DEMOCRACY AND POLITICAL GOVERNANCE IN LESOTHO: KEY ISSUES AND CHALLENGES

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1. **Introduction**

This study was commissioned by the APRM Secretariat in December 2005 and completed in January 2006. It forms part of a series of preliminary studies in preparation of the Background Paper for the Lesotho APRM process. The report focuses on democracy and political governance raising key issues highlighting best practice and outlining major challenges. There are other studies that have been commissioned dealing with economic governance and management; corporate governance and socio-economic development. Thus, in this report, we confine our discussion to issues of political governance. The Terms of Reference (TORs) for the assignment were as follows:

- Conduct desk research on democracy and political governance;
- Prepare the background paper for this thematic area;
- In developing the paper be guided by the Objectives for this thematic area as contained in the APRM Questionnaire;
- Highlight issues worthy of exploration during the APR Team country visit; and
- Highlight best practices and challenges for democracy and political governance.

Thus, this report is a culmination of desk research based upon existing information on democracy and political governance in Lesotho in the form of published works, official documents and internet sources. No interviews were undertaken, although the author made an effort to verify some information or facts with various well-placed individuals in Lesotho.

The report is structured as follows: first, this introductory section sets the stage for subsequent substantive discussions; second, Lesotho’s socio-economic context is presented and its implications for governance explored; third, a sketchy background to the APRM process is provided and we also introduce Lesotho’s early stages of the review; fourth, a fairly detailed discussion on Lesotho’s transition from authoritarian rule to a stable multiparty democracy is chronicled; fifth, the report then provides background information on the basis of the APRM Questionnaire. Specifically we address the nine objectives listed in the APRM Questionnaire under the “Democracy and Good Political Governance” namely:

- Prevention and reduction of intra- and inter-state conflict;
- Constitutional democracy and supremacy of the constitution;
- Promotion and protection of human rights;
- Separation of powers and rule of law;
- Effectiveness of the Public Service;
- Fighting corruption in the political sphere;
- Promotion and protection of the rights of women;
- Promotion and protection of the rights of children and young persons; and
- Promotion and protection of the rights of vulnerable groups.
Sixth, the report highlights best practice and lessons learnt in the Lesotho governance transformation since 1993 focusing on:

- Electoral system reform;
- Parliamentary reform;
- Security sector reform; and
- Local government reform.

Seventh and finally, the conclusion recaps the main observations and highlights the key challenges for the nurturing and consolidation of democracy.
2. Socio-Economic Context

Lesotho is a small country totally landlocked by South Africa. It has a land area of 30,355 Square Kilometres. Only 9% of the country’s land area is suitable for crop farming. The larger chunk of its land mass is mountain ranges and foothills suitable for livestock farming. The last Population Census of 1996 established the country’s total population at 1.96 million growing at an annual rate of 2.1 percent. The country’s population is currently estimated at about 2.2 million of which about 51 percent comprise the female population and about 49 percent males. According to a recent report by UN agencies resident in Lesotho, “Lesotho has a youthful population. This may have serious implications for age and economic dependency. About 36 percent of the household population is less than 15 years old; 58 percent is aged 15-64, while 6 percent 65 years or older” (UN, 2004:8).

2.1. Resource Endowment

Lesotho is one of the smallest and poorly endowed economies in the SADC region and is overwhelmingly dependent upon South Africa. Although agriculture is conventionally the fulcrum of economic productivity, it has been either in decline or stagnation due in part to the on-going drought which is dissipating household livelihoods especially in rural areas. While the agricultural sector has continuously experienced sluggish growth, stagnation or decline in productivity, opportunities for the accelerated industrial productivity exist. These are demonstrable by the recent considerable expansion of the export-led textile industry dominated by Asian investors and exploiting global market opportunities presented by the African Growth and Opportunities Act (AGOA). Under this arrangement, Lesotho’s textiles are allowed unfettered access into the US market. Consequently, in 2002, Lesotho recorded 40% increase in its commodity exports. While this export-led garment industry has been helpful in creating the needed jobs in a country whose unemployment rate is estimated at 40% and where the state is the biggest employer, it is worth noting that dependence on foot-loose Asian investors may not be sustainable. Once the preferential access of Lesotho textiles into the US markets assured by AGOA changes, inevitably, these Asian investors are bound to look elsewhere as was clearly demonstrated when some textile factories were closed in late 2004 while others failed to open in 2005.

The country has abundant water currently being exported to South Africa through the Lesotho Highlands Water Project (LHWP). Conventionally, a labour reserve economy, Lesotho has historically evolved as a dependent economy surviving upon three major external sources of revenue namely (a) the migrant remittances from the Basotho miners in South Africa; (b) dividends from the Southern African Customs Union (SACU); and (c) foreign aid from the industrialised countries.

All the three forms of resource flows have experienced declines in the past decade due mainly to the changing global and regional environment, particularly the ending of the Cold War and the demise of apartheid in South Africa. A considerable proportion of rural household income is derived from migrant remittances from Basotho miners employed in
South Africa. Basotho miners have experienced accelerated retrenchment since the 1990s with devastating social impacts on the survival of the rural households. According to the Central Bank of Lesotho, the number of Basotho migrant workers on the South Africa mines declined from about 113 000 in 1994 to 56 537 in 2004 (Mensah, 2001: 246; Central Bank of Lesotho, 2004:11; Central Bank of Lesotho, 2005:12).

2.2. Unemployment, Poverty & HIV/AIDS

Three most critical socio-economic challenges facing Lesotho today are unemployment, poverty and HIV/AIDS. Although the country is currently experiencing economic growth estimated at 3.4 per cent in real terms in 2001, due mainly to expansion of the manufacturing sector linked to the export opportunities presented by the Africa Growth and Opportunities Act (AGOA) of the United States of America, this economic growth has not reversed unemployment and poverty trends. Unemployment is estimated at 40% and poverty is more widespread among rural households as the table below illustrates.

<table>
<thead>
<tr>
<th>Region</th>
<th>% Poor</th>
<th>% Ultra-Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowlands</td>
<td>44</td>
<td>22</td>
</tr>
<tr>
<td>Foothills</td>
<td>56</td>
<td>29</td>
</tr>
<tr>
<td>Mountain</td>
<td>71</td>
<td>41</td>
</tr>
<tr>
<td>Senqu River Valley</td>
<td>62</td>
<td>36</td>
</tr>
<tr>
<td>Urban Maseru</td>
<td>28</td>
<td>14</td>
</tr>
<tr>
<td>Other Urban Areas</td>
<td>27</td>
<td>11</td>
</tr>
<tr>
<td><strong>Lesotho</strong></td>
<td><strong>49</strong></td>
<td><strong>26</strong></td>
</tr>
</tbody>
</table>


Thus, almost all development initiatives by the GOL, the private sector and the NGOs have begun to target poverty and unemployment. To this end, the GOL in liaison with the private sector and civil society organisations has evolved a fairly comprehensive Poverty Reduction Strategy Paper (PRSP) aimed at redressing poverty and generating employment. All in all, the proportion of the population living below the poverty datum line is estimated at 60% (UN, 2004:x). The causal linkages between poverty and HIV/AIDS cannot be overemphasised. According to the UNDP, “HIV/AIDS has drastically reduced household incomes for much of the population. This is due to illness and/or death, and a subsequent lowering in productivity of household members who fall ill. In addition, households have to divert scarce resources away from basic needs for expenditures on medicine, care and funerals. In turn, high levels of poverty and equality in Lesotho have made households, and indeed, the whole country, more vulnerable to the accelerating epidemic” (UN, 2004:x).

The HIV/AIDS epidemic represents not only a health crisis, but a serious development crisis. Although the first case of AIDS was reported in 1986, by 2001 about 25 000 cases of full-blown AIDS were reported by the UNAIDS in its latest report (2002). Table 3 below illustrates the scale and impact of HIV/AIDS in Lesotho as of the year 2001. The
HIV/AIDS prevalence rate among adults is estimated at around 31 percent (see Kimaryo et al., 2004) as demonstrated in the table below.

**Table 2: HIV/AIDS Incidence and Impact in Lesotho 2001**

<table>
<thead>
<tr>
<th>HIV/AIDS Impact</th>
<th>Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated No. of people living with HIV/AIDS (14-49 Years)</td>
<td>360 000</td>
</tr>
<tr>
<td>% of HIV/AIDS Adult prevalence rate (14-49 Years)</td>
<td>14.05%</td>
</tr>
<tr>
<td>Women living with HIV/AIDS (14-49 Years)</td>
<td>180 000</td>
</tr>
<tr>
<td>Children living with HIV/AIDS (0-14 Years)</td>
<td>27 000</td>
</tr>
<tr>
<td>AIDS Deaths</td>
<td>25 000</td>
</tr>
<tr>
<td>Children orphaned by HIV/AIDS</td>
<td>73 000</td>
</tr>
</tbody>
</table>

**Source:** UNAIDS, 2002

The draft PRSP incorporates the national AIDS strategic plan to be implemented by the Lesotho AIDS Programme Coordinating Authority (LAPCA) (GOL, 2002b). Additionally, with the assistance of the UNDP, the Lesotho government has developed a comprehensive strategy for scaling up a national response to the HIV/AIDS epidemic revolving around (a) prevention, (b) treatment, care support and (c) impact mitigation (see Kimaryo et al., 2004).

### 2.3. External Economic Relations

Lesotho is a member of the Southern African Customs Union (SACU)-the longest-enduring regional integration scheme in Southern Africa. There is abundant evidence suggesting that during the apartheid era, SACU was used by the racist regime in South Africa to ensure its economic exploitation of the neighbouring states (Botswana, Lesotho, Swaziland and together with the occupied Namibia). Hence it was that the implementation of 1969 SACU agreement was essentially tilted in favour of South Africa as a dominant power while the other countries lost out in terms of developing their own industrial bases. They were meant to remain labour reserves for South Africa rather than industrial competitors. Be that as it may, dividends emanating from SACU have come in handy for resource-poor Lesotho. Since the positive political changes in South Africa that witnessed the demise of apartheid and the onset of democratic rule in 1994, SACU has been undergoing restructuring. Renegotiation of the new SACU Agreement was concluded in 2002 and subsequently signed and ratified by all the five member states namely Botswana, Lesotho, Namibia, Swaziland and South Africa. The new agreement provides for:

i. a more democratic institutional structure;

ii. dispute settlement mechanism;

iii. requirement to have common policies on industrial development, agriculture, competition and unfair trade practices; and

iv. new system regarding the common revenue pool and revenue-sharing formula (Central Bank of Lesotho, 2003:7).
Lesotho has depended heavily upon foreign aid from the industrialised countries since its independence in 1966 through both bilateral and multilateral arrangements. Aid flows to the country during the 1960s-1980s were driven by the polarised ideological imperatives of Cold War politics and sheer sympathy of aid givers towards a small, impoverished country landlocked by apartheid South Africa. Thus, it could be argued that development assistance to Lesotho during the Cold War and apartheid was more a case of sympathy aid than real development aid, as it were. It is, therefore, not difficult to understand why most donors turned their back on the small kingdom immediately following collapse of the Cold War and the demise of apartheid (Gulliat and Matlosa, 1999). This is because the disappearance of the Cold War and apartheid diminished strategic and/or political significance for aid flows to Lesotho.

2.4. Implications for Governance

Three key issues emerge from the country’s socio-economic profile outlined above with grave implications for democracy and political governance. First, a small economy heavily dependent upon external resource flows runs the risk of its governance agenda being unduly influenced by powerful external forces. This may come in the form of, for instance, political conditionality of aid. This raises the challenge for both government and non-state actors in Lesotho to make sure that the country’s democracy and governance agenda is both home-grown and nationally owned by the domestic stakeholders even if it is fully supported by its external development partners.

Second, a small economy with a plethora of social ills (such as unemployment, poverty and HIV/AIDS) faces serious dilemmas while confronted with the twin challenges of democracy and development, both of which need enormous resources. Unfortunately, Lesotho’s agrarian and labour reserve economy does not have abundant resources. Can the Lesotho state, therefore, postpone democracy and pursue development first or vice-versa given the resource constraint? Alternatively, can the state afford to pursue both development and democracy in tandem despite the resource constraint? If so, how should the scarce resources be allocated and earmarked for each task? Scholarly debate in the governance literature on the interface between democracy and development suggests that it is prudent to pursue democracy and development simultaneously (see for instance, Ake, 1996; Ake, 2000; Landsberg, 2004; Matlosa, 2004).

It is now widely accepted that while authoritarianism may allow economic growth (as happened with the Asian Tigers in the 1980s), it is not conducive to socio-economic development. So countries like Lesotho should take heed of the need to pursue democracy and development simultaneously to avoid any possible slide into authoritarianism cloaked within the façade of developmentalism. With hindsight, it is now abundantly evident that when the first Prime Minister of Lesotho, Leabua Jonathan, ‘suspended’ politics after 1970s events arguing that it was divisive and what was needed was national unity for national development, the country (either by design or by default) postponed democracy in the name of development. Thus, developmentalism was conveniently invoked for purposes of institutionalising authoritarianism for sheer self-serving goals of the ruling political elites. The military regime of 1986-1993 had a similar
effect when politics and political parties were banned in Lesotho. The military elite reinforced the authoritarian tradition of the previous regime by postponing democracy and placating both domestic and international opinion on some flimsy proclamations of development, national unity and peace.

The ruling elite during the one-party rule and military dictatorship, therefore, made deliberate efforts to erroneously depoliticize and de-democratise development with immense cost for national unity and common national purpose (Weisfelder, 1999). We argue that democracy and development are crucial tasks for Lesotho and despite meager/paltry resources at the disposal of the state and both should be pursued with vigour and relentless determination. Scarce national resources should be supplemented by external support for the realization of development and democracy. It is encouraging that a number of Lesotho’s development partners have consistently provided some resources earmarked for sustainable human development and deepening democratic governance in particularly multilateral agencies such the United Nations Development Programme (UNDP), the European Union (EU) and the Commonwealth as well as the bilateral development partners such as the Development Cooperation of Ireland (DCI) and the United Stated International Development Agency (USAID).

Thirdly, various recent research and consultancy reports on Lesotho (see Kimaryo et al, 2004 in particular) have emphasised the enormity of the HIV/AIDS challenge for the country. While the socio-economic and health implications of the epidemic have been extensively documented, little appreciation of the governance implications of the epidemic still lingers on both in academic and policy circles in the country. This is not the case in Lesotho only; but evidence abounds suggesting, in fact, that in many Southern Africa countries, focus on the HIV/AIDS epidemic has tended to be on its socio-economic impact and less so on its political effects (see Strand et al, 2005). In a recent study that we conducted under the aegis of the Institute for Democracy in South Africa (IDASA) the following findings, among others, emerged in terms of the impact of the epidemic on governance:

- the HIV/AIDS epidemic erodes the institutional capacity of electoral management bodies and this may affect their capacity in managing elections;
- the epidemic also adversely affects leadership of some of the key governance institutions such as political parties and parliaments and this may prove a cost to democracy;
- the epidemic tends to be even more costly both financially and politically to countries operating the first-past-the-post (FPTP) electoral system compared to those that use the proportional representation (PR) system given that in the case of the former replacement of MPs requires by-elections while this is not the case for the PR system wherein a party list is used (Strand et al, 2005).

It is evident from the discussion above that deepening and consolidating democracy, while at the same time advancing socio-economic development is a daunting, albeit not insurmountable challenge, for Lesotho. Ostensibly, the political will to drive development and democracy among the political elite exists as demonstrated by the
recent commitment to a national vision that focuses their minds to a common national purpose. Lesotho’s Vision 2020, developed under the appropriate theme “Empowerment for Prosperity”, aims to establish:

- a stable democracy, a united nation, a nation at peace with itself and its neighbours, a healthy and well-developed human resource base, a strong economy and prosperous nation, a well-managed environment and a well-established technology (GOL, 2005).

Can Lesotho become a stable democracy, united and peaceful in the next fifteen years (i.e. in 2020)? Can initiatives such the African Peer Review Mechanism (APRM) assist the country towards achieving this vision? We may not answer these questions adequately, but we provide some pointers as to the prospects for the realisation of a stable Lesotho with sound institutionalised foundations for democratic governance, development and peace.
3. Background to APRM and Lesotho’s Preparatory Stages

The African Peer Review Mechanism (APRM) is one of the most innovative continental initiatives that form part and parcel of the New Partnership for Africa’s Development (NEPAD). It is worth noting that the essence of NEPAD, as a new development path of the continent, rotates around four main pillars namely:

- The Peace and Security Initiative;
- The Economic and Corporate Governance Initiative;
- The Sub-Regional and Regional Cooperation Initiative;
- The Human Resource Development Initiative;
- The Environment Initiative; and
- The Democracy and Political Governance Initiative (NEPAD, 2001).

The APRM process has a bearing on most, if not all of these pillars of NEPAD. It is directly linked to the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance which was officially adopted by the Assembly of the AU heads of State and Government held in Durban, South Africa in July 2002. Through this Declaration NEPAD member states have committed themselves to promoting democratic governance and its core values in particular:

- The rule of law;
- The equality of all citizens before the law and the liberty of the individual;
- Individual and collective freedoms, including the right to form and join political parties and trade unions, in conformity with the constitution;
- Equality of opportunity for all;
- The inalienable right of the individual to participate by means of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office; and
- Adherence to the separation of powers, including the protection of the independence of the judiciary and of an effective parliament (NEPAD Action Plans, 2002: 4).

The APRM is a voluntary self-assessment mechanism for African states aimed at institutionalizing and consolidating democratic governance. It is acceded to by AU member states with a view to “foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and enforcement of successful and best practice, including identification of deficiencies and assessing the needs for capacity building” (APRM Base Document, 2002). Participation in the APRM is open to all members of the African Union (AU) through notification of the Chairman of the NEPAD Head of State and Government Implementation Committee, Olusegun Obasanjo, president of Nigeria. A country that accedes to the APRM commits itself to be periodically reviewed in terms of its practice around four clusters of governance namely:
Democracy and Good Political Governance;
Economic Governance and Management;
Corporate Governance; and
Socio-economic Development.

Such a country is thus committing itself not just to a one-off review as the APRM is a continuous and periodic review that takes place every two to four years. Conversely, in some instances, participating NEPAD Heads of State and Government could be driven by signs of an impending socio-economic and/or political crisis/turmoil to call for a review in a given country “in a spirit of helpfulness to the government concerned” (NEPAD Action Plans, July 2002:10). In essence, therefore, there are four types of reviews namely:

- The first baseline review undertaken after eighteen months of the country acceding to APRM;
- A periodic review every two-four years thereafter;
- A member can also request, on its own accord, a review which is not part of the mandated reviews; and
- Early signs an impending political or economic crisis in a member country could also trigger a review which could be called by the participating Heads of State and Government (APRM Base Document, 2002).

The implementation of the review is coordinated by the Panel of Eminent Persons with administrative and logistical backstopping from the APRM Secretariat that is based at NEPAD Headquarters in Midrand, South Africa. So far twenty-three (23) countries have acceded to the MOU on APRM. These are Algeria, Burkina Faso, Cameroon, Republic of Congo, Ethiopia, Gabon, Ghana, Kenya, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Uganda, Egypt, Benin, Malawi, Lesotho, Tanzania, Angola and Sierra Leone.

In order to ensure the professionalism and integrity of the whole process, a Panel of Eminent Persons (or the APR Panel) has been set up. Deliberately drawn from all the five sub-regions of the African Union, the APRM Panel comprises the following:

- Mrs Marie-Angelique Savane from Senegal, West Africa
- Professor Adebayo Adedeji from Nigeria- West Africa;
- Ambassador Bethuel Kiplagat from Kenya- East Africa;
- Dr. Graca Machel from Mozambique- Southern Africa;
- Mr. Mourad Medelci from Algeria-North Africa;
- Dr. Dorothy Njeuma from Cameroon- Central Africa; and
- Dr. Chris Stals from South Africa- Southern Africa.

The main functions of the Panel of Eminent Persons are (a) to exercise oversight with respect to the APR process with a view to ensuring the independence, professionalism and integrity of that process; (b) to recommend appropriate African institutions or individuals to conduct technical assessment and country reviews; (c) to meet periodically
to review and make objective assessments of country review reports submitted to it by the APRM Secretariat; (d) to consider and approve recommendations contained in the country review reports submitted to it by the APRM Secretariat; and (e) to present to the participating Heads of State and Government all country review reports with recommendations for consideration and adoption (NEPAD Secretariat, October 2002:3).

There are five (5) stages through which the APRM process evolves.

### 3.1. Stage one: Preparation

This is the preparatory stage for both the country concerned and the APRM Secretariat. The country appoints the national focal point and coordinating structure(s). The government embarks upon a deliberate sensitization campaign in order to solicit broad citizen participation. The APRM Secretariat prepares the background documentation and dispatches the APRM Questionnaire that is in turn adapted to the local condition by the country concerned. The self-assessment process begins. This process should culminate in the following outputs:

- National Programme of Action prepared by the country;
- Background Paper prepared by the APRM Secretariat;
- The Issue Paper prepared from the National Programme of Action and the Background Paper.

### 3.2. Stage two: Country Review Visits

This stage of the APRM comprises country review visits. During this stage, the Country Review Team will visit a country under review with a view to carry out broad-based consultations with government, political parties, parliamentarians, representatives of the civil society organizations etc on the exercise. The country visits serve three main purposes namely:

- to provide the APR Team with the opportunity to interact with key governance stakeholders in the country;
- to allow the APR Team an opportunity to discuss the Draft National Programme of Action with relevant authorities; and
- to assist build consensus among key stakeholders on key issues and governance challenges for the country and how to address them (NEPAD Secretariat, 2002).

### 3.3. Stage Three: Review Team Report

During this stage, the Review Team prepares its report on the basis of its preliminary consultations undertaken and the findings of the background studies and the country’s Programme of Action. The report is discussed with government after which appropriate revisions are made. The response of the government is appended to the report. Specific focus is given to how the Programme of Action could be improved, highlighting best
practices and identifying deficiencies or challenges that would call for deliberate efforts towards capacity building for the nurturing and consolidation of democratic governance.

3.4. **Stage Four: Submission of the Report to the APR Panel**

In this stage the revised review report (Country Report) prepared by the Review Team is submitted by the APRM Secretariat to APR Panel. The APR Panel, in turn, considers the report and makes its recommendations to the APR Forum of the NEPAD Heads of State and Government Implementation Committee (HSGIC). The APR Forum considers the report together with the recommendations of the APR Panel. Then the Chairperson of the APR Forum communicates the decisions of the Forum to the Head of State or Government of the concerned country. The only two countries that have completed the APR process up to this stage, thus far, are Ghana and Rwanda whose Country Reports and National Action Plans were submitted to the APR Forum during its summit in Abuja in 2005.

3.5. **Stage Five: Submission of the Report to the HSGIC**

In this final stage, the HSGIC formally submits and tables the peer review reports (Country report and the National Action Plan) in key regional and sub-regional structures. These include key supranational structures such as the African Union (AU), Pan-African Parliament, The African Commission on Human and Peoples’ Rights, the Peace and Security Council and the Economic, Social and Cultural Council of the African Union and the Regional Economic Communities (RECs). This step completes the APRM process.

3.6. **Preparatory Stages of the Lesotho APRM Process**

Lesotho acceded to the African Peer Review Mechanism (APRM) on 24th August 2004. The country is currently in its preparatory stage of the APRM process planned for 2006/7. The Ministry of Foreign Affairs is the interim National Focal Point (NFP) for the Lesotho APRM process. The Ministry organised the first consultative workshop on the 5-6 October 2005 which was held at the Manthabiseng Convention Centre. The workshop was meant principally to raise awareness and deepen public understanding of NEPAD and the APRM. It involved about 125 participants, including government officials, civil society organisations, a representative of the APR Secretariat, MPs, political parties, private sector and labour, embassies and the donor community. The Task Team in charge of the workshop comprised Mr. Sehoai Santho, (the Workshop Facilitator & UNDP Consultant), two UNDP Governance specialists, namely Mr. N.S. Bereng and Mr. J. Viner and the Principal Secretary in the Ministry of Foreign Affairs, Mr. Thabang Lekhela.

The specific objectives of the workshop were:

- to discuss the NEPAD-APRM base documents, instruments and procedures in order to facilitate their implementation;
to reflect on experiences and lessons learnt from other countries that are in an advanced stage of the APRM process;

to prepare a report on the challenges of the APRM implementation in preparation for the Sixth Africa Governance Forum (AGF-VI);

to discuss the opportunities presented by the APRM process for Lesotho’s democratic governance; and

to enable the Ministry of Foreign Affairs, as the interim National Focal Point (NFP), to assess challenges of implementing the APRM after the AGF-VI (UNDP, 2005:3).

Following the consultative workshop and the AGF-VI scheduled for the 23-25 February 2006, in Kigali, Rwanda, the following steps are envisaged:

- Official launch of the APRM Process, through a national workshop to be opened by the Prime Minister, Mr. Pakalitha Mosisili;
- establishment of a representative multi-stakeholder National Commission (NC) to drive the process;
- the National Commission drives the awareness raising campaign and later the self-assessment;
- preparations for the funding of the APRM process with opportunities for cooperation with development partners;
- a time-table of the APRM activities is prepared in consultation with the APR Panel Member for the country and the APR Secretariat; and
- the role of the Ministry of Foreign Affairs as the National Focal Point is clarified and its capacity for the role is assessed (UNDP, 2005a:17).

The Lesotho APRM process will be led and guided by Dr. Chris Stals – a member of the APRM Panel of Eminent Persons- who also led the most successful APRM process in Ghana in 2005.

In the next section, we discuss political transition in Lesotho since 1966 to date. The idea is to sketch out the country’s post-colonial political development over time, identifying political change and how such change has had an impact on democracy and governance. In the process, we locate trends and dynamics that represent continuity and discontinuity in the country’s governance trajectories between 1966 and 2005.
4. Transition from authoritarianism to multiparty democracy

Lesotho’s contemporary political development has evolved through various types of transitions and social change over time. This is as it should be for society always undergoes change. No society ever remains static. It is no wonder, therefore, that various kaleidoscopic social changes in the country have also triggered different governance regimes. Put somewhat differently, each political change has tended to give birth to a particular governance regime type (either democratic or authoritarian). A closer examination of Lesotho’s contemporary political development suggests that one of the major problems for its governance has rotated around incessant political instability and perennial (especially violent) conflict. This then implies that for Lesotho to achieve the primary goal of Vision 2020 outlined earlier, the political elite needs to establish political stability and strive towards constructive management of conflict. Fortunately, the seeds of stability and constructive management of conflict were planted in 1999 with the resolution of the country’s violent conflict through the Interim Political Authority (IPA). Evidently, that negotiated settlement of Lesotho’s major violent conflict has paid political dividend particularly since the 2002 general election.

It is not our intention to provide a detailed blow-by-blow historical account of political transitions in Lesotho as this has been chronicled adequately by other authorities (see Khaketla, 1972; Bardill and Cobbe, 1985; Gill, 1993; Machobane, 1996; Weisfelder, 1999; Pule and Thabane, 2002). Instead, we provide a sketchy expose of how Lesotho has experienced transition from authoritarian rule to multiparty democracy that prevails today since its political independence of 1966. We propose that Lesotho’s post-independence political development has undergone five major phases. Each phase has been marked by a specific type of political trajectory that has influenced the nature of governance. These five phases of Lesotho’s political development are (a) the embryonic democracy of 1966-70; (b) de facto one-party rule of 1970-1986; (c) the military rule of 1986-1993; (d) fragile democracy spanning the period 1993-2002; and (e) a stable democracy since 2002 to date. It is to the significance of each one of these political epochs to Lesotho’s governance regime that we now turn.


Lesotho gained its political independence from Britain on 4 October 1966. This was the culmination of years of political agitation by various nationalist protest movements which evolved into modern political parties later (see Bardill and Cobbe, 1985; Pule and Thabane, 2002; Matlosa and Sello, 2005). Initially, the British colonial administration harboured the possibility of Lesotho becoming part of the 1910 Union of South Africa, but upon resistance to this idea by the political elite, Lesotho (then Basutoland) was granted political independence. Self-government was preceded by pre-independence election of 1965. Contested by four political parties namely the Basotho National Party (BNP), the Basutoland Congress Party (BCP) and the Marematlou Freedom Party (MFP) and the Marematlou Party (MTP), this was the first multiparty election in the country and the first expression of democratic choice for Basotho electorate, given that colonialism itself had no hallmarks of democracy. The election race was won by the BNP on a razor-
thin margin grabbing about 42 percent of the total votes which assured the party 31 out of a total of 60 parliamentary seats (see the table below). Close second to the BNP came the BCP (the party that popular opinion had suggested would win the race given that they had won the 1960 local government election on a fairly wide margin) with about 40 percent of the votes and securing 25 parliamentary seats. It thus came to pass that the BNP would form the first self-government in independent Lesotho. It also came to pass that from then to date, the major political actors that would command considerable influence on the nature and direction of Lesotho’s governance trajectories would be the BNP and various factions of the Congress Party itself as will become evident shortly.

Table 3: General Election for the National Assembly, 1965

<table>
<thead>
<tr>
<th>Contestants</th>
<th>No. of votes</th>
<th>% of votes</th>
<th>No. of seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNP</td>
<td>108 162</td>
<td>41.6</td>
<td>31</td>
</tr>
<tr>
<td>BCP</td>
<td>103 050</td>
<td>39.7</td>
<td>25</td>
</tr>
<tr>
<td>MFP</td>
<td>42 837</td>
<td>16.5</td>
<td>4</td>
</tr>
<tr>
<td>MTP</td>
<td>5 697</td>
<td>2.2</td>
<td>0</td>
</tr>
<tr>
<td>Indepts</td>
<td>79</td>
<td>0.03</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>259 825</strong></td>
<td><strong>100</strong></td>
<td><strong>60</strong></td>
</tr>
</tbody>
</table>

*Source: Macartney, 1973.*

During the period 1966 and 1970 Lesotho’s new-found democracy was in its infancy. The period was thus marked by an embryonic democracy. This was an embryonic democracy in the sense that it was a new political system under conditions of self-rule following British colonial domination, in which according to Bardill and Cobbe the Westminster constitution was under strain (1985:127). The system of governance had been inherited lock-stock-and-barrel from the British administration, but would not work the way it was intended given the peculiar political culture and the state of institutions which were supposed to anchor it. The state itself was not yet sufficiently formed; its key institutions were (and still are) weak; operations of state institutions relied heavily on external assistance, especially from apartheid South Africa (eg most advisors to the Prime Minister, including the economic advisor, were white South Africans). It thus goes without saying, therefore, that even democracy would hardly be institutionalised, nurtured, let alone consolidated during this early stage of Lesotho’s post-colonial condition.

Embryonic as it was then, Lesotho’s young democracy did not experience any major political turbulence and there were all signs that a multiparty democratic dispensation was surely in the offing. Thus, there was enormous optimism among keen observers of Lesotho’s political process that political independence and its immediate aftermath presented a golden opportunity for building firm foundations for democratic governance (see Khaketla, 1972). This optimism was further reinforced by the positive developments of the first five years of independence generally marked by legitimate and constitutional rule, political stability, rule of law and political tolerance. However, this positive beginning towards a democratic dispensation and the optimism that accompanied Lesotho’s embryonic democracy was ephemeral as the developments of 1970 would turn a different page of Lesotho’s post-colonial history.

The early signs of an embryonic multiparty democracy in the offing were shattered by the era of one-party dictatorship that was ushered by the events surrounding the 1970 general election and its aftermath. Suddenly, a country that seemed poised for a stable democratic dispensation took the route of authoritarian rule. This autocratic rule was marked by conflict and instability which further compromised the legitimacy of government and the credibility of the governance regime. This surely was a retrogressive step in terms of the evolution of Lesotho’s post-independence governance framework.

What factors explain this negative development which has cost Lesotho so much in terms of institutionalisation of democratic governance to date? Firstly, lack of a democratic political culture among political parties and the political elite created a conducive environment for authoritarian tendencies to develop within them especially the then ruling party. Second, weak governance institutions meant that democracy could not be sufficiently institutionalised as the only ‘game in town’, hence the BNP could not resist the temptation to resort to politics of repression, power centralisation and self-serving accommodation of some oppositional elements. Third, The BNP had won the 1965 election on a very slim margin and was perfectly aware of the popularity of the BCP. Given the confrontational nature of their relations, the BNP just could not conceive a situation of power alternance and handing over to the BCP. Fourth, a culture of acceptance of electoral results by defeated parties and allowing victorious parties to govern had not yet been sufficiently institutionalised. This is still a critical challenge for Lesotho’s democracy even today, in fact. Fifth, external influences in Lesotho’s politics (especially from conservative circles in the then apartheid South Africa and Britain) had their own un(fair) share of Lesotho’s political instability and slide into authoritarianism in 1970 within the context of the global ideological bi-polarity marked by the Cold War and apartheid’s regional foreign policy designs.

Lesotho held its first post-independence election in January 1970 which was interrupted by the ruling party mid-way sensing a possible defeat. Macartney refreshes our minds as follows:

*Early returns broadcast on the radio showed dramatic gains for the BNP in the Leribe district in the northwest, hitherto an opposition stronghold, but also the home ground of the influential Molapo family to which Chief Jonathan belongs. In accordance with instructions, the radio reported the results in pairs, one National Party for one Congress, although this meant holding up the broadcasting of some results favourable to the BCP close to the capital. Eventually the results were 'frozen' at twenty-three each. The remaining fourteen were never broadcast. (1973:484).*

Invoking political intimidation, national security and communist threat, the ruling party annulled the electoral process and declared itself still a legitimate government much to the chagrin of the BCP who were deemed the winners of the election. The 1970 election
was, therefore, to all intents and purposes, a serious political debacle that plunged
Lesotho into dictatorship and political instability. Although the official results of the
election were never officially announced, unofficial sources reveal that the outcome was,
as depicted in the table below, an overwhelming victory by the BCP.

Table 4: General Election for the National Assembly, 1970

<table>
<thead>
<tr>
<th>Contestants</th>
<th>No. of Votes</th>
<th>% of Votes</th>
<th>No. of Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>BCP</td>
<td>152 907</td>
<td>49.8</td>
<td>36</td>
</tr>
<tr>
<td>BNP</td>
<td>108 162</td>
<td>42.2</td>
<td>23</td>
</tr>
<tr>
<td>MFP</td>
<td>22 279</td>
<td>7.3</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>1 909</td>
<td>0.7</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>285257</strong></td>
<td><strong>100</strong></td>
<td><strong>60</strong></td>
</tr>
</tbody>
</table>

*Source: Macartney, 1973.*

Thus, the main opposition, the BCP, did not assume state power as the ruling party, the
BNP, entrenched a *de facto* one-party rule predicated upon politics of accommodation
and repression at the same time, principally aimed at fragmenting opposition parties and
sustaining BNP dominance. On the 31st January 1970, the Prime Minister, Leabua
Jonathan, and the leader of the BNP announced jubilantly that ‘I have seized power. I am
not ashamed of it. I may appear undemocratic, but I have most of the people behind me.’
(Macartney, 1973). Among the reasons advanced by the BNP to annul the electoral
process included: (a) alleged intimidation of voters by opposition parties; (b) the threat of
communism to Lesotho which is a Christian country; and (c) the irrelevance of the
Westminster constitution within the context of the local form of democracy.

The Constitution was suspended; the King was sent into exile in Holland; a *de facto* one-
party state emerged thereby displacing the embryonic multi-party political system of
1966; the judiciary was suspended; the Prime Minister declared a moratorium on politics
for five years; and bullets rather than ballots increasingly became the key medium of
political engagement among political actors. Repressive politics was a transparent ploy to
quell criticism and frustrate the opposition. It came to pass that Lesotho would know of
no democratic election, let alone democratic governance, until 1993 - some 23 years into
its post-colonial existence.

It is certainly to this era of *de facto* one-party rule that the roots of Lesotho’s major
governance problems can best be traced. This dark epoch in Lesotho’s political history
heralded the beginning of far-reaching political instability through various types of
violent conflict. The instability was marked by, among others, armed struggle waged
against the government by the armed wing of the BCP known as the Lesotho Liberation
Army (LLA) between the 1970s and 1980s (see Pule, 2002). As we indicated earlier, part
of Lesotho’s political instability was also fanned by larger politics of the Cold War and
apartheid’s regional strategic and foreign policy designs. For instance, while the Pretoria
regime supported Jonathan’s repressive regime, it also provided succour to the LLA in
what could be perceived as contradictory foreign policy stance.
However, Bardill and Cobbe reminds us that “Pretoria’s aim has not been the replacement of Jonathan by Mokhehle per se. Rather Pretoria is trying to force Jonathan’s government to withdraw its support to the ANC, to reverse its policy towards the Communist bloc, and to adopt a more favourable attitude towards South Africa’s homelands policy and proposal for a Constellation of Southern African States (CONSAS)” (1985:141). However, in yet another twist of irony, following an abortive election of 1985 in which the BNP considered itself elected unopposed as opposition parties boycotted the poll, the Jonathan regime collapsed. It was dislodged (barely a year after the abortive poll), not by the BCP, but by the military, with immense support from the Pretoria regime in 1986 (see Edgar, 1987; Edgar, 1990; Matlosa, 1998; Pule, 2002). The military dictatorship that ensued, was led by General Metsing Lekhanya, who after displacing the BNP regime in 1986, and later himself displaced by junior officers within the army in 1990, found his way back into the BNP and is currently the leader of the same party in parliament.

Pork-barrel and repressive politics of the BNP regime was replaced by politics of the barrel of the gun which further consolidated authoritarian rule between 1986 and 1993. Democracy seemed to continuously elude the mountain kingdom of Lesotho some two decades into self-government. For some eight years, the mountain kingdom became the military kingdom whereby the military ruled the country in collaboration with the monarchy as a junior partner in the alliance. In the process, the country’s political system sunk deeper in the sea of authoritarianism (Matlosa and Pule, 2001).

4.3. The Era of Military Dictatorship: 1986-1993

Pummelled by the internal faction-fighting within the party as well as domestic legitimacy crisis, emanating, in part, from its authoritarian governance regime and hemmed in by the external pressure due to declining external legitimacy, the BNP regime was dislodged by the military in 1986. Both internal and external factors for the 1986 military putsch in Lesotho have been elaborated in earlier works and need not detain us here (see Edgar, 1987; Edgar, 1989; Matlosa, 1998b; Machobane, 2001; Pule, 2002; Matlosa 2005). It should be emphasised, though, that the footprints of the apartheid regime were clearly visible from the drawing boards through the execution of the military coup. Thus, it came to pass that the de facto one-party rule would be followed by the epoch of military dictatorship between 1986 and 1993. Although the political culture of military rule has never been an entrenched feature of the political systems of Southern Africa as compared to those of West and Central Africa, it is interesting that only Lesotho experienced this extreme form of authoritarian governance. The security establishment upon which the BNP’s iron-fisted rule was predicated turned against the same party dislodging it from state power and grabbing power in its own accord. Needless to reiterate, this situation further entrenched authoritarian governance and moved Lesotho further and further away from democratic governance. The political landscape under the military regime was marked by the following:

- Military-monarchy alliance at the highest level of the state;
- Banning of party political activities through Order No. 4 of 1986;
Electoral politics remained suspended;
Worsening state of human rights;
Intensification of indiscipline and factionalism within the security forces; and
Greater influence of the Pretoria regime on Lesotho’s internal affairs for its own strategic interests.

Indeed, between 1970 and 1993, it seemed as if Lesotho’s governance problems were, by far, bigger than the size of the country itself. It is worth noting that, in a rather paradoxical fashion, the era of authoritarian rule of a military variety was the period that witnessed the mushrooming and vibrancy of the civil society organisations in Lesotho, albeit rather weak, fragmented and relatively disorganised to mount any meaningful political lobbying and advocacy for democratic governance and respect for human rights. However, despite their weaknesses civil society organisations played an important role, through the overall coordination of the Lesotho Council of Non-Governmental Organisations (LCN), in contributing to Lesotho’s historic return to multi-party democracy in 1993. It was in part due to civil society agitation that the military relinquished state power in 1993 thereby ushering a new political era in Lesotho.


The military dictatorship was followed by era of fragile democracy between 1993 and 2002 in which Lesotho’s political development witnessed the re-institutionalisation of multi-party democracy. Both external and internal factors drove this historic political transition. The key external factors included (a) the collapse of the Cold War; (b) donor pressure through the political conditionality of aid; and (c) the demise of apartheid in South Africa (see Matlosa 1997). The key internal factors included mainly civil society agitation for democracy and respect for human rights.

This new political development was ushered in by the first democratic election since the abortive one of 1970. The 1993 election delivered a landslide victory for the BCP and many observers interpreted this outcome as the ‘righting of the 1970 wrong’ when the BCP was denied its rightful claim to state power (Southall and Petlane, 1995). The BCP won 74.7 percent of the total votes and secured all the 65 parliamentary seats (see the table below). Despite the fact that it won 22.6 percent of the votes, the BNP did not get even a single seat in the legislature. This skewed distribution of parliamentary seats demonstrated, in part, the serious deficiencies of Lesotho’s first-past-the-post electoral model which has been inherited from the Britain as part of the Westminster constitutional arrangement.

Table 5: General Election for the National Assembly, 1993

<table>
<thead>
<tr>
<th>Contestants</th>
<th>No. of Votes</th>
<th>% of Votes</th>
<th>No. of Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>BCP</td>
<td>398 355</td>
<td>74.7</td>
<td>65</td>
</tr>
<tr>
<td>BNP</td>
<td>120 686</td>
<td>22.6</td>
<td>0</td>
</tr>
<tr>
<td>MFP</td>
<td>7 650</td>
<td>1.4</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>6 287</td>
<td>1.2</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>532 978</strong></td>
<td><strong>100</strong></td>
<td><strong>65</strong></td>
</tr>
</tbody>
</table>

Despite the excitement and enthusiasm that greeted the onset of multiparty democracy following decades of authoritarian rule of both civilian and military varieties, Lesotho’s democracy remained fragile and in many respects enfeebled. The fragility and enfeeblement of Lesotho’s new found democracy manifested mainly in political instability and violent conflict among key governance institutions:

- The monarchy;
- The executive;
- The legislature;
- The public service;
- Political parties;
- The army;
- The police.

In the end, the state was not only severely weakened, but was almost rendered both paralysed and dysfunctional. Lesotho’s young democracy immediately became a turbulent and conflict-ridden political experiment mainly due to three factors: (a) power struggle between and among the political elite (contestation over state power); (b) struggle over meagre resources whose access is facilitated more by control of the state machinery (resource conflict); and (c) personalization, rather than institutionalization, of the political process (personality cult syndrome).

Fragile because, although the transition to democracy was achieved, various forms of violent conflicts between and among key institutions had generated so much instability to the extent that the institutionalisation (let alone consolidation) of democracy was gravely threatened. Fragile though it was, with overt deficits, this was democratic governance all the same and surely a step in the right direction. The most encouraging signs of Lesotho’s democratic governance between 1993 and 2002 have clearly been the regular holding of general elections despite various types of election-related conflicts. Following the 1993 election, the second general election was held in 1998. In both elections citizen participation has been relatively high as illustrated by voter turn out of over 60%.

Given the serious problem of factionalism and faction-fighting within Lesotho’s political parties, they often suffer splits after splits. Thus, in 1997, the ruling BCP suffered a major split which in turn divided the then one-party parliament. Due to the split, a new party—the Lesotho Congress for Democracy (LCD) was established and led by BCP’s political icon, Ntsu Mokhehle, who was then the Prime Minister. Members of the newly formed LCD formed a majority in parliament and crossed the floor en masse. Given Lesotho’s British-style parliamentary democracy, this development was permissible constitutionally, although it left a very sour political taste. The BCP, which had won a general election overwhelmingly about 4 years earlier and thus formed the first democratic government following the military interregnum, was relegated to an opposition party by political fiat, through Mokhehle’s well-known Machiavellian politics which he had skilfully mastered since he founded the party in 1952. Thus, when the 1998 election took place, a new kid on the block had entered the political fray. The LCD took part in the race with its political muscle strengthened by two main advantages: (a) sheer popularity of its leader and the
then Prime Minister, Ntsu Mokhehle; and (b) control and strategic utilisation of state resources for political mileage in the race. It was, thus, to be expected that the LCD would win the election, but what was alarming was the extent of its victory as reflected in the table below.

**Table 6: General Election for the National Assembly, 1998**

<table>
<thead>
<tr>
<th>Contestants</th>
<th>No. of Votes</th>
<th>% of Votes</th>
<th>No. of Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCD</td>
<td>355 049</td>
<td>60.7</td>
<td>79</td>
</tr>
<tr>
<td>BNP</td>
<td>143 073</td>
<td>24.5</td>
<td>1</td>
</tr>
<tr>
<td>BCP</td>
<td>61 793</td>
<td>10.5</td>
<td>0</td>
</tr>
<tr>
<td>MFP</td>
<td>7 460</td>
<td>1.3</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>16 244</td>
<td>2.9</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>584 740</strong></td>
<td><strong>100</strong></td>
<td><strong>80</strong></td>
</tr>
</tbody>
</table>

*Source: Independent Electoral Commission (IEC), Provisional Results, May 27, 1998.*

Despite the fact that the 1998 election was proclaimed by many international observers as free and fair, it was almost immediately followed by the worst violent conflict in Lesotho’s history involving the government and some opposition parties including the BNP and BCP-an alliance that defied Lesotho’s historical/conventional political calculus by far. Opposition parties contested the election outcome, but it was evident that the split of the BCP and the establishment of the LCD had triggered a deep sense of bitterness within the ranks of the BCP. This bitterness presented the BNP with a golden opportunity to join forces with the BCP and challenge the election outcome. The conflict escalated into violence on a large scale and government sought military intervention from South Africa. South Africa, jointly with Botswana, intervened militarily and diplomatically to quell Lesotho’s political instability (Santho, 1998b; Matlosa 1999; Matlosa, 2001; Vale, 2003). The diplomatic front, involved, among others, negotiations involving belligerent parties aimed at initiating constitutional and electoral reforms.

### 4.5. The Era of Relatively Stable Democracy: 2002-to date

The current phase of Lesotho’s political development is marked by a relatively stable multiparty democracy. Key institutions of democracy are increasingly becoming vibrant, even if their capacity remains wanting. These include the three main arms of government (the executive, the legislature and the judiciary), political parties, civil society organisations, statutory watch-dog institutions such as the Independent Electoral Commission (IEC), the Auditor-General and the Ombudsman. The media (print and electronic) has also become more vibrant and continuously keeps government in check. Local government structures have been revamped and restructured in order to provide an organic linkage between central and local governance and development efforts. Although dogged by low voter turnout (less than 40%) the local government elections held in May 2005 represent a significant political transformation in Lesotho’s local governance.

Of crucial importance, this current era of Lesotho’s political development has been marked by prudent electoral and constitutional engineering triggered by political instability of 1993-1998. This political engineering culminated in electoral reforms of
2002 and the on-going parliamentary reforms that began in earnest in 2003 (Elklit, 2002). The constitutional and electoral reforms that were introduced by the government and the Interim Political Authority (IPA) introduced important changes to Lesotho’s electoral politics: (a) the first-past-the-post (FPTP) electoral system was replaced by the mixed member proportional (MMP) system; (b) the size of parliament was increased from 80 seats to 120; (c) of the total 120 seats, 80 are contested at constituency level and the remaining 40 are determined on the basis of proportional representation; (d) two separate ballot papers are used; one for election of constituency-based MPs and another for elections of parties; (e) for the purpose of election of party-based MPs, political parties are required to present their lists of candidates to the IEC and this list is used for allocation of seats; and (f) in case of replacement of an MP, this is done through a by-election in the case of the 80 constituency-based seats and through the pre-existing party list in the case of PR-based seats.

One of the most important outcomes of the Lesotho electoral reform was the extent to which it broadened representation of political parties in parliament and by extension broadening public opinion in the house. The table below indicates that Lesotho, for the first time in its political history, has a truly multiparty parliament. All the previous parliaments before the 2002 election had been, by and large, one-party legislatures with dire consequences for separation of powers, checks and balances and independence of the legislature.

Table 7: General Election for the National Assembly, 2002

<table>
<thead>
<tr>
<th>Main Parties</th>
<th>No.of Votes</th>
<th>% of Votes</th>
<th>No. of Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesotho Congress for Democracy</td>
<td>304 316</td>
<td>54.8</td>
<td>77</td>
</tr>
<tr>
<td>Basotho National Party</td>
<td>124 234</td>
<td>22.4</td>
<td>21</td>
</tr>
<tr>
<td>Basutoland African Congress</td>
<td>16 095</td>
<td>2.9</td>
<td>3</td>
</tr>
<tr>
<td>Basutoland Congress Party</td>
<td>14 584</td>
<td>2.7</td>
<td>3</td>
</tr>
<tr>
<td>Lesotho Peoples Congress</td>
<td>32 046</td>
<td>5.8</td>
<td>5</td>
</tr>
<tr>
<td>National Independence Party</td>
<td>30 346</td>
<td>5.5</td>
<td>5</td>
</tr>
<tr>
<td>Lesotho Workers Party</td>
<td>7 788</td>
<td>1.4</td>
<td>1</td>
</tr>
<tr>
<td>Marema-Tlou Freedom Party</td>
<td>6 890</td>
<td>1.2</td>
<td>1</td>
</tr>
<tr>
<td>Popular Front for Democracy</td>
<td>6 330</td>
<td>1.1</td>
<td>1</td>
</tr>
<tr>
<td>National Progressive Party</td>
<td>3 985</td>
<td>0.7</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>554 386</strong></td>
<td><strong>100.0</strong></td>
<td><strong>118</strong></td>
</tr>
</tbody>
</table>

Source: Independent Electoral Commission (IEC), Results of the 2002 General Election.

In sum, there is no doubt that today Lesotho is a relatively stable liberal democracy emerging, as it were, from the epochs of one party rule (1970-1986) and military dictatorship (1986-1993). The challenge facing the country is to consolidate the gains achieved through broadening the political space for various democracy actors to shape the country’s governance trajectory. The implementation of the key elements of National Vision 2020 would pay greater dividend in this regard. Political engineering ought to continue. The political reforms that have been instituted need to be further institutionalise. These include electoral reforms, security sector reforms, parliamentary reforms and local government reforms. Progress has been rather slow on the human rights
front, whereby the establishment of the National Human Rights Commission is still pending. However, it must be emphasised that, although a positive political development, reforms, on their own, are not adequate for the nurturing and consolidation of democracy. Reforms have to be accompanied by institutional strengthening of critical state and non-state institutions of governance so that they are effectively implemented. Besides strengthening institutions of governance, it is also imperative that democratic culture and practice is embraced and entrenched. This culture entails political representation, participation, accountability, human rights and rule of law. In this regard, the nature of relations between the state and civil society organisation becomes crucial. State and civil society organisations must play mutually reinforcing roles in the governance process even if they tend to differ on strategies and tactics.
5. Standards and Codes

5.1. International Instruments and Standards

Lesotho is a state party to numerous international conventions, declarations and treaties aimed at promoting democracy and protecting human rights. The major international human rights instruments are those developed by the United Nations which state parties are expected to internalise and domesticate by way of local legislation for purposes of implementation. These include, *inter alia*:

- The U.N. International Covenant on Civil and Political Rights (1966);
- The U.N. International Covenant on Economic, Social and Cultural Rights (1966);
- The U.N. International Convention on the Elimination of All Forms of Racial Discrimination (1966);
- Optional Protocol to the International Covenant on Civil and Political Rights (1966);
- The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (1979);
- The U.N. Convention Against Torture and Inhuman Treatment (1984); and

The table below depicts the international human rights instruments and Lesotho’s status in respect of each one of them. The only major international human rights instrument that Lesotho has not yet ratified is the Convention Against Torture and Inhuman Treatment and it is not clear to this author why the GOL has not yet ratified this instrument. The government of Lesotho argues that the convention against torture has not yet been ratified because the “instrument of ratification is being prepared” (GOL, 2000:8).

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Lesotho’s Status</th>
<th>Year of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Covenant on Civil and Political Rights, 1966</td>
<td>Ratified</td>
<td>9 December 1992</td>
</tr>
<tr>
<td>International Covenant on the Elimination of all forms of racial discrimination, 1966</td>
<td>Ratified</td>
<td>4 November 1971</td>
</tr>
<tr>
<td>Convention on the prevention and punishment of the crime of genocide, 1948</td>
<td>Ratified</td>
<td>n.d.</td>
</tr>
<tr>
<td>Convention on the Elimination of all forms of discrimination against women, 1979</td>
<td>Ratified</td>
<td>22 August 1995</td>
</tr>
<tr>
<td>Convention against torture and other cruel, inhuman and degrading treatment or punishment, 1984</td>
<td>Not Ratified</td>
<td></td>
</tr>
<tr>
<td>Convention relating to the status of refugees, 1951</td>
<td>Ratified</td>
<td>n.d.</td>
</tr>
</tbody>
</table>

5.2. **Regional Instruments and Standards**

Besides being a member state of the United Nations and thus obligated to respect those international conventions that it has signed/ratified, Lesotho is also a member state of continental/regional supra-national inter-governmental institutions including the African Union (AU) and the Southern African Development Community (SADC). These supra-national bodies have their own specific instruments and standards. Lesotho is a member-state of the New Partnership for Africa’s Development (NEPAD) and has embraced the 2001 NEPAD Framework document. Lesotho is a signatory to the Constitutive Act of the AU of 2000 and has committed itself to various OAU/AU conventions. Lesotho’s status with regard to major OAU/AU conventions is illustrated in the table below.

**Table 9: Lesotho’s Status in Respect of OAU/AU Conventions**

<table>
<thead>
<tr>
<th>Convention</th>
<th>Signature Date</th>
<th>Ratification Date</th>
<th>Deposit Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>OAU Refugee Convention</td>
<td>18-11-1988</td>
<td></td>
<td>30-12-1988</td>
</tr>
<tr>
<td>Cultural Charter for Africa</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AU Non-Aggression and Common Defence Pact</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Source**: African Union, Addis Ababa.

Lesotho is a state party to the 1992 SADC Treaty and is thus an active member of the Southern African Development Community (SADC). It is the current Chair of SADC since its Summit of Heads of State and Government held in Maseru in August 2006. It has also chaired both the Inter-State Defence and Security Committee (ISDSC) of SADC and the SADC Organ on Politics, Defence and Security (OPDS). Lesotho has committed itself to various SADC declarations, including 1997 SADC Declaration on Gender and Development and the 2004 Declaration on Principles and Guidelines Governing Democratic Elections.
6. A Guaranteed Framework of Equal Citizen Rights

6.1. Objective One: Prevention and reduction of intra- and inter-state conflict

Since the demise of apartheid in South Africa, Lesotho has not experienced violent inter-state conflicts. It is a member of various inter-state supranational bodies which, among other things, aim to secure peace and security. At the continental level Lesotho is member of the African Union (AU). It is worth noting that, in Article 4 of the Constitutive Act, the African Union (AU) commits Member States to the following principles, among others:

- Respect for democratic principles, human rights, the rule of law and good governance;
- Promotion of gender equality;
- Promotion of social justice to ensure balanced economic development;
- Respect for the sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism and subversive activities; and
- Condemnation and rejection of unconstitutional changes of governments.

Lesotho also ratified the AU declaration establishing the Peace and Security Council (PSC) in 2002 and has since 2004 seconded a military Attaché, Colonel Maaparankoe Mahao, to contribute to the AU peacekeeping and peace operation missions, including the establishment of the African Standby Force (ASF). At the regional level, Lesotho is an active member of the Southern African Development Community (SADC) and has chaired the SADC Interstate Security and Defence Committee (2002) and the SADC Organ on Politics, Defence and Security (2004). It has participated in various regional peacekeeping training operations organised through the Regional Peacekeeping Training Centre in Harare, Zimbabwe.

It is also fair to argue that in the recent past, Lesotho has not experienced major violent intra-state conflict. Following the transition from military rule to a multiparty democracy in 1993, there was evident optimism that Lesotho was poised for political stability. Although, a democratic dispensation emerged, the system did not become stable immediately. In January 1994 factions within the army locked horns in a violent conflict which, among other things, resulted in the assassination of the country’s Deputy Prime Minister, Mr Selometsi Baholo in April of the same year (see Makoa, 1998). Disturbances within the National Security Service (NSS) and the strike by the police in May/June 1994 over salary increase also contributed to a general climate of instability in Lesotho’s new-found democracy. Later on in February 1997, a mutiny ensued within the police force leading to a violent encounter between factions within the force including intervention by the army. The King dissolved the BCP government in August 1994 and instituted a short-lived six-person governing council which was headed by Mr. Hae Phoofolo. Both the military disturbances and the conflict between the head of state and his government were resolved through diplomatic intervention by South Africa, Botswana and Zimbabwe. This resulted in a memorandum of agreement signed in September 1994 which, among other things, recognized South Africa, Botswana and
Zimbabwe as the guarantors of Lesotho’s democracy on behalf of the Southern African Development Community (SADC). This arrangement still exists and in 1998, Mozambique was added to the list of guarantors of Lesotho’s democracy.

The most recent violent conflict that the country experienced with dire socio-economic and political consequences was linked to the 1998 general election. Following the 1998 election, Lesotho was engulfed in a major conflict, which did not only escalate into violence among belligerent parties, but, equally importantly, also involved military intervention by military forces from South Africa and Botswana (for details see, Santho, 1998a; Santho, 1998b; van Nieuwkerk, 1998; Mahao, 1998; Southall, 1998; Matlosa, 1998b; Matlosa, 1999; Matlosa 2001; Vale, 2003). External military intervention followed abortive internal and external efforts towards resolving the conflict through preventive diplomacy initiated by civil society and faith-based organisations. However, controversy still surrounds the efficacy of military solutions to political conflicts even if those conflicts turn violent, especially involving foreign powers. How much room was left for preventive diplomacy to play itself out in the process of conflict formation is also debatable. The justifiability of the military intervention within the internationally accepted principles enshrined in United Nations Charter has been found wanting.

6.1.1. Root Causes of the Conflict

The roots of the 1998 conflict are traceable to the country’s structural crisis and institutional paralysis (Matlosa, 1998a; Mahao, 1998; Santho, 1998; Matlosa, 1999). At the heart of all this is the intense contestation over state power whereupon the political elite perceives of the state as the key license to rapid accumulation. Political power is seen to open avenues for accelerated economic opportunities for a small coterie of the elite under conditions of paltry resource endowment and lack of a vibrant and productive private sector. Sehoai Santho (1998b) aptly sums up the critical elements of the 1998 political crisis in Lesotho as follows:

- Intense rivalry between the political elite over access to state power and resources in the context of poor resource endowment and declining economic condition;
- Structural youth unemployment and societal/political exclusion of the youth; and
- An electoral system, namely the first-past-the-post, that gives unfair advantage to a dominant party.

It is in this context that the political conflict emerged in Lesotho following the 1998 election whose outcome the opposition parties contested vehemently. The Basutoland Congress Party (BCP), Basotho National Party (BNP) and the Marematlou Freedom Party (MFP) disputed the landslide victory in the electoral race by the ruling Lesotho Congress for Democracy (LCD). The LCD had won 79 out of 80 parliamentary seats leaving one seat to the BNP. The protestation over the electoral outcome fed into the BCP’s political bitterness that the LCD had broken ranks with it and formed a government following the party split of 1997. Following the floor-crossing by members of the LCD, suddenly, the BCP had been turned into an opposition party yet it won the 1993 election. This was the first political episode of its kind in Lesotho’s political history.
Predictably, it generated an animosity which still persists between the BCP and the LCD. Thus, the challenge over the LCD election victory coalesced with the BCP’s political challenge of the legitimacy of the LCD regime following the 1997 split.

Protest action involving marches and demonstration by the opposition parties increasingly gravitated into violent encounters between the ruling party and the three opposition parties, which had already formed an alliance to dislodge the LCD even before the election. Initial internal and external efforts at a peaceful resolution of the conflict failed to bear fruit. Consequently, the government invited military intervention from Botswana, Mozambique, South Africa and Zimbabwe. Strategic interests (especially security of the Lesotho Highlands Water Project) prompted Nelson Mandela’s government of national unity to intervene promptly despite its public criticism of Zimbabwe’s military intervention in the Democratic Republic of Congo in the same year. Botswana joined South Africa in the military operation in Lesotho which was code-named Operation Boleas led by a high-ranking military commander of the SANDF. Ultimately, the Lesotho conflict was resolved through both military intervention and negotiation. External military intervention was meant to neutralize the army, which was seen to have pinned its sympathies with the opposition alliance. South Africa was in the driving seat of this component of the conflict resolution mechanism. The negotiation component was meant to hammer out a political settlement among the warring political elite. South Africa also brokered the negotiation process, through the then Minister of Safety and Security, Sydney Mufamadi. This was complemented by an investigation into allegations of electoral fraud/irregularities. This aspect was also executed under the stewardship of a prominent judge of the South African Constitutional Court, Justice Pius Langa, whose final report raised a furore in Lesotho’s political circles (see Matlosa, 1999; Matlosa, 2001).

6.1.2. Management of the Conflict

However, the resolution of the Lesotho conflict of 1998 was not a smooth sailing. While the external military force was withdrawn after some nine months, another contingent of about 300 Botswana and South Africa Soldiers was deployed under an exercise code-named Operation Maluti to assist in the security sector reform involving restructuring and re-training of the Lesotho army with financial assistance from the World Bank. The security component of the conflict was compounded by the extensive proliferation of small arms that accompanied the conflict. This proliferation of arms has fanned a spate of armed criminal offences, anonymous killings among members of the security establishment as well as a serious security threat to the general public. Anonymous killings were perpetrated with unparalleled impunity and some well-placed officers within the military and police became victims of these acts of criminality. For instance, a high-ranking police officer was assassinated in broad day-light at a public rally organised by the Prime Minister, Pakalitha Mosisili, in Botha-Bothe, one of the Northern districts of the country. Ostensibly, the instability within the police force was linked to the 1997 police mutiny which resulted in more 30 police officers being apprehended (see Makoa, 1998).
Following diplomatic involvement of South Africa and Mozambique as guarantors of Lesotho’s democracy, the settlement of the political dimension of the conflict saw the establishment of the Interim Political Authority (IPA) – a political structure comprising representatives of all parties that contested the 1998 election – which was charged with the task of preparing the political climate for a fresh election to be held in the year 2000. This was to be done through (a) a review of the Lesotho electoral model; (b) capacity building for the Independent Electoral Commission (IEC); and (c) building a conducive security climate. The IPA agreed on the adoption of the mixed member proportional system to replace the first-past-the-post electoral model.

6.1.3. Post-Conflict Reconstruction and Peace-Building

Reconstruction of Maseru and other Towns that had been set ablaze during the conflict began fairly slowly. To date, considerable progress has been made, although unemployment, poverty and HIV/AIDS continue to haunt the country. Joblessness means increased poverty. Increased poverty gets accentuated by the HIV/AIDS epidemic. External funding for reconstruction was secured from various donors including the World Bank and the UNDP. While domestic capital proved weak to make substantial amount of investment to accelerate the reconstruction process, foreign direct investment was not forthcoming in considerable sums due to political uncertainty. Many bilateral aid donors were also reluctant to pour adequate financial assistance until democratic stability in the country was firmly in place, sustainable and irreversible.

Lesotho’s NGO community, for the first time, began to take up the issue of conflict management very seriously. The Lesotho Network for Conflict Management (LNCM) engaged both state and non-state actors in issues of constructive resolution of conflicts and encouraged exhaustion of domestic conflict resolution mechanisms before external assistance is sought. The LNCM organised various stakeholder dialogue workshops for both the media (through the Media Institute of Lesotho) and the youth (through the Lesotho Youth Federation) on constructive conflict resolution strategies. This organization also worked closely with the IEC in setting up and operationalising conflict panels with technical backstopping from the Johannesburg-based Electoral Institute of Southern Africa (EISA) in advance of the 2002 general election. The LNCM further established a new partnership with the Ministry of Local Government to sensitise the rural communities together with the traditional leaders on the value of appreciating differences in opinion as one of the cardinal virtues of democratic local government.

In sum, the Lesotho conflict of 1998 did not only cost the country heavily in terms of human live lost, property damaged, but also lost jobs, thus accentuating unemployment and poverty. It is estimated that private and public property destroyed during the protests was about M160 million (UN, 2004:43). The rising spate of armed criminality became a serious cause for concern. It became evident that it was time for various state and non-state actors to set their collective mind on a broad national vision aimed at national unity, nation-building, rebuilding the economy and putting in place foundation for sustainable peace and democratic governance. The national vision would bring together the sectarian interests of Lesotho’s disparate political forces. These forces would, in turn, appreciate...
the fact that even if they disagree on a number of political issues, there are certain national concerns (national purpose) which ought to bind the nation. The political elite must learn to disagree aboard the boat without rocking it. This calls for a political culture of tolerance and living together as a nation even in the context of political diversity.

6.2. **Objective Two: Constitutional democracy and supremacy of the constitution**

Lesotho is a constitutional monarchy which operates a Westminster parliamentary system. The King is the hereditary Head of State, while the Prime Minister is the elected Head of Government. The division of labour between the King and the Prime Minister is not just a technocratic matter of statecraft, but a serious political issue reflecting bifurcation or dualism of the Lesotho governance process. Right from the macro-level of the Lesotho nation-state, through the meso-level of its ten (10) districts and down to the micro-level of a village, Lesotho’s governance regime is marked by dualism of traditional institutions of governance operating together with the modern governance regime through either harmonious or contradictory relations as illustrated elsewhere in this report.

The constitution guarantees protection and promotion of human rights of the citizens. Chapter II of the constitution elaborates the fundamental human rights that citizens are entitled to. It is worth noting, though, that during the era of authoritarianism of either the civilian (1970-1986) or military (1986-1993) type, Lesotho’s human rights record was poor. The country’s human record has improved considerably since the 1993 political transition to multiparty democracy and consequently, the country’s Freedom House ratings on Political Rights and Civil Liberties have also improved.

Besides the bill of rights, the constitution also provide for equal citizenship. In order to ensure that all citizens are treated equally before the law, the constitution defines citizenship in unequivocal terms in Chapter IV. Citizenship is acquired either by birth or naturalisation. Dual citizenship is not allowed. If a citizen, having attained the age of 21 years, acquires citizenship of another country, he/she ceases to be a Lesotho citizen.

The constitution identifies the key organs of the state and elaborates their main roles. These include the King (Chapter V); Parliament (Chapter VI); the Executive (Chapter VIII); the Judiciary (Chapter XI). We discuss the roles and functions of these institutions elsewhere in this report. Suffice only to emphasise the point that the executive arm of the state tends to over-extend itself in the governance process. Consequently, either by default or by design, the other arms of government, the parliament and the judiciary, are unduly influenced by the executive to the detriment of the principle of separation of powers. The UN agencies in Lesotho report that “it is a commonly held view that the executive, which holds a huge majority in parliament and monopolises policy formulation, continues to dominate the business of government in Lesotho” (2004:44).

Constitutional democracy further requires that watch-dog institutions are set up to ensure the accountability of state institutions as they execute their constitutionally defined roles. In Lesotho there are watch-dog or independent statutory bodies which reinforce the
institutional foundations of the country’s democracy. These include the Ombudsman, the Auditor-General; and the Independent Electoral Commission (IEC).

6.2.1. Ombudsman

The existence of the Office of the Ombudsman is provided for in Chapter XII of the Lesotho constitution. It is established by an act of parliament namely the Ombudsman Act no. 9 of 1996. The Ombudsman is appointed by the King upon advice by the Prime Minister. The staff members of the office (currently estimated at around 25) are appointed in accordance with rules and regulations governing the public service. It is an independent body which handles cases of malpractice in public institutions including investigation into cases of corruption. The current Ombudsman is Mr. Sekara Mafisa, a lawyer by profession and the former chairperson of the Independent Electoral Commission. In terms of the Ombudsman Act, there is supposed to be an Assistant Ombudsman, a position that remains vacant at present. The core mandate of the Ombudsman is to investigate allegations of administrative malpractices in the public sector, make reports and recommend remedial measures accordingly. The investigations revolve around

- Injustice, maladministration, corruption, unlawfulness, violation of fundamental rights or freedoms, general or particular dislocation of orderly administration in any specific authorities;
- Degradation, depletion, destruction or pollution of the natural resources, environment or the ecosystem (Section 7(6) of the Ombudsman Act, 1996).

The office has been investigating the grievances of the communities affected by the Lesotho Highlands Project and the state of Lesotho’s prisons.

That the Ombudsman is appointed by the King on the advice of the Prime Minister and its staff complement is appointed as part of the civil service may compromise its independence and autonomy. The independence of the Ombudsman Office should be assured, both in law and practice, in order to avoid possibilities of, even perceptions of, political patronage.

6.2.2. Auditor General

The Auditor-General is an independent institution established by Chapter XIII of the constitution. The Auditor-General is appointed by the King in accordance with the advice of the Prime Minister. Currently, Lesotho’s Auditor-General is Mr. Kenneth Hlasa-a Chartered Accountant by profession and a former senior lecturer at the National University of Lesotho, Department of Business Administration. The Office of Auditor General plays an important role in ensuring financial accountability of the government, working closely with the Ministry of Finance and the Public Accounts Committee of parliament. The Auditor General is required to audit government accounts at the end of every fiscal year. The requirement is that three months after the end of the financial year, the Ministry of Finance must hand over the final accounts to the AG for his perusal. Due
primarily to internal capacity the Auditor-General has not been consistent in discharging its duties and as a consequence the country has gone for years without audited public accounts.

6.2.3. The Independent Electoral Commission (IEC)

The IEC was established through Act No. 7 of 1997 (Second Amendment to the Constitution Act) as an independent body to manage elections. Prior to the establishment of the IEC, elections were managed by the Chief Electoral Officer who was a civil servant answerable directly to the government (Matlosa, 2002; Makoa, 2004). It is evident, therefore, that under those circumstances no elections would qualify as free and fair given that a ruling party would obviously play a double role of player and umpire at the same time. Hence it was that public perceptions of this office increasingly became negative and calls for a neutral body to manage elections with impartiality became stronger especially within civil society formations.

Consequently, the 1993 Constitution was amended to provide for the establishment of the Independent Electoral Commission (IEC) on 7 July 1997 - some nine months before the eventful 1998 election. Its main function is to supervise and administer all elections (parliamentary and local government elections) as well as referenda. Its specific tasks are:

- Boundary delimitation;
- Voter registration;
- Voter information and education;
- Registration of political parties for election purposes;
- Management of polls;
- Conducting referenda;
- Adjudicating election disputes; and
- Declaration of election results.

In order to try and insulate the commission from undue political influence, the law provides that “the electoral commission shall not, in the performance of its functions, be subject to the direction and/or control any person or authority”. Since 1997, Lesotho has had two electoral commissions. The first one (1997-2002) comprised Mr. Sekara Mafisa (chairperson), Mr. Moriee Khaebana and Mr. Lejaha Qhobela. This first IEC managed the 1998 general election. There is no gainsaying that since the introduction of the IEC, there has been a marked qualitative improvement in the management and credibility of elections, even if often the legitimacy of the electoral outcome is challenged by losing parties as happened in 1998. Following the political crisis of 1998, the IEC was restructured through the IPA process. Consequently, the new IEC was put in place and this new commission managed the 2002 general elections as well as the 2005 local government elections. The current IEC (2002-2006) comprises Mr. Leshele Thoahlanechairperson (former Executive Director of the African Capacity Building Foundation and Minister of Health); Mr. Mokhele Likate (former Registrar of the NUL) and Ms Limakatso Mokhothu (former governance advisor at the Ireland Aid). The IEC has
contributed immensely to the existing public confidence that the electorate has in the electoral processes and administrative procedures now in place.

6.2.4. Political Parties

A study conducted by this author jointly with Mr. Caleb Sello as part of the EISA regional project on consolidating democratic governance in the SADC region recognises the centrality of political parties to Lesotho’s democratic governance. We discovered that inter-party relations have improved quite considerably since 1993, although inter-party mutual mistrust still lingers on. Political parties still face numerous internal problems to become effective drivers of the democratic practice and culture in the country (Matlosa and Sello, 2005). We, therefore, recommended as follows:

6.2.4.1. Leadership
Part of the lack of internal stability within parties has had a lot to do with leadership squabbles and lack of intra-party democracy. It is recommended that parties take deliberate policy measures to institutionalise internal democracy.

6.2.4.2. Policy Development
Parties also do not have policy documents beyond the Constitution which provides policy guidelines. This problem tends to adversely affect these political parties in terms of their operations and public image. Parties should develop policy and programme documents that compliment their constitutions and from which manifestos are drawn.

6.2.4.3. Information gathering and dissemination
Parties have virtually no access to good quality political surveys and the reason is that there absolutely is no professional polling done in the country. Parties should begin to embrace a culture of assessing their political strengths through regular surveys especially around elections. They should also make concerted efforts to sustain production of their own newsletters both print and electronic.

6.2.4.4. Gender Equality
Parties were found to be weak on gender balance in their National Executive Committees (NEC) which are predominantly male dominated. Parties were also found to be weak in ensuring gender equality in the process of nomination of candidates for purposes of contesting general elections. Parties must enhance gender equality within their structures and their representation in parliament in line with the SADC benchmark above.

6.2.4.5. External Relations and Inter-Party Relations
Parties have no international affiliation of any sorts. Even locally, no party indicated any formal alliance or cooperation with other political parties in the country. It is imperative that parties develop international linkages that would be beneficial for their own work. It is also important that parties explore formal alliances or coalitions among themselves provided they share a common vision.
6.2.4.6. Membership and Recruitment
Although all maintain a membership register of one form or the other, the quality of the
register and the reliability of the membership figures differ from one party to another. For
parties to have a clear idea of their political strength especially when it comes to electoral
contests, they need to make sure that the register is as accurate as possible and the
register must be updated regularly both at branch, constituency and national levels.

6.2.4.7. Party Funding
One of the major resources that parties need is funding. There is no public funding of
political parties besides a meagre amount disbursed through the IEC to support their
political campaign during elections. One of the major challenges facing parties is lack of
public funding for their institutional development. Lesotho government must introduce
public funding for parties represented in parliament. Parties should qualify for this
funding on the basis of the number of seats they occupy in the national assembly.

6.3. Objective Three: Promotion and protection of human rights

The respect, promotion and observance of fundamental human rights form part of the
cardinal pillars of democratic governance. Undoubtedly, therefore, any assessment of the
state of democratic governance in any country has, of necessity, to probe into the state
and record of its human rights situation. This is precisely because human rights form part
and parcel of the basic tenets of democratic culture and practice. In common usage,
human rights refer to inalienable and indivisible rights that all human beings, all over the
world, are entitled to enjoy equally irrespective of racial, religious, ethnic, class and
gender differences. In upholding the human rights culture, states of the world abide by,
and are obliged by, international human rights instruments, which are domesticated into
national legislation and become part of national constitutions. The basic framework for a
human rights culture in all states of the world is the 1945 United Nations Universal
Declaration of Human Rights.

Conventionally, human rights are classified into three basic categories in order to
highlight both their distinctiveness and interconnectedness at the same time. Firstly, we
have first generation rights, which are mainly those rights that ensure civil and political
freedoms. Second, we have second-generation rights that ensure socio-economic and
cultural freedoms. Third and finally, we have third generation rights that ensure peoples’
freedoms to eke descent lives, live in a healthy environment and enjoy peace and
security. It is thus critical that the protection, respect and observance of human rights is
inextricably linked and intertwined to Sustainable Human Development (SHD). Thus,
civil society organisations have to play their rightful role as democracy and human rights
watch dogs by ensuring that not only do governments adhere to international instruments,
but also that by so adhering governments also improve the living standards of people as a
matter of human right.

As indicated earlier on, Lesotho has undergone various epochs in its political
development since independence and it is abundantly clear that during the one-party rule
(1970-86) and the military authoritarianism (1986-93) its human rights record left a lot to
be desired. It is only fair to observe that during the last two epochs of fragile democracy (1993-2002) and relatively stable multiparty democracy (2002-2005) prospects for the country’s human rights situation have looked fairly bright.

Given that Lesotho does not have an autonomous national human rights commission, much of the country’s human rights work is undertaken by the Human Rights Unit of the Ministry of Justice and Human rights in conformity with the country’s Constitution of 1993. Chapter II of the 1993 Constitution provides for protection of fundamental human rights and freedoms. These include, inter alia, the right to life; right to personal liberty; freedom of movement; freedom from inhuman treatment; freedom from slavery and forced labour; freedom from arbitrary search and entry; right to respect for private and family life; right to fair trial; freedom of conscience; freedom of expression; freedom of peaceful assembly; freedom of association; freedom from arbitrary seizure of property; freedom from discrimination; right to equality before the law and equal protection of the law; and right to participate in government.

Over the different epochs outlined above, there has been a discernible improvement of Lesotho’s human rights condition. The improving human rights situation in Lesotho is also reflected in the country’s Freedom House ratings. It is evident that both political rights and civil rights conditions have improved during the decade 1994-2004. The table below illustrates that in 1994, Lesotho was considered Partly Free with an overall rating of about 3.5. In 2004, the country’s Freedom House rating has improved to about 2.5 and, thus, the country is considered Free.

**Table 10: Freedom House Rating for Lesotho, 1994-2004**

<table>
<thead>
<tr>
<th>Year</th>
<th>Political Rights (PL)</th>
<th>Civil Liberties (CL)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>3</td>
<td>4</td>
<td>Partly Free</td>
</tr>
<tr>
<td>1995</td>
<td>4</td>
<td>4</td>
<td>Partly Free</td>
</tr>
<tr>
<td>1996</td>
<td>4</td>
<td>4</td>
<td>Partly Free</td>
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<td>1997</td>
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<td>Partly Free</td>
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<td>2002</td>
<td>4</td>
<td>4</td>
<td>Partly Free</td>
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<tr>
<td>2003</td>
<td>2</td>
<td>3</td>
<td>Free</td>
</tr>
<tr>
<td>2004</td>
<td>2</td>
<td>3</td>
<td>Free</td>
</tr>
</tbody>
</table>


While the country has made commendable progress towards embrace, promotion and protection of human rights, a gap still remains regarding the institutional framework for the consolidation of progress made thus far. That today, Lesotho has not yet established an independent Human Rights Commission, the idea to which government enlisted its support as far back as 1995, is serious indictment of either complacency or paying lip-service to international commitments by the political leadership. It is imperative that Lesotho establishes the Human Rights Commission as an independent watch-dog body to
institutionalise the promotion and protection human rights in conformity with international conventions and national laws. One of the most effective and efficient Human Rights Commissions in the SADC region is found in South Africa – Lesotho’s only neighbour. Lesotho need not go far in drawing lessons of institutionalising an effective and efficient Human Rights Commission, therefore, as the South African experience would surely come in handy in the process. Yet, another worrying trend today in Lesotho, which is bound to taint its human rights condition severely is the recent politically motivated violence. During the middle of 2006, an abortive attempt was made by yet unidentified individuals to assassinate the Minister of Foreign Affairs, Mr. Monyane Moleleki. In the latter part of the same year, the prominent member of the main opposition the Basotho National Party (BNP), Mr. Selala Sekhonyane, was gunned down and killed by yet unidentified individuals. In both cases, ostensibly, the violence was politically motivated. It should be noted that these incidence of violence taking place barely a year before the general election slated for mid-2007.

6.4. Objective Four: Separation of powers and rule of law

Separation of powers between and among key organs of government constitutes one of the cardinal pillars of constitutional governance and the rule of law. Simply defined rule of law presupposes governance in which the supremacy of the constitution is institutionalised and in which equality of citizens before the law is guaranteed. This section will deal mainly with the roles of organs of government in the context of Lesotho’s governance system highlighting their interrelationships. In the process, the degree of the separation of powers and the rule of law will become apparent. We focus on three main organs of the government namely (a) the Executive branch, (b) the Legislative branch and (c) the Judiciary. These institutions play a key role in the institutionalising and nurturing democratic governance. However, these institutions, on their own, cannot anchor and consolidate democratic governance adequately. Their efforts in nurturing and consolidating democratic governance have to be complemented (and counterbalanced) by other key actors including the political parties (see Matlosa and Sello, 2005) and civil society organizations. Historically, the military has played a counter-productive role to the country’s democratic governance process (Matlosa, 2005). Fortunately, since the recent past, the depoliticisation of the military and its professionalisation have accompanied the on-going security sector governance reform process as will become clear shortly.

6.4.1. The Executive

Executive authority in Lesotho is three-pronged. At its apex is the King in his capacity as the Constitutional Monarch and Head of State; there is also a body styled Council of State; and there is the Cabinet of Ministers. The King plays more of a unifying role for the nation and contributes to national strategic policy issues. The 15-member Council of State assists the King in his national duties. The Executive or Cabinet is headed by the Prime Minister (currently Mr. Phakalitha Mosisili) who is appointed by the King upon advice by the Council of State, provided that s/he is the leader of a political party or coalition of parties that constitutes the majority in the national assembly and commands
the requisite support of the house. The Prime Minister doubles as Minister of Defence and Minister of Public Service as well. On the advice of the Prime Minister, the King appoints ministers and assistant ministers from among members of both houses of parliament (namely National Assembly and Senate). One of the ministers is also appointed the Deputy Prime Minister (currently Mr Lesao Lehohla, Minister of Home Affairs and Public Safety). Currently, the Lesotho cabinet comprises twenty (18) ministers and four (4) assistant ministers.

The Executive is the highest decision-making and policy-making body in the running of the affairs of the state. Those decisions and policies are then translated into legislation by parliament. Such decisions, polices and laws affect governance at all levels, central government, local government and traditional governance institutions. The Executive organ is assisted, in its policy-making role, by the civil service or the bureaucracy, which man all the ministries and departments providing a vital technical back up for the politicians in Cabinet.

As policies are devised, the Prime Minister, as head of government, is required, by the constitution, to consult the King, as head of state. Often times, the roles of the head of government and head of state have been cause for various types of conflict in Lesotho with dire consequences for democracy and security in the country (Weisfelder, 1996; Machobane, 1999; Machobane, 2001; Matlosa, 1998; Matlosa 2001). The various conflicts that have marked the relationship between the head of government and the head of state reached an apex in Lesotho’s contemporary history when in 1994, King Letsie III temporarily dislodged a democratically elected BCP government and put in place an appointed six (6)-person government, a development which was reversed later in the year through pressure exerted by civil society organizations, the SADC states and the donor community (see Matlosa, 1995). Besides, the various types of conflicts that have marked the relations between the Prime Minister and King, the relationships among the key organs of the state have also not been a smooth affair mainly due to undue political interference of the Executive organ into the operational spheres of the Legislature and the Judiciary to the detriment of democratic governance. Thus, the domineering influence of the executive over other organs of the state tends to undermine separation of powers and constrains the principle of checks and balances central to the rule of law in a constitutional democracy.

6.4.2. The Legislative Branch

In Lesotho, the Legislature comprises two houses namely the National Assembly (Lower House) and the Senate (Upper House). The Lesotho Parliament is established by Chapter VI of the national constitution. At the pinnacle of Lesotho’s bi-cameral parliament sits the King, His Majesty Letsie III, who gives royal assent to approved bills that have passed through both houses. Structured along the lines of the British Westminster system, Lesotho’s legislature functions in such a way that the Lower House is the key law-making body whereas the Upper House plays a watchdog role over the former by scrutinizing and delaying bills. Their relationship therefore defines the checks and balances in the country’s law-making process.
The National Assembly comprises 120 elected MPs whose term is five years. It is headed by Madam Ntlhoi Motsamai who has been the Speaker of the House since 1998. She is assisted by the Deputy Speaker, Mr Sephiri Motanyane. The overall administration of the National Assembly is the responsibility of the Clerk of Parliament, (currently Mr. MatlamuKele Matate). The Speaker and Deputy Speaker are elected by MPs from among themselves or from outside the House.

Of the total of 120 MPs, 80 represent specific constituencies as they were elected on the basis of the First-Past-The-Post (FPTP) electoral system, while 40 were elected on the basis of the party-list Proportional Representation (PR) system and as such do not represent any specific constituency, but rather their own parties. This is a new development in Lesotho occasioned by a recent electoral reform exercise, which replaced the British FPTP and put in place a new electoral system known as the Mixed Member Proportional (MMP) system in 2002.

One of the key functions of the legislature is to oversee the policy-making role of the executive and play a role of constructive criticism in order to ensure accountability and transparency in the running of national affairs. The National Assembly operates through two types of committees (a) Select Committees (which are created for a specific task and dissolved thereafter) and (b) Sessional Select Committees which are permanent structures defined in the Standing Orders and appointed at the beginning of each new session of parliament. Currently the national assembly operates on the basis of seven sessional select committees. These are:

- The Business Committee responsible for the business of parliament;
- The House Committee responsible for the welfare of the MPs;
- The Committee on Standing Orders responsible for rules, regulations and procedures of the house (chaired by the Speaker);
- The Public Accounts Committee responsible for parliamentary oversight over the national budget and government’s public expenditure (chaired by an opposition MP);
- Staff Committee responsible for the employment conditions and welfare of the staff of the house;
- Committee of Privileges responsible for investigating complaints of breach of privilege and contempt against the House and its members and staff; and
- The Committee on HIV/AIDS responsible for facilitating parliamentary advocacy, debates and discussion on HIV/AIDS epidemic.

The Upper House or Senate is made up of twenty-two (22) hereditary Principal Chiefs and eleven (11) members nominated by the King on the advice of the Prime Minister. Its life-span is coterminous to that of the National Assembly (i.e. five years). The Senate is led by a President of the House (currently Chief Sempe Lejaha). He is assisted in his duties by the Vice-President (currently Chief Latapata Makhola). Both the President and Deputy President of the Senate are elected by members of the House from among themselves or outside the house. The administration of the Upper House is the
responsibility of the Clerk of the Senate (currently Mr Makhabane Maluke). The main function of the Senate is to scrutinize and delay bills from the national assembly a process that conforms to the principle of checks and balances. Like the national assembly, the senate also operates on the basis of committees. These are:

- The Business Committee in charge of the business of the senate;
- The Senate Amenities Committee responsible for the comfort and convenience of senators;
- Standing Orders and Staff committee responsible for rules, regulations, procedures and staff matters (chaired by the President of the House);
- HIV/AIDS Committee aimed at facilitating debate on HIV/AIDS in the House.

Lesotho’s bicameralism presents the country with a number of challenges for governance as follows:

- Often the political conflict between the government and the monarchy tends to polarise the legislature with the National Assembly supporting the government and the Senate on the side of the monarchy;
- While the legislature as a whole is supposed to hold the executive accountable, internally, the Senate plays a role of holding the National Assembly accountable through a critical review of draft bills;
- Concerns tend to arise when ministers get appointed, on the advice of the Prime Minister, through Senate and not directly from the National Assembly. A perception is thus created that elected MPs are by-passed in the creation of the cabinet and preference is given to appointed individuals using the Senate as a conduit;
- There is also a perception that the National Assembly has more political legitimacy than the Senate given that the lower house is an elected house while upper house is an appointed house. This brings into sharp relief contradictions between hereditary traditional and elected modern institutions of governance.

The Lesotho legislature is currently undergoing seemingly far-reaching reforms that are likely to change the way the parliament (especially the National Assembly) has been doing its work (details later). The extent to which the parliamentary reforms will address the above challenges still remains a moot point.

6.4.3. The Judiciary

The Judiciary is the organ of the state responsible for interpretation of the law and adjudication of justice in line with the Constitution and relevant pieces of legislation governing the country. Given the dualistic nature Lesotho’s legal and governance system, its judiciary is also bifurcated along the modern-traditional dichotomy. Common law co-exists with customary law in Lesotho’s justice system and while this is indeed desirable, at times conflicts between the systems arise and often to the detriment of aggrieved citizens. The structure of Lesotho’s judiciary system is as follows: at the top of the system is the Court of Appeal followed by the High Court, Magistrate Courts, Local
(traditional/customary) Courts. There is special court dedicated to handling labour dispute cases in the form of the Labour Court. There is no constitutional court. The Appeal Court acts as the Constitutional Court. There is no electoral court. The Independent Electoral Commission (IEC) addresses election-related disputes. If they are not sufficiently dealt with by the IEC, they are taken through the court system. Given the backlog of cases and delays in the delivery of justice, it is imperative that Lesotho considers establishing the constitutional court to deal mainly with constitutional law cases. It is also imperative that Lesotho establishes the electoral court to assist the IEC expedite settlement of election-related disputes.

The judiciary is headed by the Chief Justice (Currently Justice Lehohla). Judges of high standing head both the High Court and Court of Appeals. The Judiciary can perform its core functions more effectively if it is rid of undue interference from the Executive organ of the state. In fact, the major problem that has often hindered checks and balances among Lesotho’s three main organs of the state is the Executive’s political interference in both the Judiciary and Legislature, which development tends to undermine democratic governance to a considerable degree. In respect to the Executive interference in the Judiciary, issues have often been raised about the extent to which appointment of judges is premised upon meritocracy or political considerations. Obviously, the overbearing influence of the Executive over the Judiciary tends to compromise the independence of the latter.

6.4.4. Civil Control over the Military

Much of the current debate on civil military relation revolves around two main themes (a) the role of the military in a democracy; and (b) the impact of security sector reforms on the democratization process. These debate, that pervade both academic and policy making circles, have also informed current transformations within the Lesotho military. Whereas, there is a general consensus in the democracy literature on the commendable progress Lesotho has made in terms of democratic transition in the early 1990s, serious questioning still remains regarding prospects for the nurturing and consolidation of the country’s new found democracy. Various scholars have raised issues around perceived democracy deficits that could threaten the progress already made thus far and reverse the gains achieved to date. It is no exaggeration to observe that one of the key challenges for the nurturing and consolidation of democracy in Lesotho clearly revolves around civil control of the military.

6.4.4.1. Establishment of the Modern Army

In 1966, when Lesotho gained its political independence, it inherited Westminster constitutional and institutional arrangements and strove to establish a modern army. Hence, the modern army was bequeathed by the British colonial power and was indeed built by the British personnel with considerable succour from the neighbouring South Africa. Initially, the army evolved as a paramilitary police styled the Police Mobile Unit (PMU) in the 1960s, transformed into a paramilitary force styled Lesotho Paramilitary Force (LPF) in 1980 and subsequently elevated to a defence force proper later in the 1980s when it assumed the status of the Royal Lesotho Defence Force (RLDF) and
It is currently the Lesotho Defence Force (LDF). It is worth noting that the above changes or transformations of the military in Lesotho were not just mere changes in name, but rather a profound metamorphosis of the military from its infancy in the 1960s up to its present professional status. These changes were also informed by interesting changes too in terms of the governance arrangements of the military in Lesotho. Since the transition from military rule to a multiparty democracy, it is abundantly clear that never again can the military assume state power in its own right as it did in 1986. This is, in part, because a professional culture within and civil control over the forces has now taken root.

6.4.5. **Constitutional and Legal Framework**

The Lesotho Defence Force is established by Article 146 of the 1993 constitution as amended which states that “there shall be a Defence force for the maintenance of internal security and the defence of Lesotho”. Although the head of government still remains the commander-in-chief of the forces, the actual command is vested in the Commander who is appointed by the King on the advice of the Prime Minister. On the 29th March 1996, the Prime Minister as the Minister of Defence and Internal Security introduced a bill in parliament which amended the 1993 Lesotho constitution with the sole purpose of providing more effective and efficient governance machinery for the LDF. Thus, Section 146 of the Constitution was amended accordingly. The basic essentials of the amendment are that (a) the Prime Minister, as the elected head of government, has powers to determine the operational use of the LDF; (b) powers of command of the LDF is vested in the Commander; and (c) the appointment and removal of the Commander of the LDF rests with the King as head of state and the constitutional monarch, acting on advice of the Prime Minister, the head of government. Thus, it should be noted that there are basically three (3) main key actors in the governance of the military in Lesotho namely:

- The King as head of the state and constitutional monarch;
- The Prime Minister as head of government and Minister of Defence; and
- The Commander as head of the defence force.

The above constitutional arrangements are buttressed by an enabling legislation that further streamlines the governance of the military in line with the evolving democratic dispensation in the country. A Defence Force Act was enacted by parliament in 1996 aimed at providing the structure, organization and administration as well as disciple for the forces and matters incident thereto. The Act is consistent with the overall constitutional provisions as outlined above. However, the Act clarifies further command, control and administration of the LDF and defines the role of the Commander much more clearly. The Commander determines and implements such measures that he considers necessary for:

- Command and control;
- Maintenance of proper discipline;
- Improvement or simplification of organization, methods, and procedures; and
- Securing the most economic and efficient utilization of the resources provided for the maintenance of the Defence Force.
The Commander thus is accountable to and reports regularly to the Prime Minister and Minister of Defence on matters under his jurisdiction both on operational and policy issues relating to the defence force.

6.4.6. **Role and Position of Civil Society in governance**

The critical role of civil society formations in governance and development is widely accepted. It is thus crucial that NGOs, who form part and parcel of civil society, recognise this reality and live up to the expectations of their constituencies in discharging their duties in both governance and development arenas. Civil society organisations should claim their rightful space in the law-making, policy-making and policy implementation by government ministries and departments. They should do this through lobby and advocacy campaigns. Civil society engagement with the entire governance process from the national level to the community level through community-based organisations surely enhances citizen participation in a working democracy. The imperative for popular participation in the governance process should also be the concern of government too. It is important that government proactively engages civil society and community-based organisations in key decision-making, policy formulation and implementation processes with a view to institutionalise democratic governance and ensure meaningful people-centred development. The civil society community plays three major roles in the governance process.

First, it provides a counterweight to government use or abuse of power; in other words it is a critical watchdog for government action and behaviour. Second, it is also a reservoir of critical human, technological, material resources for governance hence a key partner for government. Third, given its proximity to the people who are voters of any sitting government, civil society has the requisite muscle to influence immensely the composition and longevity of governments, although as interest groups, NGOs do not harbour political ambitions of controlling state power in their own behalf (Mohiddin, 2002:37). It is within this general framework of the centrality of civil society in the governance process that we assess the institutional capacity of Lesotho’s democracy and human rights NGOs.

Democracy and human rights NGOs in Lesotho are a fairly recent phenomenon. The fact that democracy and human rights NGOs emerged only a few years ago suggests that much more still has to be done in order to enhance the institutional capacity of these NGOs and make them more effective in achieving their set objectives. This is the key challenge confronting the NGO umbrella body-Lesotho Council of Non-Governmental Organisations (LCN)-and the individual NGOs themselves today. A majority of democracy and human rights NGOs in Lesotho, including the LCN itself, were established between the 1980s and the 1990s. Thus, Lesotho’s democracy and human rights NGOs emerged during the era of military authoritarianism. This suggests then that the military repression, which had banished party political activity, by default, gave impetus to other types of social mobilisation namely civil society organisation to fill the void left by the banned political parties.
Not only have civil society organisations become actively involved in the democratic process in Lesotho as well as promoting a human rights culture, but they have also become key stakeholders in election management and administration. Elections form an important (but surely not the only) ingredient of a working democracy. Elections assist the electorate to choose public representatives to run national affairs on their own behalf at both local and national levels. Thus, since Lesotho’s transition to multiparty democracy in 1993, NGOs have played a vital role in the management and administration of elections by complementing the central role played by the Independent Electoral Commission (IEC). The role of NGOs in relation to election in Lesotho is generally coordinated by the LCN through its democracy and human rights commission. Generally, this includes the following:

- Voter information;
- Voter education;
- Civic education;
- National dialogue forums;
- Election-related conflict management;
- Electoral reform; and
- Election monitoring.

To the credit of the LCN and the individual Democracy and Human Rights NGOs, through the Democracy and Human Rights Commission, civil society in Lesotho has played these roles fairly effectively during the 1993, 1998 and 2002 general elections. It is worth noting that in preparation for the 2002 election, the LCN and individual NGOs were effectively represented in the eight IEC consultative committees (see the table below) that had been set up.

Table 11: The IEC Consultative Committees and their Responsibilities

<table>
<thead>
<tr>
<th>Committees</th>
<th>Area(s) of Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Election Coordination Committee</td>
<td>General electoral matters from other committees or as indicated by the committee for action of other committees, the commission or staff</td>
</tr>
<tr>
<td>Civic and Voter Education Committee</td>
<td>Civic and voter education</td>
</tr>
<tr>
<td>Logistics Committee</td>
<td>Electoral and referenda logistics</td>
</tr>
<tr>
<td>Law Committee</td>
<td>Legal and statutory</td>
</tr>
<tr>
<td>Data Management Committee</td>
<td>Voter registration and information technology in general</td>
</tr>
<tr>
<td>Security Liaison Committee</td>
<td>Electoral and referenda security</td>
</tr>
<tr>
<td>Conflict Management Committee</td>
<td>Control of electoral conflict and monitoring of observance of the code of conduct</td>
</tr>
<tr>
<td>Media Liaison Committee</td>
<td>All dealings with the media and issuance of media statements by the electoral stakeholders</td>
</tr>
</tbody>
</table>

Source: IEC, 2002:13
It is thus important to note that despite its own internal problems, Lesotho’s emergent democracy is broadly participatory to the extent that key governmental institutions cooperate effectively with civil society organizations especially in the realm of election management and administration.

However, civil society organisations have raised critical issues aimed at deepening Lesotho’s democracy. Of particular importance for this study is the fact that NGOs are calling for not only institutional strengthening of the watch-dog democracy bodies, but for their autonomy and independence. Firstly, civil society organisations have called for the establishment of an independent Human Rights Commission to champion and protect human rights of the citizens. Second, civil society organisations advocate for the autonomy and independence of the Directorate of Economic Offences and Corruption and the Ombudsman as well as the enhancement of their institutional capacity. Third, civil society has called for institutional effectiveness of the Auditor-General to ensure prudent public finance management and public accountability of government in respect of the utilisation of the national budget. Fourth, civil society organisations have called for an institutionalised system of separation of powers. In particular the independence of the judiciary and the legislature from the executive is emphasised. The executive must be held accountable by the legislature in order to ensure the rule of law and build firm foundations for an effective separation of powers mechanism.

6.4.7. The Media

Freedom of expression is one of the fundamental rights enshrined within Lesotho’s 1993 Constitution. It is within the framework of freedom of expression that the media plays its role of informing and educating the public as well as holding the ruler accountable. The media therefore is one of the crucial indicators of the scope and depth of Lesotho’s democratisation process. There are both private and public media. All media are registered with the Law Office and governed by relevant legislation and a specific media policy. Electronic media comprises Lesotho television (known as TV-Lesotho) and Radio. TV-Lesotho is a state-run media and to that extent tends to be used mainly by the government to showcase its policies and their implementation. There are currently a plethora of radio stations in the country—a positive sign that indicates pluralism of the media and freedom of speech. Since 1998, about four new private radio stations have been established. These include Mo-Afrika Radio, Roman Catholic Church Radio, Joy Radio and Peoples Choice Radio. Patrick Mohlalefi Bereng of the National University of Lesotho rightly observes that it is since 1998 that “government took steps to free the airwaves and allow a multiplicity of voice to be heard” (2001:1). However, the pluralism and liberalisation of the media notwithstanding, many private radio stations have a limited reach and listenership outside the urban areas such as Maseru. Only the state-run Radio Lesotho has a coverage throughout the country and tends to be the main medium of information for the rural folk in particular.

The print media comprises mainly newspapers. Again, there are both private and public newspapers. Most private newspapers are owned by the churches, political parties or
companies/individuals. The major church-based newspapers that have been extremely influential over the years are Leselinyana La Basotho owned and run by the Lesotho Evangelical Church (LEC) and Moeletsi oa Basotho owned and run by the Roman Catholic Church (RCC). Both newspapers are published in Sesotho and have a national reach and coverage. Historically, these two newspapers have influenced developments in Lesotho and for a long time dominated the media sector.

Political parties have a varied record of running their own newspapers as they come and go depending upon the availability of resources. Most party-owned newspapers tend to mushroom around election periods and fizzle off thereafter. These include the following:

- Basotho National Party (BNP)’s Mohlanka;
- Lesotho Peoples’Congress (LPC)’s Kutung Ea Afrika;
- Basutoland Congress Party (BCP)’s Makatolle; and
- Popular Front for Democracy (PFD)’s Mafube newspaper;

Lack of public funding of political parties exacerbates their predicament in sustaining their news bulletins beyond electioneering periods. Only the ruling party is able to produce its newspaper, Mololi, given its favourable resource endowment. Besides running its own paper, the ruling party is also privileged by using government-owned newspapers published in both English and Sesotho namely Lesotho Today and Lentsoe La Basotho respectively. Thus the fusion between state and the ruling party becomes quite evident in the use of the public media including TV, Radio and Newspapers. This political advantage is exploited to the maximum by the ruling party during elections as it uses public resources to gain mileage. That is why one of the common complaints of opposition parties around elections is always lack of adequate access to the public media (especially TV, Radio and newspapers).

Since the recent past, the most dynamic print media is surely the privately-owned one especially newspapers including Public Eye, The Mirror, Mopheme-The Survivor, Mo-Afrika, Mohahlula, Our Times etc. The regional Media Institute of Southern Africa (MISA) also has a local Chapter in Lesotho in the form of the Media Institute of Lesotho (MILES) which coordinates most of the independent media outlets. Much is expected from the private media as it is regarded as independent and well-placed, therefore, to raise critical questions regarding, for instance, democratic governance in the country. It is expected to play a watch-dog role by constantly holding rulers accountable to the citizenry within the confines of the law. So far, these papers have successfully brought critical policy issues into the public domain and thus facilitated a vibrant debate in the country. Fortunately, both the legal and political environment has been conducive to their operations, thanks to the democratisation process since 1993. However, it must be emphasised that while a democratic environment prevails for these privately-owned media to thrive, it supposed to operate in a responsible and responsive manner through professional and ethical journalism within the confines of the rule of law.

6.5. **Objective Five: Institutions of Representative and Accountable Government**
6.5.1. Effectiveness of the Public Service

Generally, the public service provides technical know-how for the executive in the running of national affairs. It, thus, constitutes an important arm of government given that the technical day-to-day public policy making and policy implementation at both national and local levels rest squarely on the shoulders of the public servants. As Mohiddin puts it “civil servants manage the institutions of governance, they provide public services, draft rules and regulations, advise ministers and assist in the formulation and implementation of public policies” (2000:38). However, the effectiveness and efficiency of the Lesotho public service has been an issue of concern before and after the democratic transition of 1993.

In order to address the problems of efficient delivery of service by public servants, Lesotho has undertaken various initiatives aimed at public service reform. One of this is the Public Sector Reform and Improvement Programme (PSIRP) which seeks to:

- Raise the quality of services delivered to the population;
- Enhance capacity of public service to carry out core functions of government; and
- Promote sustainable social and economic development (UN, 2004:45).

This programme will be undertaken by government with support from the World Bank.

6.6. Objective Six: Fighting Corruption in the Political Sphere

Corruption is one of the most nebulous terms in both democratic discourse and democratic practice. This is so, because defining corruption is as complex and difficult as detecting it, let alone combating it. This is where the main problem lies: (a) how is corruption is defined? (b) how corruption is effectively detected? (c) how is combated effectively. Lipset defines corruption as the *abuse of public resources for private gain*. First, Corruption involves a deviation from the laws and regulations, as when public administrators abuse their office to obtain private advantages. Second, the resources exchanged in corruption result in material advantages, as when a favourable public decision is paid for with money. Corruption thus is one form of influence of money on politics. Third, corruption almost always involves clandestine transactions (1995:310-311)

This definition is useful in providing us with an idea of how to delineate a corrupt behaviour or conduct from a normal conduct by public officers. Using this definition, a corrupt behaviour or conduct can be detected. Having a clear mechanism for detecting corrupt behaviour needs to be reinforced by an enforceable corpus of laws, rules and regulations that govern the conduct of public officer in discharging their national duty in the governance process. The legal framework for combating corruption needs to be given teeth in the form of an effective institutional arrangement that is capable of making appropriate policy interventions in the fight against corruption.

Lesotho has in place the following laws, which aim to redress the problem of corruption:
Despite this legal framework, corruption is rife in Lesotho. The most high-profile case of corporate corruption in the country in recent times is the one involving a high-ranking official of the Lesotho Highlands Water Project and a number of Western construction companies which had acquired contracts through bribery. A consortium of foreign construction companies was indicted in the Lesotho High Court with charges of bribery amounting to US$2 million. The former LHDA Chief Executive Officer, Mr Masopha Sole, was charged and is currently serving a jail sentence. The concerned companies were exposed for wrong-doing. It was therefore expected that they would be debarred from taking part in any future World Bank-funded projects (Hidyard, 2000).

Part of the national mandate of the Office of the Ombudsman is to combat corruption in the public sector. It is also worth noting that since the recent past, Lesotho established the Directorate on Corruption and Economic Offences (headed Mr. Borotho Matsoso, former Deputy Commissioner of Police) established by an act of parliament in 1999. Its main mandate is to deal specifically with economic offences and corruption in public sector alone. The effectiveness of this unit, however, still leaves a lot to be desired due to two main constraints namely that (a) it lacks autonomy because it is simply a unit within the ministry of justice, (b) it lacks adequate resources (human, technological, financial, infrastructural) to effectively deal with cases of corruption and (c) its area of jurisdiction does not extend beyond the public sector into private sector; (d) it lacks power of litigation in cases of corruption as this power vests in the office of the Director of Public Prosecutions (DPP). There is need to turn the Directorate on Corruption and Economic Offences into an autonomous anti-corruption institution answerable to parliament through a relevant portfolio committee. It has to be de-linked from the ministry for that purpose. Otherwise, it will remain toothless and clouded by political interference and lack of independence. Thus, its watch-dog role is bound to be compromised severely.

6.7. **Objective Seven: Empowerment of Disadvantaged and Marginalised Social Groups**

6.7.1 **Promotion and protection of the rights of women**

On of the underlying principles of democratic governance is inclusiveness. In other words, one of the indicators for judging the democratic credentials of a governance regime is the extent to which it is generally inclusive of all social groups in a given country. The significance of empowerment of women and protection of their rights to democracy cannot be overemphasised (see Lowe Morna, 2004; Geisler, 2004; Lowe Morna, 2005). It should be borne in mind that Lesotho has committed itself to the achievement of the eight (8) millennium development goals one which (goal 3) commits state parties to “promote gender equality and empower women and eliminating gender
disparity in primary and secondary schooling, preferably by 2005 and no later than 2015” (UNDP, 2005:39). One of the ways to ascertain the democratic content of Lesotho’s governance process, therefore, is to inquire into the degree to which there exists gender equality. Gender equality could be measured by the degree of participation of women in the governance process as well as the extent to which the rights of women are promoted and protected. The vital role of women in governance and development in Lesotho cannot be overemphasised more so because women constitute a majority (54%) of the country’s population, women are more literate (80%) than their male counterparts (61%) and historically, Lesotho’s agrarian economy has remained the preserve of women, as most men have tended to seek wage employment on the South African mines (see Matlosa, 2001). Lesotho has committed itself to the following conventions which embrace gender equality:

1. The Convention on Elimination of all Forms of Discrimination against Women (CEDAW: 1979);
2. The Beijing Declaration and Platform for Action (1999);

The signing of international and regional protocols is one thing, while domesticating these conventions into law and practice at the national level is quite another. Thus, the absence of a gender policy militates against the operationalization of CEDAW and SADC declarations into effective programmes and strategies for the empowerment of women and promotion/protection of their rights.

In Lesotho’s Cabinet, both the Prime Minister and his Deputy are men. Of the 16 ministers, 11 are men while 5 are women. Of the 4 assistant ministers, 3 are men and 1 is a woman.

Table 12: Gender Representation in Cabinet

<table>
<thead>
<tr>
<th>Members</th>
<th>Total Number</th>
<th>Number of Women</th>
<th>% Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Minister</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Deputy Prime Minister</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ministers</td>
<td>16</td>
<td>5</td>
<td>31%</td>
</tr>
<tr>
<td>Assistant Ministers</td>
<td>4</td>
<td>1</td>
<td>25%</td>
</tr>
</tbody>
</table>

Source: Letuka et al, 2004

Like in most other SADC countries, women's participation in politics and parliament in Lesotho remains low. The table below illustrates the low participation of women’s in Lesotho’s legislatures on the basis of the outcomes of the general elections since 1965.

Table 13: Gender Representation in Lesotho’s National Assembly, 1965-2002

<table>
<thead>
<tr>
<th>Year</th>
<th>Men</th>
<th>%</th>
<th>Women</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>65</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1970</td>
<td>65</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1993</td>
<td>62</td>
<td>97</td>
<td>3</td>
<td>4.9</td>
</tr>
<tr>
<td>1998</td>
<td>77</td>
<td>66.3</td>
<td>3</td>
<td>3.7</td>
</tr>
<tr>
<td>2002</td>
<td>105</td>
<td>87.5</td>
<td>15</td>
<td>12.5</td>
</tr>
</tbody>
</table>

The low participation of women in politics and the legislature can be explained in various ways. Lesotho’s political system has been generally marked by instability and violence. Given this and the zero-sum nature of the political game in the country, plus the marginalisation of the gender question in the national political discourse, women have not been involved. The political sphere and the state system are perceived as the male domain given their perceived zero-sum nature and their inherent violent (adversarial) character, while women tend to be relegated to relatively less violent-ridden economic sphere and the domestic realm of life. The patriarchal nature of the state system, perforce, excludes women from effectively participating in the governance process.

The legal systems in Africa in general and Lesotho in particular also inhibit women's participation in politics and national legislatures both by design and by default. Almost all the Southern African states have a dual legal system; (a) the customary law and (b) the civil law. Both systems consider women as minors in society and thus reinforce the socially constructed patriarchal ideology. This situation, no doubt, inhibits women's participation in active politics. Under customary law, a woman is under the guardianship of her father before marriage. Upon marriage the guardianship transfers to her husband and in the case of her husband's death, the husband's heir and/or the paternal male affine (Pule and Matlosa 1997:30; Letuka et al, 1997:20). What all this suggests is that "at law she is not a person with full legal rights, since she would have to be assisted if she wants to sue, or be sued in the courts. This makes a woman dependent on others in the management of her affairs" (Letuka et al 1997:20). Under customary law, therefore, a woman is a perpetual minor.

Under civil law a woman is a minor until she reaches age 21 - the majority age. Provided she is unmarried, a widow or married under community of property, a woman is considered a major under civil law. Under these circumstances, she "would be regarded as a person who is fully capable of handling the affairs of her life without permission or assistance from anyone" (Letuka et al, 1997:20). The combination of the legal system and patriarchal ideology has had a cumulative effect of low participation of women in Lesotho's political affairs. Basotho women play an insignificant, if tangential role in politics in general and the legislature in particular. Not only are their numbers in leadership positions in political parties low but their influence is insignificant too. The same is true of the gender complexion of Lesotho's national parliament: women remain a silent minority in both houses (see Letuka et al, 2004).

Following the 2002 election, in which the MMP electoral system was used for the first time, 15 women form part of the 120-person strong National Assembly. This translates to 12.5% women representation in the National Assembly, less than half of the SADC benchmark of 30% women representation by 2005 (see Lowe-Morna, 2005). Despite the increase of the parliamentary seats from 80 to 120, the number of women in the National Assembly still remains low.

<table>
<thead>
<tr>
<th>Table 14: Gender Representation in the National Assembly, 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>Parliament</td>
</tr>
</tbody>
</table>
However, this number is increased to 16 by virtue of the fact that, the Speaker of the National Assembly, Madame Nthloii Motsamai, is the first female speaker of the national assembly in Lesotho. Only two countries in SADC (namely Lesotho and South Africa) have women speakers in the national assemblies (elected house). The Lesotho Speaker has played an active role in regional democracy initiatives through the SADC Parliamentary Forum (SADC-PF), based in Windhoek, Namibia and the Electoral Institute of Southern Africa (EISA) based in Johannesburg, South Africa. Although quantitatively women’s representation is low in the National Assembly, anecdotal evidence suggests that the leadership role played by Madame Motsamai in the Lower House has injected a qualitative difference in terms of empowering women by way of the needed influence, authority and power to re-engineer the political system towards deeper democracy than hitherto has been the case. It is, thus, only fair to argue that, all things being equal, she is living up to her onerous national task of creating a more effective parliament that would hold the executive accountable. And, indeed, most of the qualitative changes in the Lesotho’s National Assembly are, to a large measure, attributable to her relentless efforts, including the on-going parliamentary reform programme aimed to align Lesotho’s parliamentary system with the new electoral model.

The number of women has tended to be higher in the Senate relative to the National Assembly. Of the total of 33 members, 9 are women. This translates into 27 percent representation of women in Senate. Both the President and his Deputy are men.

<table>
<thead>
<tr>
<th>Members</th>
<th>Total number</th>
<th>Number of women</th>
<th>% Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate</td>
<td>33</td>
<td>9</td>
<td>27</td>
</tr>
<tr>
<td>President</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Deputy President</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

The relatively higher participation of women in Senate is not hard to explain for it is more by default than by design. Over the years, women have increased their participation in the institution of chieftainship. This participation however has been more by default than by design since women can only act as chiefs in circumstances where a male is unable to perform due to absence, youth, incapacity or where there is no male in direct line of descent (Letuka et al, 1997:23). These women then automatically become part of the Senate. They are, as it were, holding the fort for the male chiefs. They are in Senate no such much in their own rights but on behalf of presumed substantive chiefs. Interestingly therefore, the higher participation of women in Senate does not suggest a deliberate democratic opening of the legislature to women for it is more by default than by design. What do these numbers tell us about the capacity and preparedness of the Lesotho legislature to critically grapple with gender issues?

The role of women MPs in male-dominated parliaments is obviously bound to be tremendously marginal. Women MPs in Lesotho parliament hardly propose motions or
introduce issues for policy debate. The patriarchal nature of the state system assigns women the role of supporting or at least reacting to issues raised by male MPs. If the democratic space is to be expanded and the democratic culture deepened, this state of affairs needs to change.

Lesotho must endeavour to adhere to the 1997 SADC Declaration on Gender and Development. In fact, the implementation of the Declaration has been given more impetus by the recently formulated SADC Regional Indicative Development Plan (RISDP). The 2003 RISDP provides the overall goal of SADC in relation to gender equality and development as “the achievement of substantive equality between women and men in the SADC region, through mainstreaming gender into all national and regional policies, programmes and activities, and the adoption of positive measures to accelerate progress in this regard” (SADC, 2003: 77). Priority areas for the achievement of this objective are; (a) gender policy and institutional frameworks; (b) women’s human and legal rights, including the elimination of violence against women; (c) gender mainstreaming; (d) access to, and control of resources and (e) access to key political and decision making positions (SADC 2003: 77). In respect of (e) above, SADC member states have committed themselves to achieve the following:

- At least 30% women in decision-making positions in local government, parliament, Cabinet and senior positions in the public sector by 2005 or affirmative action measures in place to accelerate the attainment of this target;
- At least 40% women in decision-making positions in local government, parliament, Cabinet and senior positions in the public sector by 2010, or affirmative action measures in place to accelerate the attainment of this target;
- At least 50% women in decision-making positions in local government, parliament, Cabinet and senior positions in the public sector by 2015 or affirmative action measures in place, to accelerate the attainment of this target; and
- At least 20% women in decision-making positions in large private sector firms as defined by member states by 2005, 30% by 2010 and 40% by 2015 (SADC, 2003:79).

The only sphere where Lesotho has been able to achieve 30% of women’s representation in decision-making process is in local authorities following the reforms that were instituted since 1994 and the 2005 local government elections. With regard to the executive branch of government as well as the legislature (especially the National Assembly) the country still lags far behind its international commitments. This means that at the level of central government (cabinet and legislature), Lesotho has failed to meet the SADC benchmark of 30% of women representation in decision making. The question still remains, then, whether or not, having failed the first stage, Lesotho will be able to meet the target of the next stage of the SADC Declaration namely that of 50% representation of women in all spheres of public policy making? It is in realisation of the country’s failure to meet the 30% target and slim prospects of meeting the 50% target in the foreseeable future, that we want to emphasise that signing protocols and declarations is one thing while a commitment to translating those conventions into domestic law and a lived political culture is quite another.
6.8. **Objective Eight: Promotion and protection of the rights of children and young persons**

Children and the youth (0-24 years) often get forgotten in democracy discourses and democracy building. This may be explained by the fact that conventional wisdom considers them passive actors in the governance process given their age. In most developing societies, the children and youth constitute a considerable chunk of the overall population. It is estimated that this section of society constitute about 61.4 percent of Lesotho’s population (UN, 2004:55). It is, therefore, important, from the onset, to emphasise the point that this category of society needs to be given its space in democracy building. In particular, the rights of the children and the youth have to be promoted and protected both in law and in practice. The UN report notes that the rights of children and youth “have not tended to be high on the socio-economic agenda of the country and their voices have yet to be heard in the planning of budgets and formulation of policy, legislation and programme interventions that directly concern their wellbeing” (UN, 2004:47).

With regard to Lesotho’s commitment to international conventions, it is worth noting that the country:

- ratified the Convention on the Rights of the Child (CRC) in 1992 and the African Charter on the Rights and Welfare of the Child in 1999. It is also ratified the two ILO Conventions 138 and 182 on minimum working age and elimination of hazardous forms of child labour respectively during 2001. The ratification of the international human rights instruments by the Government of Lesotho over the past decade was an important step towards the realisation of youth and adolescent rights (UN, 2004:54).

The challenge is how to turn this commitment to international human rights instruments into enforceable law and policy practice at the national level. Of the eight Millennium Development Goals (MDGs), to which Lesotho has made a firm commitment, about four have a direct bearing to the status of children and youth. These are goal 2 (universal primary education), goal 4 (reduction of child mortality), goal 5 (improving maternal health) and goal 6 (combating HIV/AIDS, malaria and other diseases). It is evident from the assessment that has been done by the UN in 2004 that Lesotho has not been able to achieve all the MDGs including the above four. It is evident too that any progress made in achieving these goals will go a long way in addressing the rights of children and youth. However, the extent to which these goals will be achieved in the medium-to-long term perspective still remains a moot.

The Government initiated a legal reform programme through the Law Reform Commission in 2000, which, among other things, dealt with child legislation. That noble initiative notwithstanding, cases of child abuse, exploitation and neglect are many in the country. According to the UN report, these cases are “exacerbated by the rapid increase in orphans (currently estimated at 92 000) resulting from the HIV/AIDS epidemic. This
has compelled an explicit call by civil society partners for urgently developing mechanisms to effectively monitor and report cases as well as ensure proper enforcement of the existing legislation, including the new Sexual Offences Act 2003. The recently established Child and Gender Protection Unit (CPGU) in the Police is one such example” (UN, 2004:48).

6.9. **Objective Nine: Promotion and protection of the rights of vulnerable groups.**

In 2001, about 4.2 percent of Lesotho’s population was reported to be suffering from some form of disability. Disability is reported to be more pronounced among males than females. Disability is used here to mean “any restriction... resulting from an impairment of ability to perform an activity in the manner or within the range considered normal for a human being” (Kethusegile et al, 2000:176). Six commonly known categories of disability in Lesotho are:

- Hearing impairment;
- Speech impairment;
- Visual impairment;
- Physical impairment;
- Mental impairment; and

The stark reality of Lesotho’s justice system is that while generally there has been a marked improvement of human rights protection and promotion since the 1993 political transition, the situation of vulnerable and marginalised social groups has hardly improved. Although a Legal Aid department exists within the ministry of justice, the UN report highlights the following problems that confront vulnerable groups:

- Persons with disabilities do not get specialised services when attempting to access justice;
- Women are still considered minority in terms of both customary and common law;
- Lack of legal provisions for handling of children throughout the justice system including inheritance issues of orphans who often have their rights violated with little recourse to legal protection;
- The insecurity of employment tenure for persons living with HIV/AIDS (UN, 2004:47).

For instance, extensive research that has been undertaken since 2000 on the rights of people with disability focusing on deaf people by Litsepiro Matlosa, a lecturer in the Department of African Languages, at the National University of Lesotho (NUL), suggests, rightly, that while democratic opening in Lesotho has broadened the political space for respect of fundamental human rights, the rights of deaf people are still curtailed (e.g. their rights to education, employment, health, language rights as well as their right to participate in the governance process). She concludes that “there are obstacles that still prevent deaf people from exercising their rights and freedoms and make it difficult for them to participate fully in the activities of their societies. They are still discriminated
against on account of their deafness” (Matlosa, 2001:202). A question is posed as to what extent the language rights of deaf people are currently being promoted and protected through deliberate policy interventions of the state. In order to address this policy lacuna, the following recommendations have been proffered:

- Government should develop a disability rights programme to raise awareness of the public about the rights of people with disabilities including deaf people;
- Popularisation of Sign Language, as the first language of deaf people in school and conduct of public policy in general;
- Promotion of inclusive education in such a way that educational needs of deaf children are catered for; and
- The rights of people with disabilities, including deaf people, to health care and services should guaranteed, protected and promoted (Matlosa, 2001:203-204).

Without a legal framework that protects and promotes the rights of vulnerable and marginalised groups, Lesotho’s democracy is likely to experience deficiencies that may inhibit its nurturing and consolidation. This is one of the areas that require deliberate legal and policy intervention as the country deepens its democratic governance.
7. **Best Practices and Lessons Learnt**

7.1. **Electoral Reforms**

Following the transition from military rule to multiparty democracy, Lesotho experienced various types of conflict. The country could probably have been spared the violent conflict that raged after the elections of 1993 and 1998, had electoral reforms been undertaken much earlier. The violent conflict that erupted after 1998 led to loss of life and property. Further more, it deepened political polarisation of an otherwise homogenous nation. Essentially, an electoral system must act as a conflict resolution mechanism in order to stabilise the political system and encourage the political elite to engage in politics of consensus, compromise, dialogue and tolerance. As early as 1998, there emerged a general clamour for a reform of the electoral system that would allow a vibrant opposition in parliament. In its Report after the 1998 election, the IEC observed that ‘the plurality system works best when it is able to produce a reasonably effective parliamentary opposition. It is a matter of record that the last two general elections in Lesotho (1993 and 1998) have produced little or no parliamentary opposition. This appears to suggest that the time is now ripe for a serious debate on the electoral system of Lesotho.’ (IEC, 1998:46).

Indeed, such a debate took place under the auspices of the Interim Political Authority (IPA). Sponsored mainly by the United Nations Development Programme (UNDP) this public debate involved academics, NGOs, representatives of government, political parties, trade unions, the business community, development agencies and both houses of parliament as well as the college of chiefs. The most historic dialogue forum came in the form of a consultative conference that took place on 21-23 February 1999 at the Maseru Sun Hotel under the aegis of the UNDP. That historic conference explored three options for the future of Lesotho electoral politics: (a) retaining the FPTP system as it is; (a) transforming the FPTP with some hybrid system combing the FPTP and the PR (either parallel or mixed member); and (c) adopting the full PR system.

During the conference, both government and opposition parties as well as other participants agreed that the current electoral model needs to change. There was an overwhelming preference for a mixed system, which could combine the advantages of the proportional representation, and the FPTP system. No wonder, therefore, that following the 1998 violent conflict in Lesotho, a considerable majority of political forces and keen observers of the country’s political scene advocated for electoral reform as part of the package for the constructive management of conflict in the small mountain kingdom. Ultimately, the ruling party and the opposition parties, through the IPA, resolved that Lesotho’s electoral model should be changed from the British-style FPTP towards the new Mixed Member Proportional (MMP) system. This was, by far, the most progressive stride made in Lesotho’s political history, aimed in the main at addressing and redressing the entrenched culture of political violence and intolerance. Immediately the MMP system was put to use in the country’s general election of 2002, the results pointed to its enormous prospects for instilling a culture of consensual (persuasive), as against,
coercive (confrontational), politics, broadly representative parliament and inclusive governance arrangement.

Witness, for instance the fundamental difference of the 2002 election outcome compared to all the other elections since the political transition of 1993 in respect of votes won and parliamentary seats secured. In 1993, one party (BCP) won all the 65 parliamentary seats with 74% of the votes leaving the opposition parties stranded despite garnering about 24% of the votes. In 1998, the newly formed LCD won 79 of the 80 parliamentary seats with 61% of the votes and the BNP won one single seat with 25% of votes won, the BCP won a total of 11% of votes cast, but secured no parliamentary seat. As a consequence of the electoral reform, the 2002 election outcome was different and historic in more ways than one. Of the total 118 contested parliamentary seats the LCD won 77 with 55% of votes cast (all seats won through the FPTP component of the new system); second to the LCD came the BNP which won 21 seats with about 23% of the votes cast (all seats attained through the PR component of the new electoral model); two parties shared the third place with 5 seats and each having garnered about 6% of the votes cast. This is surely one of the positive developments in Lesotho’s contemporary political development from which many African countries could learn important lessons around electoral engineering as a conflict management mechanism. What still remains is the commitment of the political elite in Lesotho, especially the ruling party, to ensure that in the not-so-distant-future the electoral model is further refined in such a way that it provides for 50:50 proportion of PR and FPTP seats in parliament as was originally recommended through an arbitration award passed by a legal team comprising Dr. Nqosa Mahao (former senior lecturer, at NUL and currently the Executive Dean of Law at the University of North West, South Africa), Dr. Francis Makoa (associate professor of political science at NUL) and Judge Browde (A South African Judge). The arbitration award provided that the current proportion (i.e. 80 seats-FPTP and 40 seats-PR) would be a transitional arrangement meant for the 2002 elections only. All other subsequent elections this proportion would change to 60 seats-PR and 60 seats-FPTP through an appropriate legal reform. No national debate has ensued around this issue since the 2002 election in part due to the weakness of opposition in parliament and the interest of the ruling party in maintaining the status quo ante. It is imperative that a necessary legal reform is put in place to effect the 50-50 proportion of the MMP model. The political leadership should explore the feasible of such a reform measure at the earliest before the next election in 2007 and at the latest prior to the 2012 election.

7.1.1. The Negotiation Process

Any reform process should, of necessity, be an outcome of negotiation involving key stakeholders in the political system. It is abundantly clear that the electoral reform process in Lesotho involved public debate as well as a formal negotiation process involving the political parties mediated by South Africa. A critical first step towards negotiations is a firm agreement and commitment among parties that negotiation is necessary for the resolution of the political impasse in the country. The second step is a common stance by key actors in the negotiation process on the negotiation points or the agenda of the talks. The third, step is common agreement on the methodology or
modalities of conducting the talks i.e. would these be direct talks/negotiations or would a broker/mediator be required. The fourth step is the actual negotiation and agreement on critical decisions to take the country forward. The fifth and final step is the implementation of agreements and common decisions based on a common agenda of negotiations including political reforms.

7.1.2. Constitutional Review Process

There is no gainsaying that political reforms, which, of necessity bring about changes to the political system, have a bearing on constitutional arrangements too. It therefore goes without saying that the electoral reform process in any country ought to be accompanied by some form of constitutional review and amendments as well. This is so because both the electoral process and elected institutions such as the parliament are also governed by the constitution. Further more, besides the constitution, elections are also governed by electoral laws that also need revisiting when the electoral reform process is underway. This has indeed been the case in Lesotho. With the electoral reform process, Lesotho has had to amend its 1992 Electoral Order (as amended) and its 1993 constitution accordingly.

7.1.3. From the FPTP to MMP

The transition from the FPTP electoral model to the MMP was not a straight-forward technical-cum-administrative matter decided upon by the government and the Interim Political Authority (IPA). It was a complex political decision aimed at resolving identified deficits of Lesotho’s democratic governance. The table below highlights some of the key features of the new MMP system as applied in Lesotho to demonstrate its strengths and weaknesses.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retains Accountability of MPs inherent in FPTP</td>
<td>Relatively more complex than the FPTP and PR</td>
</tr>
<tr>
<td>Retains Broad Representation in the legislature inherent in PR</td>
<td>Lack of familiarity in Africa since it is relatively new in the continent</td>
</tr>
<tr>
<td>Widens the political complexion of parliament (inclusiveness)</td>
<td>May lead to a fragmented parliament</td>
</tr>
<tr>
<td>Combination of constituency vote and party-list vote</td>
<td>Double voting either in a two ballot or single ballot system</td>
</tr>
<tr>
<td>Establishment of entry threshold for MPs to hold seats in parliament</td>
<td>Calculation of an entry threshold into parliament by MPs rather lengthy negotiation and consensus among parties</td>
</tr>
<tr>
<td>Facilitates power-sharing in the legislature</td>
<td>Rather costly relative to the FPTP</td>
</tr>
<tr>
<td>Opens avenues for gender balance in the legislature</td>
<td>May generate a proliferation of parties</td>
</tr>
</tbody>
</table>

Source: Matlosa, 2003
On the basis of the above table, the most vivid features of the Lesotho MMP are as follows:

- A part of the parliamentary seats is determined on the basis of constituency vote;
- Another proportion of the parliamentary seats is determined on the basis of party vote;
- The system allows for the use of a double-ballot through either two votes on one single ballot or two votes on two separate ballot papers;
- In this system independent candidates can only contest election on the constituency based voting and not on the party vote; and
- A threshold or quota is devised and used for both the determination of winners and composition of an elected parliament.

Thus, the MMP, in general aims to broaden representation (through the PR component), retain accountability of elected representatives (through the FPTP component) and, given its inclusiveness, can add considerable amount of value to political stability as well. In order to help define the vision and objectives for electoral reform process, Reynolds, Reilly and Ellis isolate ten (10) key criteria that could prove useful to guide the process namely:

- Ensuring a representative parliament and inclusive government;
- Making elections accessible and meaningful;
- Providing incentives for conciliation and constructive management of conflicts;
- Facilitating stable, transparent and efficient government;
- Holding the government accountable and responsive;
- Holding the elected representatives accountable and responsive;
- Encouraging “cross-cutting” political parties;
- Promoting legislative opposition and oversight;
- Making the election process cost-effective and sustainable;
- Taking into account international norms and standards (2005:9-14).

The electoral reform was triggered by two main imperatives namely political instability and representation. Of the ten objectives above, the reform process has ensured, at least four namely (a) broad representation in parliament; (b) making elections meaningful to the electorate; (c) constructive management of political conflict; and (d) political stability

### 7.2. Parliamentary Reforms

Lesotho’s parliament is undergoing parliamentary reforms at the moment. The parliamentary reform programme was launched by the Prime Minister on the 15th November 2004. The programme is coordinated by the 30-member Parliamentary Reform Committee (PRC) headed by Hon. Lekhetho Rakuoane (MP). The specific objectives of the parliamentary reform programme are:
• To create a foundation that will form the bedrock for sustainable democratic practices in Lesotho;
• To empower Parliament as a custodian of values and principles of democracy to fulfil its constitutional mandate of legislation, oversight and representations;
• To raise the visibility and image of parliament;
• To increase public participation in parliamentary process
• To review the conditions of service for Members and Staff of Parliament of the Kingdom of Lesotho.

The anticipated outputs of the programme are as follows:

• Enhanced Committee System;
• Revised Standing Rules and Orders;
• Revised Terms and Conditions of Service for Members and Staff;
• Establishment of framework to enable public participation in parliamentary process;
• Improved Members/Constituents’ relationships;
• Enhanced capacity of Members and Staff;
• Establishment of a parliamentary service.

The reform programme itself has been triggered by the adoption of the Mixed Member Proportional (MMP) system which was first put to the test in Lesotho’s 2002 general elections. However, as Elklit, rightly observe, when the Interim Political Authority (IPA) proposed the adoption of the new model, little thinking, if any at all, went into the possible impact of the new model on parliament and its key functions. According to Elklit, “the previous first-past-the-post electoral model is both in principle and in actual practice connected with the Westminster parliamentary system, while proportional representation (…) lends itself more towards a kind of parliamentary system usually called the consensus model… Clearly, this is different from the more confrontational – or adversarial- approach connected with the Westminster system and two-party system, which tends to be associated with the first-past-the-post electoral system” (Elklit, 2003:7-8).

Thus, for Elklit, reforms were necessary in six main areas if the Lesotho parliament was to adapt easily to the new electoral model. The first one relates to the relations between the legislature and the executive. Should parliament run its own affairs through a Parliamentary Service Commission or should the Business Committee of parliament be empowered to deal effectively with parliamentary staff issues without recourse to the Public Service Commission?

The second one relates to streamlining of the parliamentary committee system. While recognising the importance of the existing committees, a point needs to be made that there is a dire need for portfolio committees structured along the line ministries themselves in order to enhance accountability and reinforce the watch-dog role of the legislature over the executive. How feasible is this considering human, infrastructural,
technological and financial resources? For instance, taking these constraints into account "it has been suggested to start with only six or eight portfolio committees, each of which could then cover several portfolios" (Elklit, 2003:18).

The third area relates to dire need for extensive training and skills development for MPs. This will assist enhance the basic capacities of MPs (both new and old) in discharging their functions.

The fourth challenge revolves around capacity building for Parliamentary Staff. It is abundantly evident that for parliament to be effective, capacity needs of MPs have to be addressed in tandem with those of staff of the house. There is need for high quality staff if parliament, especially the offices of the Speaker, Deputy Speaker and the Clerk are to enhance their effectiveness. The various committees of the house also need to be supported with qualified personnel all times. The same is true for the library and Hansard sections of the house. One of the likely spin-offs of developing internal human resource capacity for parliament is that reliance on external consultants for parliamentary work would be reduced and will ensure sustainability of the reform programme in the long run.

The fifth area relates to the improvement of infrastructural facilities of the legislature. The existing facilities of the parliament are too old. There is need for a modernised building with advanced technological devices for enhancing the efficacy and effectiveness of parliament in a globalising world.

Sixth and finally, the status of constituency and PR Members of parliament has raised concerns and this needs urgent attention too. While the MMP has brought with it numerous positive developments, it has also balkanised parliament (see Elkilt, 2003; Makoa, 2005). It has brought about some kind of a ‘cast system’ wherein MPs elected through the FPTP are considered superior to those elected through the PR. Elklt observes that MPs are being “treated differently, as those elected from the party lists have so far not been entitled to something equivalent of the constituency allowance, which allows Hon. Members to go to the constituencies they represent in the National Assembly to meet their constituents” (2003:25). The country’s 1993 Constitution is unequivocal in propounding various types of rights to the citizens (Chapter II) and denouncing any form of discrimination. Section 18 (2) states that “no person shall be treated in any discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority” (GOL, 1993:33). Thus, it is imperative upon the country’s top leadership to ensure that no perception (real or imagined) is created that the members of parliament elected through the PR system are unduly discriminated against.

To this end, Elklit and Makoa aptly propose that the monthly allowance extended to MPs elected on the basis of the FPTP system be made available to MPs elected on the basis of the PR too in order to ensure equity and social justice. How far will the on-going parliamentary reforms address these critical issues for the enhancement of the effectiveness and efficiency of the legislature still remains a moot point. The reform programme is yet to be completed and implementation process set in motion. We will
only be able to judge the value of the reform process to Lesotho’s democracy at that stage. However, the very fact that parliament is embarking upon reforms to ensure that the house plays its rightful role in the democratic process is a positive step in the right direction.

7.3. Security Sector Reform

The main institution that has been established following the political transition from military rule with a view to ensure efficient and effective governance of the defence force is the Ministry of Defence (MOD) headed by the Prime Minister as the Minister of Defence. The day-to-day administration of the Ministry is vested in the Principal Secretary and his/her deputy. The Ministry of Defence was established in 1995 as the Administrative headquarters of the LDF aimed to achieve civil control of the forces by elected civil authority and ensure accountability of the forces to the executive organ of the state as well as the legislature through the minister in charge. Thus, administrative accountability of the LDF filters through the office of the Principal Secretary in the MOD through the Minister, the executive (cabinet), the legislature (parliament) all the way to the King as the pinnacle of both the legislative and executive authority.

In a nutshell, the defence force, through the MOD, is accountable to the parliament. The MOD provides for management of activities and utilization of resources and assets of the LDF in a more economic manner. It provides for civil control and coordination of the various activities of the forces and development of appropriate defence policy for the LDF. Thus, in terms of the institutional framework for the governance of the LDF the following are crucial:

- LDF as an organization headed by the Commander (operations);
- MOD headed by the Minister responsible (strategic and policy direction);
- The palace (oversight);
- The Executive organ or cabinet (oversight);
- The Legislature or parliament (civil control).

The MOD and LDF have a significant role to play in the maintenance of national security, and should this be threatened, in the management of crises. Because of this, the MOD and LDF have obligations to the Government and to the general public. In principle, the LDF should, at all times, be:

i. **Apolitical:** organised, trained and managed to serve the government of the day and the entire people; importantly they should uphold and respect the Constitution of the Kingdom of Lesotho.

ii. **Accountable:** well-discipline and accountable to government and the people through clearly defined political mechanisms of control. There is a need for the people to have confidence in their forces- in their discipline, integrity and professional ability.
iii. **Capable:** military capable of undertaking their primary task—defence of the territorial integrity of the country—whilst playing constructive peace role.

iv. **Affordable:** defence should not represent an unaffordable burden on the economy.

Considerable progress has indeed been made in respect of improving the governance machinery of the Lesotho Defence Force (LDF). This has included improved professionalism of the forces, extrication of the LDF from partisan party politics, enhanced civil control over the forces, accountability of the LDF to parliament and advances in the on-going process of security sector reforms (Matlosa, 2005). All these are indeed commendable strides forward in terms of institutionalization of democratic governance of the military sub-sector in the country. However, much more still remains to be done in order to ensure that the gains made thus far do not lead to complacency and/or allow possible reversals. The challenges for consolidation of democratic governance in the military include the following, among others:

- Strengthening parliamentary oversight through relevant standing and portfolio committees;
- Popularisation of the strategic plan and policy of the LDF and encouragement of public debate on both the plan and the policy;
- Bringing civil society organs as part of the institutional framework for oversight of the LDF over and above the state institutions mentioned above;
- Democratic governance of the LDF is also dependent upon the successful democratization of Lesotho generally;
- The democratic culture and practice that is emerging in Lesotho ought to change the attitude of both leaders and society towards the military in a positive manner;
- There should be recognition that increasingly the LDF ought to play more and more of a developmental role over and above its traditional security roles; and
- Increasingly, the LDF has begun to play more and more regional roles in the SADC region and this is bound to continue as the region strives towards deeper regional integration and this implies further and possibly more complex responsibilities.

In sum, it is abundantly evident from the account above that since its early days, the military in Lesotho has evolved from an embryonic force to a professional defence force that has fairly sound and robust institutional mechanisms for ensuring civil or democratic control. Quite obviously, the constitutional and legal framework for the governance of the military is clear in terms of defining the parameters for control of the forces by elected civil authority. Yet again, the institutional framework is clearly defined in terms of which public institutions are responsible for ensuring civil oversight and accountability of the LDF to parliament. What is still lacking though is a deliberate effort to bring the civil society organs aboard the whole institutional arrangement as part of the democratization of society at large. Further more, the accountability of the LDF to parliament could better be improved by establishment of a portfolio committee on security and defence to
complement the work that is done by the Public Accounts Committee in relation to financial accountability.

7.4. Local Government Reform
Lesotho has a chequered history of local governance. The country held the pre-independence local councils elections in 1960 which were won by the BCP. Throughout the larger part of its post-independence existence, Lesotho has not been able to institutionalise democratic local governance and as a result has not held regular local government elections since 1960. Only in May 2005 did the country manage to hold the local government elections following far-reaching local government reforms that started in earnest in 1994 (for details see Shale, 2004; Shale 2005a; Shale 2005b). It was in that year when the Ministry of Local Government was established charged with responsibility to transform Lesotho’s local governance regime along democratic lines. Since then, the government has committed itself to decentralisation of key functions, services, resources and authority.

Local government in Lesotho is governed by three pieces of legislation namely the 1993 constitution, the 1997 Local Government Act (as amended) and the 1998 Local Government Elections Act (as amended). Section 106 of the Constitution states that “parliament shall establish local authorities as it deems necessary to enable urban and rural communities to determine their affairs and to develop themselves. Such authorities shall perform such functions as may be conferred by an act of Parliament” (GOL, 1993). The Local Government Act (as amended) sets out the institutional and operational framework for the new local government system. The Local Government Elections Act (as amended) defines the rules, regulations and procedures for local government elections and importantly guarantees 30% of women’s representation in the elected councils. The main objectives of decentralisation are:

- To provide for democratic governance, ownership and accountability in matters of public policy;
- To facilitate democratic control over the development planning process;
- To move decision-making, resources allocation and local level development planning into the hands of the people;
- To provide for equitable distribution of human, institutional, infrastructural and financial resources across the country;
- To enhance the effectiveness of developmental activities by creating opportunities for elimination of duplication of effort;
- To facilitate sustainability through matching development decisions with local conditions;
- To facilitate greater speed and flexibility of decision making as a result of reduced central direction and control; and
- To facilitate mobilisation and maximisation of local resources, technologies and skills (GOL, 2003:2; Shale, 2004:6).
The restructured local government will play a critical role for enhancing popular participation and advancing community development. The reformed local government regime will comprise the following structures:

- **District Councils** (10 councils representing both urban and rural areas in each district whose composition is 2 members nominated by each community council including 2 gazetted chiefs whose jurisdiction extends throughout the district);
- **Community Councils** (128 elected councils comprising between 9 & 15 members each including not more than 2 gazetted chiefs, performing functions delegated by the District Councils); and
- **Maseru Municipal Council** (elected council of members between 8 and 15 including not more than 2 gazetted chiefs, which is a body corporate whose jurisdiction extends throughout urban areas in Maseru (GOL, 2003).

The new local government system is now in place since the election that was held in May 2005. Of the total 783,786 people that had registered to vote, only 237,363 voters cast their ballot resulting in the voter turn out of 33.19% a far-cry from the voter participation rate of about 70 percent for the 2002 general election. While the participation rate during the local government was very low, it should be emphasised that the problem of low voter turn out in local government elections as compared to general elections is not peculiar to Lesotho alone. It is a general problem in developing democracies and there is a high likelihood that even in the forthcoming local government elections in South Africa slated for the 1st March 2005, voter turnout may be far below the turnout for its general election of April 2004. Reform of the local government, including the election of the new councillors, has added enormous value in the process of deepening Lesotho’s democracy. The challenge now is to make sure that the new councillors deliver services, enhance popular participation, advance community development and reduce poverty especially in rural areas of the country.
8. Conclusion & Recommendations

Contemporary political development in Lesotho suggests that the country’s governance architecture has evolved over time from authoritarian rule of both civilian and military varieties to a multiparty democracy. The national vision 2020 further commits the political leadership to deepening democratic governance and political stability in the country. In order to further institutionalise its democratic governance regime, Lesotho acceded to the APRM in 2004. Today, the country is in its preparatory stages of undergoing the APRM process. As this process unfolds, it is important to note that Lesotho seems to have redressed one of its major problems, namely violent conflict and profound political instability that marked its post-independence history between 1970 and 1993. This observation does not suggest that there are no conflicts in Lesotho’s polity. Rather that (a) the incidence of violent conflict has subsided considerably; and (b) Lesotho has learnt to resolve its intra-state conflicts in a constructive manner through dialogue and there is no doubt that the IPA process (1999-2002) is the key landmark for Lesotho’s political stability today.

We therefore draw a number of conclusions and make recommendations for Lesotho to be “a stable democracy, a united nation, a nation at peace with itself and its neighbours” by the year 2020.

Firstly, Lesotho has undergone various epochs of its political development since its political independence in 1966. The current era of a relatively stable multiparty democracy needs to be deliberately nurtured and consolidated. The nation, through its leadership, should guard the new-found democracy jealously and resist all attempts for political reversal to the dark era of authoritarian rule.

Secondly, Lesotho co-exists peacefully with its only neighbour South Africa and has not experienced major intra-state conflict of a violent nature since 1998. This is a positive sign for it allows Lesotho to contribute actively in regional and continental peacekeeping initiatives while at the same time consolidating internal peace and harmony. There is no doubt that Lesotho’s successful security sector reform has reinforced its internal stability, peace and security. The inter-party tensions that often arise especially around general and local government elections have to be managed constructively so that they do not erupt into a violent conflict that could trigger political instability. The electoral reform programme that culminated with the adoption of the new MMP electoral model has helped reduce political tension around elections.

Thirdly, supremacy of the constitution and the rule of law should form the hallmark of Lesotho’s constitutional democracy. Government should be allowed to run the affairs of the nation in accordance with the constitution. Citizens and political parties should engage the government in accordance with the constitution. Further more, institutional capacity and effectiveness of watch-dog bodies such as Ombudsman, IEC and the Auditor-General ought to be enhanced. The existing Directorate of Economic Offences and Corruption should be made more autonomous. Political parties are considered the key drivers of a working democracy and for this reason, Lesotho’s parties need guarantee
Lesotho’s democracy while at the same time institutionalising internal democracy within them.

Fourthly, a culture of human rights should be built. Linked to a conducive culture for the respect, protection and promotion of human rights is the need for a legal and institutional framework to which a human rights culture will be anchored. To this end, a national human rights commission should be established.

Fifthly, Separation of powers between the legislature, the executive and the judiciary should be institutionalised. The current political hegemony of the executive over the legislature and the judiciary is not a healthy diet for Lesotho’s young democracy. This has severely undermined the independence of the legislature and the judiciary thereby curtailing the extent of constitutionalism and the rule of law. This, together with the periodic tensions between the government and the palace, constitute two of Lesotho’s democracy deficits. We are yet to see whether the on-going efforts towards reforming Lesotho’s parliament will allow this body assume its critical watch-dog role as an autonomous institution.

Sixthly, the role of civil society organisations in the governance process should not be taken lightly. Government should make deliberate efforts to drive governance in partnership with civil society organisations. At the same time, civil society organisations should also engage government in order to ensure citizen participation and public accountability of the country’s leadership. It is also important that the media plays its rightful role in informing and educating the citizens on governance issues. It should not only link the rulers and the ruled, but it should also act as a watch-dog holding former accountable to the latter.

Seventhly, in order to ensure effective, efficient and accountable delivery of services to the public, public service reform has to change the mindset of civil servants, corruption in the public sector has to be rooted out, and public-private partnerships must be made to work for the citizens’ benefit.

Eighthly, while much progress has been made in terms of women’s empowerment and representation at the local government level, not much progress has been made at the level of central government. Lesotho should endeavour to achieve 50% of women’s representation in all key spheres of governance in line with the new commitment adopted by the SADC Heads of State and Government during the silver jubilee summit of the organisation held in Gaborone, Botswana in August 2005.

Ninthly, legal, institutional and policy reforms are urgently required in order to ensure a sustainable culture for the respect, promotion and protection of the rights of children and the youth.

Tenthly and finally, government should make deliberate efforts to ensure meaningful participation of people with disabilities in the governance process safeguarding their fundamental rights too.
About the Author

References


SADC. 2003. Regional Indicative Strategic Development Plan (RISDP), Gaborone, Botswana (mimeo).


