

Parliamentary Reforms

A Report Prepared for the Lesotho National Dialogue Preparation Committee (NDPC)

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1. Executive Summary

In terms of the Terms of Reference for this assignment, the Parliamentary Reforms section was tasked to “to consolidate public inputs and other content of the Reforms Dialogue process within its mandate, specifically under the thematic area of “Parliamentary Reforms”. The report distills, synthesizes and consolidates the inputs of the citizens of Lesotho from four sources, namely, the *Multi-stakeholder National Dialogue Report (2018)*; the *In-District Consultations Consolidation Report (2019)*; *Diaspora Consultations Consolidation Report (2019)* and *written submissions* to the National Dialogue Planning Committee (NDPC). The section presents these inputs using the *Reporting Structure Template* designed by the (NDPC). Inputs have been carefully studied and consolidated into three categories, indicating the time frames for action as defined by the *Lesotho We Want: Dialogue and Reforms for National Transformation: Vision, Overview and Roadmap (2017)*. ¹*The report is structured in three main parts, namely, the background and objectives, the results constituting the inputs of the citizens of Lesotho on the parliamentary reform process and conclusions.*

2. Contextual background and objectives

The history of Lesotho’s parliament can be traced back to the year 1903 with the establishment of the Basutoland National Council (BNC) which was a unicameral institution mandated to make laws in connection with any public matter except for areas reserved for the Resident Commission. At the advent of self-government of 1965 and political independence in 1966, a new constitutional framework came into force and a new bicameral parliament was established.

¹ The Lesotho We Want: Dialogue and Reforms for National Transformation, 2018.

Lesotho's attainment of political independence in 1966 ushered in a new form of governance, that of parliamentary democracy. However, this new culture was short-lived for, in 1970, it was replaced with an undemocratic rule which lasted for twenty-three (23) years. In 1993 the country witnessed the return to democratic rule which, however, was to face daunting challenges of political instability the worst of which was the 1998 crises caused by the inadequacies of the First-past-The-Post (FPTP) electoral system. In response to the crises, a structure styled Interim Political Authority (IPA) was established to review the FPTP electoral system which tended to exclude other political parties from parliament even when some had some reasonable support from the voters. All twelve political parties registered with the Independent Electoral Commission (IEC) were represented in the IPA. The IPA came up with the Mixed Member Proportional (MMP) electoral model to foster a more inclusive parliamentary representation and a more widely representative Parliament leading to national unity.

The lessons of the two previous national elections of 1993 and 1998, in which under the FPTP model, one political party had won all parliamentary seats in the first, and all but one in the second, suggested a need for a review of the electoral model. After discussions that lasted for almost two years, the IPA reached a consensus to increase the number of parliamentary seats (65 in 1993 and 80 in 1998) to one hundred and twenty (120) for the next election which was to be held in 2002. Eighty (80) of these seats were to be constituency-based and the other 40 based on the PR component of the model.

The 2002 general elections were the first to be conducted under the MMP system not only in Lesotho but the African continent as a whole. Outcome of these elections saw ten (10) out of nineteen (19) parties securing representation in the National Assembly. This resulted in the most inclusive and widely representative House in the country's electoral history. As an outcome of this inclusiveness and the revitalised culture of national dialogue that had helped to bring it about, Lesotho seemed to enjoy an unprecedented period of political stability. As things stood, this would enable the country to focus on

key development challenges facing the nation. Building on the nation's tradition of dialogue in addressing serious matters of state, the IPA process demonstrated value and precedence of peaceful negotiations over conflict. Politicians could disagree over issues, but they were accountable to hold their constituents in line; to forego narrow partisanship for the greater national good, and to find lasting solutions to the country's development challenges. Because there was peace and tranquillity, Parliament was able to focus on development and become seized with finding ways and means to successfully navigate the new political terrain and institutionalize democratic norms and practices necessary for effective parliamentary governance. Towards this end, Parliament commenced a transformation journey of parliamentary reforms. The reforms were intended to transform Parliament into a responsive, effective, accountable and legitimate institution of the state.

The reforms programme was launched on 15th November 2004 by the Prime Minister of Lesotho, Rt. Hon. P.B. Misisili, MP who inter alia, pointed out that: "There is a need to constantly review our democratic institutions, processes and practices so that they command public confidence and promote participation. Parliamentary reforms should promote respect and safeguard the supremacy and sovereignty of Parliament"

The objectives of the parliamentary reforms programme were:

- To create a foundation that will be a bedrock of sustainable democratic practice in Lesotho;
- To empower Parliament as a custodian of values and principles of democracy to fulfil its constitutional mandate of legislation, oversight and representation;
- To raise the visibility and image of Parliament;
- To increase participation in parliamentary process; and
- To review the conditions of service for members and staff of Parliament.²

It was anticipated that reforms would produce the following outputs:

² Official launch of the Parliamentary Reforms Programme, 15 November 2000

- Enhanced Committee system;
- Revised Standing Rules and Orders;
- Improved terms and conditions of service of members and staff;
- Establishment of a framework to enable public participation in parliamentary process;
- Improved members'/constituents relations;
- Enhanced capacity of members and staff; and
- Establishment of a Parliamentary Service Commission.³

It is almost fifteen (15) years since the launch of the parliamentary reforms and the questions that arise are: *What Worked? What did not work? What should have been done? Put differently and simply the question is: What progress has been made?*

Progress has been made in some areas, but a discussion of each is beyond the relevance and scope of this report. Suffice it however, to state that prior to the reforms, only the Public Accounts Committee (PAC) carried out substantive parliamentary oversight. Since the "2004 Wave" of reforms the oversight function has been enhanced through the establishment of portfolio committees. Also worthy of note is the improvement in the practice and procedure of both Houses of Parliament (Improved Standing Orders), parliamentary infrastructure and facilities have received considerable improvement, and a foundation for civil participation is in place.

The "2004 Wave" of parliamentary reforms occurred under relative peace, calm and tranquillity and the same can hardly be said about the current wave of parliamentary reforms which are taking place in the context of political instability characterised by coalition politics brought about by the advent of hung parliament and electoral cycles that do not run the

³ ibid

full course. The “2004 wave” of reforms commenced without a comprehensive strategic direction that creates a framework and context of political, socio-economic and technological factors within which parliament was to reform.

The current wave of parliamentary reforms is an integral component of the comprehensive national reforms and as such, it stands in good stead to accomplish better results because of the characteristic complementarity inherent in the comprehensive approach. With the support of the United Nations Development Programme (UNDP) and facilitated by the Southern African Development Community (SADC), the vision of the current national reform agenda is “The transformation of the Kingdom of Lesotho into a just, prosperous and stable country marked by effective and people-focused institutions; national unity of purpose; rule of law, good governance and human rights.”⁴ The overall objective of the reforms is to facilitate the national transformation of Lesotho to a just, prosperous and stable society through:

- a. The promotion of long-term national stability, unity and reconciliation;
- b. The creation of professional, functioning and effective institutions for the efficient management of public affairs, service delivery and development;
- c. Building a national consensus on and implementation of constitutional changes as needed.

The specific objectives of the reforms include:

- a. Promotion of stakeholder consensus on the reforms and long-term national unity and reconciliation;
- b. Reform and re-organization of the security establishments to ensure fitness for purpose and responsiveness to the country’s needs;
- c. Reform and creation of an effective, efficient, professional and results-oriented civil service for enhanced service delivery and development;
- d. Review and reform of the justice sector to ensure greater justice, rule of law and protection of human rights;

⁴ The Lesotho We Want: Dialogue and Reforms for National Transformation: Vision Overview and Roadmap (2018).

- e. Review and reform of critical institutions such as parliament and relevant legislation, including that pertaining to elections and representation, to ensure enhanced institutional independence and stability of politics; and
- f. Generate consensus on an inclusive mechanism to undertake a review of the Constitution to ensure its alignment to the needs of present-day Lesotho.

More relevant to this report the objectives of Parliamentary Reforms are spelled come up measures to (1) enhance political stability including those to bring parliamentary practice into line with MMP system (particularly relating to representation, political parties and government formation’ and (2) strengthen Parliament by enhancing its autonomy and its ability to fulfil its legislative, monitoring and oversight functions⁵.

3. Results

The common theme that resonates throughout the submissions and consultations relates to two broad areas, namely;

- i) The continuity of Parliament amidst the challenges of, among others, floor crossing
- ii) Membership of Parliament as it pertains to size, qualifications and benefits

However, for purposes of clarity, the input/challenges have been synthesized in broader terms and at times quoted almost verbatim. The suggested solutions have been categorized into those that can be implemented within the short, medium and long term.

A. Short Term

Short-Term Issue	Challenge	Status Quo	Possible solution	Type Action required [Legislative]	Ministry Responsible
1.1. Floor-Crossing in Parliament	Floor crossing is not regulated and as such it results in instability,	Floor-Crossing is not regulated	- Floor crossing in the National Assembly should be provided for in the Standing Orders	- <i>National Assembly Electoral Act, 2011</i> should be amended in this regard to contribute	Law & Constitutional Affairs

⁵ Ibid.

	abuse of public funds, early elections and shortening of the parliamentary term and MPs do not consult their constituencies before crossing the floor.		in accordance with the Constitution (as may be amended). - Floor-crossing in the National Assembly should be provided for in the Constitution and regulated by an act of parliament. -MPs must resign their seats if they want to cross the floor and by-elections held in their constituencies.	towards this recommendation ensuring stable government. - MPS who want to cross the floor should resign and by-elections called in their constituencies. Voters vote for an MP they also vote for the political party he/she represents. It is only legitimate that MPs who want to cross the floor should get the mandate of the electorate.	
1.2. Benefits of Ministers and MPs	Benefits of Ministers and MPs and other authorities are a burden to the national purse and do not take into consideration the national economic status. e.g. the M500 000 interest-free loans	Ministers and MPs receive huge benefits which are a burden to the national economy	-Interest-free loans for Ministers, MPs and other authorities should be abolished forthwith. -These loans must be charged interest and all beneficiaries of these must pay both the loan and interest.	- <i>The Members of Parliament Salaries (Amendment Act, 1998 and Members of Parliament Salaries (Amendment of Schedule) Regulations, 2019)</i> should be amended. - The suggestion that the loans must be charged interest and paid back is legitimate.	Ministries of Parliamentary Affairs and of Law & Constitutional Affairs
1.3. Self-representation of persons with disabilities	Persons with disabilities face socio-economic and political exclusion	Persons with disabilities are underrepresented in key decision-making bodies	There should be self-representation of persons with disabilities (male and female) in both Houses of Parliament	- <i>National Assembly Electoral Act, 2011</i> should be amended to make it mandatory for political parties to include persons with disabilities on their PR lists - Among the nominated Senators, at least one should be from the	Law & Constitutional Affairs

				people living with disabilities [<i>Action required administrative</i>]	
1.4. Children's Parliament	Children's Parliament is not legislated, therefore there is no formal platform from whence their issues can be addressed.	Children's Parliament is not legally recognised	Legislate for recognition of the Children's Parliament	It is not a general practice in the world to legislate for a children or youth parliament. In recognizing the need for the youth to have their voices heard, Youth Parliaments are organized by national youth councils in collaboration with government ministries responsible for youth and usually meet at least once a year.	Gender, Youth, Sport and Recreation
1.5. Too many political parties	Lesotho has too many political parties which add no real value to the country's democracy and there is a low threshold and poorly regulated lists for registration of political parties.	Legal framework for regulation of political parties is weak	-A threshold for registration of political parties with IEC should be revised up to at least 5, 000 members to be verified by the IEC. -Abolish party funding	-Existence of political parties should be provided for in the Constitution and a new <i>Political Parties Act</i> with appropriate regulatory mechanisms should be promulgated to address all these concerns. -Abolishing party funding would disadvantage opposition parties. Party funding makes the electoral terrain fairer in line with regional and global trends.	Law & Constitutional Affairs Law & Constitutional Affairs
1.6. Mixed Member Proportional System (MMP)	The MMP System allows candidates who would otherwise not be	The MMP System is not properly applied	The MMP System should be abolished in favour of the First-Past-The-Post (FPTP).	- <i>The National Assembly Electoral Act, 2011</i> should be amended to provide for a pre-determined	Law & Constitutional Affairs

	in Parliament to get in for personal rather than public good			threshold of votes for political parties to qualify for PR seats in Parliament and also allow voters two ballots: one for a party of their choice and another for a candidate. This is how the system was designed in New Zealand where Lesotho borrowed the model from. -Returning to the FPTP system would take Lesotho back to the crises which led to the change of the very FPTP system.	
1.7. Separation of powers 1.8. between the executive and legislative arms of the state	Parliament relies on the Executive for financial and human resources.	There is no clear separation of powers between the executive and the legislative arms of the state in respect of resource control.	An independent Parliamentary Service Commission should be established to grant Parliament its independence from the Executive, determine the conditions of service of both MPs and staff and control its resources	Enactment of the law establishing an independent Parliamentary Commission which is independent of the Executive	Law & Parliamentary Affairs
1.9. Parliamentary Practice and Procedure	Current standing orders were adopted in 2007 and some of them seem to create bottlenecks during parliamentary debate and therefore need to	Standing Order 29 gives the Speaker definite responsibility to determine if the matter is really urgent. Standing order 65 provides for withdrawal of bill but does not provide for the	Review and update Standing orders 29 and 65	Amendment of Standing Order 29 and Standing Order 65	National Assembly

	be revised and updated.	procedural withdrawal of subordinate law (Regulations)			
1.10. Joint Standing Orders and Rules of Procedure	There is a need to harmonize relationship between the Senate and the National Assembly	The two Houses currently use separate Standing Orders and do not have formal joint sittings	Create formal arrangements that will facilitate: Joint sittings of the two Houses and Joint Committees	Formulation of joint standing orders to facilitate joint functions that promote smooth parliamentary governance. For instance, the British Parliament which is relatively similar to parliament of Lesotho, already operates separate and joined standing orders and joint committees.	Parliament of Lesotho
1.11. Recall of Constituency-based MPs	MPs continue to be in Parliament even when voters feel they no longer represent them properly	voters do not have the right to recall MPs	Create a mechanism for recall of MPs	No action recommended here. The practice in all parliamentary systems is that MPs are voted to serve full term of parliament. It would be extremely disruptive to recall MPs before the end of the parliamentary term	

B. Medium Term

Medium Term Issue	Challenge	Status Quo	Possible Solutions	Type of Action: [Constitutional amendment]	Ministry Responsible
2.1. The size of parliament	The size of parliament is too large for a small country like Lesotho	Lesotho has a 120-member parliament National Assembly	The size of the National Assembly should be reduced from 120 to 80 members	<i>The Fourth Amendment to the Constitution Act, 2001</i> should be amended to reduce the number of seats in Parliament from 120 to 80 seats, half of which could be PR and the other half FPTP	Law & constitutional Affairs
2.2. Minimum Academic qualification of MPs	There is no constitutional provision for the academic qualifications of MPs	Section 58 (2) (c) of the <i>Constitution</i> only requires MPs to be able to speak and to write either the Sesotho or English language well enough to take an active part in the proceedings of the National Assembly	-Section 58 (2) (c) of the <i>Constitution</i> should be amended to spell out minimum academic qualifications for MPs, as may be specified by an act of parliament from time to time. -Candidates for parliamentary seats must have at least a Bachelor's degree qualifications.	Section 58 (2) (c) of the <i>Constitution</i> should be amended to provide for academic qualification for eligibility of MPs. The move would enhance the capacity of MPs. However, great care must be taken to avoid an elitist parliament that is out of touch with the interests of the people it is supposed to represent. It is recommended that MPs must have at least "O" level qualifications.	Law & Constitutional Affairs
2.3. Term limit for Prime Minister	Prime Minister stays in power for as long as he/she is elected and his/her party has parliamentary majority support	<i>The Constitution of Lesotho</i> has no term-limits for Prime Minister	There should be two-term limits for Prime Minister	No action is recommended on this issue. Term-limits are not common in parliamentary systems; rather they are a feature of presidential systems. If the citizens of	

		in the National Assembly			Lesotho consciously want to have a hybrid system, the issue could be appropriate.	
2.4.	Bicameral parliament	Abuse of the bicameral nature of Parliament allows for candidates who have been rejected by the voters to be appointed into Senate without regard to any merit principle.	Section 55 of the <i>Constitution</i> provides for nomination by the King acting in accordance with the advice of the Council of State without spelling out criteria for such nomination	-Composition of the Senate should be left open for debate. -Retain the two houses of Parliament, but Senate should accommodate experts and marginalised groups.	- Section 55 of the <i>Constitution</i> should be amended to provide for nomination into the Senate only people with special expertise to add value to the legislative processes - The current composition of the Senate should be retained as it is reflective of the nature of Basotho as a nation. - Marginalized groups can be represented in the National Assembly through the PR component of the MMP system.	Ministry of Parliamentary Affairs
2.5.	Composition of the Senate	Composition of the Senate is not fully representative.	Senate is composed of the 22 Principal Chiefs and 11 other nominated members	- Senate should be abolished - Chiefs in Senate must be elected by the people and Principal Chiefs must be abolished.	No action required here. In a constitutional monarchical context, of which Lesotho is part, Senate performs an important legislative function as a House of review and therefore should not be abolished. It does not necessarily have to be representative; the National Assembly is.	

					-Chiefs cannot be elected lest they lose their status as chiefs.	
2.6.	Number of nominated members of the Senate	The 11 nominated members are too many and should be reduced. Furthermore, their nomination is not based on merit <i>per se</i> but on political consideration	Section 55 of the <i>Constitution</i> provides for nomination into Senate of 11 members	-11 Members of Senate who are nominated should be reduced and their nomination should be based on special expertise -Review the composition of the Senate to make the House politically neutral and non-partisan	Section 55 of the <i>Constitution</i> should be amended to reduce the number of nominated Senators six (6) to save national resources. This nomination should be based on special expertise and not on political criteria.	Law & Constitutional Affairs
2.7.	Prorogation of Parliament	The provision for prorogation of parliament is too broad.	Section 82 of the <i>Constitution</i> empowers the Prime Minister to prorogue Parliament	-Prorogation of parliament should be retained as a democratic tool that is used to mark the Sessions of Parliament. -Amend Section 82 of the <i>Constitution</i> to reduce the period of prorogation.	- Section 82 of the <i>Constitution</i> should be amended to reduce the period of prorogation of Parliament. - The conditions under which parliament can be prorogued should also be clearly stipulated in order to prevent the abuse of this practice.	Law & Constitutional Affairs
2.8.	Vote of no confidence in the Prime Minister	Vote of no confidence in the Prime Minister has resulted in the dissolution of Parliament and early elections	Section 83 of the <i>Constitution</i> provides for the prorogation of parliament by the King acting in accordance with the advice of the Prime Minister	-When a vote of no confidence against the Prime Minister succeeds, the Prime Minister should not be given the option of choosing whether or not to resign or dissolve parliament, but should in fact resign and a new Prime Minister be	-Section 83 of the <i>Constitution</i> should be amended to prevent vote of no confidence to have an impact on the continuity of Parliament. -The Prime Minister should resign once a vote of no confidence against him/her succeeds as it is	Law & Constitutional Affairs

			<p>elected from the existing Parliament to finish the remaining term of Parliament.</p> <p>-The King should have absolute authority to decide whether elections have to be called</p>	<p>a practice in parliamentary systems.</p> <p>-In democratic constitutional monarchical systems, kings/queens do not have absolute authority to call elections. Lesotho should not be an exception.</p>		
2.9.	Eligibility for pension by Prime Minister and Deputy Prime Minister	There is lack of clarity on eligibility for pension by former Prime Ministers and Deputy Prime Ministers who wish to serve as Members of Parliament after having served their term in those offices	Prime Minister and Deputy Prime Minister	<p>-Prime Minister and Deputy Prime Minister should be eligible for pension after serving five-year term.</p> <p>-Former Prime Ministers and Deputy Prime Ministers should be disqualified from membership of Parliament</p>	<p>- Section 59 (4) of the <i>Constitution</i> on disqualification for membership of parliament should be amended to include former pensionable Prime Ministers and Deputy Prime Ministers</p> <p><i>-The Prime Minister and Deputy Prime Minister (Retirement and Spouse's Benefit) Act 2011</i> should be amended to provide that the Prime Minister and Deputy Prime Minister should be eligible for pension after five-year term.</p>	Ministry of Parliamentary Affairs & of Law and Constitutional Affairs
2.10.	Separation of powers between the executive and legislative	Parliament relies on the Executive for financial and human resources.	There is no clear separation of powers between the executive and the legislative arms	<p>-Parliament should control its own resources</p> <p>-An independent Parliamentary Service commission should be</p>	An Independent Parliamentary Service Commission should be established to empower parliament to control its resources and enhance	Ministry of Parliamentary Affairs and Ministry of Law Constitutional Affairs

arms of the state		of the state in respect of resource control.	established to determine the conditions of service of both MPs and staff and control resources of Parliament	its independence from the executive.	
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C. Long-term

Long-Term Issue	Challenge	Status Quo	Possible Solutions	Type of Action Required [<i>Constitutional amendment</i>]	Responsible Ministry
3.3. Conditions of service between Senators and MPS	Lack of symmetry of the conditions of service for the members of the two Houses, resulting in the sense of seniority and superiority and inferiority	Conditions of service of the Senators and MPS are not the same	Conditions of service of members of these Houses should be standardised and harmonised	Establishment of the Independent Parliamentary Service Commission could address this issues	Ministry of Parliamentary Affairs

4. Conclusion

This report is a synthesis and consolidation of inputs from the citizens of Lesotho into the Parliamentary Reforms Thematic area as part of the overall national reforms programme. The inputs have been carefully distilled from the *Multi-stakeholder National Dialogue Report (2018)*; the *In-District Consultations Consolidation Report (2019)*; *Diaspora Consultations Consolidation Report (2019)* and written submissions to the NDPC. Key challenges that have been identified by the citizens

of Lesotho and covered in the tables above and the recommendations on how to address the challenges have been made carefully. If all the recommendations could be implemented Lesotho would have a strong and autonomous Parliament which is able to effectively perform its legislative, monitoring and oversight functions as the key objectives of the Parliamentary Reform process.