



**EXPERT REPORT ON CONSTITUTIONAL REFORMS**  
**(Incorporating Public Consultations and Written**  
**Submissions)**

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**Prof. Hoolo 'Nyane and Mrs. Masebelu Makhobole**

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## LIST OF ACRONYMS

MSND	Multi-Stakeholder National Dialogue
EMSN	The Extended Multi-Stakeholder National Dialogue
NDPC	National Dialogue Preparation Committee
PM	The Prime Minister
MP	Member of Parliament
LCN	Lesotho Council of NGOs
DPE	Development for Peace Education
LNFO Disabled	Lesotho National Federation of Organisations of the Disabled
TRC	Transformation Resource Centre

## EXECUTIVE SUMMARY

This report is the amended version of the main report submitted in August 2019. The main focus of the August Report was to make an expert analysis of the views expressed by the members of the public expressed through public consultations both in in the country and the diaspora. The report also analysed the issues and recommendations that started emerging from the first Multi-Stakeholder National Dialogue(MSNG) and the Extended Multi-Stakeholder National Dialogue(EMSN) under the auspices of NDPC.

This amended report incorporates the written submissions by private citizen's institutions, public institutions and organisations. The list of submissions is found in Appendix 2 to this report.

The analysis herein is structured in such a way that the views expressed from these main sources of references are captured as they were expressed in the reports with a view to retain the originality and legitimacy of public views on the various aspects. Thus, the issues identified herein are, to a great extent, distilled from these various reports. After capturing the views as expressed in the report, the experts briefly summarised the current constitutional position. The intention with this aspect was to present the current position in comparison to the issues raised by members of the public and the recommendations they have. The third aspect of the report is to evaluate the recommendations of the public and improving them with expert views on the various issues raised. The report further summarises, in Appendix 1, the issues, recommendations and the mode of amendment provided by the constitution.

The constitutional issues raised by the members of the public are many and diverse. They range from draftsmanship issues like section 113 of the Constitution which is ambiguous about appropriation of funds without appropriation to more substantial issues like the review of the Bill of Rights, powers of the Prime Minister(PM) and the King. The recent political history of the country has evoked strong views of the members of the public about the Powers of the Office of the Prime Minister. The dominant view is that the executive powers of the Prime Minister are excessive and largely unchecked in the broader constitutional scheme. In particular, there concerns

expressed about the PM's powers in relation to the appointment and removal of judicial leaders (Chief Justice and President of the Court of Appeal), appointment and dismissal of heads of security agencies, appointment and removal of heads of oversight institutions and his powers in relation to prorogation and dissolution of parliament.

It would seem that the views of the citizenry are strong and diverse about the changes needed on the constitution. Those issues range from, but are not necessarily limited to: The Bill of Rights, decentralisation, public finance, First Lady, parliament, judiciary, executive, political parties and institutions supporting democracy.

This therefore requires the country to make a decision on whether the changes on the constitution should be on a large scale or piecemeal amendments. There are advantages and disadvantages for either path. The advantage of piecemeal approach is that there are certain urgent matters that may be quickly attended to without a need for laborious process of having to go for referendum. It is therefore an easier path. There disadvantage with it, though, is that it will not attend to some of the major challenges of this constitutional design. Secondly, it will have the effect of fragmenting the design . However nominal the piecemeal amendments may be, they have the potential of affecting the overall theory of the design.

On the other hand, the overall review has the advantage of reviewing and redrafting almost all the aspects of the current constitution. It has the ability to affect even the central theory (Westminster) of the current constitution. It will mean that the country will have to re-draft the entire design. The obvious disadvantage with this path is that it is a longer path and has the potential to evoke fundamental differences in society which may see the design failing to pass the referendum.

In this report, regard being had to the fundamental issues raised by the public, it is recommended that the country should be bold to confront the potentially tormenting process of having to review the entire constitution. If this approach is taken, section 85 of the constitution provides that the proposed new constitution will have to be taken to voters for approval through a referendum.





## **1. INTRODUCTORY BACKGROUND AND OBJECTIVES**

The current Constitution of Lesotho was adopted in 1993. It follows the independence constitution which was suspended in 1970. The 1993 constitution is largely cast on the 1966 Constitution. The 1966 constitution was based on the Westminster design. The main principles of the design are that the Head of State is the King who is largely ceremonial and the head of the national executive is the Prime Minister. However, while the King used to have certain discretionary powers under the 1966 Constitution, such powers no longer exist under the current constitution; all his powers are exercised on advice of either the Prime Minister or the Council of State.

Furthermore, the system is predominantly parliamentary; the electorate does not directly elect the executive. The general election is parliamentary and, in turn, parliament chooses the Prime Minister. Not only is the Prime Minister chosen by parliament but even the members of the national executive (cabinet) are chosen from amongst the members of both houses of parliament. In the recent past, the design has shown some signs of problems. The system seems not to be able to place sufficient safeguards on the exercise of executive authority. As such, the exercise of executive authority has caused instability in all the three branches of government – the executive itself, the judiciary and legislature. As such, there is a broad national consensus to undergo wide-ranging constitutional reforms.

In order to realise this objective, the views of the members of the public have been collected throughout the length and breadth of the country, and beyond, on the various areas that need reform. Such views have been documented by way of reports. This report is intended to give expert analysis of the issues that have been raised by the public consultations report. The report is limited to the views of the public in relation to constitutional reforms. It is understood that reforms in other areas may have implications on the constitution, but care has been taken to leave substantive discussions to those areas.

The approach taken in this report has been to identify the issues that have been flagged by the reports and written submissions, state the position as it stands currently

and analyse the recommendations made by the in-district consultations and other reports.

There is then an appendix (Appendix 1) where an attempt is made to summarise the issues and recommendations discussed in this report.

## **2. POWERS OF THE PRIME MINISTER**

### 2.1 Challenges

There is a general view that the Prime Minister has too much powers under the present constitutional design. The views expressed by the public is that these powers are susceptible to abuse. The areas where the powers seem to have caused concern are, but not limited to: appointment and dismissal of judicial officers, prorogation and dissolution of parliament, appointment and dismissal of security chiefs, appointment and dismissal of other statutory offices and heads of institutions supporting democracy and his relationship with the office of the King. There seems also to be a concern that the appointment of Ministers is not based on merit. There is a concern that the constitution only provides for the minimum number of ministers that may be appointed but not the maximum number. As a result, the country sometimes experiences that problem of bloated cabinet sizes. This is regarded as costly to an economy that is already fledgling.

### 2.2 The Constitutional Position in Relation to the Powers of the Prime Minister

Executive authority in Lesotho is vested in the King (s 86) and exercised effectively through the office of the Prime Minister. As a Westminster design, the constitution broadly makes the Prime Minister an effective head of the executive and the King is only titular and ceremonial. As such, the Prime Minister has wide-ranging executive powers to appoint and dismiss ministers. In appointing the Ministers, the constitution does not place any fetters on the discretion of the Prime Ministers. The constitution only provides that the ministers must be members of the National Assembly or nominated members of Senate (s 87). There is no obligation on the Prime Minister to

consider any form of expertise in the appointment of Ministers. The Prime Minister also has wide-ranging powers to appoint and initiate removal of leaders (Chief Justice and President of the Court of Appeal) of the judiciary (s 120, s 124). He can also appoint and remove heads of the security agencies (s 145, s 147, s 148, s 149) and the heads of oversight and other key state institutions. The powers of the Prime Minister also extend to the legislature. He can advise – which advice the King may not decline – both dissolution and prorogation of parliament (s 83).

Invariably, the constitution places very little or no procedural and substantive limitations on the executive powers of the Prime Minister.

## 2.3 Recommendations

### 2.3.1 *Appointment of Ministers*

The recommendation from the public is that Ministers must be appointed on merit and through a competitive process. This recommendation may have the negative effect of mixing the political and bureaucratic spheres of government. The cabinet is pre-eminently a political sphere of government. However, in order to create the space for expertise in cabinet, the constitution may open a limited window for appointment of ministers from outside parliament. Expertise should also be made a requirement for nomination of senators. This will increase the pool expertise from which Ministers may be appointed.

### 2.3.2 *Appointment of Judicial Leaders (Chief Justice and President of the Court Appeal)*

The general view from the public is that the Prime Minister must not have powers over the appointment and dismissal of the judicial leaders. This area belongs more fully to the judicial reforms but at this level it may suffice to recommend that the powers of the executive over the judicial leaders may be limited both procedurally and substantively without necessarily removing the executive completely from the judiciary. While separation of powers is a noble ideal, care should be taken not to create a situation where branches of government may not function in harmony.

### *2.3.3 Appointment of the Heads of Security Agencies*

The recommendation from the public is that the Prime Minister should have little or no powers in the appointment of the heads of the security agencies. This view is certainly evoked by the experience that the country has had since 2012. The powers to control the armed forces are in nature executive and, by operation of the principle of democracy, executive authority must derive from popular will. As such, the institution which is the head of the national executive, through a democratic process, is the office of the Prime Minister. However, the constitution may be structured in such a way that certain procedural and substantive limitations are placed on the Prime Minister in the exercise of these powers. For instance, other institutions such as parliament other constitutional bodies created for that purpose may be involved in the exercise of this power.

### *2.3.4 Appointment of Heads of Oversight Institutions*

Lesotho has few oversight institutions such as the Ombudsman, the Directorate of Corruption and Economic Offence, the Auditor General and Human Rights Commission (not yet function). The heads of all these institutions are appointed by the King in accordance with the advice of the Prime Minister. These institutions are primarily intended to give oversight to the executive. It is therefore an anomaly that their heads are appointed and dismissable by the head of the executive – the Prime Minister. It is recommended that the powers to appointment and remove the heads of these institutions be removed from the executive to parliament. When making these appointments, parliament must follow a competitive process.

## **3. THE BILL OF RIGHTS**

### **3.1 Challenges**

Issues raised by the public in relation to the Bill of rights are many. They relate to women's rights, media rights, standing to litigate on human rights, limitation of human rights and socio-economic rights. The general feeling is that the entire Bill of rights must be reviewed. In relation to the women's rights, it has been contended that the clause on non-discrimination is self-defeating as it allows discrimination of women on the basis of customary law. The clause also has several other claw-back clauses which essentially defeat the essence of the right itself.

### 3.2 The Current Position in Relation to the Bill of Rights

The Constitution of Lesotho separates political rights from socio-economic rights (Chap. 2, Chap. 3). The political rights are enforceable (s 22), while social and economic rights are not (s 25). This position has rendered socio-economic rights entirely neglected at all levels in Lesotho. As for the enforcement of civil and political rights, the constitution is based on the old common law principle of 'direct and substantial interest' (s 22). It does not allow for liberal approach to standing to litigate on human rights and the constitution in general.

Furthermore, the Bill of rights does not have the general limitation clause. The rights in the Bill of rights are internally limited so much that most of the internal limitation clauses are more of claw-back clauses than limitations. The effect of these internal limitations is that other groups of society such as women and members of the disciplined forces have in some instances been effectively been deprived of certain human rights (s 18).

Furthermore, the separation of political from economic rights, and consequently rendering the latter unenforceable, has had the effect of alienating other social groups such as children, people with disability and the old age.<sup>1</sup> The rights of these groups do not directly have recognition from the constitution.

As for media rights, the Bill does not directly include rights that may be styled 'media rights' such as freedom of the press and the right to information. Instead, it has

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<sup>1</sup> Makoa, FK, *Research Paper on the Review of the Lesotho Constitution: Focus on Economic Social and Cultural Rights*, Transformation Resource Centre Occasional Paper No. 1 July 2018.

freedom of expression (s 14) which has, in fitting circumstances, been used to protect the media.

## 3.2 Recommendations

### *3.2.1 A unified and expanded Bill of Rights*

The recommendation that is made from the public is that the country must have a single bill of rights that incorporates both political and economic rights. This will go a long way in not only rendering social and economic rights enforceable but it will also enhance the rights of other vulnerable social groups such as children, people with disability, youths and old-age. The enforcement of socio-economic rights will also introduce positive obligation on state and non-state actors to fight poverty and economic deprivation in Lesotho.

On top of unifying the bill of rights, there is a strong view that the Constitution of Lesotho does not recognise certain international recognised rights such as the right to fair administrative justice, right to access to information, freedom of the press(media), human dignity, youth rights and children's rights.<sup>2</sup>

### *3.2.2 Liberal rules of standing*

There is a general consensus that section 22 must be re-drafted to liberalise rules of standing in relation to enforcement of the Bill Rights.<sup>3</sup> These will allow other groups in society acting in the public interest to help in the enforcement and realisation of human rights through the courts of law.

### *3.2.3 Limitation of Rights*

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<sup>2</sup> Law Society, *Lesotho National Reforms 2019: Law Society of Lesotho Position Paper* at 6.

<sup>3</sup> *Ibid* at 9-11.

Most of the rights in the Bill of Rights must be redrafted with a view to remove or at least minimise the internal limitations. A general limitation clause must be introduced which provides for the limitation of all rights in the constitution. This will not only enhance consistency in the protection and promotion of human rights but it will also remove the claw-back clauses that are veiled as internal limitation clauses in the majority of the rights. The derogations to the rights will also have to be reviewed to render derogations strictly exceptions and accordingly categorise rights into 'derogable and non-derogable rights.

### *3.3.3 Women's Rights*

When the Bill has been re-drafted to remove claw-back clauses, section 18 of the constitution, which is the major constitutional impediment for the rights of women, will no longer be there. Women will have truly equal rights with men on all matters. Any other law, such as common law, which may impose any form of discrimination on women will be deemed unconstitutional.

There must be changes to the laws that perpetuate discrimination of women like the succession and inheritance laws.<sup>4</sup> There should also be affirmative action provisions for women in the constitution. There may be in the areas of human rights and in electoral laws.<sup>5</sup>

### *3.3.4 Disability Rights*

There is a strong view from the disability sector that 'disability' should be explicitly provided for as a prohibited ground for discrimination.<sup>6</sup> The rights of disability can also be strengthened through the enforceable socio-economic rights.<sup>7</sup>

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<sup>4</sup> See Lesotho Council of Non-Governmental Organisation(LCN), *Sectoral Consultations Consolidated Report* at 22-23.

<sup>5</sup> See *Lesotho We Want! Basotho Women's Common Position*, National Women's Conference 23-24 October 2018.

<sup>6</sup> The Lesotho National Federation of Organisations of the Disabled(LNFOD), *Position on the Constitutional, Parliamentary, Public Service, Security, Media, Economy and Public Sector Reforms* at 1; See also See Lesotho Council of Non-Governmental Organisation(LCN), *Sectoral Consultations Consolidated Report* at 22-23.

<sup>7</sup> *Ibid* at 3-4.



## 4. PROROGATION AND DISSOLUTION OF PARLIAMENT

### 4.1 Challenges

There is a view from the public that both prorogation and dissolution of parliament are sources of not only parliamentary instability but general political instability in the country; the way they are currently written in the constitution. The main concern is that these devices seem to be readily available to the Prime Minister. The experience that the country has since 1993 is that these parliamentary devices have been used for purposes of political expediency. Ever since 1993, parliament has been dissolved before it finishes its term. However, the situation worsened after 2012 when the country entered into coalition politics. The country experienced dissolutions of parliament at an alarming rate, thereby making the country to have three general elections in a period of five years. The device of parliamentary dissolution is linked to the device of motion of no confidence and ultimately elections.

### 4.2 Constitutional position

Both prorogation and dissolution are old monarchical prerogatives under British-based constitutional designs. With the ascendancy of democracy, and increasing power of the Prime Minister as against the King, these prerogatives have effectively shifted from the King to the Prime Minister. The Constitution of Lesotho provides that the maximum term of parliament is five years (s 83(2)). However, parliament can be dissolved any time by the King acting on the advice of the Prime Minister (s 83). Ordinarily, the King will have to accede to the Prime Minister's advice. It is only under very limited circumstances where the King may refuse the advice to dissolve the parliament, namely: where dissolution is not in the interest of the country (s 83(4)(a)). Where a resolution of no confidence has been passed against the government, the Prime Minister may either resign or advise dissolution (s 83(4)(b)). Invariably, Prime Ministers have been opting for dissolution as against resignation.

In relation to prorogation, the constitutional position is that the Prime Minister may advise prorogation of parliament at any time (s 83) and, by convention, the King may

not refuse the advice. The effect of prorogation is that it ends a parliamentary session. As such, parliamentary sessions are not regular. Parliament may be prorogued for a maximum duration of twelve months (s 83(1)(a)). Like dissolution, prorogation has been used for purposes of political expediency – where the sitting Prime Minister is apprehensive that parliament may pass a resolution of no confidence.

### 3.3 Recommendations

#### 4.3.1 Dissolution

The recommendation from the public is that dissolution should be abolished, thereby fixing the term of parliament to five years. The problem of dissolution is not unique to Lesotho. Almost all parliamentary systems have the same problem. The pattern with most parliamentary democracies is that indeed parliament has been fixed in order to avoid dissolutions based on political expediency.<sup>8</sup> However, fixing of parliament may not be absolute. There must be strict exceptions why parliament may be dissolved before the end of the ordinary term. Those exceptions may be, but not limited to, making dissolution impossible before the expiration of three years into the term; introduction of the requirement of a two-third majority of both houses for a motion to dissolve parliament, removing the prerogative of dissolution from the Prime Minister as a person. If parliamentary term has been fixed, it means motion of no confidence may also be regulated. Perhaps the country may consider introducing the notion of impeachment alongside motion of no confidence,<sup>9</sup> so much that if the Prime Minister may have to be removed for misconduct, the removal should not necessarily affect the life of parliament or government.

#### 4.3.2 Prorogation

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<sup>8</sup> See National Assembly, *Concept Note for the Lesotho Parliamentary Reforms* at 5.

<sup>9</sup> *Ibid* at 6.

Like with dissolution, the general view from the public is that prorogation and adjournment sine die should be abolished. Perhaps, this view is generated by the sad experiences that the country has had with these two parliamentary devices. Mbe they may not necessarily be abolished; they should be regulated. Prorogation is a very important tool to monitor performance of parliament as it ends a session of parliament and stock is taken of what parliament has done in the preceding session. The sessions of parliament must be regularised so much that a session of parliament may be fixed at twelve months. In that way, for each parliamentary term (life) there should be five sessions. When sessions of parliament have been fixed and regularised, planning will also be easier.

#### *4.3.3 Motion of no confidence (and impeachment)*

The view expressed by both the public and the multi-stakeholder dialogue is that when a resolution of no confidence has been passed in the government, Prime Minister must resign (or be removed) instead of dissolving parliament. There is a further recommendation from the public that motion of no confidence should not be introduced before the expiration of at least three years into the parliamentary term.

Perhaps the country may consider separating vote of no confidence from impeachment. While the two are still largely political devices of parliament, impeachment is used largely for misconduct while no confidence is used for general political purposes. In that way, impeachment may be undertaken at any time when impeachable misconduct arises and vote of no confidence may indeed, as the public suggests, be introduced only after at least three years into the term of parliament.

## **5. PUBLIC FINANCE AND APPROPRIATION OF PUBLIC FUNDS**

### **5.1 Challenges**

The main concern from the multi-stakeholder dialogue was that the provisions relating to appropriation of public funds in the constitution are confusing. These are the provisions that relate to appropriation of funds beyond the end of the financial year. However, there are other issues related to public finance, namely: lack of constitutional framework on procurement, no provisions for Central Bank and its mandate, no strong constitutional framework for audit and financial accountability.

## 5.2 Constitutional Position

In terms of the constitution, a minister responsible for finance has an obligation to prepare financial estimates to be laid before both houses of parliament before the commencement of each financial year (s 112). However, the minister may, in terms of an Act of Parliament, authorise withdrawals from the consolidated fund even without the Appropriation Act at the beginning of the financial year. Such authorisation can only be valid for four months and only one-third of the previous year's budget may be utilised. The confusion arises in the use of the words 'proceeding year' in section 113(a) and 'preceding year' in 113(b). The two carry different meanings because the former is retrospective while the latter is prospective.

Furthermore, the constitution generally has a weak financial framework in that it lacks provisions on central bank, procurement, remuneration of public officials and audit framework. These aspects have been left to statutes.

## 5.3 Recommendations

Perhaps section 113 of the constitution may be redrafted to make it clearer on the question of whether one-third of the funds that may be authorised by the Minister in the absence of an Appropriation Act should be of the previous financial year or the year ahead.

Furthermore, the constitution may introduce a new financial framework in order to enhance accountability in public finances.<sup>10</sup> The issue of remunerations and incentives of public officials, such as MPs and ministers, may have to derive framework from the constitution. This issue has featured in the public consultations wherein the main view is that MPs interest-free loans must be abolished.

## **6. DECENTRALISATION**

### **6.1 Challenges**

The main issues identified through public consultations are: weak local government, incapacitated local councils, over-centralised government services, centralised national budget leading to poor service delivery and lack of implementation of the Decentralisation Policy. There is weak decentralisation framework for local governance in the constitution.

### **6.2 Constitutional Position**

In its broader design, the Constitution has created the country as a unitary state. While it has been separated between executive, adjudicative and legislative branches, the constitution has not divided power between tiers of government; neither has it allocated any functions to sub-national level. The sub-national structures are nominally envisaged under section 106(1) as thus:

Parliament shall establish such 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.

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<sup>10</sup> See Central Bank of Lesotho, *Proposal for Reform to Improve the Performance of the Financial Sector*, October 2019.

The Constitution has delegated the power of decentralisation to the central government. This is a weak constitutional framework for decentralisation.

### 6.3 Recommendations

The views expressed from public consultations are that there should be strong decentralisation, and powers must be devolved to local level. Perhaps this may be attained by providing for a strong decentralisation framework at constitutional level. The constitution may at least create tiers of government, allocate broad functions and competences to those tiers and provide for fiscal decentralisation. Decentralisation, both political and fiscal, should not be left to the discretion of central government; it should be a constitutional injunction.

## 7. OFFICE OF THE FIRST LADY

### 7.1 Challenges

A general concern has been raised from public consultations about the Office of the First Lady. The concerns are that the office is expensive and must therefore be abolished; that the office belongs to the Queen not the spouse of the Prime Minister; that it duplicates the work of government departments like the Ministry of Social Development.

### 7.2 Constitutional Position

The Constitution of Lesotho does not recognise either the wife of the King or the wife of the Prime Minister. Neither is there any statute that establishes the offices of the spouses of either the King or the Prime Minister. The spouse of the Prime Minister is only the beneficiary of pensions of the husband in terms of Prime Minister and Deputy Prime Minister (Retirement and Spouses Benefits) Act of 2011. As such, the Office of the First Lady is an informal designation granted to the spouse of the Prime Minister.

The office is therefore not an official establishment either in the public service or in the broader constitutional design.

### 7.3 Recommendations

The general view from the public is that either the office should be abolished or be granted to the wife of the Head of State, the King. The spouses of the King and the Prime Minister play vital roles in public life. They often undertake 'soft' but critical functions because of their status. Because of their public status, they are able to raise resources from private donors for purposes of helping the indigent and vulnerable members of society.

However, their offices should remain informal because rendering them formal may generate many constitutional questions such as, but not limited to: the principle of democracy (exercise of public power must derive from popular will) and where can they be placed in the broader design. As such it is better when the constitution does not recognise them.

Nevertheless, care should be taken not to allocate public resources to these offices because in terms of section 111 of the Constitution, no moneys can be withdrawn from the consolidated fund without authorisation of the Constitution or an Act of Parliament.

## **8. MECHANISM FOR MANAGEMENT AND RESOLUTION OF POLITICAL CONFLICTS**

### 8.1 Challenge

The main concern raised by public consultations are that the country does not have a mechanism for resolution of political conflicts. Oftentimes, the country resorts to international assistance for resolution of political conflicts. This is so despite the fact that political conflicts are such a recurrent phenomenon in Lesotho since independence; and when they erupt they usually wreak untold havoc in public life.

## 8.2 Constitutional Position

The constitution has no mechanism for resolution of political conflicts. At a very least, electoral disputes are resolved through the mainstream judicial mechanism. Many a time those conflicts are hardly ever resolved by the courts. Instead, they escalate. Most of the major political conflicts in the country that cause widespread disruption in public life were from the courts. Ironically, the same disputes were resolved through international intervention.

### 8.1 Recommendations

The general view from the public is that the King should be given powers to resolve political conflicts. The recommendation may draw king into an awkward position of him being subject of public criticism. This may be an unintended consequence of this recommendation.

Perhaps two options remain open for the country. The first one could be to form the structure that will be manned by reputable people that will have powers of conciliation and arbitration of political disputes; or even use other mechanism of dispute resolution and mechanism. The option has been followed in countries such as Zimbabwe where, the constitution established the National Peace and Reconciliation Commission.

The second option may be to review the Council of State. The Council of State is a successor to the Privy Council which was inherited from Britain. Its main function under the current design is to advice the King on functions that were initially in the discretion of the King. Its functions are therefor subsidiary in nature. These functions and composition may be reviewed to include political conflicts management.

## 9. POWERS OF THE KING

### 9.1 Challenges



Members of the public expressed their views and concerns on the limited or restricted powers of the King regarding several issues, such as appointment of judges, appointment of Ministers and appointment of the Commander of Defence Force and appointment of holders of offices in Institutions supporting democracy such as the Ombudsman and the Auditor General, as well as the issue of prorogation and dissolution of Parliament.

The public's concern is that, in making appointments, proroguing or dissolving Parliament, the King is required to act on the advice of the Prime Minister and as a result he cannot act on his own or make his own independent decisions. It became apparent from their views that the instability in the country was due to the fact that the Prime Minister plays a major role in what is supposed to be the King's powers. According to the public, the fact that the King is required to seek the advice of the Prime Minister and authorities such as the Council of State and the judicial service Commission undermines the King. Their view is that Lesotho would be a stable country if the King's powers are not subject to any authority.

## 9.2 The Current Position Regarding the King's Powers

The powers of the King have always been the subject of protracted controversy in the constitutional development of Lesotho. It spans all the historical epochs of the constitutional development of the country – the colonial period, post-independence, military junta and under the current dispensation. The central question has always been the co-existence of the hereditary monarchy with electoral democracy. The pattern has been that the constitution of Lesotho has gradually gravitated towards constitutional monarchy in the British style. Under the independence constitutional design, the monarch had certain 'residual powers' exercised by him in his own discretion. Those powers were, amongst others, appointment of senators, appointment of Prime Minister and other officers. Under the current constitutional dispensation, the King does not have any discretionary powers he used to enjoy under the independence constitution. All his powers are exercised 'with the advice' mainly of the Prime Minister or the Council of State.

In terms of section 44 of the Constitution, the King is a Constitutional monarch, and in executing the functions of his office, he has to abide by the Constitution and all laws in force in Lesotho. Section 51 provides for the King to take and subscribe to the Oath in accordance with Schedule 1. The Schedule emphasises that he has to observe the provisions of the Constitution and other laws of Lesotho. It further requires him to abstain from involving the monarchy in politics or in any political party.

The King is therefore required to do any act or make any decision in accordance with the Constitution or applicable laws, for example, appointment of Ministers, Section 87(4), appointment of the Chief Justice Section 120(1) and President of the Court of Appeal Section 124(1); appointment of the Ombudsman Section 134(1).

Section 83(4)(b) of the Constitution gives the King powers to dissolve parliament, but in exercising his powers under subsection (4), he has to act on the advice of the Prime Minister as well. However, there are exceptions that he can act without the Prime Minister's advice, if he is of the opinion that the dissolution will not be in the best interests of Lesotho, but he still has to seek advice of the Council of State. This defeats the whole purpose of the provision that gives him powers of dissolution of Parliament.

Section 91(3) on the exercise of the King's functions limits his powers even more because it states that where he is required to do any act but fails to do so, the Prime Minister may inform him that he is intending to do the act that he failed to do after the stipulated period, and if the stipulated period expires, the Prime Minister may do the act as long as he reports to Parliament afterwards, and that act will be considered to have been done by the king himself

### 9.3 Recommendations

There is a widespread view, probably because of the frustration of the country with electoral politics, that the King should be given more powers – even more than the

Prime Minister.<sup>11</sup> However, in today's democratic dispensation, it is still necessary to limit or restrict certain powers of the King through the Constitution. However, where the Prime Minister acts unreasonably or unjustly, the King should have power to overrule him. For example, where there is a resolution of no confidence in the Government or Prime Minister, the Constitution should provide for the King to have power to dissolve Cabinet and appoint a caretaker Government for the remaining period of the life of Parliament. The appointment has to be from within Parliament. Since the executive authority of the country vests in the King according to Section 86, he has to be consulted by the Prime Minister and other Ministers on issues relating to the Government of Lesotho. The view from the public is that the Constitution should further provide that he may exercise the executive authority through the Cabinet or directly so that if there is a need for him to directly exercise the executive authority, he can still do so.

Perhaps the main recommendation may be that it is important that the King should still remain constitutional with no executive powers. However, he should be given certain powers in the constitution. The constitutional powers may be categorised into 'dignified functions' and 'effective function'. The King should be given powers over 'dignified' functions and the Prime Minister still remain with 'effective' executive powers. That will balance the excesses of electoral politics.

## **10. THE PREAMBLE**

### **10.1 Challenges**

There is an overwhelming support for a Preamble to be included in the Constitution. The public is of the view that inclusion of a Preamble in the Constitution is of paramount importance because their views and aspirations of the Lesotho they want would be reflected in the Preamble.<sup>12</sup>

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<sup>11</sup> This view is expressed strongly in the in-district consultation reports and in the majority of written submissions. See for instance *Leaders of Political Parties Outside Parliament Position on Certain Aspects of the National Reforms*.

<sup>12</sup> Development for Peace Education, *The People's Constitution*, 2019 at 2.

## 10.2 The Current Position Regarding the Preamble

The Constitution of Lesotho does not currently have a Preamble. The value of preambles to the constitutions is that it embodies the overarching vision of the constitutional design; it embodies the values of a certain constitutional design. The Constitution of Lesotho has largely subscribed to the ethos of Westminster constitutional design. When the constitution of Lesotho was adopted in 1993, the independence of constitution was transplanted almost entirely (with few notable exceptions) to the new design. This was done despite the fact that the country had considerable constitutional lesson in the period between 1966-1993. The preamble would have captured that transition and embodied the main vision of the new dispensation.

## 10.3 Recommendations

It is necessary for the Constitution of Lesotho to have a Preamble. A Preamble will express democratic principles and the reason behind having the Constitution. The newly emerging constitutions in Africa such as South Africa (1996), Kenya (2010), Zimbabwe (2013) have a preamble that captures their transitions and the aspirations of the countries. For instance, in South Africa, the preamble provides for why the new Constitution was adopted, which is, "healing the divisions of the past and establishing society based on democratic values, social justice and fundamental human rights."

Some countries have, in interpreting provisions of their constitutions, used the contents of the Preamble of their constitutions because they are considered as a guide for reading and interpreting the wishes and aspirations of the people. Lesotho and Basotho would, after so much instability, have in their Constitution their wishes of the Lesotho they want.

However, a preamble may hardly be introduced as an amendment to the already existing constitutional design. It may best be the embodiment of 'the new design'. Hence it is proper that when thinking about the preamble, the country should think about the vision and values of the 'new design'.

## **11. FORMATION OF GOVERNMENT AND COALITIONS**

### 11.1 Challenges

According to the views of the public, there are no established or recognised procedures for formation of a coalition government in Lesotho. There are also concerns about the formation of government generally; that the constitution is not express and clear about the process for the formation of government. The formation of government clause (s 87(2)) is based on British conventions on the formation of government and, as such, difficult to operate in Lesotho.

### 11.2 The Current Position Relating to Formation of Governments

The formation of government in Lesotho, is based on British convention which has since been legislated under section 87(2) of the Constitution of Lesotho. The conventional principle governing formation of government has always been straightforward – that the King would invite the leader of the political party or coalition of parties that appear to command the majority in the National Assembly to form the government. Most of the time, the matter would have been easily decided by the election. The introduction of the mixed electoral system with a strong proportionality element did not only bring about a paradigm shift from a dominant party system to inclusive politics, but also a new phenomenon of inconclusive elections which produce hung parliaments became the order of the day since 2012. This consequently came with some uncertainties about the process of formation of government.

Government in Lesotho, starting with its formation, turns on the office of Prime Minister. However, the choice of the Prime Minister is not directly from the electorate. Voters in Lesotho do not elect the Prime Minister, at least not directly. It is the prerogative of the monarch on the advice of the Council of State. The use of the words “who appears” in section 87(2) has generated a lot of controversy. The process of

formation of government is the same, regardless of whether the government is based on a single party or coalition of parties.

The constitution does not further provide for caretaker government – government between the dissolution of parliament and the formation of the new government

## 11.3 Recommendations

### 11.3.1 Choice of Prime Minister

If a decision is made that the country should still remain a parliamentary system, government will still have to be based on the confidence of parliament. The rationale for this principle is that in the absence of parliamentary confidence the resultant government lacks democratic legitimacy. Currently the country uses negative parliamentarism (there is no vote for the Minister); it does not follow positive parliamentarism (where parliament has investiture for the Prime Minister). For avoidance of doubt, it may be recommended that the country should have investiture vote (a direct vote by parliament for the Prime Minister). There are however views that Prime Minister should be elected directly by the electorate. This view may be explored as well it may not agree well with the principles of a parliamentary system.

Be that as it may, it is apparent that some reforms should be introduced to the process of formation of a government in Lesotho. Leaving it to broad British conventions creates a lot of uncertainty not only for the appointing authority, the monarch, but even the electorate. It always works best for the political system when the electorate knows with certainty the final outcome of the voting process.

There are also strong views that the Prime Minister must be elected directly.<sup>13</sup> This option may be considered but another bigger decision will have to be made on whether the country still intends to be a parliamentary system – where parliament is at the

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<sup>13</sup> Moafrica FM Radio Listeners, *Proposals to the Constitutional Reforms of Lesotho* 15<sup>th</sup> January 2018. See also Development for Peace Education, *The People's Constitution*, 2019 at 5-6. See also *The Lesotho Youth Compact on Constitutional, Political Systems, Parliamentary Arrangements, Justice, Security, Public Sector, Economy and Media Reforms, The National Youth Conference* 18-19 October 2018.

centre of governance. When the Prime Minister is elected directly, the position will have 'presidentialised' because it will have direct mandate from the electorate; not from parliament anymore. It would mean that parliament is left largely with legislative and oversight functions. Parliament will no longer be involved in the formation of government as it is the case currently. It would mean an entirely new design where even the powers of parliament on the Prime Minister like vote of no confidence will have to be revisited because the Prime Minister will no longer be the creature of parliament but the electorate.

### *11.3.2 Caretaker government*

It is important to clearly demarcate the caretaker period in Lesotho, and the restrictions be placed on the government during this time. What is clear in terms of the constitution is that three months after dissolution of Parliament, there should be an election, and that days after the announcement of the election results Parliament must convene. As regards the timeline for the formation of a government and the restrictions on government during this time the Constitution is silent.

### *11.3.4 Coalitions*

Under the current constitutional design, the constitution does not distinguish between government formation based on single party or coalition of parties. As long as the majority of the members of the National Assembly 'appears' to support a certain person, that person becomes the Prime Minister. Ordinarily, this is not much of a problem under parliamentary systems. However, in Lesotho this has created problems starting from formation to government to the stability of government.

Perhaps formation clause (s 87(2)) may be reviewed to specially regulate both scenarios. There may also be a need for a statute (Act of Parliament) to regulate in detail the processes of coalition government formation and coalition cabinet. However, care should be taken not to over-regulate politics.

## **12. INSTITUTIONS SUPPORTING DEMOCRACY**

## 12.1 Challenges

The public is of the view that institutions supporting democracy in Lesotho are not strong enough to support and strengthen Constitutional democracy and promote rights provided for in the Constitution. According to the public, these institutions are supposed to be independent and impartial because they are creatures of the Constitution. The public made examples of institutions such as the Ombudsman, which is supposed to protect officers from all forms of unfair treatment or inefficient administration; the Auditor General who is supposed to be the taxpayers watchdog by ensuring that all three arms of Government are sufficiently accountable for monies appropriated to them and the Independent Electoral Commission which is responsible for ensuring that elections are free and fair but have, to their disappointment, failed dismally to do so.

There was a general feeling from the public that their indirect appointment by the Prime Minister made them feel like they are accountable to him and as a result cannot execute their duties without fear.

## 12.2 Current Position of Institutions Supporting Democracy

Currently, the following institutions supporting democracy are created by the Constitution: the Ombudsman is appointed under Section 134 by the King, acting on the advice of the Prime Minister and it is charged with investigative responsibilities where an officer has suffered injustice as a result of any authority's action; the Auditor General's appointment by the King, acting on the advice of the Prime is provided for under Section 142(1) and the Independent Electoral Commission which is established under Section 66 of the Constitution and the appointment of members to the Commission is still done by the King on the advice of the Council of state.

## 12.3 Recommendations



Some of the public recommendations are that the appointments of members to all these institutions supporting democracy should be made by the King independently and not be subjected to the Prime Minister's advice.

The public also made recommendations that provisions in the Constitution should clearly and sufficiently provide that the main purpose of the existence of the institutions is the strengthening of democracy. There was also overwhelming support that these institutions should be directly answerable to Parliament so that no person or authority can interfere with them in the exercise of their functions under the Constitutions and other laws made by Parliament.

The Constitution has made provision for Parliament to make laws in respect of the institutions. For instance, the Audit Act of 2016 under Section 4 on the independence of the Office of the Auditor General provides for the Office to accomplish its tasks objectively and to have administrative autonomy, that could be misconstrued to mean that the Office has lesser powers than those anticipated by the Constitution.

The Principal laws relating to these Offices should also be amended to provide for the independence anticipated in the Constitution.

## **13. TERM OF OFFICE FOR PRIME MINISTER AND RETIREMENT BENEFITS**

### **13.1 Challenges**

The public expressed their concerns about lack of the provisions of the Constitution on the term of office of the Prime Minister. They said that it has been established that there is a tendency by Prime Ministers to stay in power for as many terms as they want because the Constitution is silent on their term of office.

### **13.2 Current Position on Term of Office of Prime Minister**

The Constitution of Lesotho is currently silent on how many terms the Prime Minister should stay in office. It also fails to provide for emoluments or even retirement benefits of constitutional office holders. The issue of emoluments remains in the hands of Cabinet.

Cabinet in turn advises Parliament on salaries and benefits of members of Parliament including those of the Prime Minister and statutory position holders. Parliament endorses what Cabinet proposes. Parliament has enacted the Prime Minister and Deputy Prime Minister (Retirement and spouses Benefits Act of 2011) which provides for the Prime Minister and the Deputy Prime Ministers retirement benefits, and after how long as holders of those offices, they may qualify for the benefits. The Act also makes provision for the minister to amend the Schedule by regulations. Parliament does not have to deliberate on the salaries and benefits until the regulations are published and tabled in Parliament.

### 13.3 Recommendations

#### *13.1 Term of Officer and Age Limit*

The public recommends that there should be a provision in the Constitution, which will restrict the Prime Ministers term in office to two terms only and the Prime Minister will only have a maximum period of ten years in office. However, the term in office should be subject to other provisions such as the provision on motion of no confidence in the Prime Minister. The country may also consider the question of imposition of constitutional age limits for the Prime Minister.

#### *13.2 Retirement Benefits*

Regarding their salaries and retirement benefits, the Constitution should empower a body or authority to look into the issues of salaries and benefits taking into account the prevailing economic situation in the country.

There should also be a provision in the Constitution or Act of Parliament, which should clearly provide that, where the Prime Minister has resigned from office and taken his retirement benefits, he should not be back in Parliament as a member.

## **14. LAND**

### 14.1 Challenges

The public is of the general view that the provisions of the current law that govern ownership of land allows foreigners or foreign companies to own land and as a result, it is more in favour of foreigners or foreign enterprises than the Basotho.

There are also issues raised about the question of the 'conquered territory'.

### 14.2 The Current Constitutional and Statutory Position on Land

The Constitution of Lesotho under Section 107 vests all land in the Basotho Nation. The King holds the land in trust for the Basotho Nation. It means the power to allocate land vests in the King who has to exercise the power of allocation of land according to the Constitution and any other law enacted by the Parliament. The Constitution further provides that Parliament may enact a law prescribing allocations, interests and rights that may be granted.

The Current law governing land in Lesotho is the Land Act of 2010. The Act provides for the granting of titles to land, conversion of titles, creation of land courts and the settlement of disputes relating to land. Obviously, the Act provides for all categories of people who are entitled to own land including foreign companies which can own up to 80 percent of land while 20 percent in the company is to be held by a citizen of Lesotho.

On the question of the 'conquered territory' The Constitution (s 1(2)) provides that The territory of Lesotho shall comprise all the areas that immediately before 4<sup>th</sup>

October 1966 were comprised in the former Colony of Basutoland together with such other areas as may from time to time be declared by an Act of Parliament to form part of Lesotho.

### 14.3 Recommendations

The present land Act of 2010 seems to have an element of promoting economic growth and development. For example, the holding of 20 percent shares in land owned by a foreign company may assist in promoting poverty reduction of Basotho through their participation as holders. The current land system also removed the customary land tenure system which only allowed men to hold titles in land. Women can now own or inherit land and therefore creating a balanced ownership or inheritance in land. These may promote economic growth and development.

The question of the 'conquered territory' is slightly meta-constitutional; it may need to involve the bilateral engagements between Lesotho and South Africa. However, such engagement may need to be confronted and the issue be settled once and for all. The matter seems to be spanning almost all the historical epochs of the country. At some point it even becomes a theme for politicking and electioneering.

## 15. REGULATION OF POLITICAL PARTIES

### 15.1 Challenges

There is a general concern by the public that there are too many political parties which register for elections in Lesotho even though they may not have enough membership or following for participating in the elections. The intention of registering a political party with IEC is, according to the public, the subvention parties registered get from IEC.

### 15.2 The Current System of Regulating Political Parties and their Registration

There is currently a dual system of registration of political parties that would like to take part in the elections. A party first has to register with the Register General under the Societies Act of 1966. Some of the requirements are that a party should have its own Constitution. The number of signatories only has to be over ten people, payment of registration fee and membership fee. Once registered, a party may register with the Independent Electoral Commission. According to Section 66A of the Constitution, some of the functions of IEC are to register political parties and supervise and control registration of registers.

Unlike some of the emerging constitutions in Africa like the constitution of Kenya (2010) and the Constitution of Zimbabwe (2013), the Constitution of Lesotho does not have a provision on political parties. This is despite the pivotal role that has been played by political parties in the broader public of the country.

## 15.3 Recommendations

### *15.3.1 The Constitution*

The constitution may have provisions on the basic requirements for formation of a political party and the rights of political parties. The constitution may also regulate formation of pacts, alliances and or coalitions by political parties. It may also direct parliament to enact a detailed legislation on political parties.

### *13.3.2 Legislation*

The public recommends that there should be an independent law governing political parties and how they should register for elections. Apart from payment of registration fees payable by parties, a party registering with IEC should provide proof of availability of funds by the party in the party's account. The amount should be the amount prescribed by the Minister responsible for the administration of the Act.

There is therefore a need for an Act of Parliament, that regulates political parties ranging from, but not necessarily limited to, registration, cancellation, internal

democracy, conflict resolution, etc. Even on this one, care should be taken however not to over-regulate politics.

## **16. AGE OF MAJORITY**

### 16.1 Challenges

There is a general view from the public that the Constitution should provide for the age of majority to avoid the inconsistency in several pieces of legislation. Examples given were the Child Protection Act, Labour Code and the electoral law.

### 16.2 Current Constitutional and Legal Position

The Constitution of Lesotho is silent on the age of majority. There are currently several pieces of legislation which provide for the definition of a child. These include the following: The Age of Majority Ordinance No 62 of 1829 which provides for the age of majority as twenty-one years, the Child protection Act of 2011 defines a child as a person under the age of eighteen years, the Labour Code Order of 1992 also defines a child as a person under the age of fifteen years.

### 16.3 Recommendations

There was an overwhelming view from the public that the Constitution should provide for the age of majority to get rid of the present inconsistencies in the current legislation. The public is confident that if there is a provision in the Constitution, laws that will be passed will therefore have to be in line with the provisions of the Constitution. They also recommend that the current laws should be amended so that they are in line with international conventions which Lesotho is a party to, and repealed, in the case of the 1829 legislation which is so outdated and obsolete.

## 17. CHIEFTAINSHIP

### 17.1 Challenges

There is a general view that the institution of chieftainship has been systematically weakened by coloniality for a long period of time. The emasculation of the institution has been part of the broader annihilation of traditional conceptions of government.<sup>14</sup> Ever since the inception of coloniality in the country, hitherto, the institution has lost only its power in the broader scheme, but it has been systemically replaced by the 'democratic wave' in governance. As result, the institution has been effectively relegated at both local and central government. With the glaring failure of democratic politics at both tiers of government, there are significant voices calling for reinstatement of not only the institution of chieftainship but the traditional conceptions of government – 'seMoshoeshoe' – alongside the modern the modern conceptions. There is another problem raised by the institution that there is recognition of principal chiefs was done arbitrarily and, as a result, certain clans have been left out like Baphuthi and Bathepu.

### 17.2 Constitutional and Legal Position

The Constitution of Lesotho has differentiated between the King and the broader institution of chieftainship. As a result, the Constitution is not elaborate on the institution of chieftainship and how the institution will meaningfully participate in both tiers of government. Section 103 and Schedule two to the Constitution only recognises twenty-two (22) principal chiefs. In the main, these recognised principal chiefs are ex-officio members of Senate. In the broader scheme of things, the senate has fundamental limitations in relation to the National Assembly.<sup>15</sup>

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<sup>14</sup> *National Reforms: Position Paper of Chiefs Forum* at 20.

<sup>15</sup> See Senate, *Position Paper on Parliamentary Reforms* at 8. The position paper of Senate notes that:

"One of the challenges facing the senate currently is that is that it has limited legislative powers and limited participation in the appropriation bill. These are the two factors that curtail the effectiveness of the Senate".

Furthermore, the Constitution empowers parliament to make legislation for purposes of regulation of the institution. The key pieces of legislation that affect participation of chieftainship in matters of governance are Chieftainship Act of 1968 and Local Government Act of 1997. These laws have been criticised for significantly excluding the institution from mainstream matters of government.

### 17.3 Recommendations

There is a general call for reinstatement of chieftainship and other traditional conceptions of government. This is in view of the glaring problems of liberal democracy in an African context like Lesotho. These may be attained through a balance or 'mixed' government. The constitution may carefully allocate functions – at central and local level – to the duality of chieftainship and 'democratic politics'. However, deep debates will have to be engaged in because there are equally strong views to the effect that liberal democracy should continue to enjoy superiority over chieftainship because of the principle of democratic election inherent in liberal democracy. This will necessitate introducing a new chapter in the Constitution dedicated to chieftainship. Furthermore, it has been recommended that certain clans that have been arbitrarily excluded from recognition be recognised accordingly.

## 18. OFFICIAL LANGUAGES AND LANGUAGE RIGHTS

### 18.1 Challenge

There is a concern by some minority groups that the Constitution does not provide for Sixhosa and Sephuthi as official languages like Sesotho and English. According to these groups, they are not at the same footing or level of understanding of contents of important documents such as the Constitution and others that contain issues affecting them or are of importance to them, as other nationals whose languages are provided for in the Constitution.

Another general concern by the public is that the Constitution does not provide for a sign language as an official language. The sign language is according to the public, an



important and effective tool that makes communication with and for people who have a hearing disability easier.<sup>16</sup>

## 18.2 Current Constitutional Position

The Constitution currently provides for English and Sesotho as official languages of Lesotho. There is also no duty imposed by the constitution or any other law on state to promote African(indigenous) languages.

## 18.3 Recommendations/Possible Solutions

The public recommends that isiXhosa, isiPhuthi and sign language should be recognised as official languages of Lesotho and that the recognition should be endorsed by the Constitution.

The recommendation is that the Constitution should have a provision recognising the isiXhosa and isiPhuthi – as well as other spoken African dialects in Lesotho – as well as a sign language as official languages, because that will be in line with recent developments in international law. Lesotho now has a duty or responsibility to provide protection to minority languages against discrimination based on a language.

The constitution may also impose a duty on state to not only recognise other indigenous languages, but also to promote them. There is general pattern that although the official languages are English and Sesotho, English tends to dominate government business such as legislation, cabinet and in the judiciary. The net effect is that the African(indigenous) languages are facing extinction. As such, there is a need to promote these languages.

## 19. RELIGION AND RELIGIOUS RIGHTS

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<sup>16</sup> See Lesotho Council of Non-Governmental Organisation(LCN), *Sectoral Consultations Consolidated Report* at 79-80.

## 19.1 Challenges

There is a concern from the public that religious rights are not sufficiently provided for in the Constitution. Some religious groups are of the view that freedom of religion is a fundamental human right and that, if the freedom from religion was sufficiently provided for in the Constitution, they would not be side-lined by the Government and some of its Ministries. In particular, there is a specific submission by the Supreme Council Islamic Affairs in Lesotho that there seems to be a systematic exclusion of Islam religion in public life in Lesotho in favour of Christianity. The public functions are officiated by Christian faith leaders as against other faiths.<sup>17</sup>

On the other hand, there is a specific submission from Moafrica FM Listeners, a Christian faith aligned radio station, proposing that Christianity should be proclaimed the official faith in the country (without necessarily excluding other faiths).

## 19.2 Current Constitutional position

The Constitution of Lesotho provides under section 13 that every person in Lesotho is entitled to freedom of conscience which includes the right to religion. Every religious community has a right to practice its faith in terms of the Constitution. The right to religion is fortified by specifically including religion as a prohibited ground of discrimination in Lesotho in terms of section 18. The Constitution does not provide for the recognition of any other religion against the other; neither does it prohibit any religion or faith-based practice.

## 19.3 Recommendations/ Possible Solution

The Constitution seems to have sufficient framework for promotion and protection of religious rights and freedoms. It may violate this right if the constitution would begin to recognise or give preference to other religions or specifically exclude others.

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<sup>17</sup> Supreme Council Islamic Affairs, *Islamic Reforms Submissions/Recommendations* at 2; See Lesotho Council of NGOs(LCN), *Sectoral Consultation Matrix: 'Leaving No One Behind: The Voices of the Collective in the Reforms Process in Lesotho* at 35, 36 and 37.

However, government and other public agencies must implement the spirit of the constitution – which is non-discrimination on the basis of religion – by not excluding other faiths in official function. Government and other public agencies must take the inter-faith approach in its dealings with religious groups.

## **20. APPLICATION OF INTERNATIONAL LAW IN LESOTHO**

### 20.1 Challenges

The country has ratified many international agreements. However, there is a concern from the public that the Constitution is silent on the application or recognition of international law such as treaties, conventions or agreements.<sup>18</sup> As a result, there is uncertainty about the application of international law in Lesotho. The judiciary is also not consistent in the manner in which it treats international law. In other cases, it is treated as if the country is monist and in other cases it is treated as if it dualist. There is also no involvement of parliament in the country's ratification of international agreements. It an exclusive terrain of the executive.

### 20.2 Current Constitutional status

There is currently no provision in the Constitution indicating recognition or applicability of international law in Lesotho. The silence has been a major contributing factor on the issue of who relevant role players are in different processes involving negotiation, signing and ratification of treaties or conventions. The basis for the applicability of international instruments that Lesotho is a party to, only after incorporation into domestic law, is just a practice without any legal or legislative basis. The issue of what role Parliament plays or should play is also not clear.

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<sup>18</sup> *Sectoral Consultation Matrix Report: Leaving No One Behind in the Reforms process in Lesotho: The voices of the Collective in the Reforms Process in Lesotho* at 103.

## 20.3 Recommendations or Possible Solutions

The public is of the view that a provision on the applicability of international law should be enshrined in the Constitution.

The recommendation is that the Constitution should provide for the following: negotiation and signing of international agreements to be the responsibility of the executive arm of Government. However, an international agreement must only be binding when approved by parliament.

## 21. ELECTIONS: ELECTORAL SYSTEM AND ELECTORAL MANAGEMENT

### 21.1 Challenges

The electoral system that the country has been using since independence was the constituency-based system. This system has its taproots from the Britain. The system was criticised for distorting proportionality in the representation of political players in parliament. The model was largely blamed for the unprecedented political turmoil of 1998. As a result, the system was targeted for the reforms that followed the turmoil. In 2001, the constitution was amended to introduced a mixed electoral system(MMP). As a result, representation in the National Assembly was reconfigured so much that the size of the House was enlarged from 80 to 120. Fourth (40) seats were to be allocated on the principle of proportionality.

Views seem to differ diametrically on whether the introduction of MMP was an end in itself or a transitional stage towards a full-fledged proportional model.<sup>19</sup> There are also strong views that if MMP is retained, it must introduce the threshold in order to curb proliferation of slinter parties. A threshold of 1 constituency or 5% is recommended.<sup>20</sup> Another challenge of the MMP is that it is often manipulated by political parties with a

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<sup>19</sup> *The 4 x4 Stand of National Reforms at 2*; see also See *The Lesotho Youth Compact on Constitutional, Political Systems, Parliamentary Arrangements, Justice, Security, Public Sector, Economy and Media Reforms, The National Youth Conference 18-19 October 2018.*

<sup>20</sup> *Ibid at 1.*

view to exaggerate their representation. The manipulation became apparent with the 2007 general election.

The local government election system is different from the one used at central level; even the elections at central level and at local level are held separately. The challenge that has been raised that the two elections must be harmonised to minimise costs.

As for the management of elections, there are views that the Independent Electoral Commission must be expanded from three(3) members to five(5) and make it part-time not full-time.<sup>21</sup> There are also strong views that appointment of commissioners should not be politicised.<sup>22</sup>

## 21.2 Constitutional and Legal Position

The Fourth Amendment to the Constitution of Lesotho (2001) has introduced the Mixed Member Proportional (MMP) electoral system. The system is further operationalised through the National Assembly Electoral Act (2011). The system was first used in 2002 elections. The system is not based on any threshold; it uses the quota system to allocate the 40 proportional seats in the National Assembly. The 40 seats are allocated to political parties based on the principle of proportionality applied in respect of the National Assembly as a whole. When the model was adopted after 1998 political turmoil, there were strong views in favour of 100% proportionality already.

As for election management, the country moved from executive-based election management to a model of independent electoral commission. The commission is full-time. It is composed of three Commissioners inclusive of the chairperson. The commission is appointed by the Council of State on the advice of the registered political parties. There is a criticism that this process of appointment excludes other stakeholders and it is not merit-based. Besides the National Assembly Electoral Act (2011) which seeks to operationalise the commission, there is no Act of Parliament specifically dedicated to the commission.

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<sup>21</sup> See Lesotho Council of Non-Governmental Organisation(LCN), *Sectoral Consultations Consolidated Report* at 79-80.

<sup>22</sup> Ibid at 81.

### 21.3 Recommendations

There should be a conversation on whether the country must change the electoral system from MMP to full proportional. This conversation must be informed largely by Lesotho's experience rather than parachuted ideas of what is dominant in other countries.

There are also strong views from the youth sector that the MMP gender affirmation must be extended to cover youth and perhaps disability. Presently, a 50-50 quota otherwise known as 'zebra lists' is interested to balance gender only; not inclusion of other equally excluded groups like disability and youth.<sup>23</sup>

The country may also consider whether to harmonise the local government elections with the general elections. The only challenge with the harmonisation is that ever since 1993, general elections have never been regular; they are always called before the end of the term. Thus, this instability may be costlier when the two elections are harmonised.

As for the election management, the conversation must be held on the type of IEC (part-time or full-time) and the process of its appointment. There is also a recommendation for the IEC Act – the law that will be dedicated to operations of the Commission.<sup>24</sup>

## 22. CONCLUSION: OVERALL REVIEW OR PIECEMEAL AMENDMENTS?

The views that the members of the public have about the constitutional change are broad and run deeper. They affect almost all the major aspects of the constitution. The range from just poor and unclear draftsmanship of certain provisions of the current constitutions such as on matters related to appropriation of public funds to more fundamental issues like the review of the fundamental parts of the constitution;

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<sup>23</sup> See *The Lesotho Youth Compact on Constitutional, Political Systems, Parliamentary Arrangements, Justice, Security, Public Sector, Economy and Media Reforms, The National Youth Conference 18-19 October 2018.*

<sup>24</sup> See Lesotho Council of Non-Governmental Organisation(LCN), *Sectoral Consultations Consolidated Report* at 81.

like the Bill of Rights. This therefore requires the country to make a decision on whether the changes on the constitution should be on a large scale or piecemeal amendments.<sup>25</sup> There are advantages and disadvantages for either path. The advantage of piecemeal approach is that there are certain urgent matters that may be quickly attended to without a need for laborious process of having to go for referendum. It is therefore an easier path. There disadvantage with it though, is that it will not attend to some of the major challenges of this constitutional design. Secondly, it will have the effect of fragmenting the design the design. However nominal the piecemeal amendments may be, they have the potential of affecting the overall theory of the design.

On the other hand, the overall review has the advantage of reviewing and redrafting almost all the aspects of the current constitution. It has the ability to effect affect even the central theory (Westminster) of the current constitution. It will mean the country will have to re-draft the entire design. The obvious disadvantage with this path is that it is a longer path and has the potential to evoke fundamental differences in society which may see the design failing to pass the referendum.

In this report, regard being had to the fundamental issues raised by the public, it is recommended that the country should be bold to confront the potentially tormenting process of having to review the entire constitution. It is common with countries at one stage of their history to face some of these harsh realities. The current constitution has fundamental flaws ranging from draftmanship to more substantial issues. It is a prototype of old Westminster constitutions. Emerging constitutions in Africa have departed, even if not entirely, from the fundamental tenets of Westminster.

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<sup>25</sup> The views expressed by *Coalition of Opposition Parties in Parliament and Outside Parliament* 15 January 2019 are to the effect that there must be an overhaul as against piecemeal approach to the constitutional reform.





## 23. APPENDIX 1: SUMMARY OF ISSUES AND RECOMMENDATIONS

Issues	Challenges	Possible Solution/Recommendation	Type of Action/Method of Amendment	Responsibility
<b>1. Powers of the Prime Minister</b>	<b>1.1 Appointment of Ministers</b> <ul style="list-style-type: none"> <li>• Ministers not appointed using expertise.</li> <li>• There is strong view that the appointment of ministers is not based on merit.</li> <li>• Constitution does not provide for the maximum number of ministers to be appointed.</li> </ul>	<ul style="list-style-type: none"> <li>• No need to appoint Ministers based on expertise generally.</li> <li>• A limited allowance may be created for appointment of ministers out of parliament.</li> <li>• Expertise should be made a requirement for nominated senators to increase the pool of expertise.</li> </ul>	<p><b>a) Section 88 to be reviewed.</b> No need for special majority or referendum.</p> <p><b>b) Section 55 to be reviewed</b> The section requires special majority of both houses. No need for referendum if special majority is secured.</p>	Both Houses of Parliament
	<b>1.2 Appointment and Dismissal of Judicial leaders</b> <ul style="list-style-type: none"> <li>• Prime Minister has too much powers in the appointment and removal of senior judicial officers (Chief Justice and President of Court of Appeal).</li> <li>• These powers are often abused.</li> </ul>	<ul style="list-style-type: none"> <li>• PM may not be completely removed from appointment of judicial leaders.</li> <li>• Powers of PM may be limited procedural and substantively.</li> <li>• A lot of powers on starting appointment and removal of judges may be shifted to the newly reformed JSC.</li> </ul>	<p><b>a) Section 120 to be reviewed</b> Requires referendum</p> <p><b>b) Section 124 to be reviewed</b> No need for special majority or referendum</p> <p><b>c) Section 125 to be reviewed</b> Requires referendum</p>	Both Houses of Parliament and the electorate

	<p><b>1.3 Appointment and Dismissal of Security Chiefs</b></p> <ul style="list-style-type: none"> <li>• Prime Minister has too much powers in the appointment and removal of security chiefs.</li> <li>• These powers are often abused for political expediency.</li> </ul>	<ul style="list-style-type: none"> <li>• No need to give the King powers to appoint security chiefs.</li> <li>• The Prime Minister may remain as the commander in chief of the security agencies.</li> <li>• But the constitution may create a buffer structure like security commission.</li> </ul>	<p><b>d) Section 132 to be reviewed</b> Requires referendum</p> <p><b>Sections 145, 147, 148, 149 to be reviewed</b> No need for special majority or referendum</p>	Both Houses of Parliament
	<p><b>1.4 Appointment of Heads of Oversight Institutions</b></p> <ul style="list-style-type: none"> <li>• The oversight institutions are weak in Lesotho. They are not able to check the excesses of the executive.</li> <li>• The Prime Minister has too much powers in the appointment and removal of heads of oversight institutions.</li> </ul>	<ul style="list-style-type: none"> <li>• The powers to appoint heads of oversight institutions may be removed from the Prime Minister.</li> </ul>	<p><b>A new chapter may be created in the constitution dedicated to oversight institutions.</b> No need for special majority or referendum</p>	Both Houses of Parliament
<b>2. Bill of Rights</b>	<ul style="list-style-type: none"> <li>• Separation of political rights from social and economic rights and rendering the latter non-justiciable.</li> <li>• Narrow Bill of rights that does not include other internationally recognised human rights such as right to fair administrative justice.</li> </ul>	<p><b>Redrafting of a new chapter on the Bill of Rights that:</b></p> <ul style="list-style-type: none"> <li>• Includes socio-economic rights.</li> <li>• Includes other internationally recognised rights like right to</li> </ul>	<p><b>Chapter II and III to be reviewed</b> Requires referendum</p>	Both Houses of Parliament and the electorate

		<ul style="list-style-type: none"> <li>• Weak Bill of Rights because of many claw-back clauses.</li> <li>• Constitutionally-sanctioned discrimination against women.</li> <li>• Narrow standing (<i>locus standi</i>) provided by the constitution for enforcement of human rights.</li> <li>•</li> </ul>	<p>administrative justice, media rights etc</p> <ul style="list-style-type: none"> <li>• Removes claw-back clauses in the rights.</li> <li>• Includes rights of women, children, disability, youth etc.</li> <li>• Introduces general limitation clause</li> <li>• Liberalises rules of standing.</li> </ul>		
<b>3. Prorogation and of Dissolution Parliament</b>	<b>3.1 Prorogation</b>	<ul style="list-style-type: none"> <li>• Too much powers vested in the Prime Minister to Prorogue parliament.</li> <li>• Irregular sessions of parliament.</li> <li>• Too long a time provided by the constitution for prorogation.</li> </ul>	<ul style="list-style-type: none"> <li>• The constitution may regularise sessions of parliament.</li> <li>• Thereby removing the powers of prorogation from the Prime Minister.</li> </ul>	<b>Section 83 to be reviewed</b> The section requires special majority of both houses. No need for referendum if special majority is secured.	Both Houses of Parliament and the electorate
	<b>3.2 Dissolution</b>	<ul style="list-style-type: none"> <li>• Too much powers vested in the Prime Minister to dissolve parliament after losing vote of no confidence.</li> <li>• Unstable parliament and government that are unable to finish their term in office.</li> </ul>	<ul style="list-style-type: none"> <li>• The term of parliament may continue to be five years.</li> <li>• The constitution may fix the life of parliament to a certain duration; minimum three years</li> <li>• Before that period parliament may not be dissolved.</li> <li>• Make the circumstances under which parliament may be dissolved stricter.</li> </ul>	<b>Section 83 to be reviewed</b> The section requires special majority of both houses. No need for referendum if special majority is secured.	Both Houses of Parliament and the electorate

		<ul style="list-style-type: none"> <li>Remove prerogative of dissolution of parliament from Prime Minister.</li> </ul>		
		<p><b>3.3 Vote of No Confidence and Impeachment</b></p> <ul style="list-style-type: none"> <li>Separate vote of no confidence from impeachment in the constitution.</li> <li>Provide for impeachment as a remedy for the misconduct of the Prime Minister.</li> <li>As such Prime Minister may be impeached without dissolving parliament.</li> </ul>	<p><b>Section 87 to be reviewed</b></p> <p>No need for special majority or referendum</p>	<p><b>Two House of parliament</b></p>
<p><b>4. Public Finance</b></p>	<ul style="list-style-type: none"> <li>Weak Finance chapter in the Constitution</li> <li>Central Bank and its mandate not included in the Constitution</li> </ul>	<p><b>Redraft a new Chapter on Public Finance that:</b></p> <ul style="list-style-type: none"> <li>Clearly provides for appropriation of public funds in the absence of Appropriation Act.</li> <li>Has strong accountability framework</li> <li>Has procurement framework.</li> <li>Has provisions of Central Bank and its functions.</li> <li>Regulates remuneration of public officials.</li> </ul>	<p>No need for special majority or referendum</p>	<p>Two Houses of Parliament</p>

<b>5. Decentralisation</b>	<ul style="list-style-type: none"> <li>• No chapter on decentralisation in the constitution.</li> <li>• Weak local governance.</li> <li>• Central government domination(lack of respect) in local governance.</li> </ul>	<b>Draft a new chapter on Decentralisation that will:</b> <ul style="list-style-type: none"> <li>• Create spheres of government</li> <li>• Provide for competences of each sphere.</li> <li>• Impose obligations of mutual respect for each sphere.</li> <li>• Enhance fiscal and political decentralisation.</li> </ul>	<b>Section 106 to be reviewed and a whole new chapter on decentralisation drafted</b>  No need for special majority or referendum	Both Houses of Parliament
<b>6. Office First Lady</b>	<ul style="list-style-type: none"> <li>• Office is not established by any law yet it is practically an office in government.</li> <li>• There are public perceptions that the office is interfering in government.</li> <li>• There are public perceptions that the office is duplicating the work of other government departments.</li> </ul>	No need to have this structure in the constitution. Care should be taken however not to allocate public funds to this structure without an Act of Parliament.	If there is a strong feeling that the office should continue to exist, a law must be promulgated that regulates it.	Both Houses of Parliament
<b>7. Political Conflicts Resolution Mechanism</b>	<ul style="list-style-type: none"> <li>• There is no constitutional structure created for management of political conflicts.</li> </ul>	<b>Draft a new chapter on Political Conflicts that will:</b> <ul style="list-style-type: none"> <li>• Create a structure on conflict resolution.</li> </ul>	No need for special majority or referendum	Both Houses of Parliament

		<ul style="list-style-type: none"> <li>• Or look into the possibility of reviewing the Council of State.</li> </ul>		
<b>8. Office of King</b>	<ul style="list-style-type: none"> <li>• King's powers have been reduced under the current constitution. There is no discretionary power for the King.</li> <li>• Most of his powers have shifted to the Prime Minister and/or the council of state.</li> <li>• The King is only titular.</li> </ul>	<ul style="list-style-type: none"> <li>• The dominant view from the public is that the King should be given more powers in the design.</li> <li>• The recommendation goes as far as giving him the powers over armed forces, removal of Prime Minister, etc.</li> <li>• Care should be taken that executive authority should continue to reside in the popularly elected public officials because of the principle of democracy.</li> <li>• A careful thought should be given to the category of 'dignified' powers that may be granted to the King.</li> <li>• The King may also give certain sensitive powers to safeguard the interests of the country against the momentary excesses of politicians.</li> </ul>	This change will require a referendum	Two Houses of Parliament and the electorate.

<b>9. Formation of Government and Coalitions</b>	<b>9.1 Choice of Prime Minister</b> <ul style="list-style-type: none"> <li>There is no voting for the Prime Minister either directly or indirectly. It 'appears' to the Council of State as to who has the command of the majority in the National Assembly</li> </ul>	<ul style="list-style-type: none"> <li>Section 87(2) may be reviewed to introduce positive parliamentarism (investiture vote)</li> <li>A thought may be given to the question of whether the PM may be elected directly. This may require a long thought about the entire design as a parliamentary system</li> </ul>	No need for special majority or referendum	Both Houses of Parliament
	<b>9.2 Caretaker Government</b> <ul style="list-style-type: none"> <li>No rules for regulation of caretaker period in the constitution.</li> </ul>	<b>9.3 Caretaker Government</b> <ul style="list-style-type: none"> <li>The constitution may provide for a caretaker period and the powers of the caretaker government.</li> <li>This matter has been regulated by convention that a caretaker government may not make fundamental decisions.</li> <li>But the convention has generated a lot of controversy in the recent past.</li> </ul>	No need for special majority or referendum	Both Houses of Parliament
	<b>9.4 Coalitions</b>	<b>9.5 Coalitions</b>	No need for special majority or referendum	Both Houses of Parliament

	<ul style="list-style-type: none"> <li>No rules regulating coalitions in the Constitution.</li> </ul>	<ul style="list-style-type: none"> <li>While the constitution may not go too far in regulating parliamentary politics, the constitution may separate provisions on government based on singly party and the one based on coalition.</li> <li>Then regulate both scenarios accordingly.</li> </ul>		
<b>10. The Preamble</b>	<ul style="list-style-type: none"> <li>No Preamble in the Constitution.</li> <li>No founding values.</li> </ul>	<p><b>A preamble to the Constitution to be drafted which:</b></p> <ul style="list-style-type: none"> <li>Captures the transition of the country from old design to the new design</li> <li>Contains the values of the constitution</li> <li>May contain Moshoeshoe's values</li> </ul>	No need for special majority or referendum  <b>NB:</b> Care should be taken that a preamble is directly related to the constitutional design it is prefacing. Therefore, a preamble may not be put as an amendment to a design to which it is not related by history and values.	Both Houses of Parliament
<b>11. Term of Office for Prime Minister and Retirement Benefits</b>	<p><b>11.1 Term of Office</b></p> <ul style="list-style-type: none"> <li>There is provision in the Constitution for limiting of term and age for Prime Minister.</li> </ul>	<p><b>11.3 Term of Office</b></p> <ul style="list-style-type: none"> <li>A provision may be introduced to the constitution which places both term and age limits to the Prime Minister.</li> </ul>	No need for special majority or referendum	Both Houses of Parliament



	<p><b>11.2 Benefits</b></p> <ul style="list-style-type: none"> <li>No provision prohibiting the Prime Minister who has taken retirement benefits to really remain in 'retirement'.</li> <li>Prime Ministers often come back to contest elections after taking retirement benefits.</li> </ul>	<p><b>11.4 Benefits</b></p> <ul style="list-style-type: none"> <li>The benefits given to former Prime Minister are fairly standard; it happens in all democracies.</li> <li>However, the PM who has taken the retirement benefits may not come back to contest election.</li> </ul>	No need for special majority or referendum	Both Houses of Parliament
<b>12. Land</b>	<p><b>12.1 Land Tenure System</b></p> <ul style="list-style-type: none"> <li>The chapter on land needs redrafting for clarity.</li> </ul>	<p><b>12.2 Land Tenure System</b></p> <ul style="list-style-type: none"> <li>The land tenure system (usufructuary system) may not need any change</li> <li>The vesting of rights may also not need a change</li> <li>However, the chapter may need to be re-drafted for purposes of clarity.</li> </ul>	<p><b>Section 107, 108, 109 may be re-drafted</b></p> <p>This change will require a referendum</p>	Both Houses of Parliament and the electorate
		<p><b>12.3 Land Rights for Non-Citizens</b></p> <ul style="list-style-type: none"> <li>The Constitution does not provide for categories of</li> </ul>	<p><b>Section 107, 108, 109 may be re-drafted</b></p> <p>This change will require a referendum</p>	Both Houses and the electorate

		<p>people who may own rights in Land</p> <ul style="list-style-type: none"> <li>• The matter is left to statute, Land Act, 2010</li> <li>• The Constitution may need re-drafting to include land rights.</li> </ul>		
		<p><b>12.3 The Question of the Conquered Territory</b></p> <ul style="list-style-type: none"> <li>• The issue is meta-constitutional.</li> <li>• It involves a bilateral arrangement between Lesotho and South Africa.</li> </ul>	Need a bilateral engagement with South Africa	Government
<b>13. Regulation of Political Parties</b>	<p><b>13.1 Introducing constitutional provisions on political parties</b></p> <ul style="list-style-type: none"> <li>• No constitutional or legislative provisions for regulation of political parties.</li> </ul>	<ul style="list-style-type: none"> <li>• That will provide for broader constitutional status of political parties, their rights and obligations.</li> </ul>	No need for special majority or referendum	Both Houses of Parliament

		<p><b>13.2 Introducing a legislation on political parties</b></p> <ul style="list-style-type: none"> <li>• That will provide in detail for formation, registration, de-registration,</li> <li>• Remove political parties under Societies Act</li> <li>• Introduce the Office of Registrar of political parties</li> </ul>	No need for special majority or referendum	Both Houses of Parliament
<b>14. Age of Majority</b>	<ul style="list-style-type: none"> <li>• No provision for age of majority in the constitution</li> </ul>	Introducing a constitutional provision on the age of majority	No need for special majority or referendum	Both Houses of Parliament
<b>15. Chieftainship</b>	<ul style="list-style-type: none"> <li>• There is a general view that the institution of chieftainship has been systematically weakened by coloniality for a long period of time. The emasculation of the institution has been part of the broader annihilation of traditional conceptions of government. As result, the institution has been effectively relegated at both local and central government.</li> <li>• There is another problem raised by the institution that there are recognition of principal chiefs was done arbitrarily and, as a result, certain clans have been left out like Baphuthi and Bathepu.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduce a chapter on chieftainship and its powers in the Constitution.</li> <li>• Institute a process of recognition of Principal chiefs with a view to remove arbitrariness brought about by colonialism.</li> </ul>	No need for referendum.	Both Houses of Parliament

<p><b>16. Religion and Religious Rights</b></p>	<ul style="list-style-type: none"> <li>• There is a concern from the public that religious rights are not sufficiently provided for in the Constitution.</li> <li>• Specific submission by the Supreme Council Islamic Affairs in Lesotho that there seems to be a systematic exclusion of Islam religion in public life in Lesotho in favour of Christianity.</li> <li>• The public functions are officiated by Christian faith leaders as against other faiths.</li> <li>• On the other hand, there is a specific submission from Moafrica FM Listeners, proposing that Christianity should be proclaimed the official faith in the country (without necessarily excluding other faiths).</li> </ul>	<ul style="list-style-type: none"> <li>• The constitutional framework for religious rights is sufficient.</li> <li>• Government and public agencies may have to stop discrimination of other faiths in public functions.</li> </ul>	<p>No need for constitutional amendment</p>	<p>Government and other public agencies.</p>
<p><b>17. Application Of International Law In Lesotho</b></p>	<ul style="list-style-type: none"> <li>• There is a concern from the public that the Constitution is silent on the application or recognition of international law.</li> <li>• As a result, there is uncertainty about the application of international law in Lesotho.</li> <li>• The judiciary is also not consistent in the manner in which it treats international law.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a need to introduce provisions on the regulation of application of international law in Lesotho.</li> <li>• Parliament must be involved in the process of ratification of international agreements.</li> </ul>	<p>No need for referendum</p>	<p>Two Houses of Parliament</p>

<p><b>18. Elections: Electoral System And Election Management</b></p>	<ul style="list-style-type: none"> <li>• Views seem to differ diametrically on whether the introduction of MMP was an end in itself or a transitional stage towards a full-fledged proportional model.</li> <li>• There are also strong views that if MMP is retained, it must introduce the threshold in order to curb proliferation of slinter parties. A threshold of 1 constituency or 5% is recommended.</li> <li>• Another challenge of the MMP is that it is often manipulated by political parties with a view to exaggerate their representation. The manipulation became apparent with the 2007 general election.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a need for debate about the electoral system – whether to retain and improve MMP or change to 100% Proportional Representation.</li> <li>• There is also a need for debate about the type and nature of electoral commission.</li> </ul>	<p>No need for referendum</p>	<p>Stakeholders</p>
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## 24. APPENDIX 2: LIST OF WRITTEN SUBMISSIONS CONSIDERED IN THIS REPORT

TITLE OF WRITTEN SUBMISSION	AUTHOR	DATE
1. Proposals for Reform to Improve the Performance of the Financial Sector	Central Bank of Lesotho	October 2019
2. Sectoral Consultations Consolidated Report	Lesotho Council of NGOs	30 July 2019
3. The People's Constitution	Development for Peace Education	2019
4. Position on the Constitutional, Parliamentary, Public Service, Security, Media, Economy and Public Sector Reforms	The Lesotho National Federation of Organisations of the Disabled(LNFOD)	Undated
5. Judicial Reforms in Lesotho	Hoolo 'Nyane ( TRC Occasional Paper)	July 2019
6. Research Paper on the Review of Lesotho Constitution	Francis K. Mako( TRC Occasional Paper)	July 2018
7. Concept Note for the Lesotho Parliamentary Reforms	Parliament of the Kingdom of Lesotho: National Assembly	Undated
8. Proposal on Reform of Parliament	Parliament of the Kingdom of Lesotho	Undated
9. Taking the New Zealand Report to the People	DPE	2014
10. The Lesotho Youth Compact on Constitutional, Political Systems, Parliamentary Arrangements, Justice, Security, Public Sector, Economy and Media Reforms	The National Youth Conference	18-19 October 2018

11. Proposal for Reform to Improve the Performance of the Financial Sector	Central Bank of Lesotho	October 2019
12. Sectoral Consultations Consolidated Report	LCN	30 July 2019
13. Position Paper on Parliamentary Reforms: Senate	Senate	Undated
14. Strengthening Human Rights and Democracy Supporting Institution	TRC	December 2017
15. Inputs on Lesotho Reforms Framework and Roadmap	Lesotho Nursing Council	12 April 2019
16. The Lesotho I want Campaign: Citizens Voices	DPE	2017
17. High Level Reform Debate	DPE	12 December 2015
18. Lesotho we Want: Basotho Women's Common Position	National Women's Conference	23-24 October 2018
19. Consolidated Youth Observer Mission Report	Zwelithini Matsoso YIC(YIPA)	May 2019
20. Constitutional Reforms for Better Protection of Human Rights	TRC	31 May 2018
21. Islamic Reforms Submissions/Recommendations	Supreme Council Islamic Affairs	28 December 2018
22. Proposals to the Constitutional Reforms of Lesotho	Moafrika FM Radio Listeners	15 January 2018
23. Lesotho National Reforms 2019: Law Society of Lesotho Position Paper	Law Society	2019
24. 4 x 4 Coalition Stand on National Reforms	Government	2018
25. Letter	Coalition of Opposition Parties in Parliament and Parties Outside Parliament	15 January 2019

26. Leaders of Political Parties Outside Parliament Position on Certain Aspects of the National Reforms	Leaders of Political Parties Outside Parliament	Undated
27. National Reforms: Position Paper of the Chief's Forum	Chiefs Forum	Undated
28. In-District Consultations Consolidation Report, 2019	LCN	2019
29. Multi-stakeholder National Dialogue (MSND) Report, November 2018	NDPC	2018
30. Diaspora Consultations Consolidation Report: Leaving No One Behind	LCN	June 2019