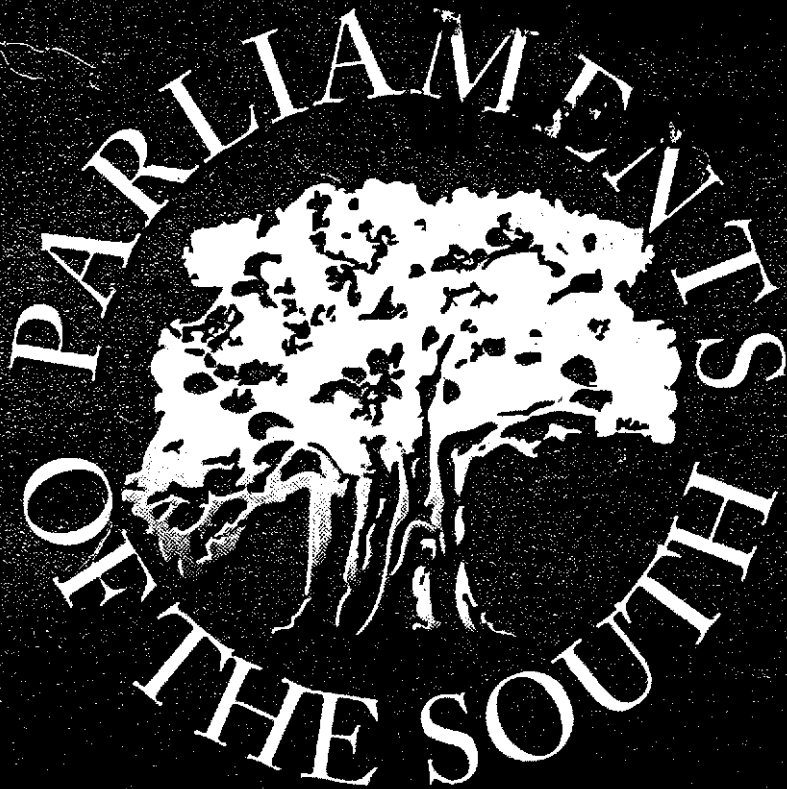


The South African Institute of International Affairs



Strengthening parliamentary  
democracy in SADC countries

# Lesotho country report

Francis Mako

Series editor: Tim Hughes

THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

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SERIES EDITOR: TIM HUGHES

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## About the author

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lecturer on arrival back home, teaching international relations, comparative politics, organisation theory, introduction to political science, political philosophy, research methods and rural development. He was admitted to the University of Liverpool, England, in 1991 to study for a PhD degree in Political Science – which he successfully completed in 1994. On resuming his teaching assignment in 1995, Francis was appointed as a senior lecturer. In 2001 he was promoted to his present position as associate professor. He has to his credit many publications on diverse policy issues, backed up by empirical research. These include privatisation, the military, rural development, the civil service, gender and politics and anti-HIV/AIDS strategies, although he has lately focused more on conflict, democratisation and elections.

# Preface

The roots of parliamentary democracy in Southern Africa are spreading and deepening despite operating in sometimes infertile soil. All countries in the Southern African Development Community (SADC) region now operate some form of parliamentary democracy. While a majority of countries exhibit text book constitutional, electoral and parliamentary architecture, the operation of these institutions is highly disparate. Some labour under the threat of civil war, constitutional flux, and monarchical fiat; others have operated consistently and constitutionally for decades. While there is little fundamental region-wide disagreement on the mechanisms for achieving a democratic polity, there is far less agreement on the appropriate powers, role and composition of legislatures; and still less discussion, let alone agreement, on the appropriate relationship between parliaments and 'the people'. Indeed the longevity of some parliaments in Southern Africa is no indicator of their constitutional strength, nor the strength of public engagement with them. Established parliaments can operate in an exclusive and exclusory manner. Established parliaments can also become susceptible to (un)democratic reversals, particularly with respect to a strong executive and single party dominance. Conversely, newly elected parliaments can forge innovative and healthy public participation programmes, thereby strengthening and deepening democracy.

This series of reports forms part of the South African Institute of International Affairs' (SAIIA) three-year research, conference and publications programme examining parliamentary democracy in SADC countries. Its normative objective is to contribute to strengthening parliamentary democracy throughout the region. Specialists in all 13 SADC countries were contracted to conduct primary and secondary research into the state of parliamentary democracy and to make recommendations on how parliamentary democracy might be improved, strengthened and sustained.

Specialists were tasked with researching a number of key themes. The first was to provide a country-specific overview of recent and current constitutional, electoral and parliamentary practice. This included 'nuts and bolts' issues such as the electoral system, constitutional provisions for the executive, legislative and judiciary and party political configurations. The organisational structure of parliament, including assembly rules, the roles and powers of committees, the status of the speaker, whips, members, as well as the functioning of parliament as

an oversight actor, were examined. These questions go, *inter alia*, to the status and credibility of parliament with the electorate.

The second theme was to conduct primary research into provisions for public engagement with parliament. There are two dimensions to this relationship. The first is the mechanisms and modalities parliaments use to convey and publicise their activities to the electorate and civil society in general. These may range from the publication of Hansard to the parliamentary web site. The former serves as a recordal of fact (after the fact), but the latter may also serve to publicise future parliamentary activity and is thus a potentially powerful tool. The more textured research centred on the degree to which parliaments encourage and facilitate the participation of the public in their activities. This may range from the public affairs offices, to the holding of public committee hearings in distant and rural areas.

The other side of the public engagement equation is the channels and practices used by civil society to interact with and lobby parliaments ranging from *advocacy, petitions and protests, to oral and written submissions.*

Public parliamentary access is often characterised by an 'insider-group' and 'outsider-group' dichotomy. The insider group is typically well-organised and funded, usually with a clearly identified constituency base and infrastructure. Insider groups may be issue specific, or cohere around markers such as class, race, religion and ethnicity. Such groups often develop effective methods and modalities of political mobilisation, support, lobbying, access and influence. Outsider groups, however, are often the mirror images of their more powerful counterparts. They may share common interests, or suffer from a common affliction or practice, but lack the resources and capacity to either mobilise effectively, or lobby for their interests. Outsider groups may be extensive in number and may even represent a numeric majority or plurality of the population, yet still operate on the margins of political and parliamentary engagement.

An important, or potentially important, linkage in this relationship is the media, and thus researchers were tasked with examining and evaluating their role. There may be an operational and political distinction between the parliamentary coverage of state-owned media, a national broadcaster and a commercial operator. Researchers were asked to evaluate briefly the effectiveness of these channels of communication and dissemination.

Finally, after workshopping their findings, researchers were asked to write a set of tightly formulated recommendations for strengthening parliamentary democracy in their respective countries.

We at SAIIA thank Professor Francis Makoa for his research and for the application and industry with which he has tackled his work in sometimes difficult

circumstances. This country report will appear in abridged form in a compendium of all 13 SADC country case studies. Its findings and recommendations will be incorporated into a SADC-wide best practice handbook.

Lastly, we should like to express our deep gratitude to Ambassador Torben Brylle of the Royal Danish Embassy in Pretoria for his constant support and that of the Danish government in generously funding this project.

*Tim Hughes*  
*SAIIA Parliamentary Research Fellow*



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## Executive summary

Parliamentary democracy in Lesotho has historically suffered setbacks. The first post-independence democratic experiment lasted for only five years from 1965 to 1970, when it was abandoned following Jonathan's electoral defeat and refusal to relinquish power to the winner, the late Ntsu Mokhehle and leader of the opposition Basutoland Congress Party (BCP), subsequently suspending the constitution for 15 years. Reinstated in 1993 under the BCP government, parliament once again faced serious challenges. The most formidable of these included the main opposition Basotho National Party's (BNP's) refusal to accept the election outcome and a series of lawless acts by elements within the armed forces, police and prison warders that culminated in the seizure and forcible detention of some cabinet ministers by members of the Lesotho Defence Force (LDF); factional fighting within the army; and the murder allegedly by the LDF of the then Deputy Prime Minister, Selometsi Baholo. The most serious threat to this fledgling democracy was posed by the king's coup in August 1994 that swept aside the elected BCP government, ending only after an intervention by Botswana, South Africa and Zimbabwe acting on behalf of the Southern African Development Community (SADC). With the opposition's challenge of the outcome of the 1998 election and mutiny by some members of the LDF, the future of democracy in Lesotho once again hung in the balance until South Africa and Botswana intervened militarily to protect Mosisili's beleaguered government just ushered in by the election. At the behest of SADC, Lesotho politicians renegotiated the troubled parliamentary democracy, ultimately coming up with a mixed member parliamentary (MMP) model that produced a National Assembly with two different parliamentary seats – 40 proportional representation (PR) seats and 80 first-past-the-post (FPTP) constituency seats. Ironically, the reformed electoral model constitutes a new focus of inter-party conflict and/or tension that has characterised Lesotho since the first democratic elections in 1966. Yet our concern is not this rather chequered political development but whether Lesotho's parliamentary system of government has strengthened democracy.

This report presents the results of the research conducted by the author from December 2003 to April 2004 in Maseru, Lesotho's capital. The instruments and methods used for generating the required data appear in the first section of this report. The study reveals that the present parliamentary model is welcomed in Lesotho, although the feeling, as deduced from the informants, is that parliament

is alienated from the population, weakly linked with civil society and made up of poorly educated people who can hardly appreciate its role and functions. Parliament's mixed membership has barely changed anything in terms of increasing popular participation and control. It has failed to reconcile the nation, as evidenced by the BNP's refusal to participate in by-elections and the ruling party's view that PR parliamentary seats are not legitimate.

So far, the electoral and parliamentary reforms do not seem to have enhanced the prospects for inter-party collaboration and cooperation that would expand the room for genuine debate and exchanges in parliament. Inter-party relations are still adversarial, with the ruling party using its majority to win parliamentary duels rather than creating the basis for cooperation and consensual decisions. Reinforced by the absence of all-party parliamentary committees, the chasm between the ruling party and its opposition counterparts remains gaping. A possible panacea could be the holding of regular and sustained inter-party debates conducted at public forums, including the formation of parliamentary portfolio committees. These are, according to the respondents, sectoral committees which if established would refine and discuss parliamentary bills pertaining to specific sectors and ministries before they are gazetted as law. This approach would, in their view, deepen democracy by extending debates and involving throughout the process all parties represented in parliament. At present this is often denied because the ruling party uses its majority during normal parliamentary debates. Guided by consensus rather than the majoritarian principle, such portfolio committees offer more scope for the democratic involvement of all members.

Pushing the electoral reform programme further and adopting a full PR model would arguably solve the problem of segregating members of parliament (MPs) on the basis of their mode of appointment to parliament, as indicated above; and this is also recommended. The weakness of a full PR model, however, is that MPs become accountable to their parties rather than to voters.

But all this said, the Lesotho parliament is a forum for all MPs, affording them the opportunity to participate in the process through criticising bills, proposing amendments, moving motions and petitioning parliament itself.

Lesotho's parliament symbolises democracy even though, as the data shows, it is too weak in relation to the executive and barely has contact and interaction with the people or with civil society organisations (CSOs), and despite the ruling party's overwhelming power used primarily to defend the executive. CSOs, for their part, have not utilised the existing avenues – lobbying and petitioning – to interact with MPs. The researcher recommends that CSOs use these avenues to push their programmes.

# 1. Introduction

## Background

In 1993 Lesotho re-embraced constitutional rule within a multiparty democratic framework and with an elected parliament. This was largely a result of the global political changes that swept away the hitherto bipolar world order dominated and/or managed by the former Soviet Union and the United States. Lesotho's democratisation process had nevertheless been a long-cherished dream and indeed a vigorously pursued goal, later entailing nearly a decade-long armed struggle in the period 1979–1985 by the Basutoland Congress Party's (BCP's) exiles. The country's military rulers reluctantly relinquished power to an elected government as it had become clear that Western donor countries would no longer give succour to governments that did not derive from popular will expressed through free and fair elections, or other similarly acceptable forms of plebiscite.

Pressure coming from within Lesotho had included complaints to the Pope and international donor organisations about alleged human rights abuses by the military regime, corruption and lack of democracy.<sup>1</sup> As one analyst noted, the celebrations that had greeted the 1986 military takeover were about the demise of the Jonathan administration, not the coup.<sup>2</sup>

Triumphantly emerging as the world's hegemonic ideology following the end of the Cold War, liberal democracy was to constitute the framework for the new unipolar international world system and legitimised the political struggles that were until the early 1980s dubbed 'terrorist', while illegitimising all forms of dictatorship. The looming democratic revolution in neighbouring South Africa – and what many Basotho perceived as the Lesotho army's determination to cling to power – increased popular resentment against the military rule and pressure on the soldiers, forcing them to seek an honourable exit from state power through an all-party constituent assembly that they appointed in 1990 to review the suspended 1966 constitution in preparation for a return to constitutional rule.

However, the economic, political and social framework of the democratic dispensation unleashed by the soldiers' departure was too fragile or weak to sustain it. Economic stagnation, high rates of unemployment and poverty meant that the newly won parliamentary democracy merely expanded the space, or opened a new one, for the continuation of old political conflicts. Unresolved by the military takeover and its seven-year rule, the traditional mutual hostility

**Table 1: 1993 Lesotho election results**

Political party	Number of constituencies won	Number of votes	Percentage of the total no. of votes
BCP	65	398 355	74.7
BNP	0	120 686	22.6
MFP	0	7650	1.4
Other	0	6287	1.2
Total	65	532 978	100.0

Source: Makoa FK, Elections, Election Outcomes and Electoral Politics in Lesotho, Africa Institute of South Africa, Pretoria, p 14.

between the country's two main protagonists in the political power contest – the BCP and the Basotho National Party (BNP) – persisted, threatening the fragile parliamentary democracy spawned by the 1993 elections. As Table 1 shows, the BCP won in all the 65 electoral constituencies, becoming a single party in parliament until the next elections five years later. With no debating tradition and deferring at all times to its charismatic leader – the late Ntsu Mokhehle who became prime minister following the BCP's electoral victory – the BCP produced a similarly deferent, non-vibrant and placid parliament that served largely as a tool and rubber stamp of the executive.

Foreign aid flows into Lesotho had, however, been dwindling since the late 1980s with no indication that donors would increase their support for the country. The ruling military junta had candidly admitted four years prior to the 1993 parliamentary elections that:

*With a changing political scene in South Africa, and major demands made on aid resources elsewhere, there are few aid officials who maintain that current or increased levels of support for Lesotho will continue.<sup>3</sup>*

As the country geared itself for the 1993 elections, 52.8% of Basotho households had no monthly cash income.<sup>4</sup> The unemployment rate in 1993 was officially estimated to be at 40%, largely as a result of decreasing mine jobs in South Africa, which had decreased by five per cent during the period 1992 to 1993.<sup>5</sup> Thus the parliamentary democracy delivered by the 1993 general elections faced the above-mentioned challenges that were later to become sources of popular discontent – a major threat to democracy. Meanwhile, undergirded by a weak economy, parliament had to operate initially with an insufficient budget: it could

only afford to pay monthly salaries to members of parliament (MPs) of not more than R1,400.<sup>6</sup> Thus in 1993 the Lesotho parliament was populated by poorly paid members of a single party who were subject to tightly-knit and hierarchical party discipline and leadership. Very little legislative independence was possible under such circumstances.

Unsurprisingly, as an exclusive chamber of the BCP the 1993–1998 parliament failed to become a genuine debating forum. Parliament was, in fact more like an exclusive club. With this character it also could not reconcile the deeply divided Basotho nation. Intermittent acts of violence between 1993 and 1994 – which included factional fighting within the Lesotho Defence Force (LDF), the murder of Deputy Prime Minister Selometsi Baholo, the unlawful arrest and detention by members of the LDF of five cabinet ministers and a trail of strikes by the rank-and-file members of the Lesotho Mounted Police and prison service warders – reflected gaping divisions within the Basotho nation. But some analysts have argued, perhaps justifiably, that the LDF was in particular “hostile to the BCP and loyal to the BNP”.<sup>7</sup>

National reconciliation seemed not to be part of the government’s agenda, for it intensified its anti-BNP tirade. Yet the achievement (or non-achievement) of national reconciliation is today regarded as one of the key tests of the success of any democratisation project. Stark challenges for the BCP administration, the above episodes were, however, triggered in part by the prime minister and his cabinet ministers’ palpably anti-LDF public statements. These included public declarations that the LDF was a BNP force and that it was among the worst enemies of democracy.<sup>8</sup>

Some analysts of post-military politics in Lesotho have expressed doubt as to the ability of the country’s single party parliamentary system to deliver democracy. For example, in his analysis of the 1998 electoral crisis in Lesotho, Kadima noted that the country’s system denied the losers “representation in parliament”.<sup>9</sup> Writing about the same problem, Molomo also contended that Lesotho’s recurrent political crisis was in part rooted in its electoral and parliamentary models.<sup>10</sup>

The SADC team – comprising the heads of state of the troika countries of Botswana, South Africa and Zimbabwe, which mediated the political crisis engendered by the king’s overthrow of the BCP government in August 1994 – had likewise warned in its report that with its long history of political conflict and instability, Lesotho required a more inclusive parliamentary system. Hence one of the SADC team’s recommendations was that the parliamentary system be reformed to make it more representative of all voters. However, it took another major political crisis – the 1998 electoral dispute that degenerated into mass

**Table 2: The performance of parties in the 1998 general elections**

Party	Number of parliamentary seats won	Number of votes	Percentage of the total no. of votes
BCP	0	61 793	10.5
BNP	1	143 073	24.5
LCD	79	355 049	60.7
MFP	0	7460	1.3
Other	0	16 244	2.9
Total	80	554 386	100.0

Source: Makoa FK, Elections, Election Outcomes and Electoral Politics in Lesotho, *op cit*, p 15.

protest and vigil on the entrance to the Palace by the opposition, bringing the country to a standstill – for the Lesotho government to adopt the SADC recommendation. The landslide victory by the 10-month-old Lesotho Congress for Democracy (LCD) (it won 79 of the 80 electoral constituencies) was rejected as fraudulent by its defeated rivals. (See Table 2 for the results of the 1998 general elections.)

The Interim Political Authority (IPA) was responsible for drafting the relevant constitutional amendment act that would supposedly make the system more inclusive. The final amendment came in as the Fourth Amendment to the Constitution Act, 2000. The IPA was a product of SADC-sponsored negotiations between the government and the opposition parties that had rejected the 1998 election outcome. It was forged out of delegates from all the country's political parties that had contested the 1998 general elections, regardless of their performance and participation in the protests. The IPA was to persuade the government to facilitate passage as law in parliament of a bill introducing a mixed member parliamentary (MMP) electoral model. This model would accommodate additional parliamentary seats allocated on the basis of the competing parties' share of the total votes cast in a general election. However, the Lesotho government and the IPA delegates were unable to agree on the exact nature of the proposed new model. The matter therefore had to be settled by arbitration chaired by Justice John Browdie, a South African senior counsel and Lesotho's Appeals Court judge, which ruled on 15 October 1999 that an MMP electoral model would be used with respect to the May 2002 elections that would produce a 130-member National Assembly with 80 first-past-the-post (FPTP) constituency seats and 50 proportional representation (PR) seats. "Thereafter the mix ratio shall be on the basis of the FPTP and PR are [sic] 50% each of the seats in the National



Assembly.”<sup>11</sup> Parliament, however, reduced the number of PR seats to 40 – downsizing the membership of the National Assembly to 120 – and amended the constitution accordingly.

The MMP model is undoubtedly more representative than the previous Westminster-type FPTP system. However, it has not stemmed what seems to be a drift since the first post-military election in 1993 towards one-party dominance in Lesotho; a phenomenon that contradicts the principle of representation and another of democracy’s defining features. It also seems not to have removed the basis for electoral disputes – the outcome of the 2002 elections is still challenged by the main opposition BNP. In any case, single-party dominance suggests that not all groups enjoy the fruits, if any, of the emergent democratic order. Indeed, in such a polity democracy hardly reaches out to what some analysts have termed non-geographical constituencies, namely “interest, linguistic or cultural ...” groups.<sup>12</sup> Thus the issue is still whether Lesotho parliamentary democracy has expanded or spread democracy to ensure, borrowing Patterson and Mughan’s phrase, “[a] voice to [all] social classes, economic interests, or territorial diversity”.<sup>13</sup> In other words, a system has to be fairly inclusive in order to qualify as democratic. Other important gauges of democracy are a system’s accessibility and amenability to influence by the varying sectors of civil society – conceived here as autonomous groups that impinge on and consciously pursue objectives that do not always converge with those of the state or government; the degree of its dependence on or independence from the executive; and the ability to hold the executive to account.

## **Purpose of the study**

The study seeks to examine the above issues. It aims to gain in-depth knowledge about the role of Lesotho’s parliament in promoting, spreading and consolidating democracy. In particular, the study focuses on the nature of parliament’s engagement with civil society and the opposition, how it does this, and the opportunities, challenges and constraints presented by this. The study also attempts to identify the institutional/structural defects and weaknesses of this parliament, and how these can be overcome.

Experience elsewhere in Africa and in other developing areas suggests that some of the elective parliamentary systems on the continent have not served as harbingers of political freedom and popular empowerment. In some African countries the advent of parliamentary systems of government has not witnessed an end to oppression and human rights violations. They have not heralded meaningful engagement between parliament and the public, civil society in

particular, nor have they expanded the political space for the opposition to perform effectively its role as the minorities' legitimate representative and voice.

The study therefore asks whether the Lesotho parliament has been able to deliver and/or foster the spread of democracy, as conceptualised herein. The key questions that it will attempt to answer include: Is Lesotho's parliament a people's watchdog – that is, is it able to hold the executive to account? Are parliamentarians themselves accessible and accountable to their constituents and to civil society at large? Do parliamentarians consult with or seek a mandate from their constituents and civil society before deciding how to vote in parliament? Are MPs, particularly those from the ruling party, sufficiently free and independent to be able to stop and/or curb the executive's anti-democratic tendencies and policies that limit or threaten democracy? Can members of the ruling party openly oppose and vote against government-sponsored bills, or expose wrongdoings by the executive? Would all the different parliamentarians in the assembly, for example, freely oppose or vote against their own parties on specific issues? What are the weaknesses of Lesotho's parliamentary democracy, and how can these be overcome?

## **Methodology**

While the research question was pre-defined by SAIIA, the approach to and methodology employed in this study have been largely dictated by both the resources at hand and the environment of the research, together with the nature and thrust of the inquiry. A predominantly qualitative methodology was thus used to generate the required data. This comprised techniques such as intensive but unstructured personal interviews with informants and the use of secondary sources, namely publications on the subject of our investigation. The interview approach, however, did not suit all the identified informants. For example, it was difficult, if not impossible, for parliamentarians to make time for personal interviews either due to their busy duty schedules while parliament was in session or because they were unavailable when parliament was in recess as they had retired to their home villages, dispersed throughout the mountainous country: the financial resources allocated for the research ruled out visits to these villages. For this category of informants, therefore, a questionnaire with probing open-ended questions addressing issues similar to those asked of the members of civil society was used to solicit information.

The informants were purposefully drawn from two categories of the politically active and/or mobilised population – that is, civil society and members of the National Assembly or House of Representatives – the aim being to ensure

informed, clear, carefully thought-out and rational responses. Civil society was conceived in this regard as autonomous organisations whose actions impinge upon policy making or have implications for it. Thus a selection was made from each of such chosen autonomous organisations.

A total of 24 informants – 12 from each category – was selected. Given the nature of the categories, the sample size of the informants was considered representative. The two biggest political parties and protagonists in the country's political power contest, the LCD and the BNP, were treated accordingly: two interviewees were chosen from each main party, while one interviewee (MP) was drawn from each of the eight smaller parties to make a sample of 12 respondents, or 10% of the total number of National Assembly members. It should be noted that the secretary-general and the deputy of the ruling LCD party were interviewed instead of the party leader who, being the prime minister, was not available for this activity due to a tight time schedule. We believe, however, that data quality has not been compromised.

Another important resource has been the researcher's personal knowledge of the Lesotho political and governmental systems within which he has always lived and continues to live as a member of the country's citizenry.

## **Conceptual and theoretical framework**

Although it predates elective assembly – also dubbed rule through people's delegates or representative democracy – the institution of parliament is accepted and recognised today by almost all countries of the world as the people's agent and arm – a means of representation and participation in decision- and law-making processes.<sup>14</sup> This instrumentalist view constitutes the main thread of the concept of democracy and democratic theory. Seen through this lens, the Lesotho parliament becomes not simply an assembly of elected constituency representatives but an agent of the people. By the same token, parliaments comprising freely chosen representatives are thus seen and acknowledged as bastions of democracy.

According to Harris and Reilly's conception, democracy combines three features:

*... meaningful competition for political power and the individuals and organised groups, inclusive participation in the selection of leaders and policies, at least, through free and fair elections, and the level of civil and political liberties sufficient to ensure the integrity of political competition and participation.*<sup>15</sup>

For Dahl, democracy as a form of government has seven distinctive features, namely that:

- *control over government decisions about policy is constitutionally vested in elected officials;*
- *elected officials are chosen and peacefully removed in frequent, fair and free elections in which coercion is absent or quite limited;*
- *virtually all adults have the right to vote;*
- *most adults also have the right to run for public office in these elections;*
- *citizens possess a right, effectively enforced by judicial and administrative officials, to freedom of expression, including criticism and opposition to the leaders or party in office;*
- *they have access, and an effectively enforced right to gain access, to resources of information that are not monopolised by the government of the state, or by any other single group;*
- *they possess an effectively enforced right to form and join political organisations, including political parties and interest groups.*<sup>16</sup>

Held provides a shorter conceptual/theoretical definition – that is, that democracy is “a political association in which citizens are able to choose freely the conditions of their own association”.<sup>17</sup> But the simplicity and conciseness of this definition does not disguise its weakness; namely the difficulty in operationalising “conditions of association”. Bratton and Van de Walle offer a minimalist but sufficiently elaborate definition of democracy that stresses political procedures by which citizens are able to govern themselves. Such procedures are:

- *that citizens be empowered to choose and remove leaders in competitive elections, the occupants of the top political offices of the state;*
- *that the election is freely and fairly conducted within the matrix of civil liberties; and*
- *that all contestants accept the validity of the election results.*<sup>18</sup>

Schumpeter’s theory of democracy also has as its indicators competition, freeness and fairness. However, Schumpeter warns that while people “could evict the government ..., they cannot control it during its period in office”.<sup>19</sup>

This problem, if it truly exists, is no doubt rooted in the structural relationship between parliaments and governments, as legitimated by the ideology of the

separation of powers. This ideology justifies and/or legitimates the severing of parliament from government. The doctrine in effect limits the role of parliament to passing bills initiated and sent to it for approval by government ministries. If, however, the ruling party is the majority party in parliament, as is the case in Lesotho, sending bills there is merely a formality that only seeks their gazettelement as laws.

Schumpeter's caveat notwithstanding, these definitions constitute a theoretical framework and guide for this study; Dahl's operational definition being especially useful for it points to a wider range of measures of democracy and the lack of it. We therefore expect Lesotho's parliamentary democracy to possess these basic characteristics.

## 2. Background, size, composition and features of Lesotho's parliament

The main and perhaps most prominent feature of Lesotho's parliamentary democracy is bicameralism, both as a particular type of structure of parliament and as its underpinning ideology. The country has a parliament comprising two houses: a National Assembly and a Senate.

Following the May 2002 general elections the Lesotho National Assembly comprises 120 members – 80 of these having been elected from an equal number of electoral constituencies, while the other 40 are allocated parliamentary seats according to their parties' performance in the national election.

The Senate comprises 33 *ex-officio* and nominated members. The 22 principal chiefs are *ex-officio* Senate members while the remainder are king's nominees.

Women are, however, still under-represented (16% excluding the speaker) in Lesotho's expanded 153-member parliament. There are only 12 women (10%) in the National Assembly and 11 (33%) in the Senate, but the speaker of the National Assembly is a woman.

### The National Assembly

One of the key features of Lesotho's National Assembly is what is commonly termed the "fusion of the legislative and executive powers. The leaders of the majority party constitute the executive (the cabinet) while retaining their seats in the legislature".<sup>20</sup> There is therefore no real separation between the two while engaged in parliamentary rather than government business.

The National Assembly's 120 members are not accorded equal recognition and treatment. The 40 PR members are not entitled to the financial support given to the 80 constituency winners, of whom nearly all are governing party representatives. This financial support is meant to mobilise people for rural community projects.

This, to the chagrin of many observers, has exploded the myth that Lesotho's MMP democracy would be automatically inclusive and would mean equality of treatment for all parliamentarians. In fact, if anything, it has strengthened the ruling party's grip on the population for only its members have financial resources that enable them to dispense patronage, thereby undercutting their opponents' support bases. In addition, the ruling party MPs are the only ones recognised by government as the authentic representatives of the people for the purpose of

initiating government-funded community projects in the country's 80 electoral constituencies.

The PR MPs are not regarded as representatives of the electoral constituencies, but of their parties. This is the reason given by the ruling party and government for discriminating against them. The ruling party used its majority to formally legalise the matter as per an amendment to the 1998 Members of Parliament Salaries Act. Hansard of 17 June 2003 cites one of the ruling MPs thus: "PR MPs do not represent the electorate but their parties. So they cannot be given constituency allowances because they have no constituencies."

The current Lesotho parliamentary democracy therefore merely redefines or reconfigures the polarisation within the country's political system. It is anchored in a polity that lacks commonly shared norms of political behaviour. But this also means that Lesotho's parliamentary democracy occurs in an environment that impedes or severely limits open and genuine debate among the representatives, even though this is supposedly a hallmark of democratic rule.

Four values are said to be "inherent in the constitutional [democratic] order, which shape any electoral system, these being fairness, inclusiveness, simplicity and accountability". The first means that, "every vote is of equal value and the parties are treated fairly in their representation in parliament", while inclusiveness means that the system must embrace "groups across the political spectrum. The system should be simple, open and easy to understand".<sup>21</sup> However, such a system is not necessarily consensual and equitable. Nor does it always encourage effective and genuine debate by parliamentarians, or create a climate or space for the growth of a democratic political culture. This is not surprising, however, for the liberal political doctrine limits the scope for debate and mutual engagement by presenting democracy as a package to be accepted without question, and parliament as a special state institution or organ concerned only with law-making functions. It is a system of winners and losers; that is, arguments and debates are settled by a vote rather than by considerations of what is necessary, this deriving its justification from the majority rule principle – one of the presumed essentials of democracy. This issue is usually glossed over or ignored by many analysts.

## **The Senate and the Council of State**

The king is not free to choose whom to nominate as a senator to make up the 33-member Senate. Section 54 of Lesotho's present constitution states that: "The Senate shall consist of twenty-two principal chiefs and eleven other senators nominated in that behalf by the King acting in accordance with the advice of the Council of State."<sup>22</sup> But over 70% of the members of the Council of State are civil

servants or state employees. The council is composed of the prime minister, who is its convener, the speaker of the National Assembly, the LDF commander, the commissioner of police, the attorney-general, two High Court judges, a principal chief nominated by the College of Chiefs, and two members of the National Assembly appointed by the speaker from among the opposition parties.<sup>23</sup>

The prime minister appoints, or at least has the final word, with regard to the appointment to their present positions and to membership of the Council of State of the state employees mentioned above. All but the High Court judges – who are supposedly protected by the myth or doctrine of *the independence of the judiciary* – can be dismissed by the prime minister for any reason he considers to warrant their removal from office. However, even the High Court judges are not immune from government influence or pressure given that they, like the civil servants above, do not appoint themselves to the council's membership. Thus not only is the risk of interference from the government high, but the composition of the council limits its independence and freedom to act. It must again be stressed that a lack of freedom and independence suggests limited and/or circumscribed democracy.

## Historical background

Lesotho already had a National Assembly that segregated chiefs and commoners before attaining its independence in 1966. The principal chiefs were *ex-officio* members of the Assembly while the commoners were indirectly elected through the district council electoral colleges. The arrangement had been made by the colonial administration, apparently in order to achieve two main objectives. First, as a response to the growing pressure for the territory's self-rule, it was meant to ensure greater participation by the Basotho people in the process of governance. Second, as part of an institutional capacity-building measure, it served as a vehicle for carrying the independence process forward in an orderly way and as a tool for fostering the growth of a democratic culture that was seen as crucial to peace and stability in an independent Lesotho.

The bifurcation of Lesotho's national parliament into an upper house or Senate and a National Assembly also has as one of its underlying factors the British colonial administration's policy that fostered division between the chiefs and commoners. Already junior partners of the colonial administrators by 1903 when the Basutoland National Council (BNC) was established, the chiefs were thus the first beneficiaries of the administrative reforms instituted at the beginning of the 20th century. Although its membership was not open to commoners for nearly 20 years after its formation, the establishment of the BNC represented a significant political



development in Lesotho. The opening of the council's membership to commoners set the stage for this dual legislature. This was formalised and consolidated through the 1960 district and national legislative assembly elections, with district councils serving as electoral colleges for the membership of the emergent parliament. This election was especially important for the commoners: not only did it endow them with legislative powers but it placed control and ownership of the legislative and political processes in their hands. It in fact accorded commoners recognition as legitimate contestants for governmental power.

Lesotho's Senate should be seen not just as a residual of the modernisation process beginning with the reforms mentioned above; it is in part a result of hard bargaining and debates that were settled ultimately through compromise by the different forces vying for state power as Lesotho edged towards independence. The creation of the institution was a means of avoiding a possible impasse or deadlock as these forces were bargaining for a place and role within Lesotho's post-colonial polity. Such forces comprised the Basotho chiefs themselves and the political parties, of which the main ones were by 1960 the BCP, the BNP and the Marema-Tlou Freedom Party (MFP). It was meant, therefore, to placate the chiefs and those supporting the retention of chieftainship after independence.

The three political parties mentioned above became the key contestants of the 1965 general elections that paved the way for Lesotho's independence. The BNP and MFP were ideologically proximate to each other, maintaining that the institutions of the monarchy and chieftainship had a useful role to play in post-colonial Lesotho as mediators, arbitrators and administrators, and as the custodians of the Basotho tradition. The BCP, however, being more secular in political orientation and rooted predominantly in the *petit bourgeois* stratum of the population, believed that the Basotho nation could do without a monarch and chiefs at no cost.<sup>24</sup> This remained a divisive issue until 1970, and was probably one of the factors behind Chief Jonathan's seizure of power.

Preserving the Senate, the monarch and the chiefs – of whom the principal chiefs were not only *ex-officio* members of the Senate but also accounted for the bulk of its membership – was seen by the BCP, BNP and MFP as a way out of this quandary. The three Lesotho political parties – and the only ones represented at the 1963/64 London constitutional talks – therefore agreed not only to adopt the Westminster-type parliament with two houses, but also to retain the institutions of the monarchy and chieftainship.

The two institutions have, however, never been given the opportunity to mediate in any of the conflicts that have been a feature of Lesotho's politics since independence. Their capacity to mediate or resolve conflict therefore remains a matter for conjecture. They have, in fact, never been anything other than adjuncts

of the government and unwilling pawns as the country's main political parties engage each other in bitter power battles.

Conflicts with spurts of violence in which the king was often embroiled became a feature of post-independent politics in Lesotho. The main opposition BCP had not only rejected the outcome of the 1965 elections but also refused to cooperate with the victorious BNP. For its part, the BNP demonstrated a lack of commitment to democratic rule when it refused to relinquish power to the BCP – its archrival and winner of the 1970 general elections. This marked the end of the fledgling democracy enjoyed by the people of Lesotho in the five-year period preceding these abortive elections. The conditions and climate for peace and stability in the enclave country evaporated with the disappearance of democracy.

The 1966 constitution gave the king freedom to appoint whomever he wanted without having to seek advice from the then Privy Council, or anybody in fact, when nominating senators.<sup>25</sup> While for the government such freedom might be used to swart democracy, it is also possible that denying the king a modicum of freedom and independence to choose senators would mean that only supporters of the ruling party stand a greater chance of being appointed, even where they may be lacking the requisite qualifications.

### **Other features**

The bicameral character of Lesotho's parliament does not mean that its two houses have equal legislative and political powers. Legislative powers rest almost exclusively with the National Assembly. The Senate can only delay for a limited period the bills sent to it by the National Assembly for scrutiny, comments and suggestions before such bills are voted into law. Moreover, members of the Senate matter to the government and the ruling party only in relation to the bills designed to amend or repeal entrenched clauses of the national constitution. The principal chiefs who constitute two-thirds of the Senate's membership are, according to the constitution, not politicians. They can therefore only oppose bills presented to them as senators in the Senate, and not government policies. The principal and junior chiefs cannot mobilise their subjects to oppose government policy or stand for election as chiefs outside political parties, since the constitution does not define them as representatives and spokesmen of the people. They are salaried public servants of a 'special type', performing a dual role – political as senators and MPs, and administrative as managers of their respective wards. The rationale for emasculating the Senate politically has not been anything other than that it is not elective and that this resembles the British parliamentary system. Yet a weak Senate cannot be a source of strength for the National Assembly. In fact,

it can only be useful as a means of extending the prime minister's patronage by bringing his supporters and potential allies into parliament, and as a channel for the luckier ones to ministerial positions. Five (about 28%) of the present Lesotho cabinet ministers have earned their positions in this way and therefore do not represent the voters.

### 3. Elections and the parliamentary system

Lesotho has held three parliamentary elections since 1993, the most recent being the May 2002 election that was won overwhelmingly by the ruling LCD. The LCD won all but one contested 80 constituency seats. As indicated above, however, the May 2002 elections were held under the MMP model which ensures greater representation in parliament. Under this new model, PR MPs are drawn from the party lists submitted to the Independent Electoral Commission (IEC) and are appointed on the basis of the parties' overall performance in the elections, subject to a threshold of one per cent.

Hence the other nine Lesotho parliamentary parties, including the LCD's main rival the BNP, share the 40 PR seats. As shown in Table 3 (*over page*), the BNP was allocated 21 seats; the Lesotho People's Congress (LPC) 4; the National Independent Party (NIP) 5; the BCP 3; the Basutoland African Congress (BAC) 3; the National Progressive Party (NPP) 1; the Popular Front for Democracy (PFD) 1; the MFP 1; and the Lesotho Workers' Party (LWP) 1 seat. The LPC also has one constituency seat won from among the 80 electoral constituencies contested on the basis of the FPTP system.

The adoption of the MMP electoral model witnessed the emergence in Lesotho of four more political parties: the LPC (an LCD breakaway faction), the LWP, the New Lesotho Freedom Party (NLFP) and the Social Democratic Party (SDP). Ostensibly, their founders aimed to take advantage of the more generous MMP electoral and parliamentary model. However, as Table 3 shows, only the LPC and the LWP benefited. The independents were the worst losers, according to the table, having been seemingly obliterated from the political scene.

A parliamentary seat yielded by or won through the FPTP system translates into minus a PR seat. Hence, in spite of its landslide victory, the LCD was not allocated PR seats in addition to its 79 constituency seats. Nonetheless, the ruling LCD is still the majority party in the National Assembly with virtually limitless power. It seems that the rest of the parties represented in the National Assembly would have impact on the parliamentary process only as members of and by using the so-called 'working committees' to articulate their interests. However, these are ad hoc rather than permanent committees. In any case, the LCD's numerical preponderance suggests that the opposition would influence only parliamentary processes requiring technical skills and specialised knowledge which the ruling party cannot provide. Thus both the ruling party and the government are guided

**Table 3: Performance of Lesotho's political parties in the 2002 general elections**

Name of party	No. of constituencies seats	No. of MMP seats gained	Total no. of party votes	Percentage of total electoral votes
BNP	0	21	124 234	22.4
BAC	0	3	16 095	2.9
BCP	0	3	14 584	2.6
Christian				
Democ. Party	0	0	1 919	0.3
PFD	0	1	6 330	1.1
Kopanang Basotho	0	0	1 155	0.2
LCD	79	0	304 316	54.9
LPC	1	4	32 046	5.8
LWP	0	1	7 788	1.4
MFP	0	1	6 890	1.2
NIP	0	5	30 346	5.5
NPP	0	11	3 985	0.7
NLFP	0	0	1 671	0.3
Sefate Democ.				
Union	0	0	1 541	0.3
SDP	0	0	542	0.1
United Party	0	0	901	0.2
Independents	0	0	10 363	1.8
Totals	80	40	564 749	100.0

Note: Independents could not secure a parliamentary seat regardless of their high total score because they are not an organised bloc.

Source: Adapted from Matlosa K, *Review of electoral systems and democratisation in Southern Africa*, in *Electoral-Task Team Review Roundtable*; *op cit*; p 63; and the IEC Statistics.

in their actions and decisions only by their conscience rather than by fear of opposition or even the electorate.

There is a direct relationship between Lesotho's parliamentary system and its dual electoral model which produces two types of parliamentarians – FPTP and PR MPs. Thus parliament has this dual character. There is, however, no relationship between the structure and composition of government or the executive authority. There is no constitutional requirement for the opposition to be included in government: government derives exclusively from the political party with the overall majority in parliament and its leader becomes prime

minister or head of the executive. According to Section 87(2) of Lesotho's constitution:

*The King shall appoint as Prime Minister the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the National Assembly.<sup>26</sup>*

Cabinet ministers, however, need only be members of either the Senate or the National Assembly whom the prime minister recommends to the king for appointment to the positions. In principle it is therefore possible to have an opposition member as a government minister if such a person so happens to be recommended by the prime minister for appointment. This is, however, unknown in a democratic Lesotho for the incumbent prime minister recommends his own party members to the king for appointment as senators, thereby creating a pool of candidates from which he chooses ministers.

## 4. Structures of parliament and channels of contact with the electorate

As indicated above, the Lesotho parliament has two houses: the Senate with *ex-officio* and appointed members; and a National Assembly comprising elected delegates through a semi-dual electoral system. Chairing the proceedings and overseeing the business of the two houses are the president and the speaker, respectively. The electoral system yields a National Assembly with two distinct types of parliamentary seats, namely those gained through winning individual constituencies and those allocated on the basis of a party's overall performance in the election. It is doubtful, however, whether an independent candidate would gain a parliamentary seat through the former avenue, although an independent can in principle win a PR seat.

Save for the segregation mentioned earlier, all Lesotho parliamentarians are supposed to be equal. They enjoy all the rights, privileges and immunities conferred by the constitution. Not only do they debate freely but they are entitled to develop, propose and vote for or against parliamentary resolutions and motions.

Lesotho's National Assembly therefore has, in principle, internal democracy. It offers scope for the participation of all members in its process, namely: scrutinising and proposing amendments to bills, engaging one another in debates, tabling motions and asking questions. This does not, however, mean power parity among the political parties or organisations represented in the assembly. Nor does it mean that the opposition has influence on parliament's decisions, and that the exercise of the majority principle by the ruling party will always be rational in terms of using its vote in the interest of the nation rather than simply to defeat the opposition. That said, like government ministers and the ruling party members, opposition parliamentarians can originate parliamentary bills subject to conditions set out in the Standing Orders of the National Assembly. According to Standing Order No. 51 "[a] member who is not a Minister and who wishes to present a bill shall give notice of a motion to leave to be given to bring in the bill ..." that must include the title of it, and provided that this is in keeping with Standing Order No. 20. This requires a recommendation by the cabinet signed by a minister in the event that the bill "imposes taxation" or alters it "otherwise than by reduction", imposes any charge upon the Consolidated Fund or attempts to make withdrawal from it, or for the composition or remission of any debt to the Government of Lesotho, or any motion which in the opinion of the person presiding would lead to the above.<sup>27</sup>

The standing orders also allow members to move motions and amendments to parliamentary acts and bills, provided that due notice is given. Furthermore, they make it possible for members to raise any matter of privilege to the House after informing the speaker and explaining the issues and facts involved.<sup>28</sup> Save for the ruling party's possible misuse of its majority, the structure of Lesotho's National Assembly and its arrangements are conducive to democratic debates, ensuring that members engage each other. The speaker, a ruling party loyalist, however, has the power to decide alone the validity of claims of any point of privilege. Indeed, all that parliament does, or does not do, seems in the end to depend on the ruling party and the government. However, as mentioned, a scope does exist for the opposition to introduce motions and to ask questions.

Since 1993 there has been only one functioning parliamentary committee, namely the Finance Committee, even though the standing orders provide for the formation of parliamentary portfolio committees. The other sectors of social and political activity are yet, if ever, to have committees. The problem is, however, also attributable to the Lesotho parliamentary system itself. As one analyst argues:

*[P]arliamentary systems have a fusion of power that does not set the branches against each other for members of the top executive are themselves members of parliament, and also because members of parliament ... obey their party leaders ...*<sup>29</sup>

That said, members of the National Assembly are accessible as individuals and can be contacted and lobbied as necessary. However, as will be seen later in this report, lobbying parliamentarians or the latter's regular contact with members of civil society is not a formally established practice in Lesotho.

The Senate operates on the same principle: its members having equal votes, rights and privileges. However, as part of parliament or the legislature, the Senate plays a largely subordinate role to that of the National Assembly in relation to its legislative powers. With such limited legislative powers, the Senate is thus not a countervailing force to the National Assembly: the Senate can neither stop bills passed by the National Assembly from being gazetted into law nor initiate legislation, even though it can move motions pertaining to the adoption or rejection of amendments, which in relation to ordinary bills has no consequence, for the National Assembly can override its decision. According to section 80(1) and (2) of the national constitution, the Senate can delay the passage of bills for only one day and 30 days for appropriation and ordinary bills, respectively.<sup>30</sup> In principle, the Lesotho Senate is not divided along party political lines. As noted earlier, however, it has historically been packed with ruling party functionaries,



supporters and sympathisers, thereby rendering it impotent. Nonetheless, individual senators can move motions regarding amendments that they propose to bills brought to them and can petition the Senate on any matter falling within the scope of its competence.<sup>31</sup> Thus only one component – the National Assembly of the Lesotho parliament – legislates. So, calling parliament a “legislature is one indication of the exaggeration of the law-making function of assemblies”.<sup>32</sup>

In its present form Lesotho’s Senate is certainly not a countervailing force to the National Assembly and government, having been denied effective legislative power by the politicians. However, the principal chiefs who constitute two-thirds of the Senate’s membership have traditionally not supported the BCP or its ruling progeny, the LCD. Not surprisingly, spurts of diatribe against the Senate and calls by the ruling party for its abolition are not infrequent. The government’s perception, expressly stated in different forums, is that the institution behaves like an opposition. The Senate’s powerlessness has been further exposed by the absence of a meaningful opposition in the National Assembly. It frequently has to contend, often unsuccessfully, with problems that could have easily been solved in the National Assembly by a strong opposition. The institution, however, remains a useful debating forum, and through debates it engages both the government/ruling party and the national issues of interest to, and debated in, parliament. The National Assembly may not necessarily accept everything that the Senate proposes but it can, and is entitled in terms of the constitution, to propose amendments to parliamentary bills passed to it for scrutiny. The Senate could therefore be useful as an adviser to the lower house but not as a check on it.

The critical question to be asked of both houses is what channels exist for contact, communication and interaction with the public or its representative organisations. The most obvious would be through lobbies and reporting back to the constituents by parliamentarians. Parliament itself could do that: it produces Hansard or a written record of parliamentary proceedings, although this is not distributed to the public but kept within the parliament buildings in Maseru. But the Lesotho parliament as an institution has no formal or institutionalised mechanisms of its own connecting it to the nation. It has no mouthpiece, even in the form of a periodic newsletter or pamphlet. Neither does it have any research department nor any ‘monitoring mechanism’ to gauge people’s needs and opinions as well as their variability over time. Parliament’s activities are filtered to the public through the media; the state-owned Radio Lesotho being the most important in this regard. This mode has one special advantage in that it broadcasts to the entire nation. Radio Lesotho has a large number of listeners due to its monopoly status which existed until recently. However, Radio Lesotho mainly

broadcasts or disseminates what it considers to be newsworthy or matters that suit its objectives and those of the government. Moreover, apart from devoting just one hour to parliamentary reporting on selected days, it is not always present in parliament. The private media, for its part, is simply not adequately equipped for this task as many of these groups are struggling to survive. Many Lesotho weekly newspapers, for example, would barely sell 2,000 copies in a week. They would thus undoubtedly not be able to place a permanent correspondent in parliament. Finally, while the private media occasionally carries reports on parliament, they are interested not in parliamentary business for its own sake but rather aspects of it which, according to them, constitute news.

Another obvious albeit difficult way for parliament's business to be made known to the public is through political rallies held by MPs. However, many MPs do not report back to their constituencies or take a long time to do so. This is evident from the findings of the study provided below. But public rallies have other weaknesses too: first, this mode has an inbuilt bias – that is, selective reporting as the different political parties represented in parliament choose what to pass on to the public and are often interested in political point scoring and matters that portray their party in a good light. Thus their public rallies would address, if so, very little regarding parliamentary business, and only matters of interest to the individual parliamentarian. Second, individual MPs would gather together to address only their party members and supporters or sympathisers. Third, political rallies require physical travel to and the presence of both the MPs and the people at a particular place; the open rally approach (also known as the *pitso* system) is expensive.

Ironically, Lesotho has a special ministry for parliamentary affairs. But the ministry, according to the incumbent minister interviewed on 3 February 2004, is responsible only for ensuring that parliament has a budget and infrastructure in order for it to perform its legislative function. The minister does not believe that parliament has any more responsibility than this. Lesotho's parliament has neither a public relations office nor its own broadcasting facility, reinforcing its tenuous links with the public. The situation is a far cry from what obtains in neighbouring South Africa. The business of the latter's parliament is covered through a special parliamentary affairs television broadcast. It also has a research and development department, staffed with permanent employees who have the requisite expertise and resources. In addition, South Africa has a vibrant civil society backed up by a strong private mass media of varying kinds – radio and television broadcasts and newspapers. Civil society in South Africa is in various ways deeply involved in that country's political process.

## **5. Interview respondents' perspectives of parliament in Lesotho**

However divided politically, the Basotho people as a whole hail the country's return to constitutional rule with parliamentary democracy as a political success. The 12 MPs and 12 CSO members surveyed and interviewed, respectively, corroborate this view.

### **Opinions and views of MPs**

Half the MPs surveyed believe that improvements are needed in order to enhance the effectiveness of parliament. Such improvements, in their view, must include a requirement that only people with a 'sufficiently' high educational qualification can be elected as parliamentarians. By this they mean not just basic reading and writing skills but a thorough understanding of and ability to comprehend, contextualise, analyse and formulate responses to the challenges facing them and their country. The MPs also believe that the establishment of parliamentary portfolio committees would increase their participation not only in the legislative process but also in policy making. Such committees would widen the scope and arena of debates while deepening inter-party interaction that is basic to mutual tolerance and understanding among the participants.

These MPs noted further that Lesotho's parliamentary democracy has not led to government accountability and efficiency. In this respect they pointed to the: widespread poverty and unemployment; AIDS pandemic; inaccessibility of parliament to the electorate and the latter's lack of control over the institution; non-acceptance of election outcomes and the non-participation in by-elections by the main opposition BNP, and the failure of the system to solve this problem. For these MPs democracy should result in a disappearance or attenuation of these defects. However, the MPs surveyed do not doubt their role in and contribution to the country's democratisation process as people's representatives and as implementers of their decisions through legislation to ensure the rule of law, thus buttressing democracy. They have faith in their role to transform the parliamentary system into a more representative mixed member-type, and as inculcators of democratic values in the citizens.

Opposition MPs in particular did not believe that the present parliament is an agent of democracy, arguing that it had not demonstrated fairness in allocating resources and distributing power. They said that parliament is not a genuine

debating forum; that the ruling LCD uses its majority to forestall democratic debates on important national issues, and that bills are often passed into law before they have been properly scrutinised or seriously debated. The MPs therefore contended that Lesotho's parliament is an instrument used by the government to undermine the opposition by legitimating denial of recognition to and discrimination against the PR MPs, and that parliament is incapable of intervening to stop the injustices inflicted on the PR MPs by the government. They cited as an example treatment by parliament of FPTP MPs as the only authentic representatives of the nation entitled to monthly 'constituency allowances'. This, indeed, could be politically damaging in another important respect – that is, engendering a feeling among opposition parties that they do not share in the ownership of parliament and in the democracy project itself.

That said, the constituency allowances mean extra cash in the pockets of the ruling LCD MPs, hence their greater capacity to mobilise support for their party than that of opposition PR MPs. Regarding inter-party relations among the political parties in parliament and how these impact on democracy, 25% or three of the 12 MPs – including the main opposition BNP MPs – said that the ruling party was contemptuous of and hostile towards the opposition. They said that this posture denied the opposition its legitimate role as the voice of the people, holding views divergent from those of the governing party. The remainder, however, including the governing LCD, said that inter-party relations were characterised by mutual accommodation and tolerance. The parties' polarised positions on this issue suggest that Lesotho's parliamentary democracy is yet, borrowing Alou's phrase, "to create the conditions necessary for the production of integrative policies ... to open democratic space to the greater number of citizens ...".<sup>33</sup> There was, however, agreement among all the respondent MPs that portfolio committees need to be created as a way of mitigating the ruling party's dominance, overcoming the problem posed by the low calibre of parliamentarians, ending mutual suspicion and expanding the terrain of debates and engagements.

All 12 MPs surveyed said that bills debated in parliament originated from government ministries with no input from them, their parties or civil society members. In spite of this, nearly all (91%) the MPs forming the sample said they were accountable to the electorate, informing them regularly about the parliamentary process, nature and implications of the bills before parliament and issues pertaining to governance, as well as raising their constituents' concerns and piloting their demands in the assembly.

These claims were, however, contradicted by the CSO members interviewed on the same issues. The CSOs see a dangerous alienation between parliament

and the people. Indeed, 33% of the MPs indicated that there were no formal links or direct contacts between their parties and the CSOs, while the other 67% said that they had never been lobbied on any matter by any organisation in the country. The MPs added that their party constitutions and manifestos embrace CSOs as their constituencies and as partners worthy of assistance. The claim is certainly confusing. But probing of the matter via the next question in the questionnaire (see *Appendix A*) produced a different answer, indicating that the respondents could have thought that the researchers aimed to expose their weaknesses, or thought that particular types of responses were anticipated by the researcher. The MPs answered that they consulted CSOs whenever they felt that such organisations had an interest in a parliamentary bill that was due for debate and discussion by the National Assembly. Our instruments, like many others used in collecting data, would not have been able to prevent this problem.

In order to verify the above claims we consulted the 1998 and 2002 election manifestos of Lesotho's four main political parties and role players represented in the National Assembly, namely the LCD, BCP, BNP and MFP. The manifesto of the ruling LCD makes reference only to women and workers, stating that an LCD government would ensure good employer–employee relations, and that women would participate in all aspects of the administration process. The BCP's 1998 manifesto promises a living wage for workers, to educate and train the youth, to create a ministry of youth affairs to promote and protect their interests, to guarantee media freedom and to outlaw discrimination based on sex. The MFP's 2002 election manifesto promises to fight oppression and harassment of women and to ensure equality between men and women. The party also undertakes in its manifesto to educate and train the youth and to encourage the formation of youth organisations. It would also assist workers and employers to institutionalise collective bargaining as a tool for determining wages. The BNP's manifesto for the same elections states that a BNP regime would respect women's rights, eliminate inequality between men and women and ensure that women compete freely in parliamentary and local elections, as well as in any position within the party hierarchy. It would further encourage the establishment and strengthening of youth organisations and would subscribe to the principle of media freedom.

These declarations, however, are not proof of engagement or partnership with CSOs. Neither do they tell us whether or not there are any regular and obligatory consultations, or the type of relations between the parties and the organisations mentioned in their manifestos. Instead, they are statements of intent, or perhaps a 'wish list'. What is clear is the paternalist attitude of Lesotho political parties towards politics. With this attitude they *a priori* define political parties as vanguards and vehicles of liberation and as repositories of popular aspirations,

hence determinants of their nation's destiny. The parties' approaches also highlight the blur in Lesotho's political battle lines – a phenomenon attributable to the fluidity of their support bases resulting from the absence of acknowledged hegemonic classes in the tiny enclave country.

### **Opinions and views of civil society organisations**

As an institution, Lesotho's parliament has not yet developed the tradition of direct engagement with civil society, although its standing orders permit lobbying of parliamentarians and the presentation of petitions to it on particular issues by individuals and groups. Nine (75%) of the 12 people selected from the CSOs as informants did not believe that Lesotho's parliamentary system of government had brought democracy to the country. They argued that parliament has no power, with all the ruling party MPs and cabinet ministers being dependent on the prime minister who appoints ministers and dispenses other forms of patronage.

The government is therefore not only unaccountable to the people through parliament but also has unfettered power to do virtually anything it wishes, including the denial of independence to other legitimate state organs. Examples proffered here by the respondents included unilateralism reflected in the signing without deferring to parliament of international treaties and protocols, and the government's invitation to foreign troops in 1998. The respondents said that the current Lesotho parliament has been unable to intervene to ensure compliance by the government with the constitution, as attested to by its failure to audit public accounts for seven years, its persistent violations of human rights (as exemplified by the shooting and killing of peaceful demonstrators), the sanctioning of slave wages for indigenous workers, and the non-investigation of corruption allegations against government ministers.

The respondents pointed to the MPs' failure to report back to their constituencies as further evidence of a lack of democracy. In their view, therefore, parliament is merely the government's tool and rubber stamp; a phenomenon that they link to the fact that there is in reality no separation of powers between parliament and the executive. For the rest (25%), Lesotho was on a path of democracy since people are now free to say what they want, to move about and to organise freely in the country, to choose their government and representatives, and that the problem engendered by a one-party parliament which excluded other parties from the governance process has been overcome through the MMP electoral system. While positive, these developments may not necessarily translate into good governance or ensure parliamentary control over government

behaviour. It also does not mean that the government will not use its parliamentary majority to exclude the opposition.

All the CSO members interviewed are, however, agreed that with only 40 members out of 120 and deeply divided, the opposition's role as a watchdog is insignificant – only capable of making noise which the ruling party can, and has in fact, ignored. The respondents also noted as evidence of its weakness the opposition's silence on and helplessness in the face of what they term 'controversial' and 'disastrous' government policies. Such an example is the new manpower development policy which, for the purpose of awarding loan bursaries to candidates for tertiary institutions, does not recognise some academic disciplines.

Several suggestions were made that might improve the effectiveness of parliament as a vehicle for democracy. These included the following:

- The insistence on higher educational qualifications for electoral candidates.
- There should be no discrimination between PR and FPTP MPs.
- It must be ensured that the speaker of the National Assembly is politically neutral.
- Former government ministers or party members should not be appointed to the position of speaker.
- Avenues should be created for regular contact and consultation between CSOs and parliament, including the executive.
- The government must promote and protect human rights and must allow free protests.
- The government must desist from misusing the police and other state organs with related functions.
- The executive must observe and abide by the principles of parliamentary supremacy and the separation of powers.
- The ruling party must recognise the legitimacy of the opposition as an essential ingredient of democracy.

Arguably, the fact that parliamentary bills are presented to parliament before being passed as law ensures some degree of ministerial accountability. This offers scope for parliamentarians to scrutinise, criticise and amend the bills or to propose appropriate modifications and changes. Indeed, along with the asking of questions regarding the conduct of the various ministries, these are the duties of a parliament and Lesotho's parliamentary system guarantees rights to parliamentarians to perform their functions. This does not, however, guarantee success and efficiency on the part of MPs. An important caveat is that only an

independent, strong and effective parliament with a commitment to serving the nation would be able to assert its authority over the government, and would also be able to act independently of the latter in dealing with various CSOs and individuals. This is admittedly difficult, if not impossible, where CSOs are themselves politically divided and even aligned with the political parties competing for power. Lesotho's trade union movement fragments among several parties, the main ones being the LCD, LWP and PFD. For instance, the Lesotho Association of Teachers and the Lesotho Teachers' Trade Union are aligned with the ruling LCD and the PFD respectively, while the LWP was formed by and represents the Lesotho Textile and Allied Workers' Union. The 1994 palace coup and the 1998 elections dispute traumatised and split the traditionally BCP-inclined Lesotho Chamber of Commerce and Industry and the Lesotho Council of Non-Governmental Organisations (LCN), with the consequent loss of bargaining power by the organisations and a reduction in their influence over policy decisions.

This situation partly explains the inadequate or lack of engagement with parliament that the CSOs pointed out. Also, rent by divisions and fragmented, weak and dependent on foreign aid and government support, Lesotho's CSOs have minimal leverage over the Lesotho government or state institutions such as parliament. This in turn means that there are no channels of contact or platforms for meaningful engagement with the government and parliament. The major CSO organisations such as the Council of Churches in Lesotho, the LCN, the Private Health Association of Lesotho and the Red Cross Society of Lesotho would indeed not be able to survive without foreign aid and government support; they would therefore flinch from making certain demands on parliament and government. Indeed, the CSOs offer no reason for not engaging parliament and government other than that they do not believe this is worthwhile or possible.



## **6. Lesotho's parliamentary opposition: Role, strengths, weaknesses and challenges**

Lesotho's parliamentary opposition functions primarily as a representative of minority voters, namely the people with differing policy preferences to those of the majority or winners. It is the voice of minority voters and an agent of individuals and groups with similar political outlooks and aspirations. It is also a watchdog that polices the ruling majority party together with its government, ensuring that in carrying out its mandate the government complies with the provisions of the constitution and adheres to its defined terms of reference. The opposition does this mainly by exposing the shortcomings of the system in the form of questions put to ministers and in addresses to the houses. Its membership of the legislature assigns it the same role and duties as the ruling party – namely, scrutinising, discussing and passing parliamentary bills as laws. These are the resources available to the opposition and the source of its strength. These processes are in fact levers for controlling the ruling party and government. Also constituting the opposition's power resources are the common cultural background of political parties composing it and the non-ethnic character of the country's politics.

However, the above observations do not mean that there is consensus regarding the challenges facing the country among the nine political parties that make up Lesotho's parliamentary opposition. Nor do they suggest that the opposition has a common political vision and/or agenda. Indeed, the opposition is not a unified force or movement working as a unit, but rather an ensemble of distinct organisations with diverse aspirations, objectives and strategies, collaborating and cooperating only when their views and aspirations converge. There is therefore as much conflict of interest between the opposition parties themselves as there is between them and the ruling party.

The opposition's numerical inferiority undermines its effectiveness. As indicated earlier, the opposition constitutes only a third of the membership of the National Assembly, and it therefore lacks the bargaining power that is essential in a system rooted in competition rather than partnership. Eight of the nine opposition parties represented in parliament are too small to generate the funds needed for investment in meaningful political mobilisation outside of parliament, having together gained just 20.9% of the total number of votes in the 2002 elections – less than the BNP's 22.4%.<sup>34</sup> Apart from the BNP, only the BCP and the MFP have fixed assets that generate income in the form of rent: the

opposition's ability to communicate with the nation is thus severely limited. Lesotho's political parties receive no funding from the state, save for a token amount (R20,000) given to each party to enable it to campaign when the country holds general elections.

Another problem is political divisions and inter-party rivalry. The traditional rivalry between the BCP (including its new splinter, the BAC) and the BNP persists and has divided or impeded unity within Lesotho's minuscule parliamentary opposition. Indeed, the research reveals that all the country's small opposition parties represented in parliament, including the BCP, have generally voted with the ruling party and not with the main opposition BNP: this means that the opposition's vote is always split. Overcoming inter-party rivalry, correctly diagnosing the country's problems and forging a common agenda are therefore among the main challenges confronting Lesotho's parliamentary opposition.

## 7. Summary and tentative recommendations

The study sought to investigate whether the parliamentary system in Lesotho has strengthened democracy. This was done by examining parliament's engagement, if any, with the nation at large and with civil society in particular, the depth of engagement and the means used, its advantages and disadvantages, its strengths and weaknesses and the improvements that are necessary. The study scrutinised the structure of the Lesotho parliament itself and its implications for democracy; its composition, membership and mode of recruitment; relations among MPs; parliamentary processes and the rights and duties of MPs, including their freedom and independence and what all these imply for the democratisation process in Lesotho; public accountability and the power of parliament to call the executive to account; MPs' consultations with their constituents; and reporting – how this is done, its effectiveness and its contribution in terms of deepening and entrenching democracy.

Two techniques were used to generate the required data, namely: intensive interviews and a survey applied to equal numbers of MPs and CSO representatives. The information was sought on strictly the same issues of concern to the researcher, as explained above. The researcher encountered few or no problems while conducting the research.

The study was undoubtedly a worthwhile undertaking, having made interesting if not profound revelations. While its democracy is yet to be consolidated, Lesotho's government system – including its electoral and parliamentary models – is seen by the groups that were interviewed and surveyed as satisfactory and appropriate. The study revealed, however, that due to the traditional rivalry between the ruling party and the main opposition BNP, mutual suspicion, distrust and hostility have remained deep between the two parties. Thus the electoral/parliamentary reforms have not enhanced the prospects for cooperation between the LCD and BNP.

The BNP, along with a few smaller parties, does not believe that the ruling party is committed to the principle of inclusive government and shared responsibility, for it does not regard PR MPs as legitimate representatives of the people. That PR and FPTP MPs are accorded different recognition in relation to constituency allowances is a fact confirmed by the researcher, and it is definitely an important political issue for the opposition. During research visits to parliament the researcher observed that the PR MPs appeared diffident and jaded, conveying

an impression of irrelevance and alienation. Indeed democracy is possible only when stakeholders feel that they own the democracy project itself.

While the country's constitution outlaws discrimination of man by man, it does not provide for court intervention to stop acts of discrimination in parliament. The ruling party, for its part, does not view the PR MPs as genuinely elected people's representatives. This surely sours inter-party relations to the detriment of cooperation, which is needed to spread democracy. It sends an incorrect signal to the opposition, already shamed by its failure to gain constituency seats, that it has no contribution to make to the processes of democratisation and governance. A proposed solution to this problem is a full PR electoral system, which has been recommended as the most equitable and appropriate for Lesotho's polarised society.

The research reveals, however, that all MPs (PR and FPTP) can contribute to discussions on parliamentary business, engaging one another freely through debates, motions and questions. However, weak and divided, the opposition has been unable to take advantage of its freedom by exposing the wrongs and defects of the system. It must use these legitimate means to inform the public about the business and plans of parliament as well as about what should be expected. However, with its numerical superiority, the governing party often simply shuts the opposition up, thus denying it its parliamentary platform to criticise government – the ability of parliament to hold the executive to account is therefore minimal. All bills eventually passed as law by parliament invariably originate from government ministries and none gets rejected or altered in a material sense because the majority LCD MPs cannot vote against their government, even though the constitution gives them this right: but rights or constitutions do not always determine political behaviour. Similarly, opposition MPs do not take a different position to that of their parliamentary party. Thus the chasm between the ruling party and the opposition is reinforced so that parliament is a formal arena for furthering their political battles. While there does not seem to be an immediate solution to this problem, debates and engagement with each other in parliament will, it is hoped, bridge the chasm. Outside of parliament, non-governmental organisations (NGOs), radio broadcasts and academics could help by organising debates between political parties on specific policy issues, thereby degrading the existing suspicions and tensions.

The research reveals that with the current asymmetry in power relations between the Senate and the National Assembly, Lesotho's parliamentary system is devoid of checks that would ensure adherence to its mandate. Yet there are no constitutional or legal means by which parliament as a public institution can be controlled and made accountable to the people, probably because of the

espousal by the rulers of the doctrine of parliamentary sovereignty and supremacy. The researcher discovered that Lesotho's parliament was not proactive, lacking initiative and waiting for the executive to formulate its agenda – that is, to develop, draft and table bills for MPs to rubber stamp. The executive alone determines when parliament will be in session. This is due, among other things, to the lack of an effective and sizeable opposition in parliament, as well as to a Senate with powers equalling or approximating those of the National Assembly. A strong Senate would be able to police the actions of the executive. Parliament's weakness *vis-à-vis* the government is attributable to the fusion between the ruling party and the executive. Moreover, parliament has never had any working committees. This limits inter-party interaction, which would enhance participation and representation. As stated above, there is no better way of solving this problem than by using the existing avenues to exert pressure on cabinet and the ruling party – that is, the constant dissemination of information.

It was discovered that there is no direct engagement between parliament as an institution and civil society. CSOs have the right to lobby individual MPs but, as both groups in the sample stated, lobbying is not practised. Moreover, lobbying does not necessarily change anything in this type of environment. There are no formal links between the parties represented in parliament and the national CSOs. The reasons for this, it was discovered during the research, include the cross-cutting membership of the political parties and CSOs. Whether or not such links are desirable, they seem impossible to achieve because of CSOs' dependence on foreign aid. Donors support only politically neutral CSOs, thus depoliticising and blunting them as pressure groups. There seems to be no obvious escape for CSOs from this dilemma, except through appeals by the organisations through avenues such as lobbying, formal meetings with and petitioning parliamentarians and the executive. CSOs could also apply pressure through appeals to certain clauses of the constitution, national laws and conventions ratified by the government and could expose deviations from these. Indeed, this would make them role players in and contributors to the process of strengthening parliamentary democracy rather than its objects – or even its victims.

Given the findings of the research the following recommendations are made:

- The ruling LCD must assure the opposition that the latter is a welcome parliamentary partner and that it, as the biggest party in parliament, seeks to achieve consensus before settling arguments and debates by vote. More importantly, the LCD must demonstrate a willingness to share political space and power with the opposition. The opposition, for its part, must assert its constitutional rights without shedding its obligation to assist parliament to

promote and spread democracy as a joint responsibility with the ruling party. The researcher does not believe that the ruling party alone or the government would democratise Lesotho.

- Discrimination based on the two types of MPs must end to ensure that all MPs have confidence in the democratic dispensation and espouse similar values necessary for them to develop the self-confidence essential for effective participation in the parliamentary process. The discriminatory monthly cash allowances paid to the ruling party MPs merely entrench patronage, thus enabling the LCD to manipulate the system. It goes without saying that this negates rather than promotes or spreads democracy and must therefore be withdrawn or be given to all MPs.
- The parties in parliament must increase their interactions both in parliament and outside of it in order to build mutual trust and confidence, while lessening suspicion, tension and confrontation between them.
- Parliament must reach out to the people through its radio and/or television broadcasts (which only air in the evenings for less than four hours), posters, newsletters and copies or excerpts from Hansard (recorded proceedings) to ensure that not only dominant parties and individuals receive exposure.
- The calibre of MPs must certainly be improved through a policy that emphasises higher educational qualifications for MPs. This will increase MPs' understanding and appreciation of the challenges facing the nation and their responsibility as its leaders and agents.
- The ruling party must accept the opposition as a legitimate partner and not as the enemy, thereby building a bridge between the two.
- MPs must maintain regular contact with the people to keep them up-to-date with developments in governance and in parliament. This will help build confidence in democratic rule.
- Opposition parties must shed their apparent fatalistic attitudes and utilise their parliamentary freedom to project their alternative plans and policies, rather than adopting a hostage status.
- Civil society must not wait for MPs and parliament to come to it. It must

aggressively demand contact, lobbying and petitioning them as necessary. CSOs must even mobilise, as necessary, the masses to signal its demands or dissatisfaction.

- Real separation must exist between the different branches of the system, with increased legislative and political powers for the Senate to enable it to protect the nation against the National Assembly.

The researcher's view is that the National Assembly is neither infallible nor sacrosanct; hence there must be a means by which the population can defend itself against it where appropriate. The present arrangement not only leaves little or no independence for ruling party MPs who at any time expect to be appointed as ministers or to lose such an appointment if they behave in a way that does not satisfy the leader. This exposes the entire nation to the possible arbitrariness of the National Assembly.

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## Appendix A: Research questions for selected Lesotho MPs

1. We have had parliamentary democracy in Lesotho for over ten years now. Do you see this as a political success? Yes/No
2. If you answered No, what in your view are the failures and problems?
3. What do you perceive to be your role in the democratisation process?
4. Do you feel that you are and have been able to perform this role? Yes/No  
Please explain your answer.
5. What in your view would enhance or increase your effectiveness in this process?
6. How do you describe inter-party relations in parliament? Please tick the appropriate word or phrase: *cordial*, *accommodating and tolerant*, or *hostile*.
7. In your view, do these relations as you described above affect parliament's performance? Yes /No. Please explain your answer.
8. If the impact on parliament's performance is adverse, what in your opinion is the remedy?
9. Are you a constituency representative member or a proportional representative MP?
10. Do you maintain regular contact with the electorate? Yes/No
  - (a) If Yes, how do you maintain this contact?
  - (b) What contribution does this contact make to your performance as an MP?
  - (c) If No, why is there no such contact?
11. Does your political party have links with and accommodate all or any of the following organisations?

- Lesotho Council of Non-Governmental Organisations (LCN)
  - Lesotho Chamber of Commerce and Industry (LCCI)
  - Trade unions
  - Employers' organisations
  - The media
  - Youth organisations
  - Women's organisations
12. Do you also as your party delegate see yourself as representing the interest of all or some of the above organisations? Yes/No  
Please explain your answer.
13. Do you always take their interests into account during parliamentary debates and voting? Yes/No
14. If the answer to the above question is Yes, please give examples and success stories, citing particular parliamentary bills involved.
15. Do you do the above on your own, or as a result of lobbying by the organisation(s) concerned?
16. How often do you contact these organisations before attending parliamentary business?
17. Do you and your party have any problems interacting with these organisations? Yes/No
- (a) If Yes, what are the problems?
  - (b) Does this make it difficult for you to promote their cause in parliament? Please explain your answer.
  - (c) Does your party have any formal relations with any of these organisations? Yes/No
  - (d) If No, would such relations make it possible for you to effectively represent their interests in parliament, and how?
18. Can you vote, and have you voted against your party motion or position in parliament? Yes/No
19. Do you have the freedom to vote against your party's motion or position, and is this sanctioned and guaranteed under its constitution? Please explain.

20. Who initiates parliamentary bills, viz. *yourself and fellow MPs, individual ministers, statutory bodies or members of the public*? Please tick appropriate items.
21. State which of these, according to your experience, does most of this initiation.
22. Is the executive (government) accountable to parliament? Give examples (e.g. before taking major policy decisions – interstate treaties, pacts, forging external relations, military alliances, etc.
23. More generally, do you think that, as it is, the present Lesotho parliamentary system promotes and protects democracy? Yes/No  
Explain and suggest improvements if required.

## **Appendix B: Research questions for interviews with members of Lesotho CSOs**

*Members of selected civil society organisations were interviewed and their detailed views and explanations were sought on the following broad questions:*

- Has Lesotho achieved democracy since the 1993 general elections?
- What is the nature of the reformed parliament, its ability to promote democracy, accessibility to the electorate, accountability, amenability to popular control, its relationship with the executive, etc.?
- What is the role of the opposition in promoting and strengthening democracy and is it able to perform that role effectively?
- What is the role of CSOs themselves in the promotion of democracy?
- What do you think should be done to deepen and strengthen democracy?

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## List of acronyms

BAC	Basutoland African Congress
BCP	Basutoland Congress Party
BNC	Basutoland National Council
BNP	Basotho National Party
CSO	Civil society organisation
IEC	Independent Electoral Commission
IPA	Interim Political Authority
LCD	Lesotho Congress for Democracy
LCN	Lesotho Council of Non-Governmental Organisations
LDF	Lesotho Defence Force
LPC	Lesotho People's Congress
LWP	Lesotho Workers' Party
MFP	Marema-Tlou Freedom Party
MP	Member of parliament
MMP	Mixed member parliament
NGO	Non-governmental organisation
NIP	National Independent Party
NLFP	New Lesotho Freedom Party
NPP	National Progressive Party
PFD	Popular Front for Democracy
FPTP	First-past-the-post
PR	Proportional representation
SADC	Southern African Development Community
SAIIA	South African Institute of International Affairs
SDP	Social Democratic Party



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