



# LESOTHO CIVIL SOCIETY

## Submission to the APRM



# ABOUT THE GISD

## Who we are?

The Governance Institute for Sustainable Development is an independent think tank that promotes adherence to good governance principles.

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### NATIONAL

Adherence to the cardinal tenets of good governance by organizations and companies for future generations to meet their own needs and aspirations

### ORGANISATIONAL

A think-tank and management consultancy firm of global choice in advancing the cause of good governance, effective leadership and research.



## Our Mission

- ◆ Embracing good governance practice by organizations and companies and open dialogue on governance issues in Lesotho.
- ◆ Assessment of public, private and civil society organizations' governance scorecards.
- ◆ Capacity-building of young leaders to prepare them for future political and business leadership and to ensure women and youth participation in the economy,
- ◆ Building intrapreneurship and entrepreneurship spirits within private and public enterprises for optional growth and plough back to society,
- ◆ Conducting research on a number of areas in order to produce credible and testable data which contributes to economic and policy decisions informed by empirical data,



## OUR GOAL

.....a nation that is good governance savvy in practice, and which has the future generations at the hindsight in all its operations



Perpetual poverty,  
deprivation and socio-economic  
inequalities



Electoral System



Separation of powers



Decentralisation & Service  
Delivery



Weak accountability  
leading to  
corruption and malfea-  
sance



Lopsided and ineffective  
public policy-making



## 10 GOVERNANCE ISSUES IDENTIFIED BY CIVIL SOCIETY



Weak corporate  
governance



Gender-based discrimina-  
tion under  
customary law



Poor  
infrastructure



Crime and the exposure of  
vulnerable groups to escalating  
criminality



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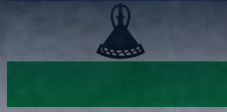
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## Executive Summary

Non-State Actors (NSAs)<sup>1</sup> participating in the Lesotho APRM Popular Sensitisation (LAPS) have identified, analysed and presented twelve governance issues, which they were convinced obstruct achievement of the desired development destiny of the country.

# 1

## Electoral System



Lesotho's electoral system combines geographical constituencies and proportional-representation principles. The system has been manipulated by politicians to create networks of alliances. This has produced a proliferation of small parties, and created a situation in which representatives are more responsive to their parties than their voters. It has also led to instability,

as a result of contested electoral outcomes. In addition, the complexity of the system creates difficulties, as many voters do not understand it. Civil society recommends that thresholds be introduced for parties to secure representation in Parliament, so as to limit the number of parties, and that proper voter education be introduced.

<sup>1</sup> Non-state actors have recently become a used terminology that is used to refer to organisations that are not affiliated with, or funded by any government



## 2

Separation of powers<sup>2</sup>

While Lesotho's constitution recognises the principle of separation of powers, there are weaknesses in implementation. Problems exist in the relations between the executive and legislative arms. The members of the executive are drawn from the legislature, while the latter institution is meant to exercise oversight over the former. The judiciary

enjoys a greater degree of independence, but the appointment of the chief justice is made by the king on the advice of the prime minister, and there have been allegations of bias and political influence in the administration of justice. Civil society recommends greater assertiveness by Parliament vis-à-vis the executive.

<sup>2</sup>Separation of powers refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.



### 3

## Decentralisation & Service Delivery



**G**overnment policy in Lesotho is to create an effectively decentralised system of government, and to enhance local governance. However, the central government has not yet devolved key functions and resources to local councils to enable them to provide services. In addition, Lesotho lacks the physical and administrative infrastructure, and the skills, to

support the process of decentralisation, which is a major drawback for local authorities. This results in poor service provision, even as demand for services is rising. Civil society recommends that the government recommit to the decentralisation agenda, devolve the relevant resources, invest in rural infrastructure and define the roles of chiefs and councillors.



# 4

## Weak accountability leading to corruption and malfeasance



Lesotho is party to various international agreements on combatting corruption and has passed several laws to encourage this domestically. However, the Directorate on Corruption and Economic Offences (DCEO), which is mandated to combat corruption, has limited autonomy and an inadequate budget, which undermines its capacity to discharge its man-

date effectively. Politically connected people, in particular, have been able to escape allegations with no serious consequences. Civil society recommends that the government provide the DCEO with adequate resources for its task and pass a constitutional amendment to guarantee its autonomy.



## 5

## Crime and the exposure of vulnerable groups to escalating criminality



The rate of violent crime has been rising in Lesotho, and the police and justice systems are unable to deal with it. Vulnerable groups are particularly at risk from crime, whether they commit it themselves or fall victim to it. Women are subject to domestic violence, and often have to resort to illegal sex work to survive. Youth become involved in crime owing

to poverty. People with disabilities often struggle to access justice. The LGBTQI+ community is also discriminated against in the economy and many resort to crime to survive. Civil society recommends that the government expand access to justice to give vulnerable groups proper recourse to the justice system.



## Poor infrastructure



Infrastructure is a major failing in Lesotho, providing low coverage and poor-quality services as a result of poor planning and limited fiscal space. To achieve the objectives of the National Strategic Development Plan II, the government of Lesotho committed itself to spending LSL<sup>2</sup> 30 billion (USD1.9bn)<sup>3</sup> on infrastructure development. Private sector

participation will be important in overcoming the infrastructure backlogs. Civil society recommends that the government implement its information and communications technology (ICT) policy by investing adequately in ICT infrastructure, making the necessary technology available to students, and expanding solar and wind generation.

<sup>3</sup>Currency code for Lesotho.

<sup>4</sup>NOTE: Dollar equivalents reflect calculations made in May 2022.



## Gender-based discrimination under customary law



**W**hile Lesotho's constitution commits the country to equality to all, it permits discrimination in personal and customary law. These provisions reinforce women's subordinate status as wives, mothers and daughters.

Examples include uneven legal and social relationships in marriage and chieftainship. Civil society recommends reform of the constitutional and legal environment to eliminate gender discrimination.



## 8 Weak corporate governance



Awareness of corporate governance is low, although a number of institutions exist to promote it. State-owned enterprises (SOEs) and parastatals are said to be run improperly. Appointment to boards, particularly at government parastatals or agencies, has recently become a tokenistic gesture rewarding loyalists of ruling political parties. The governing bodies of most organisations have failed to exhibit high levels of integrity, and this failing cascades down through the ranks. A code of corporate governance was launched in 2021

and is being finalised. The Institute of Directors of Lesotho has developed the Mohlomi Corporate Governance Code, which covers five areas – board leadership, board conduct, board composition and structures, audit compliance and risk, digitisation governance and sustainability, and integrated reporting. Civil society recommends speedy popularisation of the code across SOEs, the private sector, civil society and public enterprises for effective implementation.



## 9

## Lopsided and ineffective public policy-making



**D**esperately in need of efficient governance to encourage economic growth, public policy in Lesotho is deficient, and some problems arise from the actions of the country's government. Lesotho's public service has a bottom-heavy structure and is seriously undermanned in terms of middle management and technical staff. Political considerations influence appointments and terminations, insti-

tutions are often weak and policy is frequently made without adequate supporting evidence. Civil society recommends greater emphasis on research and development and prioritising investments and policies that ensure the responsible management of land, soil and water. It also recommends investing in climate-smart technologies.



10

## Perpetual poverty, deprivation and socio-economic inequalities



The poverty rate in Lesotho stood at 47.7% in 2017, down from 56.6% in 2002. Poverty is far more prominent in rural than urban areas and, according to a study by the World Bank, the gap between rural and urban poverty is growing. For people living in poverty, the general lack of income and assets is compounded by the government's failure to provide essential services, exacerbating their plight.

Government plans are aimed at encouraging private sector-led growth to generate wealth and employment. The government needs to create an appropriate environment for public-private partnerships,

and to encourage all role payers to make their contributions. Employment opportunities must be created that can be accessed by a large population that lacks education and higher-level skills.

Civil society recommends that the government enhance economic growth through proper administration, consolidate and administer poverty alleviation funds, invest in infrastructure to encourage growth and implement the decentralisation agenda to improve service provision. All stakeholders should work to improve the state of agriculture in Lesotho for food security and to combat poverty.



## Acknowledgements

This report was compiled by civil society organisations in Lesotho during the course of 2021 and 2022, guided by the South African Institute of International Affairs (SAIIA) and the Governance Institute for Sustainable Development (GISD). It was the main output of the Lesotho APRM Popular Sensitisation (LAPS) Project. GISD served as the secretariat for the APRM Civil Society Working Group.

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## Acronyms and abbreviations

ABC	All Basotho Convention	ICT	Information and Communications Technology
APRM	African Peer Review Mechanism	IEC	Independent Electoral Commission
AU	African Union	IoD	Institute of Directors Lesotho
BCP	Basutoland Congress Party	KPA	Key Priority Area
BNP	Basotho National Party	LAEC	Lesotho Anti-Corruption and Ethics Commission
CAT	Convention Against Torture	LAPS	Lesotho APRM Popular Sensitisation
CBL	Central Bank of Lesotho	LCD	Lesotho Congress for Democracy
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	LDF	Lesotho Defence Force
CRR	Country Review Report	LEC	Lesotho Electricity Company
CSAR	Country Self-Assessment Report	LEWA	Lesotho Electricity and Water Authority
DCEO	Directorate on Corruption and Economic Offences	LFBS	Lesotho Freight Bus Service Corporation
GDP	Gross Domestic Product	LGBTQI+	Lesbian, Gay, Bisexual, Trans, Intersex, Queer and Other
HDI	Human Development Index	LHWP	Lesotho Highlands Water Project
ICCPR	International Covenant on Civil and Political Rights	LIA	Lesotho Institute of Accountants
		LMPS	Lesotho Mounted Police Service



MMP	Mixed-Member-Proportional	SADC	Southern African Developed Community
MP	Member of Parliament	SOE	State-Owned Enterprise
NGC	National Governing Council	TB	Tuberculosis
NPoA	National Programme of Action	TRI	Technical Research Institute
NRA	National Reforms Authority	UNCAC	UN Convention Against Corruption
NSDP	National Strategic Development Plan	USD	United States Dollar
PPP	Public–Private Partnership	USF	Universal Service Fund
PR	Proportional Representation	WASCO	Water & Sewerage Company
PRS	Poverty Reduction Strategy		



## AFRICAN PEER REVIEW MECHANISM: APRM

The African Peer Review Mechanism (APRM)<sup>5</sup> has been widely acclaimed as Africa's innovation in entrenching democracy and good governance and an instrument to which Member States of the AU<sup>6</sup> voluntarily accede. Launched in 2003, it is a self-monitoring mechanism intended to foster the adoption of policies, standards, and practices that lead to political stability, high economic growth, sustainable development, and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs of capacity building.

It is a commitment to African governance standards and the tool for implementing the codes and standards enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance.

The overarching perspective of the APRM is good governance predicated on participation regularity, accountability, inclusiveness, openness, and transparency and its relationship to efficiency and responsiveness. The APRM is unique both in its scope and breadth, with the review process extending to all levels of government, parliament, and the judiciary as well as the private sector and civil society organisations.

The core principle is that every review exercise carried out under the authority of the mechanism must be technically competent, credible, and free of political manipulation. It is a non-adversarial learning process among peers that relies heavily on mutual trust among the states involved in the review, as well as shared confidence in the process. Participation in the process is open to all member states of the AU.

<sup>5</sup>African Peer Review Mechanism (APRM) was initiated in 2002, established in 2003 by the African Union in the framework of the implementation of the NEPAD.

<sup>6</sup>The African Union (AU) is a continental body consisting of the 55 member states that make up the countries of the African Continent.



## Lesotho and the APRM

Lesotho acceded to the APRM in July 2004 at the AU Summit held in Addis Ababa, Ethiopia. A national consultative workshop was organised in October 2005.

National structures for the APRM:

- o Setting up a national secretariat,
- o Setting up a broad-based and inclusive National Governing Council (NGC)
- o Setting up an inter-ministerial subcommittee :  
To facilitate mobilisation of resources and sensitisation of government departments on the process.

The Country Review Mission (CRM) formally began on 24 March 2009,

- o CRM interacted with key stakeholders:
- o Government departments regarding the thematic clusters,

- o Representatives of the Senate and Parliament,
- o Chief justice and members of the judiciary.
- o Non-state stakeholder groups,
- o Women's groups,
- o Trade unions,
- o Private sector,
- o Academia,
- o Faith-based organisations and
- o Political parties,
- o Institutions with a bearing on governance:
  - o Office of the Auditor General (OAG),
  - o Central Bank of Lesotho (CBL)
  - o Independent Electoral Commission (IEC)
- o Diplomatic corps and bilateral development partners
- o CRM undertook visits to five of 10 districts in Lesotho:



- o Mohale's Hoek,
- o Thaba-Tseka and
- o Quthing.
- o Qacha's Nek,
- o Mokhotlong,
- o The mission got broad-based perspectives from the grass roots.

The mission opened forums with stakeholder groups such as:

- o Women's groups,
- o The youth,
- o The disabled,
- o The elderly,
- o NGOs,
- o Academia,
- o The media,
- o Small businesses,
- o Faith-based organisations,

- o Trade unions,
- o Private sector companies and
- o Community-based organisations (CBOs),
- o Social service institutions
- o Traditional leaders on the emerging issues in the CSAR and NPoA.

Finally, the mission returned to Maseru for wrap-up sessions with the Cabinet and the NGC.

- o Democracy and good political governance
- o intrastate conflict in Lesotho;
- o Political competition and opportunity for choice,
- o Electoral system and political competition,
- o Supremacy of the constitution and the rule of law,
- o Decentralisation and popular participation,
- o Local government and traditional leaders,
- o Independence and effectiveness of the judiciary,
- o Independence and effectiveness of the legislature



- o Public corruption as involving behaviour on the part of officials in the public sector,

**APRM's findings:**

- o Economic governance and management
- o Many policy shifts since independence,
- o External shocks and structural changes since the 1980s
- o Declining remittances from miners
- o Poverty and employment,
- o Food security, low incomes, HIV and AIDS,

**Unique constraints:**

Lesotho faces some unique constraints to its development.

- o Size, its dependence on South Africa,
- o Stiff competition from South African firms, and
- o Poor and inadequate infrastructure.
- o Lack of comprehensive, consistent, reliable & up-

to-date statistics that conform to international standards.

**Economic governance and management:**

- o Manufacturing: Partly because of its limited domestic market, the most viable growth option for Lesotho is export-led growth.
- o Agriculture: Arable land accounts for only 9 per cent of the total land area of Lesotho (30,355 square kilometres). A tiny percentage is declining over time as a result of erosion and settlement on productive land.
- o Mining: Though the mining sector has grown rapidly over the last few years because of the expansion of the diamond industry, the sector's contribution is still limited.
- o Tourism: The sector's contribution to economic growth has been hovering around 2 per cent of GDP since 2003,



- o Private sector development: This sector is relatively underdeveloped at the moment. Part of the problem is the stiff competition presented by South Africa for the location of industries and the destination of FDI.

### **Implementing the APRM: Views from civil society**

#### **AMP Themes:**

- o Vulnerable groups
- o Poor and vulnerable men
- o The elderly
- o Herders/herdboys
- o The disabled

#### **Socio-economic issues:**

- o Land and land allocation/access
- o Poverty
- o Food security

- o Governance
- o Traditional leadership
- o Corruption
- o Elections
- o Conflict management
- o Service delivery
- o Education
- o HIV/Aids



## Lesotho APRM Popular Sensitisation Project

The GISD and SAIIA held an initial pre-planning meeting with 14 non-state actors on 27 July 2021. The purpose was to introduce the CSO sector of Lesotho to the popular sensitisation project and to invite them to participate in the process of country review under the APRM. Later on, on 25 August 2021, a non-state actors sensitisation workshop was held to take lessons from other African countries, which had completed their civil society APRM submissions to share their experiences.

The aim was to encourage peer learning and to help Lesotho's NSAs in their journey towards formulating a civil society-led APRM process to lobby governing authorities in Lesotho to marshal the country to the second-generation country review. The participating NSAs formed a Working Group on the APRM under the LAPS. The GISD Coordinated the project and has since convened virtual meetings with the Working Group.

In October 2021, participating NSAs identified 10 governance issues, which they presented to the GISD and SAIIA. Later in November 2021, the participating NSA developed their 10 written submissions on the governance issues. Concurrently, GISD and SAIIA engaged a consultant – Professor Motlamelle Kapa to develop a background paper using the 10 governance issues.

The Working Group and the consultant are completing second drafts of their submissions on the governance issues and the background paper. Once the editing has been completed, the SAIIA team working in conjunction with the GISD will consolidate the background paper and the written submissions into a Report. GISD and SAIIA will prepare for the publishing of the Report and finally its launch.



### 2.3 Milestones of the project so far

Since the start of the project, it has brought together fourteen (14) non-state actors, to mention a few; gender equality advocacy organizations (Women and Law in Southern Africa), disability organizations (Lesotho National Federation of Organizations of the Disabled), community organizations (Rural Self-help Development Association), chambers of commerce (Lesotho Chamber of Commerce & Industry) and women entrepreneurship development organizations (Federation of Lesotho Women Entrepreneurs).

Representatives of the organizations participating in the LAPS are the following:

- 1) Transformation Resource Centre: — Advocate Thuso Mosabala
- 2) Development for Peace Education: — Mr Tsepo Mosoeu
- 3) Women & Law in Southern Africa: — Attorney Mohau Maapesa
- 4) Lesotho Association of Non-Formal Education: — Ms Lisemelo Mosakeng & Mr Kekeletso Motsoasele

- 5) Lesotho National Federation of Organisations of the Disabled: — Mr Jeremane Teeele
- 6) Catholic Commission for Justice & Peace: — Ms Refiloe Makhaba-Nkune
- 7) Lesotho Association of Teachers: — Mr Kabelo Maqache
- 8) Limkokwing University of Creative Technology: — Ms Lisema Ramaili
- 9) National University of Lesotho: — Dr Seroala Tsoeu-Ntokoane
- 10) Federation of Lesotho Women Entrepreneurs: — Ms Veronica Sekhibane
- 11) Lesotho Chamber of Commerce & Industry: — Mr Eketsang Mokhele
- 12) Fund for African Private Sector Assistance: — Mr Elelloang Lesei
- 13) Rural Self-Help Development Association: — Ms Mookho Ramatlanyane
- 14) Media Institute of Southern Africa – Lesotho Chapter: — Mr Kananelo Boloetse

#### Supporters:

- 15) Mr Tsoue Petlane – Commissioner (Independent Electoral Commission)
- 16) Dr Matseliso Mapetla – Independent Consultant



# Governance Issues Explored in Detail

1



## CHAPTER 1

### Introduction



Lesotho is a mountainous country entirely surrounded by the Republic of South Africa. The country owes its existence to King Moshoeshoe I, who gathered and consolidated disparate African nations displaced into the Southern African interior by the lifaqane disturbances of the early 1800s. It became a British protectorate in 1886 and gained independence from the colonial power in 1966.



Lesotho has experienced enormous challenges since independence, as different groups have fought for political control. The 1965 pre-independence general elections were won narrowly by the Basotho National Party (BNP), which formed the first democratic government that ruled until 1970. The 1970 election results were disputed and the BNP refused to relinquish power to the Basutoland Congress Party (BCP). This was followed by the BNP's 16-year rule, which was marred by conflict between the country's armed forces and the Lesotho Liberation Army, a military wing of the BCP formed in the late 1970s. The BNP government was toppled by a military coup in 1986, with a Military Council ruling the country until 1993, when the third general elections were held. The BCP won all 65 constituencies and formed the second democratic government. Lesotho has held six other general elections since 1993.

In the years that followed, Lesotho experienced several internal challenges to the legitimacy of the democratic state. In 1994, King Letsie III staged a military-backed coup and appointed an interim government after he had failed to persuade the ruling BCP to reinstate his father, Moshoeshoe II, who had been deposed and exiled after a fallout with the military government.

Civil society groups mobilised stakeholders in and outside Lesotho to put pressure on the king to reinstate the democratically elected government. A negotiated settlement resulted in the reinstatement of the BCP, and Letsie III abdicated in favour of his father. He, however, returned to the throne soon thereafter as result of Moshoeshoe II's death in an automobile accident in 1996. The BCP split in 1997 and a new party called the Lesotho Congress for De-



mocracy (LCD) was formed by then prime minister Ntsu Mokhehle.

The second democratic elections since the return to democracy were held in 1998 and won by the LCD. Although all election observers described the poll as free and fair, opposition parties and their followers contested the outcome and there was widespread violence and looting in the country. That led to a SADC military intervention headed by South Africa and later joined by Botswana and Zimbabwe. The government of Lesotho had invited its Southern African counterparts to intervene, as the state apparatus had been paralysed by the protesters.

In February 2012 the LCD split again with the formation of the Democratic Congress by then prime minister Pakalitha Mosisili. The country held general elections in May 2012, which resulted in no single party winning a simple majority. The three former opposition parties – the All Basotho

Convention (ABC), the BNP and the LCD – formed a coalition government. This was the first time in the history of Lesotho that parties had to join forces to form a government. However, the coalition government collapsed owing to corruption and a lack of trust among the coalition partners. Eventually, the military attempted to overthrow the government in a foiled coup on 30 August 2014. Lesotho held early elections on 28 February 2015, after the intervention of SADC, instead of waiting for 2017 as was initially set by law.

Since independence, Lesotho has engaged in comprehensive planning exercises, such as national development plans, the Poverty Reduction Strategy (PRS) and the National Vision 2020. The country has tried many strategies in an attempt to address structural challenges and implemented public sector reform programmes to improve efficiency. The success of such programmes, however, remains hampered by significant financial constraints and



skills deficits. The first five-year National Strategic Development Plan (NSDP I) failed to take off and there is no evidence of what has been achieved in its implementation. Lesotho is now implementing NSDP II, which is not very different from the previous plan, as most developmental targets remain the same in both documents. This again impacts negatively on employment opportunities for the Basotho. Skills deficits continue to plague the country and no one party seeks or tries to address the lack of investment in the economy.

Lesotho remains afflicted by socio-economic and political weaknesses. Its economy contracted by 9.5% in 2020, as infrastructure projects such as the second phase of the Lesotho Highlands Water Project (LHWP II) were disrupted as a result of two COVID-19 lockdowns in March 2020 and Janu-

ary 2021. Two of the biggest sectors in the economy, mining and textiles, also suffered from weaker global demand and the containment measures affecting the domestic economy. Fitch Ratings Inc. forecasted a weak recovery in 2021 at 3.5% amid improved global demand and some normalisation of economic activities.<sup>7</sup> While the construction of advanced infrastructure for LHWP II started as early as 2019, construction of the main components (the Polihali Dam and the transfer tunnel) has been delayed repeatedly.

This submission on the current state of governance in Lesotho is based on the four thematic areas of the APRM: democracy and political governance, economic governance and management, corporate governance, and socio-economic development. The non-state actors participating in the Lesotho APRM Popular Sensitisation (LAPS) have

<sup>7</sup> Fitch Ratings Inc. "Fitch Affirms Lesotho at 'B'; Outlook Negative", August 2, 2021.



identified 10 governance issues with an impact on governance and development in the country.<sup>8</sup> A reflection on these issues helps to assess Lesotho's overall performance in the attainment of good governance. Good governance is understood in the context of this report to include the principles of increased public accountability and transparency; respect for and strengthening of the rule of law and anti-corruption measures; decentralisation and local government reform; increased civil society participation in development; and respect for human rights and the environment.<sup>9</sup>

This submission discusses each issue by outlining the problem, providing reliable evidence, and suggesting solutions to that problem.

It is structured around the 10 issues that have been identified by civil society organisations, namely:

- A weak electoral system;
- Separation of powers;
- Decentralisation and service delivery;
- Weak accountability leading to corruption and malfeasance;
- Crime and the exposure of vulnerable groups to escalating criminality;
- Poor infrastructure;
- Gender-based discrimination under customary law;
- Lopsided and ineffective public policymaking; and
- Perpetual poverty, deprivation and severe socio-economic inequalities.

<sup>8</sup> SAIIA, "Lesotho APRM Popular Sensitisation Project", <https://saiia.org.za/project/lesotho-aprm-popular-sensitisation-project/#:~:text=The%20Lesotho%20APRM%20Popular%20Sensitisation,key%20governance%20issues%20in%20Lesotho.>

<sup>9</sup> Vivien Collingwood, ed., Good Governance and the World Bank (London: University College London).



## CHAPTER 2

# 1

## Weak electoral systems



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 1:** Entrenching constitutional democracy and the rule of law

**Question 1:** Does the political system as practiced in your country allow for free and fair competition for power and the promotion of democratic governance?



## Introduction

At independence from Britain in 1966, Lesotho adopted a Westminster-type parliamentary regime with a first-past-the-post electoral system. This system had an exclusionary effect on smaller parties in that it denied them parliamentary representation even when they had reasonable popular support, but without the geographical concentration to outperform others in constituencies. Conversely, this system gave out-sized representation to larger parties, the 'winners'.<sup>10</sup> In 1998, for example, the LCD secured 79 of the 80 parliamentary seats yet it had polled only 60.7% of the national vote, effectively leaving 39.3% of voters without parliamentary representation.<sup>11</sup>

**T**he result was incessant post-election conflict and political instability, with the worst occurring in 1998, when the country was nearly plunged into a full-blown civil war. To overcome this challenge, the country's political leadership – with the support of external actors, notably SADC – introduced constitutional and electoral reforms that led to the adoption in 2002 of the mixed-member-proportional (MMP) electoral system. This was introduced through the Fourth Amendment to the Constitution Act, 2001.

<sup>10</sup> Motlamelle Anthony Kapa, "The Politics of Coalition Formation and Democracy in Lesotho", *Politikon: South African Journal of Political Studies* 35, no. 3 (2008): 343.

<sup>11</sup> Motlamelle Anthony Kapa, "The Case of Lesotho's Mixed Member Proportional System", *Africa Insight* 39, no. 3 (2009): 3.



A total of 80 members of the National Assembly (the lower house of Lesotho's bicameral legislature) are elected through geographical constituencies, while an additional 40 are elected on the basis of the proportional-representation principle in respect of the National Assembly as a whole.<sup>12</sup>

The defining characteristics of MMP are a mix of Members of Parliament (MPs) from single-member constituencies and those elected from a party list, and a Parliament in which a party's share of seats roughly mirror its share of the nationwide vote. In New Zealand, from which Lesotho 'borrowed' the MMP system, each voter has two votes: one for a party and another for their preferred candidate in their constituency. Crucially, a party may be eligible for a share of the list seats if it gains 5% or more of the nationwide party vote, or wins one or more constituency seats.<sup>13</sup>

The MMP system seeks to balance two important objectives: the principle of proportionality (by ensuring that a party's share of seats reflects its share of the nationwide vote) and the need to ensure elections deliver effective parliaments and stable governments (by avoiding an undue proliferation of very small parties). However, the proportional representation (PR) system component of the MMP electoral system has a number of potential flaws. For instance, it allocates seats to parties, and may allow candidates who are not responsive to the needs and aspirations of voters into Parliament. Candidates elected through the PR system serve the interests of their political party, not those of the citizens or the nation. This can also amplify divisions in society, for example, when people are nominated to stand for elections based on their region of origin, their clan or, sometimes, their family affiliation.

<sup>12</sup>Government of Lesotho, "Fourth Amendment to the constitution Act No. 4 of 2001", section 3.

<sup>13</sup>Rajen Prasad, Governance in Lesotho: Repositioning for Success (London: The Commonwealth, 2014), 10.



When the MMP system was introduced in 2002, it was appropriately implemented and produced the country's first inclusive Parliament. Ten parties achieved representation in a conflict-free election. However, politicians sought to work around the intentions of the electoral laws by forming electoral alliances prior to the vote. These alliances had the effect of manipulating the MMP system by allowing the parties that formed them access to seats under the PR component. They effectively turned the system into 'mixed member parallel' (as opposed to 'proportional'); beneficial to bigger parties while unfair to smaller ones. This led to conflict between opposition parties and the government over the allocation of the PR seats.<sup>14</sup>

Following an amendment to the electoral law, the votes received by candidates in the constituencies and those received by political parties are used for conversion into parliamentary seats. The 2012 elections were held under these new conditions and there were no seat allocation issues.<sup>15</sup> However, the outcome of the elections produced Lesotho's first hung Parliament, forcing the first coalition government. This trend continued after the next set of snap elections in 2015 and 2017. A noteworthy feature of Lesotho's MMP model is that the country's politicians dropped the pre-determined threshold for entry into Parliament.

<sup>14</sup> Motlammelle Anthony Kapa, "Coalitions and Unrelenting Political Instability in Lesotho, 2012–2020", in *Marriages of Inconvenience: The Politics of Coalitions in Southern Africa*, ed. Susan Booysen (Johannesburg: Mistra, 2021), 187.

<sup>15</sup> Government of Lesotho, National Assembly Electoral Act No. 14 of 2011, section 55.



In other words, the potential to ensure a Parliament composed of a limited number of parties was lost, leading to a proliferation of them. This was used by party leaders to abuse the MMP system in 2007 through unregulated pre-election alliances, thereby stoking fresh conflict and instability over the allocation of the PR-based seats of the model. In addition, the complex system places uneducated voters at a disadvantage. This is owing to the fact that voter and electoral education is conducted late, just a few months ahead of elections.

The failure of the electoral system is contributing to disillusionment in political participation on the part of Lesotho's people, reflected in the low level of participation in elections. For example, in 2017 the Independent Electoral

Commission (IEC) set a voting target of 85%, but in fact only 46.85% voted. The system has also created political intolerance, especially in the periods around elections. The resulting instability has a particular impact on the rural poor (who suffer from the lack of development), while the country as a whole experiences poor service delivery. There are different ways to rectify this weak system.

Firstly, it is necessary to raise the quota (from 5 000 votes to a larger number) for seat allocation in Parliament so that those with a smaller number of votes do not make it to Parliament, in order to prevent an excessive fragmentation of political representation.

Again, the national reforms should be put into practice and society should be made aware of them. In addition, there



must be vigorous advocacy for implementation of the decentralisation policy (power should be shared among MPs and community councillors). The country should also reassess whether the MMP model is suitable for Lesotho or whether it should shift to a different model.

Since 2018 the country has embarked on a comprehensive programme of institutional reform under an inclusive structure styled the National Reforms Authority (NRA). This covers seven thematic areas into which the citizens of Lesotho have made inputs, including on the MMP electoral system.<sup>16</sup> The NRA was established in terms of the National Reforms Authority Act, 2019 to, among others:

- ◆ Oversee and manage the process of the national reforms con-

cerning the decisions and resolutions of Plenary II (a structure consisting of a representative sample of Basotho, from top leaders to community representatives, and with plenary and group discussions around different issues and sectors for reform);<sup>17</sup>

- ◆ Ensure the implementation of national reforms and act as the custodian of the reforms; and
- ◆ Propose and approve policy documents, draft bills and any legal instruments for the chief executive officer as may be necessary for national reforms in line with the resolutions and decisions of Plenary II.<sup>18</sup>

## Recommendations

In order to address the weaknesses of the electoral system, it is recommended that the government:

<sup>16</sup> Government of the Kingdom of Lesotho, Multi-Stakeholder National Dialogue Plenary II Report (Gaborone: SADC, 2019), 7.

<sup>17</sup> Government of the Kingdom of Lesotho, The Lesotho We Want: Dialogue and Reforms for National Transformation: Vision, Overview and Roadmap (Maseru: Government of the Kingdom of Lesotho, 2017).

<sup>18</sup> Government of Lesotho, National Reforms Authority Act No. 4 of 2019, section 8 (1).



- ◆ Follow the recommendations of the NRA that a two-ballot system be reinstated and a threshold (for parliamentary representation) of half a percentage of the total votes be introduced. These proposals are based on the fact that (a) the selective adoption of the MMP electoral system denied voters the right to cast two ballots: one for a party and another for a candidate representing a constituency; and (b) the lack of a predetermined threshold for political parties to earn a parliamentary seat has led to the proliferation of minuscule parties in Parliament;
- ◆ Conduct regular awareness campaigns around elections, stressing the importance of voting and the potential it holds for encouraging change, to combat insidious voter apathy;
- ◆ Amend the electoral law to provide for the election of MPs under the PR system according to a merit-based and transparent system;
- ◆ Allow the IEC to vet people nominated as MPs under the PR system to establish their fitness to be members of the National Assembly;
- ◆ Regulate floor crossing in the National Assembly by amending the electoral law to provide for the holding of by-elections in constituencies where MPs have changed parties. Floor-crossing should be limited to a 15-day window period every three years. When the window period has lapsed, no floor-crossing may take place and if any MP crosses outside the lawful window period, the IEC will hold a by-election in the relevant constituency;
- ◆ Amend the electoral law to raise the minimum threshold (from 5 000 votes to a larger number) for seat allocation in Parliament so that those with smaller numbers of votes do not make it to Parliament. This will prevent excessive fragmentation of political representation.



## CHAPTER 3

## 2 Separation of powers



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 5:** Ensuring accountable, efficient and effective public service delivery at the national and decentralised levels.

**Question 1:** What measures have been taken in the country to strengthen institutions for an efficient and effective public service?

**Question 2:** What is the state of corruption in the public sector?

**Objective 4:** Fight corruption and money laundering.

**Question 1:** What measures have been taken by your country to fight corruption in public procurement, and with what results?



## Introduction

The 'separation of powers' doctrine draws a clear distinction between the three arms of government – the executive, legislature and judiciary. Each arm has its own functions. It also calls for an independent and autonomous judiciary that is responsible for enforcing the constitution and other laws, and ensuring that the other two arms of government act accordingly.

**T**he 1993 Lesotho constitution defines the separation of powers as the distribution of governmental powers among the three arms of government, but with due reference to the monarch, whose powers cut across each branch of government and who is avowed the supreme law of the land. The judiciary is headed by the chief justice and consists of the Court of Appeal, the High Court, Magistrate Court and local courts.

The country has a dual legal system, with these courts using common law and the traditional courts of the chiefs using customary law. The judiciary plays an important role in preserving the tenets of the constitution. The courts of Lesotho are very assertive – sometimes excessively so, by intruding into functions of the other arms of government.



The principle of separation of power between the executive and legislative branches of the government is not practical under the current Westminster parliamentary system. It works best under a pure presidential system, such as in the US. In Lesotho's parliamentary system, the constitution of Lesotho, 1993, Chapter VII establishes that the executive authority of Lesotho – comprising the prime minister and other ministers of government – is appointed from among MPs and Senate members (for ministers), thus fusing the two branches and compromising the independence of the legislative branch and its oversight role.

The problem is exacerbated by executive overreach brought about by successive coalition governments and weak institutions. The cabinet is responsible to Parliament, but in recent years the former has been taking control over the latter. Coalition governments add another layer of complexity.

Aware of this shortcoming, the people of Lesotho have expressed a wish to have the two branches separated. To that effect, the 2019 Multi-Stakeholder National Dialogue Plenary II Report mandates the NRA to '[e]xplore the possibilities of excluding the Members of Parliament from being members of the executive and compare with best practices elsewhere.' The NRA is yet to consider this issue. The challenge, however, is whether or not Parliament will accept it, given that it is the sole legislative authority in terms of the constitution, section 70 (1).

Although the judiciary does enjoy a degree of independence from the other branches in that there is no overlap of personnel between it and them, the issue has always been the appointment of the chief justice and the conduct of some incumbents in the administration of justice. The section 120 (1) of the constitution provides that the chief



justice shall be appointed by the king, acting in accordance with the advice of the prime minister. There have been cases where individuals appointed to the office of chief justice or to act in it have been perceived as biased in deciding cases in which prime ministers had interests, with such decisions later overturned by the Court of Appeal, whose president is also appointed by the king acting in accordance with the advice of the prime minister.

Basotho have noticed these gaps and again expressed their wish to have judges appointed based on the principle of an open and transparent process, with consideration given to experience and maturity.<sup>19</sup> The NRA is yet to consider proposals to reform the judiciary and present them to Parliament to pass as constitutional amendments. In 2021, however, the Judicial Service Commission took a

huge step towards making judicial appointments transparent and competitive by advertising seven vacant positions and conducting public interviews for the shortlisted candidates. This led to the appointment of only two judges, because of limited resources.<sup>20</sup>

The problems in the justice system are aggravated by the fact that high-profile cases – which are fraught with political influence/manipulation – are given preference over other cases. There is thus a high trust deficit in the judicial system of the country.

### Ineffectiveness of institutions of accountability

The institutions mandated to hold the government accountable have, for several reasons, abandoned the responsibility of holding the executive branch to account. At

<sup>19</sup> Government of Lesotho, Multi-Stakeholder National Dialogue, 7

<sup>20</sup> Koro-koro Constituency v Executive Working Committee of All Basotho Convention (C of A (CIV)), February 2, 2019.



the apex of governance in Lesotho is Parliament, whose function, among others, is to hold the executive branch accountable. The first APRM Country Review Report on Lesotho indicates that the executive branch has usurped the powers vested in Parliament, with Parliament not being much of a counterweight to the executive: 'There is a dominant executive branch of government, which is insufficiently countervailed by a weak Parliament and is not sufficiently held accountable by oversight institutions.' This resonates with the report's finding that 'public accountability is problematic and there are growing concerns over creeping cronyism and corruption'.<sup>21</sup>

There is a relationship between inadequate accountability and corruption, as the latter thrives in an environment where accountability institutions are weak.

<sup>21</sup> Lesotho Country Review Report, 2010.

## Recommendations

In order to address the weaknesses inherent in the existing separation of powers arrangements, it is recommended that:

Parliament:

- ◆ Asserts its independence. Parliament should not only supervise Executive actions but its legislative proposals as well.

Parliament should be the highest policy and law-making organ of the state, except for decisions around the day-to-day administration of the country.

The NRA:

- ◆ Should pass a constitutional amendment bill on the proposals to separate these two branches of the state and



submit them to Parliament. Parliament should in turn pass them into new constitutional provisions. The goal would be to enhance the effectiveness of Parliament in its oversight role over the executive.

- ◆ Sensitise Courts of law to refrain from going overboard in making determinations on matters which fall directly in the domain of Parliament and the executive, for the purposes of preserving the spirit of the doctrine of separation of powers.
- ◆ Empower portfolio committees to perform their fiduciary responsibility of holding the executive branch accountable for their actions.



## CHAPTER 4

## 3

## Decentralisation and service delivery



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 5:** Ensuring accountable, efficient and effective public service delivery at the national and decentralised level

**Question 1:** What measures have been taken in the country to strengthen institutions for an efficient and effective public service?

**Question 3:** What efforts, if any, have been made to empower local or rural communities through the devolution or decentralisation of political power, judicial authority or financial



## Introduction

Decentralisation and service delivery are intended to co-exist, in the belief that one cannot function effectively without the other. Hence it becomes a governance issue when the two are poorly managed. Decentralised governance is, from this perspective, intended to encourage participation, enhance accountability and make service provision more responsive to needs and demands.

**T**he 2010 APRM review of Lesotho indicated that the country had committed to a core decentralised form of government, having begun to establish a local government system in 1997. However, at the time of that review, the Country Review Report (CRR) said of local government structures: 'They continue to experience inadequate human resource capacity. They have scant local revenue and are largely dependent on central government grants. They are therefore constrained in effectively discharging their functions and delivering public services.'<sup>22</sup>

<sup>22</sup> APRM, Country Review Report No. 12, 61.



Section 106 (1) of the constitution provides that 'Parliament shall establish such local authorities as it deems necessary to enable urban and rural communities to determine their affairs and develop themselves. Such authorities shall perform such functions as may be conferred by an Act of Parliament.'<sup>23</sup> The Local Government Election (Amendment) Act 2004 establishes a four-tier local government structure: local councils, urban councils, municipal councils and district councils.<sup>24</sup> However, the local authorities were only established in 2005 after the local government elections were held under the Local Government Act, 1997, and face serious capacity and autonomy challenges. The situation has not changed much since 2010.

Local councils in Lesotho depend heavily on the central government for revenue, which comes with strings attached, thereby denying councils the power to decide on their expenditure.<sup>25</sup> The central government has not yet decentralised the key functions and accompanying resources and devolved powers to the councils to enable them to provide services to citizens.<sup>26</sup> Thus, the councils suffer from an extreme lack of capacity and autonomy.<sup>27</sup>

In 2014 the government adopted the National Decentralisation Policy, whose objective was, among others, to 'enhance local autonomy by ensuring that local government institutions are sustainably capacitated and organised with a strong collective voice'.<sup>28</sup>

<sup>23</sup> Constitution of the Kingdom of Lesotho, 1993, section 106 (1).

<sup>24</sup> Government of Lesotho, Local Government Elections (Amendment) Act No. 6 of 2004, (4) (1A).

<sup>25</sup> L Pratchett et al., Local Democracy in Lesotho: Current Strengths and Challenges (Leicester: De Montfort University, 2008), 29.

<sup>26</sup> Motlamele Anthony Kapa, "Consolidating Democracy Through Integrating the Chieftainship Institution with Elected Councils in Lesotho: A Case Study of Four Community Councils" (PhD Thesis, Rhodes University, 2010), 191.

<sup>27</sup> Kapa, "Consolidating Democracy", 191.

<sup>28</sup> Government of the Kingdom of Lesotho, National Decentralisation Policy (Maseru: Ministry of Local Government and Chieftainship Affairs, 2014), xi.



Key areas of the policy focus and strategic action included the adoption of devolution as the model of decentralisation and executive authority; establishment of local government institutions with autonomy and executive authority; and fiscal decentralisation and prudent financial management.<sup>29</sup>

The policy would be implemented through a phased approach to 'enable the government and implementing partners to take measured steps, learn by doing, and better define targets, manage the process with existing capacity, and ensure that all actors in decentralisation are well coordinated'.<sup>30</sup> This policy has not been implemented yet.

There have been attempts to promulgate new local government legislation, but the process is not yet complete

and the extent to which this takes into account the spirit of the policy remains unclear. What is clear is that local councils lack capacity and autonomy despite over 15 years of existence.

The government is yet to come up with a comprehensive plan for fiscal decentralisation. Since decentralisation is only meaningful if financial responsibility is also bestowed on the councils, there is, thus, an urgent need for the government to work out modalities of fiscal decentralisation. These include mechanisms for accountability and transparency for funds to be disbursed to the new institutions. As of 2022, this has not happened yet. Beyond the institutional and financial limitations, the overall environment for the success of decentralisation is unpromising.

<sup>29</sup> Government of Lesotho, National Decentralisation Policy, xi.

<sup>30</sup> AGovernment of Lesotho, National Decentralisation Policy, xi.



The lack of physical and administrative infrastructure and a shortage of staff to support the process of decentralisation are major drawbacks for local authorities in Lesotho. People have to travel long distances and sometimes even sleep in the open to get to and make use of government offices.

When they do get to the offices, poor access to resources for operational purposes is a major hindrance to providing services to the public. In respect of staff, low morale, limited supervision and accountability, and inadequate access to transport and suitable training and technologies have all contributed to the poor performance of local government. So, even as demand for services is growing, this is not being matched by the ability of the decentralised government to deliver. An additional problem is that communities do not have a culture of demanding services from duty bearers, or of holding them accountable.

There is therefore a need to strengthen and empower local communities to do so. The Multi-Stakeholder National Dialogue Plenary II Report of 2019 resolved that the policy should be implemented and, to that effect, the NRA is working on the issue and will draft appropriate bills for approval by Parliament.

The NRA has also prepared a new constitutional chapter on devolution of state power. This provides for, inter alia, the establishment of a two-tier government structure, and sets out the objectives and principles of devolution of government, staff and finances of the local government system, as well as the role of chieftainship. When the new constitutional chapter on devolution of power has been approved, other tools for implementation, namely the policy and an act of Parliament, will be reviewed.



## Recommendations

In order to address the deficiencies in respect of decentralisation in Lesotho, it is recommended that the government:

- ◆ Review the decentralisation policy and ensure that it is implemented effectively;
- ◆ Commit to seeing the decentralisation agenda properly implemented, so that all 10 districts in the country become effective devolution areas;
- ◆ Devote sufficient resources and make available training to capacitate local government authorities and their staff;

- ◆ Expand rural infrastructure, without which the rural economy will not be able to grow to provide revenue to local governments; and
- ◆ Define the roles of chiefs and councillors. As chieftaincy is important in Lesotho, chiefs can play a major role in ensuring effective service delivery and decentralisation.

Parliament:

- ◆ Approve the NRA's proposals on devolution and pass them into appropriate legislation.



## CHAPTER 5

# 4

### Weak accountability leading to corruption and malfeasance



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 1:** Ensuring accountable, efficient and effective public service delivery at the national and decentralised levels.

**Question 1:** What measures have been taken in the country to strengthen institutions for an efficient and effective public service?

**Question 2:** What is the state of corruption in the public sector?



## Introduction

Lesotho has ratified various international anti-corruption instruments and committed itself to implementing them. The first is the UN Convention Against Corruption (UNCAC), which seeks to:<sup>31</sup>

[p]romote and strengthen measures to prevent and combat corruption more efficiently and effectively; promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including its asset recovery; and promote integrity, accountability, and proper management of public affairs and public property.

**A**rticle 6 (2) of the (UN Convention Against Corruption (UNCAC) UNCAC commits states parties to:<sup>32</sup>

[g]rant the body ... necessary independence, in accordance with fundamental principles of its legal system, to enable the body to carry out its or its functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training such that staff may require to carry out functions, should be provided.

<sup>31</sup> UN Office on Drugs and Crime, United Nations Convention Against Corruption (New York: UN, 2004), article

<sup>32</sup> UNODC, United Nations Convention Against Corruption, article 6 (2).





At the continental level, the AU has adopted the AU Convention on Preventing and Combating Corruption (2003).

<sup>33</sup> The objectives of the convention are to:

- ◆ Promote and strengthen the development in Africa of mechanisms required to prevent, detect, punish and eradicate corruption and related offences;
- ◆ Promote, facilitate and regulate cooperation among states parties to ensure the effectiveness of the measures and actions to prevent, detect, punish and eradicate corruption and related offences;
- ◆ Coordinate and harmonise the policies and legislation between states parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent;

- ◆ Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights, as well as civil and political rights; and
- ◆ Establish the necessary conditions to foster transparency accountability in the management of public affairs.

Article V of the AU Convention commits states parties to '[e]stablish, maintain and strengthen independent national anti-corruption authorities or agencies'.<sup>34</sup> Article XX (4) commits them to establish national anti-corruption authorities or agencies 'with the necessary independence and autonomy, to be able to carry out their duties effectively'.<sup>35</sup>

<sup>33</sup> A continent body that promotes and strengthens develops mechanisms for prevention, detection, punishment and eradication of corruption by State Parties.

<sup>34</sup> AU, African Union Convention on Prevention, article XX (4).

<sup>35</sup> SADC, Southern African Development Community Anti-Corruption Protocol (Gaborone: SADC, 2001).



At the Southern African level, Lesotho has ratified the SADC Anti-Corruption Protocol (2001). The purpose of the protocol is to:<sup>36</sup>

- Promote and strengthen the development of mechanisms needed to prevent, detect, punish, and eradicate corruption in the public and private sector;
- Promote, facilitate and regulate cooperation among states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sectors; and
- Foster the development and harmonisation of policies and domestic legislation of states parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors. The government of Lesotho passed the Prevention of Corruption and Economic Offences Act in 1999, which established the Di-

rectorate on Corruption and Economic Offences (DCEO) as an entity mandated to combat corruption and economic offences. However, the DCEO faces several challenges that negatively affect its performance. Firstly, it has limited autonomy. Its director-general, who is its chief executive officer, is appointed by the head of the executive branch of government. This potentially compromises his/her capacity for independent action should he/she have to investigate members of the executive or the prime minister. Secondly, the DCEO does not have independent prosecutorial powers over the cases it investigates, but relies on the director of public prosecutions. This presents a potential challenge in cases where the two offices differ. Thirdly, it has over the years received an inadequate budget from the government, thus undermining its capacity to discharge its mandate effectively.<sup>37</sup>

<sup>36</sup> SADC, Southern African Development Community Anti-Corruption Protocol (Gaborone: SADC, 2001).

<sup>37</sup> Motlamelle Anthony Kapa, "Lesotho", in Effectiveness of Anti-Corruption Agencies in Southern Africa (Johannesburg: OSISA, 2017), 130.



The recommended budget allocation for anti-corruption agencies in the Commonwealth of Nations is 0.5% of the national recurrent budget.<sup>38</sup> For the past five years, the government budget allocation to the DCEO has been inadequate and erratic (see Table 1).

Table 1: Budget allocation for the DCEO, 2017/18 to 2021/22

Financial year	Recurrent budget	Annual budget allocation to the DCEO	% trend of the budget allocation to the DCEO
2018/19	10,750,284,826	28,207,540	0,262
2019/20	18,084,778,729	23,572,460	0,222
2020/21	12,734,629,863	25,928,888	0,143
2021/22	17,358,288,744	19,836,820	0,156
2022/23	17,358,288,744	22,058,102	0,127

Source: Compiled by author, based on data from the DCEO

The DCEO is one of the institutions whose challenges are to be addressed through Lesotho's national institutional reform agenda. The NRA has already approved the Eleventh constitutional Amendment Bill (2021), which seeks, among other things, to constitutionalise the DCEO and enhance its autonomy through the appointment of its chief executive officer and his deputy by the king, acting in accordance with the advice of the Judicial Service Commission in a fair, transparent, merit-based and competitive process.<sup>39</sup> The bill is before Parliament for passage into law.

Lesotho has also passed the Public Financial Management and Accountability Act, 2011 as the main piece of legislation whose purpose is to 'establish and sustain transpar-

<sup>38</sup> Bertrand de Speville, "Contemporary Challenges Faced by Anticorruption Agencies and Good Practices from the Commonwealth" (Paper, Commonwealth Secretariat, UNODC and the Republic of Ghana, 4th Commonwealth Regional Conference for Heads of Anti-Corruption Agencies in Africa, Accra, May 26–31, 2014).

<sup>39</sup> The Eleventh Amendment to the Constitution Bill, 2021 (1311).



ency, accountability and sound management of the receipts, payments, assets, and liabilities of the government of Lesotho'.<sup>40</sup>

This act notwithstanding, there are issues of poor accountability in the management of public finances. The Office of the Auditor-General expressed an adverse opinion on the consolidated financial statements of the government of Lesotho for the financial year ending 31 March 2020. The basis of the adverse opinion is that 'the consolidated financial statements do not present fairly the financial position of the Government as at 31st March 2020, and its financial performance and its cash flow for the year then ended'.<sup>40</sup> The report also shows some excess expenditure under three expenditure heads without any information on

whether or not an appropriate statement of excess has been prepared and presented before Parliament in terms of the constitution.<sup>41</sup>

The report does not reflect serious weaknesses in accountability systems. On corruption, Lesotho has had relatively favourable ratings over the years, compared to other countries both globally and on the continent, although the trend has been somewhat erratic. The Transparency International Corruption Perception Index, the foremost agency that assesses public perceptions of corruption on an annual basis, placed Lesotho at positions 83, 85 and 78 out of 180 countries and territories in the world in 2020, 2019 and 2018, respectively.<sup>42</sup>

<sup>40</sup> Public Financial Management and Accountability Act No. 12 of 2011.

<sup>41</sup> Office of the Auditor General, Report on the Consolidated Financial Statements of the Government of Lesotho for the year ended 31st March 2020 (Maseru: Office of the Auditor General), 2.

<sup>42</sup> Office of Auditor-General, Report on the Consolidated Financial Statements, 3.



This is not a bad record, although this is a perception index and not an actual measure of corruption. Similarly, the Mo Ibrahim Foundation, which has assessed governance performance in all 54 African countries since 2007, ranks Lesotho relatively high on a range of governance indicators. These include anti-corruption and transparency, although they do appear not as exclusive variables but under the broad rubric of security and rule of law.

The Ibrahim Index of African Governance scores Lesotho at 52.3 out of 100 points and it ranks at number 20 out of 54 countries on average for the period 2010–2019, and seventh in SADC.<sup>43</sup>

### Lesotho and accountability

Accountability is a principle of good governance. Accountability denotes taking responsibility for decisions and actions at both individual and collective levels. Decisions need to be sanctioned by someone, explained and reported. Accountability guards against maladministration and decisions that negatively impact others' freedoms and rights. Individual accountability is a personal virtue, which is inspired by a person's standards in life, while collective accountability is enforced by structures and institutions established to hold executive management, organisations, companies, cabinets and governments to account for their actions.

<sup>43</sup> Transparency International, "Lesotho: Country Data", <https://www.transparency.org/en/countries/lesotho>



Lesotho grapples with good governance across all levels, but, most importantly, on accountability. The country developed its Vision 2020 in 2000, forecasting a bright future for the country in the following 20 years. This was a grand vision that received massive financial support from international partners such as the World Bank, the International Monetary Fund and the UN Development Programme. Yet the country's accountability levels are lacking. In 2020 Lesotho's score for transparency, accountability and corruption on the Corruption Perception Index for Africa was 3.0. (This is roughly at the midpoint of the scale, where 1 reflects the highest standards and 6 the worst).<sup>44</sup> It fails periodically to account to international organisations such as the UN for human rights abuses committed by the government. Human rights are a critical outcome and driver of accountability, since they establish and reflect mutual respect between a population and those who exercise

power. The country is a signatory to a number of regional and international conventions, treaties and declarations and is expected to submit periodic reports on how it implements these instruments, such as the Convention Against Torture (CAT).

The government has been reluctant to produce periodic reports on the CAT, despite the fact that civil society organisations such as the Transformation Resource Centre regularly offer to help with the country report. Civil society wants to avoid producing shadow reports on human rights abuses, which have historically been totally different from the government version. Also, international organisations such as Amnesty International have pressured Lesotho to meet its international obligations on human rights, but without success.

<sup>44</sup>World Bank, "CPIA Transparency, Accountability and Corruption in the Public Sector Rating", <https://data.worldbank.org/indicator/IQ.CPA.TRAN.XQ>



## Corruption and public–private malfeasance

Statutory bodies such as the Anti-Corruption Directorate, the DCEO, the Ombudsman and the Office of the Auditor-General, courts of law and the private media, as well as opposition in Parliament and the Public Accounts Committee, are too weak to challenge the dominant executive branch. The anti-corruption watchdog's autonomy and capacity to investigate and prosecute corruption cases involving politically connected people has been restricted by it having been denied financial and institutional capacity, as well as adequate functional and operational independence.

The government has historically allocated meagre budgets to the anticorruption watchdog so that it is unable to perform its duties, which, in most cases, would be to expose malfeasance within the public service. The DCEO struggles to prosecute senior government officials, as it has to seek approval to do so from the director of public prosecutions.

The process of declaration of assets by public officials is often undermined by politicians and senior government officials. Most government ministries collect 'declaration of assets' forms from civil servants and file them with the DCEO. The DCEO also has fewer investigators than required, and there is considerable undue political influence on the agency, which undermines its independence and ability to deal with corruption.

In a period of five years (2017–2022), Lesotho has had four directors-general, with each experiencing difficulties in executing their duties free from interference by the political elite. For example, the government appointed Advocate Borocho Matsoso in 2018, but his tenure was cut short in 2019 when the political elite realised he was investigating high-profile cases.



A more favourable candidate, Advocate Mahlomola Man-yokole, was arbitrarily appointed to replace him, but also followed in the footsteps of his predecessor by pursuing high-profile cases involving acts of public malfeasance. He too was confronted by an irate elite. He is currently on suspension and a tribunal has been established to determine his fitness to hold office. This is after he defied orders to decline to investigate certain cases.

When he appeared in court in 2021, he said in his responding affidavit that he had been suspended because he was investigating Prime Minister Dr Moeketsi Majoro, former minister of justice and law Prof. Nqosa Mahao and other high-profile people over claims of corruption.<sup>45</sup> He labelled the duo 'crusaders of corruption'.

Advocate Sefako Seema has been appointed in an acting capacity in the position, but may follow suit after casting aspersions on the principal secretaries for failing to declare their sources of income.

The ongoing multi-sectoral reforms are trying to give teeth to the anti-corruption watchdog by ensuring its financial and operational autonomy. A draft bill, which has been presented to Parliament for adoption, proposes restructuring and renaming the DCEO into a new establishment called the Lesotho Anti-Corruption and Ethics Commission (LAEC). According to the bill, 'LAEC shall be vested with power to prosecute cases of corruption and other related matters, to deviate it (LAEC) from the previous DCEO, which was a toothless bulldog.'<sup>46</sup>

<sup>45</sup>Mohalenyane Phakela "Explosive Claims As Majoro And Mahao Fingered In Massive Corruption Claims", Lesotho Times, January 14, 2021.

<sup>46</sup>Commission on Anti-corruption and Economic Offences Bill, 2021.



The Justice Sector Reforms Report of 2021 states:

‘Establishment of the new Lesotho Anti-Corruption and Ethics Commission envisages a better Lesotho where corruption and economic offences are eradicated from all three arms of a democratic government.’<sup>46</sup> This body, as directed by the Plenary II report, shall be guaranteed its independence from both the executive and the legislature and will report directly to Parliament.

The Public Accounts Committee of Parliament has recently become a strong body that holds public officers accountable for any failure to uphold the law in handling public funds. The Office of the Auditor-General consistently releases qualified financial statements, demonstrating weaknesses in the management of resources, and has uncovered glaring reports of corruption in the public sector. However, the functional independence of the office has been hamstrung by a shoestring budget.

Nevertheless, the office has continued to execute its mandate without fear or favour. Under the multi-sectoral reforms currently underway, there are proposals for the Office of the Auditor-General to be constitutionally recognised as a statutory body. Its operational and financial autonomy is assured under the constitution, and the appointing authority for the office has been elevated to the king, at the advice of the Council of State. This is intended to insulate the office from undue political interference.

<sup>46</sup> Commission on Anti-corruption and Economic Offences Bill, 2021.



## Access to information as a precursor to effective accountability

Access to information is the bedrock of good governance and ultimately creates fertile ground for democracy to thrive. The free flow of information ensures that the media, which acts as a check within society, holds those in public office to account for their actions. It also empowers citizens to demand accountability from those they have elected to office. However, Lesotho's access to information policy and legal framework makes it difficult to enforce such a regime. There are also no oversight bodies ensuring access to information.

## Recommendations

In order to address weaknesses in Lesotho's efforts against corruption and to promote accountability, it is recommended that the government:

- ◆ Provide the DCEO with adequate resources for it to effectively discharge its mandate (and Parliament should pass the Eleventh Constitutional Amendment Bill, 2021 in order to grant the agency adequate autonomy);
- ◆ Curb political interference in the work of the DCEO so that it performs its fiduciary duties without fear or favour;
- ◆ Embark on proactive measures for fighting corruption by engendering a culture of ethical conduct among those in public service and advancing integrity within the leadership of the country; and
- ◆ Establish an Ethics and Integrity Commission consisting of respected figures in society to establish a national code of ethics for the private and public sector with the express intent to cultivate a spirit and culture of ethical, moral and professional conduct.



## CHAPTER 6

# 5

## Crime and the exposure of vulnerable groups to escalating criminality



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 6:** Promotion and protection of the rights of women

**Question 1:** What measures have been taken to promote and protect the rights of women in the country?

**Objective 8:** Promotion and protection of the rights of vulnerable groups, including internally displaced persons, refugees and persons with disabilities

**Question 1:** Identify vulnerable groups in your country and outline measures your country has taken to promote and protect the rights of permanently disadvantaged or vulnerable groups including, but not limited to, internally displaced persons, refugees and persons with disabilities.



## Introduction

In recent years, the rate of violent crime in Lesotho has been rising, based on data from weekly police media reports, although consolidated aggregate statistics are hard to come by. The Global Study on Homicide, which ranks the murder rates of 202 countries and territories, puts Lesotho at number 10, and sixth in Africa. Its murder rate is 46.6 per 100 000 people against the global average rate of 6.1 per 100 000.<sup>46</sup> Crime tends to be lower in countries where, among others, there is strict police enforcement and tough sentences for crimes.<sup>47</sup>

**T**he Lesotho justice system appears overwhelmed and too slow to cope with the number of cases lodged. The government has been underfunding the judiciary for years, leading to a huge backlog of cases, estimated at 3 000 in the High Court in 2017. Only five judges are available to hear cases, when there were ordinarily supposed to be 15 judges.<sup>48</sup>

<sup>46</sup> UNODC, Global Study on Homicide (Vienna: UNODC, 2019); UNODC, "Violent Crime Rates By Country", <https://worldpopulationreview.com/country-rankings/violent-crime-rates-by-country>

<sup>47</sup> World Population Review, "Violent Crime Rates by Country", <https://worldpopulationreview.com/country-rankings/violent-crime-rates-by-country>.

<sup>48</sup> Mohalenyane Phakela and Nat Molomo, "Mahase Speaks on Judicial Crisis", Lesotho Times, April 9, 2019.



The judiciary has not been able to increase the number of judges owing to its limited budget, which, instead of being increased, was cut by a staggering LSL 26,307,683.25 (USD 1.6 million) from the 2018/19 allocation down to LSL 10 million (USD 623 052) for the 2020/2021 financial year.<sup>49</sup> The then acting chief justice, 'Maseforo Mahase, said:<sup>50</sup>

We, in the judiciary, are in perpetual panic mode whenever the national budget speech and allocations are delivered in Parliament. We are forever treated by successive governments as the proverbial whipping boys and poorest cousins of the three organs of state.

The Lesotho Mounted Police Service (LMPS) also appears overwhelmed in terms of preventing and detecting crime,

and apprehending criminals. The commissioner of police has acknowledged that the LMPS suffers from serious capacity challenges owing to resource constraints – there are around 4 000 police officers for a population of over 2 million. Other resources such as vehicles are also extremely limited. All of these factors inhibit the effectiveness of the police in discharging their mandate.<sup>51</sup>

The weekly reports of the LMPS show an upward trend in crime statistics in the country. In a new phenomenon, young people aged between 15 and 34 are working in crime syndicates, one of which operated in Ha-Tšosane, Koalabata, Sekamaneng, Naleli, Khubetsoana and neighbouring villages.<sup>52</sup>

<sup>49</sup> Phakela and Molomo, "Mahase Speaks." NOTE: Dollar equivalents reflect calculations made in May 2022.

<sup>50</sup> Phakela and Molomo, "Mahase Speaks".

<sup>51</sup> Holomo Molibeli (Commissioner of Police), interviewed by Thabo Seisa, Radio Lesotho programme Ho tloha Tele hoea Mechachane, January 26, 2022.

<sup>52</sup> Kaleem Chikowore, "We Had to Step In to Restore the Peace: Army Commander", Lesotho Times, July 16, 2021.



The LMPS seemingly was unable to deal with these gangs, and the army had to step in to contain them. The army operation against one syndicate resulted in 74 of its members being arrested and detained at the Makoanyane Military Barracks. According to the commander of the Lesotho Defence Force (LDF), the army had to step in because the young people were <sup>53</sup>

[i]nvolved in murder, stealing, and harassing residents in the villages. Their criminal activities were clearly well planned. They used numbers to identify each other. They did not call each other by names but by numbers, just like you would see with prison gangs.

We believe that some of these methods they were using were adopted from prison gangs. They may have also learned this from the Internet. These days information is easily accessible from the Internet.

Under normal circumstances the police would act against such a gang, but it appears they could not do so for unexplained reasons – presumably, because they lacked the capacity. On why the army and not the police stepped in, the commander is reported as having said:<sup>54</sup>

Before we got involved, the police were trying to apprehend the culprits but we figured peace was threatened. Whenever peace and stability are threatened, we step in to assist. We closely cooperate with the police. We could not continue sitting while things were getting out of hand. It is better to address a problem while it is still manageable rather than wait for it to get out of hand.

<sup>53</sup> Chikowore, "We Had to Step In".

<sup>54</sup> Chikowore, "We Had to Step In".



More worrying was that even members of the security forces were targets of criminality. Between February and September 2021, some 10 police officers were gunned down in the country.<sup>55</sup>

In another incident at Ha Tsolo just outside Maseru, an armed robber shot dead a member of the LDF and took his official rifle after attacking his wife and robbing the family shop.<sup>56</sup> Owing to the increase in violent crime, Majoro established a task force comprising members of the LDF, the LMPS and the National Security Service and designated 31 off-road vehicles and three LDF helicopters to the task force.<sup>57</sup> He said:<sup>58</sup>

I have registered my concern over rising criminal acts, including barbaric killings and harassment of the elderly, women, and children without consideration of their rights.

We are also witnessing a rise in murders, robberies, stock theft, and other heinous crimes. He also expressed the government's concern about the ease with which criminal suspects obtained bail and expressed the hope that the NRA would address the problems in the criminal justice system, appealing to the nation to cooperate with the law enforcement agencies.

### Vulnerable groups

Vulnerable groups seem to be exposed to criminal actions – either committing them themselves or falling victim to them – to a greater extent than the population as a whole. Legal remedies to deal with this are often lacking. The impacts on particular vulnerable groups are set out below.

<sup>55</sup> Nthatuoa Koeshe, "DC Condemns Police Killings", Lesotho Times, September 21, 2021.

<sup>56</sup> "The Army Boss Reads the Riot Act", The Post, November 9, 2021.

<sup>57</sup> Marafaele Mohloboli, "Majoro Launches Crime Prevention Unit", Sunday Express, October 26, 2021.

<sup>58</sup> Mohloboli, "Majoro Launches Crime Prevention".



## Women

Currently, there is no gender-specific law in the country that addresses issues faced by women. While there has been an attempt to promulgate the Domestic Violence Act, to date the anticipated law remains a bill. In the absence of such a law, women both in marriages and in informal relationships continue to be exposed to criminal acts and become victims of gender-based violence in its different forms.

Moreover, unemployment among women in Lesotho was at 24.6% in 2021, according to the World Bank's development indicators.<sup>59</sup> In some instances, this has the effect of placing women on the wrong side of the law. For example, many women who are charged with concealment of child-

birth or abortion<sup>60</sup> state that they did so because they did not have the means to take care of a child. Since abortion is still criminalised in Lesotho, women who are found to have had the procedure done are often prosecuted.

Some women also engage in sex work<sup>61</sup> as a means of earning a living. Because this is regarded as a criminal act, sex workers are likely to face criminal charges if a case is proved against them.

## Children and youth

The Education Act 2010, section 3, makes provision for free and compulsory education only at primary-school level. This means that education fees must be paid beyond the primary stage.

<sup>59</sup> World Bank, Lesotho Overview, 2021.

<sup>60</sup> Penal Code, sections 44 and 45.

<sup>61</sup> Penal Code, section 55, terms sex work Prostitution.



In the face of the high rate of unemployment among women and the large number of child-headed households in the country, many children are unable to receive more than a basic education. This may exclude them from economic mobility and push them into criminality as a means of survival. A study conducted at Roma, Maseru,<sup>62</sup> found that there are numerous reasons for young people turning to crime.

A common reason is their social background, with poverty being the main issue. That is to say, they resort to crime as a survival strategy. Peer pressure was found to be another contributing factor. The report showed that stock theft, housebreaking, robbery, car theft and burglary are the most common crimes committed by this age group.

A study also found that there is a high rate of sexual abuse among young people in Lesotho:<sup>63</sup>

- ◆ 15% of girls and 5% of boys experience sexual violence before the age of 18;
- ◆ 33% of girls and 57% of boys experience physical violence before the age of 18;
- ◆ 18% of girls' first experience of sexual intercourse is physically forced or coerced;
- ◆ for 58% of girls who experienced sexual violence before the age of 18, the first incident of sexual violence was perpetrated by an intimate partner; and
- ◆ of the girls who experienced sexual violence before the age of 18, only 9% received services such as counselling.

<sup>62</sup>Emeka E Obioha and Refloe E Thakhisi, "Exploring the Burden of Property Related Crimes Among the Basotho People of Lesotho: A Case Study of Roma Valley Communities of Lesotho", *Studies of Tribes and Tribals* 11, no. 2 (2013): 195–208.

<sup>63</sup>Violence Against Children and Youth Survey (VACS) Report, 2020 youth survey 2018.



Owing to the unavailability of post-care services, these children and young people are likely to fall into depression or become perpetrators of crimes themselves.

### People living with disabilities

People living with disabilities in the country continue to face challenges. The most prevalent forms of disability in Lesotho are visual, hearing, mobility, memory, self-care and communication impairments. These conditions expose them to victimisation by criminals, as well as discrimination, unfair labour practices, etc.

The biggest challenge in the country for people living with disabilities is access to justice. The Lesotho judicial system is not equipped to hear cases involving people with disabilities – there are no special interpreters or psychologists,

and the courts are not wheelchair-friendly, for example.<sup>64</sup> This means that acts of violence against people living with disabilities often go unpunished, and the law is thus not an effective protector of this community.

### LGBTQI+ persons

Lacking legal protection, LGBTQI+ people in Lesotho continue to be victimised in criminal acts. One study showed that transgender and gender-nonconforming people in the country often experience discrimination and violence. Of the 57 transgender and gender-nonconforming people in the study, fewer than half (49%) were employed. Four in five (81%) said they did not have sufficient funds to cover their everyday needs. One-quarter (27%) had hidden health concerns from their healthcare provider because they were afraid to disclose their gender identity.

<sup>64</sup> Lesotho National Federation of Organisations of the Disabled, Access to Justice for People with Disabilities in Lesotho: A Comprehensive Study on Provisions which may be used to Argue for Accommodations for People with Disabilities in the Justice System (Maseru: LNFOD, May 2019).



Almost half said that because of their gender identity, they had been treated disrespectfully at a healthcare facility (48%), two in five (41%) said they had been insulted at a healthcare facility, and one-third (36%) had been denied healthcare because of their gender identity.<sup>65</sup> In addition, with the high rate of unemployment in the country, LG-BTQI+ people may have to resort to illegal acts in order to make a living. In addition, when they are victims of crime, they often find that the authorities discriminate against them, do not treat them with respect, or deny them services entirely.

## Recommendations

In order to address the threat of crime to vulnerable groups, it is recommended that the government:

- ◆ Improve the capacity of the criminal justice system by adequately funding law enforcement institutions so that they are able to carry out their mandate, and in so doing demonstrate that it prioritises the security of the country's people;
- ◆ Abolish sodomy laws so that government institutions can make laws and policies that cater to the needs of LGBTQI+ persons;

<sup>65</sup>Alex Müller, Legal Gender Recognition in Lesotho: An Analysis of Law and Policy in the Context of International Best Practice (Johannesburg: Southern African Litigation Centre, 2020).



- ◆ Invest in the youth's education and employment to reduce the chances of their engaging in criminal activities;
- ◆ Enact domestic violence legislation to deal with domestic violence in a more appropriate manner;
- ◆ Capacitate the courts and law enforcement agencies to deal with crimes against vulnerable populations and provide appropriate facilities; and
- ◆ Inform vulnerable populations of property and inheritance rights to prevent their falling victim to property grabbing and make them aware of how they can preserve property for their children.



## CHAPTER 7

### 6

### Poor infrastructure



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 1:** Design and implement economic policies for sustainable development

**Question 2:** What sectoral economic policies has your country developed and implemented to promote economic growth and sustainable development in the past 5–10 years and what has been their effectiveness?

**Question 6:** What are the major development initiatives undertaken to improve the energy, services, transport and communication infrastructure in your country?

**Objective 6:** Develop and implement trade and economic growth

**Question 1:** To what extent are your country's investment policies facilitative of economic growth?



## Introduction

Infrastructure is a cardinal catalyst for economic growth, which it injects through capital accumulation and raising total factor productivity gains. Infrastructure connects supply chains and allows the efficient movement of goods and services across borders. It also connects households across metropolitan areas to better opportunities for employment, healthcare and education. Clean energy and public transit reduce greenhouse gases, while infrastructure in the form of a road network, railway transport system, ports, power and airports helps to integrate a country with other global economies.

**Investment in infrastructure has the potential benefit of stimulating private investment by lowering production costs and opening new markets, thereby creating new production, trade and profit opportunities. The 2010 CRR argued that poor infrastructure (mainly in the form of roads) was a major constraint to investment, economic growth, and development in Lesotho, especially in the remote mountain areas.<sup>66</sup>**

<sup>66</sup> APRM, Country Review Report No. 12, 38.



Over the past few years, infrastructure has not been specifically targeted for its contribution to productivity and utility, and has been influenced by political demands. The lack of coordinated and integrated planning leads to low-quality projects and outputs. Poor infrastructure is also a result of limited fiscal space, owing to a high wage bill that leaves few resources to support capital expansion.

Infrastructure was a weak link between the NSDP I priorities and public spending. Limited infrastructure contributed to low private sector investment, because social returns were low and unemployment and poverty were high.

A study by the World Bank finds that 'infrastructure in Lesotho is relatively undeveloped with poor coverage and low-quality services common to many African countries

that have low per capita incomes and government fiscal limitations that constrain infrastructure investment'. It also indicates that the government should expand coverage, improve quality and ensure 'efficient delivery of infrastructure services'.<sup>67</sup>

The NSDP II also calls on the government to embark on reforms in the telecommunications, power, water and transportation sectors. In addition, it acknowledges the benefits of private participation as an element in these reforms, with a normal degree of prudence. Therefore, the NSDP proposes building enabling infrastructure, with the intent to achieve inclusive economic growth. It states that the government should commit to providing minimum infrastructure platforms, which will be an incentive for the private sector to invest in the economy.

<sup>67</sup> Public-Private Infrastructure Advisory Facility, Private Solutions for Infrastructure in Lesotho: A Country Framework Report (Washington DC: World Bank, 2004), 3.



To achieve the objectives of the NSDP II, namely 'private sector-led jobs and inclusive growth', the government of Lesotho has committed itself to the development of infrastructure by injecting more than LSL 30 billion (USD 1.9 billion) in infrastructure development that will support economic activities during the NSDP II. More than LSL 1.5 billion (USD 93.5 million) will directly support the four productive sectors to help facilitate and stimulate job creation. Interventions for this Key Priority Area (KPA) will also address the cross-cutting areas of environment and climate change, youth, children, the elderly, disability and gender. Successful delivery of interventions under this KPA will result in the following outcomes.<sup>68</sup>

## Transport

Road transport is the main mode of transport in Lesotho, given its topography. Developments in the country's road transport sector have been affected by improvements in the road network extensions.

According to a 2010 study,<sup>69</sup> until the late 1970s not a single tarred or paved road existed in Lesotho. At the time, the population was small and people either used donkeys, horses and animal carts, or they simply walked. Passenger transport was provided by the government-owned National Bus Corporation, while freight transport was provided by the Lesotho Freight Bus Service Corporation (LFBSC).

<sup>68</sup> Government of the Kingdom of Lesotho, National Strategic Development Plan II 2018/19–2022/23 (Maseru: Government of the Kingdom of Lesotho, Ministry of Planning, 2019), 7. **NOTE: Dollar equivalents reflect calculations made in May 2022.**

<sup>69</sup> Chabeli Ramolise, Competition issues in the Transport Sector in Lesotho (Geneva: UN Conference on Trade and Development, 2010).



Public transport began with the state-owned LFBSC on the then gravel roads and developed over the years to the current situation where it co-exists with private operators. Currently, the long-distance routes are serviced by buses and minibuses, while the town centres are serviced by minibuses and saloon cabs (4+1s). Freight transport began with private businesses ferrying their own cargo, and grew with the rise of exports to the present case, where it is fully established as a market on its own.

Public transport is a highly congested segment of the road transport sub-sector, but with low contestability levels. There are high barriers to entry in the form of the limited number of operating permits issued by the Road Transport

Board (for saloon cabs and minibuses), and high start-up costs (for buses). The board also controls fares. Freight transport is highly competitive, with prices determined by market forces. Predatory pricing is possible, however, and means that market entrants must have deep purses, despite free entry and exit. In addition, cargo-handling facilities in Lesotho are inadequate and inefficient.

### Telecommunications

The telecommunications sector used to be dominated by an SOE, the Lesotho Telecommunications Corporation, until the government privatised it in 1999. Private sector funding and expertise in this sector have been considerable.



Reform of the telecommunications sector has resulted in a well-developed legal and regulatory framework. The government established the Universal Service Fund (USF) to expand coverage in the underserved rural and peri-urban areas. The fund is intended to be 'a vehicle through which all citizens will have access to high quality, diverse and affordable communication services'.<sup>70</sup> The USF is meant to ensure that all Lesotho citizens have access to telephony, broadband, diverse broadcasting content and basic postal services.

## Energy

The value of energy in the economic growth of any country cannot be overemphasised. According to one study, en-

ergy accounts for about 50% of the industrial growth<sup>71</sup> of a modern economy. It is a key source of economic growth, as many production and consumption activities involve energy as a basic input. From a physical viewpoint, the use of energy drives economic productivity and industrial growth, and it is central to the operation of any modern economy.

Some analysts argue that growth in energy use leads directly to growth in gross domestic product (GDP). Currently, Lesotho generates 72MW of hydropower through the Muela hydropower project, which does not satisfy domestic demand.<sup>72</sup>

<sup>70</sup>Lesotho Communications Authority, Universal Service Fund, undated.

<sup>71</sup>Industrial development refers to the building and growth of industries within an economy by using new technologies that make jobs easier, faster and better, and lead to an increase in a business' output and in profits. Barney Foran and Franz Poldy, "Dilemmas Distilled: Options to 2050 for Australia's Population, Technology, Resources and Environment" (CSIRO Sustainable Ecosystems, Canberra, October 2002), 157–189.

<sup>72</sup>US International Trade Administration, "Lesotho Country Commercial Guide: Renewable Energy", October 16, 2021.



The country's five diamond mines, which have plans to significantly grow their operations, are not connected to the national grid, relying instead on diesel generators.

According to the Lesotho Electricity and Water Authority (LEWA) 2012/13 annual report, about 30.2% of households have access to electricity, concentrated mainly in urban areas. The government set a goal of increasing the electrification rate to 35% of households by 2015 and 40% by 2020, and identified hydropower, wind generation and solar power as potential renewable energy sources to help reach these targets.

The Lesotho Department of Energy indicates that the country has the potential to produce 450MW in hydropower and many more megawatts in wind power. Nonetheless, it says that only 17% of this potential is being exploited – 96% of its power comes from the Muela hydropower project

while the rest is derived from mini hydropower plants at Mantsonyane, Mokhotlong, Tsoelike and Semonkong.

The government has indicated its interest in taking advantage of carbon credits (a tradeable permission to emit a certain amount of greenhouse gases), which could become a great business opportunity for consulting companies in renewable energy.

### Participation by the private sector

The government of Lesotho introduced privatisation in the infrastructure sector to foster private sector participation. Among these initiatives was the sale of the government-owned Lesotho Electricity Company (LEC) and the former Water & Sewerage Authority (WASA), now the Water & Sewerage Company (WASCO).



However, the sale has been delayed as the government considers a shift in private participation strategies. Water-sector reform has been hampered by the lack of an adequate legal and regulatory framework and institutional conflicts. Private participation in the transportation sector has produced some contracts for road construction and operation, but additional opportunities for private investment in the small rail and aviation subsectors appear limited.

Public-private partnership (PPP) projects have not been very successful, as only foreign companies with some financial muscle have been able to participate. Investment partnerships with the government or projects that require government subsidies for private operations have been a challenge.

The government is also challenged in its ability to rapidly prepare, evaluate and monitor private participation projects, and to establish adequate regulatory institutions to ensure that the benefits of private participation are realised and its potential negative consequences avoided. The government and the private sector should collaborate in infrastructure development in Lesotho. Potential areas are energy, transport, road network development and water, as well as waste management.

The government should formulate a PPP policy that guides public-private collaboration on infrastructure development. Borrowing huge sums of money from international financiers is not helping to develop this sector, as it gets muddled by public-private sector corruption in non-competitive tender processes that are not handled in a transparent manner.



In respect of information and communications technology (ICT) infrastructure, the government has developed the ICT Policy for Lesotho (2005) covering an array of sectors, including education and human resource development.

The government acknowledges that qualified ICT professionals are scarce and educators lack ICT literacy and expertise, leading to ineffective integration and utilisation of ICT in schools. It also acknowledges that the costs of ICT equipment and internet connectivity are high.<sup>73</sup>

The government has committed to 'a comprehensive programme of rapid deployment, utilisation and exploitation of ICTs within the formal educational and vocational institutions' to facilitate education and life-long learning.<sup>74</sup>

The specific objectives of the policy, with regard to education and human resource development, are to, among others:<sup>75</sup>

- Facilitate the deployment, utilisation and exploitation of ICT within the educational system to improve access to information to support teaching and learning at all levels;
  - Transform Lesotho into an ICT-literate nation by promoting ICT awareness and computer literacy throughout the educational system and within the public at large; and
  - Broaden access to education and training opportunities by promoting electronic distance and virtual learning.
- This policy notwithstanding, huge gaps remain in the ICT sector with regard to virtual teaching and learning, especially in the public higher-education sector.

<sup>73</sup>Government of the Kingdom of Lesotho, ICT Policy for Lesotho (Maseru: Lesotho Government, 2005).

<sup>74</sup>Government of Lesotho, ICT Policy, 29

<sup>75</sup>Government of Lesotho, ICT Policy, 29



The advent of the COVID-19 pandemic has adversely affected all sectors of society globally, including the education sector. Governments, including the government of Lesotho, have been forced to impose measures to contain the spread of the pandemic. These measures have included lockdowns and disruption of normal face-to-face teaching and learning activities since 2020.

Although ICT infrastructure is a necessity for the education sector, the government has not adequately invested in it, despite the development of the ICT Policy for Lesotho. Virtual teaching and learning remain the only way to go if societies, including Lesotho, are to prepare human resources for the knowledge-based global economy.

The impact of poor ICT infrastructure has been notable in the education sector. The higher-education sector, in particular, has suffered the most with the halt in normal face-to-face teaching and learning activities since 2020. While other activities have continued online – such as the official meetings of the Senate and graduations at the National University of Lesotho (NUL) – teaching and learning could not proceed in this mode for two main reasons.

One is that the university's ICT infrastructure, which had been neglected owing to underfunding, cannot cope with online teaching and learning. In addition, the Learning Management System used at the NUL did not allow interactive teaching and learning activities, spurring students to protest and demand contact sessions.<sup>76</sup>

<sup>76</sup>“NUL Students Protest, Demand Contact Sessions”, The Reporter, December 10, 2020.



While this was introduced in January 2022, students still could not use it as data costs were prohibitive. Lesotho's two Internet service providers have also hiked the cost of weekly data bundles significantly.<sup>77</sup> Students at the NUL – and most likely at other higher-education institutions in the country – have thus not received good-quality teaching under these conditions.

## Recommendations

In order to address the weaknesses of Lesotho's infrastructure, it is recommended that the government:

- ◆ Allocate sufficient funds to infrastructure development;
  - ◆ Implement its ICT policy and commitments in its NSDP II by adequately investing in ICT infrastructure;
  - ◆ Help students to acquire good-quality technology and data for effective learning, in view of both the COVID pandemic and the broader applicability of ICT to learning; and
  - ◆ Expand solar power and wind generation, in partnership with – possibly contracted out to – the private sector.
- The majority of the population lives in small, rural communities, which makes the country a good market for solar energy products.

<sup>77</sup> Serame Tumisang, "Lesotho Groans Under Hefty Data Price Rises", Centre for Investigative Journalism, December 13, 2019.



## CHAPTER 8

7

### Gender-based discrimination under customary law



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 6:** Promotion and protection of the rights of women

**Question 1:** What measures have been taken to promote and protect the rights of women in the country?

**Question 2:** What measures have been put in place to enhance the role of women in the democratic process and in the governance of your country?



## Introduction

Lesotho's constitution, section 4 (1), sets out a vision of equality for all in the country: '[E]very person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms.'<sup>78</sup> Although everyone enjoys full citizenship rights, there are still some gaps in the constitutional and legal frameworks. . These were recognised in the 2010 APRM CRR, which at one point observes:<sup>79</sup>

Despite various successes with regard to the promotion of gender equality, the CRM concurs, though, with the CSAR that gender inequality remains entrenched in the cultural practices and traditions of the country and that the unequal status and position of women remain entrenched in the constitution, despite some sections in it that affirm equality and non-discrimination.

<sup>78</sup> Constitution of the Kingdom of Lesotho, 1993, section 4 (1).

<sup>79</sup> APRM, Country Review Report No. 12, 86.

<sup>80</sup> Constitution of the Kingdom of Lesotho, 1993, section 4 (1).

A number of challenges therefore face the country in its attempts at domesticating international gender instruments and promoting the equality of women, not least of which are the inherent contradictions in the country's constitution. The constitution permits discrimination in section 18(4)(b) and (c), as well as in in personal law and customary law, causing harm to women in areas such as marriage, divorce and inheritance. This affects women's fully fledged social, economic, political and other participation in society. So, while conferring equal citizenship on all Basotho, the constitution makes the following counter-provisions:<sup>80</sup>



Section 18 (1): Subject to the provisions of subsections (4) and (5) no law shall make any provision that is discriminatory either of itself or in its effect.

Section 18 (4): Subsection (1) shall not apply to any law to the extent that that law makes provision –

(b) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description; or

(c) for the application of the customary law of Lesotho with respect to any matter in the case of persons who, under that law, are subject to that law.

These provisions are effectively a colonial relic that have been imported into the non-discrimination clause and reinforced women's subordinate status as wives, mothers and daughters. Discrimination in both personal law and customary law affects core aspects of women's lives by subjecting them to unequal treatment in many arenas, particularly marriage and family. Examples include child marriage, polygamy and male primogeniture.

These provisions are also contrary to the requirements of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As the 2010 APRM report notes, Lesotho has expressed reservations about this instrument:<sup>81</sup>

<sup>81</sup> APRM, Country Review Report No. 12, 83.



The country has ratified CEDAW with reservations on issues of culture and chieftainship, meaning that its constitution does discriminate against women on the basis of customary law and religious denomination. This exception clause therefore contradicts various sections of the constitution, which extol non-discrimination on the basis of gender.

## Marriage

Marriage is a fundamental institution of society and one in which inequalities between men and women are demonstrated in Lesotho. CEDAW, for example, requires that:<sup>82</sup>

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter

into marriage only with their free and full consent;

- (c) The same rights and responsibilities during marriage and at its dissolution;

- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

<sup>82</sup>UN Office of the High Commissioner on Human Rights, "Convention on the Elimination of All Forms of Discrimination Against Women, 1979", Art. 16.



(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

This requirement is reinforced in other instruments, such as the International Covenant on Civil and Political Rights, article 23, which reads in part: 'No marriage shall be en-

tered into without the free and full consent of the intending spouses.'<sup>83</sup>

The current constitution also contains no explicit protection for equal rights between spouses in marriage and family. Although some domestic laws have been reformed to better protect women – such as the Legal Capacity of Married Persons Act – these reforms have been piecemeal. Lesotho is obligated under various international and regional treaties, such as CEDAW, to ensure such equality. The Maputo Protocol, article 6, meanwhile, deals with the issue at length:<sup>84</sup>

State Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

<sup>83</sup>United Nations, "International Covenant on Civil and Political Rights, 1966", Art. 23.

<sup>84</sup>African Union, "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003", Art. 6.



- a) No marriage shall take place without the free and full consent of both parties;
- b) The minimum age of marriage for women shall be 18 years;
- c) Monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships, are promoted and protected;
- d) Every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) A married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) A woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) A woman and a man shall have equal rights with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) A woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) During her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely. Despite the fact that all women in Lesotho are vulnerable to discrimination, certain practices hit particular groups of women and girls especially hard. Child marriage, for example, is currently permitted under both civil and customary marriage law. Under customary law, girls may marry from the time of puberty, and under civil law, the Marriage Act allows girls to marry at ages 16 and 17 with parental consent. Boys, by contrast, are protected from marriage with parental consent until age 18.



Child marriage harms girls because it usually forces them to drop out of school, and exposes them to the risk of pregnancy (and related complications), HIV/AIDS and sexual and gender-based violence.

Affirmative rights – such as the right of both spouses to enter marriage with free and full consent – could also help reduce the harms of child marriage. Lesotho is obligated under various international treaties, such as the African Charter on the Rights and Welfare of the Child, article 21(2), to act against this. The charter states:<sup>85</sup>

Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

The Maputo Protocol, article 6, prohibits child marriage and sets the minimum age of marriage at 18 years.

Another issue to be dealt with is polygamy. Many women may face physical and emotional harm in polygamous marriages and have greater responsibilities and fewer personal resources owing to the inherently unequal relationship between a single husband and multiple wives. Their children experience emotional distress and conflict because of these unequal rights and responsibilities.

Polygamy is a violation of Lesotho's international obligations under CEDAW and the International Covenant on Civil and Political Rights (ICCPR). Both CEDAW, article 16(1) (e), and the Maputo Protocol, article 14(1)(b), require men and women to have equal rights in deciding how many children to have and the spacing of those children. According

<sup>85</sup> Organisation of African Unity, "African Charter on the Rights and Welfare of the Child, 1990", Art. 21 (2).



to the CEDAW Committee, this right guarantees equal access to family planning services, including contraception, and requires the decriminalisation of termination of pregnancy.

The common law provides only two grounds for divorce in Lesotho, namely adultery and desertion. A woman seeking divorce to leave an abusive marriage is disparately disadvantaged by such limited grounds, as the onus is on her to establish that an abusive husband has the intention of terminating the marital bond. She is then forced to attempt to reconcile with the husband by continuing to live with her abuser before she is able to fully secure a divorce. These policies put women in increased danger and establish the need for equality at the dissolution of marriage.

Women must be treated equitably when establishing that they are in dangerous marriages.

With regard to inheritance, according to customary law in Lesotho, women are afforded different treatment from men. While widowers keep any property from their deceased wives, widows often lose property that belonged to their deceased husbands.

Additionally, daughters do not inherit equally with sons, and often are unable to inherit their parents' property. These systems are codified in customary law and continue to place barriers before women in respect of inheritance of rural land. The Land Act of 2010 enshrines inadequate protection for widows. These laws violate Lesotho's inter-



national human rights obligations to guarantee the equal treatment of men and women at the dissolution of marriage, under treaty bodies such as CEDAW, article 16(1)(c), the ICCPR, article 23(4), and the Maputo Protocol, article 2.

Women are also placed in a disadvantageous and even harmful position because registration of customary marriages is not required. This can lead to difficulties in providing proof of the existence of a marriage. This is particularly harmful to women who are seeking divorce or who may recently have been widowed and are establishing their right to inherit from their late husbands. Not having clear and formal documentation puts women in the way of disinheritance and land-grabbing.

## Chieftainship

Regarding succession to the office of the chieftainship by women, the constitution, section 18 (4) (c), provides for the human rights of all citizens, which include freedom from discrimination. This provision notwithstanding, the Chieftainship Act, 1968 does not allow female children of chiefs to succeed their fathers as chiefs in the event of a vacancy in this office.

Section 10 (2) provides that only the first-born son or the only son of the first marriage (Basotho chiefs used to marry more than one wife under customary law) of the chief will succeed to the chieftaincy, in descending order of seniority. Section 10 (3) provides that, when there is no person to succeed under the preceding subsection, the first-born son or only son of the marriage of the chief that took place next in order of time will succeed according to



customary law. Only if there is no person to succeed when a vacancy occurs in the office of the chief in terms of the two preceding sections may the wife of the chief or the surviving wife of the chief who was married earliest succeed to the chieftaincy. Should the office become vacant again, the eldest legitimate brother of the male chief who held that office before the woman will succeed to that office. Should the brother of the chief fail to take over, the eldest surviving uncle of that male chief will succeed. This section was challenged in a landmark court case in which Senate Gabasheane Masupha, daughter of the principal chief of 'Mamathe and Jorotane, sought to succeed her father. She lost the case in all lower courts and appealed, seeking relief on the grounds that section 10 of the Chieftainship Act is unconstitutional, as it purports to disentitle her to succeed to the principal chieftainship on the sole

grounds that she is female, and declaring that a female firstborn child of a chief is entitled to be considered for succession to a chieftainship.<sup>86</sup>

The court held that mere differentiation necessary to regulate the affairs of the community does not amount to discrimination, that the applicant had to prove that the differentiation of treatment amounted to discrimination based on sex or gender, and that:<sup>87</sup>

- Women or girls are not allowed to succeed to the position of chief whether as regent or in their own right under any circumstances;
- Men or boys are permitted to be heirs to the chieftainship in all circumstances;
- There is no rational purpose served by that differentiation; and

<sup>86</sup> Southern African Litigation Centre, *Masupha v the Senior Resident Magistrate for The Subordinate Court of Berea and Others: Summary of Judgment*, 2012.

<sup>87</sup> SALC, *Masupha v Senior Magistrate*.



- The provisions of the Chieftainship Act in that regard are in conflict with the constitution to the extent that they ought to be declared null and void.

With regard to the first issue, the court held that women married into chiefly families have a right to succeed to chieftainship either in their own right or as regent.

On the second issue, it noted that chieftainship itself is an undemocratic institution in that not only daughters but also illegitimate sons and second-born sons, among others, are not entitled to succeed. Thus, not all men or boys are permitted to succeed in the chieftainship in all circumstances.<sup>88</sup> On the third issue, the court noted that the primary purpose of male primogeniture had been to preserve the family unit and to ensure certainty in succession, and so avoid conflict within the family. It stated that this objective for the rule of male primogeniture applied with

more force in Lesotho, particularly given that it was a homogenous country where the population had similar cultural values. It concluded that the rule of male primogeniture was reasonable and justifiable.<sup>89</sup> On the last factor, the court held that the Chieftainship Act is a restatement of the customary law rules of succession and thus not in conflict with the constitution. It added that the constitution is highly protective of customary law rights relating to practices such as chieftainship, and referred to section 18 (4)(c) of the constitution, which provides that even if a rule of customary law may appear to be discriminatory in effect, it will not be so when applied to persons who are subject to that customary legal system.<sup>90</sup> In reaching its decision, the court also stated that 'customary law excludes many categories of people from chieftainship, not only in the applicant's position, and does not pretend to

<sup>88</sup> SALC, Masupha v Senior Magistrate.

<sup>89</sup> SALC, Masupha v Senior Magistrate.

<sup>90</sup> SALC, Masupha v Senior Magistrate.



be democratic in matters of succession'.<sup>91</sup> Masupha appealed, but lost the case on the grounds that section 10 of the Chieftainship Act was not unconstitutional, as the lower courts had found.

The Multi-Stakeholder National Dialogue Plenary II of 2019 has resolved that the issue of female succession to the office of chieftainship should be referred to a referendum.<sup>92</sup>

The issue will be considered by the NRA and appropriate amendments to the relevant sections of both the constitution and the Chieftainship Act made and submitted to Parliament for final approval, should it deem this appropriate.

## Recommendations

In order to address gender discrimination in Lesotho – specifically under customary law – it is recommended that the government:

- ◆ Initiate a process to reform the constitutional and legal environment to expunge gender discrimination. This would include:
  - Repealing sections 18 (4) (b) and (c) of the constitution. These sections disproportionately harm women in areas of marriage, divorce and inheritance, and allow for discrimination in various laws. This repeal should be coupled with an affirmative right to culture, which would guarantee all people in Lesotho a right to practice their culture to the extent that it does not infringe on the fundamental rights of others guaranteed by the constitution;

<sup>91</sup> SALC, *Masupha v Senior Magistrate*.

<sup>92</sup> Government of Lesotho, Multi-Stakeholder National Dialogue, 74.



- Passing a constitutional provision setting a minimum age for marriage, which would help Lesotho meet its international law obligations;
- Passing a constitutional amendment making polygamy as a marital structure constitutionally incompatible with equal rights during marriage;
- Passing a constitutional amendment guaranteeing equality at the dissolution of marriage;
- Passing a constitutional amendment requiring registration of all marriages, whether customary or civil, thus putting it in line with its international obligations under CEDAW, article 16(2);
- Passing a constitutional amendment to specify that the minimum age of marriage is 18 years, without exception; and
- Passing legislation to ensure equal rights between men and women at the dissolution of marriage and to ensure that women seeking divorce on the basis

of violence are able to secure it without facing undue barriers.

◆ Additional amendments will further promote human rights in the country. Currently, Lesotho does not require courts to use international law when interpreting fundamental rights in the constitution. The constitution should clarify the status of international law in Lesotho, particularly of the human rights treaties. It should require courts to take international law into account, as a way of meet the country's international obligations of good faith under the Vienna Convention, article 26. Lesotho should also expand standing under section 22(1) to allow third parties to litigate cases on the basis of public interest, meaning that parties that are not directly aggrieved by the violation of a fundamental right would be able to litigate to ensure that right is not violated, on behalf of those who would be most harmed.



## CHAPTER 9



# Weak corporate governance



The issues discussed here relate to the corporate governance thematic area as a whole.



## Introduction

Good economic and corporate governance, including transparency in financial management, is essential for promoting economic growth and reducing poverty.

According to the first APRM Country Review Report of Lesotho in 2010, good corporate governance is about the ethical principles, values and practices that facilitate securing an acceptable balance between economic and social goals, on the one hand, and between individual and communal objectives, on the other.

**The report indicates that the aim of corporate governance is to align, as closely as possible, the often-diverse interests of individuals, corporations and society within a framework of sound governance for the common good of the country as a whole. The emphasis is on accountability, transparency, responsible operations, efficiency and effectiveness. However, Lesotho's corporate governance performance is unsatisfactory.**

The report indicates that 'on the whole, corporate governance is still a nascent concept in Lesotho.' It states that, 'although the country subscribes to the eight international and regional standards and codes for assessing corporate governance, progress with regard to implementation is slow'.<sup>93</sup>

<sup>93</sup>“APRM, Country Review Report No. 12, 136.



The 2010 CRR also comments that:<sup>94</sup>

Accountability of corporations, directors and officers is weak owing to inadequate legal and regulatory frameworks and enforcement agencies. According to the auditor general's report, many government ministries were not up to date with their accounts and some, including state-owned enterprises (SOEs), maintained incomplete accounting records; hence the issuing of qualified audit reports.

A few institutions in Lesotho are engaged in promoting good corporate governance. These are the Central Bank of Lesotho (CBL), the Lesotho Institute of Accountants (LIA) and the Institute of Directors Lesotho (IoD). However, awareness is low, on the whole. The CBL regulates the financial sector, keeping an eye on banks and other financial institutions as to how they conduct their financial

affairs, in line with regional and international instruments. The LIA is a regulator for private accounting firms with regard to how they conduct their accounting operations. It also regulates individual accounting practitioners' conduct in terms of upholding ethical and professional principles in their daily operations, whether they are employed or self-employed. There is widespread perception that corporate governance in corporates, public institutions and agencies, and semi-autonomous authorities and statutory bodies is poor. SOEs and parastatals are said to be run and managed improperly, outside good governance parameters. In Lesotho, appointment to boards, particularly at parastatals or government agencies, has recently become a tokenistic gesture rewarding loyalists of ruling political parties.

<sup>94</sup> APRM, Country Review Report No. 12, 10.



The boards of directors for the LEC, WASCO, LEWA<sup>95</sup> and other state enterprises have been infested with political cadres deployed as a thank-you gesture for their loyalty to ruling parties. The main reason for the deployment is thus to reward them, not for them to serve as competent, professional and dedicated board members pursuing organisational goals. Professional qualifications, expertise and experience are overlooked in these nepotic appointments. This adds to the bruisingly low standard of corporate governance in the country.

'Cadre deployment'<sup>97</sup> becomes apparent when a coalition government's partners realise they have little space to reward their loyalists in the public service or in diplomatic missions abroad.

They then resort to rewarding loyal individuals by appointing them to SOE boards. The realities of cadre deployment were exposed when a feud erupted within the leadership of the coalition government, the ABC, when the party leadership withdrew its national spokesperson, Montoeli Matsietsa, from the board of Letšeng Diamonds in 2018 when it appeared that he belonged to a different faction.<sup>98</sup>

The governing bodies of most organisations have failed to show high levels of integrity, and this failing cascades down to all levels and structures of organisations. Integrity is about acting in good faith and in the best interests of an organisation. This starts with the governing body (board of directors) and executive management, with the

<sup>95</sup> The LEC, WASCO and LEWA are state-owned enterprises, with the latter acting a regularity body for the first two that operates like a private entity bound by principles of good corporate governance.

<sup>96</sup> This phrase, drawn from the South African political lexicon, implies the placement of political operators in supposedly impartial offices, as opposed to those with proper administrative, technical or professional aptitudes and attitudes.

<sup>97</sup> Pascalinah Kabi and Moorosi Tsiane, "Masoetsa Fired from Letšeng Board", Lesotho Times, April 17, 2019.



rest of staff following suit. Integrity is underpinned by an avoidance of conflicts of interests and, where those do surface, disclosing them at the earliest possible time and managing this proactively. However, disclosure of sources of income and assets is still a non-starter in Lesotho, as the DCEO does not have the courage or autonomy to implement the practice under the Prevention of Corruption and Economic Offences Act (1999).

Local media abounds with reports of members of governing bodies being involved in shenanigans such as deceit, bribery and fraud. In 2021 the media carried reports of the fraudulent activities of members of the board of the Lesotho Communications Authority.<sup>98</sup> The former minister of trade and industry, Joshua Setipa, announced in 2016 that he had submitted a case of fraud by board members of

the Lesotho National Development Corporation to the anti-corruption body. He alleged that they had squandered huge sums of money from the corporation on seating allowances, which he viewed as corruption.

### A corporate governance code

Although Lesotho subscribes to international and regional standards and codes for assessing corporate governance, for a long time it did not have its own national corporate governance code, hence a recommendation from the first APRM report in 2010 that it should develop one.<sup>99</sup> This recommendation has been accepted and the IoD has developed (with the support of government-sourced financial assistance from the African Development Bank) an overarching corporate governance framework, closing almost all gaps in the governance space.

<sup>98</sup> Eric Priezkalns, "Regulator Accuses Minister of Demanding Bribes and Sex after GVG Wins National RA Deal in Lesotho", Comms Risk, June 14, 2021.

<sup>99</sup> APRM, Country Review Report No. 12, 136.



The Mohlomi Corporate Governance Code was launched virtually on 2 September 2021, with the prime minister giving an opening address and thereby demonstrating acceptance of it. The code covers corporate governance in all sectors of society: private companies, corporations, SOEs, non-profit companies, not-for-profit organisations (political parties and religious organisations) and local government entities. The draft code document is at the editing stage, in preparation for publication and implementation.<sup>100</sup>

The draft code covers six key clusters in the corporate governance space, namely board leadership; board conduct; board composition, structures and remuneration; audit, compliance and risk; digitalisation governance; and sustainability and integrated reporting. Under each of these

clusters it lists 22 principles that should underpin governance, as well as the recommended best practices.<sup>101</sup> These practices include that the board should:<sup>102</sup>

- ◆ Develop an ethical policy and a code of conduct that reflect the values of the organisation;
- ◆ Develop the board charter and terms of reference outlining the roles, duties and responsibilities of the board and its committees, as well as any additional powers of the chairperson, chairpersons of the board committees and chief governance officer;
- ◆ Adopt a transparent procedure for the merit-based nomination of board members who meet ethical and fit and proper requirements;
- ◆ Appoint to membership individuals with appropriate skills consistent with the organisational values and needs, and maintain a skills register reflecting diversity of skills, governance and technical competences of its members;

<sup>100</sup> Chaka Nkofo (Chief Executive, Institute of Directors Lesotho), interview by Motlamelle Anthony Kapa, November 2021.

<sup>101</sup> Draft Mohlomi Code of Corporate Governance.

<sup>102</sup> Draft Mohlomi Code of Corporate Governance.



- ◆ Be responsible for the appointment of the chief executive, the chief governance executive and chief audit executive;
- ◆ Guard against undue shareholder influence, either real or perceived;
- ◆ Develop a conflict-of-interest policy and guidelines in line with laws and regulations;
- ◆ Not comprise public officials (in reference to SOE boards); and
- ◆ Ensure that fraud, corruption, tax evasion, transfer pricing, money laundering, etc. are mitigated through appropriate risk strategies.

## Recommendations

- ◆ The IoD should get more organisations to come on-board and popularise the Mohlomi Corporate Governance Code in order to ensure compliance with it.
- ◆ A culture of corporate governance should be encouraged by embarking on building the capacity of executives and boards of directors on complying with corporate governance principles.
- ◆ Constantly assess the level of compliance with the code by the private sector, public sector and civil society organisations, and encourage such compliance.



## CHAPTER 10

### 9 Lopsided and ineffective public policy-making



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

**Objective 1: Promote and accelerate broad-based sustainable socio-economic development**

**Question 2: What is the capacity of your country to formulate, implement and monitor broad-based sustainable socio-economic development?**

**Objective 2: Encourage broad-based participation in development**

**Question 1: What mechanisms have been put in place to promote, extend and encourage stakeholders' participation in broad-based sustainable socio-economic development?**

**Question 2: To what extent are the private sector and civil society involved in the design, formulation and implementation of development policies and strategies?**



## Introduction

Public policy is what the government does and, for optimists, what it ought to do. Public policy and governance are intimately related. In Lesotho, public policy can be characterised as lopsided and ineffective. Some policy problems in the country are outside of government control, while some are self-inflicted. These are discussed below.

## Nature of the state

**L**esotho is a mountainous, landlocked and least-developed country where resource deficits, both human and physical, have a debilitating effect on policy and governance performance. Fitch recently awarded Lesotho a 'B' rating, balancing high external indebtedness, deteriorating public finances and a history of political instability weighing on policymaking against the favourable profile of the country's external debt and continued support from multilateral and bilateral lenders.<sup>103</sup>

<sup>103</sup>Fitch Ratings Inc. "Fitch Affirms Lesotho at 'B'; Outlook Negative", August 2, 2021.



Lesotho's economy relies heavily on public spending funded by volatile Southern African Customs Union receipts and has been in recession since 2017, even before the pandemic. Hence, tight fiscal conditions limit the government's capacity to spend and boost growth.

Growth has also been constrained by structural factors, including high inequality and poverty, political instability, lack of skilled labour and weak infrastructure. Recurring bouts of political volatility and intra-party conflict amid an overall weak institutional capacity constrain the government's ability to adjust fiscal policy and push forward reforms, and exacerbate problems with public-finance management. Political instability is underscored by Lesotho's

having experienced three early elections following no-confidence motions over the past decade and several cabinet reshuffles, partly reflecting intra- and inter-party conflicts.

The government comprises 37 ministries and agencies. The current public service has a bottom-heavy structure and lacks significant middle management and technical staff, which affects quality and performance.

Similarly, there is an absence of policy and guidelines to inform restructuring and implementation of new structures across the public service – different departments handle their situations differently. Staffing and payroll records and data are fragmented and outdated, and controls such as



reconciliations are ineffective or not performed. This leads to invalid payroll records, for example ghost workers, double dippers, etc. Key processes, such as retirement and removal from the payroll, are not executed efficiently, resulting in retirees remaining in the system.

Since independence, Lesotho has engaged in comprehensive planning exercises such as the NSDPs, PRS and the National Vision 2020. The country has tried many strategies in an attempt to address structural challenges and has implemented public sector reform programmes to improve efficiency. The success of such programmes, however, remains hampered by significant financial constraints and skill deficits.

Currently, Lesotho is saddled with a huge public service wage bill, which is 47% of recurrent expenditure. However, the high expenditure in the public service has not translated into improved performance and productivity; in particular, human development indicators are far below those of other countries at Lesotho's level of income. Moreover, the institutional configuration of the country's public service, which is the main vehicle for service delivery, does not predispose it to be efficient or impactful.

The most glaring policy missteps concern rural livelihoods. Inhabitants of these areas traditionally sustained their livelihoods through subsistence farming, but face increasingly regular and protracted droughts and soil erosion.



The scope for such farming continues to diminish. In addition to the country's high poverty levels, HIV/AIDS have had a devastating effect on family units and social cohesion. Lesotho has the second-highest HIV rate in the world at 25% of its population – one in four people in the country are living with HIV.

Over half of the 300 000 adults living with HIV in Lesotho are women.<sup>104</sup> This has a huge effect on issues such as absenteeism, productivity and the allocation of economic resources, as more resources (that might otherwise go into investment) are committed to HIV-related programmes. These realities have placed a tremendous burden on the state, which has neither the financial means nor the human capacity to properly address the needs of the most

marginalised within society. To tackle these challenges in a meaningful way, the country needs protracted growth that is robust and equitable.

### Evidence-based policy

The country's policies must respond directly to the needs of the citizens. Research and development can assist the government to make informed decisions and ensure that policies are evidence-based. However, this is too infrequent to allow for timely analysis and policy corrections.<sup>105</sup> A lack of funding has also made it difficult for organisations to produce research on important topics such as corruption and sustainability. Lesotho's indigenous knowledge is another untapped resource.

<sup>104</sup> Help Lesotho, "Impact and Prevalence of HIV in Lesotho", 2022.

<sup>105</sup> BTI Transformation Index, Lesotho Country Report 2022 (Gütersloh: Bertelsmann Stiftung, 2022).



## Steering capacity

Policy steering depends on proper operation of government institutions. In Lesotho, some of the most serious challenges are cronyism and nepotism, which are rife in the public sector. The government failed to implement the five-year NSDP I. The biggest challenge to the implementation of development plans in Lesotho has been poor coordination and a lack of financial support to ensure that targets are met. Donors play a critical role in supporting Lesotho, as the EU, China, Japan and others continue to donate enormous amounts of development aid to government programmes. There is, however, not much to show for it.

Policy learning is a huge handicap. The country relies heavily on the support of intergovernmental organisations and international financial institutions to set its policy direc-

tion. Policy formulation is not based on scientific research, which makes it highly subjective. Also, the government has failed to maintain the implementation of policies that have earned the country a lot of respect from international players and resulted in development aid being pledged to support government programmes. It has also failed to ensure that it created platforms for local experts and public servants to learn from international consultants.

The lack of a pay structure for international consultancies makes it easy for these consultants to be paid whatever they charge without benchmarking against regional rates. In addition, the government has failed to include skills-transfer provisions in major government contracts so that public servants can learn from contracted companies and consultants. This leaves the country dependent on consultancies for the continuity of the projects they implement.



## Resource efficiency

Appointments and dismissals in the public service are influenced by political affiliations. Principal secretaries appointed during Mosisili's regime (2014–17) had to vacate their offices with the change of government. Many contested the general elections while retaining their positions in order to use government resources to finance their election campaigns. The trend continues unabated.

The government of Lesotho has struggled to use state resources properly, a case in point being public procurement regulations, which are often not followed. The government has come to use virements (transferring funds from one account to another), which bypass normal procure-

ment procedures, in order to misappropriate public funds. For example, the award of the government fleet services tender was mired in controversy and maladministration. Ministers and senior government officials diverted money budgeted for programmes to finance international travel. Recently MPs awarded themselves an LSL 5 000 (USD 312) travel allowance, incurring the wrath of ordinary citizens.<sup>106</sup>

Lesotho regularly holds local government elections, which establish community councils that would ideally manage development agendas. However, devolution of power and resources is still a challenge, as power remains with the central government and resources and project implementation are used to score political goals for political elites at

<sup>106</sup> Pascalinah Kabi, "Youths To Petition Parly Over M5000 Fuel Allowances", Lesotho Times, August 24, 2021.



the central-government level. The community council projects are not independent of the central government. (See Decentralisation and service delivery.)

Public policy in Lesotho also suffers from weak policy coordination. The most important feature of politics in the country is personality, not policy. Government ministries often compete for scarce resources and for the prioritisation of their policies. The inability of the office of the prime minister to coordinate policy formulation and implementation is a seminal weakness in the government machinery.

Inadequate coordination can be attributed to corruption and a lack of leadership on the part of both bureaucrats and politicians. The office of the prime minister is not equipped with impactful experts that can provide guidance to other

government ministries. Where ministries are competing, a decision will be based on other factors, such as the influence of the minister within the ruling party. The major challenge for the coalition government has been that ministries have become fiefdoms for coalition partners.

Fiscally, the Ministry of Finance remains the custodian of revenue collection and is responsible for financing specific projects. However, the major challenge is that the implementation of projects lies with the line ministries. Since funds are not disbursed through Parliament, they tend to be used sparingly. There have been serious public disagreements between government officials about whether the Ministry of Finance did the right thing by implementing austerity measures while line ministries were seeking to increase spending in order to finance their programmes.



Public procurement regulations are not adhered to. For instance, the Ministry of Public Works awarded big construction projects to a Chinese construction company – China Geo – under the pretext that the company could build roads that were beyond the capacity of local construction companies.<sup>107</sup> The Office of the Ombudsman heard evidence against the appointment of a new commissioner of Lesotho Correctional Services, while the former commissioner was placed on forced leave. The new commissioner promoted officers, which the Ombudsman recommended be reversed.

There are diverse views on whether the country is making any progress as a democracy or a market economy. Awarding tenders to Chinese-owned companies without adhering to a competitive process is one

example of the public procurement predicament. Government meddling in forcing contracts between wool and mohair farmers and a Chinese-owned company created discomfort among major political players. The government also created a monopoly for Meraka, another Chinese-owned company, to import red meat to Lesotho. Its competitors were forced to buy meat from it instead of farmers from neighbouring South Africa.<sup>108</sup>

Interestingly, the NSDP II outlines numerous key constraints to growth and development in the country, including inadequate and outdated legal, regulatory and policy frameworks, resulting in the most part from weaknesses in national governance. Specifically, policy challenges include the following.

<sup>107</sup> Mohalenyane Phakela, “Local Contractors Cry Foul Over Chinese Dominance”, Lesotho Times, June 16, 2018.

<sup>108</sup> Refiloe Mpobole, “Meat Traders Feel the Heat”, The Post, September 21, 2021.



## Poverty and social protection

This is perhaps the most pressing issue. Recent statistics indicate that half (49.7%) of Lesotho's population lives below the national poverty line, and about one-quarter (24.1%) in extreme poverty.<sup>109</sup> Poverty varies by geographic location, with rural areas still harder hit than urban areas. About 61% of the rural population remains poor, while only 28.4% of the poor live in urban areas. The spatial rural/urban distribution of poverty has not shown significant changes over time. (See Perpetual poverty, deprivation and severe socio-economic inequalities below.)

## Healthcare: Pandemic

Currently, Lesotho's healthcare system is overwhelmed by the COVID-19 outbreak. When the healthcare system collapses, deaths from the outbreak itself can quickly be

exceeded by deaths from preventable or treatable conditions that are no longer being managed by the failing system. Lesotho has a fragile healthcare system owing to the burden of other pandemics and system deficiencies.

Despite relatively high government expenditure on healthcare (10.6% of GDP) and government-subsidised access to health services, the healthcare system does not function effectively and much of the population is geographically constrained from accessing such services.

Lesotho has high incidences of HIV and tuberculosis (TB), high infant and maternal mortality rates, and only six nurses, one physician and one pharmacist per 100 000 inhabitants. Besides the obvious challenge of COVID-19, Lesotho also grapples with HIV/AIDS, TB and cancer of all kinds.

<sup>109</sup> World Bank, Lesotho Social Protection and Systems Review (Washington DC: World Bank, 2021).



### Political instability and policy capacity

The country has experienced three episodes of political regime change within three years as a result of unstable coalition administrations. Unstable coalition governments remain a threat to the country's policy stability and economic development generally. It has had three general elections during the past eight years.<sup>110</sup>

According to a review of the NSDP I, chronic political uncertainty and politicisation of civil service management were one of the key factors that led to the sub-optimal implementation of the plan. Political uncertainty has negative effects on private investment, families and communities, which are invariably a burden for women. The political uncertainty also affects investor confidence negatively and slows down economic growth.

<sup>110</sup>Government of Lesotho, National Strategic Development Plan II.

### Food insecurity and the climate change-induced fragility of the agricultural economy

Land quality is deteriorating in the country as a result of climate change and excessive or inappropriate human exploitation. This environmental degradation is largely attributed to increased use of natural resources for farming and grazing, and a growing dependency on biomass as a source of fuel.

The most affected areas are the highlands, rural areas and the Senqu Valley. At the same time, the country has lost vast tracts of arable land owing to the fast-paced encroachment of settlements. This, in turn, has been blamed on poor implementation of land appropriation policies and legislation and lack of enforcement thereof. As a result, the country experiences poor agricultural production.



Moreover, Lesotho experiences extreme weather conditions characterised by recurrent droughts, heavy rainfall and floods, strong winds, early/late frosts, hail, snowstorms and emerging signs of progressive desertification caused by climate change. Increasingly warmer temperatures and lower levels of rainfall have had significant implications for agriculture, food security, poverty and vulnerability.

Despite being one of the smallest contributors to climate change globally, Lesotho is among the countries facing severe consequences of climate change. The occurrence of extreme weather conditions requires the country to use its already scarce financial and other resources in relief efforts, rather than helping to finance measures geared towards economic growth and employment.

### Service delivery: Access

The state plays a vital role in the delivery of a wide array of public services, from justice and security to services for individual citizens and private enterprises. In addition to traditional public services such as healthcare or education, there are also administrative services such as the delivery of licences and permissions, which are subject to administrative regulations.

The Lesotho Public Sector Modernisation Project, financed by the World Bank, was intended to help the country strengthen its public administration, improve efficiency in resource management systems and increase its capacity for service delivery, which in turn would help improve its poverty reduction efforts.<sup>111</sup>

<sup>111</sup>World Bank, "Public Sector Modernisation Project", 2016



Yet Afrobarometer survey data shows the growing disenchantment of Basotho with the state of service delivery.<sup>112</sup> Basotho are disgruntled by the perpetual failure of the democratic government to improve living conditions in the country.

Unemployment, corruption, nepotism, pollution, insecurity, crime, indebtedness and hunger continue to worsen, irrespective of the country's having had democratic governance since 1993. Citizen engagement, it should be remembered, as an instrument of reform is only as good as the use that public officials make of it.

## Recommendations

In order to address lopsided and incoherent policymaking in Lesotho, it is recommended that the government:

- ◆ Place greater emphasis on research and development, including by non-state entities; and
- ◆ Prioritise investments and policies that ensure responsible management of land, soil and water.

<sup>112</sup> Libuseng Malephane, Declining Trust: Basotho Perceptions of Government Corruption and Performance Drive Drop in Popular Trust (Afrobarometer Policy Paper No. 57, June 2019).



### All stakeholders should:

- ◆ Invest in climate-smart technologies. Unsustainable land-use practices contribute to excessive soil erosion and increased environmental degradation, and will undermine agricultural productivity if not arrested immediately. Climate change will only exacerbate environmental degradation, as Lesotho is already prone to drought.

Therefore, climate-smart technologies, including low-energy, low-water irrigation technologies, conservation agriculture, energy-efficient production and post-harvest processes, and the gradual replacement of biomass with clean and renewable energy must be promoted.



## CHAPTER 11

# 10

## Perpetual poverty, deprivation and socio-economic inequalities



The issues discussed here relate to the democracy and good political governance thematic area, specifically:

### Objective 3: Poverty, unemployment and inequality

- Question 1:** What policies and strategies has the government put in place to reduce poverty and inequality, particularly in terms of access to resources and basic services?
- Question 2:** What policies and strategies have been adopted by your country to combat social inequality, in particular with regard to people with disabilities?
- Question 3:** What are the national programmes, policies and strategies put in place to reduce poverty, in particular the feminisation of poverty?



## Introduction

Poverty affects different people and communities in various ways and to varying degrees. The World Bank states: 'Poverty has many faces, changing from place to place and across time, and has been described in many ways.'<sup>113</sup>

Poverty in today's world is multifaceted and so defies a general definition. However, the bottom line is that poverty describes a condition where individuals or communities lack financial resources and other essentials to achieve a minimum standard of living.

**P**overty denotes the state of having insufficient income to enable one to meet basic needs. One study published in South Africa argues that poverty is 'the inability to attain a minimal standard of living measured in terms of basic consumption needs or the income required to satisfy them'.<sup>114</sup> Poverty that presents itself consistently over time produces a situation of extreme deprivation, characterised by the inability to satisfy basic human needs.

<sup>113</sup> Libuseng Malephane, Declining Trust: Basotho Perceptions of Government Corruption and Performance Drive Drop in Popular Trust (Afrobarometer Policy Paper No. 57, June 2019).

<sup>114</sup> J May, Poverty and Inequality in South Africa: Report Prepared for the Office of the Executive Deputy President and the Inter-Ministerial Committee for Poverty and Inequality (Pretoria: Human Sciences Research Council, 1998), 3.



Deprivation reflects a lack of the material resources regarded as necessities.<sup>115</sup> Poverty and deprivation are therefore intertwined. Perpetual poverty occurs when people do not have resources such as education and financial capital to help them get out of the poverty situation, thereby further entrenching the poverty cycle.

Lesotho is beset by poverty and deprivation despite an overall decrease in the poverty rate from 56.6% of the population in 2002 to 47.7% in 2017, according to a study by the World Bank.<sup>116</sup> The gap between rural and urban poverty is wide, with the former having experienced an increase in poverty in recent decades.

In 2017, 67.8% of the people living in the country's rural, mountainous areas were poor, marking an increase of 10 percentage points from 56.9% in 2002. The phenomenon of rural–urban migration has led to a decrease in the number of rural poor from 864 000 to 801 000, while the number of urban poor has increased from 180 000 to 196 000. The figures also show that female-headed families, the less educated, the unemployed, and the caretakers of large families and children are most affected by poverty.<sup>117</sup>

<sup>116</sup> Jeffery D Sachs, *The End of Poverty* (New York: Penguin Press, 2005), 416.

<sup>117</sup> World Bank and Bureau of Statistics, *Lesotho Poverty Assessment: Progress and Challenges in Reducing Poverty* (Washington: World Bank, 2019), 15.

<sup>118</sup> World Bank and Bureau of Statistics, *Lesotho Poverty Assessment*, 15.



In addition, 57% of a population of 2.2 million people live on less than \$1 a day; the government allocates 7% of the national budget to social support programmes (school meals, pensions, child grants, public works, etc.); the unemployment rate among people below 35 years is 29%; and the HIV/AIDS prevalence rate in the 15–49 years age group is estimated at 25.6%.<sup>119</sup>

A more comprehensive measure of poverty than income is the Human Development Index (HDI), which is 'a summary measure for assessing long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living'.<sup>120</sup> Lesotho's HDI value for 2019 was 0.527, placing the country at 165 out of 189 countries and territories.<sup>121</sup>

In terms of the Multidimensional Poverty Index, which is a measure of multiple overlapping deprivations suffered by individuals in the dimensions of health, education and standard of living, 19.6% of Basotho (413 000) are multidimensionally poor and 28.6% (603 000) vulnerable to multidimensional poverty.<sup>121</sup>

Poverty impacts families, women, children and society to varying degrees. Its repercussions are far-reaching and lead to social isolation, low educational attainment, unemployment, rural-to-urban migration and unequal development, thus affecting the mental and physical health and social interactions of the poor. The trend in Lesotho is for poverty to be inherited, as many children born in poor families tend to grow up to be poor themselves.

<sup>119</sup> World Food Programme, "WFP Lesotho Country Brief", September 2021.

<sup>120</sup> UNDP, African Human Development Report 2016: Accelerating Gender Equality and Women's Empowerment in Africa (New York: UNDP, 2016), 20

<sup>121</sup> UNDP, Human Development Report 2020: The Next Frontier, Human Development and the Anthropocene (New York: UNDP, 2020), 243.



Therefore, the household into which a child is born affects his/her lifelong development. According to the UN Children's Fund, the general environment a child faces at an early age is particularly important for developing skills and capabilities, and is mostly shaped by household members. This environment enables children to develop the required cognitive and socio-economic skills that will enable them to seize and use opportunities later in their lives.

In Lesotho, this process reinforces inequalities. Poor Basotho, for example, lack access to good healthcare services, as better private healthcare facilities are more expensive than the sub-standard public healthcare facilities. For people living in poverty in Lesotho, the general lack of income and assets is compounded by the failure of the government to provide essential services.

This is recognised by the NSDP II, which notes that persistent poverty and growing inequality are the key challenges confronting the country. (Note that, although the data in the document is slightly different from the more detailed information provided by the World Bank and Lesotho's Bureau of Statistics cited above, the overall message is consistent).

The NSDP II data is recorded here to illustrate the operating assumptions of state policy. According to the NSDP II, 49.8% of the population was living below the national poverty line in 2017/18, with about 61% living in rural and 26.8% in urban areas.<sup>122</sup>

Unemployment in 2017/18 was estimated at 33.8%, and was higher for females and youth at 39.7% and 32.3% respectively, compared to males at 26.2%.<sup>123</sup>

<sup>122</sup> Government of Lesotho, National Strategic Development Plan II, 23.

<sup>123</sup> Government of Lesotho, National Strategic Development Plan II, 23.



Inequality, as measured by the Gini coefficient (a frequent measure of inequality that attains the value of 0 if all resources are distributed equally, and the value of 100 if one person has all the resources),<sup>124</sup> was estimated at 0.45.<sup>125</sup> Lesotho's population can, in other words, be described as afflicted by poverty, substantively unemployed and highly unequal.

To address the triple incidences of poverty, inequality and unemployment, the government commits through the NSDP II to shift away from a state-led, inadequate, non-inclusive and unsustainable model towards a new private sector/export-led growth model that will ensure inclusive growth and job creation.<sup>126</sup>

The intention of this new growth model is to create 9 863 jobs a year, and a total of 49 319 jobs (23 096 from the productive sectors and 26 223 from the rest of the economy) by the end of 2023.<sup>127</sup>

The government has identified agriculture, manufacturing, tourism and creative industries, technology and innovation sectors as the KPA 1 in the NSDP II, into which it will make an undisclosed amount of public investment.<sup>128</sup> These are very ambitious targets whose achievements are difficult to predict, given that only one year is left of the NSDP II's implementation period.

<sup>124</sup>World Bank, "Metadata Glossary", <https://databank.worldbank.org/metadataglossary/gender-statistics/series/SI.POV.GINI>.

<sup>125</sup>Government of Lesotho, National Strategic Development Plan II, 23.

<sup>126</sup>Government of Lesotho, National Strategic Development Plan II, 52.

<sup>127</sup>Government of Lesotho, National Strategic Development Plan II, 52.

<sup>128</sup>Government of Lesotho, National Strategic Development Plan II, 84.



The government envisages the following as immediate outcomes of this new growth model: sustainable commercial agriculture and food security; diversified products and effective business linkages; operational industrial clusters; strengthened research for policymaking and product development; functioning industrial parks; and improved use of ICT.<sup>129</sup>

However, the extent to which it will achieve these outcomes, which have a huge bearing on reducing poverty, unemployment and inequality, by the target year of 2023 remains to be seen. It should be noted that, while poverty requires the attention of the government, there must also be inputs from and interaction between different social groups and the government in dealing with it.

All must contribute to the process of policymaking without any necessarily dominating in the fight against poverty. One scholar argues:<sup>130</sup>

Where governments may have the authority to decide, it may lack the financial means or expertise to do so in a meaningful way. Actors need each other because resources like authority, expertise, finances and political support are not usually in one source.

Therefore, poverty alleviation and rural development will not be realised effectively without the involvement of all developmental stakeholders, including non-governmental organisations and community-based organisations. Civil society, government and the private sector must complement one another in policy-guided development initiatives.

<sup>129</sup> Government of Lesotho, National Strategic Development Plan II, 84.

<sup>130</sup> H Daemen, "Deepening Democracy", in Good Governance for People: Policy and Management, eds. F Theron, A van Rooyen & J van Baalen (Bellville: School of Public Management and Planning: University of Stellenbosch, 2000), 57.



To solve the problem of poverty in Lesotho, it is imperative that the government create an appropriate environment for PPPs. The role of all players needs to be encouraged. As the people put democratic governance into place, it needs to be answerable and accountable to their needs. There is also a need to balance power; to create a common objective between the different social groups of the Basotho community.

Moreover, the overwhelming majority of Lesotho's rural poor depend on agriculture for survival. This gives this part of the economy an importance that is not captured in GDP statistics. The challenge faced by many households is a lack of access to arable land – agriculture yields are inconsistent and often very low, which further compound

hunger and malnutrition. As a result of the high rate of illiteracy, the poor struggle to access formal employment and thus lack the means to migrate in search of better opportunities. Job creation that is accessible to Lesotho's poor is also essential, especially in view of the large number of Basotho migrant workers employed in the informal sector in South Africa.

### Recommendations

In order to address poverty and deprivation in Lesotho, it is recommended that the government:

- Enhance economic growth through the proper collection of taxes, improved public accountability and increased political legitimacy;



- Consolidate poverty-alleviation funds, distribute them equitably and account for such spending. This requires strong political will and commitment on the part of the government and the empowerment of the masses to organise and create mechanisms that can hold it accountable;
- Develop infrastructure to assist in stimulating economic growth. This will also improve quality of life through greater access to roads in rural areas, water and sanitation, telecommunications and energy, as well as improved settlements and housing and health facilities; and
- Pursue a decentralisation agenda. Decentralisation

of basic public and essential services could afford the rural poor access to services without their having to travel long distances to towns, thereby enhancing rural development. This could also enhance their inclusion and participation in critical decision-making in issues that largely affect their livelihoods.

#### All stakeholders:

- Invest in and improve the state of the country's agriculture sector to enhance food security, thus curbing poverty.



## CHAPTER 12

### Conclusion



The purpose of this report was to assess the state of governance in Lesotho, using the 10 governance issues identified by civil society groups. The country is most likely to make progress on these 10 issues if the ongoing national reform process is concluded and appropriate constitutional and legal reforms are approved by Parliament. These include the electoral system, weak accountability systems and corruption, separation of powers, and decentralisation and service delivery.

Gender-based discrimination under customary law and lack of public participation in the public policy process could also be addressed through the reform process. While they are not on the reform agenda, there is still room for them to be addressed by Parliament. Poverty and deprivation, poor infrastructure, the high crime rate and poor delivery of justice could be addressed through government provision of the requisite resources.



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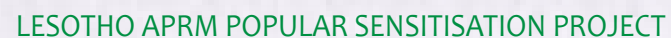
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NSAS' SUBMISSION TO THE APRM IN LESOTHO

# Notes

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## GOVERNANCE ISSUES





# LESOTHO CIVIL SOCIETY

## Submission to the APRM

