the Prime Minister. The said legal instruments have all conferred the power to appoint top level bureaucrats such as the Principal Secretaries (PSs), the Commissioner of Police and the Commander of the Lesotho Defence force in the hands of the Prime Minister.

The Prime Minister (PM) is at liberty to appoint officers based on political considerations rather than merit. This is because the recruitment criterion is not specified, thereby leaving room for the PM to use his discretion.

Politicisation of the public service has been a feature in all regimes since independence. However, it intensified and was institutionalised since the return to multi-party politics in 1993 wherein the ministries' Chief Executive Officers' title was changed from Permanent Secretaries to Principal Secretaries.

They changed from being career civil servants who were permanent and pensionable to contractual employment and this is done without going through an open and competitive recruitment process. Politicisation has manifested itself through mass replacement of top public servants such as PSs, Ambassadors, and heads of security agencies at the change of government. These are usually replaced by candidates with well-known political backgrounds. For instance, after the 2012 national elections, Prime Minister Thabane, the head of the first coalition government, dismissed the Government Secretary. The Commissioner of Police, Mr Kizito Mhlakaza took early retirement and was subsequently replaced by Deputy Commissioner Monaheng who also got replaced by Commissioner Khothatso Ts'oana. The Principal Secretaries' contracts were terminated prematurely and they were replaced by the government's loyalists. Some ambassadors were also replaced at the expiry of their contracts.

Some PSs and ambassadors had political background. For instance, Sam Rapapa, who held the PS position in Cabinet Office, served as a Treasurer in the All Basotho Convention (ABC) National Executive Committee (NEC). Lerotholi Pheko, who held the PS position in the Ministry of Development Planning, also served as ABC NEC Public Relations Officer and Acting Secretary General (Lestimes,

2014).

In addition, the government appointed ambassadors such as Advocate Kelebone Maope (KC) representing Lesotho in the United Nations. High Commissioner in China Mpeo Mahase-Moiloa, and Lebohang Ntšinyi the ambassador of Lesotho in Belgium also had political backgrounds. As the above evidence shows, the appointments were made based on candidates' political leanings. However, the second largest coalition partner, Metsing Mothejoa, leader of Lesotho Congress for Democracy (LCD), disagreed with some of the dismissals and appointments.

For example, Metsing disagreed with the dismissal of Motlatsi Ramafale, the then GS which brought about conflict between the coalition partners. Other appointments that caused a rift between coalition partners was the replacement of the President of the Appeal Court, Ramolibeli with Professor Kananelo Mosito, the appointment of Lieutenant General Maaparankoe Mahao to replace Lieutenant General Kamoli as the Commander of the LDF. Metsing denounced the replacement on national television. Following the dismissal, the radio stations were shut down and the military raided the police stations murdering Sub-Inspector Mokheseng Ramahloko. The incident was labelled as an attempted military coup.

Thabane and Chief Thesele 'Maseribane, leader of the Basotho National Party fled the country together with Maaparankoe Mahao, and other high ranking police officers. They only came back under the guard of South African security agencies.

In putting together the incidents, it is safe to argue that politicisation of the public service undermined the stability of state institutions and consequently the political stability of the country. Sejanamane (2016, 291) attests by indicating that the dismissals and recruitments brought about chaos in the public service.

Upon assumption of power post-2015 national elections, the Demo-

cratic Congress (DC)-led seven party coalition government followed suit as it immediately made a decision to demote Lieutenant General Mahao and reinstated Lieutenant General Kamoli as LDF commander.

The reappointment of Kamoli led to the flight of the leaders of the ABC, BNP and Reformed Congress of Lesotho (RCL) to South Africa, who said they feared for their lives. Some LDF officers who were suspected to be associated with Lieutenant General Mahao were arrested and tortured for an alleged mutiny. These culminated in the assassination of Lieutenant General Mahao by LDF personnel, who were allegedly trying to arrest him as he was said to have led the mutiny conspiracy.

The government collapsed in 2017 and the third coalition government led by ABC assumed office. The politicisation cycle continued as the government dismissed the Director of Public Prosecutions, Leaba Thetsane, the Attorney General, Ts'okolo Makhetha, the Commissioner of Correctional Services, the Director General of National Security Services Tumo Lekhooa. Commissioner of Police Molahlehi Letsoepa was suspended and later on took early retirement. The PSs have also been dismissed. Politicisation of the public service seems to be pervasive in all governments since the return to multi-party politics and this indicates that the politicians are benefiting from the practice. The following section presents the politics of public service reform in Lesotho.

### **The politics of public sector reform in Lesotho**

There is evidence that Lesotho's politicians value the politicised public service and do not find the prospects for its reform attractive. Even the supporters subscribe to and support employment based on political party inclinations. For instance, after every election, supporters of the ruling party (s) put pressure on the government to oust the civil servants that were recruited by the predecessor government and replace them with



the ruling party supporters. Additionally, Thabane (2017) notes that politicians seem to be addicted to politicising the public service and they have gone as far as entrenching it in the Lesotho's legal frameworks to the extent that it seems normal. Sejanamane (2018), attests to the reluctance to reforming the public service by indicating that Lesotho politicians abhor the politicisation of the public service and advocate their reform only when they are not in government but continue to use those unreformed institutions when they are ruling. The Post (2017, July) succinctly notes that the de-politicisation of the civil service through the adoption of a merit based system for senior positions will prompt protests from party supporters who always demand their parties to reward them with jobs even if they do not hold the essential qualifications for such jobs. Based on the preceding sections, the following section proffers a public sector reform approach.

### The proposed approach

There are opposing views regarding the approach that governments should adopt in reforming the public service. Werlin (1992, in Wescott, 1999 p. 3), advocates a top-down, politically-driven, all-encompassing reform approach. Werlin's argument it that public service reform required political will and the government's use of persuasive powers.

Conversely, Esman 1991 (in Wescott, 1999 p. 3), argues for a "bottom up" incremental approach with the participation of stakeholders. This is essential as reforms disturb established routines and threaten conventional centres of powers.

In agreeing with Esman, I suggest a bottom-up approach that incorporates stakeholder participation at all stages. This will ensure wider acceptance and consequently the legitimacy of the reforms and support for the constitutional amendments that are envisioned.

This should be in line with the Interim Political Authority (IPA) that was established after the 1998 political

crisis. This is because the envisaged process is politically sensitive and should be treated as such. I believe the government should hold a multi-stakeholder dialogue which has also been recommended by civil society organisations in the country. One of the outputs of the dialogue would be reform management structures (commission). The bill would then be tabled before parliament regarding the structuring of the reforms process. This is imperative to lend acceptability to the commission and this would pave a way for a smooth reform process.

The reforms commission would then be charged with facilitating the process by; firstly, holding multi-stakeholder workshops that are meant for the development of a vision regarding the nature of the public service that the country requires.

In the same workshops, the stakeholders would then diagnose the problem and deliberate on the strategies that are necessary to solve the problem. This should be done in an incremental fashion sensitive to the politics of reforms as discussed in the previous sections. A similar process was adopted by Botswana since the 1970s wherein Wescott (1999) points out that the public service reforms in Botswana have been part of a clearly developed vision of change, which has been characterised by citizen participation at the formulation and implementation stages. Consequently, the commission would have to submit the recommendations to the relevant committee in the national assembly to be enacted in the ordinary way. It is important to note that in all the stages there should be communication channels established in order to keep the general public informed about the process. Different media should be utilised to ensure wide coverage and access to the reforms information.

### Conclusion

The need for public sector reforms in Lesotho on the basis that it is highly politicised and dysfunctional is undisputable. The politicised

public service has detrimental effects on the effective functioning of state institutions and consequently to the country's stability. The national and international community should however be cognisant of the paradox of the reform process. They should note that the reform process, specifically depoliticising the public sector, is a predominantly political process. This is evident in the lack of enthusiasm that is demonstrated by the current and former governments in reforming the public service. The reform process has been largely rhetoric.

For the process to be successful, there is need for consensus building through robust participation of the populace. Participation and negotiation at all stages will render the process and the process legitimate and will draw popular ownership.

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Celebration of public service day

# Patronage vs Merit-based recruitment in Lesotho Civil Service:

*What have we learned?*



By

Ms Matšelisio 'Mota



**I**ntroduction  
There are persistent claims that the civil services of more advanced countries such as the United States of America (USA) enjoy insulation from political pressure and merit-based hiring, while those of developing countries such as Lesotho tend to be dominated by a patron-client relationship, over-staffed with politically ill-trained staff rather than professional competence (Oyedeyi, 2016, Ban 2014). Such civil services (in less developed countries) are said to be characterised by a myriad of problems, which have rendered the delivery of public services inefficient and ineffective.

The poor quality of the civil service in developing countries has necessitated a need and a clamouring for reforms. In Lesotho, however, civil service reforms had little impact towards making the civil service responsive. This article argues that such reforms failed to bring change because political intervention in the civil service is widespread and little was done to challenge the unlimited, excessive and unchecked power politicians' hold on the civil service.

Lesotho, as opposed to USA, adopted a politicised bureaucracy model in which there is no difference between politics and administration, and between political party and state. As stated by Libby (1987), this model was first introduced in Lesotho during Chief Leabua Jonathan's tenure. Such claims state that Chief Leabua adopted this model mainly to increase his political base by recruiting only civil servants affiliated to his political party (Libby, 1987). The USA has

## Abstract

*The article reflects on Lesotho's civil service reform, with special attention on the recruitment process. Models that were adopted and used to describe the recruitment process are identified and analysed. The article posits that political loyalty and patron-client relationship as main elements in staffing high level positions in Lesotho government is worrisome.*

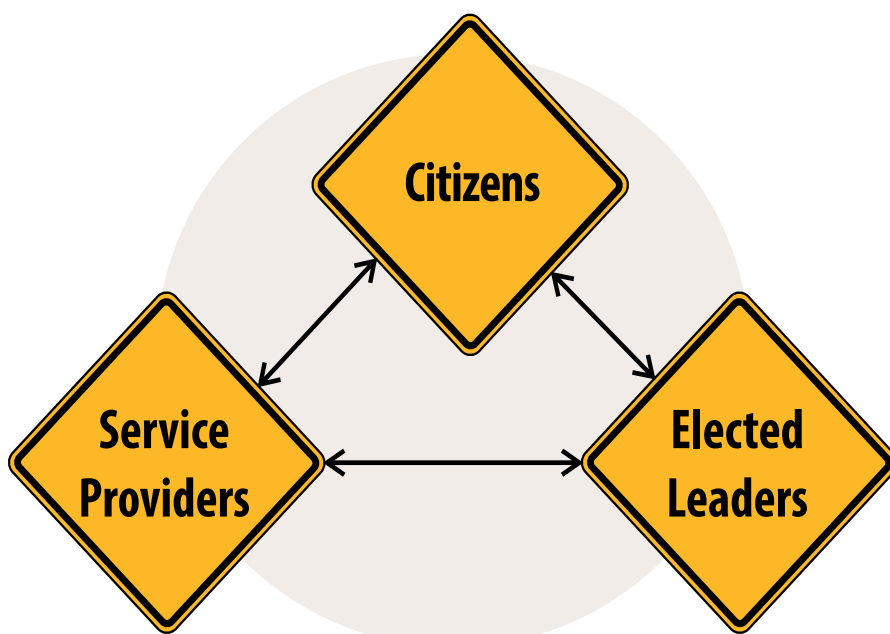
*These practices, the article argues, have led to the infiltration of incompetent personnel who are failing to produce quality public service.*

*This is a comparative study which uses the Lesotho and American case studies to analyse the recruitment processes. The use of the USA case study does not suggest that the two countries currently share any similarities, however, USA was chosen because issues that emanate from the discussion on politicised civil service in*

*Lesotho are to a large extent settled in the USA. Moreover, USA provides a very diverse spectrum of experiences in the sphere of civil service reforms, with a variety of practical models of transformation ranging from introduction of radical clear-cuts among the state apparatus, to the replacement of old state bodies which Lesotho could learn from.*

*To obtain the information, different websites on the subject were reviewed. The findings recognise the need for the adoption of a different model that would ensure a balance between political loyalty and a strong, merit-based system of employment. Moreover, the findings discovered that **implementation**, not laws, determines the persistence of patronage and shapes the characteristics of career services.*

*The article concludes by making a call for civil service reform in Lesotho.*



adopted a hybrid model with a mixture of overt political selection and control, as well as extreme commitment to the merit-based system.

It is in this context that this article reviews attempts to reform the civil service in Lesotho. Also, the article traces how and why the merit-based system became a success in America but failed in Lesotho.

Based on the two case studies, the article concludes that perhaps the way to a competitive, neutral, independent and trustworthy, reformed civil service in Lesotho lies in the adoption of an alternative model or in the development of the current model.

However, the article warns that success in adopting a relevant model lies in following a comprehensive process; a process that is characterised by a strong government commitment, adoption of relevant structures and a thorough public participation process.

### **This article is divided into six parts.**

The first part clarifies and explains the concepts the study adopted, the second looks at the study models, the third looks at the politicisation process in two countries, the fourth part highlights the lessons learned, the fifth discusses the findings, and the last one sums up the study. Conceptual clarification of the study

### **Civil Service:**

The civil service is a political term which has different implications from one country to another. As stated by Drewry *et al* (1988), the civil service evolution

can be traced to the late 18<sup>th</sup> century to distinguish between civilian and military personnel of the East India Company. With time, this definition evolved towards a contemporary concept which states that the civil service means remunerated personnel (Sevic *et al*, 2000). Today, the term civil service is defined as the administrative structure employed in civil capacity to fulfill government policies and programmes (Oyedeji 2016). The following features are usually used to define the civil service:

### **Comprehensiveness:**

The civil service is said to be comprehensive because the services and responsibilities cover and affect all aspects of the lives of the people in the country.

### **Political Neutrality:**

Although public servants are expected to vote during an election period, Oyedeji (2016) argues that political servants are expected to be politically neutral, and they are not expected to be card-carrying members of a political party or get involved in partisan politics. Instead, they are expected to serve the government of the day with full dedication.

### **Anonymity:**

The principle of anonymity, according to Oyadeji (2016), states that the civil servant should be seen and not, by principle, be heard. This means, as much as civil servants' advise political office holders on issues relating to government, they neither take the blame nor the glory of such policies.

However, Sevic *et al* (2000) point out that despite the usual perception of the civil service as a

monolithic structure, its characteristics, textures, operating principles and procedures vary significantly from one policy sector to another.

They observed that the politician-civil servant relationship changes not only with respect to a policy sector, but also due to changes in the dominant political ideology of the time or changes in political leadership.

In this article, the term civil service will be used to refer to the administrative bureaucracy, which occupies an essential position in the political system of nations. The sole purpose of the civil service is to promote sustainable and equitable economic growth. As a result, efficient and effective management of the civil service are very critical if the country is to attain sustainable socio-economic development. The following are the features by which the civil service is identified.

### **Politicisation of the civil service**

Clifford & Wright (1997) argue that the term politicisation is taken to mean many different things, that is, it is convenient umbrella term for many different effects, for example, changing relationship, changing behaviours and changing structures.

As a result, it relies on assumptions about what happened traditionally or in the past. At the basic level politicisation of the civil service means the substitution of the political criteria for merit-based criteria in the selection, retention, promotion, rewards and disciplining of members of the civil service (Peters *et al* 2004). Having mentioned that, Peters *et al* (2004) remind

us that almost all civil service systems have some level of political involvement in personal matters that are considered appropriate.

Secondly, Peters *et al* (2004) elaborate that the nature of the political criteria being employed when the civil service is being politicised may vary – we usually think of these as being partisan loyalties but attempts at politicisation may also reflect policy and stylistic issues as they are manifested in activities of public servants. Thirdly, the way the political criteria are employed may matter for the performance of the administrative system, for example, permitting the merit system to dominate the selection and promotion of public servants for most of their careers with political criteria being used to remove the very senior officials and replace them (particularly after a change of government).

Fourthly, Peters *et al* (2004) argue that politicisation may also mean that public servants begin to take tasks that might formerly have been political.

A final consideration Peters *et al* (2004) make mention of is that in some ways political criteria may be more important for ensuring democratic values in governing than conventional merit values.

### **Civil Service Reform**

The concept of civil service reform is used in this article to refer to a planned intervention to raise the level of public service. It must have carefully defined goals and a strategy to attain these goals. Not far-fetched from the above definition, Schactes (2000) adds the management dimension to this and argues that public service reform is more about strengthening

the way the civil service sector is managed. Omyefa (2008) sees civil service reform as the total overhauling of the government administrative machinery with the aim of injecting real effectiveness, efficiency, hard-core competence, and financial prudence in the running of the public service.

### **Models Adopted**

Public administration literature has a number of different successful and failed models applied in different countries in pursuit of efficiency. Such models range from the British permanent model, the American hybrid model, the complementarity model as well as the politicised bureaucracy model (Mafunisa, 2003). For the sake of this study, only two models will be investigated, namely; the American Hybrid model and the political bureaucracy model.

#### **Political bureaucracy model:**

With this model, politicians are entrusted with a mandate to control the public service - that is, there is no distinction between politics and administration or between party and state. This is a highly patronised model because it suggests that rewards and appointments are made on the basis of allegiance to the ruling party by the public servants and not on the basis of the merit system (Mafunisa, 2003).

The model is not quite clear on how to manage the relationship between political office bearers and public servants in a manner that ensures that the public service is not abused for narrow party-political agendas but remains a critical instrument in service delivery.

### **The American hybrid model**

This model resembles that of a hybrid system for it combines the elements of merit and patronage. This means that civil servants are recruited and hired based on merit, are evaluated periodically and are promoted on the basis of their efficient ratings (Pyper 1995).

At the same time, there is a considerable number of positions that increase at the beginning of every new political term for the cabinet to appoint their own people.

### **Politicisation of the Civil Service in Lesotho**

Lesotho is a constitutional monarchy. The Prime Minister is the head of the government and appoints a cabinet. The legislature has two chambers: The National Assembly, which is elected for a five-year term with 120 members, and the non-elected senate with 33 members. The cabinet is responsible for all government policies and the day-to-day running of the affairs of the state, the cabinet of ministers therefore consists of the Prime Minister and other Ministers.

According to section 87 of the constitution of Lesotho, the Cabinet is led by the Prime Minister who is appointed by the King in accordance with the advice of the Council of State.

The dominant supposition in the literature on Lesotho civil service is that it has been, and continues to be, over-politicised. Claims are that almost all democratic governments politicised the civil service for serving their narrow interest (Libby 1987, Rankoe, Monyane, 2008, Lesotho Times, 2015).



According to Libby (1987), the political nature of the civil service in Lesotho can be traced as far back as the time when the country attained independence in 1966.

During this time, he argues, Prime Minister Leabua Jonathan transformed the traditional chieftaincy into state functionaries under centralised control. Through these structures, Leabua Jonathan used the country's foreign aid muscle to recruit a cadre of professionals, independent traders, commercial managers and civil servants to support his political regime across the ten administrative districts of Lesotho.

From the public administration perspective, Monyane (2008) argues that the Leabua regime increased its political control over the civil service when it stripped the public service commission of its powers and created the cabinet personnel office instead.

As a result, the ministers and senior government officials used this office and its powers to appoint and dismiss public servants on political grounds and in this way the civil service slowly became politicised. Since then, successive governments in Lesotho have been accused of politicising the civil service.

Due to this widespread politici-

sation, today the general perception is that the civil service has been divided into pro-congress and pro-national camps. As a result, every government tries to recruit its supporters in the civil service for their political gain. The evidence comes in the form of patronage, supplanting the traditional mechanisms of recruitment, the blurring of tasks that should be undertaken by the civil service and those that are party political, as well as an unwillingness to listen to the advice and counter-arguments of the civil service (Phoofolo, 2017).

To be precise, Inglis (2016) points out that successive governments since independence have been accused of fanning inefficiency and corruption by creating jobs for the boys to appease party cadres who did not necessarily have the requisite qualifications. The same sentiment is echoed by the Lesotho Times (2017), which argues that Lesotho needs technocrats to run government ministries and not just political appointees. The newspaper further indicates that to achieve this, Lesotho needs to depoliticise its civil service to ensure that individuals are appointed to these key positions based on their qualifications alone (merit).

Another problem that characterises the excessive political in-

fluence the politicians have over senior civil servants or administrators (principal secretaries), is the constant reshuffling that results into appointing either unqualified personnel for the job or placing qualified personnel at the wrong institutions.

To illustrate this, during the principal secretary reshuffles that took place mid-May 2018, we saw a lawyer by training being moved from the Ministry of Constitutional Affairs to the Ministry of Defense, while a nurse by training was placed at the Ministry of Tourism. This alone says a lot about the kind of public goods the current government renders to the public.

Another observation made by Pefole (2017) relates to the contractual nature of the appointment of senior civil servants or administrators. With these, Pefole (2017) challenges the fact that senior civil servants' appointment is political. While he understands that politicians will prefer civil servants who they can trust, he immediately reminds us of the important role the senior civil servants play.

Based on that, he argues that constant appointments of new civil servants after every five years brings inconsistency to the performance of the civil service.



Instead, he makes a proposition that such positions should be neutral and permanent. Moreover, he advocates that appointees to such positions should not be trained to serve egotistical interests of the political leadership but should be devoted to serving Basotho.

In Lesotho, there is not much account on different systems tried and tested to promote a neutral civil service. However, Monyane (2008) indicates that the restructuring of the public service to bring back the public service's credibility in managing the human resources can be traced back to 1986 when the cabinet personnel office was transformed into ministerial status.

In 2005, the Lesotho government passed the Public Service Act which was indeed a giant step towards a merit-based system or a career civil service. This Act stipulates that the recruitment of the top civil servants in Lesotho is usually done by the Prime Minister, acting after consultation with the Public Service Commission (Public Service Act 2005).

These include the positions of the Government Secretary and Permanent Secretaries, while other ordinary civil servants are appointed by the Public Service Commission without any political influence but based on the merit system.

The Act further shows that the powers to terminate appointments of such persons is vested in the Public Service Commission (Public Service Act 2005). Moreover, the Act stipulates that entry and advancement within the public service shall be based on merit, which includes: ability,

qualification, knowledge, skills, and aptitude after a fair and open competition which ensures that all citizens of Lesotho receive an equal opportunity (Public Service Act, 2005).

In 2007, the Government of Lesotho adopted Public Sector Improvement Reform Programme (PSIRP) which has three components; decentralisation, improvement of the financial management and the public service management.

With the common understanding that civil servants should be apolitical, loyal and dedicated servants to the public, the Pakalitha Mosisili-led administration passed the following laws: The Public Service Regulation Act, Codes of Good Practice of 2008, and Basic Conditions of Employment for Public Service of 2011 to realise the above objective.

Despite the passage of these laws, the appointment of administrative or senior civil servants continues to be purely based on political affiliation rather than on merit. One will argue that this illustrates a typical example where laws are usually written into constitutions but not respected in practice or where structures are put in place but are not given legal provision to act while excessive, unlimited and unchecked power lies in the hands of the Prime Minister.

Despite making a bold move towards the adoption of the merit-based system of employment, the Lesotho civil service remains chaotic, highly political and inefficient. In fact, there are rumours that since the introduction of the coalition government, both political appointments and civil ser-

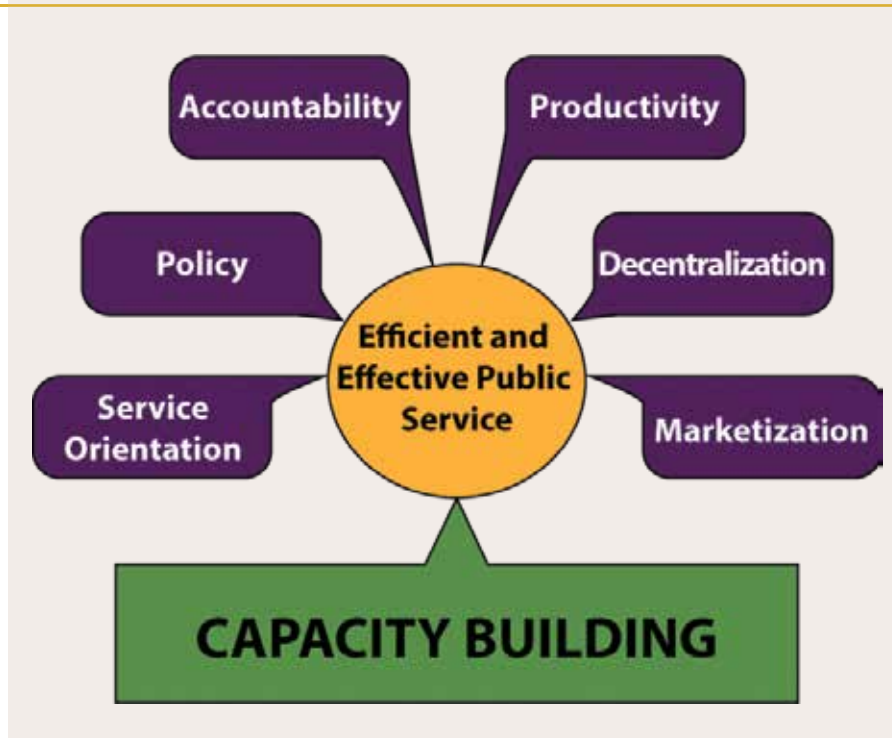
vice appointments have become exceedingly political and controversial.

In an interview with Lesotho Occasions (2017), Professor Kapa stated that the politicisation of the general civil service became stronger during the first coalition administration headed by Thomas Thabane in 2012. Claims are in 2013, Thabane clashed with the Foreign Affairs Minister Mohlabi Tsekoa over the allocation of diplomatic posts to ten overseas missions with the All Basotho Convention chief demanding some of the posts for his cronies (Lesotho Occasions, 2017).

The Mosisili-led coalition government is not an exception in this case; it also had its own deep-rooted patron-client relationship side. According to Ntaote (2017), Monyane Moleleki (Alliance of Democrats) confirmed claims that the second coalition authorities headed by Mosisili in 2014 corruptly handed out posts within the nation's safety business to their supporters.

Specifically, Moleleki indicated that 100 vacancies on the Lesotho Correctional Services were divided among the political partners in the coalition government. Also, the Lesotho Times (2016), observed that the call for snap elections meant that contracts of some of the Lesotho diplomats had to be terminated as they were contracted by the previous government. These incidents highlight that indeed, party loyalty has become a strong currency in Lesotho's civil service.

Beyond abusing public servants, the coalition government in Lesotho is also notoriously known for creating political positions that



in creating a merit-based system could be traced back to between 1828 and 1836 during Andrew Jackson's presidency. During his office tenure, Jackson introduced the spoil system whose purpose was to preserve the neutrality of the civil service.

However, as argued by Peter (2004), the politicians maneuvered the system to their advantage and started using the spoil system to build personnel and party support among the public. To address this shortcoming, the principles of the merit-based system were introduced. Thus, the merit system was promulgated through the Pendleton Act. As noted by Ingraham (1995), the merit system became the foundation of a career civil service for the federal government.

It is worth mentioning that although the American civil service system is designed to ensure that most positions in government are not affected by political consideration, this does not mean that the USA government does not have power over the civil service. In fact, as documented by Aberbach (1994), there is a substantial and growing number of positions that are handed out for political reasons, with the intention of ensuring that the administrative system will follow the leadership in government.

This reflects that the administrative system in the USA is an almost inconsistent mixture of overt political selection and control, as well as extreme commitment to merit and depoliticisation. Given this overtly political nature of appointments at the top of the pyramid in public organisations, Peters (1994) argues that the meaning of politicisation in USA is somehow

are primarily used to exercise political control. According to Weistelder (2016), the Lesotho 2014 cabinet members were five (5) more than its 2012 predecessor. Claims are this was done to reward each of the minor parties with a full ministry and not because it was necessary to do so (Weistelder, 2016).

**Politicisation of the civil service in the United States of America**  
The United States of America is a federal constitutional republic. The government structure of the USA is divided into three branches; the legislature, the executive and the judicial branch. The USA civil service has two political masters, being Congress as well as the President.

In short, the President shares his power with the Congress. Thus, in the USA, the quest for a responsive, bureaucracy neutral civil service centres on the executive branch.

History tells us that during the ninth century, federal workers

were once a valuable political asset in the USA (Johnson *et al*, 1994), as patronage became the fundamental part of the recruitment system.

During this time, the President who had the constitutional power to staff the executive branch positions traded these positions to Congress and other politicians in exchange for their support on legislation and re-election, thus patronage positions were awarded to the party faithful, who engaged in campaign work.

However, the appointments were not based on competence and, as a result, scandals and charges of fraud and inefficiency were linked, among other things, to the largest post offices and customhouses, which at the time had the highest numbers of employees recruited through patronage. Patronage was blamed and the President, together with the Congress members, was increasingly pressured to reform the system.

According to Peters *et al* (1994), the United States' first attempt



problematic to explain.

Based on the scenario, the question would be: what is it that USA is doing right to allow the co-existence of the two systems? To answer this question, Aberbach *et al* (1994) take us back to the structure of governance in the USA. They show that unlike Lesotho, the USA civil service has two political masters (the Congress and the President).

Thus, the pursuit for a responsive civil service centres on the executive branch *but* the legislative branch certainly has something to say about the management of the public bureaucracy.

Over and above that, the Office of the Personnel Management and the Merit System Board are charged with maintaining the integrity of the merit system with other institutions in place to pursue any significant violation of political neutrality concept.

From the two case studies, the article can conclude that the Lesotho case study presents an example of a system that preserves an inefficient state machinery, which has unlimited power in the hands of the Prime Minister, which is inactive, grants little respect for ordinary people's interests, abuses government resources and is very reluctant to reform, while the USA case study provides a very diverse spectrum of experiences in the sphere of civil service reforms. It demonstrates a system which was slowly, incrementally and adaptively succeeded by a career or merit-based system of employment.

### **The Process Comparison: What have we learned?**

The study highlighted that the administrative system in the USA

is an almost paradoxical mixture of overt political selection and control as well as extreme commitment to merit and depoliticisation. To achieve this kind of administration, USA embarked on different strategies, namely:

#### **Political will and local context:**

Firstly, the USA case study reflected a country with political commitment. Thus, in the USA the move to a merit-based system was characterised by conflicts and negotiations. Nevertheless, USA knew it needed a solution to address the patronage system of employment that resulted, amongst other things, in poor service delivery.

To achieve that, repeated reforms were introduced. Such reforms shifted the balance of power and created problems, but the USA federal government did not stop. Instead, such problems were used to create solutions.

In Lesotho, however, a different picture was painted. In fact, one could argue that the reforms failed because they were donor-driven and the government showed little or no interest at all. The first lesson that Lesotho could take home is how the USA government became committed throughout the whole reform process. Against all the challenges, the government knew it had to slowly, incrementally and adaptively move away from the system that was becoming costly, both in monetary terms and in service delivery terms.

#### **Adoption and implementation of structures:**

Closely related to the USA federal government political will is the nature of *formal structures and rules adopted* for creating

and protecting a merit system and abandoning the patronage system. Not only did the USA government pass legislation but it also included oversight by an independent civil service body (which is itself insulated from political control context).

Also, other structures such as the Office of the Personnel Management and the Merit System Board were established to protect the integrity of the system. Over and above that, such structures were also given power to act accordingly should there be some violations. Indeed, as argued by Ban (2014), these formal structures played a critical role in creating and protecting the merit system of employment which became very difficult to manipulate.

#### **Setting standards-competence:**

In Lesotho, both the Mosisili and Thabane regimes detail the disastrous effects of incompetent appointments. According to Rankoe (2016), Lesotho has continuously appointed incompetent ministers and senior civil service members. To rectify this, Lesotho politicians must grasp that the appointment of incompetent partisan officials to senior ranks is entirely dysfunctional and lead to incompetence. How then did the USA move from the same dysfunctional system? Ban's (2014) is one case study that verified competence as another method or approach in creating and establishing a merit-based civil service while at the same time maintaining the power of the politicians.

This the USA achieved by concentrating on the skills that are required for senior positions. In this manner, the politicians will still be exercising their control by appointing officials who combine

loyalty and expertise. Thus, even where pure political influences prevail, certain standards are typically considered and followed.

Engaging in public participation: USA civil service reform also demonstrates another case in which independent media, concerned citizens and the politicians had an important role to play and, to some extent, this benefited the reform process.

*Based on the two scenarios, the article advocates for some consideration to engage our minds on the following:*

Considering a shift from the current political bureaucratic model and the adoption of any hybrid model that would allow the politicians to still oversee the policy process while at the same time allowing civil servants to enjoy their independence and their neutrality. A typical example of such model is the American hybrid model where the elements of merit and overt political considerations are combined. Or the Swedish model in which there is a strict division between policy-making, administration and between political appointments and merit-based appointments.

Another option for consideration could be the adoption of the neutral, unbiased and objective media. This is because the media play an important role in exposing abuse in political bureaucracy. The assumption here is that if the political appointees know that there is a risk that patronage will be exposed, they would be more likely to refrain from abusing their political power.

Important also to consider is passing legislation on political

appointments. The article advocates a more open and meritorious system to ensure that the best qualified principal secretaries who would be able to deliver quality public goods are appointed.

Lastly, there should be an adoption of a well-defined process that encourages public participation, that establishes relevant structures with relevant power to protect senior civil servants, and a process that shows government commitment.

What becomes evident from the discussion is that Basotho must stop watching the practice of this model in silence but must start confronting the patronage system and its negative effects if Lesotho is to provide public services effectively and efficiently and stop watching in silence.

### **Conclusion**

The article studied attempts to reform the civil service in Lesotho and in the USA and special attention was paid to the recruitment process. The picture painted here was that an essential component of an effective professional civil service is its insulation from direct political pressure, its neutrality, its independence, and trustworthy.

That is, when the recruitment process of the senior civil servants is insulated from excessive political power, the right candidates with the right qualification would be appointed and the quality of public goods produced would improve.

The article also revealed that both patronage system and merit-based system can co-exist but warned that should this be the

case, the bold line between political appointments and administrative or career civil servants should be drawn and maintained.

Most importantly, an argument was made that the future direction of reforms in the Lesotho public service should be directed at making the civil service responsive, people-oriented rather than self-serving and must be politically neutral.

This article does not in any case suggest that the Lesotho government should adopt the hybrid American model. There are other countless models available such as the British Permanent model and the complementary model that the Lesotho government can pick from.

However, it strongly suggests that the current model that the government aspires to has failed: it has failed the public, it has failed the civil servants and it is failing the economy and it keeps eroding Lesotho's social fabric.

The article also warned that finding a suitable model is not an easy process; in order to succeed, the government should show commitment, relevant structures should be put in place and public participation should be a paramount factor during the reform process.

Throughout the discussion, the article maintained that a competitive, efficient and effective civil service is a possibility in Lesotho. To get there, the article advocates that there should be an adoption of a different model of political-administration or the excessive, unlimited and uncontrolled power in the hands of the Prime Minister be neutralised.



Qhobosheaneng Government Headquarters situated at Maseru City Centre

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# The road to recovery:

## *Strengthening the accountability structures in Lesotho's National Reforms Agenda*



By

Adv. Marealeboha P. Makau

### **Abstract**

*There are those that have described Lesotho as a small country with very big problems. Needless to say, the political, security and judicial quagmire, amongst many others, have not helped in shedding this grisly reference. However, it is believed that the recommended national reforms might go a long way in remedying Lesotho's political predicaments.*

*This paper therefore recommends public interest litigation as one of the mechanisms that can be constitutionally enshrined in the upcoming reforms to set in place a measure with which the electorate can hold those in power accountable, promote the protection of fundamental human rights and increased access to justice*

**I**ntroduction  
On the 14<sup>th</sup> May 2018, the Prime Minister of Lesotho Dr Motsoahae Thomas Thabane officially launched the long-awaited National Reforms Agenda in the National Assembly.

In his speech, Dr Thabane gave a brief picture of the political history of Lesotho, thus laying a foundation for the implementation of the national reforms agenda. The need for reforms came by way of recommendations from the Southern African Development Community (SADC) which identified several key areas of governance in Lesotho that needed revisiting, namely; the constitution, security, parliamentary, civil service and judicial sector.

In any constitutional democracy, which Lesotho professes to be, the rule of law and separation of powers are some of the paramount tenets, which lay a foundation for good governance.



This should be coupled with a robust constitution that does not provide a fertile ground to breed political strife and unaccountability. The reforms agenda therefore comes at a time when Lesotho is indeed experiencing erosion of the rule of law, separation of powers and a constitution that is seen, by some, to be the cause of instability and strife.

This paper therefore makes a recommendation on the constitutional entrenchment of public interest litigation (PIL) as another leg of constitutionalism meant to provide a voice for the electorate, who have long lacked mechanisms of interacting with those in governance on key issues that affect them, particularly holding them accountable.

Moreover, PIL promotes the protection of fundamental human rights norms as provided for in the constitution by way of judicial engagement and activism. Badwaza (2005) argues that PIL serves different purposes in order to achieve different goals but at the heart of almost all of PIL endeavours is the need for social change through the law.

While it is acknowledged that the modern state has a range of positive functions, it is also noted that many of the outlined functions and responsibilities are often considered to fall within the exclusive purview of politics as opposed to rights.

Similarly, modern democracies entail accountability and participation by the people but the extent and nature of the said participation is seldom defined and gives way to many controversies. Thus, it is submitted that simply citing accountability without pro-

viding avenues and practical ways of ensuring that governments can be held directly accountable by the citizenry is meaningless.

There is no reason why processes cannot be put into place to respond to the need of enforcing positive duties by governments. Therefore this paper proposes and recommends that PIL should be capable of judicial enforcement in the national reforms agenda.

### **The Constitution and PIL in Lesotho**

The current Constitution of Lesotho 1993 came in the wake of a democratic dispensation whose underlying values include accountability, participation and equality. Section 20 provides that:

1. Every citizen of Lesotho shall enjoy the right:
  - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b. to vote or to stand for election at periodic elections under this Constitution under a system of universal and equal suffrage and secret ballot;
  - c. to have access, on general terms of equality, to the public service
2. The rights referred to in subsection (1) shall be subject to the other provisions of this Constitution.

Although this provision may give one hope of an avenue to hold those in governance accountable, it has proven a futility in achieving this goal. In reference







Palace of justice

to this section, the court noted in *Mofomobe and Another v Minister of Finance and Another; Phoofolo KC and Another v The RT Hon. Prime Minister and Others (C of A (CIV) 15/2017 CONST./7/2017 C of A (CIV) NO. 17/2017) [2017] LSCA 08 (02 May 2017)* there is no direct authority in this jurisdiction (Lesotho), on the meaning of section 20(1) of the Constitution and that it is not entirely clear what is meant by the words “Every citizen of Lesotho shall enjoy the right...to take part in the conduct of public affairs, directly or through freely chosen representatives”.

Section 22 provides for the enforcement of protective provisions and sections 25 to 36 embody principles of state policy. The latter section is often defined as an epithet of socio-economic

rights which, as previously noted, are some of the functions that are reserved for political action.

That is why the Court of Appeal of Lesotho contended, in the *Mofomobe* case cited above, that the appellants did not allege that they individually or together suffered any damage themselves or that there was any breach of some duty owed to them individually or an infringement of some rights vested in them.

It further noted that, as in any parliamentary democracy, the violation of revenue laws by the government is a matter within the province of parliament and not individual taxpayers. One of the functions of Parliament is to question the use to which government puts public resources. In direct contrast to this case, the

question then becomes, what happens when a body that is tasked to question certain conduct fails in that duty which it owes directly to those that have vested interests?

In the *Qhalehang Letsika and Others v Dr. Kananelo Mosito and Others (CC 16/2017) [2017] LSHC 1 (09 February 2018)*, the court addressed this concern and noted that by virtue of the applicant’s vocation, coupled with their status, they individually and collectively, have a direct interest in the legality of the appointment of judges in general.

The matter (before court) raised serious concerns of national interest as to whether the appointment of the preferred candidate who has been designated as the president was constitutionally



compliant.

Most importantly, the court noted that although the applicants were members of the seventh respondent (Law Society), they did not need the Law Society of Lesotho to act as their mouthpiece because, in any event, the latter had openly made common cause with the first respondent (Dr Mosito).

Moreover, by forming such an alliance, the Law Society alienated the loyalty of some of its members.

Consequently, the stance of the Law Society may well have been completely different had it followed a due consultative process to ascertain the popular view of its members and this was not done.

It is submitted that this is one of the problems that plagues Lesotho's democracy. Often those that are tasked with representing the views of the people that have put them in positions of power and governance, as articulated in section 20, never solicit their views on issues, which the electorate ought to be engaged on.

In a situation where the electorate are denied an avenue to exercise their constitutionally entrenched right of participatory governance, this right becomes meaningless.

This was further seen in the case of *Development for Peace Education and Another v Speaker of the National Assembly and Others CC5/2016* where the applicants contended that they were denied their constitutional right to participate during the legislative process over the Human Rights Commission Bill thereby violating their right under section 20

of the Constitution of Lesotho which section, they alleged, gave them both *locus standi* and the right to participate in parliament and in the public affairs of Lesotho.

While the court acknowledged that "the right to take part in public affairs" must be given a broad, inclusive and purposive interpretation; and took cognisance of Standing Orders 54 and 76 of the National Assembly which promote public participation, it however noted that the said Standing Orders do not form part of the Constitution of Lesotho and can be amended or repealed by the House properly sitting for that purpose.

Moreover, it noted that the said orders are not an extension of section 20 of the Constitution and therefore their violation or non-observance or non-compliance does not *ipso facto* mean violation of section 20.

One need not look beyond these cited cases to see how meaningless the draftsmanship of section 20 is to this all-important right of participatory governance.

Yet the plethora of rights detailed in the Constitution have an expressive role, signalling the values that a society stands for, regardless of the method of their enforcement (Freedman, 2008).

Moreover, Gavri and Brinks (2008) contend that these rights constitute a focus for political grassroots campaigning, giving a specific and authoritative legitimacy to demand their fulfilment while guiding political and executive decision-making so that legislation, policy and administration are formulated to meet their demands.

Needless to say, none of these provisions can be used as a basis to establish standing for any litigant who wishes to hold the government accountable on general governance issues where there is no direct and personal infringement on their part.

It is submitted that this loophole in our law has given leeway to some, if not much of the apathy that is resident in the governance of Lesotho because what justifies all public power is the ability of its incumbents to offer adequate reasons for the decisions which affect those subject to them (Dyzenhaus, 1997). It is high time that there is some clarity on the meaning of section 20 and the viable solution is to reconstruct the section to entrench PIL.

This is because in the context of a malfunctioning state in key areas of governance such as Lesotho, there is a wide range of circumstances in which judicial prompting can play a vital role in stirring the government to act and fulfil undertakings that are already made to which there is simply a failure to honour them.

In this regard therefore, the ideal behind constitutionally enshrined PIL is to construct the court as a vehicle for social conversation between co-equal citizens (Freedman, 2008).

In addition, PIL has the potential of being a catalyst for democratic pressures which trigger governmental action to counter apathy.

However, courts are not an instrument of total societal revolution; they are, at best, instruments of piecemeal social engineering, never a substitute for direct political action (Baxi, 2000) and their role is not to make the decision in

the place of the decision-maker, but to require the decision-maker to give an open account of why a duty has not been fulfilled or has been fulfilled in one way rather than another (Freedman, 2008).

### The strength and influence of PIL

To begin with, PIL has been defined as a legal action initiated in a court of law for the enforcement of public interest or a general interest in which the public or class of the community have a pecuniary interest or some other interest by which their legal rights or liabilities are affected (Black Law Dictionary, 1999). It is submitted that the rather deliberate failure to confine the ambit of PIL to a specific field is consistent with the inherent flexibility and innovative characteristics of PIL (Badwaza, 2005).

This means that any piece of legislation which affects the public in any way can be the subject of a PIL case and reference to law in this context, embodies legislation itself, policies, executive and governmental action or inaction.

Therefore Badwaza (2005) admits that PIL is not an endeavour that is reserved for lawyers only but that its success relies on the concerted efforts of other professionals who do not necessarily have expertise in the field of law as it has to be complemented by lobbying, research, advocacy and human rights education.

It is submitted that the NGO movement in Lesotho is already well-placed to play a complementary role in ensuring the utilisation of the constitutional provision of PIL for demonstrated rights empowerment of the citizenry in Lesotho.

### Lessons from other jurisdictions



One cannot discuss PIL without making reference to jurisdictions where the concept has thrived and prompted intense political scrutiny and general public debate. One such case is the South African context. Section 38 of the Constitution of the Republic of South Africa 1996 provides as follows:

Enforcement of rights – Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

- a. anyone acting in their *own interest*;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. an association acting in the interest of its members

This provision has laid a founda-

tion for many class action suits and PIL cases in South Africa which have sparked rigorous public debates and brought to the forefront some of the issues which would otherwise remain unknown to the larger public.

Moreover, the relaxed requirement of standing or *locus standi*, as it is commonly known, in the above section, have enhanced access to justice and increased participation of civil society in issues of governance. Traditional rules of initiating litigation require one to have a direct and real interest in an issue that is brought before court, as is the case with section 20 of the Lesotho Constitution.

An example of one such case is the *Minister of Health and others v Treatment Action Campaign and others 2002 (10) BCLR 1033 (CC)* case in which the TAC argued before the Constitutional Court that the government has a legal duty to provide anti-retroviral drugs to HIV positive pregnant women.

In its judgment, the court held that the government's failure to develop and implement a comprehensive mother-to-child transmission prevention programme breached the express constitutional guarantee to

health care services, in particular, the state's positive obligations in respect of that right. The court went a step further and ordered the government to take a series of steps aimed at ensuring access to a comprehensive prevention programme of mother-to-child transmission services in the public sector without delay.

Admittedly, the paper does not in any way suggest that constitutionally enshrining PIL in Lesotho will holistically ensure total and complete accountability within the governance structures.

The concept itself is not without its flaws that include the resultant enforcement question which, in my opinion, bears witness to the true success of any judgment that can be rendered in a class action suit.

However, causes of action like the PIL often arise first through judicial fiat and are then formalised in legislation or recognised in constitutions because the courts provide a venue, a focal point or a catalyst for organising politically to contest policies even if, or especially when, the claimants are unsuccessful (Gavri and Brinks, 2008).

This is because the courts of law can be rendered more effective when they work within and for the dominant current political atmosphere and environment as opposed to working against it. PIL then breathes a new life of adjudicating positive human rights duties as opposed to the current adversarial, passive and retrospective nature of the litigation process.

## Conclusion

The effects of a state where ac-

countability imposed by the rule of law is not cemented on the constituent documents that guide the policy makers are numerous.

To mention but a few, one would find for instance that medicines do not reach the health facilities due to corruption, women and children in rural areas remain ignorant of their rights, people are killed with impunity in criminal violence, and the public purse is depleted by those accountable for it for their own personal benefit and all this rings true of the mountain kingdom.

It is not unreasonable for Basotho to expect that particular needs of the populace ought to be satisfied by the government. However, this kind of expectation is not a sufficient condition for litigation against the decision-makers.

By revising our section 20 of the Constitution of Lesotho to be similar to section 38 of the Constitution of the Republic of South Africa as outlined above, this would ensure that our courts exert the much-needed democratic pressure which would make the recalcitrant government of Lesotho to act accordingly for the purpose of facilitating a deliberative democracy and promoting equality.

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Qhalehang Letsika and Others v Dr. Kananelo Mosito and Others (CC 16/2017) [2017] LSHC 1 (09 February 2018)





By  
Ms Likopo Mokhele

# The Right to Public Participation in Constitutional Reform Processes in Lesotho

## **A**bstract

*The past 52 years of Lesotho's independence have been a rough ride, with many governance obstacles that have compromised the stability and economic growth of the country. These challenges have coerced the priority agenda of the country to be translated into constitutional reforms. This paper explores the public participation approaches Lesotho should implement in transparent and effective constitutional reform processes. It deduces the importance of public participation in the constitutional reforms of the country, which will not only legitimise the process, but will promote citizen ownership of the constitution and uphold accountability mechanisms of which the constitution shall apply upon the nation. The article climaxes public participation as a prerequisite for the design and adoption of constitutional reform for Lesotho to achieve constitutionalism.*

**I**ntroduction  
Lesotho saw a shift from single-party rule to multi-party government in 2012, after which Basotho witnessed the kingdom spiral into political turmoil and being labeled as unstable and crisis-bound (Muzofa: 2017).

Even presently, the state finds itself infested with a multitude of political, social and economic evils, as well as politically charged state institutions such as the judiciary, security, and civil service which have all constituted to Lesotho's unending predicaments of instability.

However, under international pressure Lesotho made a commitment that it would undertake constitutional reforms as a matter of urgency following the advice of the Commonwealth and the Southern African Development Community (SADC).

These mediations have compelled the country to initiate constitutional reform processes through the engagement of citizen participation in the form of consultation and a national dialogue. However, Mohloboli (2018) reports that the government launched the national reform programme on 14<sup>th</sup> May 2018.

The reforms kick-started with a national prayer on May 25 followed by the appointment of a National Dialogue Planning Committee, a National Leaders' Forum and a National Multi-stakeholder Dialogue where a draft reform agenda will be formulated and the dialogue will deliberate on the core business of the reform areas, the modus operandi,



TRC's Mr Lepeli Moeketsi and Mrs Makatleho Mohasi making a submission in parliament

di, as well as the institutional arrangements for the reforms. Although the reforms are in the process, for the constitution to be balanced, it must be developed in a consultative process in which the public is allowed to participate which will more likely entrench strong accountability norms, mechanisms and legitimacy where people exercise their democratic right, Chirwa and Nijzink (2012:26). Lesotho as party to the International Covenant on Civil and Political Rights which came into force in 1966 declares a right to take part in public affairs. Section 20 of the country's constitution gives citizens the right to participate in government.

The purpose of this paper is to advocate effective public participation in all reform processes, ensuring that the democratic values of responsiveness, transparency and accountability are sustained. It also advises how Lesotho's weak mechanisms in facilitating and promoting public participation in legislative design processes can be strengthened as there are frail supportive systems

in place to explicitly necessitate and effect the constitutional provision on public participation in governance.

### **Public Participation Impression in the Constitutional Framework Context**

Rowe & Frewer (2006) refer to public participation as a practice that involves the public in agenda-setting, decision-making and policy formulation in an organisation. Public participation denotes that the people have a voice in decision-making and are able to influence policy processes.

However, Arnstein (216:1969) indicates a fundamental point that participation without redistribution of power is an empty and frustrating process for the powerless. It allows the power holders to claim that all sides were considered, but makes it possible for only some of those sides to benefit. It maintains the status quo. Essentially, it is what can enter into a partnership that enables them to negotiate and engage in trade-offs with traditional power holders. At the topmost rungs,

delegated power and citizen control have-not citizens obtain the majority of decision-making seats, or full managerial power.

Simutanyi (2012:26) raises a supportive argument as Arnstein by upholding that constitution-making is essentially a political process that involves competing claims and interests of two main groups; those in power bent on preserving the status quo and the ruled who demand that power should be exercised in the interest of all.

Nevertheless, the degree of consideration of the citizen in policy-making processes is of essential value in legitimising the end results of the constitution. Needless to say the dominance of state power over constitutional processes may have optimal influence over the constitutional reform outcomes but will do more harm than overall good.

This is because if the interests of the elite are prioritised over the majority, there will be dire consequences where a chain reaction of political, economic and social quandaries will impact negatively on citizens as well as the country.

Lesotho's constitution has its shortcoming because the then powerful had an oversight to include the majority in critical decisions where policy-making emanates. The constitutional reform process is a lesson learned that should be a reminder for all past mistakes that are costing the state its resources in all facets, that being financial, time, and human.

While assessing Lesotho's infant constitutional reform process, the manner in which the process will be facilitated is unsettling.

The government has announced that it will consult the public and facilitate multi-stakeholder national forums.

Elkins, Ginsburg and Blount (2008:365) contend that constitutional design is more participatory if the mass public has more opportunities by which to both oversee and engage in the process. Participation through oversight, through direct input, and through ratification differ conceptually; but we treat them all as contributing to a process in which the citizen is "involved" in some sense.

However, Moehler (2008:199) argues that constitutional making is an intensely political act whose outcome depends on political participation in which leaders have greater interest in mobilising the public to share their views on the constitution and to support certain provisions. Moehler argues that political wrangles and accusations that might otherwise remain at the elite level are more likely to be passed on to the general public, making the resolution of societal and political conflicts more difficult by expanding the number of interests that must be considered and by intensifying citizens' preferences.

But Simutanyi (2012: 27) acknowledges that a constitution that is perceived as imposed on a large segment of the population, or as having been adopted through the manipulation of the process by some stakeholders is likely to gain sufficient popularity or legitimacy to endure the test of time. Still, it is not quite clear how public participation activities will be expedited in Lesotho and what significant outcome will be drawn from them. The government seems to be at crossroads

regarding the manner in which the people must be engaged in the administration of the reform process.

### **Public participation enabling structures**

Hart (2010) states that three principal modes of participation have been used; the election of representatives in constitution-making bodies; referendums on draft constitutions; and education of, consultation with, and the responsiveness to the public.

On the other hand, Tushnet (1983:1988) argues that even those who might claim to speak for the smaller groupings such as representatives from NGOs, sometimes have problematic relations with those groups. For these reasons it is perhaps misleading to think that the constituent power is an actual aggregate entity in the real world. Rather, it should be understood as a concept that helps explain the normative basis for a constitution's claim to authority.

Nonetheless, Hart further adds that participation principles enumerated practices such as ensuring the independence of the drafting commission, giving adequate time and funding, assisting civil society, facilitating access to international experience using the media to communicate with and report to the public throughout the process, and providing representative means of ratifying the constitution and forward-looking means for regular review thereafter.

Mulisa (2009:15) further adds that the constitution review process in Kenya was initiated by the Constitution of Kenya Amendment Act and the Constitution of Kenya Review Act 2008, which



provide the legal framework for the review process.

It establishes four organs that facilitate the review process and set out the procedure through which the organs will work to achieve consensus on contentious issues to be followed by a referendum in which all eligible voters will decide on the proposed constitution. Mulisa (2009:16) further highlights the organs established by the review act include the Committee of Experts, the Parliamentary Select Committee, the National Assembly and the Referendum. Section 31 of the Review Act provides for a reference group of representatives of interest groups to be identified in the Act and will be an integral component of the process.

### **Public participation in constitutional design**

Moreover, Nunow (2004:14) is emphatic that for people-based approach reforms to be comprehensive, participatory, consultative and of public processes, the constitution building commission work involves the following stages:

*Establishing and forging of an inclusive agreement on the need for terms of the review and the structure of the review process.*

The terms and conditions of the methodological consensus were basically the guiding principles in which the commission in Kenya was established to enable public participation in all subsequent review processes. Renwick (2014) explains that the expert commission is a small body of individuals who have relevant experience and who are chosen, at least in part, because of their capacity to deliberate effectively about the

issues in hand and contribute to reasoned proposals. The bodies referred to here as expert commissions are, however, diverse in their character:

*Civic education to prepare people for effective and meaningful participation in the review process.*

The people were made to understand and evaluate the present Kenyan constitution comparatively with those of other countries. Mulisa (2009:29) argues that civic education programmes should target all groups of people including women, the marginalised and disadvantaged communities. Civic education can take various forms including disseminating information in public gatherings, workshops and the media. It should also include visiting constituencies since the majority of the people cannot access newspapers, radio and television.

*Public consultations and listening to people through the constituency constitutional forums and direct submissions to the commission.*

This allowed the commission to listen and receive presentations and written memoranda. This also enabled experts to make public consultations, which formed the basis for drafting, analysis, debate, consensus building and the adoption of the new constitution. Renwick (2014:43) adds that there should be a mode of operation in order for the debates to be broadly based and involve all citizens, a forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations

receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate.

Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Presidium. Renwick (2014:48) also gives an account of a civil society convention which was part of the Scottish constitutional convention which provides for indirect representation of the people who are leading figures from organised civil society.

Murray (2017:4) further explains that a national dialogue should be an inclusive process for building national consensus around social, political or economic concerns through an open and tolerant exchange of ideas. To be considered a National Dialogue, the process must be on a national scale, addressing national issues, and involving honest and constructive dialogue.

*Collation and analysis of views and preparing and writing of the report and draft bill to alter the constitution.*

The commission developed an analytical framework that ensured that the new constitution was an account of the opinions and presentations received from the people at constituency, district and provincial levels. Public discussions and debate of the commission's report and the draft bill necessitated the Kenyan commission to widely distribute the report and draft bill to the public in all forms of media channels.

*Discussing, debating and adopting the report and draft bill at the National Constitutional Confer-*



Basotho participating at a public gathering

ence.

The law also gave the Commission the power to make regulations and to prescribe the procedure for the constitution and conduct of the National Constitutional Conference. In so doing, the Commission ensured that the deliberations at the National Constitutional Conference were not only based on consensus building but were also fully participatory.

#### *Consensus building at the National Constitutional Conference and the Referendum.*

The National Constitutional Conference would proceed on the basis of consensus building and that decisions would be made by consensus. The Review Act provided that in the absence of consensus, decisions would be made on the basis of a simple majority failing which the outstanding issues would be made directly by the people through a National

Referendum.

The Commission would record the decisions made by the Conference and submit the question or questions supported by the resolutions under the Act to the people for determination through a referendum within one month of the National Constitutional Conference.

Mulisa (2009:33) emphasises that people should be aware of what they are approving and disapproving through a referendum. The choice of the terminology of what to vote for in a referendum is as important as the contents of the referendum. The referendum organising body should determine what people are voting for and against other than the referendum being an extension of political scuffles and fights. Referendums should be seen as making decisions on laws that will affect policy and decisions not voting for political parties in power.

#### *Working through the National Assembly towards the Enactment of the New Constitution.*

The nature and manner of interactions between the Commission and the National Assembly were prescribed in the Review Act. The Act further established the Parliamentary Select Committee to assist the Commission in the performance of its functions under the Act, particularly with regard to the filling of the vacancies arising at the Commission. The law provided that the National Assembly would review and approve, from time to time, the Commission's programme of work and also establish the arrangements for financial reporting by the commission to the National Assembly.

#### **Conclusion**

At this point, Lesotho needs to optimise public participation in the constitutional reform design for the constitution to be acceptable

and legitimate. Ginsburg, Elkins and Blount (2009:515) may suggest that the claim that participatory design processes generate constitutions with higher levels of legitimacy and popular support, has been subjected to limited study.

They acknowledge that Eritrea, Ethiopia, and Thailand used broadly participatory processes that had little to no effect on the subsequent political system. Even if the presumption that the link between public participation and constitution making is questionable and too weak to evidently be established, the adoption and practice of public participation is essential in constitutional reforms.

The value of public participation is pronounced by different opinions, views, understanding and the consolidation of these approaches. Public participation in the design and adoption of a new

constitution will help address the shortcomings of Lesotho's constitution which drove the country to opt for improvement. Public participation will further assist to establish and reinforce an inclusive national agreement in terms of methodology, structure and general guiding principles.

However, Lesotho portrays a worrying public participation limitations picture during the reform processes which encompasses unclear structures established specifically to facilitate and manage the process in a bottom to top approach, where the public will effectively be engaged.

This means all different public groups need to be represented, for example, minorities, academia, politicians, and others. Public education has not been effected, which is vital for ordinary Basotho to understand what these reforms mean - how the constitution has impacted their

lives and how the need to reform the constitution is envisioned to improve their lives. The proposed district level consultations and national multi-stakeholder dialogue will sideline other important public segments in participating or expressing their views in this matter.

Conflicting relations between government and opposition have resulted in poor cooperation between the two, hindering constructive talks regarding the welfare of Basotho and Lesotho. Opposition leaders are dictating the terms on which they will come back into the country and participate, whereas the government seems indecisive on addressing this matter. These unresolved issues and arrogance continue to compromise public participation in the constitutional reforms.

Constitutional reform design is unclear, in terms of the government's implementation processes as well as public engagement in such. The roadmaps that have been presented by the government have only stimulated questions rather than answering or paving way to the reform process. The government therefore remains stagnant in this agenda. No significant public consultations have been made to initiate the process or pave way for subsequent processes to unfold.

In other words, no significant outcome will come out of the reform processes as long as all stakeholders do not meet and engage in the reform for the betterment of everyone. As long as government continues to work in secrecy without seeking advice from the public, it will keep the constitutional reforms of Lesotho at a stalemate.

“

**Public consultations  
and listening to  
people through  
the constituency  
constitutional forums  
and direct submissions  
to the commission...**



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By  
Mr Mokitimi Tsebo Tšosane



# Need for Comprehensive Regulation of Referendum Processes in *Lesotho*



## Abstract

*The Kingdom of Lesotho is an emerging democracy which has witnessed engagement of politicians in zero-sum-games for power in the political landscape. Those in power adopt strategies and schemes to safeguard and maximise their cynical, well-defined endogenous political ends. These ends are achieved through strategic exploitation of the knowledge and in disregard of the limited counter-strategies available to the other weaker players.*

*In the process, politicians in power attempt to gain equilibrium and competitive advantage over other significant players. Some of these strategies adopted elicit demagogic tendencies where political leaders seek support by appealing to the popular desires and prejudices of uninformed populace rather than rational argument.*

*This article discusses popular initiative processes, mostly referendums as one of those oligopolistic strategies which an executive may use to maximise the outcome in its favour against parliament and the citizens where there are no regulations or guidelines.*

*The underlying presumption is that despite the 6th Amendment to the Constitution, 2012 and section 85 of the Constitution, 1993, there is need for an enabling law with necessary logistics that provide for the conduct and regulation for referendums and initiative processes on wider spectra of socio-political, economic and cultural issues except for alteration of limited provisions that are constitutional in character and application.*

## Introduction

The advent of coalition politics in 2012 has heralded an era of political change (Nyane, 2018). Since the 2015 snap elections, this change in the political landscape has also marked a shift towards a populist fever. Politics leading up to the 2017 elections were shaped and characterised by populist annotations, comments and declarations.

Due to the inclinations towards polarised uncompromised politics of vindictiveness and anger (Mosae, 2014), populism thrived. At the centre of these populist invocations/inclinations lies the reform agenda. Inasmuch as populism elicits antidemocratic tendencies, it also has democratic dispositions since it makes politics more accessible, comprehensive and popular.

It on the back of this tide on reforms that the seven-party regime spearheaded by Prime Minister Pakalitha Mosisili wanted to ride to maximise the outcome in their favour. This, Mosisili's executive hoped to achieve by taking the country to executive-driven and controlled constitutional reform referendum without the consent of the ostensibly intransigent legislature which sought his ouster.

At the end of 2016, it was already clear that the Mosisili-led coalition administration had lost majority support in parliament. Hypothetically, let us suppose the ruling coalition at that time when selling its reform agenda when asked whether they were to initiate the constitutional reform process through parliament said they were not concerned about

parliament as they would opt for a national referendum.

Indeed, it would have been within the power of the Prime Minister, in accordance with the provisions of section 84B of the sixth Amendment to the Constitution.

The executive would then ride on the contingency of populist invocations on the reforms agenda and constitutional change. Strategically, it is translucent that the voters' decision would have been influenced by the popularity of the agenda other than the merits or the underlying ulterior motive behind the issues. From a governmental document entitled "Lesotho Constitution Making Project Document" (2016), the executive already anticipated an answer from the referendum in the affirmative and would only work to legitimise a new constitution.

Presuming that the answer to the referendum was in favour of the Executive posited question, Parliament's sovereignty would have been encroached. The majority of anti-executive parliamentarians would be obliged to vote for a policy initiated by a player whose intention was to twist their hand strategically. In the event where those anti-executive Members of Parliament were to hold steadfast against the Executive-controlled initiative process, then this tactic would fuel a war between "the will of the people" and the "elites" (parliamentarians), whom they already see as their enemies to some extent. In those circumstances, who would have won? Indeed, this executive-controlled referendum was to be initiated to support and legitimise policies of the executive.

Essentially, the executive which



mostly excluded parliament and other stakeholders in most of the reform processes sought to call a referendum without the necessary logistics of an enabling framework in a form of legislation. Evidently, only offices in the Executive arm of Government were allocated roles and responsibilities in the governance arrangements for the constitution-making process (Lesotho Constitution Making Project Document, 2016). There is no law which provides for circumstances where an Executive on its own cognisance may refer issues for popular vote without Parliament's approval. It is not clear whether referendums initiated either by the Executive or the Legislature are binding (obligatory) or advisory (recommendatory).

### **Constitutional Provisions for Referenda**

Constitutional referenda are controlled processes in Lesotho. A referendum can either arise from a bill that alters any of the provisions mentioned in section 85(3) (a) or by the King acting on the advice of the Prime Minister. The Constitution through section 85(3) (a) entrenches instances where the Legislature shall refer bills for an Act of Parliament for popular vote but this is limited in those alterations to limited constitutional provisions. Of interest is the 6<sup>th</sup> Amendment to the Constitution which reads:

The King may, on the advice of the Prime Minister order that a referendum be conducted to obtain the opinion of the electors on any matter he considers to be of national interest.

A Prime Minister as a politician sitting at the heart of executive

authority, the executive and "parliament with governmental control can behave like an elected dictatorship – tyranny by the governing majority" (Lester, 2016). The above-quoted section continues a tradition where the Crown's prerogative is exercised in accordance with the Prime Ministerial advice which is for all intents and purposes "constitutionally" binding hence in all practicalities, the Prime Minister holds the reins.

In Lesotho, the constitution gives the Prime Minister extensive powers which create an uncompromising "dictatorial discretionary creature", inheriting the powers of the ancient monarchs able to dominate the crown, cabinet, parliament, counsel of state and the office of the Attorney General.

Recent political developments have led to the anatomy of the executive powers in Lesotho and have unveiled a constitutional creation of a prime minister with the character akin to that of historical monarchs with regards use of discretionary powers. This constitutional Amendment also confers an enormous political advantage to a sitting prime minister.

The prime minister seems to have the unchecked power to decide what national interest is and what issues are in the national interest. The Amendment does not define what this often misused phrase, "national interest," means. It is argued by Saunders (2014) that "politicians' excessive invocation of national interests to justify their varied aims diminishes their persuasiveness by breeding public scepticism."

Politicians with an ingrained pow-

er at their disposal appear to act according to their own separate rulebook where they engage in zero sum games to maximise the outcome in their favour. According to Qvortrup, the provision for a referendum is a rare example of a constitutional provision for 'controlled' referendums. He further asserts:

Such referendums – it is argued – typically occur in executive dominated polities, especially at times of constitutional change. It is further argued that the executive control of the referendum has implications for the outcome of the plebiscites. It is shown that the voters' decisions in 'controlled' referendums (statistically) tend to be based, not on the merits of the issue, but on popularity of the Prime Minister (or president) who calls the referendum.

It is also against this background that this paper argues that parliament should take heed of section 84B (2) of the sixth Amendment to the Constitution and make provision for conduct of a referendum through the enactment of a Referendum Act. This would ensure that parliament protects itself and the people it represents from a very powerful prime ministerial position. With powers at its disposal the prime ministerial post may circumvent parliament and force its hand through a referendum.

### **A Call for a Direct Democracy Tools in a Representative Democracy.**

The Kingdom of Lesotho adopted a representative parliament from Britain at Independence

in 1966. The representative institution was an emulation of one of the oldest representative establishments on the planet, House of Commons. This representative parliamentary system is constitutionally codified (Lesotho Constitution, 1993, Sections 20(a)). However, the Constitution entrenched a right to direct participation (Section 20 read with Section 85 (3)). This right will be discussed later in the article.

Due to the populist euphoria on reforms and developmental issues, politics are accessible and popular. The political climate is rapidly heating up; the populace have expressed deep-seated consternation and disgust at the manner their supposed representatives and politicians in general do not represent citizens' interests. Increasing number of citizens are expressing tremendous outrage towards politicians on media platforms, mostly radios and social media. They are concerned at how complacent politicians grow once they hold influential positions. Perhaps, the average voting percentage has been in steady decline because a wider margin of citizens does not trust the politicians to represent its interests. Now more than ever, the people are growing conscious of the constitution and politics, and are asking questions and demanding answers on wider spectra of governance issues.

There have been numerous demonstrations and attempts by individuals to mobilise and influence others through petitions. A renowned All Basotho Convention (ABC) activist, Mr Mpho Serobanyane launched a "complaint letter" against the hike of power rates without direct public consultations by Lesotho Elec-

tricity Corporation (LEC). One of the most significant petitions was launched by Attorney Tumisang Mosotho online.

In the petition, the lawyer questioned the legal, moral and ethical principles motivating the government's decision to write-off and bail out legislators' loans. The same sentiments were echoed by a group of graduates who demanded the government to "pay back the money". In 2017, University of Lesotho Student Representative Council Secretary-General Thato Ponya weighed in on the issue and declared that:

"This scheme should be stopped, and anyone who wants to take a loan should apply for one on their own without the government being the guarantor. These are loans meant for personal enrichment and not for the people" (Lesotho Times, 2017).

Despite the Development for

Peace Education (DPE) and Transformation Resource Centre (TRC) losing an application where they challenged the constitutionality of the Human Rights Act, No. 2 of 2016, their concern was clear; parliament should have sought broader direct public participation ([Development for Peace Education \(DPE\) and Transformation Resource Centre \(TRC\) and Speaker of the National Assembly & Ors Constitutional Case 1/5/2016](#)).

In essence, the two non-governmental organisations were arguing for an initiative process as a catalyst to more inclusive reforms to the political system. The two non-government organisations were offering a more corrective outlook to a seemingly technocratic system which was failing to address developmental issues in contemporary politics.

In effect, they were advocating a healthier democracy where citizens are politically engaged directly; where enactments and

**Referendum on the new constitution of Lesotho**

Vote only once by putting a cross ☒ in the box next to your choice

Does Lesotho need regulation for referendum or should referendum be discretion of prime minister?

Lesotho need regulation for referendum? ☐ YES ☐ NO

Referendum should be discretion of prime minister? ☐ YES ☐ NO

policies would encroach and impact their rights and interests directly. Whether the court unfairly disregarded the notion of direct initiatives in denying that parliament failed in their constitutional duty to facilitate proper (direct) public participation in line with section 20 read with section 85(3) of the Constitution, 1993. This is to the effect that the passage of the Human Rights Commission Act in its operation amounts to an alteration of the enforcement of the fundamental human rights. However, a further discussion on the matter would constitute a digression which would warrant a paper in own right.

These few incidents indicate that the Kingdom of Lesotho has entered a progressive phase in its politics hence the need to level the playing field for direct democracy initiative processes and tools for this constitution and political reform era and beyond. The Constitution already entrenches

instances where the Legislature shall refer bills for an Act of Parliament for popular vote but this is limited to those alterations to some constitutional provisions underlined in section 85(3) of the Constitution. Hence, there is a need for an enabling Act of Parliament to regulate the dynamics of the game frame of popular initiatives like referenda and the dynamic of the whole process of a referendum from the initiation, through the campaign process to the implementation stages for wider spectra of issues not just constitutional matters.

It is peremptory that the new progressivism in politics ushered with the increased need for public participation in broader governance issues requires a level playing field. From a tabulated series of constitution and institutional reforms, there is a need to embrace a changing paradigm across multiple policy issues.

It is evident that citizens regard current democratic institutions as dysfunctional to address broader developmental issues hence the call for sovereignty in the name of inclusivity. Citizens are no longer waiting on the sidelines for politicians to take action; they need to voice their concerns through more direct avenues. As it stands, direct participation is a reaction to an 'exclusionary' representative system which calls politicians to account only during election times.

### **Conclusion**

Changes on the political landscape, along with conflicting pressures from political groups, together with liberals and socialist reformers, in their various occupations, have made the constitution and political reform process an exciting, if somewhat unsettled, field of activity. There is no law that provides for initiative processes such as referendums which indicate when and how individuals, pressure groups, reformers, civil societies, non-governmental organisations and all interested groups outside of the legislative arena may draft laws or policies, and then petition the government to refer them to a nationwide referendum.

The sixth Amendment which prescribes when an Executive through the Prime Minister may refer issues for popular vote in a referendum is not clearly expressed. In Britain, the Brexit Referendum reveals how referendums can be strategically used to reduce the discretion and power of the legislature by pre-empting the will of Parliament. In December 2015, the UK Parliament passed the European Union Referendum Act, and the ensuing referendum on 23 June 2016 produced a majority in favour

# **“ A Call for a Direct Democracy Tools in a Representative Democracy**”



of leaving the European Union where even those who dissented were forced to vote for a policy which they opposed.

Again an Executive-driven attempt to negotiate Britain's Exit from the European Union (EU) affirms how the Executive may bypass Parliament in effecting and implementing the outcome of a referendum. Fortunately, in R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2016] EWHC 2768 (Admin) and [2016] NIQB 85, Gina Miller and Deir dos Santos where the issue was whether a formal notice of withdrawal can lawfully be given by ministers without prior legislation passed in both Houses of Parliament and assented to by HM The Queen the Court held that government must hold a parliamentary vote before triggering Article 50 of the Lisbon Treaty to leave the European Union.

As noted on paragraph 25 of the Brexit Judgment, the ministers' response to the 12th Report of Session 2009-10 of the House of Lords Select Committee on the Constitution (Referendums in the United Kingdom). The Committee included the following recommendation in para 197:

“[B]ecause of the sovereignty of Parliament, referendums cannot be legally binding in the UK, and are therefore advisory. However, it would be difficult for Parliament to ignore a decisive expression of public opinion.”

In the case of Lesotho, it is not clear whether referendums in their different forms are binding or advisory to the government.

There are no guidelines to the interpretation of all the dynamics involved in a referendum. As it stands, the Executive through powers at its disposal may force the hand of the legislature. Even if it were a point that an outcome from a referendum is advisory (recommendatory), which parliamentarian will stand against “the will of the people” and hope to retain popular support? Effectively, a recommendation from a referendum is pragmatically binding.

The purpose of this study is not to offer a normative judgment on whether initiative process and referendums should be adopted or not but to indicate the need to level and regulate the playing field when such processes may be utilised. Throughout, this article has advocated adoption of enabling framework, regulations and guidelines to the interpretation of all the dynamics involved in the initiative process, like a referendums.

## Recommendations

“Judging from the earlier Constitutional developments for Lesotho since 1956, while there has been public consultation broadly and public participation in particular, Basotho as a whole have never been granted the opportunity to become part of the Constitutional framework in terms of directly being involved in voting for the Constitution and thus approving or disapproving it” (Lesotho Constitution Making Project Document, 2016). It is in congruency with these demands that people have turned to initiative processes such as referendums, to get real reform. However, for the game to be fair and just, it is recommended that the legislature impose comprehensive regulations and guidelines on the process. This can be achieved through an enactment of a Referendum Act in accordance with section 84B (2) of the sixth Amendment to the Constitution.

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By

Mr Mokitimi Tsebo Tšosane

## Abstract

*Lesotho is at the pinnacle of political opportunity. This calls on key influencers and stakeholders to come together with the common agenda of creating an in-depth, new constitution.*

*From 1993, out of 7 elections Lesotho has had 3 snap elections. In 2017, the Prime Minister was ousted through a resolution of no-confidence. He used his prerogative powers to advise the King to dissolve parliament two years into existence while an alternative government could have been formed.*

*This article outlines a number of issues surrounding the controversy of the prerogative to call elections after a successful vote-of-no-confidence while an alternative government could be formed in Parliament without the need for general elections.*

*These issues arise from the changed political and constitutional spectra in the new era of hung parliaments and unstable coalition governments. This article also makes a comparative study with the adoption of Fixed-Term Parliaments Act in the United Kingdom.*

# Achieving Durable Constitutional Reforms in Lesotho: *A Need for Fixed Term Parliaments*

## Introduction

**I**n Lesotho adopted a Westminster system of governance (Nyane, 2016: 179); its constitution is replete with expressions from British conventions and traditions. These British conventions, traditional practices and precedents constitute what could amply be termed the British Constitution (Barnett, 2002: 3; Dicey, 1915: 82). Codification of these has made Lesotho politics fundamentally constitutionalist in character. In a sense, political crises are most likely to raise constitutional issues.

The executive authority of Lesotho is vested in the King. The Prime Minister is head of the Executive branch of government and *primus inter pares* ("first among equals")

in the Cabinet (Williams, 1998: 111). His principal role is to ensure that His Majesty's government runs efficiently and that ministers produce desired results.

The Prime Minister must be able to either control a majority of seats within the National Assembly, or to ensure the existence of no absolute majority against his or her government (Bradley and Ewing, 2007: 21).

If parliament passes a motion of no-confidence or if the government fails to pass a major Bill such as the budget (as a matter of British tradition), then the government must either resign, so that a different government can be formed, or seek a parliamentary dissolution, so that new elections may be held.

## Overview

Lesotho's National Assembly unprecedentedly passed a vote of no-confidence on Prime Minister Mosisili's administration on 1<sup>st</sup> March 2017. Initially, the executive through the Minister of Finance failed to table financial proposals for the 2017/18 Fiscal Year and the motion of no-confidence in the Mosisili's administration effectively disbanded the government.



His Majesty King Letsie III was faced with dilemma to dissolve parliament in 2014 and 2017

In that event, the Prime Minister had three options; either to resign so that the member of parliament nominated and proposed by majority of the members of the National Assembly could form a new government; or seek a dissolution so that elections may be held; or if at the end of three days the Prime Minister had not chosen the other two alternatives the King may act

in accordance with the advice of the Council of State and remove him (section 87(5) (a)).

As the then Prime Minister Mosisi had promised and reiterated to his supporters, he advised the King to dissolve parliament. The dissolution on the advice of the Prime Minister came after a request by some of the members of the Council of State had been

denied by the Office of the King to the consternation of many.

It was argued by some that the Prime Minister had lost legitimacy to advise the King and that the Council of State was the appropriate institutional body to advise the King in the given circumstances. Among those who vehemently opposed the move was renowned lawyer, Haae Phoofolo. It came





## Were their advices on dissolution of parliament mandatory to the King?

Prime Minister Tom Thabane and Former Prime Minister Pakalitha Mosisili during handover of power

as no surprise when Phoofolo together with the then Member of Parliament, Joang Molapo jointly lodged an application challenging the King's decision to dissolve Parliament on the advice of the Prime Minister instead of seeking that of the Council of State which they contested was the proper body to advise the King (Haae Phoofolo KC and Chief Joang Molapo v. Right

Honourable Prime Minister and Others (Cons/Case/08/2017)).

On 3 April 2016, Justice Moiloa held that the advice to His Majesty to dissolve parliament was constitutional and that the King need not seek the advice of the Council of State. As per the Constitution, the Court held that the Prime Minister had made the dissolution re-

quest to the monarch within the three-day period as constitutionally required.

### Implications and Analysis

Since the return to constitutional democracy in 1993 (Nyane, 2015), the Prime Minister has been endowed with the prerogative to call elections. Conventionally, it is perceived as a prerogative which is to

be exercised when circumstances so dictate.

However, the unprecedented collapse of Mosisili's administration proved that such a prerogative could be (mis)-used by a Premier to extend his administration's stay at the helm of power without parliament's confidence.

Despite "termination of employment" through a no-confidence resolution, the Prime Minister adopted "command and control strategy" (Greene, 2006), flouting the conventions of a caretaker government (Sejanamane, 2017). The contemporary history of Lesotho has witnessed patronage appointments by politicians, maybe as a means of capturing key state institutions.

The cynical continued stay in power by Mosisili was disputable, raising cardinal questions on legitimacy. The interpretation of section 83(4) was disputed; the question was whether a Prime Minister who has lost "legitimacy" through the motion of no-confidence was the right person to advise dissolution to the Monarch or the power was now vested in the Council of State.

This controversially hauled the Monarch into a concerted political manoeuvring strategy by the Prime Minister which keenly had the King's name being peddled in the muddy political arena.

Constitutional law experts, political scientists, academics and partisans were locked in a divergence of (political) attitudes to ideological extremes in interpreting section 83(4). These objectively interesting debates were turned into an exercise of political correctness with professors being insulted and ambivalently accused of partisan

interpretations.

The starkly polarised debates reflected the level of divisions in this country sparing none; not even objective analysts. The King's name also became a victim of public ideological extremists.

This also raised issues around expediency in that when a vote of no-confidence is passed, and an alternative government can be formed, Parliament must not be dissolved. In the circumstances an incumbent Prime Minister losing a vote of confidence would resign, handing power to a nominee with confidence in Parliament. The Constitution nullifies a resolution of no confidence without a nominee (sections 83(5) and 87(8). The maladies of this provision need be examined.

While it is without question that Mosisili constitutionally advised the King for dissolution of Parliament, it is also without doubt that a Prime Minister ousted with a motion of no-confidence should immediately lose legitimacy.

However, the Constitution has endorsed a biased reaction from the Prime Minister vindictively dismayed that he was about to relinquish power to a man his party tried to desiccate politically.

As unfair and poignant as the Constitutional provisions may be, it is the law which the Constitutional Court had to enforce. The indignation by Professor Sejanamane ought not to be directed to the Court's Judgement but to the Constitution itself.

The English tradition as codified in the Constitution is that the King promulgates dissolution into force on and in accordance with the Prime Minister's advice. It is the same tradition which James

Callaghan resorted to when his administration lost a vote of no confidence in 1979 (Early, 2016).

These are some of the issues which have made it crucial to reform the Constitution as Lesotho enters an era of coalition governments and hung parliaments. There is a serious need for reforms on basic principles on how governments can be defeated in Parliament, and how a government can be changed in parliament without going for general elections if an alternative government can be formed. There is also need to fix the life-span of parliament which could only be truncated through constitutionally entrenched parliamentary procedures.

### **The British Solution: Fixed-Term Parliaments Act**

On 28<sup>th</sup> March 1979, James Callaghan's administration lost a vote of no confidence proposed by Margaret Thatcher's led opposition (Haddon, 2015). After losing the vote, either he had to resign like Ramsey MacDonald's Labour government of 1924, handing power to Margaret Thatcher or he could exercise a prerogative to call for an election extending his stay at the helm of the Executive in a caretaker government (Alder, 2002: 320).

It was not until 2011 that parliament drastically changed the rules and spectra of political culture in the United Kingdom with the Fixed-Term Parliaments Act, 2011 (Haddon, 2015). The Fixed-Term Parliaments Act significantly provides that elections must be held every five years hence fixing parliamentary terms, and makes provision for the dissolution of Parliament.

The Act was a devised remedy for routine elections and the Prime



Minister's choice to dissolve Parliament and call elections at whim (Bowden, 2016). It also clearly makes provision for formation of a new executive where the incumbent administration has lost the confidence of the House of Commons and outlines circumstances under which there may be early polls.

Section 1(3) provides for a fixed five-year term and designates a day when parliamentary general elections shall be held. However, section 2 outlines two ways under which a fixed five-year parliamentary term may be truncated:

"If the House of Commons resolves "That this House has no confidence in Her Majesty's Government", an early general election is held, unless the House of Commons subsequently resolves "That this House has confidence in Her Majesty's Government". This second resolution must be made within fourteen days of the first.

If the House of Commons, with the support of two-thirds of its total membership (including vacant seats), resolves "That there shall be an early parliamentary general election."

On 19<sup>th</sup> April 2017, the House of Commons backed Prime Minister May's resolution for an early parliamentary general election under section 2 from the scheduled date of 2020. The resolution for an early election proposed by the Prime Minister got the support of over two thirds of all seats in the House of Commons - 522 voted for the early election on 8 June 2017, with just 13 against (Maidment, 2017). This significant event marked the practicality and expediency of the Fixed-Term Parliaments Act.

Section 3 provides for dissolution of Parliament in line with the provisions of section 1 or appointed under section 2(7). Under section 3(2), Parliament cannot otherwise be dissolved. This clearly introduces an automatic dissolution of Parliament unequivocally abolishing the prerogative of advising the Monarch to dissolve and call elections by the Prime Minister at his or her own whim.

While it is without question that the Fixed-Term Parliaments Act came as a shock to the English conventional political culture and may have adverse ramifications on democracy, its utility cannot be simply ignored. Whether it is good for democracy and accountability is a subject for debate for another day.

In this era of hung parliaments and unstable coalitions, it restricts the possibility of elections at the impulse of the Prime Minister as it abolishes the Prime Minister's prerogative over dissolution of Parliament.

This evidently brings in certainty to a rather unpredictable political environment. Fewer elections mean less public expenditure and budget allocations to the costly polls. The elections are to be held at the effluxion of the prescribed period of parliamentary lifespan. This may even lead to stability into the highly volatile capital markets which react adversely to unstable and hostile external environments.

However, the Fixed-Term Parliaments Act changes the rules of conventional political practices. There is ambiguity with regards formation of new governments once the incumbent administration loses confidence of the House of Commons. The Act addresses a legitimate concern of cynical and vindictive regimes calling elections out of malice while an alternative government could be formed. However, it is silent about how many times governments could be replaced during Parliament's lifespan of 5 years. The provisions of the Fixed-Term Parliaments Act are still uncharted territory and they may raise deep constitutional questions of their own.

### Conclusion

As Lesotho enters the era of hung parliaments and unstable coalition governments, it is unquestionable that there is need to change the dynamics of political games and government formation in parliament.



PM Dr Thomas Thabane and Former PM Dr Pakalitha Mosisili



In this era, resolutions of no confidence in the incumbent governments and forging political alliances in parliament may be commonplace and there is a need to reform the constitution on dissolution of parliaments.

Under the current constitutional landscape, the historic application by the prominent lawyer, Phoofolo and politician, Molapo has proven that the Prime Minister whether “legitimate or illegitimate”, enjoys a wide range of prerogative powers. These powers encroach upon the legitimate rights of the electorate in a representative democracy and undermine the essential role of Parliament. They also usurp some of the functions of other institutions like the Council of State in advising the Monarch on important matters in its jurisdiction.

In the words of Tony Benn, “the present centralisation of power into the hands of one person has gone too far and amounts to a system of personal rule in the very heart of our system of parliamentary democracy.”

In light of the controversies arising out of the decision of Prime Minister Mosisili to cynically call elections when an alternative government could be formed, it is practical to examine and review the powers that the Prime Minister may exercise under the Constitution after losing the confidence of the National Assembly.

It is also imperative to explicitly outline the role of the Council of State after a resolution of no confidence has passed against His Majesty’s Government. It is also exhortative to rescue the country from a very powerful Prime Ministerial position which the Constitution endorses even when Parlia-

ment has sent him to the gallows.

Lesotho has had a third election in no more than 5 years. Before the 2017 elections, the Prime Minister who had lost confidence of the very institution which legitimised his stay in power and exercise thereof still possessed the prerogative to call an election at whim. This provides a serious need for reforms.

These reforms must involve an all-inclusive process of public awareness edification and engagement. This is to ensure that the resultant constitutional reforms are not just a governmental deal of expediency but, rather, an inclusive genuine effort to learn from history, consolidate constitutionalism, representative democracy and forge a new reinvigorated and durable constitutional change and formation of governments that has a broad consensus among the people in the country.

### Recommendations

In 2017, the Prime Minister who had been ousted through resolution of no confidence used his prerogative powers to advise the King to dissolve Parliament two years into existence while an alternative government could have been formed.

More elections mean more burdens on public expenditure and budget allocations. Despite the constitutionality of the move by the Prime Minister, the country is in a dire situation where a need for proper recommendations is not only critical, but cost-saving.

In order to reduce the impact of going for elections frequently, Lesotho needs to adopt Fixed-Term Parliaments into the Constitution.

This is to meet Lesotho’s changed government formation dynamics in Parliament and dissolutions thereof. Adoption into the Constitution is to make it harder to amend or repeal. This is the very first step that will not only secure a proper outcome in the future, but will address current issues.

Again, it is clear that the opposition cannot themselves at all times win a motion of confidence after an ouster of a sitting Prime Minister through a resolution of no-confidence.

It is also clear that the National Assembly cannot at all times be at consensus on whom to propose in the resolution of confidence but *id idem* that the National Assembly has no confidence in the Executive.

The Constitution should be amended to map out clearly the role of the Prime Minister who has lost legitimacy through the vote of no confidence during the transition period before Parliament resolves to dissolve itself or when negotiations between parties are on-going between parties or the period leading to elections.

In conclusion, it is imperative that the Government realise that Lesotho is at the pinnacle of political opportunity.

As soon as Lesotho implements above-mentioned recommendations, they will guide the country towards meeting new political problems in hung parliaments and coalition governments with beneficial outcomes, which is essentially the core idea behind this recommendation. It is an opportunity to conceive a home-grown solution, not simply to copy and paste traditions and practices from outside.

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Chief Joang Molapo



By  
Mr Thabo Tšasanyane

## **Abstract**

*Lesotho's journey to democracy has been particularly tough and uncertain even after over fifty years of its independence from Great Britain in 1966 with the adoption of a constitutional monarchy with little or no executive authority because the monarch is prohibited from actively participating in political initiatives.*

*However, the monarch remains a living symbol of national unity (Constitution of Lesotho.1993:151). Therefore, this article is going to focus mainly on parliament as an independent entity that forms part of good governance in a democratic dispensation. The article will also look into the circumstances and reasons that necessitated parliamentary reform in the case of Lesotho after five decades of independence. Above all, it will concentrate on the significant role that can be played by all stakeholders in this profound exercise.*

# Parliamentary reform in the Kingdom of Lesotho







Absenteeism of parliamentarians is one of the key challenges to parliamentary democracy

## Introduction

According to the Parliamentary Union (1961:3), parliament in its broadest sense, embracing all extremes, may be regarded as a collective part of the government of a country, consisting as a rule of a large number of elected members representing the interests of an entire population both in legislating and the executive.

The diversity of parliamentary institutions in the different states considered is reflected first of all in the way in which particular parliaments are structured; that is to say, some are unicameral, whereas others are bicameral.

Hence Lesotho's Parliament follows the latter. The Parliament of the Kingdom of Lesotho is established by Sections 54, 55, 56 & 67 of the Constitution of Lesotho as amended. It is composed of two houses, that is, the lower and the upper. The lower house is referred to as the National Assembly with a total membership of one-hundred and twenty (120) with eighty (80) directly elected from constituencies and the other forty (40) elected through proportional representation. The upper house is called the Senate with a total membership of thirty-three (33) comprising twenty-two Principal Chiefs and the other eleven (11) appointed by His Majesty. Marshall (1957:12)

argues that parliament's sovereign powers are exercised by human beings but that does not make them individually or jointly sovereign; legislative powers are conferred on parliament not upon them.

May (23<sup>rd</sup> Edition:21, suggests that parliamentary reform is a process of reviewing, examining, repealing or amending existing sections or subsections of the laws that establish parliament and its profound effective functionality. Also, it covers a variety of proposals and changes which need to be carefully distinguished in order to make parliament more representative and more independent of the executive.

The purpose of this article is to help create a stable constitutional government based on the involvement of all political forces in Lesotho to accommodate one another's aspirations not for political gains but in view of long term socio-economic developments of the country.

According to Gill & Machobane (1993:249), political parties have failed to show conclusively that they are content to lose one election in the hope that they will perform better at the next. To this end, the quest for power by any other means is doomed to lead the country into a new cycle of instability and violence. Based on the afore-mentioned facts, this paper shall focus on the political background of Lesotho, problems and challenges, the necessity of parliamentary service, conditions of service for Members of Parliament and staff; communication between Parliament, NGOs and Mmedia, and the committee system.

### **Background**

Lesotho's first democratic elections held in 1965 ahead of its independence in 1966 was the main cause of political history that has been marred by evils of hatred, polarisation and violent conflicts resulting in loss of lives (Gill & Machobane. 1993:212-214).

The general election's outcome of that period in question produced a minority government since Chief Leabua Jonathan's Basutoland National Party (BNP) had won only forty-two percent (42%) of the valid vote. To this effect, Ntsu Mokhehle's Basutoland Congress Party (BCP), Moeketse Malebo's Marematlou Freedom Party (MFP) and some indepen-

dent candidates felt cheated by the electoral system because they collectively secured a total of fifty-eight (58) percent of the valid vote.

However, subsequent to 1970, elections were won by BCP with thirty-six (36) seats in Parliament to BNP's twenty-three (23), while MFP only secured one (1) seat in the then sixty (60)-member Parliament [Gill & Machobane. 1993:220-222.

Unfortunately, the BCP's victory celebration was short-lived as the elections were nullified by Chief Jonathan who suspended the constitution and declared a state of emergency. It was only after twenty-three years that on 5<sup>th</sup> February, 1993 that Amendment of the Revised Draft Constitution was published as Government Notice No. 12 ushering in the return of democracy.

### **Problems and Challenges**

Parliamentary reform in the Kingdom of Lesotho is a continuous process that dates back to the Sixth Parliament of 2002 with focus on the establishment of Parliamentary Service, conditions of service for both members and staff of parliament, review of parliamentary processes, NGOs and the media, Standing Orders, and Committees System forming the establishment of Portfolio Committees.

The goal was to achieve autonomy of Parliamentary Service, enhance capacity, terms and conditions of MPs and Staff, and improve Members relationship with their constituents, enable public participation, revise Standing Orders and strengthen Committees System.

However, the process of parliamentary reform has not been successful due to government's involvement with the supposedly autonomous establishments of parliament, the army, security sectors, public service, and judiciary, chieftainship, churches, private sector, NGOs, Media and all stakeholders.

Although the constitution suggests that everyone has the right to freedom of opinion and expression without any interference whatsoever, this has never been the case in Lesotho's political arena. If you criticized the government, it would be viewed as a personal attack on the Prime Minister or his party.

### **Parliamentary Service**

According to Kaul & Shakhder, parliament is sovereign within the limits assigned to it by the Constitution. Therefore, there is an inherent right in the House to conduct its affairs without any interference from an outside body like courts of law in respect of anything said or any vote given by a member in the House. That is, in the matter of judging the validity of its proceedings, the House has exclusive jurisdiction.

Again, a Member of Parliament, Officer or Staff in whom powers are vested for regulating the procedure or the conduct of business, or for maintaining order in Parliament, is subject to the jurisdiction of any court in respect of the exercise of those powers. Therefore, each House has the power to punish its Members for disorderly conduct and other contempt committed in the House while it is sitting.

According to Commonwealth (Latimer House) Principles on the



three branches of Government (2009:10-13), Parliament, Executive and Judiciary are guarantors in their respective spheres of rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, moral principles and accountability. Members of Parliament must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

### Conditions of Service for MPs and Staff

According to Kaul & Shakhder, the relationship between Members of Parliament and civil servants is largely governed by certain well-recognised principles and conventions developed over the years. To this effect, civil servants are enjoined to accord due courtesy and regard to the representatives of the people, and to help them to the extent possible in the discharge of important functions which they have to perform.

A civil servant may have their own political views but they should not ally themselves with any political group or party. And no civil servant can be a member of, or be otherwise associated with any political party or any organisation which takes part in politics nor can they take part in, subscribe in aid of, canvass or assist in any other manner, any political movement or activity. Parliament, the Ministers and the Civil Service, together, cannot function independently of each other with any real efficiency.

For someone to be employed in parliament, the criteria of eligibility for that particular appointment should be based on merit

and proven integrity, not political affiliation as is the case now. And this political employment criterion frustrates the development of parliament because public officers become unproductive knowing that they have politicians behind them. The same applies to MPs because they tend to treat the Executive with kid gloves with the expectation that developmental projects would be directed to their constituencies and score political mileage.

### Parliament, NGOs and the Media

Kaul & Shakhder. Sixth Edition indicates that in a parliamentary democracy, the NGOs together with the press (media) have to assume the role of being the principal communication link between Parliament and the people.

Both institutions have the responsibility of keeping the people informed of what is happening in Parliament and afford the public an opportunity to express their views, grievances, hardships, omissions and commissions by the Government in order to report how policies are being implemented and how administration is affecting the people.

**It is of paramount public and national importance that the proceedings of Parliament are communicated to the people who are interested in knowing what transpires within its walls because whatever is said and done depends on the welfare of the community.**

But in recent years the NGOs and the media were on several occasions associated with government, opposition or certain political parties; this was due to lack of professionalism and partisan-

ship regarding some of them in communicating horrific incidents that occurred here in Lesotho.

For example, in the ninth parliament there were a series of deaths that occurred, about which both the NGOs and the media houses were so vocal about. I can name just but a few, the assassination of the late Lt. General Maaparankoe Mahao, Constable Mokalekale Khetheng, Mrs Lipolelo Thabane (former First Lady) and Lt. General Khoantle Motšomotšo.

### Committee System

With the formation of 'watch-dog' committees of parliament to hold the executive accountable, it is apparent that the executive still has an overwhelming influence on parliament's decisions and that has proven detrimental to the economic development of the country. Therefore, there is a necessary amendment to Section 87 (4) of the Constitution of Lesotho which says:

*"The King shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the Members of the National Assembly or from among the Senators..."*

Notably, the ministers must not form part of the elected members of parliament or appointed Members of the Senate, that is to say, they must be appointed from outside based on their individual knowledge, expertise and skills to assist Parliament to carry out its oversight function.

Maluke (2004:10) argues that any accountable government has to know the value of self-perception by not escaping from the accountability obligation. And





Kaul & Shakhder, suggest that both houses of parliament have to communicate with each other by means of written message sent from one House to the other, meetings of Joint Committees and Joint Sitzings of the Houses.

There is another crucial amendment required regarding Section 87 (2) of the Constitution of Lesotho which says:

*“The King shall appoint as Prime Minister the Member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of the Majority of the Members of the National Assembly.”*

The past coalition politics and coalition governments of the Kingdom of Lesotho have been characterized by instability and break-ups. This has been the case in countries like Zimbabwe, Mauritius, Nigeria, Kenya and Malawi.

Therefore, it is significant that Section 87 (2) should be amended in order to provide an overarching legal framework that forms the basis of a properly structured and effective functional coalition Government. This important task of the formation of coalitions regarding the amendment of the Constitution must include all political parties in Parliament and outside.

More importantly, Section 87 (5) (a) which says:

*“if a resolution of no confidence in the Government of Lesotho is passed by the National Assembly and the Prime Minister does not within three days thereafter, either resigns from his office or advise dissolution of Parliament;”*

should be amended because it gives too much power to the Prime Minister to advise dissolution of Parliament regardless of any other political leader who commands the support of the majority of the Members of the

National Assembly. A peaceful transfer of power from the incumbent Prime Minister to the Prime Minister designate would immensely save money and time.

Therefore Fish and Kroenig (2009:311-312) argue that the Parliament of India is a formidable centre of authority with a broad sway over executive power. Therefore, the legislature alone, without the involvement of any other agencies, can replace or remove the Prime Minister from office by a two-thirds majority vote of its total membership in both Houses. And the legislature is immune from dissolution by the Executive because it lacks decree power.

### Recommendations

- The process of giving Parliament of Lesotho full autonomy must be expedited because that will address the issue of conflict of interest by maintaining a high standard of accountability, transparency and responsibility in the

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The Lesotho national flag

conduct of all public business.

- Both Houses should be treated equally with each having its unique role and at the same time acknowledging their complementary nature in order to avoid the current situation in which the Senate is purported to be an extension of the National Assembly
  - The system should allow introduction of Bills in any of the two Houses through the Ministry of Parliamentary affairs because there should be adequate parliamentary examination of proposed legislation.
  - The publication of the proceedings of Parliament must be easily accessible to Media Houses and NGOs even to minorities in order to enforce local content requirements and diversity
  - Freedom of the NGOs and the Media has to be expressly provided in the Constitution because they have a very important role to play in enforcing people's fundamental rights. Also, government's transparency and accountability
- is promoted by an independent and vibrant media which is responsible, objective and impartial.
- Resourceful and productive officers of Parliament must be retained due to their knowledge of the institution and expertise because they will save parliament money and time for training of new employees.
  - The promotion of zero-tolerance for corruption is vital to good governance through effective parliamentary committees in order to monitor and evaluate utilization of public funds.

### Conclusion

1. Parliamentary reform should be the responsibility of the government, the opposition and all stakeholders in order to establish a common ground in this important process. Therefore, **Parliament has to perform its oversight function granted by the Constitution to properly monitor and oversee Government's actions through its ministries without any fear or favour thereof.**

## **A**bstract

*To date, discussions on reforms have largely focused on content and principles to the dire exclusion of processes and context. This would put the efficacy and sustainability of the envisaged reforms at serious risk. Although problems identified in the discussions point to the need for determining and addressing root causes they, however, fall short of addressing this need.*

*This paper goes deeper to map and discuss the root causes and proposes pre-requisite processes and necessary attributes in the dialogue processes that will help to find their effective solutions and sustain their outcomes.*

*It draws direct links between socio-economic conditions and scientific findings, with scriptural or spiritual links on how and why our nervous systems, as our response mechanisms to life situations and thoughts, can lead us into destructive tendencies and habits; and how we can switch into constructive modes.*

*The paper shows that this healing, although often resisted, will also heal the alleged “political polarization” said to have plagued the nation and attenuate the reported debilitating conditions. This is the basis for the change of culture - attitudes, mindsets, behaviour - and reconciliation, which have been proposed by some people and is a pre-requisite for any meaningful consensus building and national dialogue. It highlights convergences and synergies between these findings and healing spiritual approaches.*



By

Mr Mafole Sematlane

# **Pre-requisite processes and dialogue processes:**

## **Enhancing the Efficacy and Sustainability of Reforms**





## **I**ntroduction

Several workshops have been hosted by the local Non-Governmental Organisations and by the Lesotho Government in preparation for the envisaged national dialogues on reforms. On June 1<sup>st</sup> 2018 King Letsie III led a national prayer day for the national dialogues on reforms.

These workshops and the national prayer day proceedings provide valuable information about the observations and thoughts of stakeholders on the issue. Problems identified and aspirations expressed in these forums hold material that can be used to inform the design of an effective reforms process with sustainable outcomes.

This article uses that material to propose essential considerations for the reforms processes, together with the creation of the necessary environment for sustaining the expected and desired

outcomes.

The article seeks to contribute to the efficacy and sustainability of Reforms. It does so by attempting to create a deeper understanding and appreciation of the root causes of (political) crises, their negative impact on good governance, human rights, stability, institutions, peace, security (safety) and the economy. It also discusses some of the factors inherent in the identified symptoms that are likely to cause people to have concern with own interests to the exclusion of needs of other people (others); discussing root causes of popular political polarisation.

In addition it will highlight the systemic nature of problems, the generic nature of their integrated holistic solutions' set, and raise caution as to fragmented approaches to problems; in particular, tracing the problems to stress and discuss the physiological and psychological linkages of stress, human behaviour and so-

cioe-conomic well-being or none; underscoring the compelling implications for processes of social healing (effective management of stress) and reconciliation as essential pre-requisites for effective and sustainable national dialogues on reforms.

Finally, the article seeks to delineate the necessary attributes in dialogue processes to ensure that the basic guiding principles of ownership, participation and inclusivity, transparency and accountability, and acceptable standards are imbued into the larger dialogue on reforms process.

### **Brief Problem Statement and Situation Analysis**

In its call for articles, the Transformation Resource Centre says Lesotho has been embroiled in political crises which have significantly had a negative impact on good governance, human rights, stability, peace, security and the economy. It notes that the political leaders of the country are mainly concerned with their own

interests rather than focusing on answering the needs of the people. (Call for Articles, pp 1-2)

The National Leaders Forum of 12<sup>th</sup> February, 2018 noted with concern the current political polarisation that is likely to paralyse and derail any effort at dialogue or reform. The Forum voiced the need to heal and reconcile. In the several preparatory Stakeholders' dialogues hosted by the Local Non-governmental Organisations on "National Dialogues on Reforms" and in many public media programmes participants, viewers and listeners have identified, in their words (translated), "a pervasive national pandemic" (see for instance, TRC 2018).

At the Post-Election National Dialogue Reform on the Rule of Law and Nation-Building Process of 18<sup>th</sup> – 19<sup>th</sup> October 2017 stakeholders noted challenges that include, but were not limited to, the need for change of attitude, change of behaviour and change of heart; identifying the root causes of our political crises and carrying out consensus building ahead of the reforms; accepting that as a country we are on the wrong track; urgent need for mindset changes; and a caution that reforms may have become a buzz word for us, which could possibly be a tacit admission that we had lost direction. (LCN 2017, pp 22-26).

As we seek to redraw our external maps of constitution and institutions, shouldn't we also be upraising our internal radars for possible necessary reprogramming?

### Setting the Context for Our Discussion – Elaborating the Need to Reform

In this section we show that the problems that have been identified are actually symptoms of something deeper and represent elements of, or are causally linked to, (seemingly different) scientific conceptual frameworks (including frameworks in psychology, because they have a scientific basis) and spiritual percepts or teachings, that are essentially complementary.

They are all about human behaviour: *"In its broadest sense, organisational behaviour encompasses the entire field of human psychology, since almost all human behaviour occurs in the context of one or more organisations... We are born into a society and culture ..."* (Peck 1993, p 5). We also show how these belong with the destructive modes – ineptness in the management of our stress levels, low consciousness levels, extended negative emotions, negative attitudes, fixed mindsets, limited leadership skills and other repertoires - of our responses to situations or thoughts.

We also show how the aspirations expressed by stakeholders are linked to and belong with the constructive modes – equanimity, high consciousness levels, the will to learn and to grow, growth mindsets, the gate to life – of our responses to situations and thoughts.

In the subsequent sections we motivate the need to transform from the destructive mode into the constructive and productive mode; that it is through processes and not just knowledge of principles that the meaningful transformation happens.

The problems identified by the

Forums indicate endemic chronic stress. *"Chronic stress and (its) elevated cortisol levels is public health enemy number one ... interferes with learning and memory, lowers immune function ... increases risk for depression, mental illness, and lowers life expectancy... and decreased resilience... wreaks havoc on your mind and body."* (Psychology Today, 2013) Chronic stress leads to heightened senses of insecurity, blame, suspicion and defensiveness. Chronic stress leads to undesirable decisions, actions and life outcomes. How do the symptoms indicate chronic stress?

Extended negative emotions cause destructive stress. *"Stress is often described as a feeling of being overwhelmed, worried or run-down. Stress can affect people of all ages, genders and circumstances and can lead to both physical and psychological health issues. By definition, stress is any uncomfortable "emotional experience accompanied by predictable biochemical, physiological and behavioral changes."* (APA 2018)

Dr Hawkins has mapped levels of human consciousness. The map is divided into two broad categories with positive and negative influence on our lives. The calibrated levels correlate with specific processes of human consciousness – emotions, perceptions, attitudes, worldviews (mindsets) and spiritual beliefs.

The negative influence comprises the following corresponding elements from lowest to highest calibration: **Worldview** – miserable, evil, hopeless, tragic, frightening, disappointing, antagonistic, and demanding; **Level** – shame, guilt, apathy, grief, fear, desire, anger,

and pride; **Emotion** – humiliation, blame, despair, regret, anxiety, craving, hate, and scorn; **Process** – elimination, destruction, abdication, despondency, withdrawal, enslavement, aggression, and inflation. The consciousness with positive influence similarly comprises: **Worldview** – feasible, satisfactory, hopeful, harmonious, meaningful, benign, complete, perfect, and Is; **Level** – courage, neutrality, willingness, acceptance, reason, love, joy, peace, and Enlightenment; **Emotion** – affirmation, trust, optimism, forgiveness, understanding, reverence, serenity, bliss, and Ineffable; **Process** – empowerment, release, intention, transcendence, abstraction, revelation, transfiguration, illumination, and Pure Consciousness.

Broadly speaking, extended periods in the lower level consciousness with negative influence (force) correspond to unmanaged destructive stress, the wide gate to destruction. They cause polarisation. *“Force always creates counterforce; its effect is to polarise rather than unify... it requires constant defense. Defensiveness is invariably costly, whether in the market place, politics, or inter-*

*national affairs.”* (Hawkins 2002, p 133) Of course, even though they cause us some pain and existential suffering, we need a little stress as an inevitable part of our lives and to spur us to growth. Scientists agree that it is not the events of life themselves that determine whether they have a positive or a negative effect on one’s life or not, whether they are experienced as opportunity or as stress. It is how one reacts to them and the attitude that one has about them. *“Pain exists to promote evolution; its cumulative effect finally forces us in a new direction.”* (Hawkins 2002, p 127) *“... tendency to avoid problems and the emotional suffering inherent in them is the primary basis for all human mental illness.”* (Peck. 1978, p14)

Looking at the elements of the map of human consciousness as described above it becomes clear that the problems that have necessitated for us to have to do reforms are direct results of long spells in the lower and negative level of the map.

Hawkins talks about populations living in these levels, *“Famine and disease are commonplace,*

*frequently accompanied by political oppression and scant social resources. Many of these people live in a state of hopelessness ... in resignation to their abject poverty.”* (Hawkins 2002, p 96).

He adds that people respond to life situations based on their level of consciousness. (Ibid, pp 240-242) What levels should we want to be at? It becomes clear also that the implicit aspirations inherent in the TRC call for articles and expressed by stakeholders are possible only and only if the critical mass of us, as a nation, heal from our chronic stress, transform and transcend into the higher levels of human consciousness (power). What about mindsets?

Along similar lines as the consciousness map, Professor Carol Dweck identifies two types of mindsets: The *fixed mindset* – in which people believe that their qualities, especially intelligence, are carved in stone; and so they generally shun challenges and avoid the pain of growing; and the *growth mindset* – in which people believe that they can cultivate their basic qualities through their efforts.





Clearly this is just an alternative but similar framework. (Dweck 2006, pp 6-7) Effective leadership development uses similar brain pathways as the effective management of stress, management of emotions and development of mindsets. (see Goleman, Boyatzis and McKee 2002, pp 199-210)

Not surprisingly, selfish leadership, for instance, has been cited as one of the problems entangled in the need for reforms. Elizabeth Wiseman and Greg McKeown also break leadership down into two broad categories: *Multipliers* – who are committed to learning and growth and facilitate for others to learn and grow; and *Diminishers* – who are about themselves, often lazy to learn and diminish others. (Wiseman with McKeown 2005, pp 8-28)

Again, not surprisingly, laziness and narcissism are marked as the two root causes of evil; and evil, we will recall, comes out of extreme extended stress and appears as the second lowest life-view in the map of consciousness. (Peck 1983, p 27; Hawkins 2002, pp 68-69) *“But while all fear is not laziness, much fear is exactly that. Much of our fear is fear of a change in the status quo, a fear that we might lose what we have if we venture forth from where we are now.”* (Peck 1978, p 293)

Incidentally the two categorisations correspond to Christ's two gates – the narrow gate currently chosen by few and the wide gate chosen by the unwise multitudes. (Mat. 7: 13-14) Now, what about culture?

Schein provides us with a very comprehensive and pragmatic definition of culture: *“(a) a pattern of basic assumptions, (b) invented, discovered, or developed*

*by a given group, (c) as it learns to cope with its problems of external adaptation and internal integration, (d) that has worked well enough to be considered valid and, therefore, (e) is taught to new members as the (f) correct way to perceive, think, and feel.”* (Goodstein, Nolan and Pfeiffer 1993, p 57)

This means that an organisation's culture is a social system based on a central set of beliefs and values. This social system was developed or learned as a consequence of the organisation's efforts over time to cope with its environment. Its success in coping leads the organisation's members to regard their ways of doing things as the best ways to cope with its environment in the future.

Again, it is clear that such a central set of beliefs and values would issue from a nation's level of consciousness. Also such a culture continues to be tenable only to the extent to which it actually helps the nation to succeed in coping with its environment; and to the extent to which its ways of doing things can be considered as the best ways to cope with the environment in the future.

The question is, “Are our ways the best for coping with our environment in the future?”

While a few organisations are beginning to take the initiative to seek interventions in effective stress management, the truth is that there is still a big problem with people, institutions and organisations not being even aware that they are sick and need healing. In other cases, where and when there is awareness and some remedy is attempted, the only method used has been prayer (the Lesotho Defense

Force earlier and the Nation on 1<sup>st</sup> June 2018).

Fortunately at the National Prayer Day, the Church in the prayer dedicated to social healing, led by Bishop Rantle, did confirm that a more holistic approach to healing was needed. Even though for us it is becoming even more serious by the day, this is not a unique or new problem: *“Something is seriously wrong... We are in need of healing... The only problem left – and it is gigantic – is how to assist our institutions to desire their healing... Is there some magic to make the sick to want to be healed? Huge though it is, that is the only question remaining.”* (Peck 1993, 3-6; 347)

Another factor that complicates it, which is not new itself, is that invariably, each one of us thinks the sick one is the other: And Jesus Christ said, *“Why, then, do you look at the speck in your brother's eye, and pay no attention to the log in your own eye? How dare you say to your brother, “Please let me take the speck out of your eye,” when you have a log in your own eye?”* (Matthew 6: 3-4)

This article recognises the fact that the psychospiritual “log” – the sickness – the silent chronic stress – is more often than not what Hawkins puts as his subtitle in **“Power vs Force: The Hidden Determinants of Human Behavior”** (Hawkins D.R. 2002). So, how do we unravel and expose these hidden determinants so that we can have more reassurance and confidence that we are addressing the relevant real issues, and that our efforts will bring about the Sustainable Lesotho We Want?

### **Mechanics of Our Response Mechanisms (Nervous Systems)**

We have now seen how our cul-



*fight or flight. Otherwise, cortisol levels build up in the blood, which wreaks havoc on your mind and body.” (Psychology Today 2018)*

Sympathetic nervous systems that are continuously aroused are the cause of our rife world distress – greed, illusion of sense of insecurity, pandemics, poverty and strife.

Two implications for National Dialogues on Reforms: i) although eustress is necessary and useful in providing us with the energy to meet our goals, we must have the necessary skills for thinking up the necessary activities and carrying them out. Without them and without achieving the goals chaos could erupt as the energy seeks outlets and frustration emerges.

Therefore, we need that Holistic Social Healing and Reconciliation through multiple options/routes to enable each one of us to take the daunting climb to the mountain top of Reforms that yield improved conditions of socio-economic development and livelihoods.

*“It isn’t just fear alone that characterises anxiety. In most cases it’s fear coupled with the feeling that you can’t handle the situation causing the fear.” (Mininni 2005, p 34) ii) The excessive distress that pervades our nation and suggests that we feel threatened clearly needs to be healed and effective ways of managing it acquired. It is only when we have equanimity of mind and body that we are able to think properly and dialogue creatively and productively.*

ture, beliefs, values, thoughts, attitudes, emotions, mindsets, leadership development, prayer (spirituality), consciousness all relate to stress management, and how these are implied for any meaningful reforms process. But, what actually happens that connects these to human behaviour, its effects on the external environment and outcomes of life?

This is what Dr Darlene Mininni says about the nervous system, *“Although highly efficient, this delicate system is primed to respond to situations and thoughts in a primitive way. It was originally designed to allow our prehistoric ancestors to run from a vicious lion or escape natural disasters, but it responds in the same way in the modern world to problems like getting stuck in traffic or dealing with an overbearing boss.”* (Mininni 2005, p 14) Indeed, it responds in the same way even to today’s problems of quality of service, political contestations, interpersonal relationships, the raising of children, management

of families, job responsibilities, leadership responsibilities, socio-economic demands and problems, etc.

Our response mechanism operates under two distinct modes – as the Sympathetic Nervous System (under conditions of stress with the *panic response*, especially when skills are lacking) or as the Parasympathetic Nervous System (under conditions of equanimity or mellowness with the *relaxation response*, accompanied with the will to grow).

Activating the sympathetic nervous system creates feelings of anxiety and tension by revving up the body. (Mininni 2005, p 15) Two types of stress have been identified: eustress (good stress) and distress (bad stress). *“Both eustress and distress release cortisol as part of the general adaptation syndrome. Once the alarm to release cortisol has sounded, your body becomes mobilised and ready for action – but there has to be a physical release of*

Let me quickly share an example of what the sympathetic nervous system is capable of.

In the past two weeks I switched mine on twice for a few minutes: My cheap mobile phone was full and got reset twice. In the period it consumed my weekly data and airtime twice inside spaces of only two days. After the second occasion I switched my sympathetic nervous system on again.

While it was on, and I had not quite switched the parasympathetic system on as I had thought I had, I attempted to load airtime: copied three sets of vouchers from my WApp onto a piece of paper for loading. The system rejected the attempts and gave me unfamiliar messages.

I went back to the Service Provider, contained but riled up. After several failed tries with the first set the second set loaded; the third would not. Then I sobered up: "Could there be something wrong with me?" And indeed when I compared the sets of numbers on the piece of paper with the ones in the vouchers in my WhatsApp they were different. My "distress" was playing havoc with my mind and body.

Now, just imagine what could happen if this was not just a matter of small data bundles and airtime; and if I was someone else who did not know the things I know about stress. I apologised to the people who were serving me and we had some discussion about stress.

Berne Siegel suggests that we also have a *die response* or mechanism that actively stops our defenses and cause lethargy. But it is also dissonant. (Siegel 1986, pp 66-67)

Who would prefer cortical dissonance to cortical coherence? Who would want to dialogue their most serious life issues (**National Dialogues on Reforms**) with colleagues who have cortical dissonance than cortical coherence? Who would knowingly want to take the chance?

The sympathetic nervous system is switched off by switching on the parasympathetic nervous system and calling in the feel-good hormones or chemicals. Cryer and Sekerka also report that positive emotions that cause us to be cool even under pressure and dynamic stress make our bodies to secrete feel-good or relaxation hormones like DHEA and acetylcholine which, in turn, give us cortical facilitation (coherence) and heightened performances (which require physiological and psychological coherence) and appreciation. (Appreciative Inquiry Consulting and Weatherhead School of Management 2001)

Mininni herself says, "*The parasympathetic nervous system is wired to put the brakes on the sympathetic nervous system. With long neuron fibers spreading throughout the body, it spurts a chemical called acetylcholine. This chemical is responsible for slowing the heart rate, lowering blood pressure, promoting blood flow to all organs, and generally reversing the internal processes the sympathetic nervous system had set in motion.*" (Mininni 2005, p 15) Our brains then generate alpha waves that create harmony and promote higher intelligence, creativity and competence." (Sematlane M. 2008, p 118)

### **Facilitating National Dialogues on Reforms**

A range of guiding principles

have been tossed around for the national dialogues that include ownership, inclusivity and participation, transparency and accountability, international standards of democratic participation to which we may wish to add, explicitly, efficacy, efficiency and sustainability.

Experts in facilitating organisation change in complex environments and times of uncertainty and rapid change say that methods that succeeded in times of slow change may not always work today. When they do not, disappointment and blame are broadly distributed. (Olson and Eoyang 2001, xxxii)

To realise these guiding principles, mindful of the caution, we would need methods and approaches, for instance, that ensure effectiveness in situations where a diverse group of people must deal with complex, and potentially conflicting material, in innovative ways; tools that are particularly powerful when nobody knows, or professes to know the answer, and the ongoing participation of a number of people is required to deal with the questions at hand. (Owen H. 1992, p 14).

Already, in the dialogue of the National Leaders Forum of 12<sup>th</sup> February, 2018, one of the leaders, maybe not the most likely to do so, suggested that more facilitation skills would be needed if the National Dialogues were to be effective.

### **In Conclusion**

The current design of our reforms is just about principles – constitution and institutions. Hawkins advises us that focusing on legislative action, structures, laws, policies, prohibitions, etc



is equivalent to mere treatment and merely quells the situation temporarily; that for lasting health we need healing that also transforms the context or environment. (Hawkins 2002, p 73)

I truly believe that the envisaged processes are intended to deliver sustainable, visible and significant improvements in the socio-economic conditions of Basotho and their lives.

This calls upon us to be very responsible people, and keep our eyes on the big picture. We are responsible only when we know that to get different consequences from our actions we must change our minds and our actions. (Sematlane 2018, p 90)

In the documentary movie "Crossroads" scientists share the latest Global Risks Report published by the World Economic Forum with a Risk Interconnectedness Map that shows how risks

in all areas are interwoven and interdependent – a crisis in one area will quickly lead to a crisis in other areas. (Ohayon 2013, 2mins – 4mins).

We need to be wary of approaching our reforms in a fragmented way. *"Fragmentation and compartmentalisation of knowledge keeps us from grasping "that which is woven together."* (Morin 1999, p 19)

In his National Prayers Day speech on 1<sup>st</sup> June, 2018, King Letsie III himself cited the guiding scripture, *"If my people, which are called by name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then I will hear from heaven, and will forgive their sin, and will heal their land."* (2 Chr. 7: 14)

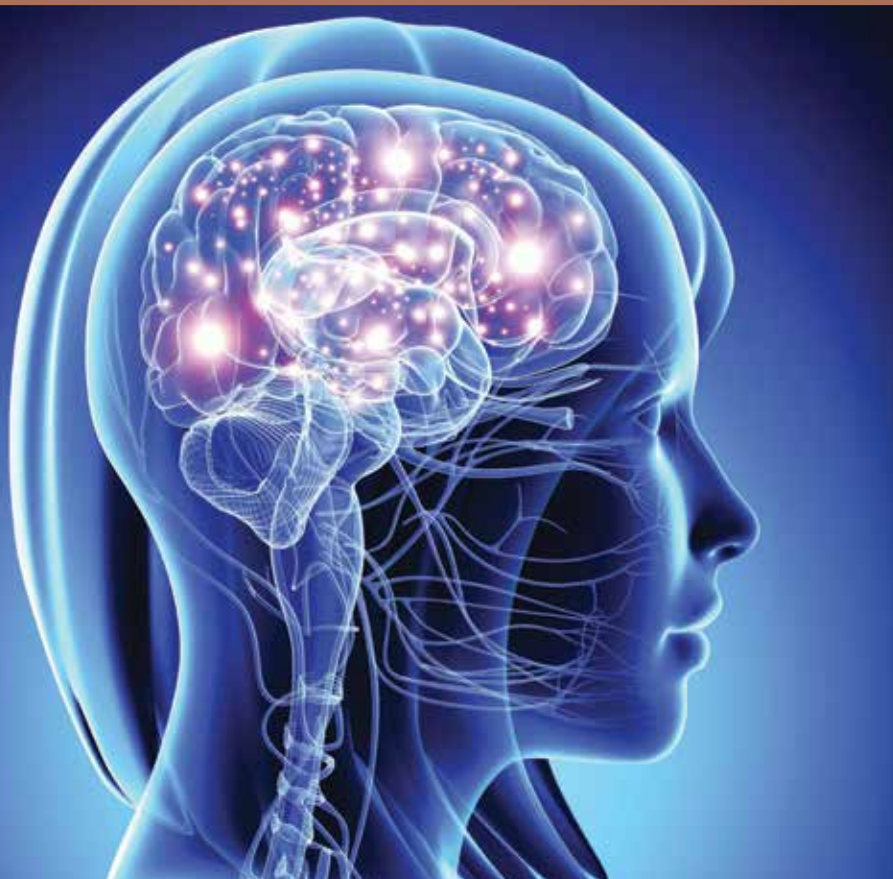
Humility is often misunderstood. It is about opening ourselves for

new learning. *"Great leaps in levels of consciousness are always preceded by surrender of the illusion that "I know"... Light cannot enter a closed box... But unless we become humble and transform them into gateways to growth and development, the painful lessons of life that we deal ourselves are wasted."* (Hawkins 2002, p 246-247)

Turning from our wicked ways is increasing our level(s) of consciousness, changing our mindset(s), managing our stress levels effectively, and helping us to become effective leaders even before we engage in the dialogues. The verse has direct implications for process and informed action and thus calls unto a trilogy with itself Proverbs 18: 15, *"Intelligent people are always eager and ready to learn,"* and *"So then, as the body without spirit is dead, so also faith without actions is dead"* (Jas 2: 26) into a triage of a Holy tango.

The triage trilogy tango itself has a precursor in Mark 11. 25, *"And when you stand and pray, forgive anything you may have against anyone, so that your Father in heaven will forgive the wrongs you have done."* And our great Rwandese brothers are testimony to this.

We need holistic social healing processes ahead of the national dialogues to optimise our stress levels and create a supportive environment. We also need to be wary of the facilitation processes at the dialogues themselves. *"There is no point in ending up with a very simple way of delivering nothing. The key values have also to be kept in mind."* (De Bono E.1998, p 174)



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**By the year 2020 Lesotho shall be a stable democracy, a united and prosperous nation at peace with itself and its neighbours. It shall have a healthy and well-developed human resource base. Its economy will be strong, its environment well managed and its technology well established.**

## How far?

# About TRC

Transformation Resource Centre (TRC) is an ecumenical resource Centre that advocates for justice, peace and participatory development. It was established in 1979 by Jimmy and Joan Steward. TRC owes its origin within the church. Its founders saw the organization as a community of caring people, rooted in the Christian faith. TRC's socio-political focus was inspired by Paulo Freire's ideas of liberation, social analysis, justice, leadership, community work, simple decision making, action planning, new forms of management and problem solving mechanisms. These were captured in a manual for social analysis and community work called Training for Transformation from which TRC took its name, a veritable resource Centre for transformation.

## TRC Scope

TRC uses a national focus due to the breadth and complexity of its programme content. While operationally the organization addresses specific project areas in the districts of Maseru, Mafeteng, Leribe, Botha Bothe, Mokhotlong, the impact and stimuli of the organization's work is expected to be felt nationally. Regional and international connections keep the Centre firmly on the global development agenda.

## ADMINISTRATION AND ORGANISATIONAL DEVELOPMENT

TRC's administrative function is key in supporting the Centre's programmatic work, providing leadership and direction, coordinating activities and supervising work (including human resource management, evaluation, development and remuneration). In addition, this unit also coordinates activities such as donor and stakeholder relations.

The CA/OD Programme aims at putting TRC in the lead as the preeminent social justice and good governance NGO in Lesotho, a leader in public interest advocacy and community empowerment, based on the principles of democracy, transparency, efficiency and inclusive participation. TRC also aims to be the partner of choice for both public and private institutions, locally and internationally, working on the promotion of good governance in Lesotho.

## Parliamentary Affairs and Public Participation Programme

The main aim of this programme is to promote public participation in parliamentary affairs as well as to build the capacity of the members of parliament on their roles, functions and responsibilities. The programme has activities that assist the constituencies to have strong links with their members of parliament, whereby they are able to engage them on the identified needs of their constituencies, to hold them to account and give report backs on the

mandate that they have been given. This also includes the capacity building of political parties on the principles of good governance which they have to apply when they ascend to the national assembly.

## Civic and Electoral Education

The civic and electoral education programme focuses more on youth and women than the general populace. The programme empowers youth, women in particular and other stakeholders to participate in civic life. It disseminates civic information on Lesotho's political system and context not ignoring the economic, social and political matters. As part of electoral strategies, these groups are further engaged in immediate electoral processes to actively participate in the democratic life of Lesotho. The department provides voter education during election periods to help the public appreciate electoral processes, their roles, responsibilities and rights as voters. It aims to give Basotho information and training on the democratic and electoral affairs of the country, making the public understand the relationship between elections and democracy.

Youth and women are enabled to demonstrate critical thinking, understanding and interpretation of democratic and electioneering matters. This program assists youth and women to engage and interact with policy makers to influence positive change. The Programme creates platforms for community dialogues and public debates on local and national governance issues. Amongst other activities undertaken are youth and women trainings on democracy education, media advocacy on treaties and legal frameworks which protect women and girls, students' parliament, national dialogues on public participation laws and electoral reforms.

## CIVIL AND POLITICAL RIGHTS

### Promoting Respect for Human Rights:

Promoting respect of human rights is one of principal programmes of TRC. It focuses much on strengthening human rights institutions and oversight bodies to protect, promote and respect human rights of citizens. Furthermore the programme facilitates that victims of human rights violations also get redress. Thus with the programme TRC facilitates that the human rights violations exposed are documented. The programme of promoting respect of human rights comprises of the components which stand as follows;

- Advocacy for independence of human rights commission
- Advocacy for independence of oversight bodies in protection and promotion of human rights
- Monitoring, document and report hu-

man rights violations

- Facilitating counselling and support to army abuse victims
- Training of community paralegals and liaise with the law clinics for redress of human rights violations

## Human Rights Respect

It is a common knowledge that the main obligation of the state as duty bearer is to protect human rights. However, a practice in Lesotho has been that the state is the principal violator of human rights. Under this result, there must be a close monitoring, documenting and reporting of human rights violations. Human rights violations remain unreported and undocumented. They happen at all levels of society; at national and community levels. The purpose is to document and report these violations with a view to expose them and assist victims and those affected to get redress.

The result wants to see paralegals being identified within project site who shall be equipped with necessary skills to identify and report human rights violations within their communities. They shall further be capacitated on mediation and conciliation skills when there are disputes within their communities.

This unit also focuses on soldiers and their families dealing with trauma they have experienced. It seeks to ensure that all victims get redress. And most importantly, that those soldiers fully partake in the National Reforms especially security reforms and ensure that SADC recommendations are implemented fully.

## The Socio – Economic Rights Programme

Communities affected by Lesotho's large dams, extractive activities and emerging industries continue to generate community grievances over compensation, development, resettlement, and access to services. Problems associated with these developments affect thousands of people negatively in Lesotho. These challenges range from no clear policies on development, public participation, environmental impacts assessments and regulations that regulate these sectors. Their destructive nature range from pollution, chasms, other un-rehabilitated areas, arbitrary siege of land by companies, unfair and inadequate compensation, absent independent government monitoring, as well as limited or no knowledge regarding these issues by the affected communities.

The Programme focuses on the rights of communities affected by water, dams, and environment and mines to ensure that they are safeguarded through fair and adequate compensation and participation for sustainable development. The programme advocates for justice and respect for the rights of people affected by major capital



projects. It operates on the principle that affected communities must derive direct benefits from the resources and have their quality of lives improved for the better.

### Information and Communication

The programme communicates TRC's activities to the world. It also serves as a hub for information exchange between TRC and the rest of the world. The main function of this programme is to keep TRC on the development radar.

This is done through various functions such as research, media liaison, public relations, debate, enquiries and publications. The programme is also a vehicle of TRC in its endeavours to harness organizational responsiveness, solidarity, partnership and linkages.

## PROGRAMME ACTIVITIES

### Publications

Work for Justice is journal of choice that has gained respect for projecting and sustaining debates. The newsletter clarifies certain issues that would otherwise be easily dismissed as old or insignificant. The glossy and semi-academic newsletter is popularly distributed among policy makers, researchers and the academia.

Litaba tsa Lesotho is a community friendly newspaper that mainly documents TRC activities in community empowerment and development initiatives. It appeals more to rural community residents and is usually distributed in TRC project sites as well as other areas to keep the public informed about TRC programmes.

### Radio

Weekly radio programmes are hosted on Sethaleng Radio Station (103.30) at 6a.m to 8a.m on Mondays where conversations on a wide variety of issues related to TRC programmes, good governance and human rights are discussed to gain listener-ship views.

### Website and Social Media Pages

These platforms are regularly updated with TRC's main events and activities undertaken by different programmes. The website is a credible source of information about TRC, its partners and activities. It is more effective in attracting international awareness, strengthening solidarity and inspiring donor cooperation.

### Friends Meetings

Topical issues on good governance and human rights are discussed monthly by

TRC and friends to influence and improve government and other partners' responsiveness in efficient and effective service delivery.

### Media

TRC activities are publicized in different media platforms to make them known to the public. Press conferences, press releases and information clips are used by numerous media houses to publicize TRC's national and community activities. Various promotional materials are also produced to complement TRC programmes.

### Resource Centre

The TRC operates a Library / Resource Centre that houses a large variety of books, journals and grey material on issues related to its work. The library has remained and known to many as the flagship unit of the organization. It supports TRC work in literacy, leadership, conflict resolution, democracy education, human rights activism and community empowerment. The Centre also acts as a distribution point for book donation project that serves over 70 schools in the country. Library users include consultants, professionals, policy makers, researchers, academics, teachers and students availing them the opportunity to study in an atmosphere of calm and quiet for a small daily monthly and yearly subscription cost.

### Polihali Liaison Community Participation (PLCP)

The Polihali Liaison Community Participation programme sensitizes communities affected by Lesotho Highlands Water Project (LHWP) Phase 2 dam construction. It empowers communities to claim their rights and social justice through lobbying and advocacy strategies. TRC's major role is to address compensation and resettlement issues that affect Polihali Communities.

These efforts are made mainly to safeguard these communities, their compensation, and environment, pursue developments and hold developers accountable to commitments made to mitigate arising problems. The programme investigates the fulfilment of social impact assessments conducted or subcontracted by the developers during implementation of their projects.

The process of Polihali Dam construction entails a wide ranging problems that can result with permanent predicaments that involve;

1. Permanent displacement of settlements
2. Loss of land and natural resources
3. Limited access to water resources
4. Change of social infrastructure
5. Increased health risks
6. Drastic economic changes
7. Absence of development around the dam perimeters.
8. Low employment opportunities of community members

The programme provides capacity building for affected communities to claim their rights and demand complementary development initiatives from LHWP and government. The project seeks to help communities to re-establish themselves under changed conditions whilst it advocates fair and adequate compensation from the loss of their properties. It further initiates and monitors LHWP and community policy consultative engagements through discussions and involvement in decision making.

This is GEF Small Grants Programme – UNDP funded project which TRC and SOLD took initiative on range conservation, land reclamation and fodder production. This initiative falls under category community landscape conservation. Its main focus is capacity development of community based association of farmers on range management, agroforestry for land reclamation and production of fodder.

This is a complementary project that responds to the Polihali communities' catchment. It addresses the challenges that will be brought about by the construction of Lesotho Highlands Water Project (LHWP) dam, which will cause vast amount of rangeland to be inundated by water. Focus communities are Malubalube, Kanana and Popa which are exposed to the ecological challenges as ranges become ceaselessly damaged.

Additionally the project aims to empower communities and strengthen local initiatives in range management, land reclamation for fodder production through capacity building (training workshops and consultative meetings for local authorities (chiefs and councilors), farmers associations, range management committees and herd boys. Animal inventory for establishment of data base that will inform subsequent activities such as animal husbandry, periodic rotational grazing and selection of community range management committees.

The logo features a central graphic of two hands clasped together, with a vertical line passing through the center. Behind the hands is a stylized map of Lesotho, filled with vertical brown stripes. The entire graphic is enclosed within a large, white, eye-shaped oval. The word "Transformation" is written in a brown, sans-serif font, arching over the top of the oval. The words "Resource Centre" are written in the same font, arching under the bottom of the oval. The background of the entire page is a repeating pattern of small, stylized hands holding each other, set against a light brown grid.

# Transformation Resource Centre

## **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 223227910  
**Email:** [likopo.mokhele@trc.org.ls](mailto:likopo.mokhele@trc.org.ls)  
**Website:** <http://www.trc.org.ls>