

COALITION POLITICS IN LESOTHO



A Multi-disciplinary
Study of Coalitions and
their Implications for
Governance

Editors

Hoolo 'Nyane

Motlamelle A Kapa

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DEDICATION

This book is dedicated to the memory of Dr Moletsane Monyake, who tragically met his untimely death after completing a seminal paper for this volume.

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LIST OF ACRONYMS

ABC	All Basotho Convention
ACP	Alliance of Congress Parties
AD	Alliance of Democrats
AG	Attorney General
AJA	Administration of the Judiciary Act
AMHC	All Mauritian Hindu Congress
ANC	African National Congress
BAC	Basutoland African Congress
BAP	Basotho Action Party
BBDP	Basotho Batho Democratic Party
BCP	Basutoland Congress Party
BDNP	Basotho Democratic National Party
BNP	Basotho National Party
CAM	The Comité d'Action Musulman
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CID	Criminal Investigation Division
CMW	Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
CORD	Coalition for Reforms and Democracy
COVID-19	Coronavirus Disease of 2019
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
DC	Democratic Congress
DCEO	Directorate on Corruption and Economic Offences
DPL	Democratic Party of Lesotho
DPP	Director of Public Prosecutions
ECF	Extended Credit Facility

ECK	Electoral Commission of Kenya
EMB	Election Management Body
FIU	Financial Intelligence Unit
FORD	Forum for Restoration of Democracy
FPTP	First-Past-The-Post
GDP	Gross Domestic Product
GNU	Government of National Unity
HRC	Human Rights Committee/Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
IFP	Inkatha Freedom Party
IMF	International Monetary Fund
IPA	Interim Political Authority
JIMC	Monitoring and Implementation Committee
JSC	Judicial Service Commission
KANU	Kenya African National Union
KSC	Kenya Social Congress
LCD	Lesotho Congress for Democracy
LCN	Lesotho Council of Non-Governmental Organisations
LCS	Lesotho Correctional Services
LDF	Lesotho Defence Force
LHWC	Lesotho Highlands Water Commission
LLA	Lesotho Liberation Army
LMPS	Lesotho Mouted Police Service
LP	Labour Party
LPC	Lesotho People's Congress
LPF	Lesotho Para-Military Force
LWP	Lesotho Workers Party
MCA	Millennium Challenge Account

MEC	Movement for Economic Change
MFP	Marematlou Freedom Party
MMM	Mouvement Militant Mauricien
MMP	Mixed Member Proportional
MPs	Members of Parliament
MSM	Mkenya Solidarity Movement
NARC	National Rainbow Coalition
NASA	National Super Alliance
NDPC	National Dialogue Planning Committee
NEC	National Executive Committee
NIP	National Independence Party
NLF	National Leaders' Forum
NRA	National Reforms Authority
NSS	National Security Services
NUL	National University of Lesotho
NYS	National Youth Service
ODM	Orange Democratic Movement
PAC	Public Accounts Committee
PDP	Peoples Democratic Party
PEFA	Public Expenditure and Financial Accountability
PFD	Popular Front for Democracy
PM	Prime Minister
PMSD	Parti Mauricien Socialiste Democrate
PMU	Police Mobile Unit
PNU	Party of National Unity
PR	Proportional Representation
PSIC	Public Sector Investment Committee
PSIP	Public Sector Investment Programme
RCL	Reformed Congress of Lesotho
RLDF	Royal Lesotho Defence Force

SACU	Southern African Customs Union
SADC	Southern Africa Development Community
SGR	Standard Gauge Railway
SMM	Single Member Majoritarian
SMMEs	Small, Micro and Medium Enterprises
SMP	Single Member Plurality
SOMILES	SADC Observer Mission to the Kingdom of Lesotho
SOU	Special Operations Unit
TNA	The National Alliance
TRC	Transformation Resource Centre
TRC	Truth and Reconciliation Commission
UDF	United Democratic Forum Party
UPR	Universal Periodic Review
URP	United Republican Party
WDM	Wiper Democratic Movement

PREFACE

The scope of *Coalition Politics in Lesotho* extends far beyond the borders of this small and frequently overlooked country. It offers a wealth of insights worth noting by scholars studying the complex interactions among constitutional principles, electoral systems, governmental structures, executive powers, judicial independence, political party organization, voting patterns and gender equity that constitute key issues in national political cultures.

When doing my doctoral research in Lesotho in 1965-6, there were few scholarly texts on Basotho political development and institutions, none of which were by indigenous authors. With the ground-breaking exception of B.M. Khaketla's, *Lesotho 1970*, major studies of Basotho politics in the following decade were written by white, foreign authors and appeared in journals and books not easily accessible in Lesotho. But by the late 1970s a significant cadre of social science scholars had emerged at the National University of Lesotho (NUL). Wary of Leabua Jonathan's regime and inspired by Umkhonto we Sizwe leader, Chris Hani, who was exiled in Lesotho, they often used pseudonyms in their political commentaries. While giving a talk at the NUL in the late 1970s, I quoted one such author, which prompted unexpected laughter around the table. Unbeknownst to me, I was sitting next to him!

When the restoration of democratic government in 1993 failed to yield political stability, a new generation of Basotho scholars at NUL came into prominence. They created several noteworthy journals, including the *Lesotho Law Journal: A Journal of Law and Development* and *Lesotho Social Science Review*, *Review of Southern African Studies* and *National University of Lesotho Journal of Research*. The liberation of South Africa gave them greater access to many regional journals as well as continent-wide publications. Their scholarship played a key role in shaping the mixed-member proportional (MMP) electoral system that emerged in 2001.

Coalition Politics in Lesotho embodies an interdisciplinary third generation of scholars drawn primarily from NUL faculties, Basotho scholars from outside the country and Lesotho's non-governmental organizations. It addresses the challenges created by the emergence of coalition governments from the MMP electoral system since 2012. Written amongst the isolation and devastation wrought by the global pandemic, it is a tribute to the depth and resilience of Basotho scholarship. Hopefully, the publication of this book will attract global attention to the talents of these writers, drawing them into greater future interaction with scholars around the African continent and the world when the pandemic

subsides. To flourish as a national university, NUL, its faculties and students will greatly benefit from exchanges of its scholars with universities around the world and from the resultant greater visibility of the political innovations in Lesotho detailed in this important book.

Professor Richard Weisfelder
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FOREWORD

Transformation Resource Centre (TRC) relentlessly demands social accountability by defending human rights and increasing accountability for good governance. It has earned itself new public confidence as part of national institutions supporting democracy. The responsibilities bestowed on these institutions are challenging as they are always intertwined with high public expectations to provide immediate relief and longer-term change to societal sufferings resulting from poor governance.

To meet this expectation, the Centre usually asks eminent scholars in the areas of social sciences and legal studies to investigate the impact of poor policy development and help strengthen social accountability. The TRC is proud that at the epicentre of efforts in conducting research to raise questions on policy decisions, it has oftentimes been Professors Hoolo 'Nyane and Motlamelle Kapa from the University of Limpopo and the National University of Lesotho, respectively. They consistently produce works of great scholarship to inform public discourse. This book is no exception.

Ever since the inception of coalition politics, we have witnessed political instability, a security crisis and collapse of three coalition governments in a period of less than seven years. With the advent of coalition governments and their concomitant dramatic and catastrophic conflicts that were likely to destroy the economy and social fabric among the citizens, we need to understand the underlying factors that perpetuate this crisis. Although this epoch (between 2012-2021) can serve as a contemporary reference point for political and economic tragedies, it gave us great lessons that must be analysed and synthesised comprehensively in the form of a book-length study dedicated to this important era in the history of the country.

This book is a collection of research contributions made by the intelligentsia and civil society organisations (CSOs) practitioners. It epitomises the best relationships the Centre has enjoyed with various sectors of society. The book is a watershed initiative in the history of partnership between academia and CSOs in their commitment and give analysis to share comparative perspectives on political dynamics in the administration of coalition governments in Lesotho.

In the series of chapters of this book, the authors have successfully managed to address thorny legal questions of coalition governments' agreements and constitutional controversies circumscribing a prime minister in the coalition government arrangement. The areas of interest that have been well traversed by scholars further involve challenges around the separation of powers between the judiciary and executive branch of government that have

been underscored as consequences of absolutism doctrine now understood in the current constitution. Some of the critical issues that have been addressed in the book are questions related to the independence of the Attorney General, elections, and electoral systems, as well as ramifications of conflicts and/or disagreements among members of coalition governments on economic development and social cohesion.

At the heart of the debate is a collapsed state or, rather, a state in crisis. Corruption in various forms such as rent-seeking, patronage and nepotism have become so corrosive. Hence, the authors suggest measures to be undertaken to activate a turnaround strategy. Structural formulae and affirmative action initiatives are also recommended in the book, suggesting constitutional changes to counteract the security crisis and gender discrimination phenomenon.

Moreover, to influence changes in legal frameworks, authors in their critique have warned National Reforms Authority (NRA) to avoid political elitism in the national reforms process and recommend introducing a gender quota system for parliamentary and ministerial posts and constituency seats in the drafting process of legal reforms.

The Centre wishes to pay homage in a special way to Dr Moletsane Monyake, who had passed on after he succumbed to Covid-19 before this publication could come into completion. He will be remembered for his contribution where he challenges the legitimacy of governments chosen by a small population of the citizenry as it has been experienced with the recent trend of declining voter turnout in Lesotho, showing disturbing levels of voter apathy in the country. His ideas on how the problem can be arrested constitute a great legacy that he left despite his younger age.

The Centre is proud to have supported such a comprehensive multi-disciplinary study of coalitions and their implications on governance; surely, it is of immense importance to Lesotho. The national reform process has been guaranteed by the Southern Africa Development Community (SADC) together with other development partners who are close friends of this country. The book is an invaluable work of great scholarship that should inform the drafting of a new constitution and other pieces of legislation, which must be passed by parliament.

A particular word of thanks must be expressed to the Protestant Agency for Diakonie and Development for Bread for the World, the main funding partner of TRC, for its continuing commitment and partnership in our efforts to promote human rights, access to justice and social justice, by strengthening social accountability in Lesotho.

It will be remiss of me if I fail to extend our heartfelt gratitude to the Open Society Initiative for Southern Africa, European Union Delegation to Lesotho, United States of America Embassy (Maseru) & Canadian High Commission (Pretoria) as well as Sisters of Holy Names of Jesus and Mary for the support they have demonstrated to the Centre until today.

Tsikoane Peshoane
Executive Director, Transformation Resource Centre

PART 1
INTRODUCTION AND
THEORETICAL FRAMEWORK



INTRODUCTION AND OVERVIEW OF THE BOOK

1

Hoolo 'Nyane and Motlamelle A Kapa

1 Background to the book

Ever since independence from Britain in 1966, Lesotho has been an experimental laboratory of various models of governance. The country has experienced multi-party models, plain dictatorships, one-party dominated models, military juntas, and recently coalition governments (Mothibe, 2017). After a long spell of unelected and repressive governments since 1970, the country returned to electoral politics in 1993. As is the norm with African transitions, Lesotho's transition into electoral politics was marked by much fanfare and optimism. However, such optimism was shattered by the immediate start of a dominant party system. As Matlosa poignantly observes: “[d]espite the 1993 election which was hailed as the first-ever democratic election since the country's independence, the country still experienced one-party rule with a fairly insignificant role for the opposition in the process of governance” (Matlosa, 1999:174). The 1993 Constitution organised state institutions based on the Westminster design and continued with the plurality electoral system inherited from Britain upon independence in 1966. To a great extent, the plurality model was responsible for the dominant party system that the country experienced from 1993 until the advent of coalition politics in 2012. The single-party dominated system was attributable to the constituency-based electoral system, which favoured dominant political players. Assisted by the benefits of incumbency, including a pervasive patronage system, state media, vehicles etc., the ruling political parties were able to campaign effectively in constituencies and ultimately win more votes than others. The system has also been blamed for the spasms of instability that punctuate the country's history because of its exclusive and disproportionate manner

(Mahao, 1997). The height of this political instability was the aftermath of the 1998 general elections. The country experienced arguably the fiercest electoral conflict since its return to electoral politics in 1993 (Southall & Fox, 1999).

Consequently, the new electoral system was adopted, becoming a “game-changer” in the country’s political system. Instead of jettisoning the plurality electoral system altogether, as was suggested in some quarters, the country opted for a mixed electoral system – the mixed-member proportional (MMP). The system was used, for the first time, during the 2002 general elections (Kapa, 2009). While the electoral system did not usher in coalitions at the outset, the writing was already on the wall that the end of the era of a dominant one-party system had started. The system unprecedentedly brought ten political parties into parliament. It was already becoming clear that coalition politics was on the horizon for the country. The next election was held in 2007. By this time, political players were already aware that the era of political coalitions was imminent.

Hence, in the run-up to the 2007 election, political parties tried to anticipate the election’s outcome by forming pre-election alliances to enhance their prospects in the aftermath of the election. The then bigger political parties – the Lesotho Congress for Democracy (LCD) and All Basotho Convention (ABC) – formed alliances with smaller parties to maximise proportional representation seats in the National Assembly. The election stirred a lot of controversy and instability as the alliances manipulated the electoral system. As Elklit pointedly observes, the alliances in the run-up to the 2007 elections had “the effect of distorting the model, leading to charges that such alliances were intended to manipulate the MMP, denuding it of its original three principles, namely broad representation, reconciliation and harmony, and compensation for small players” (Elklit, 2008:36).

That notwithstanding, the country was still governed by a single political party, Lesotho Congress for Democracy (LCD). The aftermath of the 2012 election finally brought what has always been the inevitable eventuality – the coalition government – after the reform of the electoral system from a plurality system to a mixed system. The country received the advent of coalition politics with mixed reactions across the landscape. On the one hand, there was a view that the shift brought a sigh of relief from the one-party domination that animated politics in Lesotho virtually since the return to electoral politics in 1993. It was hoped that the transition would bring the consensual politics necessary to drive the vision of nation-building and inclusive politics. On the other hand, there was much scepticism that coalitions by their very nature are a recipe for instability and disruption for economic development. As such, not much can be expected from coalition politics.

Both of these polemic views have, in some way, been vindicated by the lived experiences since 2012 hitherto. The era affected the Lesotho political landscape in a huge and multifaceted manner. At the constitutional level, it exposed what have always been the defects in the Westminster design of government – that government institutions are designed so that they

can hardly limit the exercise of the prime minister's executive authority. It became apparent that the prime minister has powers, almost single-handedly, to appoint and dismiss the judiciary leaders, the leaders of the security agencies and the senior officials in the civil service and, much more importantly, to prorogue and dissolve parliament. The exercise of these powers has caused untold institutional instability in the country since 2012. Even at the socio-political level, the era has had an impact. The ideological alignments of political parties became dismantled; the intra and inter-party conflicts got exacerbated; the economy of the country experienced uncertainty; institutions of government – executive, parliament and judiciary – experienced instability and turnover never seen before.

2 The justification for the book project

Lesotho is still entrapped within this era, even to the present moment. The nature of this era continues to evoke different views amongst scholars and practitioners in Lesotho and beyond. Ever since its advent in 2012, there has been a discernible upsurge of scholarship about coalitions in Lesotho. Nevertheless, the research about Lesotho coalitions has been sporadic, incoherent and single-discipline-based. In some instances, the Lesotho experience has been featured narrowly in the studies about coalitions at regional or in international studies (Kadima, 2014). This has left a gaping hole for the single, multi-disciplinary study of a book-length dedicated to this significant era in the country's history. This dearth of dedicated study on this significant phenomenon has deprived the country of the benefit of getting a comprehensive and multidisciplinary analysis of this era.

3 The approach

The advent of coalition politics has affected several aspects of public life. As a result, a straight-jacketed approach where disciplines – most of the time legal and political studies – treat the phenomenon of coalitions in Lesotho as a preserve of one or two disciplines has demonstrated palpable deficiencies. As Youngblood (2007:1) pointedly contends: “[n]o discipline is an island entirely in itself. That is to say: disciplines are by no means discrete entities – they necessarily overlap, borrow, and infringe upon one another.” The discipline-specific approaches often omit several aspects of the phenomenon.

In this book, instead, we take the multidisciplinary approach to the phenomenon of coalition politics in Lesotho. Conceptually, multidisciplinary is an approach in research in which “members of two or more disciplines cooperate, using the tools and knowledge of their disciplines in new ways to consider multifaceted problems that have at least one tentacle in another area of study” (Youngblood, 2007:2).

When a phenomenon is multidimensional, the best approach in studying it is through a multidisciplinary approach. This is in keeping with the current scholarly wave in favour of both multidisciplinary and interdisciplinarity. The justification for the multidisciplinary

approach is that the phenomenon of coalition politics in Lesotho is multifaceted and has multivariate implications. Newell captures the justification for a multidisciplinary and interdisciplinary approach instructively thus:

Its object of study must be multifaceted to justify the interdisciplinary approach, yet its facets must cohere. If it is not multifaceted, then a single-discipline approach will do (since it can be studied adequately from one reductionist perspective). If it is multifaceted but not coherent, then a multidisciplinary approach will do (Newell, 2001:2).

Hence, this book draws from political studies, constitutional studies, conflict studies, gender studies, and socio-economic and development studies. The assortment of methodologies of these studies forms the basis of the approach in this book.

4 The structure of the book

The book is divided into four parts: introduction and theoretical framework (chapters 1 and 2); institutions, powers and the constitutional framework (chapters 3-7); political parties, political stability, security and electoral systems (chapters 8-12); public involvement, and gender dynamics and comparative perspectives (chapters 13-17).

Chapter 1 deals with an introduction to the book. **Hoolo 'Nyane** and **Motlamentele A Kapa** set the background of the book, its methodological approach and its structure. They emphasise that the book is a multidisciplinary study that does not only use expertise from academia but also uses practical knowledge acquired by practitioners from civil society, political parties and government.

Chapter 2 is the theoretical framework. In this chapter, **Oscar Mwangi** lays the theoretical foundation for coalitions in parliamentary systems. The author traverses three main coalition formation theories: office-seeking theory, policy-seeking and portfolio-allocation model. The author observes that oftentimes, the purpose for the formation of a coalition is determined by certain desires – the desire to seek office, the desire to implement a specific policy agenda and the desire to get the spoils of government, specifically cabinet portfolios. These desires are not necessarily mutually exclusive. Once in office, several institutional and behavioural factors influence the motives to form and sustain a coalition government.

In Chapter 3, **Kananelo Mosito** analyses one of the thorny legal questions since the advent of coalitions in Lesotho – the question of the juridical nature of coalition agreements. Invariably, coalitions are formed on the basis of coalition agreements. These agreements embody key aspects of the coalition, such as but not necessarily limited to the allocation of ministerial portfolios, management of coalitions, conflict resolution and, much more importantly, the programme of the resultant coalition government. These agreements are, therefore, very important to the life of a coalition government. However, when disputes

arise between and amongst coalition partners, there are always divergent views about the extent to which a coalition agreement may be relied upon to resolve such disputes. This divergence of view has permeated even the scholarly and judicial attitudes to this question. Mosito recommends that the best way out of this wide divergence of views is to introduce changes to the constitution and pieces of legislation to regulate political parties and their coalition arrangements.

In Chapter 4, **Hoolo 'Nyane** deals with the question of a coalitional Prime Minister's powers. Lesotho entered the coalition era with the same constitutional framework and, arguably, constitutional practices that regulated the workings of government in a single-party setting. This setting reposed a lot of constitutional and political powers in the office of the Prime Minister. When the country transitioned to coalition politics, it was just presumed that the same powers would be discharged on the basis of coalition agreements without much difficulty. That was so despite the fact that agreements reduce a lot of powers that the constitution reposes in the prime minister, such as the appointment of ministers and other senior government officials, parliamentary powers and powers related to appointment and dismissal of judicial leaders. During moments of disagreement in coalition governments, Prime Ministers often resort to their constitutional powers to the utter disregard of coalition agreements. This problem has haunted almost every coalition since 2012. 'Nyane argues that the coalition agreements must be understood as part of the broader constitutional law of Lesotho, for they are made in terms of section 87(2) of the constitution. As such, they have an impact on the powers of a coalitional Prime Minister.

In Chapter 5, **Itumeleng Shale** and **'Marealeboha Makau** traverse one of the most disturbing aspects of coalition politics in Lesotho – the impact that the coalitions have had on the independence of the judiciary. Since the start of coalition politics in 2012, the judiciary has been openly enmeshed in politics. The reality has not only exposed the constitutional fault lines in the relationship between the executive and the judiciary, but it also laid bare the extent to which politicians in Lesotho can go to cement and consolidate political power. Since the Prime Minister has unfettered powers to appoint and dismiss the leaders of the judiciary – the President of the Court of Appeal and the Chief Justice – successive Prime Ministers have used this power to literally ransack the independence of the judiciary. Every time a new Prime Minister comes into office, he makes sure that there is a change in the leadership of the judiciary. Shale and Makau reckon that the most plausible way out of this entrapment is to review the constitutional framework for appointment, conduct and removal of all judicial officers. They argue that in this review process, the revamping of the Judicial Service Commission will be inevitable.

In Chapter 6, **Hoolo 'Nyane** analyses the principles for the formation of government in general and in the case of a coalition government formation in particular. The rules

for the formation of government in Lesotho are largely uncodified. Section 87(2) of the Constitution only provides that the government in Lesotho will be based on the confidence of the National Assembly. That is, a person who the King will appoint to be Prime Minister must enjoy the confidence of the House. This is a time-honoured principle of formation of the government, not only in Lesotho but across the entire Westminster constitutional family. Nevertheless, the principle operates somewhat smoothly in a situation where the general election has been conclusive on the question of who commands the majority in the house of representative the National Assembly in the case of Lesotho. Where elections have been inconclusive, the conventions often become less helpful, thereby imperilling even the post-election stability of the country. Nyane contends that Lesotho may have to consider the codification of the rules of formation of the government, including the caretaker conventions. In particular, he contends that the country may have to consider introducing the investiture vote – the process by which members of the House directly elect the Prime Minister rather than leaving it to the King, on the advice of the Council of State, to appoint a person who “appears” to enjoy the confidence of the House.

In Chapter 7, **Rapelang Mosae** and **Mokitimi Tsosane** tease out the question of the powers of the Attorney General in general and in a situation of a coalition in particular. The office of the Attorney General emerged as one of the most controversial offices since the start of coalitions in 2012. The height of this controversy was in 2014 during the tension between the Prime Minister and the Deputy Prime Minister over a number of issues – including, but not limited to, the appointment of the President of the Court of Appeal. The Attorney General was palpably an ally of the Deputy Prime Minister in that standoff. This was the case despite the fact that the Constitution establishes the office of the Attorney General as an independent office. The then Attorney General launched a constitutional case that challenged what he called the unilateral exercise of powers by the Prime Minister to the exclusion of cabinet. One of the vexed questions before the courts was the powers of the Attorney General to litigate against the government he is supposed to advise. The authors find that, at best, the coalitions have compromised the much needed independence of the office of the Attorney General. They recommend that the constitutional powers of the prime minister must be reviewed with the view to enhance the independence of the office of the Attorney General.

In Chapter 8, **Khabele Matlosa** weaves together complex phenomena of the interplay between the coalitions and the electoral system. One of the most nagging questions about political development in Lesotho is the question of the electoral system. The pinnacle of the problems brought about by the electoral system was the political turmoil of 1998. The turmoil led to the review of the electoral system from a majoritarian system to a mixed system. Despite the change of the electoral system, the country still saw political instability associated with the electoral system in the aftermath of the 2007 elections. The

era of coalitions, which is largely attributable to the change of the electoral system from a majoritarian model to a mixed system, has seen the electoral system still being central to the politics of the new era. Matlosa advances a two-pronged argument. Firstly, he observes that the First-Past-The-Post (FPTP) electoral system that Lesotho had adopted and used since independence until the 1998 general election did not facilitate the institutionalization of party alliances and coalition among parties given its winner-take-all nature and form. Secondly, with the transformation of the electoral model away from the FPTP into the current Mixed Member Proportional (MMP) System, party alliances and coalitions began to reshape Lesotho's multi-party politics and the complexion of the legislature since the 2002 election.

In Chapter 9, **Fako Likoti** focuses on political ideologies in the context of Lesotho's coalition politics and the impact of these ideologies on the country's political system. He notes that Lesotho's political parties have similar ideological orientation and policies as they all have embraced neo-liberalism and its attendant free-market policies and minimalist state, although they also tend to support welfare policies. As such, forming coalitions has not been a difficult process despite their history of mistrust and adversarial relations. Likoti adds that coalition governments have eradicated post-elections conflicts that have destabilised the country in the past four and half decades. He submits that political parties' ideology has not been a factor in the coalition break-ups in Lesotho.

In Chapter 10, **Sofonea Shale** deals with the stubborn problem in Lesotho's politics: intra and inter-party conflict management within the coalition arrangements. He notes that all coalition agreements had provisions for conflict management mechanisms and established structures in that regard. He argues that although all coalitions collapsed before their term because of conflicts, none of them was unresolvable or unmanageable; the parties just did not attempt them. He blames the poor manner in which conflict-management mechanisms were inserted into the coalition agreements and linked to the power structures of both the political parties involved and the governments themselves. He argues that this weakness made it difficult for the conflict-management provisions of the coalition agreements to be applied when conflict ensued. When parties failed to resolve their conflicts, the Southern African Development Community (SADC) had to intervene, but conflict resolution became protracted. Shale hopes that the institutional reforms process that the country started in 2019 has the potential to change the situation. He warns, however, that this is not a given. The reforms process has to be carefully managed to deliver changes.

In Chapter 11, **Mokete Pherudi** traces the reasons for the collapse of coalition governments since the first coalition following the 2012 elections. He identifies the following as the main factors that led to this outcome: heightened corruption in the public sector; abuse of the parliamentary practice of floor-crossing by some members of parliament; the politicisation of the public sector by different coalition governments; abuse of no-confidence motion

in parliament; undue interference in the judicial matters by the executive branch of the state; and personal squabbles between the leaders of coalescing parties. He recommends that the government capacitate the anti-corruption agency (the Directorate on Corruption and Economic Offences) to deal with corruption cases and effectively encourage and protect whistle-blowing. He also recommends abolition or regulation of parliamentary floor-crossing through a legal requirement for a by-election in case members of parliament decide to cross the floor. He also believes that the institutional reforms process can help solve these problems if completed.

In Chapter 12, **Tlohang Letsie** discusses the role of security agencies, viz, the Lesotho Mounted Police (LMPS); Lesotho Defence Force (LDF); National Security Services (NSS); and the Lesotho Correctional Services (LCS) in Lesotho's political instability, which transcended into the crises of the agencies themselves from 1993 to 2021. Letsie blames the phenomenon of politicisation (through a legislative framework that granted the sitting Prime Minister's powers to appoint and dismiss heads of these institutions) for the partisan intervention of these agencies in the political crises of the country and notes that the army, in particular, has been at the centre of the crises. He further observes that the political-cum-security crisis became manifest in confrontations within and between agencies as well as the agencies and the government itself, attracting the attention of external actors, notably SADC, and making Lesotho dominate the agenda of the body's summits. Letsie further observes that the advent of coalition governments witnessed the parties in coalition governments compete for control of the security agencies and render them part of their conflicts. With the new developments, Letsie notes, security agencies cease to be used to suppress the "enemy within" the country (opposition parties) – as is the case in most African countries – but now suppress the enemy "within" the government itself. Like other authors in this volume, Letsie is optimistic that the ongoing multi-sectoral reforms will solve the persistent security crisis.

In Chapter 13, **Motlamentele A Kapa** offers a critique of the parliamentary reforms process, which is part of the comprehensive multi-sectoral reforms exercise that was to be underpinned by, among other principles, public participation. He notes that Lesotho's parliamentary reforms exercise was rhetorically intended to grant the citizens a direct voice in the reforms process under what was supposedly an inclusive, participatory and deliberative framework. He argues, however, that the design of the process was flawed from the onset in that the structures that were to drive the process (from the National Leaders' Forum (NLF), to the National Dialogue Planning Committee (NDPC), and Plenary (II) became dominated by the political elites, who seized the opportunity to retain and entrench their interests in the process at the expense of those of the nation. The political elite, Kapa observes, vetoed all inputs of the citizens on issues that directly threatened their interests; thus putting to question the value of public participation in the parliamentary

process and turning the whole process into a window-dressing exercise, serving only to confer some legitimacy on what is a self-serving project entrenching the interests of the elites rather a truly institutional transformative device. Kapa is sceptical that the NRA will rescue the voices of the citizens and give them effect in the outcomes of the parliamentary reforms since the NRA is similarly dominated by politicians.

In Chapter 14, **Moletsane Monyake** addresses the worrisome trend of declining voter turnout in Lesotho elections, especially during the era of coalition politics. He draws on nationally representative survey data to examine the link between the party system's fragmentation, resulting in unstable coalition governments and the rising voter apathy among the Basotho and tests whether and the extent to which a small segment of the voting population – the habitual voter – reacts to contextual conditions, particularly, the party system and stability of coalition governments. At the more theoretical level, Monyake unpacks the habituation model's assumption that habitual voters are more intrinsically motivated and that system-level factors should not have a major effect on their willingness to cast a ballot. He makes three key findings: the institutional environment characterised by the mushrooming of political parties, inconclusive election results, and coalitions could be responsible for the onset of apathy among consistent voters. Second, this means that turnout is likely to continue the downward trajectory if the institutional factors that depress it are not given the attention they deserve. Third, it may well be that not all habitual voters are driven by the psychological benefits that accrue from the act of voting and which underpin the decision to continue despite undesirable election outcomes and lack of meaningful changes. Monyake is also of the view that the NRA could devise innovative ways of arresting the deepening trend of voter apathy as it threatens Lesotho's democracy and legitimacy of government.

In Chapter 15, **Mamello Rakolobe** analyses the gender dynamics in the coalition government's ministerial appointments. She explores the institutional arrangements that determine ministerial recruitment in Lesotho, focusing on the formal and informal rules, norms, practices and procedures that influence the appointment of women into ministerial positions. She finds that there are no explicit formal rules on ministerial recruitment; instead, informal rules are predominantly followed in ministerial appointments. But even these formal and informal rules and norms, she argues, are gendered in ways that they distribute power within executives towards the male actors. She further finds that in all coalition governments, more women than men have occupied ministerial positions in ministries that deal with soft issues such as gender, social welfare and health. She concludes that Lesotho's ministerial portfolio allocation exercise is highly gendered, limiting women's chances to access the cabinet, which is the pinnacle of public decision-making. She acknowledges that coalition governments in Lesotho have in a few cases appointed women to the traditionally masculine policy areas such as finance, foreign affairs and agriculture.

Rakolobe recommends three key recommendations. One is that political parties should consider establishing selection procedures for cabinet posts to give formal rules more weight than informal ones. Second, there is a need to introduce a gender quota system for parliamentary and ministerial posts and constituency seats. Third, political parties should commit to that to make it easy for the Prime Minister to appoint a gender-balanced cabinet.

In Chapter 16, **Selibe Mochoboroane** and **Keneuoe Mot'soene** assess the diverse economic costs of conflict within coalition governments and the extent to which conflict impacted the country's socio-economic development. They observe that when the country transitioned from the dominant one-party system after the introduction of the mixed-member proportional (MMP) electoral system that led to coalition governments, the expectation was that Lesotho would be politically stable and realise economic development. But that did not happen; instability continued, and economic development remained sluggish. The authors show that the country had two snap elections within five and a half years at the huge cost of about M 900 000 000 due to political instability. They argue that since the advent of coalition governments in 2012, the cost of political conflict has been remarkable, and it affected economic development in many ways, including: the decline of the capital budget as a share of GDP; the phenomenal 73% rise in the recurrent expenditure as a proportion of the total budget allocation, leaving only 27% for capital budget allocation in 2019/20 financial year. Loss of budget support from development partners estimated at M473 460 000 and investor flight due to constant political instability in Lesotho caused Lesotho to lose budget support from the European Union to the tune of M473 460 000. The authors recommend increasing capital budget and private sector support to realise economic growth and job creation to reduce the competition for parliamentary seats and ministerial positions, which are the sources of political instability in Lesotho.

In Chapter 17, **Victor Shale** and **Robert Gerenge** present a comparative analysis of four conclusions from the analysis of these coalition governments in Lesotho, Kenya and Mauritius in terms of the coalition types, the theoretical rationale for their formation and their impact on party systems. They make four conclusions from the analysis of the three cases: one is that at the heart of coalitions is the quest to pursue and safeguard elite circulation rather than the developmental value of cooperation. Secondly, political party coalitions can become vehicles for countervailing efforts aimed at restorative justice because of the high premium placed on elite survival. Thirdly, even if the coalitions' public policy pronouncements (in their agreements, manifestos or through statements by leaders) are value-ridden, the three case studies have shown that coalitions continuously restructure the dichotomies of ethno-regional salient identities. Therefore, coalition governments are arguably poised to be confronted with paradoxes that mirror the tension between nominal developmental value-coalition and political exigencies' realism.

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CONCEPTUAL AND THEORETICAL APPROACHES TO COALITIONS IN PARLIAMENTARY DEMOCRACIES

2

Oscar G Mwangi

1 Introduction

The study of coalition governments in parliamentary systems is highly topical. Analysing coalition governments provides significant insights into the contemporary social, economic and political problems that countries under such systems of government face. Much of the political science literature on coalitions and coalition governments in parliamentary democracies is empirical. The literature adopts both theoretical and case-studies approaches. This chapter pays attention to the conceptual and theoretical approaches used to study coalitions in parliamentary democracies. The chapter is divided into three sections. The first section examines the concept of coalitions and types of coalitions. The objective is to provide the relevant conceptual background necessary for understanding the key concepts under discussion. The second section examines the key theories of coalition formation so as to identify the appropriate theoretical frameworks for explaining how and why coalitions are formed. The section pays attention to characteristics and analytical value of office-seeking theories, policy-seeking theories and the portfolio allocation model of coalition formation. The third section examines the relationship between coalition rule and governance in parliamentary democracies. The section demonstrates the way in which institutional and behavioural factors impact adversely upon the performance and duration of coalition governments and governance. The section also discusses the strengths and weaknesses of coalition governance mechanisms.

2 The concept of coalition and types of coalition

The term “coalition” in political science, broadly describes a variety of associations among definite, distinct actors that pursue common goals through combined action. The term, for example, refers to geopolitical alliances in international relations as well as to political party competition and governance (Fox, 2010:486). This chapter examines coalitions in the context of political party competition and governance. Scholars of coalition governments in parliamentary systems argue that the study of parties competing for power provides significant insight into a country’s major historical and contemporary socio-political characteristics. Governments in multi-party parliamentary democracies often comprise a coalition of parties, which symbolise particular competing interests and societal divisions in the country. Hence, a lot can be learned about a country’s social, economic, and political divisions by analysing its governing coalition’s composition and political behaviour and the parties in the opposition (Evans, 2020:1-2).

Like many other concepts in political science literature, the concept of a political party coalition has been defined in several ways. This chapter adopts a practical definition by O’Day (2004), which aptly captures the relationship between coalition political parties and governance. The definition states that:

A coalition is usually a temporary pact or partnership between two or more political parties, for the purpose of gaining more influence or power than the individual groups or parties can hope to achieve on their own. By focusing on their common objectives and pooling resources – policy expertise, funding, geographic strengths, support – coalition members can build on each other’s strengths and gain an advantage on issues of common interest. With a particular objective in mind – winning an election or referendum, passing a specific piece of legislation, or forming a government – coalitions have a limited life span until the objectives are achieved (O’Day, 2004:2).

This definition appropriately summarises the key features of the formation and duration of coalition governments. It focuses on the aims and objectives of coalitions in the context of their composition, how they seek power and why they seek it. In order to fully comprehend the formation of the duration of coalition governments, it is, first and foremost, necessary to briefly examine types of political coalitions.

2.1 *Types of coalitions*

Several types of coalitions are categorised according to aims and objectives that specify what kind of political goals the coalition intends to achieve and how it intends to achieve them. The most common types are the electoral alliance, coalition government, grand coalition, and government of national unity. An electoral alliance normally combines two or more political parties’ resources to seek political power. The aims and objectives of the electoral alliance are to attain the required number of votes to win an election, achieve a legislative

majority, and form a government. It does so by primarily fielding common candidates. In multi-party systems, political parties comprising the electoral alliance agree not to compete against each other in particular electoral districts so that it improves its electoral outcomes (NDI & OCPD, 2015:14). Coalition governments generally ensue when no single political party wins a clear majority in parliament. In parliamentary systems, most often, the largest party in the parliament, reaches agreement with compatible parties to form a cabinet, a legislative majority, hence government. Based on its coalition agreements, the cabinet comprises representatives from the different member parties, and its legislative proposals are typically supported by members of parliament (MPs) from its coalition partners. Minority coalition governments have sufficient legislative support to form the executive but lack a clear majority in the parliament. As a result, the executive has to constantly negotiate support to secure the passage of its legislative proposals (NDI & OCPD, 2015:15-16). Grand coalitions are normally formed when a country's main political parties unite in a coalition government competing for political office. Coalition-building between these common competitors is normally difficult because of the traditional rivalry between them. Grand coalitions may be formed during moments of national political crisis as no other alignments are possible or to limit the influence of one or more marginal parties (NDI & OCPHR, 2015:17). Like grand coalitions, governments of national unity are typically formed when countries face national political crises. They often have responsibility for overseeing far-reaching or fundamental national political reforms, such as the development of a new constitution. The allocation of seats and responsibilities in the government of national unity may be negotiated without the advantage of a democratic election or agreement on an electoral outcome (Ibid.). This chapter examines the coalition government.

3 Theories of coalition formation

Several institutional and behavioural factors determine the formation and duration of coalition governments. Coalition governance is a function of the way in which procedural rules affect the behaviour of parties that make up the coalition. The concept of coalition governance associates formation and termination with the duration of coalition governments. The relationship between formation and termination is the result of institutional and behavioural factors, such as cabinet collective responsibility mechanisms, the impact of coalition decision rules, the role of legislatures in coalition maintenance, and monitoring delegated power (Timmermans & Moury, 2006:391). Given that no party typically gains a majority of the seats in the legislature in many parliamentary democracies to form a government, without cooperating with some other parties, coalitions become a necessity. Hence the phenomenon of political coalitions has led to the development of a number of theories about coalition formation. Initial coalition theories assumed that parties only seek office for the power and prestige of an office and predict that minimal winning coalitions will form. However,

following empirical appraisal, coalition theorists introduced policy-seeking incentives for parties. The appraised coalition theories began predicting that parties coalesce with ideologically proximate parties (Strom & Muller, 1999:2; Back, 2009:53; Druckman, Martin & Thies, 2005:530).

Theories of coalition formation base their predictions on essential expectations about party goals. Most of these theories assume that political parties prioritise the fundamental goals of votes, office and policy similarly (Pederson, 2012:896; Doring & Hellstrom, 2013:685). The theories base their argument on the notion that parties are unitary actors; hence parties have homogeneous goals. The coalition formation literature pays attention to the way in which parties seek office, policy issues and portfolios so they can coalesce and form the government (Strom & Muller, 1999:2; Wolinetz, 2002:149; Back, 2009:64; Pederson, 2012:897). Although essentially no party will have completely homogenous goals, the theories are, nonetheless, empirically significant as they demonstrate the characteristics of parties and the social, economic, geographical, and political environments in which they operate. The theories also stipulate the widely applicable categories not specific to any geographic region or subset of political parties (Wolinetz, 2002:150). These theories are, therefore, relatively and universally applicable in the analysis of coalition formation. This section examines the theories of coalition formation, particularly the office-seeking theories, policy-based theories, and the portfolio-allocation model

3.1 Office-seeking

The primary objective of an office-seeking party is to get its leaders into government using various strategies. Coalition formation theories were initially based on the assumption that parties were purely interested in seeking office (Back, 2001:2; Wolinetz, 2002:150; Doring & Hellstrom, 2013:685). Office-seeking theories emphasise that the best way for parties competing for the spoils of government is to share as little power as possible. Sharing as little power as possible produces minimum winning coalitions. These coalitions are only as large enough as they need to be to secure their winning status and maximise cabinet durability, with partners as small as possible to minimise sharing spoils. The office-seeking theories point out that in such coalitions, offices are distributed proportionately according to the share of legislative seats each party contributes to the coalition. This distribution essentially does not take into account the political significance or value of the office. Hence office-seeking behaviour prioritises the pursuit of office benefits over and above their electoral or policy value. While office-seeking coalition theories assume that parties may seek votes or policy as instruments to get into office, the theories emphasise that the main goal is to get and control office benefits. The theories also underscore that other members of the same party should not constrain the behaviour of an office-seeking leader in coalition bargaining since seeking office is the primary goal. The office-seeking party has been developed mainly

in the study of government coalitions in parliamentary democracies. In Central Eastern Europe, coalition parties are more office-seekers than policy-seekers and hence are often oversized (Strom, 1990:567; Pederson, 2012:899; Bergman, et al., 2020:158).

3.2 Policy-seeking

A policy-seeking party is one that gives primary emphasis to the pursuit of policy goals. Policy-seeking theories of coalition formation argue that policy preferences are the most important determination of coalition formation. The theories emphasise that parties that form a coalition are ideologically compatible along a policy dimension. In the case of minimum-winning coalitions that comprise parties connected along a policy dimension, the policy-seeking theories also stipulated that such parties are minimal in the sense that they lose the majority status if one policy-compatible member party leaves the coalition (Pederson, 2012:897). The theories also stress the significance of post-electoral coalition policy-based negotiations. These negotiations require parties comprising a majority of parliament's members to reach both formal and informal policy-based agreements specifically on national policies and determine which parties control government's ministries that oversee policy implementation. The office-seeking theories are emphatic that policymaking and coalition governance during the legislative term are enhanced by policy-based coalition agreements. In Norway, coalition-building is a requirement to form a government. Coalitions are usually established before an election, and they agree on joint policy positions. Other crucial party-specific matters are normally dealt with after the election (Doring & Hellstrom, 2013:685; Bondevik, 2015:103-104; Kluver & Back, 2019:1995-1996; Evans, 2020:2).

3.3 Portfolio-allocation model

Coalition-building is a complex process that involves several political aspects. Key among these aspects is that in order for parties, which form the parliamentary majority to be able to govern effectively, they need to simultaneously share control of the cabinet and the executive branch. In most parliamentary democracies, this has become "the rule, rather than the exception" (Strom & Muller, 1999:2). Studies on coalition formation and governance emphasise that the portfolio allocation model of coalition formation is key to understanding how coalition governments are formed and how they govern. Coalition bargaining and government formation, as already noted, is a function of several institutional and behavioural factors that involves several procedures and a number of decisions on the part of the key actors involved. However, three important procedural and behavioural issues need to be taken into account in coalition bargaining and government formation. One problem is the problem of membership, which is "whom to ask to join a coalition, or vice versa, whether or not to join once asked for". A second is conflict resolution, that is,

“how the conflict of interest concerning future governmental policies is resolved within the coalition”. Thirdly, delegation, that is, making a binding decision on “how to delegate authority for the execution and implementation of the agreed coalition policy program”. The three questions are interrelated, and the coalition formation portfolio allocation model systematically addresses all the questions. The model places emphasis on the dominant role of cabinet ministers and postulates that coalition cabinets are generally based on ministerial discretion. Hence cabinet ministers have substantial influence over governmental decision-making in their area of jurisdiction. The model also emphasises the coalition party that holds a portfolio sets its policy. Hence parties agree over portfolio allocations to parties rather than policies. This leads to the anticipation that policy in any area primarily reflects the commitments of the party that occupies the relevant ministry (Debus & Brauning 2005:3-4; Back, Dumont & Saalfeld, 2011:2; Doring & Hellstrom, 2013:685; Martin & Vanberg, 2019:2). Quantitative analyses of portfolio allocation have produced clear empirical evidence that coalition parties in government receive ministerial posts proportionally to their overall legislative seat share in parliament. The portfolio allocation model emphasises that not every portfolio is equally important. Some portfolios give more power to the ministers and parties holding them than others. Parties that make up the coalition will, therefore, tend to value particular portfolios more than others. Such prominent portfolios are valuable sources of political patronage benefits. Qualitative analysis of aspects of portfolio allocation that address the question of who gets what and why also adequately demonstrate that parties which make up the coalition are likely to be allocated the ministerial posts controlling the policy areas that are most “salient” to them (Back, Dumont & Saalfeld, 2011:2). For example, in the United Kingdom, portfolio allocation was part of the *Coalition Agreement for Stability and Reform* between the Conservative and Liberal Democrats parties’ coalition government formed in 2010. The agreement stipulated that ministerial posts should be allocated in close proportion to the size of the two parliamentary parties. However, the Liberal Democrats were allocated a slightly higher share of cabinet and ministerial roles than their share of MPs (Nice & Paun, 2019:6).

4 Coalition rule and governance in parliamentary systems

Coalition literature mostly attributes the duration of coalition governments to strategies of politicians and their parties. These strategies are constrained by the attributes of the coalition and the party system (Maravall, 2010:82). The relationship between coalition rule and governance in parliamentary systems is best understood in the context of the procedural and behavioural factors that determine the durability of coalition governments. These factors include, among others, preference divergence, political uncertainty and political opportunism. The difficulties of controlling political parties that have formed

coalition governments arise from three conditions: preference divergence, uncertainty, and opportunism (Strom, Muller & Smith, 2010:519; Matthews, 2019:150). These three conditions can adversely impact the performance of coalition governments, subsequently leading to the collapse of such governments.

Preference divergence refers to when members of the different parties in the coalition and their cabinet representatives have different and often conflicting preferences over the spoils of government. The spoils of government are usually scarce, and as such, not all political demands can be satisfied simultaneously. Eventually, “one party’s gain will be another party’s loss”. Preference divergence between party members in the legislative and executive branches of government can produce new or enhance already existing adversarial executive-legislative relations (Strom, Muller & Smith, 2010:519; Matthews, 2019:150). Uncertainty arises due to several reasons. Four major sources of uncertainty have been identified in the coalition literature. One source of uncertainty arises when politicians face considerable uncertainty over the decisions that they are required to make and the circumstances under which they will make such decisions. The second source of uncertainty emanates from exogenous political events that coalition party leaders might face in the course of a parliamentary term. Such exogenous political events include a variety of international and domestic crises. The third source of uncertainty concerns the skills and preferences of the various candidates for executive office. These skills and preferences are often “hidden information.” The fourth source of uncertainty is that it is still difficult to authoritatively predict human behaviour despite prevailing abundant information and technological skills. Political leaders cannot confidently predict how the electorate will respond to their decisions (Strom, Muller & Smith, 2010:520). The problem of opportunism is often a function of uncertainty. Opportunism emanates when coalition partners use uncertainty to acquire private gain at the expense of others. Opportunism also stems from the problem of establishing whether all parties in the coalition, in fact, honour their commitments (Ibid.).

The problem of preference divergence is evident in the relationship between coalition rule and governance. The formation of a coalition government ends when the parties that make up the coalition allocate themselves cabinet portfolios and appoint individual office-holders to the respective ministries. However, portfolios are not fixed. The process of establishing and allocating portfolios is not static. It is dynamic. It is dynamic in that portfolios can be modified to adapt to or suit changing social, economic and political circumstances. This includes, among others, changes of ministerial names. Hence, each new incoming cabinet can reshuffle ministries, rename them and then reorganise the units within ministries. The modification of a country’s governance structure by a coalition government is partly a function of preference divergence among members of the coalition parties (Kuipers, Yesilkagit & Carroll, 2021:901-902). Preference divergence also affects policy preferences and the policymaking process under coalition governments. Unlike

single-party governments, policy-making in coalition governments is different. Under coalitions, the policy is made jointly by parties that were independently accountable at election time. As such, any party-specific policy and corresponding governance initiative will not simultaneously conform to the policy preferences of all parties that make up the coalition. Despite policy compatibility among parties during coalition formation, not all policy preferences are realised simultaneously under coalition rule (Strom & Muller, 1999:3; Martin & Vanberg, 2014:980; Quinn, 2016). In Denmark, political parties often govern in minority coalition governments, whereby coalition policy-making, characterised by mistrust of coalition partners, is the norm. Danish parties in minority coalitions often build legislative alliances with policy-incompatible opposition parties; hence the inter-party mistrust (Konig & Lin, 2020:8).

Uncertainty affects coalition rule and governance in several ways. Political parties that are members of a coalition government are sometimes uncertain over the governance decisions they make and under what circumstances they do so. Coalition parties can, for example, face challenging problems of mutual oversight and control of the political executive. Such challenges are exacerbated by the fact that coalition governments create cabinet ministers who are representatives of their respective parties and the parliamentary coalition as a whole. Adding a part to the chain of delegation in the legislature compounds (Strom, Muller & Smith, 2010:531). Uncertainty emanating from the undisclosed skills and preferences of the various candidates for executive office is an indicator that politicians representing the various coalition members may not fully understand the relationships between the instruments of governance at their disposal and their intended political outcomes. In part, the distribution of cabinet portfolios among members of coalition governments determines the relationship between coalition rule and governance in a country. Collective decision-making by parties that make up coalition governments, particularly in situations of mistrust and suspicion, can be caused by a dispute concerning the nature of portfolios each party controls. While parties rely on a mutually agreed criterion for making a fair distribution of key portfolios during government formation, the mutual agreement can negatively affect the tacit rule of ministerial discretion. Inter-party conflicts may, therefore, begin as interdepartmental conflicts and escalate. Ministerial portfolios are generally exceptional and indivisible. If a particular portfolio is allocated to one party, it is automatically lost for all other parties in the coalition (Strom & Muller, 1999:3; Timmermans & Moury, 2006:392). In Central Eastern Europe, inter-party conflicts, followed by intra-party conflicts, regularly lead to the collapse of coalition governments. This is largely due to the absence of coalition governance mechanisms in coalition agreements (Bergman, et al., 2020:158).

The problem of opportunism is often a function of uncertainty. As discussed earlier, the duration of coalition governments is attributed to the behaviour of politicians and their parties as affected by procedural rules of the coalition and the party system. The use of

uncertainty by particular parties to receive private gain at the expense of other parties that make up the coalition and coalition government is an indicator of opportunism. Opportunistic parties may take advantage of unpredicted circumstances to obtain benefits from coalition bargaining. If the payoffs to all parties that make up the coalition are fairly distributed over the coalition government's expected duration, then most likely, each coalition party will have a perpetual reason to sustain the coalition. If the payoffs are unequally distributed over time, then a party that initially received a large benefit will have minimal reason to discharge its part of the pact thereafter. The arrangement, therefore, under which the parties that comprise the coalition safeguard their gains can stabilise or destabilise coalitions (Strom, Muller & Smith, 2010:520). Opportunism may also arise from the way in which political parties evaluate the political significance of portfolios as a criterion for portfolio allocation. When forming coalition governments in parliamentary democracies, political parties take into account the quantity and quality of cabinet portfolios to be allocated to them. Normally what matters is how important or prominent the portfolio is, and not necessarily the number of portfolios. The allocation of portfolios affects not just the office benefits enjoyed by political party beneficiaries but also the policies undertaken by the coalition government. (Carroll & Cox, 2006:2; Camoes & Mendes, 2009). Political parties that form the coalition attempt to get the ministerial and parliamentary committee positions that will allow them to formulate and implement the policies that provide the most patronage benefits for their constituents. The extent to which specific portfolios are sought by parties in different countries indicates the broader issues within a country's political and social debates (Ennsner-Jedenastik, 2013; Evans, 2020:2). Austria provides an example of the relationship between coalition governments and political patronage in the public sector. The occurrence of party patronage is partly due to the fact that, historically, state-owned enterprises accounted for a sizeable share of economic activity. Party patronage in large public enterprises is influenced by, among others, the relative parliamentary strength of the government parties. Patronage is generally more pronounced in state-owned enterprises corporations with higher political and financial benefits or payoffs (Ennsner-Jedenastik, 2013:14-15).

Political opportunism also arises when parties within a coalition fail to honour their coalition formation commitments. The opportunity for parties not to honour their commitments occurs as a result of the specialisation of tasks in government. When the government is increasingly divided into specialised agencies, policy expertise is monopolised by the ministry that has formulated a policy. When one party within the coalition government has exclusive control over the ministry that formulates the policy, there can be considerable scope for "hidden action" on the part of executive office holders. This situation makes it difficult for other parties within the coalition government to supervise specialised policy making of government and to ensure that commitments made by coalition parties are implemented. If some parties within the coalition fail to honour the commitments,

then their coalition partners have valid reasons to get concerned with the “downstream” implementation of their policy platform (Strom, Muller & Smith, 2010:520). Ministers in coalition governments can also exploit their office due to party political interests. In such situations, parties that form the coalition government are able to monitor cabinet ministers from their own parties. However, they do not have such control over ministers from other parties that make up the coalition. Since the main goal of political parties is to capture and control government office, party leaders are often not willing to endanger such political ambitions by bestowing the right to veto cabinet appointments on their coalition partners (Matthews, 2019:150-151). In Austria where political patronage appointments occur in public enterprises, despite the dominant influence of individual ministers, junior ministers in coalition governments can constrain their departmental superiors in disbursing appointments (Ennser-Jedenastik, 2013:14-15). In short, preference divergence between coalition parties intensifies uncertainty, on the part of members of parliament, in relation to the substantive policies that will be adopted and implemented by the executive. Consequently, this leads parties to fear opportunism on the part of their coalition partners (Strom, Muller & Smith, 2010:531).

Coalition theorists perceive the character of coalition governance as “dynamic, cyclical and anticipatory” (Matthews, 2019:150). In this context, the theorists emphasise that coalition governance requires parties that make up the coalition to predict and influence events that will occur between the formation of the coalition government and the next election (Matthews, 2019:150). The combination of preference divergence, opportunism and uncertainty make coalition governance risky. As a precaution, the coalition partners put in place various institutional safeguards to protect the respective political interests in the coalition (Strom, Muller & Smith, 2010:520). The most general type of institutional enforcement mechanism is the coalition agreement. This agreement is what coalition parties enter into before collaborating to form a coalition government and govern. Coalition agreements, formal or informal, are generally designed to impose various degrees of coalition discipline on various parliamentary activities.

Coalition agreements are regarded as good indicators of the coalition government’s governance priorities (Strom & Muller, 1999:5; Matthews, 2019:150). These tacit and/or explicit agreements between the coalition governing parties are extra-parliamentary mechanisms. At the very least, coalition agreements normally indicate the division of cabinet portfolios. However, they go beyond this and define the government’s policy agenda. Coalition agreements may also decide to spell out how the coalition government will deal with other public institutions or at other levels of government. Thus, coalition agreements vary greatly in their content, comprehensiveness, and formality (Strom, Muller & Smith, 2010:528; Matthews, 2019:150). By “constraining the actions and policies that can be pursued after the government is formed,” coalition agreements thus play an

important role in reducing uncertainty (Matthews, 2019:150-151). The 2010 coalition agreement between the Liberal Democrats and Conservatives specified that ministerial reshuffles and the right to nominate Liberal Democrat candidates for posts would be the prerogative of the party leader. Additionally, Liberal Democrat junior ministers would sit in 13 of the 15 departments headed by a Conservative Party cabinet minister. Likewise, three departments headed by Liberal Democrats would have Conservative junior ministers (Quinn, 2014:27-28).

Coalition agreements, however, do not ensure good governance. Coalition parties may have noble objectives, but coalition agreements may be ineffective. Coalition agreements are “the script, not the performance” (Strom, Muller & Smith, 2010:529). Enforcing coalition agreements is a major problem that coalitions face while in government. Hence coalitions will often rely on a combination of measures to ‘police the bargain’ (Matthews, 2019:150-151). Though coalition-bargaining is usually problematic, it is not necessarily beyond any reasonable solution. Bargaining problems occur due to several reasons, and the problems can be solved by both formal and informal means. Successful bargaining is the result of several reasons, such as compatible party preferences and the anticipation of mistakes made in previous party interactions. Such reasons may encourage party leaders to honour agreements despite their enforceability. Despite their shortcomings, studies of actual coalition agreements, however, illustrate that such agreements are highly relevant guides to coalition governance (Strom & Muller, 1999:4-5; Strom, Muller & Smith, 2010:529). Despite their shortcomings, studies of actual coalition agreements, however, illustrate that such agreements are highly relevant guides to coalition governance.

While coalition agreements are extra-parliamentary, there are official executive and parliamentary institutions that mutually control coalition partners. Coalitions can also establish various formal specific inter-party conflict-management committees, such as issue-specific cabinet committees, coalition committees, mixed committees of ministers and parliamentary leaders, and committees of parliamentary leaders (Matthews, 2019:151). Coalitions are more likely to institute oversight policymaking monitoring and reporting arrangements. One such policymaking oversight mechanism is what the coalition literature refers to as “the so-called ‘watchdog’ or ‘hostile’ junior minister”. This occurs when coalition parties appoint junior ministers to departments headed by ministers from different parties. The objective of such a mechanism is to regularly monitor coalition partners. The practice is normally used in countries with few institutional checks upon ministerial discretion. The monitoring focuses on those portfolios considered crucial to the monitoring party (Matthews, 2019:151). To ensure good governance and coalition government durability, coalition parties in parliamentary democracies regularly rely on several such extra-parliamentary and parliamentary mechanisms (Strom, Muller & Smith, 2010:528). When

the Conservative and Liberal Democrats parties formed a coalition government in 2010, the coalition governance mechanisms included procedural rules and ‘watchdog’ ministers that would ensure coalition stability throughout its period in office (Quinn, 2014:27-28).

5 Conclusion

Political parties in parliamentary democracies coalesce to form the government for a variety of reasons. Their aims and objectives are normally determined by the desire to seek office for the sake of it, the desire to implement a specific policy agenda, and those that desire to get the spoils of government, specifically cabinet portfolios.

However, it is important to note that while the aims and objectives can be perceived as theoretically mutually exclusive, they are, once in office, irrespective of the motives, to form the government. Coalition governance is influenced by a number of institutional and behavioural factors. Institutional factors, particularly formal and informal procedures, that define party politics and governance impact the behaviour of party leaders – hence political parties. The formal and informal rules determine the conduct of politics only insofar as actors accept or comply with these rules. Therefore, the way coalition governments govern and their durability and duration in office is both a relative and universal characteristic. This is evident in how conditions of preference divergence, uncertainty, and opportunism can adversely impact the performance of coalition governments, subsequently leading to the collapse of coalition governments. Failure by coalitions to enforce coalition agreements is, to a large extent, a factor of the conditions of preference divergence, uncertainty, and opportunism, which ironically are the conditions the agreements basically seek to prevent. Despite their problems of enforceability, coalition agreements are, nonetheless, important mechanisms for enhancing the duration of coalition governments. The conceptual and theoretical arguments raised in this chapter are adequate to provide the required analytical evidence to examine and understand the relationship between coalitions and governance in parliamentary systems.

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PART 2
INSTITUTIONS, POWERS
AND THE CONSTITUTIONAL
FRAMEWORK



CONSTITUTIONAL AND JURIDICAL IMPLICATIONS OF COALITION GOVERNMENT AGREEMENTS: THE LESOTHO EXPERIENCE

3

Kananelo E Mosito

1 Introduction

The Kingdom of Lesotho has hitherto had four successive coalition governments resulting from a hung parliament. These governments were formed based on coalition agreements. However, a comprehensive examination of Lesotho's jurisprudence reveals that inadequate ink has hitherto been spilt on the constitutional and juridical characterisation of the said agreements. This chapter discusses constitutional and juridical issues in forming a coalition government after an election resulting in a hung parliament. Consequently, there is a need to investigate these constitutional and juridical characteristics and the implications of these coalition agreements. Thus, this chapter aims to examine the constitutional and juridical implications of coalition governments. The chapter will also address Lesotho's experience with coalition agreements.

This chapter is organised as follows. It begins by identifying and delineating the research problem. It addresses existing gaps in knowledge in the field, thereby leading to further research. It also briefly formulates and discusses the theoretical framework. It proceeds to consider the juridical and constitutional characteristics and implications of coalition agreements. It also relates that consideration to the Lesotho experience. It continues to discuss a comparative evaluation of the content of Lesotho's four coalition agreements.

2 Nature of the problem

Section 1(1) of Lesotho's Constitution provides that Lesotho shall be a sovereign democratic kingdom. In this connection, the Court of Appeal observed that:

[A]s a constitutional democratic kingdom, Lesotho has committed itself to provide a system of periodic elections with a free choice of candidates; competing political parties; universal adult suffrage; political decisions by majority vote; protection of minority rights; an independent judiciary; constitutional safeguards for basic civil liberties, and the opportunity to change any aspect of the governmental system through agreed procedures (*Koro-Koro Constituency Committee v Executive Working Committee: All Basotho Convention*, 2019:17).

Therefore, it is clear that political parties' organisation and activity in Lesotho must be juridically achieved according to their constitutions. Political parties must use democratic means and approaches to attain their political goals.

A coalition government is born of political parties in line with section 87(2) of the Constitution. In practice, political parties enter into written coalition agreements. Such agreements must adhere to the country's Constitution, the rules, and procedures of the political parties forming a coalition. Although political parties are pivotal to creating a coalition government, they are registered under the Societies Act 1966, which governs all voluntary associations' registration. The non-existence of a legal framework dedicated to the registration, regulation, management, funding and dissolution of political parties implies that political parties are private associations and perform a public (constitutional) function.

The significant problem is that Lesotho's Constitution has no provision on coalition agreements' formation, management and termination. It is also silent on the role of coalition agreements as well as the law applicable to and the justiciability of such agreements. There is no statute regulating the establishment, registration, organisation, activity and dissolution of coalition agreements. However, the phenomenon has been with Lesotho since 2012.

The last facet is that academic contributors have concentrated more on the political than the constitutional and juridical dimensions. Generally, while interdependent, the political and juridical dimensions manifest a dichotomy that pervades and cuts across coalition agreements. This dichotomy defines the underlying constraints to aligning coalition agreements in a manner that is virtuously reinforcing coalition governments in Lesotho. This situation cries out for improvement.

3 Theoretical framework

3.1 General

In the context of legal scholarship, theoretical frameworks are not often addressed. If they are, it is in the context of methodology discussions (Taekema, 2018). However, regard being had to this study's multidisciplinary nature, it is helpful to provide a brief theoretical framework to give the research context and provide a conceptual basis to this study. The

concepts and theories employed in this study are constitutional supremacy, the principle of separation of powers, alliance versus a coalition of political parties, judicialisation of politics, comparative approach and the constitutional convention of collective responsibility. These are briefly outlined below.

3.2 Constitutional supremacy

The first constitutional doctrine applicable is that of constitutional supremacy. Several sections of the Constitution of Lesotho provide for a framework on the role of political parties in the democratic dispensation of the Kingdom. This framework has been recognised by the country's apex Court (*Koro-Koro Constituency Committee v Executive Working Committee – All Basotho Convention*, 2019). Section 2 of the Constitution provides that Lesotho's Constitution is the supreme law of Lesotho. If any other law is inconsistent with the Constitution, that other law is, to the extent of the inconsistency, void. The section states that any law inconsistent with it is invalid. This section introduces the doctrine of constitutional supremacy. The purpose of the doctrine is to prevent abuse of public power. This prevention is achieved by declaring invalid conduct inconsistent with the Constitution. Thus, all law and conduct in Lesotho are subject to the Constitution. This doctrine is relevant to this study's aims, given its emphasis on constitutional supremacy.

3.3 Separation of powers

One of the keystones upon which contemporary parliamentary democracies are based on is the principle of the separation of powers. The doctrine of separation of powers is based on the principle that each arm of government is independent, has a separate function, and has unique powers that the others cannot infringe upon. The doctrine recognises the three components of the government's functional independence, the parliament, the executive, and the judiciary. The question is whether coalition agreements' justiciability is likely to infringe upon the principle of separation of powers under conditions such as democracy and constitutional rights, among others. Therefore, it will be necessary to carry out this chapter's objective to consider the extent to which coalition agreements may or have impinged upon the principle of the separation of powers in Lesotho.

3.4 Alliance versus a coalition of political parties

Section 87 (2) of Lesotho's Constitution provides that:

The King shall appoint as Prime Minister the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the National Assembly (Constitution of Lesotho, 1993).

The phrase *coalition of political parties* is not defined in the Constitution. From the perspective of coalition theory, the critical distinction is whether a new government in the Parliament must win the support of at least a plurality or not (Bergman, 1995). In Lesotho, the Head of State formally appoints a Prime Minister (and thereby a new government), and no vote of investiture is required. The Parliament's ultimate power rests in its ability to remove the government. Contrary to popular belief, it is not legally required that there must be a vote of investiture in a Prime Minister before a government assumes power.

However, the dictionary meaning of the term *coalition* is, "(a) [a]n alliance or union between groups, factions, or parties, especially for some temporary and specific reason. (b) A coalition government" (Butterfield, et al., 1986). In legal parlance, an "agreement" exists where there is a mutual understanding of parties' rights and responsibilities to such an arrangement. The Constitution does not expressly provide whether the contemplated coalition of political parties should consist only of those represented in the National Assembly. Neither does Lesotho law nor international literature reveal a clear and consistent approach to a coalition's concept. Makoa's approach seems not to distinguish between an alliance and a coalition of political parties within the context of Lesotho. He writes that:

If any, the conceptual delineation between alliances and coalitions is thin and sometimes blurred, so the difference between them is circumstantial and contextual. Indeed, as concrete phenomena, the two represent and signify solidarity groups, of which national states are some, working together and cooperating to achieve a specific goal. Thus, as descriptive terms, the two have rightly been used interchangeably and synonymously (Makoa, 2008:52).

The author further states that: "[t]he concepts connote and describe a collective and cooperative approach by two or more distinct formal organisations ..., with similar objectives and outlooks, however temporary and time-bound, the challenge or predicament facing them" (Makoa, 2008:53). He points out that, at the domestic or intra-state level of abstraction, an alliance or coalition must be conceptualised as collaboration and cooperation to pursue common goals between and among national organisations. Other scholars contend that though the word "alliance" refers to the pre-election grouping of political parties and "coalition" to the post-election groupings, these words are often used interchangeably (Kadima & Kasenally, 2005).

Other scholars contend that the distinction between an alliance and a coalition is that the former is established before an election, while the latter occurs in parliament after the general election. The latter is based on the election outcome (Kadima, 2014). The preceding conceptual characterisations of coalitions and alliances reveal that, while other scholars believe the two concepts may be used interchangeably, others contend they are distinct. However, in this chapter, the term *coalition* will refer to the end result of a post-electoral process where two or more political parties form a group in the National Assembly to create

a government. The Constitution of Lesotho uses the phrase *coalition of political* parties in the National Assembly. Since alliances cannot command the support of a majority of the National Assembly members as they are outside the National Assembly, they are therefore not contemplated by Lesotho's Constitution. These theories on coalition and alliance are at the heart of this study's aim.

3.5 *Judicialisation of politics*

The "judicialisation of politics" refers to the spread of legal discourse, jargon, rules, and procedures into the political sphere. Judicialisation has been linked to various factors, from the dissemination of human rights discourse (Epp, 1998; Kate & Van Koppen, 1994). Lesotho is not infrequent to spread legal discourse and procedures into the political sphere and expand courts' jurisdiction to determine core political controversies. These features are the primary expressions of the judicialisation of the country's political field. As a general rule, before a court can become seized with an issue, there must be a legal basis: a constitutional source, a statutory authority, subordinate legislative support, or common law precedent to constitute the legal authority upon which the courts can exercise their jurisdiction. The above expressions are referred to as *juridical facts* in this chapter. In Lesotho, judges have adopted a central role in resolving political disputes where juridical facts exist. This role is accomplished through either abstract review or resolution of concrete cases.

There are three general areas in coalition agreements in which the courts may intervene. These are policy, office allocation, and procedure. These aspects may be adjudicated upon where juridical facts exist. Some coalitions have substantial and explicit policy agreements. Coalition agreements impose various degrees of coalition discipline in parliamentary votes and other parliamentary activities. The judicialisation of politics is relevant to this study, as will appear later on in this chapter.

3.6 *Comparative theory*

Lesotho's proliferation of coalition agreements has produced a need for comparative legal knowledge unparalleled in its history. Examples of phenomena that necessitate this knowledge include the national legal reform programme Lesotho has currently embarked on. Such a situation requires scholarly analysis. This chapter views comparative law as serving several valuable purposes in this context. It acts as an instrument of learning and knowledge for improving Lesotho's domestic law and legal doctrine. These methods together constitute the whole toolbox for comparative research.

Comparison is a logical and inductive method of reasoning that enables objective identification of merits and demerits of any norm, practice, system procedure, or institution compared to others (Bhoa, 2015). The need for a comparative study of Lesotho's

four coalition agreements is justified mainly in terms of the benefit of the comparison to the national legal system. Since legal doctrine is a prominent factor in Lesotho's law's functioning, knowledge of its growth in other jurisdictions will reflect its efficacy in dealing with coalition agreements. The eclectic approach to be adopted will broaden the individual study's analysis. This chapter undertakes a comparative evaluation of the four coalition agreements. This comparative evaluation will provide alternative models for legislative interventions in this area.

3.7 Collective responsibility

Collective responsibility is a fundamental convention of the British constitution. The government is collectively accountable to Parliament for its actions, decisions, and policies (Everett, 2016). Every cabinet member takes responsibility for any decision made and is considered irresponsible if they do not resign from their post when necessary (Barnett, 2017). This convention provides Parliament with the means of holding the government as a body accountable (Woodhouse, 1994). It should continue to apply when there is a coalition government. Exceptions from collective responsibility are infrequent. However, as times change, these occurrences happen more frequently due to a coalition government's complexities. The reason is that the implications of collective responsibility are delivering confidence, unanimity, and confidentiality (Loveland, 2021). This constitutional convention is relevant to this study's aims, given the study's emphasis on coalitions' functioning and their agreements.

4 The juridical and constitutional implications of coalition agreements

4.1 General

The historical strand of new institutionalism explains behaviour by examining rules and other institutions' impact. Law in action may be different from the law in the books. These are aspects of juridical characteristics and implications. As March and Olsen point out: "institutions are collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations" (March & Olsen, 1984:160). One of the primary questions about coalition agreements is the juridical and constitutional characterisations and implications to a jurist. The reason for this is that when political parties govern together, they have a high potential of running into a wide variety of grave problems that may require judicial intervention. This section discusses the juridical and constitutional characteristics and implications of coalition agreements related to the Lesotho experience. This exercise will be done under six main subheadings. The subheadings are *ad seriatim* below.

4.2 *The impact of the law on politics and vice versa*

Before 1992, the doctrine of judicial non-intervention into political parties' affairs was common in Lesotho. With time, the courts have upheld judicially imposed controls on political parties. Since 1992 after the Basutoland Congress Party (BCP) returned from exile, Lesotho's superior courts have repeatedly intervened in the so-called political sphere. This approach has increasingly eroded the scope of realms considered non-justiciable in political life. This judicial intervention is justifiable because of the parties' direct involvement in the electoral process. Therefore, it is necessary to evaluate the juridical status of coalition agreements under Lesotho's law criteria.

Formal political agreements are now public, and this is a significant development. Nevertheless, these agreements are the first layer of political negotiation. Moreover, these formal agreements are generally not regarded as legally binding by the parties to them because they are not considered enforceable. Political developments are dictated by the balance of power in the Parliament. As a result, the issue arises as to whether political party activities should be judicially regulated to ensure that they do not violate the Constitution and the law. The problem occurs whether they do not deny constitutional rights to any segment of the electorate or abridge the right to vote or associate with the political party of one's choice. Undoubtedly, these developments significantly impact the law on politics and *vice versa* in Lesotho's political life. Therefore, it is validly arguable that this thinking goes a long way in informing the juridical and constitutional characteristics and implications of coalition agreements in Lesotho.

4.3 *The rule of law in politics*

The rule of law is central to coalition agreements. Therefore, it is necessary to evaluate the juridical status of coalition agreements under Lesotho's legal criteria. Lesotho's superior courts have shown willingness to intervene in political life. The starting point should be the courts' readiness to resolve political disputes. Therefore, all institutions and organs of the state must discharge their functions according to democratic values, the Constitution, and the law. The concept of the rule of law is at the centre of the rule of law in politics.

The concept of the rule of law is universally accepted and recognised by all civilised nations. It applies and transcends all organs and institutions created by the Constitution and all Lesotho citizens regardless of rank, status, or power. The rule of law is inviolable. For purposes of this discussion, two questions, therefore, arise: Can the courts in Lesotho declare that coalition (political) agreements are subject to the rule of law? What is the correlation between the rule of law and politics? To answer these questions, one has to bear in mind that the rule of law is one of the foundational values of constitutionalism, which puts constraints on public power exercise. It necessitates that public power is exercised in compliance with the law and within the law's boundaries.

When political parties enter into a coalition agreement in contemplation and furtherance of section 87(2) of the Constitution, they conceivably, perform a public function and power. Since the rule of law requires a rational and non-arbitrary exercise of power, the political parties must not act arbitrarily and irrationally. The non-arbitrariness requirement means that there must be a rational connection between the exercise of power by the political parties and the purpose for which that power is given, which is the formation of political parties' coalitions contemplated in the section.

The rule of law has a procedural and substantive component, which political parties and the government must observe. Otherwise, in public law, their actions are susceptible to judicial review. Arguably, the courts are perfectly entitled to enforce the rule of law regarding coalition agreements, present the judicial facts, and do so within an appropriate factual matrix. As a founding constitutional value, the rule of law must be linked to the constitutional values of accountability, openness, and responsibility.

Whichever way coalition agreements are created in Lesotho today falls short of satisfying the rule of law's various theoretical requirements. There are no open, transparent, stable, general rules to make coalition agreements. These principles have several practical legal implications in public law. There is no way of finding out whether the exercise of public power by the political parties to a coalition agreement is within the framework of the law, as there is no constitutional or statutory guidance as to how coalition agreements have to be formed. The rule of law may mean more than merely acting within the scope of allocated power. An Act of Parliament governing the establishment of political parties to a coalition pact, transparency, accountability, supervision of accountability, dissolution as well as sanctions may come in handy.

4.4 Political agreements

It has been argued that coalition and coalition agreements are more political "studies" concepts than legal or constitutional scholarship ('Nyane, 2019). In Lesotho's law, political parties' coalitions are sited within public law in general and constitutional law in particular. Undeniably, "[w]hile political agreements are not binding contracts, they do have some binding force in law. This force does not derive from the law of contract but from principles of public law that apply to the exercise of political power" (Kretzmer, 1992:413-414). The principal question regarding coalition agreements' legal significance is whether they create legally binding rights and obligations. Some scholars contend that coalition agreements are merely political settlements and produce only moral duties for the contracting parties. As stated by this viewpoint, coalition agreements are not concluded with the intention that they should be legally binding. Pergantis quotes Dumont and De Winter describing these agreements as moral engagements (Pergantis, 2019), while von Münch (1999) regards them as a species of gentlemen's agreements, where negotiators and parties agree to settle for exclusively moral pledges.

There is no indication in any of the four of Lesotho's coalition agreements that the parties intended the agreements to be legally binding on the parties. Arguably, there may be merit in Justice Elon's opinion of the Israeli Supreme Court in the decision on the *Zerzevsky* case. He argues that it is for the public to judge political (coalition) agreements. Political parties concluding such agreements were accountable (*Yosef Zerzevsky v The Prime Minister*, 1991). It is submitted that this does not tell the whole story.

Conversely, even though political parties to a coalition agreement may have no intention to be legally bound by it, its provisions and the measures taken for its implementation have legal significance. They must be subject to a specific set of legal rules to assess their legal validity. The crucial feature of a coalition is that it is fundamentally a form of collaboration between political parties or groups, not because this is what they desire, but because of what they are politically and constitutionally forced to do if they want to form a government. Such agreements are both at the heart of politics and coalition governments' constitutional formation. Perhaps, coalition agreements should be considered legally binding commitments. These agreements are not subject to the regular provisions of contract law but are still ruled by a legal regime that is no less severe than public law (Barak-Erez, 2002). Arguably, In Lesotho, public law's application to coalition agreements seems the most plausible approach (Von Münch, 1999).

4.5 Lesotho's coalition agreements and the constitutional doctrine of separation of powers

Since 2012, coalition agreements of parties commanding a majority in the National Assembly under section 87(2) of Lesotho's Constitution have been established (DC, et al., 2015). The 2015 Coalition Government adopted broad strategic objectives. These included being a reformist government addressing fundamental development issues: restoration of national peace and political stability. It also intended to deepen democracy and respect for human rights. It undertook to promote transparency and good governance. It contemplated driving economic growth to lead Lesotho out of the least developed nations within ten years. It undertook to place a greater focus on consultation and citizen participation, enhancing equality of opportunity for all citizens; eliminating corruption at all levels of society and government; making government more accountable to the people; deepening national pride amongst Basotho, and the relationship with regional and international partners.

The 2015 coalition government identified priority policy programmatic areas for itself. These areas included poverty reduction and addressing villagers' plight. They also encompassed the need to reform the public service and Parliament. In addition, the contemplated areas extended to the review of the judicial system, security reform, education, health, local government, and rights of workers, civil society organisations, media, and culture as well as recognising the vital role of women in development and promoting gender equality

and focus on the rights of women, children and people with disabilities to access services. It also undertook to ensure that the law on the declaration of assets and interests was implemented. Conceivably, these are matters which are constitutionally reserved for the Executive organ and not for coalition parties. These matters violate the constitutional principle of separation of powers. The same coalition government decided on the vast size and number of cabinet members. The agreement considered itself the critical instrument of the coalition government formed per section 87(2) of Lesotho's Constitution.

Arguably, the clauses practically reduce the margin of the Prime Minister's initiative and his ministers. They marginalise the Parliament's role, thereby disturbing the balance between the various branches of the government and violating the principle of the separation of powers. The coalition government believed that the instrument should have legal status. It provided that the coalition agreement's standing needed to be reflected in the National Assembly's Standing Orders. The foregoing discussions give credence to the thinking that coalition agreements impinge upon the principle of the separation of powers, which constitutes one of the foundations of Lesotho's parliamentary democracy.

The essential trait of a coalition agreement is that much of the governmental policy is determined therein. Any amendments are discussed informally by the coalition's institutional machinery to resolve conflicts and update the coalition agreement. Lesotho's four coalition agreements are no exception to this norm. A look at the four coalition agreements' provisions reveals that much of the governmental policy was determined in the dealings. These agreements affected the constitutionally provided processes for legislation. They, thus, undermine the constitutionally prescribed functions of the main state organs such as the executive and Parliament in state affairs. This situation necessitates legislative intervention to regulate coalition agreements' establishment, content, implementation, and termination.

5 A comparative analysis of the content of Lesotho's four coalition agreements

5.1 General

Section 82(1) (b) of Lesotho's Constitution calls for the National Assembly to meet no later than fourteen days after holding a general election. This means that if a coalition is to be formed, it must be completed within fourteen days. The 2012 general election produced the first coalition government in Lesotho. The agreement's name was *Agreement to Form a Coalition Government of Political Parties*. The coalition partners were the All Basotho Convention (ABC), Lesotho Congress for Democracy (LCD), and the Basotho National Party (BNP). This first coalition government was formally constituted and held a

bare majority of 61 out of 120 seats in the National Assembly. There was also a legislative coalition called the Bloc. A legislative coalition is an informal coalition. It can exist for one specific policy vote only and then dissolve. The coalition government virtually crumbled in acrimony in June 2014 when one of its major partners, the LCD, signed a new alliance with the DC, which had won 48 seats in the 2012 polls.

The second coalition government resulted from the 2015 general election. When the results were announced, the DC leader declared that he had assembled a coalition that would command a majority in the National Assembly. The coalition partners were the Democratic Congress (DC), Lesotho Congress for Democracy (LCD), Popular Front for Democracy (PFD), National Independent Party (NIP), Basutoland Congress Party (BCP), Lesotho People's Congress (LPC), and Marematlou Freedom Party (MFP). The agreement on which the coalition was based had a somewhat clumsily constructed name – *The Coalition Agreement for Stability and Reform Lesotho's Second Coalition Government Agreement*. This second coalition collapsed in 2017, thereby leading to the third coalition's birth.

The third coalition government resulted from the 2017 general election. This coalition was called, *The Coalition Agreement for National Unity, Reconciliation, Peace and Stability*. This time, the coalition partners were the All Basotho Convention (ABC), the Basotho National Party (BNP), the Alliance of Democrats (AD), and the Reformed Congress of Lesotho RCL. This third coalition collapsed in 2020, thereby leading to the fourth coalition government's birth. This fourth agreement was called, *The Coalition Agreement for Restoration of Rule of Law, Implementation of National Reforms Programme, and Stimulation of Economic Growth*.

5.2 Comparative analysis of the content of the four coalition agreements

It is now apposite to do a comparative evaluation of the four coalition agreements' contents. The discussion will set out using a functional method. In comparative legal research, "functionalism" encompasses understanding law, comparing (*tertium comparationis*), focusing on similarities (*praesumptio similitudinis*), building a system (of "legal families" for instance), determining the better law, unifying law, critical appraisal of the legal orders (Michaels, 2006). Generally, the content of the four coalitions is similar. What appear to be slightly different are the minor variations on dispute resolution. It is convenient to examine these variations. In this connection, it should be borne in mind that, in forming coalitions, politicians leading disciplined parties have a clear idea of their respective strengths (Kadima, 2014).

The first comparator between the coalition agreements relates to dispute resolution. In the 2012 coalition agreement, the parties agreed to re-negotiate the deal should the need arise. They also agreed that any dispute arising out of the application or interpretation of the agreement's provisions must be referred to the Monitoring and Implementation Committee (JIMC) for settlement, failing which, mediation and conciliation. If those alternative dispute resolutions failed, the parties would have to decide on the coalition's future. The coalition parties agreed that there might be occasions when they may have to agree to disagree on a proposal or course of action. In every such case, there would be a prior and full discussion between the parties to identify the area of conflict, and efforts would be made to resolve it. Conversely, the 2015 coalition partners recognised that a robust democracy encourages debate. They noted that, where there are differences in policy approaches, the parties agreed to express those views while assuring their commitment to the government's broader programme of work.

Under the 2015 coalition agreement, there was no provision for an alternative dispute resolution mechanism. Comparatively, the 2017 coalition agreement provided that the coalition government and the parties' leaders to the compact commit to working in good faith and consistently seek to cultivate the spirit of consensus and cordial relations between all the parties in the coalition government. The coalition agreed to establish a mechanism to monitor the agreement's implementation. In case of disagreement, the disputes were to be referred to an Independent Mediation Mechanism as set out below. They also agreed to set up an Independent Mediation Mechanism to help resolve disputes between the parties. Unlike the 2012, 2015 and 2020 coalition parties, the 2017 coalition parties agreed to invite SADC and other international partners to serve as mediators of last resort to this agreement. In the circumstances that all local remedies failed to resolve a dispute, the Southern African Development Community (SADC) or other regional and international partners were to be requested to mediate. Comparatively, the 2020 coalition seems to have reposed its faith in intra-coalition mediation. It considered that only if this did not work would they seek some trusted person's mediatory intervention. Unlike the 2017 coalition parties, the 2020 coalition parties did not agree to invite the SADC and other international partners to serve as mediators of last resort to this agreement.

The second comparative aspect is that the 2015 coalition was the largest. A larger coalition would only mean that each member gets a smaller share of the perks of winning. Riker (1962) argues that we should expect rational actors to form only minimum winning coalitions because of this. Debatably, the 2015 coalition agreement produced a minimum winning coalition. The third comparative aspect is that the 2015 coalition agreement was the worst, regard being had to the low winning size of the coalition it produced. The fourth comparative feature is that the four coalition agreements' content is ideologically similar. There is no discernible set of political beliefs or ideals that characterises a particular culture

to be ushered in by either of the four coalition agreements. The sixth comparative facet is that, since the size of a coalition is measured by its share of the parliamentary seats, the 2015 Lesotho coalition agreement was comparatively the worst of the four.

5.3 Status of the coalition agreements

As Akrivopoulou (2018) correctly contends, coalition governments attempt to represent a broader spectrum of the political scene, leading to more democratic decisions and more substantial legitimacy. In any substantive research in comparative law, both legislation and case law should be studied. They are both of decisive importance for knowing the law (Pound, 1910). Adopting this approach demonstrates how diverging rules and doctrinal constructions may produce similar decisions or how similar rules and doctrinal structures may diverge practical solutions. According to the Court of Appeal of Lesotho, while section 1(1) of the Constitution supports the system of multi-party democracy, there are no explicit rules in the Constitution that regulate how political parties should function. There are no exact rules in the Constitution that regulate whether their internal systems should be democratic. It is unclear how they should appoint leaders and office-bearers and manage their relationships with their members. The Constitution does not even require auditing or disclosing of their finances. That observation is also correct of the coalition of political parties contemplated by section 87(2) of the Constitution. Comparatively, the second agreement provides in clause "I" that this agreement is the key instrument of the coalition government formed following section 87(2) of the Constitution of Lesotho. It further provides that the coalition government believes the instrument should have legal status. Arguably, even if a coalition agreement were to be tabled before the National Assembly for a vote, that would not give it political and legislative legitimacy. It is also unclear what would happen if the government lost a vote on the coalition agreement. It stated that the coalition agreement needed to be reflected appropriately in the Standing Orders of the National Assembly. This indicates that the parties' intention regarding the second coalition agreement was to give it some juridical cloak eventually. This inferred intention is bolstered by the fact that even the agreement's final provision provides that the coalition government will bring a bill to the House to confirm the coalition agreement's legal status within six months of the deal's signing. The Bill was to reflect international best practices.

5.4 Operation of government and Parliament under the four coalition agreements

Under the 2012 coalition agreement, the parties agreed to form an inclusive government that would incorporate all parties' policies fairly and adequately. The government was to work on a good faith basis, and no surprise. The parties agreed to agree to disagree. No specified areas were permitting the parties to the coalition to adopt different positions.

Where it is clear that no collective position can be reached on an issue, a proper process should be in place to govern any setting aside of collective responsibility. The allocations of ministerial, ambassadorial, senator and district administrative positions were to be made proportionally in line with the National Assembly's seats. Principal secretaries' appointments would be made based on proportionality with the National Assembly's seats. The agreement also provided that executive authority (including appointments) would be exercised regarding the principles and spirit underlying the formation of the inclusive (coalition) government.

Comparatively, the 2015 and 2017 coalition agreements had explicit provisions on collective responsibility. Each provided that the principle of collective cabinet responsibility bound all cabinet members. Once a Cabinet decision is made, no Cabinet Minister can stand aside from it unless the cabinet approves a Minister to take a different position. Similarly, the 2020 coalition agreement provided that the principle of collective cabinet responsibility binds all cabinet members. Once a cabinet decision is made, no Cabinet Minister can stand aside. However, there is no provision under the 2020 coalition agreement that the cabinet approves for a Minister to take a different position.

5.5 The government and its programme

Before the 2012 election, the political parties in Lesotho did not publicly discuss what might happen in a hung parliament. All parties campaigned to secure an overall majority. However, the coalition was formed in private negotiations after the public had voted. The resulting coalition agreement had not been put before the people. This led some to argue that a coalition government formed is not as democratically legitimate as a single-party government. In the run-up to general elections, each political party put forward its manifesto for the next election. The coalitions were formed through post-election negotiations producing a new government programme that had not been put before the electorate.

There is a shortfall in democratic legitimacy from this process of post-election government formation. The first question is whether there should be a constitutional provision to the effect that there should be a vote to invest the new Prime Minister to have apparent legitimacy to form a government. A prime ministerial investiture vote would significantly change Lesotho's constitutional processes for forming a government. This means that Lesotho has first to make a conscious political choice to adopt this route. This should be a matter of a referendum. This issue was not one of those raised amongst the ongoing reforms' questionnaires. As Everett points out in paragraph 48 of the Report, a prime ministerial investiture vote would, in effect, make that vote the test of confidence rather than to vote on the government's programme.

Another aspect is whether a prime minister should be elected separately from the other parliament members. The prime minister would be free to appoint his team of ministers to run the government to counter the effects of coalitions on the government and its programme. The present author does not support any of these two approaches. Firstly, this approach would likely plunge Lesotho into deeper political trouble with her kind of politicians who may just refuse to vote for a prime minister. Secondly, an investiture vote would result in a presidential style of government. Again, this should be a matter of a referendum. It was not one of those raised amongst the ongoing 'reforms' questionnaires.

The second coalition agreement provided that the National Assembly should approve the coalition agreement. Were this proposal to materialise, there would be a need to provide for the implication and constitutional status of such an action in law. This would be so because Lesotho follows a system of constitutional supremacy instead of parliamentary sovereignty. It is submitted that, in all the four coalition agreements where there have been attempts to qualify, modify, or circumscribe the exercise of constitutional powers conferred upon the various constitutional creatures, such qualifications, modifications, and circumscriptions are unconstitutional.

In all the four coalition agreements, the respective parties commit to working in good faith and consistently cultivate the spirit of consensus and cordial relations between all the coalition government parties. It is evident from the above discussions that the concepts, rules, and procedures were slightly divergent, while the solutions contemplated to be given to potential problems were to be similar or even identical.

5.6 A statement on good faith and no surprises

In the four agreements, there is a similar thread. The second coalition government partners agreed to work collaboratively and based on no surprises and good faith. They decided to be bound by this agreement's spirit as much as by the specific provisions it contains. More specifically, they agreed to the following aspects: First, that the coalition leaders would meet every month, or more often if necessary, to discuss the government's programmes and to inform the partners on progress with particular policies and legislation. This would also be an opportunity for party leaders to raise any other issues confronting the coalition. Second, there was to be a joint parliamentary caucus of the coalition parties held at least once a month to consider any matter they may wish to raise with each other. Third, they agreed that any coalition party leader might directly see the Prime Minister for any matter considered necessary. Fourth, each coalition party would hold its caucus meeting as and when it deems appropriate. Fifth, the Coalition Government believes that the comprehensive programme of work identified in this coalition agreement should be monitored and reviewed periodically. The coalition would establish a coalition-monitoring group comprised of representatives of each coalition's parties and other experts as required,

who would develop a process and timeline for timely review and evaluation of the work programme. The monitoring group would be set up within three months of signing this coalition agreement. Sixth, they agreed that where it is known that a policy or legislative proposal is of interest to a coalition partner, that party would be consulted on the proposal. Their views would be taken into account when finalising the proposal. In cases where there is a serious disagreement, the matter would be escalated to the coalition partners' leaders to resolve. Additionally, all consultations would take place on a timely basis and allow for the proper processing of proposals, especially when contentious. Seventh, the coalition partners would also have access to relevant Ministers on a needs basis to discuss constituent issues, policy proposals and receive briefings on their portfolios' matters of interest.

5.7 Policy concessions or agreements

In the coalition agreement, the parties agreed on several issues. First, they agreed and committed themselves to grow the economy faster through institutional reforms, effective use of natural resources, and infrastructure development. The approach was to be one that would attract investment to protect Lesotho's interests and ensure that a more significant proportion of the earnings from natural resources remains in Lesotho. Second, they agreed to enhance the strategic management of natural resources. Third, they also committed to adopting a "Lesotho Now" approach to drive economic development and create employment by results-oriented procurement practices, strategic leveraging of natural resources, and competitive regional and international negotiations. Fourth, they undertook to create a conducive environment for the growth of the private sector through an appropriate regulatory framework promoting the tourism industry. Fifth, the parties committed themselves to promote food security and commercial agriculture. Sixth, they undertook to support Small, Micro and Medium Enterprises (SMMEs) through appropriate regulatory policies and access to finance. Seventh, there was also a commitment to focus on identifying and maximising value-added industries that create a balance between the export of raw materials such as diamonds, wool and mohair, and job creation. The eighth commitment was to address social outcomes for Lesotho citizens by focusing on reducing poverty, reducing inequality, and improving access to adequate social services. The ninth, there were commitments to address the needs of the vulnerable populations and the public servants' welfare needs. The eleventh obligation was to review strategic bi-lateral and multilateral relationships to enhance Lesotho's economic and social prospects. Lastly, the parties undertook to review Lesotho citizens' movement and migration.

5.8 The government's legislative programme

A coalition agreement should allow the government to facilitate the implementation of the preferred legislative programme in Parliament. Under the 2012 coalition agreement, there was no provision on the government's legislative agenda. Comparatively, under the 2015

coalition agreement, the coalition agreement provided that, to ensure a timely and effective process for periodic review of statutes, the Law Reform Commission would be reviewed and restructured to build its capacity to meet its objectives. The parties also agreed that where it is known that a policy or legislative proposal is of interest to a coalition partner, that party will be consulted on the proposal. Their views are taken into account when finalising the proposal.

The 2017 coalition agreement made provision in clause 1(b) 9(ii) that the coalition would promulgate a public procurement code of conduct for politically exposed persons, including ministers and senior officers. In paragraphs 3.1(b) and 9(ii), it also pointed out that it would review and pass new procurement legislation. It also provided that it will review and amend Lesotho's Constitution as appropriate. The 2020 coalition agreement provides in paragraph 3.1(h)(iii) that the coalition would review and pass new procurement legislation to fight corruption. It is arguable that, overall, the four coalition agreements are fragile on a commitment to the legislative programme. The coalition agreements are weak on the legislative programme's issue.

5.9 Cabinet positions and collective responsibility

There was also a statement on collective cabinet responsibility in the second coalition agreement. In this connection, the parties agreed that the Prime Minister would be the leader of the Democratic Congress. The Deputy Prime Minister would be the leader of the Lesotho Congress for Democracy (LCD). The Prime Minister would allocate cabinet portfolios in consultation with the Deputy Prime Minister based on each party's proportional strength and negotiations between the Prime Minister and each party. The Democratic Congress (DC) would have sixteen Ministers and five Deputy Ministers. The Lesotho Congress for Democracy (LCD) would have five Ministers and one Deputy Minister. The Popular Front for Democracy (PFD) would have one Minister and one Deputy Minister. The Basotho Congress Party (BCP), Lesotho People's Congress (LPC), Marematlou Freedom Party (MFP) and the National Independent Party (NIP) would each have one minister.

Where the need to reshuffle a Cabinet Minister arises for whatever reason, there would be prior consultations between the Prime Minister and the leader of the party that the minister represents. A Minister would be dismissed from Cabinet if he or she lost his or her party's confidence as indicated by the relevant party leader to the Prime Minister. If the Prime Minister loses confidence in a Minister, such a Minister would be dismissed after consultation with the leader of such a Minister's party. The Prime Minister is responsible for all performance and disciplinary issues for Cabinet Ministers. The Cabinet would meet regularly, and these would be the only occasions on which formal decisions are made on all critical issues and those prescribed constitutionally. The principle of collective cabinet

responsibility binds all members of the Cabinet. Once a Cabinet decision is made, no Cabinet Minister can stand aside from it unless Cabinet approves a Minister to take a different position.

5.10 A statement on confidence, procedural motions and supply

The four coalition agreements provided that the coalition partners agreed to support the government on the Parliament's procedural motions.

5.11 An "agree-to-disagree" provision

The coalition parties agreed in different words that there might be occasions when they agree to disagree on a proposal or course of action. There would be a prior and full discussion between the Parties to identify the area of conflict and efforts to resolve it in every case. The Coalition partners recognised that a robust democracy encourages debate. Where there are differences in policy approaches, Coalition partners agreed to express those views while assuring their commitment to the government's more comprehensive programme of work.

5.12 Political appointments

By the coalition agreement, all political appointments are to be made by the Prime Minister in consultation with the Deputy Prime Minister based on each party's proportional strength and negotiations between the Prime Minister and each party's leadership. Whenever a political appointment would be contemplated at any government tier, the Prime Minister would make it after consultation with all coalition party leaders.

6 Coalition agreements and the resolution of disputes between the parties

A coalition government is based on a coalition agreement. Such agreement may be either verbal or in writing. There were no provisions about the agreements' enforceability or otherwise in the four coalition agreements that birthed Lesotho's four coalition governments. Differently put, there were no juridical indications for their non-enforceability. A coalition of political parties is contemplated by the Constitution (Anthopoulos & Akrivopoulou, 2017). Suppose a party to the coalition violates the coalition agreement. In that case, it may be argued that such is a violation of a legal obligation arising out of that agreement. Debatably, a coalition agreement creates a binding agreement between the parties by implication. Such an implication is not only a possible or probable one, but it is also necessary. It is so strong a probability of intention that an intention contrary to that attributed to the political party to the agreement cannot be supposed. In this chapter, the approach adopted is that a coalition agreement contemplated in the Constitution embodies an obligation arising from what is expressed.

7 Coalition agreements *vis-à-vis* the role of the Council of State

7.1 General

In discussing the Council of State's role within a coalition agreement's setting, it is helpful to keep the importance of Lesotho's constitutional architecture in mind. "Constitutional architecture" is a term that connects constitutional texts to underlying functions and intentions. The elements included in a constitution are closely related to the purposes it is intended to serve. Constitution builders often deliberate at length on what institutional design to adopt in response to a given situation. Institutional design in constitutions is often theorised from existing constitutional practices and traditions, often highly context-sensitive. Thus, the Council of State's role in the decision-making leading to the appointment of the Prime Minister in a coalition government setting necessitates understanding Lesotho's constitutional architecture. It is, therefore, necessary to begin by discussing the nature and function of the Council of State.

7.2 The Council of State

Section 95(1) of the Constitution of Lesotho enjoins the Council of State to assist the King in discharging his functions conferred by the Constitution. The Council of State consists of: the Prime Minister, the Speaker of the National Assembly, two judges or former judges of the High Court or Court of Appeal who are to be appointed by the King on the advice of the Chief Justice, the Attorney-General, the Commander of the Defence Force, the Commissioner of Police, a Principal Chief who is to be nominated by the College of Chiefs, two members of the National Assembly appointed by the Speaker from among the members of the opposition party or parties. The Law Society nominates a member of the legal profession in private practice.

As clarified earlier, the Constitution of Lesotho enjoins the King to appoint as Prime Minister, the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the National Assembly. The test as to whether one is or is not the leader of a coalition of political parties is objective and based on relevant facts, which would, in the ordinary course, be placed at the disposal of the Council of State. It means that the Council of State should be provided with relevant facts. Suppose the power to advise the King is subject to objective criteria consistent with the Constitution. In that case, that power is not constitutionally objectionable. The Constitution provides that the King may attend any meeting of the Council and is to preside if he does attend. In the absence of the King, the Prime Minister (or such other member as may be prescribed by its rules of procedure) is to preside at meetings of the Council. A critic would argue that

this level of attachment of the monarch to the political negotiations should be avoided. The Constitution does not explicitly preclude the monarch's involvement in discussions. The perception of personal influence over the process might damage the monarchy.

The primary theoretical lenses to be used in discussing the role of the Council of State within a coalition agreement's setting are: (a) the dynamics that concentrate or disperse power and (b) the dynamics that legalise issues in the Constitution compared to those that seek to make more room for politics. The relationship between a constitutional text and its broader purposes beyond embodying the supreme law should also be highlighted. By design, the text includes only those normative and substantive issues and principles for which a consensus was reached. The factual bases for these discussions will be gleaned from the historical traditions and constitutional reports resulting from the Council of State's institutional design.

In 1992, the National Constituent Assembly in Lesotho made several proposals respecting the King's Privy Council established in section 80 of the Lesotho Independence Order. The first proposal was that the Privy Council's name be changed to the Council of State. No reason was offered for this proposed change. The second proposal was that the Council's membership be increased from three to fourteen. The result was the present number of members of the Council of State. Again, the Report does not say why this change. The Council of State was also clothed with the power to advise the Prime Minister on the existence of a state of emergency. One of the essential powers of the Council is to advise the King on appointments of the Prime Minister and the Chief Electoral Officer.

7.3 Coalition agreements and the role of the Council of State

The King must appoint a National Assembly member to be the Prime Minister. How does the Council of State determine whether a particular member of the National Assembly is a political party leader or coalition of political parties? In 2012, three political parties in the National Assembly signed a coalition agreement to form a government. The leaders were Thabane MP (for All Basotho Convention), Metsing MP (for Lesotho Congress for Democracy [LCD]), and Maseribane MP (Basotho National Party). Arguably, this was not evidence enough to prove that the coalition would command the majority of the members of the National Assembly in the absence of a recorded vote.

Additionally, the coalition agreement provided that "[t]he parties to this Agreement agree to form a Coalition of Political Parties to be called the 'First Coalition of Parties of Lesotho', working in collaboration with the Bloc." In this context, Bloc means the six collaborating political parties comprising Basotho Democratic National Party (BNP), the Lesotho People's Congress (LPC), the Lesotho Workers Party (LWP), the Marematlou Freedom

Party (MFP), the National Independence Party (NIP), and the Popular Front for Democracy (PFD). However, those were not parties to the agreement. How then could that agreement bind them?

In 2015 a coalition agreement was signed by seven political parties in the National Assembly. It provided that the document is the agreement of the coalition of parties commanding a majority in the National Assembly and thereby entitled to form a Coalition Government according to section 87(2) of the Constitution of Lesotho. In 2017, four leaders of political parties signed another coalition agreement. Again, no other National Assembly members had signed to indicate that they would support the government. In 2020, some individuals (one in the National Assembly and one not) signed for the All Basotho Convention and one for the Democratic Congress. A jurist would ask whether it matters not that the signatories are members of the National Assembly.

As discussed earlier, there is no provision in the Constitution regarding the Prime Ministerial investiture vote in Lesotho. Since coalition agreements are negotiated confidentially, the underlying decision about who should be the next Prime Minister is usually shrouded in secrecy. There is no advantage in the National Assembly voting on the Prime Minister's investiture or a coalition agreement. The vote on the King's Speech is equivalent to a vote of confidence in the government's programme. A separate vote on the Prime Minister's investiture or a coalition agreement would risk confusion and would be inappropriate. There is a bigger question: how would the Council of State view that the coalition will command the support of the majority of the National Assembly? Perhaps, the Council of State would only rely on the Speaker armed with a copy of a coalition agreement.

8 A recommendation for a provision governing the content and status of coalition agreements

As discussed above, the coalition parties agree on what they want to achieve in the next government period. They each want to implement their party manifestos in the coalition agreement as much as possible. It follows that a coalition agreement is a matter of give-and-take and a compromise between different party views. It is also clear from the Lesotho's four coalition agreements that a coalition agreement first decides the government's policy programme (Timmermans, 2006). Lawmaking is crucial for governing parties, but at the same time, it poses a severe challenge to coalition governments because the cabinet parties are likely to differ in policy positions and also concerning the importance they ascribe to different issues (Saalfeld, 2008).

As Bergman instructively points out, when issues are not seen as necessary, other influences, such as historical experiences and socialisation into existing constitutional arrangements, work in favour of the institutional *status quo*. The study of Lesotho's existing constitutional

design shows that a goal-seeking perspective has limits. Therefore, in Lesotho's upcoming constitutional national reforms, it would serve the country well to include a provision in the new constitution governing the formation and functioning of coalitions. The Constitution would do well in controlling coalition agreements' content and status. Another aspect relates to legislative enactments. Electoral laws are essential in shaping the context of government formation in at least one additional way. A constitutional provision should be included addressing the question of whether a coalition government's programme should, in the future, be put to the National Assembly for approval.

9 Conclusion

The discussion above has pointed to essential patterns in Lesotho's coalition formation. It has also underscored the importance of political parties as integral to the constitutional democratic order. From the above discussion, it is clear that a Prime Minister's powers to appoint and dismiss ministers under a coalition are significantly constrained. The coalition agreements provide that the King's ultimate advice on appointing or dismissal still comes from the Prime Minister subject to the coalition agreements' conditions. There is a need to have a provision in the Constitution.

Now that Lesotho's constitutional, parliamentary and political reforms are on the horizon, it is recommended that the reform of the Constitution should introduce a new paradigm for management and administration of political parties. Firstly, there should be a provision in the Constitution that should recognise political parties as important institutions in promoting democracy. The Constitution should guarantee the right to freedom of association and participation in a political party's activities. However, it should also set out basic requirements for political parties.

Secondly, the Constitution should also require Parliament to enact legislation providing for key aspects concerning political parties. A Political Parties' Act should, among other things, make general provisions regulating such issues as the constitutional status and functions of political parties. The extent of their active and passive legitimation, designation, and equality of treatment of political parties should be enacted. The Act should also deal with the internal organisation, the nomination of candidates for election; public financing; presentation of accounts; and the implementation of bans on unconstitutional parties.

Thirdly, Lesotho needs more legal regulation concerning coalitions' formation and management. It is suggested that there be enacted a Coalitions Agreements Act. The Act's purpose should be to regulate coalition agreements and encourage political parties to enter into pre-election coalition agreements. It should provide for whether political parties may negotiate and enter into a coalition agreement with other political parties before or after a general election. Such an agreement must contain the specific minimum rules. Such rules

should encompass procedures on how a political party leader to a coalition agreement that has won the highest number of parliamentary seats should be nominated or appointed leader of the coalition of political parties and nominated as Prime Minister. There should also be a provision on what should happen if two or more political parties have equal seats in the National Assembly. There may also be provisions regarding a Deputy Leader of the Coalition and their role. It may also provide for some Coalition Executive organ, which may be the Coalition of Political Parties' supreme governing body.

Fourthly, the Coalition Executive organ's importance would be to manage the coalition's affairs and advise the coalition's leader in forming the Cabinet. All these may help in the appointment of high-calibre ministers. There should also be provisions on processes for termination or replacement of the Coalition Leader or Deputy Leader. The coalition agreement partners may also be required to consider providing a strategy, and plan adopted, whether wholly or by combination or amalgamation, with or without variations, by the Coalition Executive organ be binding and be implemented by the Coalition of Political Parties.

Fifthly, the Act should have its roots in the country's Constitution. It would be a mistake to leave the choice of the main aspects of the proposed Act's content to Parliament. If left to the Parliament to regulate, some unscrupulous politicians may remove the Act. Lastly, there should also be a provision for coalition agreement rules for the opposition side.

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THE POWERS OF A COALITIONAL PRIME MINISTER UNDER THE CONSTITUTION OF LESOTHO

4

Hoolo 'Nyane

1. Introduction

The Constitution of Lesotho (1993) places executive authority in the King (sec 86). However, the scheme of the Constitution vests the effective powers of government in the Prime Minister, regardless of whether the government is based on a single-party majority or coalitional. The Prime Minister's office is integral to the entire constitutional design as the government forms and falls through this office (Rose, 1990; Bogdanor, 2008). As a Westminster design, the confidence of the National Assembly is a condition precedent to the formation of a government in Lesotho. The person to be appointed Prime Minister must, at all material times, enjoy the confidence of the House (Heasman, 1962; Rasmussen, 1987). If the National Assembly withdraws its confidence from the government and the Prime Minister, it effectively marks the end of such a government (sec 87).

While the Constitution expressly creates the Prime Minister's office, it is a matter of intense controversy whether the powers stipulated in the Constitution as powers of the Prime Minister are exhaustive. In principle, the "executive authority" effectively exercised by the Prime Minister is a fairly broad notion that defies both definitional and legal circumscription. Therefore, the term "executive" is primarily associated with the implementation of the law (Baxter, 1982). However, limiting the executive function to the implementation of the law might obscure the nature of executive authority in modern constitutional theory. The modern-day conception of executive authority has outgrown its classical trappings. As Phillips and Jackson contend: "the scope of this function has become extremely wide. It now involves the provision and administration or regulation of a vast system of social services,

as well as supervision of defence, order and justice and the finance, required, therefore” (Phillips & Jackson, 1987:12). Thus, the executive is best defined in generic terms as: “the whole corpus of authority to govern” (Bradley & Ewing, 1997:88).

Be that as it may, the Constitution of Lesotho provides for certain basic executive functions of the Prime Minister. The most prominent ones are the appointment and dismissal of ministers and senior government officials, the parliamentary prerogatives such as dissolution and prorogation of Parliament, appointment and dismissal of heads of the superior courts. These are classical prerogative powers of the King that have effectively drifted to the Prime Minister (Obioha, 2020; Nyane, 2020).

In a situation where the government is based on a single political party, the exercise of these functions is pretty straightforward. The problems of decision-making are minimal; the Prime Minister is normally regarded as the head of government, assisted by the Cabinet. The situation is a bit complicated in a hung parliament situation – where the government is based on a coalitional majority in the National Assembly. The Prime Minister’s ordinary executive powers get curtailed both politically and legally (Green-Pedersen, et al., 2018). He is not as strong as the Prime Minister who won the outright majority in the House at the political level. At the legal level, the situation is a bit dicey because the Constitution of Lesotho spells out the powers of the Prime Minister regardless of whether it is coalitional or single-party-based. Yet, the coalition agreements, which form the basis for coalition governments, often attenuate the Prime Minister’s powers in fundamental respects (Bennister & Heffernan, 2012). They spell out how the cabinet will be constituted.

The cabinet positions are shared amongst the coalescing partners, and the appointment and dismissal of cabinet members from other political parties is only a formality for the Prime Minister. The coalescing partners wield powers to recommend the appointment and dismissal of ministers from their own political parties. For instance, under the 2017 coalition, the agreement was that: “[c]abinet portfolios will be allocated by the Prime Minister in consultation with the Coalition Partners” (ABC, et al., 2017:art 5.5). It provided further that: “[w]here the need to reshuffle Cabinet, or dismiss a minister arises for whatever reason, there shall be prior consultations between the Prime Minister and the relevant Coalition Partner” (ABC, et al., 2017:art 5.7).

The coalition agreements also limit the executive prerogative of the Prime Minister to exercise his government discretion. He is often bound to consult the partners on matters of government. To that end, the 2017 Coalition Agreement provided that: “[c]onsultation is presumed to precede every important decision by the Prime Minister” (ABC, et al., 2017:art 5.11). When relations deteriorate between coalition partners, which is a common phenomenon in Lesotho, the contestation between the Prime Minister and the coalition partners often arises (Booyesen, 2015; Weisfelder, 2015). When disagreements occur, the Prime Minister often resorts to his original executive powers enshrined in the Constitution.

In contrast, the coalition partners often resort to coalition agreements and the threat to withdraw their support to the Prime Minister in the National Assembly. During the maiden 2012-2015 coalition between All Basotho Convention, Lesotho Congress for Democracy (LCD), and Basotho National Party, the disagreement over the non-consultative nature of Prime Minister Thomas Thabane was very common (Banerjee & Rich, 2017). The disagreement became so acute that it even became the basis for the premature collapse of that coalition. The tension recurred under the ABC-led 2017-2020 coalition government when the Prime Minister sought to unilaterally prorogue parliament. It equally led to the premature ending of the coalition agreement.

These tensions have given rise to two fundamental questions. The first one is whether a Prime Minister in a coalition government is legally bound to consult the coalescing partners on matters of government. The second one relates to the effect that a coalition agreement has on the Prime Minister's powers. The purpose of this chapter is to investigate these questions. Methodically, the chapter uses the content analysis method to analyse the provisions of the Constitution and the few decided cases in Lesotho and abroad on the questions under investigation.

2 Conceptual framework: The powers of a single-party Prime Minister vis-à-vis a coalitional Prime Minister

The position of the Prime Minister is a relatively recent creature of Westminster constitutional designs. The title of "Prime Minister" had been used officially for the first time by Benjamin Disraeli while referring to himself in the Treaty of Berlin in 1878 (Brazier, 2020). Before the general acceptance and widespread usage of the title of Prime Minister, the heads of government in England held office under the designation of the "First Lord of the Treasury" (Phillips & Jackson, 1987). Thus, the emergence of the position of Prime Minister has been, to a great extent, a matter of political expediency and practice rather than of law (Bradley & Ewing, 1997). As one British authority contends: "there is no legal definition of the office of Prime Minister or of its powers and duties" (Brazier, 2020:7). The power of the Prime Minister "waned and waxed" depending on several factors such as, but not limited to, the personality of the incumbent and the political system of a country in question (Bennister & Heffernan, 2015).

In the beginning, the position of Prime Minister started in sharp contrast to that of the President. The classical difference between the two was that while the President wielded the executive authority as a person, the Prime Minister operated within a cabinet system as the *primus inter pares* (one amongst equals). The Prime Minister was just one amongst equals in-cabinet. Although he still wielded so much policy influence, the Prime Minister was not necessarily the embodiment of the state's executive authority. In a Westminster

design, it was always the sovereign (monarch) who wielded such power (Heffernan, 2005). However, studies have shown that in recent times the position of Prime Minister has, to a great degree, materially mutated; the office has gained more power and prominence (Dowding, 2013; Foley, 2004; Heffernan, 2003). The drifting of power from the palace to the cabinet has hugely bolstered the office of the Prime Minister. It has since become either “presidentialised” or a “quasi-monarch” (Hinton, 1960; Jones, 2006). This is mainly attributable to the ascendancy of democracy, electoral politics and the political party system (Jennings, 1969). These factors have favoured the Prime Minister more than the monarch, whose power is based on heredity. The formerly indivisible powers of the monarchs over the *trias politica* – the parliament, the judiciary and the executive – have since shifted to the Prime Minister. The burgeoning of the powers of the Prime Minister has, in a way, distorted even the cabinet system of government. The Prime Minister exercises power not only over the cabinet but over the political system as a whole. These are immense powers. As one British constitutional authority observes:

...the Prime Minister’s actual authority has tended to increase. He is not merely *primus inter pares*. He is not even, as Harcourt said, *inter Stellas luna minores*. He is, rather, a sun around which planets revolve. Though he may rise to office because of the Queen’s choice or the election of his parliamentary colleagues, he owes his majority to the choice of the electorate. Generally, a party obtains office because of a general election. A general election is, primarily, an election of a Prime Minister (Jennings, 1969:200).

These wider-ranging powers of the Prime Minister notwithstanding, when the government is based on a coalitional majority, the Prime Minister’s powers get reduced somewhat. As observed by Bennister and Heffernan (2012:778): “[f]orming a coalition involves compromise, so a prime minister heading up a coalition government, should not be as powerful as a prime minister leading a single-party government”. The basis for the reduced powers of a coalitional Prime Minister, compared to a single-party Prime Minister, is pretty obvious – the power of a single-party is based on the fact that he won a landslide victory in both general elections and Parliament. As Bogdanor poignantly points out, the power of the single-party Prime Minister rests “largely on the fact that they had won landslide victories for their parties on the manifestos that had been stamped with their own personal imprint” (Bogdanor, 2011:27). Contrarily, the same cannot be said about a coalitional Prime Minister; he cannot claim the same power wielded by the Prime Minister who won a landslide victory both from the elections and in Parliament. Oftentimes, this is the reality that coalitional Prime Ministers do not want to accept. The usual tendency is to exercise wide powers similar to the ones wielded by a single-party Prime Minister.

A coalition arrangement does not only reduce the ordinary powers of the Prime Minister over the cabinet, like the appointment and dismissal of ministers; it also profusely affects even the powers of the cabinet itself. In a single-party government, the cabinet is the uncontested repository of government policy (Jennings, 1969). The established conventions

such as collective ministerial responsibility enable the Prime Minister to control the activities of individual ministers (King, 1985). In a coalition government, the dynamics change somewhat. The government becomes beholden to the extra-cabinet coalitional arrangements. In the end, the decisions made at that level turn out to be more important than the decisions of the cabinet. In effect, the cabinet often finds itself in an awkward situation of having to “rubber-stamp” decisions made at a coalitional level. According to Bogdanor, writing in the context of Britain, the structure called “Coalition Committee” during the 2010 coalition government became more important than the cabinet itself, and “Cabinet government might have come to be replaced by coalition Committee government” (Bogdanor, 2011:67).

In the case of Lesotho, the situation is even more dire because the coalitional structures – which are often established by coalition agreements – are often dysfunctional. As a result, the informal interactions between the coalition leaders end up being the basis for the functioning of the government. That is why the coalition governments’ stability often depends on the cordial relations between the Prime Minister and his deputy and other coalition partners (Shale, 2017). Two coalitions in Lesotho bear testimony to this. The first one was the 2012 coalition. The 2012-2015 coalition ultimately collapsed only two years into its normal five-year parliamentary term when the relations between the then Prime Minister, Thomas Thabane, and his deputy, Mothejoa Metsing, broke down irretrievably (Weisfelder, 2015). Another coalition that, amongst others, collapsed because of the contest for power between the Prime Minister and his coalition partners, amongst other reasons, is the 2017 coalition. That coalition collapsed in 2020. Intriguingly, while the 2017 quartet coalition disintegrated when the relations between partners broke down, the relations between Prime Minister Thabane and his Deputy, Moleleki, were somewhat still harmonious when the coalition unravelled in 2020. The main disagreement came from their partners, the BNP leader Thesele Maseribane and the RCL leader Keketso Rantšo over the Prime Minister’s intention to prorogue Parliament to ward off the enactment of the Ninth Amendment to the Constitution (Motsoeli, 2020).

3 The constitutional framework for the powers of a coalitional Prime Minister in Lesotho

The Constitution of Lesotho (1993) has always anticipated that a government may be formed based on either a single-party majority or a coalitional majority. To that end, section 87(2) provides that: “[t]he King shall appoint as Prime Minister the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the National Assembly.” While governing through coalitions only started in earnest in 2012, this section is the successor to section 71(3) of the Constitution of Lesotho 1966, which ushered the country into independence.

Section 95(2)(h) of the 1993 Constitution also provides that the leader of opposition may be recognised based on a coalitional majority. The High Court reaffirmed this principle in the case of *Mokhothu v Speaker of the National Assembly* (2017). In this case, the applicant was deprived of his status as the official leader of the opposition after his party lost one member of parliament to the government. The Speaker did this despite the fact that the other opposition parties had written to assure the Speaker that they support the first applicant as the official leader of the opposition. The court reversed the Speaker's decision.

Section 87(2) is the most crucial section for formation and sustenance of a coalition government in Lesotho. The Constitution does not have any other section that guides coalitions beyond the formation stage. This is a very awkward constitutional position. After the formation, the government exercises normal executive powers, regardless of whether it is a coalition or a single-party government. The Prime Minister, who is the effective head of government, exercises the powers of that office virtually unaffected by the nature of government. The section which establishes the office of the Prime Minister (section 87(1)), unlike the one that provides for formation (section 87(2)), is silent about the possibility of the Prime Minister being either based on a single-party majority or a coalition. It only provides that: "[t]here shall be a Prime Minister who shall be appointed by the King acting in accordance with the advice of the Council of State".

Although it is a common mantra that the Prime Minister is the "head of government" (Government of Lesotho, 2020), the Constitution does not expressly provide for the Prime Minister as the repository of executive authority in the country. Instead, section 86 provides that: "[t]he executive authority of Lesotho is vested in the King and, subject to the provisions of this Constitution, shall be exercised by him through officers or authorities of the Government of Lesotho". This formulation is in keeping with the classical Westminster designs where the sovereign (monarch) is ordinarily the holder of executive authority, but it is effectively exercised by the government of the day. Rather than giving powers to the Prime Minister expressly, the Constitution creates the cabinet (section 88(1)) and empowers it "to advise the King in the government of Lesotho" (section 88(2)). To that end, it further renders the "cabinet collectively responsible to the two Houses of Parliament for any advice given to the King by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office" (section 88(2)). This design seems to be more in favour of a Cabinet Government than a Prime Ministerial Government. This notwithstanding, the Prime minister appears to wield wide-ranging powers, most of which are more political than legal. He, nevertheless, often brings the broad powers he wields at the political level to bear on his constitutional powers.

Although the Constitution seems to be fundamentally more in favour of cabinet government than the Prime Ministerial Government, the practical decisions of government seem to repose in the Prime Minister more than in cabinet. This is because all the former prerogatives

of the King related to parliament, judiciary, and even the executive have shifted to the Prime Minister personally – not necessarily the cabinet. This is a constitutional anachronism and somewhat of a contraction in the design. The Prime Minister is catapulted as the sole “chief adviser” of the King; thereby deviating from the time-honoured principle that the Prime Minister is one amongst equals in the cabinet (Jones, 1985). As the “chief adviser”, the Prime Minister effectively has the powers that originally belonged to the King.

The courts have confirmed that the King may not decline “the advice” of the Prime Minister (*Makenete v Lekhanya*, 1991; *Phoofolo v The Right Honourable Prime Minister*, 2017). Similarly, courts in Lesotho seem to support the view that where the Constitution grants the powers to the Prime Minister, there is no need for him to consult the cabinet. The matter came under sharp focus in 2015 in the case of *Attorney General v His Majesty the King and Others* (2015). The case arose out of a coalition arrangement where the relations between Prime Minister Thabane and his deputy, Mothejoa Metsing, had virtually broken down. The Prime Minister had advised the King to appoint the President of the Court of Appeal. The Deputy Prime Minister was opposed to the decision and consequently alleged that the Prime Minister’s decision was unilateral and therefore unconstitutional. The Prime Minister ought to have consulted the cabinet before advising the King to make the appointment. Therefore, the courts were called upon to decide a narrow question, but which has far-reaching implications for the constitutional design in the country, of whether the Prime Minister is obliged before advising the King on the appointment of a new President for this Court of Appeal to consult cabinet. The court noted that while section 88(2) of the Constitution empowers the cabinet to advise the King “in the government of Lesotho”, the various provisions of the Constitution that provide that the King must act on the advice of the Prime Minister in person without mentioning the cabinet. For instance, in terms of section 83(4) of the Constitution, the King is required to exercise his power to dissolve or prorogue Parliament on the advice of the Prime Minister. Other appointments that the King makes upon the advice of the Prime Minister in person include the Chief Justice; an acting Chief Justice; the President of the Court of Appeal; Acting President of the Court of Appeal; the Ombudsman; the Attorney-General; the Auditor General and Ambassadors; High Commissioners or other principal representatives of Lesotho in any other country and the heads of security forces.

As a result, the court concluded that where the Constitution specifically empowers the Prime Minister to advise the King, there is nothing which “requires that any particular matter of government policy, or any decision by the Prime Minister, should be debated in cabinet” (2015:para 37). This case is a huge blow to the notion of a strong cabinet government. It further emboldens the Prime Minister even against the coalition partners who may hope to exercise some influence within the cabinet setup. This is the position even though after 2015, coalition agreements continue to include clauses that enjoin the Prime Minister to

'consult' the coalition partners when making important decisions. It would seem that, in view of the decision of the Court of Appeal, those common clauses of coalition agreements may not be judicially enforceable. That, however, does not settle the recurring question of whether a coalition agreement as a whole is a mere "gentleman's agreement" – without any juridical value to the Constitution. The way section 87(2) of the Constitution is couched envisages that the government may be based on a coalition.

A coalition is undoubtedly an agreement between political parties in the National Assembly. Therefore, it may not be conclusively said that an agreement that forms the government and determines the allocation of cabinet positions does not have a constitutional value. While the Constitution of Lesotho remains so brief on the operations of a coalition government after formation, the purposive and generous interpretation of section 87(2) of the Constitution may help to give more meaning to the operation of a coalition government. Where coalition agreements do not contravene the Constitution or any other law, they help to enhance it and, therefore, have a constitutional value.

3.1 The constitutional experiences of the 2012-2015 and 2017-2020 coalitions

Ever since the advent of coalition governments in 2012, the country has had some experience about the contestation of power between the Prime Minister and his government partners. The differences became so pronounced that the courts had to intervene. Those were the coalition governments of 2012-2015 and 2017-2020. Both of these coalitions were led by Thomas Thabane as the Prime Minister. The 2015-2017 coalition government, which Pakalitha Mosisili led as the Prime Minister, did not have major intra-coalition differences. This was the case despite the fact that with seven coalition partners in government, that coalition remains the coalition government with most partners hitherto. The main differences – which even led to the collapse of that coalition – were within the Democratic Congress (DC) party as the then main partner in the coalition (DC, et al., 2015). The seven political parties that announced a constituted 2015-2017 coalition government were the Democratic Congress (DC), Lesotho Congress for Democracy (LCD), Popular Front for Democracy (PFD), National Independence Party (NIP), Marematlou Freedom Party (MFP), Lesotho People's Congress (LPC) and Basotho Congress Party (BCP). During the two coalitions led by Prime Minister Thabane – the 2012-2015 and the 2017-2020 coalition governments – the tensions within the coalition partners over the exercise of the Prime Minister's powers became more pronounced. Hence, this section is dedicated to these two coalitions.

3.2 The contest over the powers of the Prime Minister during 2012-2015 coalition government

The 2012-2015 coalition was the first formal coalition government since the country attained independence in 1966. The advent of coalition governments broke with the long tradition of a single-party dominant political system since the return to electoral democracy in 1993; and the defeat of the longest-serving elected Prime Minister, Pakalitha Mosisili, who had been the Prime Minister since 1998. This coalition was constituted of three political parties – the All Basotho Convention, the Lesotho Congress for democracy and the Basotho National Party (ABC, et al., 2012). The tripartite alliance had a hairbreadth majority as it only managed to get the support of 61 of the 120 members of the National Assembly. Ten other political parties, which styled themselves “The Bloc” in Parliament, had promised to support the coalition (Kapa & Shale, 2014). They later withdrew their support. That meant that the coalition was left in a very precarious position because its majority in the National Assembly was just one seat. This in itself became the recipe for the challenges of the coalition that were later to besiege it. The real challenges started in May 2014 when the two members of parliament – Mr Mophato Monyake and Mr Thabiso Lit’siba – defected from the ABC and government. With this defection, the government was no longer enjoying the majority of the members of the National Assembly. Mindful of the fact that the government no longer had a majority in the National Assembly, the opposition opportunistically launched a motion of no-confidence seeking to depose both the Prime Minister and his government (Mail & Guardian, 2014). When the relations between the Prime Minister and his deputy deteriorated, the Deputy Prime Minister’s party publicly supported the move to remove the government through the motion of no-confidence (Mail & Guardian, 2014).

The difference between the Prime Minister and his deputy became much more brazen over three decisions that the Prime Minister took, which the Deputy Prime Minister and his party alleged had occurred although neither the coalition nor the cabinet had been consulted. The first decision was the prorogation of parliament for nine months, which was done in June 2014 to ward off an already impending motion of no-confidence in the National Assembly. In terms of section 83 of the Constitution, the power to prorogue parliament is vested in the King upon the advice of the Prime Minister. It has been fairly established, both at judicial as well as scholarly levels, that when power is exercisable by the King on the advice of the Prime Minister, it effectively means the power belongs to the Prime Minister as the King may not decline the advice of the Prime Minister (Newman, 2009; Blackburn, 1988). Despite it being a potent political weapon that drifted from the King to the Prime Minister against parliament (Tremblay, 2010), the power to prorogue was rarely utilised and has been less controversial in Lesotho since the return to constitutional democracy in 1993. Following the apparent abuse of the power to prorogue parliament by the Prime

Minister in 2014, it was deemed necessary to reduce the time within which parliament may be on prorogation. The Ninth Amendment to the Constitution (2020) changed the maximum duration of prorogation from twelve months to three months.

However, the Ninth Amendment only changed the duration of the prorogation without changing the substance of prorogation itself, which include the reasons for which prorogation may be invoked and the procedure that the Prime Minister must follow in advising the prorogation. Both in 2014 and in 2020, Prime Minister Thabane did not only seek to exploit the long period of twelve months provided by the Constitution for which the parliament may be prorogued, but he also abused the open-ended nature of the provision relating to the reasons for prorogation.

With the relations of the Prime Minister and his Deputy – and by extension their political parties – already on a slippery slope, the Deputy Prime Minister opposed almost every major decision that the Prime Minister took. Three such decisions were the dismissal of the Commander of Lesotho Defence Force (LDF), Tlali Kamoli; the dismissal of the then Minister of Communications, Selibe Mochoboroane; and the appointment of the President of the Court of Appeal, Kananelo Mosito.

All these contestations had far-reaching consequences for the stability of the country (Matlosa, 2020). That notwithstanding, the decision which had the superior courts to weigh in on the recurring constitutional question of whether the Prime Minister, in exercising his constitutional powers, is obliged to consult cabinet, was the decision to appoint the President of the Court of Appeal. Although the challenge was brought by the Attorney General, the Deputy Prime Minister filed an affidavit in support of the Attorney General (*Attorney General v King*, 2015). Despite their vehement opposition to the appointment, neither the Deputy Prime Minister nor his political party participated in the case as litigants. It would be interesting to see whether they would invoke the Coalition Agreement to challenge the unilateral decision of the Prime Minister. Article 5(g) of the Agreement provided that:

The Parties agree that in the exercise of executive authority including appointments, the Prime Minister, Deputy Prime Minister and Ministers and Deputy Ministers shall have regard to the principles and spirit underlying the formation of the inclusive government and accordingly act in a manner that seeks to promote cohesion both inside and outside government (ABC, et al., 2012:art 5(g)).

It would be interesting to see how the attitude of the superior courts would be to the constitutional question raised by this on the exercise of executive powers of a coalitional Prime Minister – whether the coalition agreements have a limiting effect on the executive powers of a coalitional Prime Minister.

However, the challenge was limited to the relationship between the Prime Minister, regardless of whether he is coalitional or single-party based, and the cabinet. The court settled the question in that the Prime Minister was entitled to act unilaterally – without consulting cabinet – where the Constitution expressly empowers him (*Attorney General v King*, 2015). This approach of the Court of Appeal is still inconclusive on the effect of a cabinet government in view of section 88(2) of the Constitution, which establishes the cabinet with a function “to advise the King in the government of Lesotho”. How is the function performed by the cabinet when there are certain matters concerning the government which the Prime Minister is allowed to do unilaterally?

3.3 The contest over the powers of the Prime Minister during 2017-2020 coalition government

The contest over a coalitional Prime Minister’s powers came under sharp focus again during the 2017-2020 coalition government. This coalition comprised four political parties – the ABC, the Alliance of Democrats (AD), the BNP and the RCL. Concerning the powers of the Prime Minister, the Coalition Agreement provided that: “[t]he Prime Minister shall always exercise his constitutional powers in the interests of preserving the stability of the Coalition Government and shall consult members of the Coalition Government” (ABC, et al., 2017:art 5.12). The coalition partners started differing openly with the Prime Minister in January 2020 when they wrote a letter to the King raising disagreements with a set of decisions taken by the Prime Minister (Moleleki, et al., 2020). In the letter, they raised mainly three decisions of the Prime Minister which they complained about. The first one was what they called “illegal suspension of the Commissioner of Police”. In December 2019 and in January 2020, the Prime Minister had sought to place the Commissioner of Police on forced leave and suspension respectively (Lesoma, 2020a; Lesoma, 2020b). In their letter to the King, they alleged that the suspension of the Commissioner was retaliatory because, in December 2020, the police had started the criminal investigations against the Prime Minister and his wife over the murder of the former Prime Minister’s wife, Lipolele Thabane (Moleleki, et al., 2020; The Post, 2020). The decision by the Prime Minister to suspend or retire the Commissioner of Police was set aside by the High Court in *Holomo Molibeli v The Prime Minister and Others* (2020).

The second decision which they raised in the letter to the King was what they called “unilateral change of Lesotho’s foreign policy and putting the country in a policy crisis regionally and internationally”. They alleged that the Prime Minister sent the then Minister of Foreign Affairs to Morocco, “without knowledge of the Cabinet of Lesotho to go and somersault on the standpoint (sic) of Lesotho on the issue of Morocco and Western Sahara”. The Minister of Foreign Affairs had, presumably with the instruction of the Prime Minister, gone to Morocco to assure Morocco that Lesotho no longer supports the independence

of Western Sahara (Kabi, 2020). The third complaint was what they styled “meddling of the First Lady in the running of the government”. They alleged that the then First Lady was meddling in the business of government in that: “she summons most ministers and senior government officials to the State House, usually to give them illegal instructions” (Moleleki, et al., 2020:2). The letter by these three leaders in the coalition was very vague about what the King should specifically do. They requested the King to “receive and take into consideration” that there has been a series of events that portray “a state of constitutional crisis that are perceived to be orchestrated, perpetrated or committed by the sitting Prime Minister” (Moleleki, et al., 2020:1). Interestingly, the authors knew quite well that the King does not have any powers of discipline over the Prime Minister in terms of the Constitution; neither did the Coalition Agreement carve out any role for the King in the event of disagreement in the coalition government.

The dynamics within the coalition took a fresh and somewhat intriguing turn in March 2020 when the Prime Minister, this time working together with his deputy, sought to prorogue parliament to forestall the enactment of the Ninth Amendment to the Constitution and a looming vote of no-confidence. The Ninth Amendment was proposing the reduction of the erstwhile prerogative powers of the Prime Minister on dissolution and prorogation of parliament. For the first time since the advent of coalition governments in 2012, the decision to prorogue parliament was challenged in the courts of law by coalition partners because the Prime Minister was not consultative in exercising executive powers. The other two coalition partners, BNP and RCL, challenged the Prime Minister’s decision. The ABC was also amongst the applicants, even though the Prime Minister was from it, because it was experiencing internal factional contestations, and the executive committee of the party was opposed to the decision to prorogue parliament. Hence, the parties instituted the proceedings in *All Basotho Convention and Others v The Prime Minister and Others* (2020). The brief facts of this case merit mention here. The case concerned the prorogation of parliament by the Prime Minister purportedly in terms of section 91(3) of the Constitution. The section provides that where the Constitution requires the King to do any act according to the prime minister’s advice, and the King does not do that act, the Prime Minister may do such an act.

Consequently, such an act will be deemed to have been done by the King. On 20 March 2020 at 18h00, the Prime Minister wrote a letter to the King advising him to prorogue parliament, cleverly citing the Covid-19 pandemic as the reason for such prorogation. However, the court found that the real reasons for prorogation were political. Two important political processes seem to have precipitated the decision to prorogue parliament: a) the National Assembly had just passed the Ninth Amendment to the Constitution which, amongst others, prevents a Prime Minister who has lost the confidence of the house to call an early election; b) there was a pending motion of no-confidence against the Prime Minister. To

that end, the court admonished that: “the Court’s view is that prorogation is not a blunt instrument available to a Prime Minister to resort to its use to fight political battles or to frustrate Parliament in the performance of its constitutional roles such as the passing of the Budget...” (para 41).

In the letter advising the King to prorogue parliament, the Prime Minister indicated that if the King did not comply with the advice by 21h00 the same day – which was effectively a three-hour ultimatum – the Prime Minister would invoke section 91(3) of Constitution and prorogue parliament himself. Indeed, the King did not comply, and the Prime Minister consequently went ahead and prorogued the parliament the same day (Government of Lesotho, 2020).

The coalition partners challenged the decision on the basis, among other things, that:

...the collusion of 1st [Prime Minister] and 2nd [Deputy Prime Minister] respondents leading up to the advice to prorogue parliament and actual publication of the decision in Government Gazette, Legal Notice No. 21 of 2020 without the unanimous consent of the other coalition partners is unconstitutional and or unlawful (*All Basotho Convention and Others v The Prime Minister and Others*, 2020; para 4).

The decision was also challenged because the Prime Minister failed to consult the cabinet (para 4). The applicants were very adventurous to allege that the Prime Minister’s failure to exercise an executive decision without the “unanimous consent of the other coalition partners” is unconstitutional. The court was called upon to decide, for the first time, the recurrent question of whether coalition agreements do attenuate the powers of the Prime Minister; and the corollary question of the juridical nature of coalition agreements. The question of whether the Prime Minister ought to have consulted cabinet had already been settled in the case of *Attorney General v The King* (2015) to the effect that the Prime Minister doesn’t have to. In this case, the court reiterated that view and found that the Prime Minister does not need to consult the cabinet. Its decision was based on section 88(3) of the Constitution, which enumerates the decisions that the Prime Minister may take without the need to consult the cabinet. The court held that the section “is dispositive of the issue whether the Prime Minister is obliged to consult Cabinet and get its approval before advising the King to prorogue Parliament” (para 23).

In a similar manner, the court rejected the applicant’s contention that the Prime Minister ought to have consulted the coalition partners in line with the Coalition Agreements. The court held that:

...the proposition advanced by the political parties is devoid of any constitutional basis and therefore, must be rejected. The coalition agreement does not have any constitutional status. Its status is political and not legal. It is an agreement *res inter alias acta*. By signing such an agreement, the Prime Minister does not thereby contract out his executive powers. But even if he purports to do so, the agreement would

be unenforceable... In any case, it is common cause that the Prime Minister and his coalition partners did discuss prorogation and disagreed among themselves. That must answer the complaint that the Prime Minister breached his *inter partes* obligation to consult in the matter (para 112).

This generic discarding of coalition agreements as mere “political agreements” is problematic – more so when the court did not interpret section 87(2) of the Constitution. If the court engaged in the extensive interpretation of section 87(2) of the Constitution – which permits the formation of coalition governments – its conclusion that coalition agreements are mere “political agreements” would perhaps be more convincing. The purposive interpretation of section 87(2) would probably lead to a different conclusion – that the Constitution itself recognises coalitions, and therefore, it may not be entirely accurate to say agreements that give birth to a coalition do not have constitutional value. This is the approach taken by the former Israel Chief Justice Barak in the case of *Rubin v Berger* (1987). He convincingly observed that: “[m]aking a public agreement non-justiciable, will, in the end, lead the parties to renege on the agreement and on their consent, and this renegeing will in the end damage public trust in the institutions of government. This result must be prevented”. Lessons from the Israeli constitutional law would be more helpful for a court in Lesotho dealing with the juridical nature of coalition agreements. There is a growing body of both judicial (*Zerzevsky v The Prime Minister*, 1991; *Shalit v Peres*, 1990; *Ressler v The Minister of Defence*, 1988) as well as the scholarly opinion to the effect that coalition agreements cannot be discarded as mere political agreements without any constitutional value (Zamir, 1992; Shalev, 1992). Therefore, it may not be proper to lay a hard and fast rule, as the court wanted to suggest in the *All Basotho Convention* case that coalition agreements are not enforceable.

4 Conclusion

This chapter sought to investigate the extent to which the powers of a Prime Minister who owes his tenure in office to the coalition of political parties are affected by such a coalition arrangement. What is emerging from the above investigation is that indeed coalitions attenuate the Prime Minister’s powers – both politically and constitutionally. Politically, the Prime Minister who did not win an outright majority both from elections and the National Assembly is deemed less powerful than the one who has an outright mandate at all levels (Bogdanor, 2011). The coalitions that the country has seen, from 2012 until 2020, bear testimony to this finding. The disagreements scuppered those coalition governments over the exercise of certain powers by the Prime Minister.

At the constitutional level, there are a lot of controversies. The controversy is primarily fanned by the fact that while the Constitution recognises that government may be formed based on coalitions, there is no guidance on how a coalitional government can operate. The basic presumption is often that government management will also be based on the initial

consensus that the coalescing parties had when they initially formed a government. Yet, the Constitution is cast in a manner that gives the Prime Minister power, regardless of whether he is coalitional or based on a single party. Furthermore, the Constitution grants powers to the Prime Minister, different from the powers he wields in-cabinet. This has been another area of controversy. The coalition partners often hope that if they fail to influence the Prime Minister at coalitional level, perhaps another collective platform would be the cabinet. However, the decisions of the superior courts in Lesotho in the recent decisions such as *Attorney General v His Majesty the King and Others* (2015) and *All Basotho Convention and Others v The Prime Minister and Others* (2020) confirm that the Prime Minister is constitutionally empowered, under certain circumstances to act unilaterally. The slight problem with the approach of the courts in these two decisions is that it is more literal, rather than purposive and general, about the powers of the Prime Minister. The import of these decisions, in the main, is that there is no obligation on the Prime Minister to consult either his coalition partners or cabinet, thereby leaving the Prime Minister with untrammelled powers. In *All Basotho Convention and Others v The Prime Minister and Others* (2020), the High Court has gone to the extent of stating outright that: “[t]he coalition agreement does not have any constitutional status. Its status is political and not legal” (para 112).

This literal approach preferred by the court is problematic in two fundamental respects. Firstly, it renders the cabinet system established section 88 of the Constitution nugatory; it has fortified the apparent ascendancy of the Prime Ministerial Government as against the cabinet government. This approach creates certain dangers to the design. The country is already battling with the phenomenon of wide and oftentimes abused powers of the Prime Minister. The problem has already manifested in areas such as security and the judiciary. Secondly, this approach is problematic in that by discounting the juridical value of coalition agreements, the court has rendered section 87(2) of the Constitution equally nugatory. It renders the section procedural – in that it only deals with the formation of government – and it does not have any substantive value during the currency of the coalition government. Furthermore, the generalisation that coalition agreements are mere political agreements, without assessing the merits of each case, is not in keeping with the public law approach; it is based on the private law approach where contradictions without *animus contrahendi* (intention to be bound) are regarded as unenforceable (Hutchison, et al. 2012). Coalition agreements, it may be argued, are coalitions by another name as envisaged by section 87(2) of the Constitution; they are in the realm of public law (Nyane, 2019). Rather, a more appropriate public law maxim is *pacta sunt servanda* (agreements voluntarily entered into must be honoured).

Given this, two main recommendations may be made. The first one is that there is a need for improvement on the legal framework for coalitions in Lesotho. This will need the revision of the Constitution, the passage of an act of parliament and the manuals guiding the

exercise of powers in a coalitional government. However, care should be taken in creating such a legal framework, not to “over-regulate” politics. The intention should just be to give a framework for the roles of players in a coalition setup. The second recommendation is that perhaps the literal approach adopted by the courts in relation to the powers of the Prime Minister may need to change in favour of a more liberal and purposive approach. The liberal approach will resuscitate sections 87(2) and 88 of the Constitution; thereby allowing each part of the Constitution to have value in the design.

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COALITION GOVERNMENTS AND THEIR IMPACT ON INDEPENDENCE OF THE JUDICIARY

5

Itumeleng Shale and 'Marealeboha Makau

1 Introduction

As an arm of government, along with the executive and the legislature, the judiciary has a principal role of ensuring that the other two arms perform their functions as per the law (Jones, 2012). Thus, while playing the role of an arbitrator between individuals or between individuals and the state, the courts of law contribute to governance. It is a widely accepted norm that to be able to play this critical role in governance, the judiciary has to be independent of any political pressures (Lederman, 1956; Kelly, 2002).

When analysing the relationship between the executive and the judiciary in Ghana, Quashigah argues that there is an embedded assumption that of the three arms of government, the judiciary is the weakest (Quashigah, 2016). Since their establishment, the courts of Lesotho have played an important role in interpreting and protecting the supremacy of the Constitution without being viewed, either by the executive or the public, as the weaker arm of government. Thus the relationship between the judiciary and the executive has been without any apparent altercations except for a challenge against the appointment of a former Director of Public Prosecutions (DPP) as a judge in the case of *Law Society v Hon. Prime Minister* (1985). Apart from this, judges retired at their due time and could pronounce themselves in judgments without the risk of being removed from the bench. However, with the advent of coalition governments in 2012, the picture changed. The executive began to invoke constitutional provisions to change judicial leadership for reasons, which on the face of it, are purely political. By 2020, the relationship had deteriorated to the extent that it also affected the appointment of puisne judges.

Scholars and commentators have commented that the constitutional design has played a part in fuelling and enabling intrusion by the executive branch of government into the affairs of the judiciary. While the strategic appointment and removal of heads of the judiciary by coalition governments have cast doubt and reduced public confidence in the judicial system, they have also exposed loopholes in the Constitution of Lesotho 1993 regarding safeguards for the independence of the judiciary (Shale, 2018; 'Nyane, 2019). The purpose of this chapter is to illustrate how coalition governments took advantage of these loopholes and, in the process, unravelled constitutional challenges facing the independence of the judiciary in Lesotho. The chapter is divided into four sections. The first section is an introduction; the second section outlines the fundamental principles governing the independence of the judiciary; the third section outlines the history of coalition governments, the nature of coalition agreements and their impact on the independence of the judiciary. The fourth and last section is a conclusion.

2 Fundamental principles on the independence of the judiciary

Judicial independence has been defined as: “the ability of courts and judges to perform their duties free of influence or control by other actors, whether government or private” (Law, 2011). It is paramount to democracy and the protection of human rights (Barnett, 2017). The importance of independence is that an impartial and independent judiciary is seen as the last hope of the society in terms of security and protection from the arbitrariness of government or other forces (African Development Fund, 2006). The need for independence is based on the principle of separation of powers which was articulated by a French philosopher, Montesquieu, in the following terms:

... [T]here is no liberty if the judiciary be not separated from the legislative and the executive. Were it joined to the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression (Montesquieu, translated by Nugent, 1777:221).

Over and above refraining from vesting power in a single person or office, the principle also demands ensuring the absence of certain connections or influence by one branch over the other (Russel, 2001). Admittedly, the interaction between the judiciary and the executive is at times unavoidable; yet executive powers should not be exercised in a manner that is likely to compromise or have the appearance of compromising the independence of the judiciary (International Commission of Jurists, 2013). The Court of Appeal of Lesotho endorsed this view in the case of *Sekoati v President of the Court Martial* (1999), where it held that no judicial system is entirely devoid of any relationship with the legislative or executive branches of government. However, to ensure separation between the executive

and the judiciary, several safeguards, discussed below, have been agreed upon by states through international and national legal frameworks as basics that states must implement to ensure that the relationship does not compromise the independence of the judiciary. These safeguards include transparent appointment processes, the security of tenure for judicial officers, and determinable guidelines for discipline and accountability of judicial officers (Resnik, 2004).

2.1 *International standards on the independence of the judiciary*

According to the United Nations Charter (1945), the protection of human rights is vital for preserving world peace and avoiding atrocities that led to the two World Wars (UN Charter Preamble). Because of its link to democracy and protection of human rights, independence of the judiciary is one of the principles that states have undertaken to guarantee through the United Nations and other international bodies. While there is no international treaty that focuses exclusively on the independence of the judiciary, the concept of independence runs through many core international human rights and international criminal law instruments to which Lesotho is a party.

In human rights law, the independence of the judiciary is tied to the right to a fair trial. For instance, the Universal Declaration of Human Rights (1948) states that: “everyone is entitled in full equality, to a fair and public hearing by an *independent* and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him” (Universal Declaration, 1948: article 10). The mandate to oversee the implementation of the Universal Declaration is vested in the Human Rights Council (UN General Assembly Resolution 60/251). The Human Rights Council (HRC) fulfils this mandate through various means, including Universal Periodic Review (UPR). So far, Lesotho has been subjected to three cycles of the UPR process in 2010, 2015 and 2020. In its report in the first (2010) cycle, the government indicated that Lesotho observes independence of the judiciary to the letter and to this effect has adopted the Judiciary Administration Bill (UPR, 2010:par 16). The Bill was to be later enacted into an Act of parliament in 2011. The delegation did not respond to a question by the Netherlands as to what measures Lesotho had put in place to guarantee the independence of the judiciary. Rather, in the following terms, the delegation refuted allegations of challenges to the independence of the judiciary in Lesotho:

...the delegation was taken aback by the questions regarding the independence of the judiciary, as Lesotho was proud of its independent and free judiciary, which drew inspiration from the Constitution. The Government availed itself of all resources at its disposal to protect and enhance the independence of the judiciary (UPR, 2010:para 71).

In the second cycle, Lesotho highlighted the passing of the Administration of the Judiciary Act (AJA), 2011 as a big step towards ensuring judicial independence because the AJA had ensured that the judiciary is a separate and independent organ of the state, thus endorsing

the principles of separation of powers and the rule of law (UPR, 2015:paras 89 and 96). No questions were raised regarding the implementation of the AJA and how it has improved the independence of the judiciary. Lesotho was nonetheless urged to “[t]ake measures to strengthen the efficiency and the effectiveness of the judiciary system” (UPR, 2020:para 111.80). In the third cycle, the only reference to the judiciary was the reform process, which would include the judiciary as one of those sectors responsible for Lesotho’s long-term political and security problems (UPR, 2020:par 128). The only question asked in this regard was the timeframe within which Lesotho would implement the reform process.

The three cycles in the UPR process do not paint a clear picture, which is illustrated later in this chapter, of the turbulence that took place in the Lesotho judiciary from 2012 to date. However, although the delegation had dismissed the question raised by the Netherlands in the 2010 cycle indicating that judicial service was bliss in Lesotho, there is an acknowledgment in the 2020 report that the judiciary was among those sectors which needed reform as it had contributed to, or suffered from political instability and failure of coalition governments, the three of which had not by 2020, managed to last a full term.

Independence of the judiciary as a component of the right to a fair trial is also protected under various core UN human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) 1966 article 14, Convention on the Rights of the Child (CRC) 1989 article 37(d), Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW) 1990 article 18, Convention for the Protection of all Persons from Enforced Disappearances 2006 article 11(3), Convention on the Rights of Persons with Disabilities (CRPD) 2006. In terms of these instruments, all persons are entitled to a determination of their rights or criminal charges against them by competent, independent, and impartial courts or tribunals. These requirements have been unpacked by Human Rights Treaty Bodies in General Comments and Recommendations as well as concluding observations. For instance, in General Comment 32 on article 14 of the ICCPR, the Human Rights Committee (HRC) stated that the requirement for independence “refers in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exists...” (HRC, GC 32, 2007:para 29). The Committee also referred to a comment it made in its Concluding Observations to Slovakia’s state party report that in terms of article 14, states are mandated to protect the judiciary from political influence (HRC, GC 32, 2007:para 19).

Similarly, when unpacking the right to access to justice for persons with disabilities under article 13 of the CRPD, the Human Rights Council emphasised and restated several General Comments on access to justice which echo the same principle that access to justice requires adjudication by independent courts (Human Rights Council, 2017). It stressed further

that effectiveness or otherwise of a remedy obtained by a person with a disability is also dependent on the independence of the judicial officer seized with a matter involving the rights of such a person (Human Rights Council, 2017:para 43).

While the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 does not contain a stand-alone article on fair trial or access to justice, in its General Comment 33 on women's access to justice, the CEDAW Committee stressed that:

[t]he right of access to justice for women is essential to the realisation of all the rights protected under [CEDAW]. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity, and credibility of the judiciary, the fight against impunity and corruption and the equal participation of women in the judiciary and other law implementing mechanisms (CEDAW Committee, General Recommendation 33, 2015:para 1).

Lesotho is a party to all the core instruments discussed herein and therefore has bound itself to ensure the independence of the judiciary. The question which then confronts the state, is how these principles on independence may be implemented. The answer to this is contained in various soft laws, which have been developed to guide states to fulfil their obligations. These include International Bar Association Minimum Standards of Judicial Independence 1982, UN Basic Principles on the Independence of the Judiciary 1985, Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence 1998, Commonwealth Principles on the Accountability of and the relationship between the three branches of Government 2003. What is common in these principles and guidelines is that they urge states to ensure that the independence of the judiciary shall be guaranteed by the state and enshrined in the Constitution or law of the country. All governmental and other institutions must respect and observe the independence of the judiciary.

From a regional perspective, Lesotho's obligations to guarantee the independence of the judiciary are contained in articles 7 and 26 of the African Charter on Human and Peoples' Rights (African Charter) 1981. The African Commission discussed the nature of the obligations contained in these articles in the case of *Liberties Organisation v Nigeria* (2000). The Commission indicated that because states are not allowed to derogate from these rights, individuals are entitled to access to justice dispensed by independent courts even in times of emergency. The importance of the independence of the judiciary is also indicated by the adoption of the Resolution on Respect and Strengthening of the Judiciary 1986 (Resolution). The Commission has also adopted the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2005. In the Resolution, the Commission calls upon states to "repeal all their legislations which are inconsistent with the principles of respect for the independence of the judiciary..." (African Commission, 1986:para 1). In the same vein, the Fair Trial Principles urge states to ensure that the independence of judicial bodies and judicial officers is guaranteed by the Constitution and laws of the country and

respected by the government, its agencies and authorities. These principles and the ones articulated under the global human rights framework have been the basis of constitutional safeguards for appointment, discipline, and removal of judges in many jurisdictions, Lesotho included. Hence in the next section, Lesotho's normative framework and practices of the coalition governments are benchmarked against these international standards.

2.2 National standards on the independence of the judiciary

The historical context of Lesotho's judiciary is highlighted by 'Nyane (2019), who notes that the judiciary in Lesotho has largely been an appendage of the executive since 1938, when the current judicial model was established in Lesotho and when the colonial masters fundamentally transformed the judiciary from its traditional model to a supposedly modern model. This inherited model is outlined in section 118 of the Constitution, which states that judicial power shall be vested in the courts of Lesotho, which shall consist of the Court of Appeal, the High Court, Subordinate Courts, and Courts-Martial and such tribunals exercising a judicial function as may be established by Parliament. The constitutional assurance of independence is pivotal to the proper functioning of the judiciary as recommended by Principle 1 of the UN Basic Principles on the Independence of the Judiciary as well as the Fair Trial Principles adopted by the African Commission. In Lesotho, this assurance is articulated in section 118 of the Constitution, which sets the tone for interaction between the arms of government, namely the executive, the legislature, and the judiciary. It speaks to the status of the judiciary in a democratic dispensation as follows:

- (2) The courts shall, in the performance of their functions under this Constitution, or any other law, be independent and free from interference and subject only to this Constitution and any other law.
- (3) The Government shall accord such assistance as the courts may require to enable them to support their independence, dignity, and effectiveness, subject to this Constitution and any other law.

Section 118(3) is reinforced by AJA, which confers both administrative and financial autonomy on the judiciary in order to strengthen the Judicial Service. Section 22(1) thereof provides that:

The Judicial Service Commission shall make or adopt such Ethical Principles for the Judiciary as may be appropriate to uphold the independence, the integrity, and other interest of the judiciary and the Principles shall be published in the Gazette.

In essence, the principal responsibility for the administration of the judiciary in Lesotho has been vested within the JSC in fulfilment of the main functions of JSCs or Councils throughout the world to shield judicial appointments and removals from the executive influence and also to ensure accountability ('Nyane, 2019).

Section 132(1) of the Constitution of Lesotho outlines the composition of the JSC to consist of the Chief Justice as the Chairperson, the Chairman of the Public Service Commission or a designated member of the Commission and a member appointed from amongst persons who hold or have held high judicial office who shall be appointed by the King acting per the advice of the Chief Justice. This constitutional design relating to the composition of the JSC has been lamented as a precursor to several challenges that have affected the independence of the judiciary in Lesotho. 'Nyane (2019) identifies two types of JSCs: those that have strong executive representation and those with weak executive representation. A commission has strong executive representation when the majority of its members represent the executive in one way or the other: a commission is regarded as having weak executive representation when the executive does not constitute a majority of the commission ('Nyane, 2019). He concludes that the JSC of Lesotho falls into the first category: the Chief Justice, the Attorney General, and the Chairperson of the Public Service Commission all owe their positions to the executive in some way. He contends that while an attempt was made to create an independent judicial appointing body to ameliorate direct executive influence on the appointment process, the Commission in its current state is overtly ill-suited to that purpose because it is comprised of surrogates of the executive, that is, it is too thin to absorb the executive influence on the judiciary.

Similar issues concerning the composition of a JSC, which is "executive-heavy", were raised in the South African *Certification of the Constitution of South Africa* (1996). In terms of section 178 of the Constitution of South Africa, the JSC is composed of twenty-three members, fifteen of whom are politicians and eight are drawn from the professional bodies being judiciary, attorneys, advocates and academia. This structure was challenged on the grounds that politicians, especially from the ruling party, dominate the JSC and are therefore likely to influence appointment processes unduly. The Constitutional Court rejected this claim and held that:

The mere fact, however, that the executive makes or participates in the appointment of judges is not inconsistent with the doctrine of separation of powers or with the judicial independence... What is crucial... is that the judiciary should enforce the law impartially and that it should function independently of the legislature and the executive (*Certification of the Constitution of South Africa*, 1996:para 123)

While the observation of the South African Constitutional Court is that the executive's participation in the appointment process may not have adverse effects on the independence of those appointed, a safeguard may be that despite being outnumbered, the South African JSC has a strong presence of other actors such as members of parliament from the opposition as well as representatives of professional bodies. The same cannot be said with the situation in Lesotho JSC, which is composed of only four members, the majority of whom are executive appointees except for the one judge. Therefore, as 'Nyane observes, the Lesotho JSC is less likely to resist executive influence. This composition also falls short

of standards set in international best practices. For instance, the Commonwealth Model Law on Judicial Service Commissions outlines the composition of a standard JSC in Clause 3(2) (a) to (g) as follows:

- (a) the Chief Justice, or a senior judicial officer designated by the Chief Justice, as Chairperson;
- (b) the President of the Court of Appeal, or a member of that Court designated by the President of the Court of Appeal;
- (c) two other senior judicial officers designated by the Chief Justice;
- (d) the Chief Magistrate, or a magistrate designated by the Chief Magistrate;
- (e) two practising members of the legal profession nominated by [the relevant professional governing body];
- (f) a teacher of law nominated by [the relevant body representing universities or law teachers in universities];
- (g) five lay members who are not members of [the Executive or Parliament] nominated by [the relevant body representing civil societies].

If Lesotho were to follow this Model Law, the JSC and indeed the judiciary as a whole would be empowered to enhance and increase its efficiency and overall independence. The Act, however, does not address issues relating to appointment, discipline, and removal of judges except that it provides that discipline and removal of judges shall be vested in the JSC. The JSC is established by section 132 of the Constitution. 'Nyane argues that Judicial Service Commissions worldwide were created to assume the power that originally belonged to the sovereign, namely, the power to appoint judges who served at the sovereign's pleasure ('Nyane, 2019). Section 133 of the Constitution clothes the JSC with power to appoint judicial officers, including the power to confirm appointments, the power to exercise disciplinary control over persons holding or acting in such offices, and the power to remove such persons from office save for the office of the Chief Justice and the President of the Court of Appeal.

Regarding its judicial appointment function, the JSC has appointed judges through cherry-picking with no set and transparent appointment processes since its establishment. However, in February 2021, the JSC advertised seven positions of puisne judges. In August 2021 it shortlisted and conducted interviews for six and in September 2021 appointed two to fill up two of the seven, thus leaving out five of the advertised positions. This transparent process took place for the first time in the history of the JSC. While this process may be seen as an attempt to adhere to the principle of transparency, the challenge is that it has no legislative backing. Therefore, it is not guaranteed that appointments will always be done in a transparent manner. With regard to its power to remove judges, to date, the JSC has not recommended the removal of a puisne judge despite several complaints of incompetence of judges characterised by delay or utter failure to issue judgements amongst others. Removals have only taken place with regard to the Chief Justice and President of the Court of Appeal,

which took place after the establishment of coalition governments in Lesotho. On face value, the legislative framework gives an impression that the judiciary's independence is guaranteed. However, the constitutional design is vested with problems regarding the independence of the judiciary, including vesting of appointment and removal powers in the Prime Minister, composition of the JSC and failure to outline what constitutes judicial misconduct, to mention but a few, thus leaving the judiciary susceptible to removal on purely political grounds disguised as misconduct.

3 Coalition governments and independence of the judiciary

3.1 The nature of coalition agreements

A coalition agreement is a voluntary agreement between political parties represented in parliament to form a government. Because it is voluntary, none of the parties can be forced to join a coalition (Steunenberg, 1997). Some scholars regard coalition agreements as a sort of bargain struck between participating parties. This bargain is evidenced by negotiations ranging from policy issues to undertakings of moral pledges between participants (Von Münch, 1999; Steunenberg, 1997). Despite their gradual formalisation, coalition pacts constitute an informal stage of the constitutional process of government formation (Vassilis, 2016). In the same way, coalition agreements in Lesotho remain informal as they are neither regulated by the Constitution nor by any legislation. When seeking to analyse the correct nature and classification of coalition agreements from a legal perspective by drawing inferences from various scholars, Pergantis (2019) concludes that the classification ranges from that of a private contract to agreements with inherent political nature and those subject to the application of public law. In the case of *Bundesverfassungsgericht* (2013:para 5), the Court ruled that the signing of a coalition agreement does not take place in the public sphere, and therefore such agreement cannot qualify as an act of the state.

These definitions and classifications of coalition agreements are fraught with limitations and not immune to challenge. One of the controversies about coalition agreements is whether they can be subjected to judicial scrutiny. One view is that the political nature of coalition agreements entails the risk of politicisation of the court's role if the court reviews such agreements (Vassilis, 2016). Another view is that they are subject to judicial scrutiny. The latter view is illustrated in the case of *Ressler v Minister of Defence* (1988), in which Barak J distinguished between normative and institutional justiciability of coalition agreements. He stated that the former aims to answer the question of whether there are legal criteria for determining a given dispute, while the latter is concerned with the question of whether the dispute should be adjudicated in a court of law at all. He stressed that the courts' review of coalition agreements does not signify disrespect for the parties and the parliament, but

surely expresses their respect for the law. Nonetheless, the absence of legal remedies for enforcement of the coalition agreement has led some authors to reject their justiciability, arguing that such agreements cannot be reviewed before domestic courts (Klabbers, 2009; Timmermans, 2006). In Lesotho, the view that there is a lack of legal remedies to enforce coalition agreements was given credence to in *Senatla v Minister of Law & Constitutional Affairs/Khetheng v Minister of Law and Constitutional Affairs* (2018) where the Court granted interim relief and ordered that:

In the meantime, the parties should continue to explore a possible political solution to resolve the impasse in the best interests of Lesotho and Basotho. At the end of the day, the solution should come from us as Basotho. *Litigation may not be the precise answer* (own emphasis) (para 7.1).

The sentiments expressed by the Court, in this case, indicate the fragility of coalition governments. What makes Lesotho's coalition governments to be considered even more fragile is the fact that none so far has lasted the five years prescribed for in the Constitution. Lesotho's first coalition government was formed in 2012. It was a three-party coalition government composed of the All Basotho Convention (ABC), Lesotho Congress for Democracy (LCD), and Basotho National Party (BNP). This coalition government was led by the leader of the ABC, Thomas Thabane, while the leader of the LCD, Deputy Prime Minister, and the leader of the BNP, was a Minister. The government became synonymous with political disunity, lack of trust, and gross dissatisfaction with how the leader of the coalition government handled state's affairs, including matters of appointment of ministers. This eventually resulted in a cabinet reshuffle done without consultation of the coalition partners. A series of events afterwards, including a military coup staged by the Lesotho Defence Force (LDF), led to the collapse of the coalition government in 2014.

The collapse of the first coalition government resulted in a snap election in February 2015, and a second (seven-party) coalition government was formed between the Democratic Congress (DC), LCD, and five other parties. The 2015 seven-party coalition government was ousted through a motion of no-confidence on 1 March 2017. Lesotho had another snap election in June 2017, which resulted in another coalition government consisting of four parties, the ABC, the Alliance of Democrats (AD), the BNP, and the Reformed Congress of Lesotho (RCL). The four-party coalition government was led by Thomas Thabane, who had led the first (2012) coalition. The following section seeks to address how these seemingly fragile government systems have impacted the independence of the judiciary in Lesotho.

3.2 *Independence of the judiciary in the era of coalition governments*

Since the formation of coalition governments, the judiciary has been confronted with a plethora of cases that sought to push for new statutory interpretations and, as a result, enhanced legislative intervention in the political arena. Despite the unclear classification of

their legal status, coalition agreements and the acts of governments formed through such have impacted the judicial landscape in Lesotho. While the toxic relationship between the executive and the judiciary only surfaced after 2012, 'Nyane argues that the relationship has always been unhealthy because when the independence constitutional design was toppled in 1970, the judiciary moved even closer to the executive and was seen as very instrumental in clothing the coup-based government of the time with legitimacy ('Nyane, 2019). According to 'Nyane, when the country returned to constitutional democracy in 1993, the executive had essentially been having free rein on the judiciary, but because the country had always been under one-party dominated politics, the problem remained dormant and largely unseen until it became exposed in 2012 when the country transitioned from one-party politics to coalition politics. The increased polarisation of the judiciary made the appointment of judges and other members of the judiciary a matter of interest and controversy.

As illustrated below, the impact of the unhealthy relationship between the executive and the bench during the era of coalition governments was uncovered in a series of events, including the invitation of the executive in matters of judicial leadership, appointment and removal of judges for political convenience, and enforcement of coalition agreements. The effect of all these actions was to uncover weaknesses of the constitutional design, in particular, constitutional challenges to the independence of the judiciary in Lesotho.

3.3.1 Invitation of the executive to intervene in issues around the leadership of the judiciary

The first crisis that bedevilled the judiciary and disclosed the constitutional loopholes, which could affect the independence of the judiciary, took place in 2013, just after the installation of the first coalition government in 2012. A dispute arose between the then Chief Justice and the then President of the Court of Appeal over which of them is the head of the judiciary. This dispute was deepened by the silence of the Constitution over which of them commands the overall leadership of the judiciary in Lesotho. The tension and breakdown of the relationship between these two senior judicial officers played itself out in full public view. Despite the practice in terms of which judges of the High Court acted as members of the Court of Appeal, in 2013, the Chief Justice refused to permit two acting High Court judges to sit for the January 2013 session of the Court of Appeal. He further failed to convene the JSC to consider the appointment of permanent judges to the Court of Appeal during February 2013 (ICJ, 2013). The President of the Court of Appeal sought the intervention of the Minister of Justice and Correctional Services through a letter dated 14 February 2013. The tension further attracted investigation by the International Commission of Jurists (ICJ) through a High-Level Mission. Amongst others, the ICJ rebuked the invitation of the executive into judicial matters. The report states as follows:

There is always a danger in inviting the executive to intervene in matters falling within the purview of the judiciary. This may well create the perception that the judiciary is dependent on the executive. In addition, this undermines the principle of separation of powers and the independence of the judiciary, which require not only independence in fact but requires that the judiciary as an institution and individual judges must also be seen to be independent ... A judiciary that fails to resolve its internal issues and instead relies on the executive to do so creates the perception that it is not independent and that undermines its independence (ICJ, 2013:49).

In the quest to resolve the impasse, the government urged both the President of the Court of Appeal and the Chief Justice to vacate their offices (Shale, 2018). The attempted removal was viewed as an onslaught of interference released upon the judiciary. After several meetings, the Chief Justice acceded to the demand, but the President of the Court of Appeal resisted. Acting on the basis of section 125(5) of the Constitution, a tribunal was set up to consider his impeachment. He instituted legal proceedings in *The President of the Court of Appeal v The Prime Minister and Others* (2013) challenging this move on the ground that the Prime Minister had not given him a hearing before invoking section 125, that he had not applied his mind and lastly that the decision to set up the said tribunal was bias. He lost the case both in the High Court and on Appeal. In the High Court, the majority decision written by Moshidi AJ stated that “the appointment of the Tribunal was merely a preliminary step, which had no adverse effect on any of the appellant’s rights” (*The President of the Court of Appeal v The Prime Minister and Others*, 2013:12). This decision was upheld on appeal. Before the tribunal could commence the enquiry, he resigned. This leads to the conclusion that while both Chief Justice Lehohla and Ramodibeli, President of the Court of Appeal, finally resigned from office, they were politically managed, and their resignations were not voluntary (Shale, 2018).

In its analysis of the crisis of judicial leadership in 2013, the ICJ (2013) also delved into the composition of the JSC and recommended that to avoid future hurdles in the judiciary, the JSC ought to be broadly representative of the major stakeholders in the administration of justice including representatives from the judiciary, the executive, the legislature, the legal profession, law teachers, and civil society and that it should function transparently. It recommended further that to avoid intrusion by the executive, the JSC should be responsible for recommendations on all judicial appointments, including the heads of the judiciary (ICJ, 2013). The recommendation was not heeded, and in 2020 the JSC faced challenges with regard to the appointment of puisne judges as indicated in the case of *White Horse Party v Judicial Service Commission and 7 Others* (2020). This case resulted from the JSC’s recommendation of five names for appointment as puisne judges by the King. The King withheld the appointment on the ground that the JSC was not properly quorate when the recommendation was made. White Horse Party, a small political party in Lesotho, lodged the application claiming that the King’s failure to appoint violates section 120(2) of the

Constitution. The Constitutional Court held that in terms of section 132(10), resolutions of the JSC ought to be made by the majority of the four members, and therefore the said recommendation was unconstitutional.

3.3.2 Appointment and removal of leaders of the judiciary for political convenience

Looking at the tensions that characterised each coalition government, one could conclude that each of them vied for the judiciary's control to legitimise any political conduct that could be subject to judicial scrutiny by the coalition counterparts. This is illustrated by the manner and the periods within which those at the helm in the leadership positions were appointed and dismissed. In 2015, while preparing for elections, the Thabane administration appointed Justice Mosito as President of the Court of Appeal. The Attorney General lodged an urgent constitutional application in *Attorney General v His Majesty the King & others* (2015), challenging the appointment on the basis that it was unprocedural in that, among others, the Prime Minister had not consulted cabinet before recommending the appointment to the King. The application was, however, dismissed on the ground that there was a dispute of fact. On appeal, the court held that section 124 of the Constitution does not require the Prime Minister to consult the cabinet when recommending the appointment of the heads of the judiciary. However, the court hinted in obiter that it could have been appropriate to do so, especially in the context of a coalition government and the fact that such was done during preparations for elections. The appeal was dismissed, and Justice Mosito remained in office. He was, however, forced to resign from office in 2016 when the second coalition government, which took office in 2015, set up a tribunal to investigate his fitness to hold office. He was, however, reappointed to the same post in 2017 when the third coalition government led by Thabane came into power.

In 2015, the first (2012) coalition government-appointed Chief Justice Majara to replace Justice Lehohla when he resigned. However, in 2018, the third coalition government, coincidentally led by the same Prime Minister who appointed her, indefinitely suspended her and established a tribunal to try Justice Majara over a litany of misconduct charges against her. However, she refuted the allegations and claimed that the Thabane administration pushed her out to appoint someone who could yield to their political demands. Prime Minister Thabane proceeded to appoint Justice 'Maseforo Mahase as the Acting Chief Justice. Majara was not prepared to go without a fight. She had earlier obtained a court order interdicting the Prime Minister from recommending to King Letsie III her suspension from office as well as the appointment of a tribunal to probe her. In her court papers, Justice Majara said her troubles with the government had started in November 2017 when she was approached by the former Minister of Justice, Mahali Phamotse, who requested her to resign because the government did not want to work with her (Kabi, 2018). Majara contended that:

During our discussions, I informed her (Dr. Phamotse) that the government did not have to like me. All that was required was for me to discharge my constitutional mandate and comply with other laws of the country. My service was not at the pleasure of any politician of whatever political orientation. (Kabi, 2018)

The effect of the persistent intrusion by the executive, which used constitutional processes to remove and appoint judges, has destabilised the judiciary, threatened its independence, and exposed it to public scrutiny and general disdain. In *Tšeliso Mokhosi v Justice Charles Hungwe* (2019), the applicants expressed apprehension of executive intrusion in making appointments of the first respondent and other judges, alleging that the JSC was subject to the control and direction of the executive in violation of the Constitution. The Court rejected the applicants' argument and pointed out the misconception that the process of recruitment of judges should be so detached that it should be devoid of any participation by the executive or anyone else and stated that this is not in line with the scheme of the Constitution. However, the objection had some merit in as much as the constitutional framework for the appointment of judges does not adhere to international standards.

3.3.3 Enforcement of coalition agreements

The political impasse caused by the death of Maaparankoe Mahao, reinstatement of Tlali Kamoli within the LDF and detention of members of the LDF at the Maseru Maximum Security Prison led to intervention by the Southern African Development Community (SADC). SADC set up a commission of enquiry headed by Justice Phumaphi of Botswana. The mandate of the Phumaphi Commission was to investigate the death of Brigadier Mahao, other alleged killings, mutiny and kidnapping of the opposition members and former LDF members, appointments and removals of both commanders and other matters relevant to the inquiry (SADC, 2015). SADC also commissioned the SADC Observer Mission to the Kingdom of Lesotho (SOMILES). The Phumaphi Commission made its findings and also incorporated the SOMILES report, which identified the areas that needed reform in Lesotho, namely the Constitution, security sector, public service, and information and media. Later on, the judiciary was listed as one of the institutions which needed to be reformed. To pave the way for the reforms agenda, the Government of Lesotho signed a Memorandum of Understanding with the Coalition of Opposition Parties in Parliament. Clause 10 of the MOU reads as follows:

The Government of the Kingdom of Lesotho shall ensure the safety of all citizens in exile and must provide adequate security for Mr. Metsing and other similarly placed exiled. Mr. Metsing and similarly placed persons will not be subjected to any pending criminal proceedings during the dialogue and reform process.

In the case of *Senatla v Minister of Law & Constitutional Affairs/Khetheng v Minister of Law and Constitutional Affairs* (2018), the court found Clause 10 to be unconstitutional in as far as it undermines, and is inconsistent with, the Constitution of Lesotho in relevant

parts. However, dissatisfied by this determination, the applicants in *Mothejoa Metsing v The Director Public Prosecutions* (2018) sought to nullify this determination. The Court reiterated its position in the *Senatla* case (2018) that clause 10 of the MOU remains unconstitutional. These and many other cases of a similar nature, which stem from disagreements borne out of coalition arrangements, have shed light on the judicialisation of politics in Lesotho. Corder and Hoexter coin the “lawfare” use of litigation by political parties to resolve political tensions succinctly and refer to it as “lawfare”. They describe lawfare as the use of litigation to resolve contentious political disputes: the phenomenon of asking courts to rule on problems that would otherwise be resolved by political means in more mature jurisdictions or those which may not even be regarded as justiciable (Corder & Hoexter, 2017). Undoubtedly, there is a danger when politics play out in the courts because this may potentially take the courts outside their area of constitutional and institutional competence and draw them into factional politics. Because of this, the judiciary often takes a strain and questions of their independence and integrity plague them post any decision they make. But apart from that risk, litigation of this kind inevitably places strain on the relationship between the judiciary and the political branches and exposes the judiciary to public criticism, whether justified or not, which ultimately detracts from the legitimacy of the courts (Corder & Hoexter, 2017).

This strain played itself out again in the case of *Korokoro Constituency Committee and 2 Others v ABC Executive Working Committee and 6 Others* (2019), in which the Korokoro Constituency Committee of the ABC challenged its suspension over their nomination of Nqosa Mahao to contest the deputy leader’s post. The Acting Chief Justice Maseforo Mahase (as she then was) dismissed the case, but the Court of Appeal overturned the disqualification with President Kananelo Mosito presiding. The Prime Minister did not take kindly to the decision of the Court of Appeal and went public with his attack at a political rally in Hlotse, Leribe, in which he stated that “we will not allow the courts of law to deal with ABC issues, we will deal with the issues on our own”. The scathing attack against decisions of the courts, especially when one faction has lost, is a clear threat against the judiciary as an institution as well as the individual judges. It is against this dissatisfaction and lawfare that politicians opt for continual removal and appointment of judicial officers using constitutional loopholes in an attempt to secure strategic allies within the judiciary, a factor that clearly goes against the principles surrounding the independence of the judiciary.

4 Conclusion

This chapter has highlighted that the relationship between the judiciary and the executive has been without apparent cracks from the time when Lesotho gained independence. However, events, which took place during the era of coalition governments, have exposed the fragility of this relationship. It has illustrated that from their outset and on several

occasions thereafter, different coalition governments invoked constitutional provisions to influence change at the radar of the judiciary, all for political gain. The constitutional design has thus enabled the executive to cross the line, which separates the powers of the two arms of government. The Constitution has created an enabling environment for this intrusion. The various ways in which this is the case include: establishment of a JSC whose composition does not comply with international best practices in that members of the legal profession as well as other stakeholders are not represented; concentration of appointment powers for the Chief Justice and President of the Court of Appeal on the Prime Minister amongst others. The chapter has illustrated further that the composition of the JSC and the Prime Minister's appointment powers have enabled political interference with the appointment and removal of members of the judiciary.

At the time of establishing the first coalition government in 2012, Lesotho lacked a clear point of reference about the drafting and legal classification of coalition agreements. Therefore, one may conclude that this very lack of experience and clear reference has contributed to a lot of strife and breakdown of coalition relationships, consequently impacting the independence of the judiciary. The interference with independence is illustrated by the fact that different regimes clutched onto constitutional inadequacies on appointment and removal of judicial leaders to find ways of clinging onto power. While the constitutional design on appointment and removal of judges does not comply with international standards, its effect on the independence of the judiciary remained oblique, only to collapse with the advent of coalition governments. The net effect, which the unstable coalition governments have on the independence of the judiciary is seen in Justice Mosito's appointment in 2015, resignation in the face of impeachment in 2016 and reappointment in 2017. On this basis, Lesotho needs constitutional redesign to ensure that the judiciary is stable even in the face of an unstable executive so that it may continue to be independent and perform its functions to make Lesotho better.

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AN ANALYSIS OF THE PRINCIPLES GOVERNING THE FORMATION OF A COALITION GOVERNMENT IN LESOTHO

6

Hoolo 'Nyane

1 Introduction

The formation of a government is a constitutional process that has generated a lot of interest amongst constitutional scholars and political scientists alike (Brazier, 1992; Lagassé, 2019). It is a critical buffer between the election and the actual governing of the country. If it is not properly managed, it has the potential either to undermine the electoral outcome or to stoke political instability. Therefore, the process of forming a government is just as important as the election itself. Many countries have rules that regulate this important stage in the democratic process (Cyr, 2017). The rules for the formation of government depend largely on the political system that a country uses. The parliamentary systems often differ from presidential systems: with a parliamentary system, it is parliament, and not the voters, that determines who must form a government (Lijphart, 1991). Although presidential systems come in many variations, the person who is to form a government is usually elected directly by the electorate. Due largely to its Westminster historical ties, Lesotho is a parliamentary system *par excellence* (Macartney, 1970). The voters elect the members of parliament, and parliament, in turn, produces the government. As one British authority argues, the cabinet is the committee appointed by parliament, and the Prime Minister is the chairman of that committee (Bagehot, 1867). This characterisation applies in equal measure to the constitutional design in Lesotho.

The government in Lesotho, regardless of whether it is coalitional or single-party, forms and turns on the office of the Prime Minister. The Prime Minister is appointed by the King based on the overarching principle of the Westminster design – that the government must

at all material times be based on the confidence of parliament. This principle is embodied in section 87(2) of the Constitution. Neither the Constitution nor the rules of parliament provide for any further guidance beyond this general principle in section 87(2).

Since this general principle is based on British constitutional conventions (Lagassé, 2019), it has always been presumed that its practical application will not lead to serious problems because the general election is generally conclusive about who will form the government. As a matter of convention, and by operation of the principle of democracy, the leader of the political party with the majority in parliament will be appointed as Prime Minister and will, in turn, form the government (Rasmussen, 1987). This has been the practice in Lesotho since 1993 when the country returned to electoral politics, and it did not cause any major problems. The fact that the country has no comprehensive rules governing the process of forming a government was only exposed when it started the turbulent journey of coalition governments in 2012. This was the first time that the country experienced a hung parliament (Letsie, 2013; Nyane, 2016). It then became apparent that the Constitution is deficient on several aspects relating to the process of forming a government such as, but not limited to, the negotiation of a coalition with the requisite majority, the stages followed in the appointment of the Prime Minister, and the actual installation of government (Nyane, 2016).

These crucial stages remain largely unregulated. In the absence of guidelines regulating the process of forming a government, most of these matters remain susceptible to different interpretations. In most cases, these multiple interpretations create unnecessary tensions in the country.

Therefore, the purpose of this chapter is to distil the principles that govern the process of forming a government in Lesotho, most of which are based on Westminster conventions. Ultimately, the chapter contends that with a written constitution, Lesotho cannot afford to rely on malleable constitutional conventions that originate from the uncodified constitutional design of the erstwhile colonial master, the United Kingdom.

The chapter is divided into three main parts. The first part revisits the general principles governing the formation of a government under a Westminster constitutional design. The second part deals with the Constitution of Lesotho and how the courts have interpreted its rules for the formation of a government. The third part applies the principles to the formation of governments since 2012 when the era of coalition governments began.

2 The general principles governing the formation of a government under the Westminster constitutional design

Although hung parliaments continue to present unique problems for the formation of a government under the Westminster design, there are no unique rules for the formation of a government after an inconclusive election. As Brazier correctly observes: “it seems from all this that there are no ‘rules’ about government formation from a hung parliament” (Brazier, 1986:387). The rules that govern the formation of a government remain the same for both a hung parliament and a clear-cut majority. Even in cases of a clear-cut majority, the rules for the formation of a government are a matter of considerable controversy (Schleiter, Belu & Hazell, 2017). Across the Westminster designs, these rules are based on British constitutional conventions and precedents, which hitherto remain uncodified and a subject of considerable disagreement (De Winter, 1995; Bogdanor, 2011). These inconsistencies were laid bare in 2010 when Britain returned to the formation of coalition governments. Mindful of these inconsistencies, the government sought to compile – without necessarily creating new rules – all the existing conventions on the formation of government in general, and during situations of a hung parliament in particular, into a Cabinet Manual of 2011 (Blick, 2014).

Several constitutional scholars have tried to distil, from a British precedent based on a long history, what the principles for the formation of government could be (Schleiter, Belu & Hazell, 2016). The problem with this hysterical academic exercise is that it happens within an uncodified British constitutional setup. As Rasmussen pointedly observes: “one of the drawbacks of having an unwritten constitution is that no one is certain what the rules are” (Rasmussen, 1987:139). Hence, an attempt to distil the rules for the formation of government is not an easy academic exercise. Nevertheless, several principles have started to emerge within the Westminster-based constitutional family (Schleiter, Belu & Hazell, 2017). For purposes of the argument being made in this chapter, those principles will be collapsed into four fundamental principles.

The first and most fundamental principle is what may be styled the *confidence principle*. This principle is an animating principle of any parliamentary system – that government is at all material times based on the confidence of parliament. It is immaterial whether such a government is based on a single-party majority or on a coalition of parties. As one British authority observes: “[a] hung parliament after all only makes transparent the fundamental principle of parliamentary government – a principle that a government depends upon the confidence of Parliament” (Bogdanor, 2008:25). Likewise, another authority from New Zealand, which is also a parliamentary system, notes that: “MMP (Mixed Member Proportional) politics continue to be organised around the linchpin of the Westminster

system – the need for governments to secure and retain the confidence of the popularly elected house” (Joseph, 2009:113). This is a hackneyed principle of the formation of government in Westminster-based constitutional designs. Although the principle originates from convention, countries like Lesotho have gone as far as codifying it.

The confidence principle provides a buffer between the monarchical prerogative to appoint the Prime Minister and the principle of democracy. As one British authority pointedly observes, “[t]he Queen, the Cabinet, the House of Commons and even the House of Lords are the instruments which history has created as, or political conditions have converted into, instruments for carrying out the democratic principle” (Jennings, 1969:13-14).

Over time, the development of the principle of democracy and its manifestations, like electoral democracy and political party system, have had a limiting effect on the prerogative of the monarch. While the monarch still retains the prerogative to appoint the Prime Minister, the prerogative is no longer absolute (Nyane, 2020; Obioha, 2020). The monarch is now bound to appoint not just any person to form a government, but a person who commands the majority of the elected house of parliament.

Hallowed as the *confidence principle* is to a parliamentary system, it only works smoothly in cases where it is obvious who has the confidence of parliament – where the electoral outcome is conclusive on who commands the majority of the members of the representative chamber of parliament. In cases of a hung parliament – where the election is inconclusive about the person who will command the majority of the members of the elected chamber of parliament – the principle becomes less helpful in identifying the person who will command the majority. Brazier captures this difficulty much more astutely thus:

[T]he only “rule” in such circumstances is open-ended and unhelpful, namely, that in choosing a Prime Minister the Queen should commission that person who appears best able to command the support of a stable majority in the House of Commons or, failing such a person, that politician who seems able to form a government with a reasonable prospect of maintaining that administration in office. This does not take us very far. How, for example, could the Queen identify that person who might command a majority in a House of Commons of minority parties, and how would she resolve the possible and conflicting claim of the leader of the largest minority party to form a minority government? (Brazier, 1986:387)

Consequently, precedent from Britain and the broader family of Westminster-based constitutional systems has led to the evolution of other principles that will guide the identification of a *formateur* – the person who must be recognised to form a government where the election has been inconclusive (Schleiter, Belu & Hazell, 2017).

This leads to another principle: what may be styled the *political negotiation principle*. Since the election could not decide the question of the majority in the representative chamber, the matter may not immediately shift to the monarch for resolution because such a move

will undermine the principle of democracy. The matter can then best be resolved through political negotiations. One British authority observes that: “the guiding light ought to be that the political crisis should if possible be resolved by politicians – in a phrase, that there should be political decisions, politically arrived at” (Brazier, 1986:389). Political negotiations between political leaders are undertaken to agree on the formation of the government and to secure confidence in government. The political process of negotiating a coalition can be fairly messy and open-ended. No rules govern it. Any political party can agree with any other, as long as they first secure an overall majority. Sometimes there is the perception that the party with the largest majority or the incumbent Prime Minister has certain rights, such as the right to be allowed time to attempt to negotiate a coalition first. This view is based on the *plurality principle*. The principle has been widely criticised on the basis that, since the voter was inconclusive during election, favouring any political party during formation of government on account of its relative majority is not proper. This view posits that if elections are the process of formation of government they should be open and be left to political dynamics and expediency (Brazier, 1986; Bogdanor, 2008).

In the political process, political leaders may either take a long time to conclude negotiations or fail to agree. In such cases, principles have emerged to guide the formation of the government. In the event of negotiations continuing for a long time, the *caretaker principle* applies. This principle provides that while the political negotiations are being undertaken after an inconclusive election, the incumbent Prime Minister has a duty to remain in office, in a caretaker capacity, until the political negotiations are concluded, after which he may either resign or form a new government. The rationale for this principle is that at no time is the monarch left without a government (Bogdanor, 2011). The operation of this principle is sometimes tricky in practice as there is no stipulated time for the resignation of the incumbent Prime Minister. It is a matter of his political judgement. As Bogdanor observes: “[he] should not be required to incur odium by having to hang on when it is clear that he no longer enjoys political support” (Bogdanor, 2011:34). This principle must be approached with caution in practice because, in the majority of cases, the incumbent Prime Minister would have no outright majority because he or she has lost the broader support of the electorate. Therefore, his or her continued presence in the office may be perceived as undemocratic. For this reason, other Prime Ministers resign immediately if they fail to secure an outright majority in the election. This is what former Prime Minister of Britain, Gordon Brown, did in 2010. Contrary to the caretaker principle, he resigned upon his failure to secure an outright majority, even before a new coalition could be concluded. His main argument was that while the election may have been inconclusive, one message from the election was clear – that the voters had rejected him. If the voters wanted to retain him, they could have said so in an unequivocal manner (Bogdanor, 2011).

Another complication arises when political negotiations do not result in a coalition agreement. The authorities seem to be divided on this issue. On the one hand, some contend that the incumbent Prime Minister has a right to continue with the government until he or she is met with a direct vote of no-confidence or an indirect one – for example, if he or she loses a vote on an important matter like the Speech from the Throne. This is called the *continuity principle*. The British Cabinet Manual – which is supposedly a collation of conventions on the subject – seems to support this principle. It provides that the incumbent government is entitled to wait until the new parliament has met to see if it can command the confidence of the House of Commons (*United Kingdom Cabinet Manual*, 2011:section 2.12). On the other hand, some authorities argue that if political negotiations fail to produce an overall majority government, the monarch must ask the leader of the largest parliamentary party to form a government. The largest parliamentary party is the party that, although it does not hold the overall majority, holds a majority relative to all other political parties individually. This principle is called the *plurality principle*, and is defined thus:

It dictates that the largest parliamentary party should be the first to designate a *formateur*. Only if the first formation attempt fails should the nomination pass on to the second largest party, then to the third, and so forth. By focusing on the seat distribution in parliament as the determinant of the order in which actors are invited to form a government, this principle follows a clear democratic logic (Schleiter, Belu & Hazell, 2017:408).

Whether a government is formed based on the *continuity principle* or the *plurality principle*, the resultant administration will be a minority government because the political process failed to produce a government with an overall majority. A minority government can be formed with or without an agreement. An agreement on a minority government may be brokered between the party with a relative majority and the party or parties outside government. These agreements are called “confidence and supply agreements”. The party outside the government agrees to vote with the government in confidence motions “in exchange for policy concessions and a promise of consultations on legislation. A confidence and supply agreement provides for a parliamentary but not a governmental coalition” (Bogdanor, 2011:21).

A minority government, as one authority observes, is “a constitutional time bomb ticking” (Brazier, 1986:401). The government may be defeated at any time on a confidence motion. This will in turn see the parliament being dissolved after a short period of time. Britain experienced this when the Labour minority government lasted for only seven months in 1974 (Bogdanor, 2011). When such a government loses a confidence vote, it means another election after a short period of time. This may be an inconvenience for the country. It exacerbates the already existing problem of instability created even by coalitions that produce governments with a majority in parliament.

The situation where parliament is dissolved for the second time within a short period of time seems to be a subject of intense controversy (Blackburn, 1988; Newman, 2009). Some authorities suggest that this may be one of the exceptional circumstances under which the sovereign can exercise his or her right to ignore the advice to dissolve parliament (Forsey, 1968; Hicks, 2010). In terms of the Constitution of Lesotho, the King may decline the advice to dissolve parliament if he “considers that the Government of Lesotho can be carried on without a dissolution and that a dissolution would not be in the interests of Lesotho” (section 83(4)). This suggests, as Brazier rightly contends, that: “it is beyond doubt that the Sovereign can refuse a request for a dissolution of parliament: the difficulty lies in identifying the situations in which such action would be constitutionally appropriate” (Brazier, 1986:402).

The Ninth Amendment to the Constitution of Lesotho (2020) has ameliorated this problem by providing that if the Prime Minister loses a confidence vote, he or she must resign rather than dissolve parliament unless his or her motion to dissolve parliament is supported by at least a two-thirds majority of the members of the National Assembly. This is a tall order for a Prime Minister who has already lost the vote of no-confidence. While the Amendment may ameliorate the problem of a high turnover in parliament, it has the potential to lead to a high turnover in government.

3 The constitutional practice in Lesotho

The Constitution of Lesotho has codified the above general principles in section 87(2). Therefore, the text of the Constitution of Lesotho has to be interpreted. The relationship between the British constitutional conventions and the written constitutions of former British colonies that have codified those conventions was best articulated by the Judicial Committee of the Privy Council in the Nigerian case of *Adegbenro v Akintola* (1963) thus:

The instrument now stands in its own right; and while it may well be useful on occasions to draw on British practice or doctrine in interpreting a doubtful phrase ... it is in the end the wording of the constitution itself that is to be interpreted and applied, and this wording can never be overridden by the extraneous principles of other constitutions which are not explicitly incorporated in the formulae that have been chosen as of this constitution.

This conception is in keeping with what the Constitutional Court of South Africa stated in relation to constitutional interpretation in *S v Zuma & Others* (1995:par 17) that: “even a constitution is a legal instrument, the language of which must be respected. If the language used by the lawgiver is ignored in favour of a general resort to ‘values,’ the result is not interpretation but divination”.

While the Constitution of Lesotho is largely based on British conventions, it is a written instrument. Its text as a legal document must be respected. The relevant part of the Constitution is section 87(2), which provides that: “[t]he King shall appoint as Prime Minister the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the National Assembly”. The section has four important components, which are analysed below in view of what has happened in practice and how the courts have interpreted them, on the few occasions in which they have dealt with the section.

3.1 Prerogative of the King to appoint the Prime Minister

The Constitution makes the appointment of the Prime Minister, with whom the responsibility to form government lies, the prerogative of the monarch. This is an antique prerogative of the sovereign at Westminster. In its original form, the appointment of the Prime Minister is the “personal prerogative” of the sovereign (Phillips & Jackson, 1987; Bradley & Ewing, 1997:262). However, because of the evolution of the modern canons of representative democracy and a constitutional monarch, the power is no longer absolute. The power is qualified, which means that the sovereign must appoint as Prime Minister only a person who seems to be in a position to form a stable government based on the majority in the representative chamber of parliament. The independence Constitution of Lesotho (1966) was couched in terms closer to the original nature of this prerogative. Section 75 thereof provided that the King could “act in accordance with his own deliberate judgement” in the performance of certain specified functions in the Constitution.

The expression “deliberate judgement” was not defined in the Constitution, but Palmer and Poulter (1972:241) correctly deem it to mean the powers that fall within the absolute discretion of the King. They distinguish these powers from another type of power called “agency powers” – the powers that the King exercises upon the advice of some other institution. The powers that fall within the monarch’s absolute discretion were, amongst others, the power to appoint senators, the dissolution of parliament, the appointment of the Prime Minister and the dismissal of the Prime Minister. It is intriguing to note that the independence Constitution had the “appointment of Prime Minister” in this rubric of powers that are subject to the “deliberate judgement” of the King, despite it having the provision that the King shall appoint a person who is a leader of a party or coalition of parties that command the majority in the National Assembly. In that way, the power to appoint the Prime Minister was surely different from the power to appoint senators, which was at the absolute discretion of the King. To put its Westminster pedigree beyond doubt, section 76(2) of the 1966 Constitution provided that: “the King shall in the exercise of the said functions act, so far as may be, in accordance with any constitutional conventions to the exercise of a similar function by Her Majesty in the United Kingdom”.

While the 1993 Constitution retains the same principles for the formation of a government, it has introduced two important changes to the monarchical prerogative to appoint the Prime Minister. Firstly, the Constitution no longer has a category of powers that fall within the absolute discretion of the monarch (Mahao, 1997; 'Nyane, 2020). All the powers of the monarch, including the power to appoint the Prime Minister, are exercised on the advice of some other authority. Therefore, the King is obliged based on that advice (*Makenete v Lekhanya*, 1991-1994) unless the advice is irrational, unconstitutional or somewhat unlawful (*All Basotho Convention and Others v Prime Minister and Others*, 2020). Secondly, the Constitution has introduced an interlocutor in the appointment process in the form of the Council of State. The Council of State is the successor to the now moribund Privy Council. All the powers of the King that were exercised at the absolute discretion of the King – such as the appointment of senators, the appointment of the Prime Minister, the dissolution of parliament and the dismissal of the Prime Minister – are now exercised upon the advice of the Council of State. In relation to the appointment of the Prime Minister, the powers of the Council of State are purely formal because the question of who commands the majority of the members of the National Assembly is a political question that is determined through political processes in the National Assembly itself.

Initially, the Speaker of the National Assembly did not have a role in the appointment process as that was the preserve of the King on the advice of the Council of State. However, the Ninth Amendment to the Constitution (2020) now introduces the Speaker as another interlocutor in the process of appointing the Prime Minister. The amendment introduces a new section to the Constitution of Lesotho, which seeks to regulate the consequences of the Prime Minister's death, retirement, or resignation. The newly introduced section 90A (1) provides that:

Notwithstanding the provisions of section 87(1) and (2), the King shall upon the death, retirement or resignation of the Prime Minister, appoint a member of the National Assembly who appears to be the leader of a political party or coalition of political parties that commands the majority of the members of the National Assembly, as Prime Minister, on the advice of the Speaker.

This section is problematic in two fundamental respects. Firstly, it does not repeal or amend section 87(2) of the Constitution. Therefore, section 87(2) remains the principal provision for government formation; whether the need for the formation of the government came as a result of the resignation of the incumbent Prime Minister after an election or during the parliamentary term (without dissolution) is immaterial. The section is thus somewhat superfluous. Another complication brought about by the new section is that it introduces the Speaker into the process of appointing the Prime Minister without necessarily introducing the investiture vote – the process by which parliament elects the Prime Minister. The section, therefore, requires the Speaker to preside over an unregulated process, either by rules or convention.

3.2 *The members of the National Assembly*

The Constitution makes it the preserve of the members of the lower chamber of parliament – the National Assembly – to produce the Prime Minister. This means that the Prime Minister can come from neither the Senate nor outside parliament. This is in keeping with the principle of democracy. As Jennings contends in relation to the United Kingdom, “[t]he House of Commons and the Cabinet are the instruments of democracy. The prerogative of the Crown and, to a lesser degree, the powers of the aristocracy, have been subordinated to public opinion” (Jennings, 1969:14). The National Assembly is an elected chamber of parliament. As such, it provides a clear nexus between the electorate and the government. It stands in sharp contrast to the Senate, which is both appointed and hereditary (Constitution of Lesotho, 1993:section 55). Although the electorate does not elect the government directly, the National Assembly provides the assurance that, at the end of the day, the government in office, at a particular point in time, has a relationship with the voters.

Now that the country has two types of members of the National Assembly – the Proportional Representation (PR) members and the constituency representatives – the Prime Minister can be appointed from either of these two categories. It is immaterial whether a member is associated with any political party or is independent. Ever since independence, however, all Prime Ministers have been affiliated to political parties, and they have been constituency representatives. This rule found application in 2020 after the resignation of Prime Minister Thomas Thabane. The deputy leader of the party, Nqosa Mahao, could not succeed as the Prime Minister because he was not a member of the National Assembly. At the time of Thabane’s resignation, Mahao was not a member of parliament. Mahao was later appointed as a member of the Senate – a position which allowed him only to be a minister, but not the Prime Minister. Faced with this predicament, the All Basotho Convention, which was the party with a relative majority in the National Assembly, chose Moeketsi Majoro – a member of parliament for Thetsane constituency – as Prime Minister. The other coalition partners supported the choice of Majoro as Prime Minister.

3.3 *The King “appoints” the person who “appears”*

It is important to note that the language used by the Constitution appears to be unequivocal here. There is a general temptation to assume that because the National Assembly is the body whose confidence is necessary for the King to appoint a member to be Prime Minister, then it elects the Prime Minister. The word used by the Constitution is “appoint”, not “elect”. Therefore, the Prime Minister is appointed, not elected. This accords with the long-standing prerogative of the monarch – that the King is the one who appoints the government. The confidence principle has only attenuated, rather than abolished, this convention. This also accords with the fact that neither the Constitution nor the Standing Orders of parliament provide for the process of electing the Prime Minister – what is called an investiture vote.

While an investiture vote may be ideal, it currently does not exist either in Lesotho or England. In England, there is scholarly support for introducing it (Maer, 2010). The House of Lords in England has accurately captured both the present and the ideal position thus:

A prime ministerial investiture vote would be a significant change to the UK's constitutional processes for forming a government. At present, after a general election the Queen calls on the person who appears best placed to command the confidence of the House of Commons. When there is a single-party majority, that is straightforward. When there is not, the matter may become more difficult. The first test of whether a Prime Minister has the confidence of the Commons is at the vote on the Queen's Speech after an election. A prime ministerial investiture vote would, in effect, make that vote the test of confidence, rather than the vote on the Government's programme set out in the Queen's Speech (House of Lords, 2014:para 48).

Therefore, the word "appears" may not necessarily be accurate since there is currently no process of election. In England, whether the person appointed as Prime Minister indeed enjoys the confidence of the House is normally tested with the vote on the first Speech from the Throne after the general election. This speech contains the programme of the government. In Lesotho, an indirect vote of no-confidence – like a negative vote on the budget or speech of the King – may not be helpful tools for determining with certainty the confidence of the House. The Constitution has a clear provision on the vote of no-confidence (section 83), in terms of which the National Assembly is at liberty to show whether or not the House has confidence in the Prime Minister and government. This is in keeping with negative parliamentarism, which is a feature of most Westminster-based political systems (Bergman, 1993).

In Lesotho, this principle has been practised with relative ease. Before 2012, the elections were normally conclusive. Therefore, the King would ordinarily appoint the leader of a majority party in the National Assembly. In situations of a hung parliament, several factors assist the King in deciding which person "appears" to be in command of the majority of the members of the National Assembly. One prominent factor is the coalition agreement. If a coalition agreement has been brokered, it is clear that a majority has been secured. Another factor is the outcome of the election of the Speaker and the Deputy Speaker. In its first meeting, the National Assembly must elect the Speaker and the Deputy Speaker (section 63(4)). Ordinarily, this vote is indicative, albeit not necessarily conclusive, of how the alliances have been configured in the House.

The Ninth Amendment to the Constitution has improved the process somewhat. Section 90A(1) of the Amendment, for the first time, empowers the Speaker to advise the King on who appears to be appointable as Prime Minister. While the section does not introduce the process of electing the Prime Minister, it acknowledges the fact that the Speaker is the best person to advise about the political configurations in the House. The introduction of the Speaker into the process is an improvement, but it does not settle the uncertainty

surrounding the process. The Speaker is still going to rely on incidental processes like coalition agreements. In situations where the election is inconclusive, and the parties cannot broker a coalition agreement, the Speaker is still going to find it difficult to advise the Council of State about the person who “appears” to be in a position to form a government. The best panacea for this uncertainty in the process would be the introduction of the investiture vote for choosing the Prime Minister. This would give members of the National Assembly a clear opportunity to vote for the Prime Minister.

3.4 The leader of the political party or coalition of political parties

The Constitution also provides that the person to be appointed as Prime Minister must be the leader of a party or coalition of political parties. This is the manifestation of the animating principle of government formation in a parliamentary system – that the government must at all times enjoy the confidence of the House. Ordinarily, this principle is clear and unambiguous. However, since the Constitution of Lesotho is written, the text must be interpreted. The Constitution uses the phrase “leader of a political party” instead of the word “member”. This often generates controversy about whether any member of the National Assembly can be appointed as Prime Minister. Lesotho’s parliamentary and judicial precedents have shown that the word “leader” is not interpreted literally. Any member of the National Assembly may be appointed as Prime Minister. The precedents date back to 1965, when the country held an election a year before independence. The election was held under the 1965 Constitution, which was the blueprint for the independence Constitution of 1996. Thus, the same principles of formation of a government that the country uses today originate from the 1965 Constitution.

In the 1965 election, the Basutoland National Party (BNP) secured a narrow lead in the National Assembly of 31 seats out of 60. Although the BNP secured an outright majority in the National Assembly, its leader, Chief Leabua Jonathan, did not win his constituency and was therefore not a member of the National Assembly when it first met after the election. Consequently, the Deputy Leader of the Party, Chief Sekhonyana Maseribane was appointed the Prime Minister. However, a safe constituency was identified for Chief Jonathan. The elected candidate in that constituency resigned, and Chief Jonathan was comfortably elected in that constituency. He was then sworn in as the Prime Minister (Khaketla, 1972; Machobane, 1988). The political manoeuvrings notwithstanding, the precedent for constitutional practice is that any member of the National Assembly can be appointed Prime Minister.

In 1997, the High Court had an opportunity to set a judicial precedent on the subject in the case of *Ntsu Mokhehle v Molapo Qhobela and Others* (1997). The case arose out of intriguing circumstances. The then Prime Minister and leader of the then ruling Basutoland Congress Party (BCP), Ntsu Mokhehle, was threatened with removal from the leadership of

his party by some in the party, including the national executive committee (NEC). In court, he wanted to raise the argument that if they removed him from the leadership of the party, it would mean that in terms of section 87(2) of the Constitution he would no longer be the Prime Minister of the country. The court disagreed and held that: “BCP as a political party does not feature prominently. Its members are recognised by the use of the term political party in the Constitution. The party does not feature by law in making or the unmaking of the Prime Minister.”

The matter presented itself again in 2012 but in relation to the leader of the opposition. After the 2012 general election, the Democratic Congress (DC) leader, Pakalitha Mosisili, decided not to take up the position of leader of the opposition. The party, in turn, nominated his deputy, Monyane Moleleki, for the position of leader of the opposition. Section 95(2)(h) of the Constitution provides that for purposes of representation in the Council of State, “the Speaker shall appoint the leader of the opposition and the leader of the opposition party or coalition of parties having the next greatest numerical strength”. Even in the aftermath of the 2017 election, a similar arrangement happened when Mathibeli Mokhothu, the then deputy leader of the DC, became the opposition leader. In the case of *Mokhothu and Others v The Speaker of the National Assembly and Others* (2018:para 25), the High Court ruled that:

In the Westminster parliamentary practice, the identity of the person to be the leader of the Opposition does not lend itself to controversy. It is the person who leads the largest party in the National Assembly or lower House in opposition to the Government. The Speaker’s duty is to accept the nomination of such a person and not to question it.

In 2020, the leader of the ABC, Tom Thabane, resigned as the Prime Minister but retained his seat in the National Assembly. His party nominated Moeketsi Majoro to take up the position of Prime Minister. Although irregularities marred the process for the appointment of Majoro, as will be demonstrated more fully later, it adds to the solid principle that one does not necessarily need to be a leader of a political party to be appointed Prime Minister.

3.5 Who will command the support of a majority of the members of the National Assembly

The Constitution uses the word “will” in its text to qualify the requirements of the person who is appointable as Prime Minister. The word “will” carries futuristic undertones: it suggests that the person the King appoints must have the prospect of forming a stable government. It dovetails with the confidence principle – that His Majesty’s government must enjoy the confidence of the House at all material times.

The main bone of contention is about the type of majority anticipated by the Constitution. It is usually assumed that the word “majority” refers to an “overall majority”. The convention suggests that the word “majority” does not necessarily refer to an “overall majority”; even a “relative majority” is still within the ambit of the section. The net effect is that a political

party can still form a government with a relative majority, provided no parties have coalesced to secure an overall majority. This will inevitably mean a minority government. Bogdanor, a leading British authority, captures this situation with erudition, stating that the overarching confidence principle remains, which is: “that a government must be able to command the confidence of the House of Commons, although this does not mean that it need enjoy an overall majority, so long as the opposition parties are not prepared to combine to defeat it” (Bogdanor, 2011:24).

However, Lesotho has no experience with minority governments. In 2012, after the then Prime Minister Mosisili failed to obtain an overall majority in the National Assembly, his party, the DC, floated the idea of forming a minority government (*Sunday Express*, 2012). The DC held the relative majority in the National Assembly. The idea of a minority government evoked public outrage because many people regarded the fact that Mosisili did not get an overall majority in the National Assembly as evidence enough that he had lost the election and had to step down as Prime Minister.

But, technically, Mosisili could have lawfully formed a minority government as long as there was no coalition with a larger majority in the House. Fortunately, in 2012, a coalition secured a hair’s breadth majority in the House. Three parties – the ABC, the LCD and the BNP – formed a coalition of 61 out of 120 seats in the House. Initially, six political parties in the House – the Lesotho People’s Congress (LPC), the Lesotho Workers Party (LWP), the Marematlou Freedom Party (MFP), the National Independent Party (NIP), the Basotho Democratic National Party (BDNP) and the Popular Front for Democracy (PFD) – had pledged support to the government. They officially identified themselves as the “Bloc” with ten seats. Although it ultimately did not materialise, their arrangement was more like a confidence and supply agreement: the parties outside government would vote with the government on confidence motions in exchange for consultations, policy concessions, and some deployments of party loyalists to certain political posts, like embassies.

4 Appointment of the Prime Minister during the parliamentary term

The appointment of the Prime Minister during the parliamentary term has not been a common feature in Lesotho until 2020. Prime Ministers have always been appointed at the beginning of the term of parliament and their terms ended with the term of parliament. This was by and large because of the constitutional framework in place prior to the Ninth Amendment to the Constitution (2020). Before the Amendment, a Prime Minister who had lost the confidence of the National Assembly had two options – either to resign or to advise the King to dissolve parliament. Almost invariably, Prime Ministers would opt for the dissolution of parliament in the hope that they would get a renewed mandate from

the electorate. Prime Minister Thabane exercised this option in 2015. In 2015, parliament had to be dissolved because Thabane's government had lost the confidence of the House due to the fallout between the then main coalition partners – the All Basotho Convention (ABC) and the Lesotho Congress for Democracy (LCD) (Booyesen, 2015; Weisfelder, 2015). Although the government had lost the confidence of the House, there was no direct motion of no-confidence passed by the House against the government.

The country had to have an early election in February 2015, hardly two years after the 2012 election. Similarly, the government that was elected in 2015 was removed through a direct vote of no-confidence in March 2017, and the country held another election in June 2017. This created real mischief that needed to be addressed to stabilise parliament. The remedy deemed appropriate by parliament was the Ninth Amendment to the Constitution (2020). The amendment has removed dissolution as a readily available option to the Prime Minister, who has lost a vote of no-confidence. The only real option now available to the Prime Minister is resignation. The Prime Minister may still recommend dissolution, but only if such dissolution is supported by two-thirds of the members of the National Assembly (section 83).

The Amendment provides that upon the death, retirement or resignation of the Prime Minister, a member of the National Assembly “who appears to be the leader of a political party or coalition of political parties that commands the majority of the members of the National Assembly, as Prime Minister, on the advice of the Speaker” (section 90A (1)) shall be appointed as Prime Minister. To some extent, this Amendment is superfluous because it presumes that the Constitution had an inadequate framework for the resignation and the appointment of the Prime Minister during the parliamentary term. Section 152 of the Constitution allows any person, including the Prime Minister, “who is appointed, elected or otherwise selected to any office established by the Constitution to resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or otherwise selected”. In the case of the Prime Minister, who is the pivot of government under the design, if his or her office becomes vacant – for whatever reason – section 87(2) of the Constitution kicks in. Section 87(2) provides for the appointment of the Prime Minister regardless of the circumstances that led to the vacancy. In the event of the resignation of the Prime Minister – where parliament has not been dissolved – the principles of section 87(2) apply. The King will appoint the person who is most likely to command the majority of the members of the National Assembly to form the new government.

In 2020 Lesotho experienced, for the first time, a situation where the Prime Minister resigned, and a new government had to be formed during the parliamentary term – without dissolving parliament. Since the Ninth Amendment to the Constitution (2020) prohibits a Prime Minister who has lost a vote of no-confidence from unilaterally advising

that parliament be dissolved, Prime Minister Thabane was forced to resign after he realised that a significant number of his own party was ready to vote with the opposition on the mooted motion of no-confidence.

Moeketsi Majoro was then appointed as Prime Minister upon Thabane's resignation. The process by which Thabane's government ended and by which Majoro was appointed was problematic and is not a good precedent for the formation of a new government during the parliamentary term. The two main political parties – the ABC and the Democratic Congress (DC) – signed the coalition agreement on 3 April 2020 (ABC and DC, 2020), thereby tacitly marking the beginning of the end of the coalition that was formed after the 2017 election. On 8 May 2020, the joint caucus of the four political parties – the ABC, the Alliance of Democrats (AD), the Basotho National Party (BNP) and the Reformed Congress of Lesotho (RCL) – decided to disband the ruling coalition and formerly communicated this to the Speaker on 11 May 2020 (National Assembly, 2020:2). On the same day, the House adopted the following motion without notice:

That when this Honourable House rises today, Monday, 11 May 2020, it do (sic) adjourned until Friday, 22nd May, 2020 at 9.00 am to facilitate for transition from the current Coalition Government to a new Government (National Assembly, 2020:17).

On 12 May 2020, a joint letter from the ABC and the DC was written to the Speaker of the National Assembly, informing him that: “the new caucus of ABC and DC, together with parties supporting the coalition, resolved to submit the name of Dr Moeketsi Majoro as the new Prime Minister for transmission to relevant authorities” (ABC and DC, 2020). The letter further identified eight other political parties supporting the coalition whose numbers, together with the ABC and the DC, added up to 97 out of a 120-member National Assembly. The following day – 13 May 2020 – the Speaker wrote a letter to the King, reporting the termination of the then ruling coalition. The letter also presented “the nomination of the Prime Minister designate in the person of Hon. Dr Moeketsi Majoro, MP for Thetsane Constituency No 33 by a joint caucus of the ABC and DC” (Motanyane, 2020).

On 18 May 2020, the Council of State sat and resolved “to advise his Majesty to appoint Hon Dr Moeketsi Majoro MP for Thetsane Constituency No. 33 as Prime Minister designate of the Kingdom of Lesotho to succeed the incumbent Prime Minister Dr Motsosahae Thomas Thabane” (Posholi, 2020). Majoro was sworn in as Prime Minister on 20 May 2020, after the resignation of Thomas Thabane.

The process used for appointment of Prime Minister Moeketsi Majoro is not a good precedent for the appointment of a Prime Minister during the parliamentary term because of two fundamental procedural flaws. The first one is that at the time the Speaker wrote to the King to appoint Majoro as the “Prime Minister designate”, Thabane had neither been

ousted on a formal motion of no-confidence nor had he resigned. He was still a substantive Prime Minister. For the Speaker to initiate a constitutional process of appointing the Prime Minister, there ought to have been a vacancy in that office created by resignation, a vote of no-confidence, or some other reason.

Secondly, the notion of the “Prime Minister designate” is alien to the current constitutional framework governing the formation of government in Lesotho. The Constitution refers to the appointment of the “Prime Minister”, not the “Prime Minister designate”. This phrase “Prime Minister designate” was cautiously used by both the Speaker and the Council of State to hide the fact that they had both acted prematurely.

5 Conclusion

This chapter sought to distil the principles governing the formation of government from various sources – the Constitution, precedent and Westminster conventions. The chapter has demonstrated that the Constitution of Lesotho presents some challenges in forming a government. Section 87(2) thereof is the turning point for the formation of a government. The section is based on the central principle of the formation of a government at Westminster: that the government of the day must at all material times enjoy the confidence of the representative House. In an unwritten constitutional situation like the one that exists in Britain, convention often provides guidance. Conversely, with a written constitution like that of Lesotho, the exercise of distilling the principles of formation of government is complicated by two aspects. The first one is that the text of the Constitution must be respected, regardless of whether it is ambiguous or not. The second is that although it is written and its text is worthy of respect, the Constitution is woefully wanting in detail about the process of forming a government. This lack of detail becomes even more problematic when the country faces the situation of a hung parliament.

It is therefore recommended that the rules governing the formation of government should be codified. The codification could include the existing rules and could introduce new rules. The Ninth Amendment to the Constitution (2020) has already introduced new principles, such as the involvement of the Speaker in the appointment process. However, the involvement of the Speaker alone, without providing guidelines, may be an exercise in futility. The Speaker will still face the challenge of recommending the appropriate person to be the Prime Minister, as happened in 2020 with Prime Minister Moeketsi Majoro. The most obvious change may be introducing an investiture vote – the process by which parliament itself can positively vote for the Prime Minister. In the event of a hung parliament, the country may have to choose between the *political negotiation principle* and *plurality principle*; or hybridise the two. The *plurality principle* – the preference of political parties according to their electoral strength – seems closer to the principle of democracy because the government will always be led by the person who has a relative majority in the National Assembly.

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THE CONSTITUTIONAL POWERS OF THE ATTORNEY GENERAL WITHIN THE CONTEXT OF COALITION GOVERNMENTS

7

Rapelang Mosae and Mokitimi Ts'osane

1 Introduction

Since the dawn of coalition governments in Lesotho, the autonomy and integrity of the Office of the Attorney General have been placed under intense scrutiny. Despite the existence of a constitutional principle that the Attorney General shall not be subject to the direction or control of any other person or authority (Constitution of Lesotho, 1993 section 98(4)), the practice under coalition politics has oftentimes reduced this to words on a piece of paper. The practice has reduced the “supposedly independent” Office of the Attorney General to an active accomplice in the crony administrative efforts of incumbent prime ministers. The duty of loyalty has shifted from the Constitution, where it ought to be, to an individual occupying the Prime Minister’s political office. Before the collapse of the first coalition government in 2015, the Office of the Attorney General became a platform of contestation between the Prime Minister and the Deputy Prime Minister (Gebremichael, et al., 2019:9). Before 2012, this contestation was effectively not so relevant to Lesotho as she had a leader of a single political party with the required majority in the National Assembly forming cabinet from 1993 to 2012 (Sejanamane, 2017:167).

Essentially, the advent and the dawn of hung parliaments and coalition politics ushered in a new era with a shift in the cabinet government system toward the greater conflict in advising opposing forces by the Attorney General. Over the years after 2012, the Attorney General is sometimes confronted with the dilemma of advising opposed forces. In essence, coalition politics is amply characterised by coalition governments where different parties with different political interests and ambitions divide among themselves different strategic ministries.

What then should the Attorney General do when either confronted by opposing forces or when his/her advice appeases one side to the detriment of the other, like the dilemmas the first coalition government ran into between 2014 and 2015? For example, in a letter dated 5 January 2015, the then Prime Minister, Thomas Thabane ordered the dismissal, with immediate effect, of Lesotho's chief delegate to the Lesotho Highlands Water Commission (LHWC), Topollo Charles Putsoane, over the latter's alleged poor performance and insubordination (*Lesotho Times*, 2015). The then Energy, Meteorology and Water Affairs Minister, Tséliso Mokhosi and LCD, refused to heed the Prime Minister's instructions and even threatened to go to court.

The abovementioned incident raised fundamental issues on the Attorney General's role and duty when there are conflicts between institutions, government ministries, public offices and public agencies. The Office of the Attorney General is legally mandated to advise and represent the aforementioned public offices while maintaining its autonomy and independence as mandated by Section 98(4) of the Constitution. Despite this guaranteed institutional independence and functional autonomy, the legal sphere relies on interpretation, notwithstanding that the Attorney General only owes his or her loyalty to the Constitution, meaning he or she can direct the advice towards any direction he or she wishes. This previous statement will be addressed later in this chapter with concrete examples. Experience has shown that despite the Office of the Attorney General owing its allegiance to the Constitution, nothing precludes opinions from the Attorney General intended to advance a particular strategic agenda ramping up a partisan position. A case in point was when Thabane faced an ouster in 2019, and the Attorney General issued instructions to the Treasury to give the former Deputy Prime Minister, Mothejoa Metsing, his benefits despite the court case that was dealing with the same issue. On 16 April 2021, Mosotho Attorneys, in a letter titled "*Re: pending judgements in CIV/APN/ 316/2017, CIV/APN/380/ & CIV/Apn/212/2018*", wrote to the Registrar of the High Court, bringing it to her attention that the cases, including that involving Metsing's benefits, were argued to finality before Monaphathi J, but judgements in those matters had not been handed down.

At the time, the former Prime Minister Thabane was trying to foster an alliance of convenience with Metsing, and the Office of the Attorney General was instrumental in those political deals. It has to be borne in mind that as a constitutional creature, the Office of the Attorney General carries functions of great constitutional importance that should not be swayed by political interests actuated by the political climate.

Since the dawn of coalition politics, the Attorney General as the government's chief legal advisor has been mired in constitutionally controversial issues in the execution of his legal mandate, functions, and duties, which have political implications. For instance, in August 2017, the former Deputy Prime Minister from the two consecutive coalition governments, Honourable Mothejoa Metsing, filed an application before the High Court of Lesotho

seeking nullification of the government's decision to deny him any benefits which he argued accrued from 2012 during the first coalition government to 2017 when the second coalition government was voted out of power.

In that case, the Attorney General, who was employed on a contractual basis by the incoming Prime Minister, instructed a private attorney, one Attorney Tumisang Mosotho, to oppose the application (*Mothejoa Metsing v Minister Responsible for Public Service and Others*, 2017). The parties argued their respective cases.

At the time, the then Prime Minister Thabane, who led a political party which the then Attorney General Phoofole KC once represented in parliament, initiated talks with his nemesis to forge a partnership that would rescue his sinking ship. The Attorney General made this politically motivated decision disregarding the *sub judice* rule, which legally restricted him and the Executive from making any decisions or deliberations on the matter which the High Court was seized with.

This is not the only conflict of interest the occupant of the Office of the Attorney General had run into since the dawn of coalition politics as a direct consequence of factionalism in a coalition government. On 12 February 2015, the Attorney General, supported by the Office of the Deputy Prime Minister, through an affidavit, unprecedentedly launched an application against the King, the Prime Minister and the President of the Court of Appeal (*Attorney General v His Majesty the King and Others*, 2015). In other words, the principal advisor and legal representative of the King, executive, cabinet and the judiciary stood against the decision of the institutions he has a legal obligation to represent. It is worth mentioning that the then Attorney General, Tsókolo Makhethhe, had been appointed in July 2007 by the leader of a political party which the Deputy Prime Minister, Metsing led (Sello, 2017).

The abovementioned instances were just considered to establish a context, and as such other illustrative examples will be considered in due course. This chapter analyses and examines the conflict of interest that cloaks the Attorney General as a political appointee as a direct consequence of the dawn of coalition politics and governments in Lesotho. This chapter also examines how the transformation of the Cabinet Government to Prime Ministerial Government has impacted and affected the function of the Office of the Attorney General. This chapter also adds to the debate on the reform of the Attorney General Office for a broader autonomy as an important constitutional functionary which represents all three arms of government, but which seems to be politically compromised since the dawn of the coalition governments.

Confrontations between the Attorney General and conflicting governmental authorities, institutions, powers, departments and agencies which are direct consequences of coalition politics are one of the major reasons why the Office of the Attorney General needs to be

reformed. This is because any political connection during this constitutional and political era have not so desirable connotations which compromise the entire mandate and functions of the Attorney General. There is an erosion of public confidence and trust in the Office of the Attorney General which is also a protector of public interest. The Attorney General does not hold the Office on his behalf but on behalf of the public that he serves, which in turn is represented by the government (*Mpunga v Malaba*, 1959; *Du Randten 'N Andre v Du Toit*, 1995).

This chapter shall provide a background of hung parliaments and the advent of coalition politics in Lesotho and how they have affected the efficiency and effectiveness of the Office of the Attorney in a broader constitutional scheme with two illustrated cases between the Attorney General and the King and the Attorney General and the former Deputy Prime Minister Mothejoa Metsing. Then the chapter will outline a conceptual and constitutional framework which establishes and outlines the duties of the Attorney General. Further, the shift from a Cabinet Government to a Prime Ministerial Government will be extensively discussed as one of the problems which face the Office of the Attorney in highly contested coalition politics. Then the chapter will conclude and advance recommendations with a plea for reforms to the Office of the Attorney General.

2 Conceptual and constitutional framework for the office of the Attorney General

As stated earlier in this chapter, Lesotho adopted a Westminster system of governance – its Constitution is filled with constitutional arrangements similar to the British conventions, principles and traditions (Machobane, 1990:306, 'Nyane, 2017:83). Therefore, it is a given that the title and Office of the Attorney General of the Kingdom of Lesotho have their origin in the Office of the English Attorney General. The only notable difference without any perceptible change in the functions of the Office is that the Office of the Attorney General of England has no statutory basis (Lord Goodlad, et al., 2008:21)

In 1959 Lesotho adopted a constitution under the guidance of Professor Cowen who subscribed to the British model of government (Machobane, 1990:261, Basutoland Report on Constitutional Discussion, 1959). Following the 1960 elections, a Commission was appointed by King Moshoeshoe II to draft a constitution that Lesotho would adopt when she assumed her independence from Britain (Machobane, 1990:292). The commission reported in 1963 and recommended a Westminster-style constitution (Shale, 2012). The Constitution was approved by the British Royal Degree in January 1965.

The 1965 Constitution created the Office of the Principal Legal Adviser whose appointment vested in the Public Service Commission, acting in after consultation with the Prime Minister (section 121(1)). In 1970, Prime Minister Leabua Jonathan declared a state of

emergency and suspended the Constitution (Mothibe, 2017:56). In 1993, a new constitution was adopted and it established the Attorney General under section 98. In terms of section 140, the power to appoint a person to hold or act in the Office of the Attorney General vest in the King, acting in accordance with the advice of the Prime Minister. The duties, roles and powers of the Office of the Attorney General are outlined under section 98(2) of the Constitution of Lesotho, 1993.

The role of the Office of the Attorney General evolved as a matter of convention in Britain. The Office assumed its modern shape in the 17th Century when the Attorney General became the legal adviser to the Crown (Lord Goodlad et al., 2008:5). Like other British colonies, Lesotho codified the common law powers and duties of the English Attorney General. However, the difference is that the English Attorney General, just like that of Australia and Canada, combines the legal and ministerial functions (The Governance of Britain: A Consultation on the Role of the Attorney General Constitutional Affairs Select Committee on the House of Commons (CASC), 2007:12).

There are several duties attached to the Office of Attorney General but principally, the Attorney General's first and principal duty is to provide legal advice to the Government (*Attorney General v His Majesty the King*, 2015:28). In terms of section 2 of the Office of Attorney General Act, 1994, the Attorney General is the principal legal adviser of the Government of Lesotho. This duty of the Attorney General is stated in section 98(2) of the Constitution of Lesotho, 1993 and provides as follows:

98. Attorney-General

(1)

(2) It shall be the duty of the Attorney-General -

(a) to provide legal advice to Government;

(b) ...

(c) to take necessary legal measures for the protection and upholding of this Constitution and the other laws of Lesotho

According to Lord Goodlad (2008:6), this duty “involves providing high-level advice to ministers, the Cabinet and also on occasion to the King and Parliament.” In paragraph 51 of the landmark case of the *Attorney General v King* (2015) the Court of Appeal endorsed a point from the Prime Minister's Affidavit that: “the Attorney-General attends cabinet meetings to give advice to the government, but he is not a member of the cabinet” (*Attorney General v King*, 2015). That notwithstanding, the Office of the Attorney General is established under Chapter VIII which is designated “The Executive”; the Attorney General is not solely an officer of the Executive branch and legal advisor to the cabinet. The Attorney General is also a legal advisor to the legislature and may address either houses of parliament (section 76(2) of the Constitution). Recently, the Speaker of the National Assembly sought legal advice from the Attorney General on the validity of the motion of no-confidence which was filed on the

5 June 2019 by Motebang Koma, a member of parliament who stood for election under All Basotho Convention (ABC) flag at Koro-Koro (Phakela, 2019). The Attorney General advised the Speaker of the National Assembly that the motion was constitutionally valid. Unfortunately, the Speaker of the National Assembly on 26 November 2019 rejected the counsel of the Attorney General and threw out the motion on the basis that it “had no basis in both the Constitution and in the practice of parliament” (Kabi, 2019).

Unlike in the United States of America, the Office of the Attorney General does not identify only with the Executive to the exclusion of other branches (Kramer & Siegel, 1960:529). Under common law which was often formally adopted through constitutions by the British colonies, the Attorney General also identifies with the judicial branch in addition to the legislative branch (Ibid.). In all suits, actions or proceedings where the judiciary as an institution or through its officers is involved, the Attorney General is cited as a party (section 98(2)(a) of the Constitution and section 3 of the Attorney General Act, 1994).

Another offices for which the Attorney General is responsible is the Office of the King. Section 50(5) of the Constitution vests the powers to protect the King or any person exercising the functions of the Office of the King as Regent or by virtue of a designation under section 45(3) in respect of legal proceedings in the Attorney General. Section 3 of the Government Proceedings and Contracts Act, 1965 provides:

- (1) In any action or other proceedings which are initiated by virtue of the provisions of section 2 of this Act, the plaintiff, the applicant or the petitioner (as the case may be) may make the Principal Legal Advisor the nominal defendant or respondent.
- (2) Save as may otherwise be provided as law sections or other proceedings by Her Majesty in her Government of Basotoland (*sic*) shall be instituted by and in the name of the Principal Legal Advisor.

Borrowing from Kramer and Siegel (1960:30) the general duty of the of the Attorney General can amply be summarised thus:

Generally, it has been said that the Attorney General of England has the ultimate responsibility of all litigation to which the Crown or a government department is a party, and much of this litigation is brought or defended in the name of the Attorney General.

To reiterate, from the foregoing, it is clear that the Attorney General renders legal advice to the Prime Minister, cabinet members, and officials of other agencies within the government. The role is not exclusive to the Executive arm but extends to the other branches of government – Legislature and the Judiciary. With the advent of coalition politics, different political parties form alliances of convenience and divide strategic government ministries among themselves. The question which keeps ringing is whether the Office of the Attorney General, whose role cross-cuts all branches of government, should still be aligned through appointments to a particular political party. It has to be borne in mind that the Attorney General is the defender of the Constitution and public interest and above all is a lawyer.

3 Functions of the Attorney General in the context of Prime Ministerial government

The advent of the coalition government in 2012 dawned with a Prime Minister who wielded so much power; the ebb and flow of authority marked a shift from a Cabinet Government to a Prime Ministerial Government. From 1993 to 2012, Lesotho was led by a single-party government where the Executive had a majority of members in the National Assembly and the Cabinet was not a forum for the contestation of power (Kapa & Shale, 2014:93).

It is safe to assume that before the advent of coalition governments, the Prime Minister, who was also the leader of a political party with an absolute majority in the National Assembly, had considerable influence over the policy direction and outcome of cabinet discussions. It was safe and convenient to pass most decisions through the cabinet. It was guaranteed that whatever the Prime Minister put before the cabinet would rarely, if ever, be opposed or contested.

The *status quo* changed with the emergence of a hung parliaments in 2012 and the Coalition Government that followed. In 2012, Thomas Thabane from All Basotho Convention (ABC) eventually had to be deputised by Mothejoa Metsing, a rival politician from Lesotho Congress for Democracy (LCD). They formed a coalition of convenience which ousted the long-serving Pakalitha Mosisili who had defected from the Lesotho Congress for Democracy (LCD) on 28 February 2012 to lead a newly formed Democratic Congress (DC). Pakalitha Mosisili had resigned from LCD after bitter infighting and factionalism which was led by Metsing (*Mail & Guardian*, 29 February 2012). The pact between ABC and BNP was motivated by an insatiable desire to oust a man whom Metsing had previously accused of being an authoritarian dictator.

From the start of the coalition, the powers of Prime Minister Thabane were compromised as he did not have a choice over who would be his deputy, and ministerial appointments had to be agreed upon by the coalition partners (Coalition Agreement between ABC, LCD and BNP, 2012). Worse still, each partner in the coalition had a choice to dictate to the Prime Minister who would be placed in charge of which ministry and he was reduced to a rubber stamp.

These changed dynamics threatened the hegemonic status of the Prime Minister and reduced his power and influence. It was this eventuality that prompted the Prime Minister to adopt a “command and control strategy” to sustain his powers. With this strategy, the Prime Minister Thabane went for patronage appointments to create a chain of command in strategic positions which would “seemingly” not be constrained in his influence yet follow his lead. This was a way to avert a dilemma where the Prime Minister would appear too authoritarian or too gullible which would have allowed his rivals to revert to their natural selfishness and to pursue their political interests.

The Prime Minister had to strategise and resort to patronage appointments and vindictively purge those in strategic positions who did not pay allegiance to him. Soon after becoming the Prime Minister, Thabane sought to retire the older officers in strategic constitutional positions and replace them with his own. The Attorney General along with his subordinate, The Director of Public Prosecutions, Leaba Thetsane were forced to retire to make way for Thabane's patronage appointments which failed after courts' interventions. The scuffles culminated in *Makhethe v Prime Minister* (2014) in which the Director of Public Prosecutions challenged the Prime Minister's decision to force his retirement. The vindictive purges and patronage which the Prime Minister wanted to undertake as a means to entrench his power as the central figure enraged his deputy who complained that he was never consulted. The Attorney General in his founding papers in *Attorney-General v His Majesty the King* (2015) alleged that Prime Minister Thabane purged top officials to replace them with pliable employees. He further alleges that the Prime Minister was on a mission to "capture key state institutions" (*Attorney General v His Majesty The King and Others, 2015:para 6.1.1*).

When Prime Minister Thomas Thabane had disagreements with his deputy, he utilised all his powers in the Constitution, sometimes even undermining representative democracy and the essential role of other institutional establishments like the Office of the Attorney General. During the SADC Commission of Inquiry (Phumaphi Commission) which was appointed by the Prime Minister at the initiation of the Southern Africa Development Community (SADC) to enquire into political and security incidents which occurred between July 2012 and June 2015, it was revealed that Thabane had a resource group which advised him and often bypassed the Attorney General (Ntaote, 2014).

In *Attorney General v His Majesty the King*, the Attorney General and the Deputy Prime Minister accused the Prime Minister of bypassing the cabinet; thereby disregarding the principle of collective responsibility. The then Right Honourable Prime Minister, Motsosahae Thabane was repeatedly accused of excessive purging of government officials perceived to be aligned to his political opponents. The Director of Public Prosecutions and the Attorney General, who was appointed by the previous Prime Minister, were also on the books of those whom the Prime Minister sought to get rid of and it all culminated in *Leaba Thetsane v Prime Minister* (2014). The attempted dismissal of the Attorney General and the Director of Public Prosecutions caused a serious rift between the Prime Minister and his Deputy.

The Prime Minister also attempted to fire Lesotho's Chief Delegate to the Lesotho Highland Water Commission, Charles Putsoane, without consulting the Attorney General (Motsamai, 2015:6). This enraged Deputy Prime Minister Metsing and the Water and Energy Minister who reportedly prepared a robust response to Thabane's action. An interesting dilemma would have come to the fore had the Prime Minister, Deputy Prime Minister and Ministry of Water and Energy in their official capacities while holding opposed positions sought the advice of the Attorney General.

The Deputy Prime Minister also opposed the Prime Minister's dismissal of army commander Lieutenant General Kamoli. Without the advice of the Attorney General, Thabane unilaterally summoned then on leave Police Commissioner Khotatso Ts'oana back to Lesotho to the disgust of many who alleged that this was a breach of the Maseru Peace Accord. Despite the allegation levelled against him, Thabane, however, insisted that it is within his constitutional power to change government personnel. The appointment of Mosito as the President of the Court of Appeal was also done without consulting the cabinet and the Attorney General whom the Prime Minister had previously sought to retire. The then Prime Minister had also unilaterally prorogued parliament without seeking the advice of the Attorney General.

After these and other episodes, it became clear that Thabane had transformed Lesotho from a cabinet government to a Prime Ministerial Government amassing powers that undermined the functions of other institutions like the Attorney in advising the government on important constitutional matters. Borrowing the words of Tony Benn as cited by Watts: "the present centralisation of power into the hands of one person has gone too far and amounts to a system of personal rule in the very heart of our system of parliamentary democracy" (Watts, 2012:131). The Prime Minister had sought to deploy subtlety to maintain the unity of command and control his appointees like puppets on a string.

The alleged disproportionate abuse of executive power by the Prime Minister had serious constitutional implications as far as the Office of the Attorney General was concerned. Among other things, it raised issues of factionalism within a coalition government to the effect that such could even affect the autonomy and may result in the Attorney General in a conflict of interest dilemma where his clients hold opposing positions. Such impasses should imperatively arouse interest to examine the relationship between the Attorney General *inter se* the offices of the Prime Minister and other government institutions.

In Britain, Brown (2020) traces the shift from what could amply be termed a cabinet government to what has been termed a Prime Ministerial Government to the premiership of Margaret Thatcher. Brown further notes that Thatcher's premiership provided a huge impetus to the idea that political power belongs to the prime minister. Like Margaret Thatcher, Thomas Thabane appeared to stretch the power of the prime ministerial office to its limits, even bypassing the importance of the Attorney General in Lesotho's constitutional dispensation.

The rift of collegiality in the Thabane-Metsing coalition was troublesome for the Attorney General because one sought to purge him to replace him with someone pliable while the other sought strategic alliances with disgruntled officers that Thabane was trying to boot out of office. The monolithic style of governance that Thabane assumed led to the downfall of the first coalition with the relationship between the Prime Minister and the Attorney General broken beyond repair and was hardly a model of good governance (*Lesotho Times*, 2015).

In an interview with *Lesotho Times*, Thabane, urged voters to give him an outright majority of seats in parliament to enable him to continue with his agenda of eradicating corruption. This happened on 26 February 2015, two days before the General Elections. Thabane further vowed to fire Director of Public Prosecutions (DPP) Leaba Thetsane and Attorney-General Tšokolo Makhete, if he was returned to Office as Prime Minister. Thabane also described Advocate Makhete's decision to challenge the appointment of Kananelo Mosito as Court of Appeal President, a "drunken decision" (*Lesotho Times*, 2015).

Like the British Prime Ministers such as Margaret Thatcher and Tony Blair, Thabane was effectively shifting the whole governance system towards personal rule, presidential in character. Despite the shared or collective formation of a coalition government in Lesotho, Thabane was on a mission to stamp his personality, hire pliable employees and impose his preferences on the government. This move was somehow in contrast to Mackintosh's original proposition that:

The country [Britain] is governed by a prime minister who leads, coordinates and maintains a series of ministers, all of whom are advised and backed by the Civil Service. Some decisions are taken by the prime minister alone, some in consultation between him and the senior ministers, while others are left to the heads of departments, the cabinet, cabinet committees, or the permanent officials ... (Mackintosh, 1962:451-2)

A shift from a one-party government to a coalition government with a Prime Minister having a monolithic approach to power changed the political discourse greatly. The Attorney General as evidenced in the case of the *Attorney General v King*, was opposed to such a capacious notion of the powers of a Prime Minister. In the same way, Watts observed that critics of this kind of prime ministerial concentration of power long pointed to its dangers and noted that former left-wing MP and ex-minister, Tony Benn, was specific in his challenge:

The wide range of powers ... exercised by a British Prime Minister ... are now so great as to encroach upon the legitimate rights of the electorate, undermine the essential role of Parliament, [and] usurp some of the functions of collective Cabinet decision making... In short, the present centralisation of power into the hands of one person has gone too far and amounts to a system of personal rule in the very heart of our system of ... parliamentary democracy (Watts, 2006:131).

One other episode where the Attorney General, as the chief legal advisor of government, was confronted with conflicting governmental authorities with the Prime Minister, Motsoahae Thabane, at the forefront was the purported dismissal of Charles Putsoane as the Chief Delegate to the Lesotho Highlands Water Commission in 2015. Putsoane's dismissal added to the list of Thabane's emissive purging of government officials perceived to be aligned to his political opponents.

This enraged Deputy Prime Minister Metsing and the Water and Energy Minister, who prepared a robust response to Thabane's action. Among other things, the argument contained the following:

That Prime Minister does not have the authority to fire Putsoane because he does not report to him but the ministry and that the Prime Minister is interfering with the operations of the ministry. Thabane's decision contradicts the Maseru Declaration and decided without consulting the LCD as required by the agreement by the coalition partners (*The Post*, 2015:4).

The two offices of the Prime Minister and the Deputy Prime Minister clashed over several of Thabane's decisions to fire several government officials. Thabane had fired the then Communication Minister, Selibe Mochoboroane, who remained in Office despite being fired for allegedly disrespecting the king. The Deputy Prime Minister also opposed the Prime Minister's dismissal of army commander Lieutenant General Kamoli. Despite the allegation levelled against him, Thabane was adamant that it was within his constitutional powers to change government personnel.

4 Reforms debate on the office of the Attorney General

The era of hung parliaments and the unstable coalition governments has changed Lesotho's constitutional democracy. With the change in political dynamics comes a change in the constitutional landscape. The changes have been so drastic that the country experienced instability which threatened the foundations of its democracy. Under the auspices of the Southern African Development Community (SADC) and development partners, the country had to undertake constitutional, institutional and security sector reforms (SADC Observer Mission to Lesotho (SOMILES) Report, Lesotho Reforms Roadmap, 2016).

While scholars primarily focused on the authority of the Prime Minister in a coalition government, the powers of the King, parliament and the judiciary, the reform of the Office of the Attorney General has not received much academic attention. This chapter asserts that reforming the Office of the Attorney is a crucial response to the constitutional requirement that public functionaries' opinion should be purely based on the law free of political undertones and influence. The essence of the constitutional reform of the role and Office of the Attorney General arises from at least two controversial cases: *The Attorney General v the King, Prime Minister, Executive and Judiciary* episode (2015); and *Mothejoa Metsing v Minister Responsible for Public Service and Others*, (2017). These two cases shall be used in this chapter as illustrations strategically to show the need to reform the Office of the Attorney General in the wake of coalition politics in Lesotho. The main objective is to illustrate that the Office of the Attorney General was used as a political tool for politicians in order to gain political advantage over other groups.

The recent appointment of Advocate Rapelang Motsieloa as the Attorney General with effect from 10 June 2021 was criticised by the Lesotho Congress for Democracy (LCD). The criticism was on the basis that it would be in the interest of openness and transparency that appointment into key government institutions such as the Attorney General, the army, police and the judiciary be deferred until after the implementation of the multi-sector reforms recommended by SADC in 2016 (Kabi, 21 June 2021). Speaking to *Sunday Express*, Apesi Ratséle from the LCD indicated that the Advocate Motsieloa's appointment lacked transparency and was seen as a reward to Prime Minister Majoro's political allies instead of the most deserving candidates (Kabi, 21 June 2021).

4.1 The Attorney General v the King, Prime Minister, Executive and Judiciary episode (2015)

As a protector of public interest, the Attorney General stands as one of the principal gatekeepers of Lesotho's constitutional democracy like in all states that were colonised by Britain (*Thorson v Attorney General of Canada*, 1975). However, the Constitution has had to operate in a much-polarised space bred by coalition politics. The Attorney General has not been immune to this toxic landscape where politicians within the same government adopt strategies and schemes to maximise their power and authority to have greater influence. By capturing key constitutional offices, the politicians hope to gain a competitive advantage.

In 2014, the ABC, LCD and BNP coalition government began to show signs of a great rift. The Deputy Prime Minister Metsing accused the Prime Minister of turning the tripartite coalition into a Prime Ministerial Government where the Prime Minister centralised power unto himself and made significant decisions with constitutional ramifications without any consultations. While the Prime Minister went for a command and control strategy attempting to patronise the government, his Deputy forged strategic alliances with holders of those statutory and constitutional positions whom the Prime Minister wanted out.

The Attorney General and his subordinate, the Director of Public Prosecutions, were some of those whom the Deputy Prime Minister held the fort for when the coalition was cracking. The Deputy Prime Minister was opposed to the move by the Prime Minister to force these constitutional repositories of power out of Office. Like in the Lieutenant General Kamoli and Prime Minister Thabane debacle when Thabane sought to oust Lieutenant General Kamoli and have him replaced with Brigadier Maaparankoe Mahao who was seen as a Thabane loyalist, the Honourable Deputy Prime Minister put political weight behind the Attorney General's struggle to retain his position.

After numerous correspondences between the Attorney General's legal representatives and the Government Secretary as an agent of the Prime Minister, the Prime Minister used force at his disposal to throw the Attorney General out of office. This followed after the Attorney

General and the Director of Public Prosecutions were served with letters asking them to go on special leave pending the finalisation of their cases (Mohloboli, 2014). In an affidavit to the High Court, the Attorney General alleged as follows:

The applicant says the bearer of the letter was in the company of five police officers, one of whom he identified as Senior Inspector Chechile, who told him to vacate Office immediately under pain of physical force should he resist. He vacated the office to avoid being physically manhandled out of his office. Senior Inspector Chechile, the applicant, says he then took away his office keys from his secretary and subsequently a new set of locks were installed in his office.

To regain control of his office, the Attorney General launched a case of spoliation alleging wrongful deprivation of the possession by the Prime Minister. The *mandament van spolie* or “spoliation order” is a common law remedy that the Attorney General sought as a shield against the Prime Minister’s “self-help” tactic. The Attorney General was of the view that the Prime Minister and his agents were taking the law into their own hands and exercising their “power” arbitrarily. The Attorney General lost the case on the basis that:

The Office of the Attorney General is an Office in the public service. The incumbent of the Office, for the time being, is, as such, merely a servant. He enjoys certain benefits as such an incumbent. He does not hold the Office on his behalf but on behalf of the public that he serves, which in turn is represented by the government (*Makhethe KC v Prime Minister*, 2015).

However, the Attorney General later continued with his duties when the Court of Appeal in *Thetsane v Prime Minister* (2014) ruled in favour of the Director of Public Prosecutions, who was similarly placed as the Attorney General. By way of brief background, the Right Honourable Prime Minister sought to force both the Attorney General and the Director of Public Prosecutions to vacate their respective offices because they had passed the retirement constitutional prescription age of 55 for public servants in their offices.

The legal repercussions were the same for both the Attorney General and the Director of Public Prosecutions. The High Court sitting as the Constitutional Court dismissed the application. The Director of Public Prosecutions challenged the decision of the High Court and the Court of Appeal ruled in his favour. It was held that DPP was entitled to elect to retire at the age of 60 years in terms of section 26(4)(b) of the Public Service Act.

The case presented another dilemma – a situation where two or more institutions that the Attorney General should represent were on the opposite side of the legal battle. The Director of Public Prosecutions brought the application in his official capacity against the Prime Minister. The Office of the Attorney General whose occupant stood to benefit in his official capacity if the case was to fall in favour of the Applicant was cited as the 5th Respondent. The conflict of interest explicit in the matter is worth exploring

in the context of coalition governments but it would comprise a different chapter. Such cases in a coalition government have placed the Attorney General at the centre of an ethical dilemma as a lawyer.

It has to be noted that the Deputy Prime Minister morally and politically supported the Attorney General and the Director of Public Prosecutions against the Prime Minister. Two of the most important offices of His Majesty's Government were divided among the coalition partners. What admittedly placed the Director of Public Prosecution within the Deputy Prime Minister's camp were the withdrawals of the corruption charges laid in August 2014 which were preferred against the Deputy Prime Minister Metsing and Selibe Mochoboroane from the Lesotho Congress for Democracy (LCD) who was then the Minister for Communications, Science and Technology.

The withdrawal of the charges against the Deputy Prime Minister and his cohort from the same political party increased the rift in the division of the public service by the two main coalition partners. The Attorney General who, according to the Constitution exercises ultimate authority over the Director of Public Prosecutions, and the Director of Public Prosecutions along with other repositories of power as the army commander were pitted to be in the Deputy Prime Minister's camp against the Prime Minister.

Following the altercations between the Prime Minister, who was bent on replacing the cabinet with the Prime Ministerial Government against the officers supported by the Prime Minister's coalition partner on one side, came one last ground-breaking episode. The Attorney General unprecedentedly launched an application against the Head of State in the King, the Head of the Executive arm of government in the Prime Minister, and the President of the Court of the Appeal, the highest Office in the judiciary in terms of hierarchy.

The Attorney General was supported by the Deputy Prime Minister through an Affidavit. The Attorney General initially cited improper motives and lack of *bona fides* on the part of the Prime Minister and principally that section 124(1) of the Constitution should be read with section 88(2) of the Constitution. The allegations of improper motives and lack of *bona fides* had connotations on assessing the legitimacy of the conduct of the Prime Minister in terms of the "supposed" duty of fairness and moral considerations towards his coalition partners and necessary consultations.

The point was not pursued further in court and was jettisoned in court. Perhaps the point was not pursued because instead of advancing legal points, the point would have led to a political enquiry into the motives and *bona fides* of the decision of the Prime Minister. The Attorney General was never approached by the Prime Minister to advise on the appointment of Kananelo E. Mosito as the President of the Court of Appeal.

Bypassing the Attorney General whom the Prime Minister had labelled as aligned to the Deputy Prime Minister who was from a rival political party in the coalition was not a misnomer. The Prime Minister had failed to remove the Attorney General despite earnest attempts to have him retired. Instead of seeking advice from the Attorney General, Prime Minister Motsoahae Thabane had assembled a private team known as the “resource group”, which advised and reportedly controlled ministries under the ABC.

Also, interrogated by government and LDF lawyers, Nkoea Thabane, Motsoahae Thabane’s daughter, admitted before the SADC Commission of Inquiry into the death of former Lesotho Defence Force Commander Maaparankoe Mahao that the Prime Minister consulted the “resource group”. Nkoea Thabane did not want to admit that the Right Honourable Prime Minister, who is also her father, had side-lined the Attorney General and had taken advice from his resource group.

On 11 February 2015, the Deputy Prime Minister, in a press conference pronounced his support for the Attorney General against “the prime minister who has been contravening the constitution of Lesotho and all other agreements he has entered into during the entire duration of the coalition government we formed with him in June 2012” (*Lesotho Times*, 2015). The application was aimed at nullifying a “strategic” appointment which was made without the advice of the Attorney General and consultation of the Cabinet or the Deputy Prime Minister.

The application was supported by the Deputy Prime Minister through an affidavit that principally contained alleged facts upon which the whole Attorney General’s case rested. The support the Attorney General received from the Deputy Prime Minister who had been his shoulder during the retirement altercations, received severe criticism from some quarters as the Attorney General was branded as a political pawn of the Deputy Prime Minister (*Lesotho Times*, 2015).

Despite the constitutional importance of the case, the politics around it compromised the credibility of the Attorney General as the protector of the public. Due to the factionalism which rocked the coalition government, the integrity of the Attorney General was widely compromised. Capturing key institutions is characteristic of each politician in a coalition government trying to maximise their influence and power to maximise their political position.

The Office of the Attorney General was not the only Office that was rocked by divisions between the Prime Minister and the Deputy Prime Minister. The Honourable Deputy Prime Minister also aligned his forces with the army commander, Lieutenant General Tlali Kamoli, and he is the one who incited Kamoli not to leave the Office. The Deputy Prime Minister,

against Prime Minister's orders, is the one who said Lieutenant General Tlali Kamoli was never dismissed and that he did not support the appointment of Lieutenant General Maaparankoe Mahao as the commander of the Lesotho Defence Force (Mohloboli, 2015).

At the centre of all these conflicting government institutions and Offices, on opposite sides to a legal argument, stands the Office of the Attorney General. A coalition greatly compromises the autonomy and independence of the Attorney General because ministries are strategically divided in terms of each partner's political interest.

4.2 *The Attorney General disrespecting the sub-judice rule (2019)*

Under Cyril Ramaphosa's mediation on behalf of the Southern African Development Community (SADC), Lesotho headed for snap elections set for 28 February 2015. This was after Thabane fully displayed his monolithic powers by proving that political power belongs to him rather than to the government when he prorogued parliament whimsically and unilaterally (Letsie, 2015:87).

Thabane lost the elections in 2015 and this also marked the end of the protracted altercations between the Prime Minister and the Attorney General. Pakalitha Mosisili's seven-party regime took over from former Prime Minister Thomas Thabane's led coalition and Mosisili's administration maintained a good relationship with Attorney General Ts'okolo Makhethhe. Among other things, the Attorney General was at the forefront of assisting the Mosisili–Metsing led coalition in the impeachment of the President of the Court of Appeal, Justice Kananelo Mosito. He also advised Mosisili's administration to neglect parliament after the government through the Minister of Finance, Tlohang Sekhamane, failed to table budgetary estimates in February 2017.

The Attorney General assisted the Mosisili–Metsing led coalition in the impeachment proceedings against Court of Appeal President Justice Kananelo Mosito. In a letter titled "*Immediate resignation as President of the Court of Appeal of Lesotho*" (*Lesotho Times*, 6 January 2017), Justice Mosito alleged that the then Attorney General Makhethhe had selected 3 (three) judges from the Republic of South Africa and handed their names to the then Prime Minister Mosisili effectively as "hired mercenaries" to ensure his ouster (6 January 2017). In an attempt to stop the impeachment proceedings against him, Justice Mosito accused Attorney General Ts'okolo Makhethhe of going "out of his way" to select three retired judges from South Africa to serve as members of his impeachment tribunal. The Court of Appeal in *Mosito and Others v Letsika and Others* (2018) at para 4 took note of earlier developments that:

during the months that followed the new Prime Minister Pakalitha Mosisili and the then Attorney General Mr. Ts'okolo Makhethhe K.C set in motion a vigorous politico-legal and diplomacy scheme to reverse the appointment of the appellant despite its affirmation in C. of A. (CIV) 13/2015, but unsuccessfully so.

It is worth noting that the same Attorney General had attempted to annul Justice Mosito's appointment suing the King and the Prime Minister assisted by the then Deputy Prime Minister Mothejoa Metsing. However, in 2017 Lesotho headed for another snap election on the 3rd of June. Pakalitha Mosisili's administration was replaced by another coalition led by Motsoahae Thabane.

Barely a month after Thabane's inauguration, the Attorney General, Ts'okolo Makhethe issued a memo titled "Leave Pending Retirement" and that memo served as a notification that Makhethe would be on leave of Office pending statutory compulsory retirement from Office (*Lesotho Times*, 2017). The retirement was to be effective from the 1st of November 2017. This made way for Prime Minister Motsoahae Thabane's patronage appointment in the Office of the Attorney General. The Prime Minister appointed Haae Phoofolo as the Attorney General with effect from 8 February 2018. The dignified Office of the Attorney General was compromised through the appointment of a well-known politician.

By way of background, in 2012, Advocate Haae Phofolo stood elections as a candidate for Thabane's led All Basotho Convention (ABC) at Maseru Central Number 32 Constituency. Phoofolo won and was the representative of the constituency in the National Assembly. Prime Minister Motsoahae Thabane appointed Phoofolo as the Minister of Justice, Human Rights, Correctional Service and Law and Constitutional Affairs.

Upon assuming Office, advocate Haae Phoofolo advised the government against giving Motsoahae Thabane's nemesis, who ultimately brought down the 2012 coalition, Mothejoa Metsing, pension benefits for the position of Deputy Prime Minister, which he assumed over two different regimes. On 24 August 2017, Mothejoa Metsing filed an urgent application to prevent the government from denying him the pension benefits (Tefo, 2017).

Essentially, Metsing argued that he served sixty consecutive months over two regimes from 2012 to 2017 and as such, was entitled to benefits in terms of section (1)(b) of the Prime Minister and Deputy Prime Minister (Retirement and Spouses' Benefits Act) of 2011 (*Lesotho Times*, 2017). On behalf of the Government, Attorney Mosotho indicated that all ministers vacate Office before 17 March 2015 when the Thabane-led coalition was replaced by Mosisili's seven-party coalition. At the time, Metsing had served 31 months as the Deputy Prime Minister. Between 17 March 2015 and 3rd June 2017, Metsing served about twenty-nine months. Attorney Mosotho argued that Metsing did not qualify for any benefits. On 8 December 2017, Justice Monaphathi reserved judgement, having heard representations from both parties (*Lesotho Times*, 2017). Surprisingly, while the parties were awaiting judgement in 2019, the Attorney General instructed the Treasury to give to Metsing the benefits whose contention was still before the High Court.

5 Conclusion and recommendations

It has been demonstrated that the Office of the Attorney General as a constitutional office remains highly compromised under coalition governments. The chief duty of the Attorney General is to provide legal advice to the government – it is a fact that each element of legal advice has political ramifications. Coalitions have been demonstrated to effectively be divided governments; hence, if the Attorney General's Office remains in its current state it will always be a scramble for control of the Office of the Attorney General, for whoever controls the Attorney General effectively controls the law. It is therefore imperative that the Office of the Attorney General is reformed if it is to remain, even in the advent of coalition governments in Lesotho. The recommendations below will categorise how the Office may be reformed to ensure it remains sustainable and beneficial to Basotho. The first recommendation is that the Office of the Attorney General is essentially a political office under the guise of a neutral functioning public office. Therefore, it is imperative to establish a reformed office of the Attorney General that is outside the Public Service. Under the current dispensation, the Attorney General is appointed by the King acting on the advice of the Prime Minister (section 140(1)). It is, therefore, necessary to adopt a transparent process of appointment consisting of an open call for applications for the position. After that, an independent panel will shortlist candidates and public interviews will be conducted by the panel composed of representatives from civil society organisations, academia and government ministries. This panel shall then make a binding recommendation to the Prime Minister, which will be forwarded to the King.

The second recommendation addresses a debate as to whether the Attorney General can sue the government. The Court of Appeal in the case of *Attorney General v The King and others*, left the matter open. It is, therefore, necessary to reform the Office of the Attorney General such that it can sue the government on matters of public interest. Section 98(2)(c) of the Constitution charges him with the responsibility to protect and uphold the Constitution. In coalition governments, the Constitution tends to find itself threatened by the government as happened when Prime Minister Thabane withdrew from Government and the Speaker announced that a new government would be formed (Mosae, 2020). This was done for political expediency and it flew in the face of the Constitution which stipulates how a Prime Minister may be removed from Office. It is on such occasions where the Attorney General should be mandated to sue on behalf of the public to ensure the Constitution is upheld.

Lastly, this chapter proposes that those eligible for appointment must not have any on-going political affiliation before and after appointment. This principle should not be implied but be clearly stated in the Constitution. This is a salient principle which shall enhance the confidence of the public in an Office designated to be the protector of public interest.

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PART 3
POLITICAL PARTIES,
POLITICAL (IN)STABILITY,
SECURITY AND
ELECTORAL SYSTEMS



THE INTERPLAY BETWEEN PARTY COALITIONS AND ELECTORAL SYSTEMS IN LESOTHO: IMPERATIVES FOR PARTY REFORMS



Khabele Matlosa

1 Introduction

This chapter investigates the nexus between coalitions on the one hand; and electoral and party systems on the other. It advances a three-pronged thesis. Firstly, the First-Past-The-Post (FPTP) electoral system that Lesotho adopted and used since independence until the 1998 general election did not facilitate institutionalisation of party alliances and coalition among parties given its winner-take-all nature and form. The FPTP is reputed for encouraging either one-party or dominant party systems. The dominance of the Basotho National Party (BNP) in Lesotho politics between 1965 and 1985 was predicated, in part, on the FPTP system. Following the transition from military rule to multi-party dispensation, the 1993 and 1998 elections were dominated by the Basutoland Congress Party (BCP) and the Lesotho Congress for Democracy (LCD), while other parties were pushed to the periphery of politics despite commanding a sizeable chunk of the popular vote.

Secondly, with the transformation of the electoral model away from the FPTP into the current Mixed Member Proportional (MMP) System, party alliances and coalitions began to reshape Lesotho's multi-party politics and the complexion of the legislature since the 2002 election. The MMP is renowned for anchoring consociational democracy and enabling power-sharing. Compared to the FPTP, Proportional Representation (PR) electoral systems facilitate party coalitions (Kadima, 2006; Oyugi, 2006; Kadima, 2014). The positive correlation between the MMP and party coalitions in Lesotho has been confirmed by various studies (Kapa, 2008; Makoa, 2008; Kapa & Shale, 2011; Kapa & Shale, 2014). Since the 2007 general election, various types of pre-election party alliances have been tried with varying levels of success. Post-election coalition governments have also become more entrenched since 2012 in earnest (Kapa & Shale, 2014; Deleglise, 2018).

Thirdly, the changes to Lesotho's electoral system in 2001 were half-baked as they did not include the reform of the party system itself. This is a major shortcoming given that political parties are central to democratisation. Thus, reforming the electoral system without reforming the party system is tantamount to scratching the surface and merely tinkering with the system. Both the electoral system and the party system exhibit signs of crisis today, manifested by, inter alia, loss of faith in elections, mushrooming of parties, low voter turn-out and declining public trust in institutions such as the election management body (EMB), political parties and the legislature.

This chapter is divided into six sections, including this introductory section. The second section presents a conceptual context. The third section portrays the First-Past-The-Post (FPTP) electoral system as a disincentive for party alliances and coalitions. The fourth section presents the Mixed Member Proportional (MMP) System as an incentive for coalitions. The fifth section makes a case for the reform of the party system, with the sole purpose of improving intra-party and inter-party relations. The concluding section winds up the discussion and recaps the main findings of the study.

2 Conceptual “bush-clearing”

Before ploughing a new field, the first order of business is to clear the bush. Then other tasks follow: ploughing, planting, sowing, irrigating, weeding, etc. All things being equal, including clement weather, these steps are most likely to result in a bumper harvest. This is what this section aims to do: to clear the bush by setting out the conceptual parameters of the chapter. Three main concepts constitute the glue holding this chapter together: (a) the electoral system; (b) the party system; and (c) party coalitions. In clearing the bush, the first order of business is an understanding of what these concepts denote.

An electoral system gives meaning to the conduct of elections and how results are computed and winners and losers determined. It refers to institutional arrangements governing the method each country uses to translate votes cast during elections into seats won by parties and candidates for the formation of government at various levels. It encompasses procedures, rules and regulations for the electorate to choose their leaders and guides how the votes determine the distribution of political power (Mahao, 1997; Matlosa, 2002; Matlosa, 2003; Makoa, 2004; Matlosa, 2004; Reynolds, et al., 2005; Matlosa, 2006).

According to Harris and Reilly (1998), an electoral system serves fundamentally three major functions: (a) it acts as a conduit through which the electorate is able to hold their representatives accountable; (b) it makes it easy for the National Assembly to be constituted either through proportionally determined vote count or through a simple plurality of votes; and (c) different electoral systems bring out public opinion in the form of an electoral outcome by according a particular political party or coalition of parties control of state power (Harris & Reilly, 1998:192).

Globally, electoral systems are many and varied. There is no consensus as to which one is the best and/or worst for democracy, peace and stability. Broadly, there are four main families of electoral systems: (a) the Single Member Plurality (SMP); (b) the Single Member Majoritarian (SMM) (c) the Proportional Representation (PR) and (d) the Mixed Systems (Jackson & Jackson, 1997:371; Matlosa, 2003; Matlosa, 2004:24). Lesotho has adopted and used two types of electoral systems, namely the winner-take-all First-Past-The-Post (FPTP) between 1960 and 1998 and the Mixed Member Proportional (MMP) System since 2002 to date.

A party system refers to the way in which parties function internally and how they relate to each other during and between elections (Salih, 2003; Matlosa, 2007; Salih & Nordlund, 2007; Reilly & Nordlund, 2008). At one level, a party system is a predictor for intra-party democracy, or lack thereof, with implications for its institutionalisation or fragmentation. At another, it is a predictor for conflicts or cooperation between and among political parties with ramifications for democratisation. It is this system that defines and determines how parties play the political game (Matlosa, 2007:37-40; Erdmann & Basedau, 2008:242).

There are five main types of party systems globally: (a) the no-party system, where parties are not allowed by law; (b) the one-party system, either *de jure*, where the law provides for only one party to exist, or *de facto*, where opposition parties are allowed to exist, but the political environment makes it impossible for them to operate and contest state power; (c) the two-party system, where two parties dominate the political landscape and alternate control of state power from time to time; (d) the dominant party system, where despite the existence of many parties only one (ruling party) exercises overwhelming hegemony over the political system over a long duration of time; and (e) the multi-party system where many parties are allowed to exist and operate, and almost all of them stand a good chance of winning state power, compelling them often to form coalitions.

Lesotho has experimented with four of these party systems, namely: (a) the one-party system, under the iron rule of the Basotho National Party (BNP) between 1970 and 1986; (b) the no-party system, under the military rule (1986-1993); (c) the dominant party system under the Basutoland Congress Party (1993-1997) and the Lesotho Congress for Democracy (LCD) (1998-2012) and (d) the multi-party system marked by coalition governments since 2012 to date.

A coalition denotes a pact or partnership between two or more parties for purposes of gaining more influence or power than they would otherwise on their own (National Democratic Institute and Oslo Centre for Peace and Human Rights, 2015:13). There are four main motives that drive parties to form coalitions: office-seeking, policy-influence, ideological proximity, and peace/nation-building (Kadima, 2006; Oyugi, 2006; Makoja, 2008; Erdmann & Basedau, 2008; Kapa, 2008; Kadima, 2014; Kapa & Shale, 2014; Makoja, 2014; Deleglise,

2018). Interestingly, the Lesotho case adds another factor propelling coalitions which is missing in existing literature, namely survival of smaller parties, especially in parliament. While office-seeking is a preponderant motive for parties to coalesce, an additional motive for smaller parties to enter coalitions is sheer survival in Lesotho's turbulent political terrain. A case in point is the formation of a legislative coalition of small opposition parties between 2012 and 2015 styled the Bloc (comprising BDNP, BCP, LWP, MFP, NIP and PFD). The Bloc turned their individual numerical weakness into a collective political strength, positioning themselves between the then Thabane-led coalition government and the official opposition, the DC. This survival strategy came in handy for the office-seeking motives of these small parties. Following the 2015 elections, the majority of these small parties joined the DC-led coalition government, with some of their leaders assuming high-level government positions.

Coalition politics takes five main forms: (a) electoral alliances aimed at increasing chances of winning forthcoming elections; (b) majority/minority (minimum-winning) coalition governments which result from the inability of one single party to win elections outright in order to form a government on its own accord; (c) grand (maximum-winning) coalition governments, a partnership involving two main parties joining forces to control state power; (d) governments of national unity which often emerge in post-conflict situations as part and parcel of a peace agreement; and (e) legislative coalitions involving inter-party partnerships to influence legislative outcomes (National Democratic Institute & Oslo Centre for Peace and Human Rights, 2015:14-18).

Lesotho has experimented with various types of coalition politics. Electoral alliances are a common feature of the country's political landscape, such as the various party alliances witnessed during the 2007 elections, some of which had the net effect of distorting the MMP electoral model. Majority/minority coalition governments have been a feature of the Lesotho political landscape in earnest since 2012. The same holds true for legislative coalitions by both ruling and opposition parties alike. The trend of majority/minority coalition governments was disrupted in May 2020, when the current grand coalition government involving the All Basotho Convention (ABC) and the Democratic Congress came into power with support from some minor parties.

Clearing the bush is one thing, and ploughing and planting is quite another. While it is relatively easier to define and describe electoral systems, party systems and party coalition, it is relatively harder to establish the nexus between and among these concepts. The next section will show that the First-Past-The-Post system (FPTP) was neither amenable to, nor facilitative of, party coalitions in Lesotho.

3 The First-Past-The-Post system: A disincentive for party coalitions

The FPTP is premised on single-member constituencies or electoral districts whereby among candidates contesting elections, only one emerges a victor, not necessarily on the basis of an absolute majority, but even a simple plurality, of votes.

Lesotho inherited the FPTP system from the British colonial administration. Under the FPTP, the Basutoland National Party (BNP) won the 1965 pre-independence general election by a mere whisker. The Basutoland Congress Party (BCP) had also won the 1960 local government election narrowly. In 1970, sensing an inevitable defeat at the polls, the BNP abruptly halted the election, usurped power by force, declared a state of emergency, ruled by decree and persecuted the main opposition BCP. The 1970 debacle facilitated the institutionalisation of the *de facto* one-party system (Khaketla, 1971; Macartney, 1973).

The straw that broke the camel's back was the 1985 "mock" election, in which, through political fiat, BNP ensured that opposition parties were elbowed out of the contest and all its candidates declared elected unopposed. However, the BNP's fraudulent victory was a pyrrhic one. There was simmering discontent under the surface, which further eroded the legitimacy of the BNP regime and threatened its hold on state power. Four factors led to the downfall of the BNP regime: the tension between the regime and apartheid South Africa over the signing of the Lesotho Highlands Water Project and the eviction of South African refugees; close relations between the Lesotho military and the apartheid state as the latter's relations with Leabua Jonathan soured; the perceived threat posed by the rampant and heavily armed BNP youth league, trained in North Korea, to the security establishment; and factionalism within the BNP wherein one faction, which was seen as radical and allied to the armed BNP youth league, pro-East and anti-apartheid locked horns with the conservative faction, which was anti-communist and willing to collaborate with apartheid South Africa in pursuit of its own objectives.

The above factors emboldened the army to topple the BNP and take over state power. During the military interregnum (1986-1993) Lesotho's electoral system and party system were frozen by the military junta, in three important ways. Firstly, Lesotho Order No. 2 of 1986 vested executive and legislative power in the King and established the Military Council at the same time chaired by the Commander of the LDF, who was also the Chairman of the Military Council and Council of Ministers. This arrangement would later lead to tension and bitter struggles between the royalist and non-royalist factions of the military, culminating in internal strife leading to its downfall.

Secondly, Lesotho Order No. 4 of 1986, Suppression of Political Activities Act, had the net effect of continuing the ban of party-political activities, legalising a practice that Leabua Jonathan had perfected since the 1970 election. Parties were not allowed to operate. Consequently, there were no regular multi-party elections.

Thirdly, while the BNP authoritarian regime had started and successfully implanted the militarisation of the Lesotho politics and politicisation of the military, the military junta entrenched this culture much more profoundly. The military became a political player with its hand emboldened by the barrel of the gun. Once the military tastes political power, it is well-nigh impossible to disentangle it from political meddling, even if soldiers retreat from the state house back to the barracks. This explains, in part, why this culture of politicised militarisation and militarised politics continues today despite various efforts towards security sector reforms (Matlosa, 2020; Monyake, 2020).

Following the transition to democracy, the FPTP electoral model facilitated the entrenchment of the dominant party system under the political hegemony of the BCP and the LCD between 1993 and 2011. BCP won all the 65 parliamentary seats in 1993. However, BCP was its own worst enemy because in 1997, its leader and then Prime Minister, Ntsu Mokhehle, abandoned his own ruling party and left together with 41 MPs to form the Lesotho Congress for Democracy (LCD) which instantly became a government pushing the BCP to the opposition benches without recourse to a fresh poll. The LCD dominance was entrenched between 1998 and 2011. Therefore, the FPTP electoral system in Lesotho was not amenable to party coalitions. Instead, it entrenched the BNP one-party system (1970-1985) and the BCP/LCD dominant party system (1993-2011). The military junta (1986-1993) introduced the no-party system, disbanding parties and suspending multi-party elections.

Despite the 1993 transition, Lesotho's democracy project was hemmed in by pervasive violence. This prompted the Lesotho Council of Non-Governmental Organisations (LCN) to convene a national dialogue on 17-22 September 1995 under the theme "Democracy, Stability and Development". In its declaration, the national dialogue recommended, inter alia, the review of Lesotho's electoral model and the establishment of the independent electoral commission (LCN, 1995). Hence, it was that the Independent Electoral Commission was established in 1997.

The worst violent conflict followed the 1998 general election, which was resolved in part by military intervention by Botswana and South Africa. Part of the resolution of the 1998 political crisis included the establishment of the 24-member inter-party Interim Political Authority (IPA), co-led by Lekhetso Rakuoane of the Popular Front for Democracy (PFD) and the late Bereng Sekhonyana of the Basotho National Party (BNP). The IPA convened a national consultative conference on 21-23 February 1999 to deliberate on Lesotho's electoral

reform, building on the 1995 LCN conference. Following this consultative conference, the IPA proposed the replacement of the FPTP with the MMP system. The size of parliament was increased from 80 to 120 seats. The 80 constituency-based seats were retained. Forty (40) additional seats were introduced as the compensatory PR component. This new model was introduced through the 2001 amendment of the Constitution.

But the adoption of the current MMP was not smooth sailing given that electoral engineering is more of a political than merely a technical process. The LCD government preferred the mixed member majoritarian/parallel system. The IPA proposed the MMP with the parliamentary configuration of 80 FPTP seats and 50 PR seats. While retaining the 80 FPTP seats, the LCD government reduced the PR seats to 40. In 1999, Ngosa Mahao, Kopano Makoia and Justice John Browdie offered an arbitration award proposing 80/50 proportions for elections following the 2002 elections and 65/65 parity in subsequent elections. The LCD government rejected these proposals (Elklit, 2001).

The next section will demonstrate that, unlike the FPTP electoral system, the MMP electoral model has anchored the dominant party system (2002-2012) during the early days of the MMP and promoted the current multi-party system, following electoral reforms of 2011.

4 Mixed Member Proportional (MMP) System: An incentive for party coalitions

The MMP is one of the two known mixed electoral systems: the other being the parallel system, also known as the Mixed Member Majoritarian (MM) system. The MMP in Lesotho combines the FPTP and the Proportional Representation (PR) systems. The latter compensates for the disproportionality of the former in respect of the popular vote. Although the MMP broadened representation in parliament, it sustained the BCP/LCD political hegemony until 2011. However, the BCP/LCD dominance was challenged due to various factors chief among which were splits. Besides the major split of the BCP in 1997, in 2001, the LCD's deputy leader, Kelebone Maope, broke away from the party to form the Lesotho People's Congress (LPC) with 26 MPs and won one constituency in the 2002 general elections. Five years later, Motsoahae Thomas Thabane, then Minister of Information and Communications, deserted the LCD with 16 MPs and all of them won elections in their constituencies in 2007.

Both the ABC and LCD vowed to make every effort to win the 2007 election by hook or crook. That is why both parties made deliberate efforts to distort the MMP electoral model, effectively turning it into the mixed member majority/parallel system (Elklit, 2008; Matlosa, 2008; Mahao, 2013). The LCD entered an unholy marriage with the National Independent Party (NIP). In the process, LCD instigated an intra-party conflict within NIP as the party leader, Anthony Manyeli, protested this proposed alliance, while his

deputy, Dominic Motikoe, accepted LCD's proposal. Manyeli challenged the marriage in the courts of law, but the case was dismissed on technicalities. LCD fielded candidates for all the 80 constituencies and featured some of its bigwigs on the NIP PR list of 40 candidates. Those LCD candidates that lost elections in the constituencies found their way into parliament through the NIP party list. After splitting NIP, the speaker of parliament, Ntlhoi Motsamai, then an LCD member, denied the leader of ABC, Motsoahae Thomas Thabane, his rightful place as Official Leader of Opposition in parliament. The position of the Official Leader of Opposition was handed over to Motikoe on a silver platter as a golden handshake for assisting the LCD to distort the MMP electoral model and win PR seats fraudulently. Motikoe was in a very difficult position as a member of the ruling LCD/NIP coalition government and the Official Leader of Opposition at the same time. People used to joke that *Mosisili o noele nipi ea Manyeli*, literally translated as Mosisili has drunk Manyeli's nip of gin or whisky, a sarcastic reference to how the LCD abused NIP to retain state power. This incident shows how major parties can abuse smaller parties through alliances and coalitions.

The ABC entered a similar alliance with the Lesotho Workers Party (LWP). ABC applied the same script of the LCD, except that they did not destabilise the LWP. Not only did these party alliances distort the MMP electoral model, they also undermined the country's democratisation and stability with the IEC just watching helplessly. The IEC as the guardian of the MMP and the referee in the electoral game was supposed to have shown these parties the yellow card and even the red card if need be. The failure of the IEC to read the LCD and ABC the riot act, led to its tremendous loss of integrity and public trust over the years (see Table 8.1).

The more the signs of its politicisation, the more the IEC's public image is dented. Ahead of the by-elections in Thaba-Phechele on 15 February 2014, during a campaign rally, the then Prime Minister, Tom Thabane, made a startling remark about the IEC, which had been appointed in December 2013. He proclaimed that "the chairperson of the IEC, Mahapela Lehohla, is linked with the ABC, while fellow commissioners Makase Nyaphisi and Mamosebi Pholo are affiliates of the Lesotho Congress for Democracy (LCD) and the Basotho National Party (BNP)" (Koloi, 2020).

The Southern Africa Development Community (SADC) deployed the former President of Botswana, the late Sir Ketumile Masire to facilitate an amicable resolution of the 2007 political impasse. But the then ruling LCD stalled the process and frustrated Masire until he threw in the towel leaving the facilitation task to civil society organisations under the stewardship of the Christian Council of Lesotho with technical support from SADC (Elklit, 2008; Matlosa, 2008; Mahao, 2013).

Following the 2012 elections, the DC, a breakaway party from the LCD, which emerged through floor-crossing in parliament won a total of 48 seats, but this did not allow it to form a government on its own (Letsie, 2013; Letsie, 2015; Weisfelder, 2015). The party failed to negotiate a ruling coalition. The ABC and LCD ganged up against the DC and formed a ruling coalition involving BNP. Had it not been for the bitter rivalry between Motsoahae Thomas Thabane, ABC leader and Pakalitha Bethuel Mosisili, the DC leader, prospects were great for the formation of a grand coalition.

This was the first coalition government led by the ABC. Thabane succeeded Mosisili in an epoch-making election where, for the first time, an opposition had dislodged a ruling party in Lesotho's history; the result accepted by all and a smooth hand-over of power facilitated. But the three-party coalition government was short-lived. The memory of the 2006 split of the LCD leading to the emergence of the ABC was still fresh, and this would play itself out in the tension between Thabane and Metsing, the leader of the LCD.

This coalition government collapsed in June 2014, due, largely, to a dispute between ABC and LCD rotating around three main factors: (a) contention about the powers of the Prime Minister, (b) the modalities of parties' working relationships and (c) lack of effective dispute resolution mechanisms (Deleglise, 2018:31; 'Nyane, 2019:97). Metsing's LCD initiated the process of a motion of no-confidence in parliament against Prime Minister Thabane in March 2014. The SADC intervened and recommended the holding of an election, which happened in February 2015.

The election failed to deliver a clear winner. The DC, with 47 seats, formed a seven-party coalition government leaving the ABC in the cold, bringing LCD (12 seats) on board. Metsing abandoned Thabane, handing Mosisili sweet revenge as the latter also jettisoned the possibility of a grand coalition with the ABC. Mosisili reversed almost all major policy changes that Thabane had put in place including the appointment of Lt-General Maaparankoe Mahao as Commander of the Lesotho Defence Force (LDF) reinstating Lt-General Tlali Kamoli. The latter orchestrated a political vendetta against the former leading to Mahao's gruesome assassination by LDF soldiers on 25 June 2015 (Pherudi, 2018; Matlosa, 2020; Monyake, 2020). SADC instituted a Commission of Inquiry into the assassination of Lt-Gen. Mahao led by Justice Mpaphi Phumaphi of Botswana.

In 2016, DC suffered a major split when its deputy leader, Manyane Moleleki, formed the Alliance of Democrats (AD), crossing the floor of parliament with a number of DC MPs. He subsequently announced that AD had signed an agreement with the ABC to form a new government. On 1 March 2017, the ABC, AD and RCL sponsored a motion of no-confidence in Mosisili's government. In turn, Mosisili approached the King to dissolve parliament, paving the way for a snap election of 3 June 2017.

The ABC won 48 parliamentary seats and negotiated with the AD (9 seats), BNP (5 seats) and RCL (1 seat) to constitute a four-party coalition government. But the ABC experienced in-fighting between two factions: one allied to the newly elected Deputy Leader, Nqosa Mahao and another allied to the party leader and Prime Minister Thabane. These intra-party squabbles, in part, facilitated a vote of no-confidence against Thabane in early 2020.

In May 2020, the four-party government collapsed like a pack of cards. It was replaced by the first grand coalition government in Lesotho's history comprising the ABC and the DC with support from smaller parties including PFD, MEC, MFP, NIP and BCP. No fresh election was needed as the Prime Minister was legally barred from advising the King to dissolve parliament and call for a snap election. Parliament passed the Ninth Amendment of the Constitution which:

... prevents a Prime Minister who has lost a vote of no-confidence in parliament from calling an early election. It leaves him or her with just one option: to resign. The amendment had an immediate application in May 2020 after then Prime Minister Tom Thabane lost the confidence of the National Assembly (Nyane, 2020:2).

While this constitutional amendment may have curtailed the powers of the Prime Minister to prorogue parliament and call for snap elections, it has not helped stabilise the country's coalition parliament. It may have succeeded in saving the country massive expenditure in regular snap elections, as a result of unstable coalitions but "it is doubtful that the amendment will stabilise parliament and governance" (Nyane, 2021:6). The three mutually reinforcing features of the interface between coalitions on one hand and electoral and party systems in Lesotho are worth highlighting.

The first is the declining public trust in governance institutions. From Table 8.2 below, the three institutions with a relatively considerable level of public trust among Basotho are the King (71%), religious leaders (61%) and traditional leaders (57%). The five institutions with the lowest level of public trust are ruling parties (12%), the Prime Minister (14%), opposition parties (19%), parliament (20%) and police (30%). This data shows that Basotho exhibit more trust in non-elected governance institutions (except the police) compared to the elected ones, hence their apparent loss of faith in elections as manifested by low voter turnout. The ruling parties, opposition parties and the Independent Electoral Commission rank high among the less trusted institutions; a serious indictment of the crisis of electoral and party systems. It is the crisis of the electoral and party systems that denudes the value of party coalitions.

Table 8.1 Public Trust in key governance institutions

Institution	Trust Somewhat/A Lot
King	71%
Religious leaders	61%
Traditional leaders	57%
Army	46%
Independent Electoral Commission	43%
Courts of law	42%
Local councils	38%
Lesotho Revenue Authority	33%
Directorate for Corruption and Economic Offences	31%
Police	30%
Parliament	20%
Opposition Parties	19%
Prime Minister	14%
Ruling Parties	12%

Source: Afrobarometer, 2020

The second is the loss of faith in elections, as vividly illustrated by the 2019 Afrobarometer findings. These include the following: (i) fewer than half (48%) of Basotho support elections as the best way to choose their leaders, a drop of 25% points from 73% in 2014. This is the lowest level of support for elections among 34 African countries surveyed in 2016/2018; (ii) support for multi-party competition has likewise dropped sharply from 55% in 2014 to 36% in 2017; (iii) two-thirds (66%) of Basotho want their electoral system to switch back from the current Mixed Member Proportional (MMP) System to a majoritarian system; and (iv) after three elections that have resulted in coalition governments, three-quarters (76%) of Basotho say coalition governments are more unstable and have more difficulty getting things done than one-party governments (Malephane, 2019). Loss of faith in elections is further demonstrated by low voter turn-out, as shown in Table 8.2.

Thirdly, the mortality rate of coalition governments in Lesotho is very high. Consequently, the country has had to hold three elections in the space of six years with a heavy financial cost (see Table 8.2). The 2012 general election cost the country M245 000 000 (USD15 312 500), while the 2015 snap election cost M236 403 590 (USD14 775 224.40). The 2017 general election cost M247 389 290 (USD15 461 830.60). For a poverty-stricken country like Lesotho, this enormous expenditure of a whopping M728 792 880 (USD45 549 555) in six years, just on elections, places far too much pressure on the national budget, which is supposed to be earmarked primarily towards addressing socio-economic challenges including underdevelopment, poverty, hunger, disease, illiteracy, inequality and unemployment.

Table 8.2 Proliferation of parties, voter turnout and cost of elections, 2012-2017

Election Year	No op Parties	Parties in Parliament	% Voter Turn-ou7	Cost of Elections (USD)
2021	18	12	50.00	15 312 500
2015	23	10	46.61	14 775 224.40
2017	27	12	46.37	15 461 830.60

Source: Malephane, 2019:2; Independent Electoral Commission

In the context of the crisis of its electoral and party systems, Lesotho's coalition politics is broken and needs fixing. This is the task for the governance reform under the stewardship of the 59-member National Reforms Authority (NRA), of which 35 are political parties.

5 Imperatives for party reforms

Lesotho has begun a process of governance reform, whose painstakingly sluggish pace has cast a shadow of doubt on prospects of its success (Monyake, 2020; Thabane, 2020). When Lesotho undertook reforms of its electoral system in 2001, the missing link was the reform of the party system. The current institutional reform should fill this lacuna. Reform of the party system is critical because parties play a key role in Lesotho's democratisation. They contest elections and form parliament, cabinet and local councils. Significantly, a major controversy surrounds the role of parties themselves in the reform process. Thabane poses this dilemma succinctly: "it is difficult to see how perpetrators of acts that lead to political instability are expected to lead the reform processes... If they will be completed under the politicians' influence, ongoing reforms will fail..." (Thabane, 2020).

Party system reform ought to include six key aspects: (a) proliferation; (b) external regulation; (c) internal functioning; (d) party funding; (e) floor-crossing; and (f) party militias.

5.1 Proliferation

The proliferation of parties contributes in no small way to the fragmentation of the party system. Part of addressing this problem should involve, *inter alia*, tightening regulations for registration, operations of parties and how they enter parliament through elections.

Currently, there is no official threshold for entry into parliament following general elections. A threshold refers to the minimum share of the popular votes that parties require in order to gain a seat in parliament. Elklit reminds us that when MMP was adopted, two factors worked against the introduction of a threshold: (a) smaller parties fought against the threshold; and (b) lack of a threshold in neighbouring South Africa (Elklit, 2002:4). Given that it is relatively easy to get into parliament; the mushrooming of parties has been alarming since the recent past.

The mushrooming of parties in Lesotho is proving deleterious to the country's democratisation process (Matlosa & Sello, 2005; Kapa & Shale, 2011; Kapa & Shale, 2014; Matlosa, 2017; Shale, 2017). Upon independence in 1966, Lesotho had four parties, namely the 1952 Basutoland Congress Party (BCP), the 1958 Basutoland National Party (BNP), the 1962 Communist Party of Lesotho (CPL) and the 1963 Marematlou Freedom Party (MFP). With the reintroduction of multi-party democracy in 1993, the number of parties increased to 12. Since then, this number has increased exponentially to about 41 registered parties. This number includes the two parties that emerged in May 2021 as breakaways from the ruling ABC: the Basotho Action Party (BAP) led by Nqosa Mahao, former deputy leader of the ABC and former minister of law and justice and Basotho Patriotic Party (BPP) led by Tefo Mapesela former ABC member and former minister of agriculture. It is worth noting that the numbers mentioned above are for parties registered with the Independent Electoral Commission (IEC) only for purposes of contesting elections. The total number of parties registered with the Law Office stands at a staggering 105 for a country the size of Lesotho with a population of 2.2 million only. Out of these parties, only 12 are represented in parliament.

The national dialogue on governance reform has proposed the introduction of a threshold as a new feature of the MMP system. The NRA must propose and agree on the level of threshold building on the proposal from the national dialogue. For a start, even a one percent threshold would go a long way in stabilising the party system, and this could be reviewed further as and when the need arises.

5.2 External regulation

Presently, parties register with the Law Office under the Societies Act, 1966 and require only ten signatures to come into existence. Parties need 500 paid-up membership of electors for registering with the IEC for purposes of contesting elections.

Lesotho needs a Political Parties Act for proper external regulation of parties. This Act must govern registration, internal functioning and de-registration of parties. The Act should also establish the Office of the Registrar of Political Parties as the main institution responsible for registration, de-registration and overall oversight on the functioning of parties.

The IEC should not be saddled with managing political parties. The IEC should only deal with parties in relation to elections and referenda. The proposed Political Parties Act should also provide for a forum of political parties to facilitate regular multi-party dialogue on important national issues. This will improve inter-party relations by encouraging parties to resolve their differences by peaceful means. The Registrar of Political Parties should also be tasked with assisting political parties to eradicate the current culture of violence. All conflicts (both intra-party and inter-party) must be resolved through dialogue facilitated by the Registrar.

5.3 *Internal functioning*

Some parties are established merely for election purposes and become dormant between elections (Matlosa & Sello, 2005). Some of them have neither office spaces, membership registers, nor bank accounts. They do not hold regular elections of governing structures. They do not submit regular reports to the IEC as required by the National Assembly Electoral Act, 2011.

These challenges are so entrenched in Lesotho's politics that on 13 August 2021, the Transformation Resource Centre (TRC), a human rights advocacy non-governmental organisation, along with a smaller party, the Democratic Party of Lesotho (DPL) filed an urgent High Court application seeking to compel the IEC to deregister those parties in parliament who flout some of the provisions of the 2011 Electoral Act, including irregular or no leadership elections, lack of records of proceedings of their elective conferences, non-submission of their office bearers to the IEC, lack of offices for conducting their business, lack of verifiable data on their paid-up membership, financial mismanagement, lack of audit reports and lack of accountability for public funds received by parties from the treasury (Phakela, 2021). In a ruling that could be considered epoch-making, Lesotho's Chief Justice, Sakoana Sakoane, ordered the IEC and the Registrar-General of Societies to provide all the required records, registry and databases in relation to compliance to all the provisions of the 2011 Electoral Act by all parties registered with IEC and Law Office (GoL, 2021).

The Registrar of Political Parties should undertake a regular audit of parties to ascertain their functioning. The Registrar of Political Parties should also facilitate independent observation of internal party elections for national executive committees, the executive committees of women's leagues and youth leagues.

Parties are still beholden to the founders. They are less rooted in the mass of their membership. Because of this problem, the founder of the party is often considered synonymous with the party and vice versa. In Nigeria (Albert, 2005), this problem is referred to as godfatherism whereby financiers determine who is nominated as party candidate and "impose candidates both in the political parties and in elective positions" (Edigheji, 2020:60). Political godfathers, in turn, create 'godsons' within parties and in government, in a system anchored on personality cult. Godfathersim undermines the institutionalisation of parties as agents of democratisation and promotes corruption and election-related violence (Edigheji, 2020:60).

One of the greatest litmus tests of the institutionalisation of a party is its survival beyond the founding leader. The problem personality cult, that borders godfatherism, in Lesotho should be eradicated. It is encouraging that a consensus emerged during the national reform dialogue for limiting the tenure of office of the Prime Minister, who is often a leader of a party (or coalition of parties) with majority support in parliament, to two consecutive terms of five years each.

All parties should be mandated to hold regular conferences to elect leadership at various levels from the national to village committees in line with their constitutions. This democratic practice should be mandatory and provided for in the proposed Political Parties Act. The law should also compel parties to ensure 50% women's representation within party leadership positions and at least 30% youth representation. Emphasising broader representation of various sectors of society and wider inclusiveness of party leadership will have a positive effect of diluting the elitist nature of parties and politics whose net effect has been the marginalisation of the masses. Therefore, there is a dire need for deliberate efforts aimed at de-elitisation of parties and politics of the country. To this end, a deliberate effort is needed to turn parties into people-centred, inclusive, transparent and accountable institutions enjoying considerable public trust.

5.4 Party funding

This is one of the biggest challenges facing Lesotho in respect of party reforms. This is precisely because money in politics is a double-edged sword: parties need money to undertake their mandate of democracy-building, while at the same time, money can buy parties for private agendas that are inimical to democracy-building.

Presently, the National Assembly Electoral Act, 2011 provides for two types of funding to parties. The first relates to funding for political parties registered with the IEC from the Consolidated Fund for campaign and payment of party agents. For parties that participated in the previous elections, the funding is based on the number of votes gained; for parties that did not participate in the last elections, the funding is based on the threshold requirement for registration with the IEC; and for parties in alliance, funding is channelled to each party.

The second relates to funding of parties to discharge their democracy mandate in between elections. This applies to parties that participated in the previous elections. It is allocated to parties that are represented in the National Assembly on an annual basis, depending on the number of their parliamentary seats.

One major challenge is that almost all parties fail to account adequately for the use of public funding in line with the electoral law. But even a much bigger challenge is that private funding to parties is totally unregulated. This opens up parties to undue influence by private interests, including possible capture. Once private interests capture parties, this opens up floodgates for corruption. This is also one important step to capturing the state through the capture of ruling parties or coalition of parties.

In November 2018, a Chinese business tycoon who was also the special advisor to the former Prime Minister Thabane, Yan Xie (commonly known as John), made a startling revelation that he had bankrolled almost all the parties in Lesotho, notably ABC, LCD, DC, AD and BNP (Ntsukunyane, 2018). It is this financial support to various parties that

have participated in coalition governments that facilitated Yan Xie's tight capture of the Lesotho state for years despite the alternation of power between LCD, DC and ABC over time. It was no wonder that when the Directorate on Corruption and Economic Offences (DCEO) and the Financial Intelligence Unit (FIU) started investigating him over suspected corruption in the financing of the construction of Thabane's house in Makhokhoeng, Maseru, Xie fled the country to Australia in June 2020, about a month after Thabane was deposed (Kabi, 2020).

It is for this reason that both public and private funding must be tightly regulated through the Political Parties Act. Funding of political parties must be managed by the Registrar of Political Parties and not the IEC. Restrictions must be placed on funding of parties by private interests from both within and outside Lesotho. South Africa has just introduced a comprehensive party funding reform model from which Lesotho can learn some important lessons in this regard. The new Political Parties Funding Act, 2018 (Act No. 6 of 2018) was signed into law by the President of South Africa on 18 January 2021, and came into force on 1 April 2021. The Act establishes the multi-party democracy fund, regulates public and private funding of parties, prohibits some sources of funding to parties and compels parties to disclose sources and amounts of funding (Government of South Africa, 2021).

5.5 Floor-crossing

The issue that seems to have incensed the populace in Lesotho relates to floor-crossing in parliament. This problem has its roots in factional battles and a lack of inner-party democracy, which generates tension and conflicts within parties. Floor crossing weakens parties and destabilises the National Assembly. It also undermines the country's fledgling democracy (Kapa, 2008; Matlosa & Shale, 2008; Kapa & Shale, 2011; Shale, 2017)). It violates the will of the people expressed through the ballot.

There are various ways of dealing with this problem. One possible pathway is to outlaw floor crossing. Linked to the banning of floor crossing, there should be enabling legislation empowering citizens to recall members of parliament (MPs) who exhibit dismal performance of their national duties. An alternative route is to retain floor-crossing but under tightly controlled and regulated circumstances. Floor-crossing is not permissible for MPs elected through the PR component of the MMP. This practice should be retained. While permissible for MPs elected through the FPTP component, floor-crossing should not be allowed to happen at any time. There should be a specific window for floor-crossing in the lifespan of each parliament, and affected parliamentary seats should be subjected to by-elections for renewal or change of mandates by the people.

5.6 *Party militias*

One negative trend that needs to be addressed in reforming the party system relates to armed vigilantes or militias belonging to some parties. This is a less studied aspect of politics in Lesotho. Its causes, course and consequences are not adequately canvassed in the literature and the media so far. What is well established is the experience of the BNP in the 1980s, which transformed its youth league into a heavily armed vigilante or informal militia which was trained in North Korea. This BNP experiment entrenched the militarisation of intra-party and inter-party relations tremendously. It also soured the relations between the then BNP regime and the security establishment, ultimately leading to the 1986 military coup.

Lesotho's political parties do not seem to have learnt a lesson from this bitter experience of the BNP. Some political parties have built their own private security apparatuses with deleterious effects for intra-party relations and their relations with the overall security establishment. Once a political party experiences internal faction-fighting, this also spills over into its private security apparatus. This was witnessed on 18 June 2019 when the private militias of the ABC faced off at Metcash Complex in Maseru as the newly elected national executive committee made an effort to access the Office of the party with resistance from a faction of the party allied to party leader, Thabane, who had refused to allow a smooth handover (Mpaki, 2019).

It was in direct response to this incident that in early July 2019, the Heads of Lesotho's security agencies (National Security Services, Lesotho Defence Force and Lesotho Mounted Police) issued a public warning regarding the dangers posed by these militias. In that statement, the national security chiefs expressed:

their collective grave concern over the rapidly deteriorating security situation in the country as a result of armed gangs established under the pretext of private personal protectors... While we are aware that these ragtag security outfits are armed with licensed firearms, the greatest concern stems from the intelligence gathered to the effect that most of them (the protectors) are former national army servicemen and police officers... who had left their respective jobs for dishonourable reasons, among them indiscipline (Mpaki, 2019).

There is a need for a deliberate effort aimed at demilitarising the party system, with a view to improving intra-party relations and party relations with the formal security establishment. To this end, one of the urgent steps is to disband vigilante groups/militias. This task should be one of the priorities of the Registrar of Political Parties. This should be legislated as part of the Political Parties Act. In legislating for the disbandment of militias, Lesotho could learn important lessons from Ghana where, in 2019, parliament passed the Vigilantism and Related Offences Act. To demonstrate commitment to adhering to the provisions of the Act, the two major parties also signed the Presidential Elections Peace Pact on 4 December 2020, committing to, inter alia, undertake constitutional reforms aimed at eradicating the root causes of vigilante violence in Ghana (National Peace Council, 2020).

6 Conclusion

This chapter has established the nexus between coalitions and electoral and party systems. The chapter has identified the four factors that motivate coalitions as canvassed in the literature. However, it has added a fifth factor in the case of Lesotho, namely the survival imperative for smaller parties.

The chapter has found that, on its own, the FPTP electoral system did not facilitate institutionalisation of party alliances and coalitions due to its zero-sum character. The BNP dominated Lesotho's political landscape in part due to the FPTP. Following the 1993 transition, the BCP and LCD dominated politics until the 1998 elections, despite other parties enjoying considerable popular vote.

The chapter has found that with the 2001 transformation of the electoral model away from the FPTP to the MMP system, party alliances and coalitions have become more common. The trend of alliances was more manifest during the 2007 general election, which also resulted in the distortion and defrauding of the MMP by both the LCD and ABC. It was under the MMP system that coalition governments of various shades and shapes have now become a norm since 2012.

While the 2012 and 2015 elections produced majority/minority coalition governments, this pattern was disrupted when in May 2020, the country experienced a grand coalition, led by the ABC with Moeketsi Majoro as the new Prime Minister, while Thabane still remains the leader of the party. Currently, the ABC is confronted with factionalism and two centres of power. The ABC has entered into a new power-sharing arrangement with the DC under its new leader, Mathibeli Mokhothu, the current Deputy Prime Minister. Mokhothu has succeeded Mosisili as the leader of the DC.

While the 2001 electoral reform was progressive, it remained deficient because it did not extend to the party system. Party reforms should include six key aspects: (a) proliferation; (b) external regulation; (c) internal functioning; (d) party funding; (e) floor-crossing; and (f) party militias. However, the current reform process does not inspire much confidence given the dismal record of the political elite to uphold national purpose over and above individual interests. It is not without consternation, therefore, that Monyake (2020) warns that the process is: "in danger of collapse or likely to result in the design of institutional rules so faulty that they are unable to address the country's recurrent political crises" (Monyake, 2020:14).

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THE IMPACT OF COALITION POLITICS ON POLITICAL PARTIES' IDEOLOGIES IN LESOTHO, 2012-2020

9

Fako Likoti

1 Introduction

Political party ideologies in Lesotho have changed over time as a consequence of coalition politics. In 2012, Lesotho saw an emergence of coalition politics. While coalitions are normal in other countries, it was the first time elections produced a hung parliament in Lesotho's political history. The 2012, 2015 and 2017 general elections were all inconclusive. No single political party could form the government on its own. When it came to coalition formation, none of these parties had prior knowledge about this, but they still formed coalitions nevertheless. Coalition governments, in most cases, are composed of political parties that share a similar ideology. Their shared policy outlook tends to form the basis of their agreement. The usual reason for such an arrangement is that no single party has achieved an absolute majority after an election.

Party coalitions have become very important in contemporary African politics, both in parliamentary and presidential systems. In the 1960s, multi-party politics were banned and immediately after independence, dominant one-party systems replaced them. In Lesotho, from 1970 to 1986, political parties were banned by the then ruling Basotho National Party (BNP) (Khaketla, 1971). These parties were further banned from 1986 to 1993 during the era of military rule (Matlosa & Sello, 2005). Lesotho's political parties were only allowed to function after 1993 constitutional reforms, which allowed a free democratic process. Conversely, this period ushered in one dominant political party, Basotho Congress Party (BCP), until 1998 when electoral reforms were introduced, and a new electoral Model of Mixed Member Proportional (MMP) representation was introduced (Likoti, 2009).

In assessing political parties' ideologies on coalition parties in Lesotho, it is important to understand their role in influencing political parties to govern. Ideology as a concept is a very crucial aspect of politics. The French philosopher Destutt de Tracy was amongst the first to coin this term (ideology) (Heywood, 1997). He believes ideology refers to "a new science of ideas that set out to uncover the origins of conscious thought and ideas" (Heywood, 1997:40). Liberals and conservatives described it as an instrument of social control to ensure obedience and subservience. Ideologies provide an account of the current situation and foster a good future for society by illustrating how a desirable political change can be arrived at. Ideology as a comprehensive set of beliefs in a political world describes political goals and the means of achieving these desirable goals (Danziger, 1998).

Popper (1962) argues that it is a closed system of thought and, therefore, all-encompassing. According to this analogy, this concept has something to say about virtually all political issues: moral and social issues. It is practically impossible to disprove ideology because there is an almost possible explanation for any deviation. In most cases, ideology is opposed to scientific thinking, which always produces falsifiable hypotheses since it is a grand theory that explains everything.

Putnam (1973) described ideology as a set of beliefs, values and goals affecting style and action. For example, conservatism, socialism and liberalism all serve as a guide to their adherents. It serves a useful function by enabling society to explain, justify and order several issues which otherwise would have been a major challenge to explain. Thomson (2016) argues that ideology provides an explanation for current events and interprets history. It, therefore, provides a set of values that political supporters adhere to. It shapes how people identify themselves. Similarly, it can serve as an identity with certain political beliefs propelled by a particular political party. Since ideology is also a socialising force, it also provides the basis of social order.

It can also be argued that: "ideology binds both the state and civil society together, and it provides governments with the mission, coherence and most importantly their legitimacy" (Thomson, 2016:31). Similarly, coalition governments, in most cases, are bound by similar ideology. Coalition governments tend to cooperate and defend each other to protect the coalition marriage. Therefore, "people with similar worldviews will cooperate to further mutual interests and defend this lifestyle against competitors" (Thomson, 2016:31). Conversely, where the ideology is weak, the likelihood of the collapse of that coalition is high. Ideology can also emerge during crises, and parties can coalesce to avert such crises. Ideology is commonly used to mean any more or less cohesive political principles such as liberalism, conservatism, Marxism or socialism (Tansey, 2008). Like other parties in Africa, Lesotho political parties follow their ideology depending on the then prevailing

political circumstances when they were formed. The historical formation of these parties reflects the then existing political environment in Lesotho. To conceptualise the ideology of Lesotho political parties, their origin forms a key aspect of that understanding.

Ideology binds people together, more especially those that share the same worldview. This stems from the fact that in people's understanding of politics, emotional identification with, and evaluation of political reality, ideology acts as a kind of radar that directs the practice of politics and their interpretation. It guides, supports, restrains and thus rationalises political action. As a systematic and interconnected set of ideas about the socio-economic and political organisation of society as a whole, ideology looks into the past, explains the current political situation, and offers a vision of the future. It can be argued that: "ideology is a persuasive argument designed to motivate active involvement on the part of its adherents ... tends to be personalised and turned into a sacred belief similar to religious beliefs" (Nnoli, 1986:150) like in Lesotho where some people believe in congress or nationalist parties. Ideologies are, therefore, action-oriented motivation and seek to promote a particular social and political order, which urge people to strive to achieve. Most ideologies such as socialism, conservatism, and liberalism overlap considerably (Garner, 2009).

This chapter is divided into five sections, including this introduction. The second section analyses the shifts in party ideology before the onset of a coalition government. The third section, borrowing from the above framework, illustrates the coalition government formation and shaping of party ideologies. The fourth section evaluates the impact of shifting ideologies on Lesotho's democratisation and stability. The section argues that the impact of the era of coalitions on political parties' ideologies can be measured in terms of several factors, specifically the ideological homogeneity of these political parties. The conclusion forms the last section of this chapter.

2 Shifts in party ideology formation before the onset of coalition governments

The first pre-independence political party in Lesotho, Basutoland African Congress (BAC), which was later called the Basotho Congress Party (BCP), was founded in 1952, under the leadership of its founder Ntsu Mokhehle. The party "was the first to solicit a mass base and, its victory in Basutoland's initial local government election of 1960, seemed destined to lead the nation to independence" (Weisfelder, 1999:1). BCP became aggressive in pushing the political liberation agenda. Its Pan-Africanist ideological thrust became even more robust after Mokhehle had participated in the All African People's Conference in Ghana (Accra) in December 1958. During this conference, he was also elected as a member of this organisations' Executive under Nkrumah's leadership (Matlosa & Sello, 2005).

The BCP derived its inspiration and motive from the philosophy of egalitarianism and Pan-Africanist outlook. The philosophy of egalitarianism denotes that the party has a strong peasant base and obligation. Its leadership was uniquely of peasant origin and background, and its roots are firmly set in the harsh rural environment and experiences rather than in elitist and aristocratic circumstances and comfort. The BCP aimed to reduce inequality and promote egalitarian social communities (KymLicka, 1991; Giddens, 1989). During this period, both the chiefs and the powerful Catholic Church became suspicious of the BCP motives in leading Lesotho's independence.

These forces perceived Mokhehle then as a communist and against the churches in Lesotho. During the time when the movement towards independence gained momentum, suspicions also grew; hence, BCP mobilised the broad coalition forces to grumble (Weisfelder, 1999).

Mokhehle's party was soon followed by the formation of Marematlou Freedom Party (MFP) in 1957. Chief Seephephe Matete "together with other influential chiefs turned their backs on the BCP and formed the Marema-Tlou Party, which in 1962 merged with the Freedom Party" (Matlosa & Sello, 2005:20), under the leadership of Makalo Khaketla who was the Deputy President of BCP then. This was precipitated by "disagreement about the role of paramount Chief but came after long disillusionment with Mokhehle's authoritarian mode of operation" (Weisfelder, 1999:44).

To date, MFP is still pursuing its monarchist ideology and royalist agenda. Following the formation of MFP above, the BAC/BCP militancy motivated the formation of another political party, the Basutoland National Party (BNP) in 1959. This party was called Basotho National Party (BNP). It was under the leadership of Chief Leabua Jonathan (Sixishe, 1984). The party had strong backing from the Catholic Church, which ostensibly supported its establishment (Matlosa & Sello, 2005).

Apart from the party's (BNP) backing and "strong influence of the Catholic Church in the formation and ideological orientation of the BNP, other factors that triggered the emergence of this party emanated within the BAC itself" (Matlosa & Sello, 2006:21). The party promoted religious values and supported the Catholic Church in particular (Sixishe, 1984). It is important to note that the leader of BNP, "Chief Leabua had been a member of the Basutoland Congress Party, as indeed were most of the Chiefs" (Khaketla, 1971:18).

Weisfelder (1999) argues that most of the founders of BNP, including Leabua Jonathan, Gabriel Manyeli, and Patrick Mota, had originally been BAC members and sympathetic to its ideas. However, all these BNP founders were wary about the aggressive stance taken by BAC towards the Catholic Church and the Chiefs. Jonathan concluded to form the BNP with his colleagues after attending a Conservative party conference in Britain. He declared that: "his participation in a Conservative party supporting the traditional way of life and

basic Christian values would have ample precedent in the British parliamentary pattern” (Weisfelder, 1999:26). It was these reasons, amongst others, that underpinned the BNP formation. Jonathan argued then that BNP would support this conservative ideological outlook from that period onwards.

It must also be noted that, in 1961, Mokhehle suspended and expelled some of the BCP members. He argued that communists in his party would not be entertained (Weisfelder, 1999). BCP stalwarts such as Robert Matji and others were ejected from the party. Matji and his group eventually formed the Communist Party of Lesotho (Khaketla, 1971). This party later breathed life into a new political party called Popular Front for Democracy in the early 1990s (PFD) (Matlosa & Sello, 2005).

These developments produced fragmented political parties and a weak democratic culture in Lesotho. All these fragmented parties have a direct and indirect link to the Basutoland African Congress (BAC) since Lesotho’s pre- and post-independence period in 1966. The consequence of all these changes affected the democratic process and future prosperity of Lesotho.

3 Coalition governments and the shaping of party ideologies

The emergence of coalition governments has become a global phenomenon. The composition, nature and life expectancy of a coalition government varies from country to country, depending on specific political circumstances. However, coalition precipitants remain more or less the same. Some of these precipitants, motivating coalition formation, first and foremost, are related to political discontent (Yellappa, 2020). In fact, coalitions are a result rather than a cause of political unrest. The dissatisfaction with the single majority rule and its failure to respond to the changing public needs forces the electorate to resort to other alternatives. In Lesotho for instance, the formation of the coalition, which the ABC-led in 2012, was motivated mainly by anti-Mosisili (then-Prime Minister and leader of DC) sentiments (Motsamai, 2015).

These parties feared congress dominance under Pakalitha Mosisili, especially his welfare policies of free education and old-age pension policy that appeared to be attracting more followers. Ironically, all Lesotho coalitions and political parties adopted these policies. Their fears were not grounded on ideology but motivated by an office-seeking mentality. This also proved that their ideological outlook (ABC, LCD and BNP) was not markedly different from the DC Leader’s (Motsamai, 2015).

It can be argued that the emergence of the coalition was a direct reflection of “the failure of Lesotho’s political elites to cooperate for the greater good, itself a manifestation of the historical legacy of elite fragmentation and mistrust produced what was described as the

assurance or coordination dilemma” (Monyake, 2020:3). This was a manifestation of a lack of trust amongst political elites where there was no coordination and reciprocity. The absence of compromise and collaboration between rival political elites has made it difficult for the emergence of consensus building. For this reason, among others, it made the era of coalitions in Lesotho very unstable.

In most cases, some members of the then ruling majority party were not content with the working of the party and consequently opted to break away and form smaller factions as demonstrated in Table 9.1. These factions then frame their own policies and developmental programmes, though not radically different from those of the parent party, having a somewhat different approach towards issues (Yellappa, 2020). This was because all these parties have a similar ideology and are fragments of one main political party, the BCP. Their shared origin, history and similar ideological outlook “can be characterised in the game-theoretic parlance as a zero-sum game, wherein winner takes all and attempts to vanquish the opponents either by fair or foul means” (Matlosa, 1999:176). This creates instability and crisis within the political spheres and confusion among the voters.

Coalition government under these circumstances becomes a prerequisite rather than an alternative. Since no country is static, the other reason for coalition formation could be traced to fundamental changes in the structure of the society (Yellappa, 2020). A developing country like Lesotho provides conditions most conducive for a coalition. Lesotho politics has faced fragmentation of political parties and socio-economic challenges. In such a political environment, a single political party can’t cater to the variegated and heterogeneous needs of the people (Yellappa, 2020). The result is the mushrooming of a multitude of parties, each representing the interests of a particular section (Yellappa, 2020). Lesotho today, with a population of 2 million, has 41 political parties. With the current Mixed Member Proportional (MMP) electoral system (Likoti, 2009) it is clear that no single party will govern alone.

The emergence of pluralistic politics in the early 1990s motivated the emergence of coalition governments to secure sufficient seats in parliament to form stable governments. These power-sharing governments were so popular in most developing countries, especially in Southern Africa, where “others have been accused of being unprincipled because their members were ideologically remote and therefore perceived as political opportunists interested in short-term gains rather than long-term policy goals” (Kadima, 2006:1).

The end of the Cold War in Europe witnessed ideological shifts in most developing countries. Most countries in Africa went through ideological changes that were influenced by socio-economic changes:

even in those few countries with relatively more delineated ideologies (eg, Mauritius and South Africa) high poverty levels have forced party leaders to grant the state a comparative large role in the market economy in order to fast-track national socio-

economic development. This convergence of the main priorities creates a degree of connection among the majority of mainstream political parties, thus justifying why most parties can compatibly share power. Divisions tend to be, in essence, personality-driven rather than ideologically based. (Kadima, 2014:5).

The 1960s and 1970s saw the emergence of coalition theories based on size and ideology (Kadima, 2006). Most of these theories drew their experience from Western Europe. These theories' main thrust was to explain coalition government formation in European parliamentary democracies. While these theories are important, they were limited in explaining coalition government formation fully in most African countries. That being the case, "they centre on the effects of a potential coalition size and ideology on its chances of formation and may be subdivided into office-seeking and policy-seeking theories" (Kadima, 2013:4).

The office-seeking theory assumes that political parties' major goal is to assume power. The formation of government is key to any political party, and cabinet positions are the ultimate payoffs. Government formation is a matter of a win and lose scenario. Since cabinet portfolios are very important to political parties, a majority coalition in parliament would not allow the existence of a minority government. Rather, it would take the spoils of the office itself. For this reason, office-driven theories are known as office-seeking or office-oriented (Kadima, 2006).

The theory assumes that it is more desirable for few political parties to form a coalition government. The numbers must be sufficient to guard against any contemplated vote of no-confidence, which must be won. The 2012 coalition government of three political parties in Lesotho and the 2017 coalition of four parties were formed on this basis. The view here is that the fewer the parties that form a coalition government, the better the payoffs (Gamson, 1961; Riker, 1962). The propounders of this view argue that it's better to exclude more passengers. For them, it is easier for few political parties to reach a consensus as opposed to many parties.

The assumption on which the policy-oriented theories are based is that policy goals justify party coalitions. While these theories support some coalition formation in Lesotho, especially the 2012 and 2017 coalitions, they came short in explaining the seven parties' coalition of 2015 which was led by these parties and the May 2020 coalition led by ABC and DC which is formed by ten political parties.

Lesotho political parties are not markedly different ideologically. The articulation of ideology and similar policies by most political parties in their election manifestos (ABC 2012a, 2015b, 2017c; BNP, 2011-2012; DC & LCD, 2017) has influenced them to embrace not only neo-liberal ideology but also welfare policies. Lesotho today boasts a rich welfare system whereby there is free universal primary education and an old-age pension scheme

for citizens over seventy years old (Likoti, 2008). This policy enjoys maximum support from all political parties. These parties embrace this ideological outlook and advocate for overcoming potential inequalities across the nation (ABC, 2007; Likoti, 2008).

The parties' recent manifestos indicated that BNP and other parties have become more similar in their current neo-liberal outlook (BNP, 2017; DC & LCD, 2017; ABC, 2017). Together with their fragments, these parties formed coalitions in Lesotho in 2012, 2015, 2017 and 2020, as Table 9.1 below illustrates.

Table 9.1 Political parties that formed coalitions in Lesotho

POLITICAL PARTY	2012-2015 COALITION	2015-2017 COALITION	2017-2020 COALITION	2020- COALITION
ALL BASOTHO CONVENTION (ABC)				
LESOTHO CONGRESS FOR DEMOCRACY (LCD)				
BASOTHO NATIONAL PARTY (BNP)				
REFORMED CONGRESS OF LESOTHO (RCL)				
DEMOCRATIC CONGRESS (DC)				
LESOTHO CONGRESS FOR DEMOCRACY (LCD)				
POPULAR FRONT FOR DEMOCRACY (PFD)				
BASOTHO CONGRESS PARTY (BCP)				
LESOTHO PEOPLE'S CONGRESS (LPC)				
MAREMATLO FREEDOM PARTY (MFP)				
NATIONAL INDEPENDENCE PARTY (NIP)				
ALL BASOTHO CONVENTION (ABC)				
ALLIANCE OF DEMOCRATS (AD)				
BASOTHO NATIONAL PARTY (BNP)				
REFORMED CONGRESS OF LESOTHO (RCL)				
ALL BASOTHO CONVENTION (ABC)				
DEMOCRATIC CONGRESS (DC)				

Table 9.1 Political parties that formed coalitions in Lesotho (continued)

POLITICAL PARTY	2012-2015 COALITION	2015-2017 COALITION	2017-2020 COALITION	2020- COALITION
MOVEMENT FOR DEMOCRATIC CHANGE (MEC)				
BASOTHO NATIONAL PARTY (BNP)				
POPULAR FRONT FOR DEMOCRACY (PFD)				
BASOTHO CONGRESS PARTY (BCP)				
REFORMED CONGRESS OF LESOTHO (RCL)				
NATIONAL INDEPENDENCE PARTY (NIP)				
MAREMA TLOU FREEDOM PARTY (MFP)				
DEMOCRATIC PARTY OF LESOTHO (DPL)				

Source: Compiled by the author

Lesotho Coalition governments that were established since 2012 “are offshoots of either the BCP or the BNP. The BCP and BNP represent the two major streams in Lesotho politics – the congress and the nationalist movement formed in 1952 to lead the demand for independence from Britain” (Kabemba, 2003:27). However, from 2012 to date, ABC has grown exponentially to surpass both the BNP and BCP by winning 52 constituencies as compared to these parties, which failed to win even a single constituency.

The 2012 coalition government, which was led by the ABC, comprised parties that came directly from BCP. Those were BNP and LCD. The ABC and RCL, on the other hand, fragmented from LCD (Matlosa & Sello, 2005). Similarly, the 2015 DC-led coalition was composed of the same BCP and BNP family members as well. However, DC is another LCD fragment while NIP and DPL broke away from the BNP, which was also formed by former BCP stalwart Chief Leabua Jonathan.

In 2017, the ABC again repeated the same scenario of BCP direct and indirect affiliates coalition formation. However, a former Deputy Leader of DC who left the party in 2016 over their leadership squabbles formed another party, Alliance of Democrats (AD). In May 2020, the ABC leader resigned from the government, and a new coalition composed of ABC under the leadership of its former Minister of Finance, Moeketsi Majoro, and DC under the leadership Mathibeli Mokhothu, who was then the official leader of the Opposition, was formed. These parties have been able to coalesce with ease because Lesotho political parties are not markedly different ideologically.

It has been asserted that African political parties have “no significant ideological differences” (Svasand, 2014:87). Surveys showed that voters could identify the parties as offering alternative policy issues. This has been the case with Lesotho’s major political parties with similar ideologies and policies. One major political party, “the BCP, for example, has split five times, with no major ideological differences between the resulting parties” (Kabemba, 2003:28). Table 9.1 above demonstrates that it has been easy for these parties to form coalition governments. Kabemba (2003) notes that:

... 19 parties that cover Lesotho political space show very little variation in ideological orientation, policy position, organisational structure or geographical dispersion, and they hardly present any alternative sets of policies for addressing the socio-economic challenges facing the country and for taking the country forward (Kabemba, 2003:27).

Therefore, Lesotho’s political parties have no divergence in their ideological orientations. To a large degree, these parties embraced the now reigning hegemonic world’s neo-liberal ideology (Kapa, 2013). This neo-liberal ideology refers to pluralistic politics and free-market-oriented reform policies of deregulation of capital markets, the elimination of price controls and lowering of trade barriers, amongst others. This neo-liberal ideology is sometimes referred to as “pluralism” since it focuses on the plurality of actors who play a major role within global markets (Tansey, 2008). These actors advocate for “free trade together with the minimisation of state intervention” (Garner, Ferdinand & Lawson, 2009:344).

Neo-liberals see the plethora of actors’ roles as interdependent, hence the term “complex interdependence,” within a given market environment. Since political parties are also interdependent within a country in terms of some policy outlook and their ideological similarities, they coalesce with each other, where the dominant goal is not security but the welfare of their citizens (Garner, et al., 2009).

A plethora of political parties dominate the current Lesotho political environment. These “parties only differ in names and colours ... party manifestos are the same ... the difference is only in language used in writing the manifesto and leadership” (Kabemba, 2003:27). It has been these similar ideological relations between parties that have created favourable working relations amongst them.

Most political parties in Lesotho, like liberal parties in Norway, represent egalitarian and nationalistic principles as expressed in the Constitution (Strom, 2020, Constitution of Lesotho, 1993). They support small businesses, hence the recently established Ministry of Small Businesses and Enterprises (DC, et al, 2015). Both the 2017 and 2020 coalition governments adopted this newly established Ministry without question. Similarly, these neo-liberal parties also made it clear in their manifestos (ABC, 2017; BNP, 2017;

LCD & DC, 2017) that they will support the public education system and protect the environment and freedoms as expressed in the 1993 Constitution of Lesotho, religion and gender equity.

What is explicit in all these coalition formations is that they have adopted similar political structures, ideology and analogous policies. It can be argued that ideology played no role in these coalition formations, but political spoils and office-seeking behaviour did. The manifestos of the above political parties do not reflect any variant ideology or policies. The only difference has been the utterances of the leadership of some of these parties who constantly complain about lack of service delivery by any party or, rather, the coalition in power at the time. Therefore:

the only convincing explanation for the formation of coalitions seems to be the office-seeking motives of political elites. Both those elites within the ruling party and those in opposition were motivated by the desire for access to state power and, by extension, to the benefits that go with public office (Kapa, 2013:96-97).

Consequently, the formation of coalition governments in Lesotho is motivated by the office-seeking mentality of political elites and nothing else. For example, in Lesotho like, “in Mauritius, coalition formation and governance has been influenced by office-seeking strategy” (Sithanen, 2003:7) rather than other factors such as ideological considerations. Kapa (2008) observes that the leadership of most of these Lesotho political parties is just an instrument of elite circulation in power with no divergent policies. Party names may differ, but leadership faces have been seen in national politics before. Since their policies are the same, this thesis cannot be seen as a motivation for coalition formation just like in other African countries (Oyugi, 2006).

While Lesotho political parties have similar or convergent ideological orientations, this did not mean that their coalition formations derived from their ideology. Kadima, (2006) argues that, of the five countries studied – South Africa, Kenya, Mauritius, Mozambique and Malawi – ideological proximity of political parties in each of these countries was not a determining factor of coalition formation. He argues further that the embracing of neo-liberal ideology only moved these political parties to the centre (Kadima, 2006), which is a case in point with Lesotho political parties as shown in Table 9.1. Therefore, “the ideological realignment of the main parties ... towards the centre has reduced the importance of ideology as a differentiating factor for coalition building, collapse and revival” (Kadima, 2006:229).

4 Impact of coalitions on parties' ideologies

Since neoliberal ideology emphasises the plurality of groups in the global environment, the impact of this ideology has necessitated the acknowledgement between political parties

in Lesotho that: “political elites compete for the consent of the governed; there may be no equality in the distribution of power, but there is a plurality of competing groups” (Ball, 1991:231). As a result, party competition in Lesotho has become increasingly pluralistic. These parties can be categorised as falling under centre-left political cleavage.

The emergence of coalition politics in 2012, among other factors, brought political stability to Lesotho. What was more important was that: “ideologies are as much a factor in the stability and political unity as a source of challenge to the existing political structures” (Ball, 1991:233). In 2012, LCD, ABC and BNP formed a coalition government. In May 2020, ABC, DC and BNP followed the same pattern of coalition formation as indicated in Table 9.1 above. Ideologies, therefore, “provide the language in which to conduct an examination of the political processes. They are a response to and a means of changing the existing political system” (Ball, 1991:233). Thus, the current consensual political system has been necessitated by the ideological proximity of these political parties.

Despite the collapse of several coalition governments in Lesotho, Basotho now believe strongly in an elected government. The era of coalition politics in Lesotho has strengthened voters’ belief that coalition governments play a pivotal role in democracy. Furthermore, parties’ ideologies have significantly impacted Lesotho polity by accelerating acceptance of the current political changes.

As Table 9.1 illustrates, these parties did not only form one coalition government but four coalition governments. In the past, it was argued that Lesotho’s political parties had maintained adversarial relations with each other with no likelihood of establishing closed relationships and thus working together (Makoa, 2005). This thinking has disappeared. Parties, which had entrenched mistrust against each other, are now working together in a coalition government. This has been the greatest impact of ideological similarity amongst the political parties.

Martin and Vanberg (2003) argue that political parties are diverse institutions. They are, therefore, not unitary actors internally due to the size of the negotiation players with competing interests. Hence, negotiations for forming a coalition are not easy. Ideological impact on competing interests has been significant during coalition negotiation. These competing interests have shown that political leaders who are engaged in negotiations are not the only ones. A myriad of interested actors who have veto powers to influence decisions during the coalition negotiation process is also involved (Martin & Vanberg, 2003). The size of these actors also reflected their direct interests in coalition formation.

The May 2020 coalition formation in Lesotho was a case in point. The ABC faction that wanted to form a coalition government with the DC had to consult its Constituency Representatives for approval, while the other faction opposed this formation. The DC, on the other hand, had to hastily convene a congress in late March 2020 to convince the

entire party leadership to approve the formation of the May 2020 Coalition. What was very clear was that, despite the ideological closeness to these political parties, leaders who sit around a bargaining table are not the only decision-makers whose preferences are central to successful coalition bargaining. This has an important implication for coalition negotiations (Martin & Vanberg, 2003).

Another ideological impact on the speed of negotiation of coalition formation has been the number of parties engaged in bargaining. The higher the numbers of parties, the more likely the negotiations are to include party leaders who need to signal to their constituents that they are “working hard” (Luebbert, 1986). The 2015 inconclusive elections produced a second coalition government composed of seven parties. Five of these parties had similar ideological orientations. The PFD and NIP on the other hand, had ideological proximity to these congress parties. The ideological closeness of these political parties’ solidified their cooperation. During this technological era, information is easily accessible and shared easily among different political parties. Therefore, large numbers of political parties have access to correct information, whether seven in the case of 2015 or ten as in May 2020 does not affect bargaining duration, and negotiations conclude quickly as was the case in 2015 and May 2020 because they share information expeditiously. The presence of a larger number of parties implies that the number of alternative allocations of portfolios expands exponentially.

The ideological homogeneity and the size of these coalition supporters that have to be consulted have given most of them a sense of entitlement to the detriment of expertise and professionalism. In fact, “the focus on political appointments and absence of a detailed focus on policy gave rise to a cynicism that the coalition would not respond to the expectation that voters had for Lesotho’s coalition government” (Prasad, 2014:28). Therefore, it can be argued that Lesotho coalition governments focused more on inclusiveness and working as one partner rather than working as partners in a coalition, which have negotiated the coalition agreement.

The ideological similarity of Lesotho political parties was also critical during coalition government formation negotiations. Martin and Vanberg (2003) argue that coalition negotiations conclude more quickly when bargaining parties are ideologically close than when they are ideologically distant. The speed within which negotiations in all four of Lesotho’s Coalition governments (2012, 2015, 2017 and 2020) were concluded was indicative of the impact of ideological convergence. In alluding to the speed of Lesotho coalition formation challenges in Lesotho, Prasad (2014) argues that lack of preparedness by politicians to negotiate and cooperate, and the two weeks’ constitutional requirement for the first meeting of parliament after elections precipitated rushed coalition formations without going deeper into the prerequisite of coalition formations (Constitution of Lesotho, 1993).

Despite the above ideological impact on negotiations and bargaining by many parties, Martin and Vanberg, (2003) argue further that coalition negotiations conclude more quickly the fewer the number of bargaining parties. The 2012 and 2017 Coalition governments demonstrated this. These authors demonstrated that: “a higher number of parties again reduces the winset and may therefore demand more detailed coalition agreements. Because crafting more detailed agreements will require more time, this creates the potential for delay” (Martin & Vanberg, 2003:327). The 2012 Coalition government was between the ABC, LCD and BNP. These Parties are known to harbour a long political history of acrimony against LCD even though they share similar ideologies. These parties had a history of mistrust and adversarial relations between those who left BCP in the late 1950s to form BNP and those who remained in the BCP. Despite having a history of mistrust amongst themselves (Monyake, 2020), they were able to conclude their coalition negotiations faster because they were fewer in number as opposed to the 2015 and the 2020 Coalition governments.

Their adversarial relations and mistrust were not a main feature during coalition negotiation. What was crucial for these parties was the fact that they were fewer in number and would maximise the share of benefits of incumbency. Luebbert’s (1986) theory suggests that such coalitions are likely to be composed of the smallest number of political parties needed to consolidate a government majority. This presumption was based on the conjecture that the fewer the parties in a coalition the more they will maximise the share of the benefits of incumbency.

Another impact of coalition politics has been cooperation between former political adversaries (parties). In a functioning democracy, for a coalition government to be stable, it must coordinate and cooperate with all partners in the coalition marriage. Cooperating with partners who have different interests, goals, and similar policies can become the greatest challenge in the coalition between politicians, given the value and premium of cooperation in the coalition government. Additionally, conflict between political coalitions is a hallmark of vibrant democracies. To maintain a well-functioning democratic republic, individuals must negotiate with members of different political coalitions, make concessions, and ultimately cooperate. This process often unfolds in a suboptimal manner that can result in dramatic negative consequences to society, even to the point of government collapse (Balliet, et al., 2018:798).

It has been argued that: “party leaders will, all other things being equal, prefer cooperation with a party whose preferences are tangential to cooperation than with a party whose preferences are convergent” (Luebbert, 1986:64). In a competitive political environment, there is tension between compromising party identity and government participation. This environment opens the bargaining process and encourages parties with tangential or even conflicting policy interests to cooperate and join the government. The cooperation between these parties with similar ideologies has incentivised them to trust each other and cooperate to ensure the stability and sustainability of their coalition government. Therefore,

...trust and cooperation are essential to a healthy, vibrant, well-functioning democracy ... people with liberal, compared to conservative, ideologies tend to display greater concern for others' outcomes and equality in outcomes, both liberals and Conservatives tended to cooperate more with in-group, compared to out-group, member (Ballet, et al., 2018:815).

Since parties cooperate, especially after four and half decades of mistrusts, this is the most significant impact of coalition politics on parties' ideologies. These parties embraced neo-liberal policies because they have shifted to the Centre-left essentially because of their interests, policy similarities, and ideological convergence. Their differences have been tactical, not ideological, since they all adopted similar ideology.

Coalition governments are proving to be more radical in terms of excessive spending than the previous governments. The ideological impact of coalition governments' policy has become the modern feature of the day. Since the advent of coalition governments in Lesotho in 2012, public spending has increased considerably in areas such as old-age pension, health, education, school feeding programmes and other government intervention measures in the economy. During the beginning of the term in office, the policy positions of the cabinet reflect the overall cabinet ideology. This implies that the policy output of a coalition government reflects the coalition's preferences at the beginning of the legislative term. something that can be interpreted as a vote-seeking effort of the parties in government. The 2015 coalition government pledged to reduce poverty by addressing the plight of villagers (DC, et al., 2015). They argue that:

The broad policy objectives and specific commitments of the Coalition Government, which are identified in this agreement, reflect its serious concerns about Lesotho's status of being a "least developed country". Despite the existence of the National Strategic Development Plan and Vision 2020, many Basotho, including those in villages and urban areas live in poverty, are unemployed, experience hunger, have no access to appropriate health services, and are serviced through poor infrastructure DC, et al., 2015:6).

This cabinet ideology (policy) preference was to ensure that the plight of the poor and those living in villages and urban areas would be the priority of the Coalition Government. Unlike the right-wing policies, which aimed at cutting the budget, the ideological preference of this coalition government was to intervene massively in the national economy. They vouched to increase public spending to ensure maximum ideological impact and salvage the poor and the marginalised groups. Matlosa (2017) argues that, in the context of chronic unemployment and poverty, political survival easily translates into economic survival and the contestation over the control of the state, hence the rationale for coalition government intervention within the state.

The ideological impact of the coalition government in Lesotho was huge in the area of public spending. This impact motivated logrolling and sharing of spoils of the incumbency. Since the emergency of coalition governments in Lesotho, politicians have benefited immensely

from sharing the spoils of incumbency. Nowhere has the impact of ideology been more profitable than in the area of sharing the spoils of office (Sithanen, 2003; Kapa, 2008, 2013; Kadima, 2006). The benefit that goes with the office-seeking mentality has increased exponentially. Table 9.2 below illustrates that, since 2012, the first coalition cabinet posts have increased in order to accommodate political parties forming a coalition government.

Table 9.2 Composition of Lesotho Cabinets since 2012 to 2022

GOVERNMENTS	CABINET MINISTERS	DEPUTY MINISTERS	TOTAL
Dominant Government 2010	18	1	19
Coalition 2012-2015	22	0	22
Coalition 2015-2017	28	7	35
Coalition 2017-2020	28	10	38
Coalition 2020-2022	28	8	36

Source: Compiled by the author

During the era of single-party government, Lesotho had nineteen (19) cabinet ministers as opposed to 38 and 36 for subsequent coalition governments. The first coalition government in 2012 increased public spending in government to accommodate its coalition members by establishing twenty-two cabinet positions. It can be argued that there is a high propensity to spend more when you have many parties in a coalition government than when you have fewer partners. This was a case in point with subsequent coalition governments.

Riker (1962) argues that political parties are office-seeking actors. They want to win elections to gain control over executive posts. They value political offices for intrinsic or instrumental reasons (Strom, 1990). The logical consequence is that public spending should increase as the number of parties forming the government increases. In terms of sharing better payoff of coalition formation (Gamson, 1961; Riker, 1962), the 2017 coalition had to provide 35 cabinet positions, the 2017 coalition government created 38 and 2020 coalition 36 cabinet positions, respectively. The presence of coalition governments fosters more logrolling and increased public spending than their one-party dominant government counterpart. Therefore, the ideological impact on public spending in Lesotho had considerably increased since the advent of coalition governments. Ministries had to be increased, and some Ministries such as Education had to be broken in two parts just to accommodate more partners in cabinet positions.

5 Conclusion

In conclusion, therefore, ideology is a political thinking and new science of ideas. It is also important because it rationalises politics and activates people of similar ideological outlook to participate in politics and work together. These parties share a similar origin, and their

ideology serves as a guide to their adherents. This has been a case in point with Lesotho political parties. Despite their similar policies and ideological homogeneity, all political parties in Lesotho have embraced neo-liberal policies of the free market and minimal state intervention. They also support welfare and egalitarian policies. Therefore, forming a coalition has not been a hard and fast rule for these parties.

Coalition politics and political parties' ideologies had a profound impact on Lesotho's political landscape. This impact has produced pluralistic politics where many parties compete for state power. Therefore, pluralistic politics in Lesotho have now become the order of the day. The impact of coalition politics on political parties' ideologies have created much needed political stability and democratisation.

There has been an ideological impact on competing interests with veto powers during negotiations. Various actors have been involved during these negotiation processes. The 2015 and 2020 May coalition negotiations between DC and ABC were the cases in point. Ideology has been instrumental during bargaining between many political parties in determining the speed of negotiations and between few parties in quickly concluding coalition negotiations.

Political parties' ideological outlook has made them cooperate in coalition formation and, thus, govern together. This happened despite parties having had a history of mistrust and adversarial relations.

The other impact of ideology has been on social policy and public spending. The coalition governments have increased spending in order to salvage the poor from poverty and other marginalised communities. The coalition governments have also increased public spending in order to share the benefits of incumbency. Since 2012 to date, cabinet positions were increased from 19 to 38. This was done in order to accommodate coalition partners. The ideological impact on sharing the payoff and spoils of the coalition posts have increased logrolling and office-seeking motives among coalition government partners.

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THE IMPLICATIONS OF PARTY CONFLICTS FOR COALITION GOVERNMENTS 10

Sofonea Shale

1 Introduction

The inevitability of conflict in human relations cannot be overemphasised. It is how conflict is handled that defines its implications for collaboration. This chapter looks at the implications of party conflicts for four coalition governments in Lesotho: 2012-2015; 2015-2017; 2017-2020 and 2020. The chapter examines the conflicts that the coalescing parties experienced in these different coalitions, how they were handled and their impact on governance. The chapter differentiates between different ways of dealing with conflicts and chooses conflict management for a conceptual framework. It conceptualises conflict handling and applies it to coalition, examines styles the parties employed to deal with conflict, and analyses the impact on the stability of the government.

The methodology for this chapter has been predominantly a desktop review. This has been complemented by interviews with a wide range of people: the political leadership, civil society, analysts, and youth as key informants.

The chapter argues that while conflict management featured prominently in the coalition agreements, it was not applied in times of conflict. This allowed conflict escalation which prevented coalition governments from operating and led to them finally collapsing. The chapter shows how failure to manage conflict led to the demise of each coalition government.

The chapter draws from that experience, interviews, and the citizens' voices on reforms to propose how best political parties can deal with conflicts to enhance the stability of coalition governments in Lesotho. It proposes that conflict handling and internal party democracy should form an integral part of the negotiation of coalition agreements. It starts off with conceptualisation and contextualisation. It characterises coalitions since 2012 to 2020, analyses the impact of conflict and its management on them, examines the prospects for effective conflict handling and concludes that Lesotho has the opportunity to correct the shortcomings identified.

2 Conceptual and contextual departure points

Conflict is perceived and defined differently by many writers. For example, Persuad and Turner (2013:28) define it as:

[A] disagreement between two or more parties in which one or all perceive(s) a denial of a right or resources or the absence of the capacity to obtain justice which leads to anger, hurt, hate and possibly verbal and violent reactions resulting in damage to person(s) emotionally, physically and or on the property.

This presents a typical situation for Lesotho wherein the BNP and the BCP set Basotho apart and turned them into enemies in the post-independence period. Thus, the Lesotho political experience has characteristically been injustice, discontent, and violence along political party lines. In another instance, Madalina (2016:1) defines conflict as: "some form of friction, disagreement, or discord arising between individuals or within a group when the beliefs or actions of one or more members of the group are either resisted by or unacceptable to one or more members of another group". This reflects the experience in Lesotho, where coalescing parties are of different origins and could not deal with conflicts encountered.

However, conflict can be positive depending on how it is handled. Conflict is inevitable and desirable (Murerwa & Guantai, 2014:1). Whether it becomes constructive or destructive is a choice. How is conflict handled? Conflict management is applied where the intention is not to end but deal with the conflict to prevent escalation and avert violence. Conflict resolution is applied where parties seek to end the conflict, while transformation is applied where conflict is resolved and new forms of relationships are built through structures. Thakore (2013:7) defines conflict management as a means to solve and avert collapse but preserve unity. This is necessary to sustain coalition governments. Conflict management uses party differences effectively and harnesses them to enhance stability and collaboration desperately needed in the coalition governments. Conflict management implies the integration of all factors which can contribute to averting the negativity of the conflict (Turkcalj, et al., 2015:510).

The different approaches to conflict, namely, force, rule, and interests-based applied in Lesotho, expose parties' behaviour in conflict. According to Ury, et al. (1988) the distinction among conflict approaches is glaring where power-based refers to one where the powerful determines the settlement; the rights-based is rule oriented while interest-based reconciles the needs of parties with their concerns and aspirations. These approaches are reflected in the different styles, five of which are generally acknowledged: adaptation, avoidance, collaboration, fight, and compromise (Madalina, 2016:810). Parties resort to one or a mixture consciously or unconsciously, but none is wrong or right; it is a matter of the appropriate style to adopt towards one or another for the conflict in question.

Conflict in Lesotho's politics is historical. The fiercely contested 1965 National Assembly elections between the Basutoland Congress Party (BCP) and the Basutoland National Party (BNP) under First-Past-the-Post electoral model, won by the latter, marked the beginning of a violent political confrontation. Though BCP won 1970 polls, the Prime Minister, Leabua Jonathan, refused to relinquish power, suspended the Constitution, and declared a state of emergency (Sixishe, 1982:67; Lenka,1997:1). The people's reaction was suppressed through state violence. The leaders' decision later to annul the outcome of such elections (Jonathan, Mokhehle, Mohaleroe & Mofeli,1970) without any consultation whatsoever exposed their unfettered power. Followed to the logical conclusion, force-based and rights-based approaches were used to deal with the conflict.

The advent of coalition governments in Lesotho did not occur on a clean slate but rather on the foundation of political conflict, which was not properly handled. The cancellation of the 1970 polls was followed by protracted instability characterised by two-decade civilian authoritarian regime and military dictatorship. Since leaders have moved from one party to another, this history has shaped the present situation. The return to constitutional order, after 1993, can be categorised into three periods: fierce interparty confrontation and weak state (1993-2001), a decade of stability and progress (2002-2012), and the coalition dilemmas (2012-2021).

The introduction of Mixed Member Proportional (MMP) system brought relative stability to Lesotho politics (Matlosa, 2008), but coalition governments are a new normal with unique challenges. Makoa argues that MMP has not cured but opened a new side of political conflict (Mahlamenyane, 2018:28). Therefore, coalition governments in Lesotho are a product of unresolved conflicts and a manifestation of the effects of such.

The 2012 coalition, which lasted until 2015, followed a bitter fight within the then ruling LCD, the climax of which was split and formation of the DC shortly before the election. The removal of Prime Minister Mosisili from office intensified the rift between DC and LCD and created suspicion regarding how the ABC perceivably, victimised by Mosisili, would deal with him in opposition. Although the intra-party conflicts were observable in

the coalescing parties, the fallout between the Prime Minister and his Deputy collapsed the coalition government. The DC-led coalition made up of LCD and other five parties (2015-2017) faced inter-party conflict but collapsed due to conflict within the DC. The ABC-led a coalition of AD, BNP and RCL (2017-2020) but discontent within ABC followed and it collapsed coalition government.

First, political parties form coalitions, not by choice but due to inadequate electoral support to form a government alone or secondly due to the special dispensation to address deep political and ethical differences. The reasons necessitating coalitions are essential in seeking to understand why and how they fail. Three schools of thought: game theory, election systems theory and conflict transformation theory, used to analyse coalitions, have been generally applied to the Lesotho context (Deleglise, 2018:17).

In Lesotho, the coalitions are a result of inadequate electoral support for a single-party government. The coalitions are the temporary, decision-oriented, joint use of resources by two or more social units (Kang & Tripp, 2018:4), but the resultant conflict has been a challenge to handle in Lesotho. The two delicately distinct yet inseparable aspects of coalitions are *formation* and *enforcement* (Ray & Vohra, 2013:1). The conceptual and application weakness of agreements on conflict affects sustenance of coalitions. The exhaustion of the common agenda of the coalition parties, external shocks, and party change destroy an initially existing equilibrium (Muller & Miller, 2005:5). However, effective conflict handling can ameliorate these challenges and sustain coalitions.

The coalition agreements in Lesotho have acknowledged the inevitability of conflict and provided for how they would be handled. However, practically, they became destructive, not constructive, due to the manner in which they are handled. Deutsch (1994:14) differentiates three types of conflict which determine whether the conflict becomes constructive or destructive as follows:

Cooperative - the party has a positive interest in the welfare of the other as well as its own; the *individualistic* - the party has an interest in doing as well as it can for itself and is unconcerned about the welfare of the other, and the *competitive* - the party has an interest in doing better than the other.

Clearly, parties need choice and commitment to the approach to have a constructive outcome. Avoided conflicts tend to escalate (Fisher,2000:1), resulting in fear and defensiveness reflecting individualistic and competitive attitudes. Therefore, conflict handling is not just an expression but a conceptual and practical guide.

The success of dealing with conflict, regardless of the style applied, lies in the soundness of both theory and practice. First, the conflict has to be understood. This entails conflict definition and analysis, which give attention to the history, context, parties involved and the nature of their role in the conflict, issues of contention, power dynamics, the stage of

the conflict or level of escalation (Moore,1996). It is generally believed that conflict, well understood, is almost effectively handled. Once clearly understood, parties can determine whether the conflict can be best managed, resolved or transformed. Besides, understanding conflict is a prelude to the generation of options for a possible solution. Secondly, the generation of options for constructive outcome largely depends on the competitive-cooperative attitude of parties to the conflict and its end:

Collaborating mode is best when parties wish to cooperate to achieve a win-win outcome and ensure each party is content. It seeks to obtain a lasting solution taking into account the interest of both parties involved in the conflict like the integrative and problem-solving modes ... Competing mode has been associated with a win-lose outcome and the need to defend your position (Murerwa & Guantai, 2019:753).

Typically, parties enmeshed in conflict find it difficult to work it out themselves. This brings to fore the significance of the third party. The third party can take different approaches, and this continuum elaborates this point. The *dictatorship* is where the third party determines what the solution shall be and enforces compliance. The *litigation* where a judge listens to the representatives of parties, applies the law, and imposes binding decisions. The *arbitration* is similar to litigation, except that the parties agree on who the third party should be. The other is *negotiation*. Pruitt (1981: xi-xii) defines negotiation as a form of decision making where parties find a solution to their conflict. Similar to negotiation in determining the third party is mediation. According to the United Nations (2012:4), mediation is a process where the third party helps parties in conflict to prevent, manage or resolve conflict. It is not all third-party interventions that bring constructive outcomes. Nathan provides a well-received 'six strategic principles' third-party schema:

mediators should not be partisan; the parties must consent to mediation and the choice of the mediator; conflict cannot be resolved quickly and easily; the parties must own the settlement; mediators should not apply punitive measures; and mediation is a specialised activity (Nathan,1999:2).

This mediation catalogue provides evidence that dealing with conflict should not be taken for granted. It is a specialised function that needs expertise, skill, and some authoritative stature of those who may be third parties. Since the stability of coalition governments in Lesotho is at the core of SADC-led reforms, this topic is significant. Unfortunately, the involvement of SADC in Lesotho has been for long with little if any progress. Therefore, examining conflict and its impact on coalition governments may benefit this process.

3 Characterising conflict in the coalition governments in Lesotho: 2012-2020

The four coalition governments share a similar background. They were all formed immediately after a certain conflict. The circumstances under which they were negotiated were also similar. The parties signed agreements detailing how they would work within

a short time of 14 days. There are similarities and differences in the nature of conflicts the coalitions faced, and how they dealt with them was an admixture of experience. This experience shows that the section turns to discerning the conflict dynamics of each and synthesising the experiences to characterise them.

3.1 Political foes entering into friendly agreements in pursuit of office

The political parties that formed coalition governments were once foes before signing agreements. The obligation that parliament shall meet within 14 days of elections Constitution (sec 82(1) (b)) makes coalition negotiation a haste encounter. Prasad (2014) correctly observes the short time for parties to form a government after elections as a cause for concern.

The hasty negotiations process pressurises parties to sign agreements prematurely. For example, “the ABC which has replaced BNP as the LCD’s bitter and formidable foe” (Makoa, 2008:51) swiftly got to power with LCD. Shortly before the split of LCD and the formation of DC, which was less than three months before elections, LCD and ABC were rivals, and the question could be whether they had time to transition from being foes to being friends. Mothibe (2016:71) defines the ABC-LCD coalition simply as a marriage of convenience against Mosisili. It will be shown that this was not the only one that was driven more by avoiding certain political actors than common policy considerations.

The agreements were reached in haste without critical and deep reflection of parties entering into coalitions. Kapa and Shale (2014:106) agree with Prasad (2014:3) on his criticism of the 2012 coalition for overly concentrating on management and governance of the coalition neglecting policy. Contestations over power and its application are sharper than policy differences. Tolo (2021) argues that parties in Lesotho coalesce not because they agree on a programme to achieve but self-interest, which they clash upon. This is echoed by Matsietsa (2021), arguing that coalition is a fairly new concept to the parties used to single-party government and it is not supported by law. But Shale (2021) argues that the ideological differences, anger and self-interests combined knocked the ABC-led coalition while the DC-led was purely based on succession.

The 2012 ABC-led a coalition of LCD and BNP defying the old congress-national divide pattern (Kapa & Shale, 2014:101). However, this coalition was not arrived at considering the pre-existing differences and similarities between and among political parties. Similar scepticism was cast on the DC-LCD courtship. “In the twist of ironies, the LCD and the DC, which were sworn enemies following the DC’s usurpation of power from the LCD in an ugly split in 2012, joined forces and engineered the fall of the ABC-led coalition government” (Shale, 2016:38).

In 2015, when DC and LCD, together with the other five parties, coalesced, theirs was a consummation of the idea, which started earlier when LCD decided to break ranks with the ABC and BNP in the previous coalition. The other five parties that joined the DC-LCD coalition have been a bloc aligned to the ABC-led coalition. At the formation of DC and immediately before the 2012 elections, the DC-MFP leaders blew fists at the meeting organised by the Christian Council of Lesotho (Tlali, 2012). The latter has been an outspoken critic of Mosisili's administration at LCD, and has made several attempts to moot a motion of no-confidence against him and lately criticised Mosisili's increased security.

The ABC and BNP had no history of confrontation. In fact, there is a strong belief that BNP, not LCD, lost many members to ABC at its formation. However, whilst Tom Thabane was still with LCD, he and the party were branded thieves, surrogates, and traitors by the BNP for rigging 1998 elections and conspiring with South Africa to attack Lesotho under Operation BOLEAS in 1998. Before coalescing with Tom Thabane (ABC), Monyane Moleleki (AD), the DC deputy leader as he then was, had been a prime suspect hunted for diamond related offences and corruption during the Thabane regime.

Although parties have had such a conflictual history, they suddenly entered into agreements without dealing with the entrenched differences. This is not different from the ABC-DC rivalry, which paved the way for the sudden grand coalition. According to Delglis (2018:30), parties were concerned with power-sharing, not history, workable and irreconcilable issues at the formulation of agreements.

The coalition agreements have been signed by parties that have neither healed nor moved on from the conflicts, leading to their separation. LCD, itself an offshoot of the BCP, had given birth to LPC, ABC, and DC due to failure to deal with intra-party conflict. The BNP had given birth to NIP, NPP and the BDNP. However, these parties did not recognise that their already challenged conflict-management arrangements might even be more exposed once they had closer friends and foes to work with. The DC, which inherited its constitution from its parent party, had the same limitation as parties that it coalesced with, which were either the result of unresolved conflicts or had experienced the same internally.

The conflicts that led to the demise of these agreements are primarily internal, but the conflicts from the external causes had a role in the instability of governance.

3.2 Recognition of conflict handling mechanisms in the coalition agreements

The 2012, 2015, 2017 and 2020 coalition agreements detailed how power would be shared and collaborative governance handled. All these agreements provided for conflict handling arrangements in them. The insertion of conflict handling mechanisms in the agreements is examined with a view to understanding their applicability, effectiveness, and efficacy.

The ABC, LCD and BNP coalition recognised the potential for conflict and provided in the agreement for conflicts among partners to be referred to the Joint Monitoring and Implementation Committee (ABC, LCD and BNP Coalition Agreement, 2012:9). The primary function of the committee was to ensure implementation and facilitate dialogue and trust-building among the coalition partners. It included, over and above dealing with conflict, facilitation of dialogue, trust-building, and the implementation of the agreement. In this provision, the committee mandate was too broad and exceeded conflict handling. The implementation task was problematic, more so when the mechanism lacking institutional-legal arrangements does not have clear lines of liaison with the party and government structures like national executive committees and the cabinet responsible for implementing the agreement.

The DC led a coalition of seven parties (DC, LCD, BCP, LPC, MFP, NIP, PFD) which, in the same fashion, established a Monitoring Group to handle conflicts (DC, et al., 2015:11). In anticipation of conflict, the ABC-led 2017 coalition partners also agreed to establish an Independent Mediation Mechanism made up of people who were capable of independent thinking, wise, and had the expertise (ABC, et al., 2017:8). The sections in this agreement, dedicated to the settlement of disputes, only provide that it shall be referred to the Joint Monitoring Committee or mediation if not resolved whenever there is a conflict. However, the composition, functioning and approach of such a committee were not defined.

In anticipation of conflict, the grand coalition of 2020 contemplated an Oversight Committee to conciliate any dispute with support of an Independent Mediation Mechanism (ABC & DC, 2020:9). The provision was silent on how the structure would be composed, how it would function and what conflict-handling approach it would follow.

Although these coalitions acknowledged the inevitability of conflict in the partnership, which was commendable, the provisions did not provide adequate clarity on how the conflict would be addressed. The conflict-handling mechanisms were not instructive in terms of what approach they should pursue – power-based, rights-based or interest-based. This conflict-handling orientation is critical because it shows the attitude of parties to the conflict. The silence of agreements on this aspect made the proposed mechanisms vulnerable to manipulation by parties during the conflict.

Traditionally, political parties in Lesotho do not handle conflicts directly and effectively. Rather, they fall either by choice or default for avoidance and/or fight conflict styles, resulting in destructive outcomes. This is explained by Kapa (2013:63) in his argument that parties in Lesotho have developed what may be described as a “culture of splitting”. The net effect of parties choosing to avoid conflicts or fights instead of handling them effectively is collapse or separation. The proliferation of political parties in Lesotho emanating from

splits is common (Matlosa, 2003:27). The conflict mechanism in the coalition agreement does not seem to be adequate for the intra- and inter-party conflict emanating from elite political rivalry that has shaped political discourse in Lesotho (APRM, 2010:55).

The provisions for conflict handling in all the agreements have given nothing more than an expression of intent to note conflict as one of the areas to agree upon. The provisions have not defined the orientation from which the parties would deal with the conflict – management, resolution or transformation. They were not clear on the of conflict handling mechanisms; they did not consider any principles highlighted by Nathan (1999:2).

The structural limitations of the conflict mechanisms explain why parties appeared aloof to conflict handling despite the provisions in the agreements. Although parties declared that they would deal with coalition conflicts in the coalition agreements, such declaration was not adequate.

The conflict resolution mechanisms contemplated the agreements and were never established except for one in the first coalition. In the 2012 coalition, Samonyane Ntsekele, the Prime Minister's Political Adviser-ABC, Mpho Malie-LCD and Mr Chaka Ntsane-BNP constituted the JMIC. However, this team, made up of members of capable and respected calibre, could not help saving the "Letsema coalition" from collapse, not because of incompetence but rather the problematic level of insertion in the party and subsequently coalition apparatus. The trio was very much conversant with issues during the turbulent 2014-2015 period. It predicted that the coalition would not survive the conflict at hand, but its hands were tied by the undefined position and modalities of intervention (Ntsekele, 2021).

The subsequent coalition did not have the structure set up because nobody talked about or even wanted it. The attitude of political parties towards conflict, blamed on lack of internal democracy and authoritarianism by leadership (Likoti, 2005) and failure to deal with conflict resulting in proliferation and party splits (Kapa, 2013), are reflected in the coalitions. Many writers agree that political parties in Lesotho split because conflicts are not addressed, but dominant actors seek to have their way if the resolution of such conflicts is not successfully avoided (Shale,2021:35). Put differently, with the elaborate provision, parties could have been better driven to decisively deal with their conflicts, compromise, collaborate and find ways through which their interests could co-exist and coalition governments could be sustained. Muller and Miller(2005:3) observe that: "treating political parties as unitary actors in coalition politics is highly unrealistic and therefore inadequate in many instances". Lesotho's situation confirms the observation. The parties remain largely "ailing" individual organisations rather than part of a collective in the coalition government.

Besides, this inadequate provision of conflict mechanisms did not make conflict handling part of the coalition's life. As parties developed and matured in other aspects of coalition government, conflict handling lagged behind. Hence they could not cope in time of need.

3.3 Conflicts experienced and how they were handled

Given the foregoing discussion, the focus now turns to look at how the conflicts were handled. Further, the concentration will be on how such impacted the stability of the coalition governments.

The conflict that took the 2012-2015 coalition down was a fallout between the Prime Minister and his Deputy that was neither defined nor addressed. The failure of SADC was first in the definition of the conflict. In this way, all the efforts made on the improperly defined conflict could only exacerbate the situation. The coalition partners who have now turned into belligerent parties strived to insulate SADC envoys from civil society because each wanted their narrative to prevail. The parties wanted a win-lose solution in their favour, which Murerwa and Guantai (2019:753) define as collaborating against competing attitudes that result in constructive and destructive outcomes. On the other hand, civil society looked for the progress of the country beyond naïve partisan gains. Given the centrality of SADC as the third party in the conflict between ABC and LCD in the same coalition, the target of each party was to have SADC understand the conflict from their vantage, not reality point.

The foregoing narrative explains how the conflict started and how it escalated until it reached crisis level. Further, it also shows how the external mediator/facilitator did not save the situation, but allowed the problem to lead to the protracted coalition governments' instability.

The ABC-led coalition experienced conflict where LCD leader Mothetjoa Metsing, also the Deputy Prime Minister, complained about consultation in making key decisions by the Prime Minister. He complained about removing Government Secretary Motlatsi Ramafole and other senior officials without non-consultation (Metsing, 2014). This did not seem to be an isolated case, rather a pattern, because shortly thereafter, the Deputy Prime Minister wrote to the Christian Council of Lesotho warning that LCD would leave the coalition government "if nothing is done to change the situation" (Metsing, 2014:3). The ABC also wanted the Deputy Prime Minister to answer corruption charges in court.

At the time, ABC was also experiencing intra-party conflicts, some of which were orchestrated by an informal yet powerful inner circle of the party known as the "Resource Group". It was alleged that it had influenced many key and sometimes unpopular decisions in the name of the party. Allegedly through the same influence, the Prime Minister sacked two Ministers from the cabinet, namely Mophato Monyake, who formed his party, Progressive

Democrats, and Thabiso Litsiba, who defected to the DC. This reduced the ABC majority, which coincided with the ABC-LCD feuds crowned by the LCD-DC alliance, signed for the change of government, which made the situation desperate for the ABC. At the time, there was also a looming motion of no-confidence. The Prime Minister invoked section 83 of the Constitution and prorogued parliament for nine months, thus blocking LCD and DC to pass the motion of no confidence in him and the government.

The civil society organisations raised their voice to SADC Troika Summit sitting in Victoria Falls in Zimbabwe. Ahead of the 2014 SADC Summit, President Pohamba, Chair of SADC Troika and President Zuma, who flew into Lesotho, were misled by the parties to understand the conflict as non-consultation between Prime Minister and his Deputy, yet that was only a manifestation. Lesotho needed to be helped to deal with Prime Minister-Deputy fallout and be set on the reforms agenda (LCN, 2014:2). However, SADC did not consider this; rather, it agreed with belligerent parties that elections would be a solution. By this move, SADC missed the point of where the conflict was, and suffocated the local processes. For the belligerent parties, elections would be the way of getting rid of another conflict.

The regional body called for the reopening of parliament, dropping off the DC-LCD agreement, signing of Maseru Facilitation, signing of Maseru Security Accord, and bringing forward elections. The New Zealand reform initiative already afoot was removed from the cards only to be recommended later to be prioritised. The turning point was when on 29 August 2014, the King, in terms of Section 12(1) (a) of the Lesotho Defence Force Act and acting in accordance with the advice of the Prime Minister, Thomas Thabane, removed Lieutenant General Tlali Kamoli and appointed Brigadier Maaparankoe Mahao, as he then was, as Commander of the Lesotho Defence Force (LDF) (Legal Notice No. 64:2014 and Legal Notice No. 41 of 2012). Although the Deputy Prime Minister went on air insisting that Kamoli was still the Commander, Kamoli refused to leave office; instead, according to Mothibe (2017:70), he attempted a coup, a fact Kamoli (2014) blatantly denied.

The ABC-LCD fallout could have been effectively addressed if the conflict mechanism setup had been properly empowered. The fact that the fallout had caused tension even within the conflicting parties also demonstrated that it was a workable conflict. On the basis of collaborating, not competing attitudes, identifying convergences and divergences could have led parties to a win-win situation. Although officially LCD appeared discontent about the ABC leadership, not all members of the LCD agreed with efforts to dissolve the coalition. Some cabinet members from LCD wanted the LCD leader to face court cases and allow the coalition to continue. The formation of RCL led by the former LCD Secretary General, Keketso Rantšo, was a case in point. Rantšo (2021) believed that the coalition agreement was not adequately clear to deal with the conflicts and saw immediate establishment and empowerment of the Monitoring Group as something that could have been helpful.

The Joint Monitoring Group tried to deal with the conflict, but the pressure was too much for the informal structure against the national executive committees, cabinet, and later SADC which all had vested interest in how the outcome favoured them and not so much how the conflict would be managed, resolved, or even transformed. Ntsekele (2021) argues that it is not like the group was not aware of the conflict and its potential. He contends that the advice was given but not considered. Since the conflict was not addressed, it kept on escalating to crisis level.

The SADC is somewhat responsible for the demise of the first coalition. This started with the conflict's inaccurate diagnosis, which led to a series of other decisions and activities escalating the conflict. The regional body took Lesotho to the brought-forward elections on the assumption the Kingdom needed that as belligerent parties claimed. Here, each party wanted elections, hoping that was the legitimate way of divorcing the other. However, the chosen route had the effects from the simple collapse of the ABC-led coalition to the complex challenges that still keep SADC in Lesotho even today.

The problem of external intervention cannot be overemphasised. As Botcharova notes: “[t]he international community often sees people in the regions of conflict as passive recipients, rather than active resources in peacebuilding...” (Botcharova, 2001:272). The argument that official state-based diplomatic efforts have proven to be limited to tackle internal conflicts, and they are circumscribed by political interests and other problems caused by internal conflicts (Rupesinghe, 1997:187) is relevant to Lesotho. For an external intervention to be effective, it should strive not to exclude but harness the capabilities of civil society and other groupings working in peace and community mobilisation.

Lesotho civil society has shown potential in dealing with complex conflict situations. Following the unceremonious departure of the SADC Eminent Person, Sir Ketumile Masire in 2009, Lesotho's civil society picked up the process. CSOs rescued the SADC process from collapse and invited the church to lead while playing a technical role. The local mediation accommodated SADC back to give political clout to the process but demanded that the regional body play a quiet and non-assertive facilitators' role (Odendaal, 2013:7). This empowering arrangement allowed SADC to facilitate dialogue through locals while it remained a guarantor of the process. According to Nathan:

The complexity of intra-state conflict and peace-making poses two main challenges to the international mediators. First, they should acquire a thorough understanding of local history, politics, cultures, and personalities before assuming a substantive role. Second, they should refrain from rushing the process and making precipitate interventions. However critical the situation and however obvious the basis of a settlement might appear, they should not attempt to thrust solutions on the parties or pressurise them into signing an accord prematurely (Nathan, 2000:9).

Coming back to Lesotho in 2014, SADC forgot the local capacity demonstrated in the post-Masire dialogue. As the state-led entity, SADC was sold on the idea of side-lining civil society; hence, it fell into the external intervention trap. It could have easily been avoided by relying on institutional memory. Although several agreements were signed under SADC during that period, the conflict was not resolved. The impact of the SADC blunder in the definition of the problem manifested in the subsequent coalitions. In the subsequent conflicts, 2015-2017; 2017-2020 and 2020 to date, the parties have not attempted adaptation, collaboration or even compromise styles to deal with the conflict.

The DC-led coalition faced inter-party conflict but what brought it to its knees was the intra-party conflict within DC itself and the failure as argued later. The second party in the coalition, the LCD, was not spared from the internal feuds. The tension between the leader and the Secretary General saw a split of LCD and the formation of MEC. Generally, the 2015-2017 coalition occurred within a very volatile situation. As Mothibe notes: "The second Coalition government of 2015-2017 was equally unstable" (Mothibe, 2016:70). The DC Leader and Prime Minister Pakalitha Mosisili seemed to have been leading the coalition of seven relatively well until the unattended conflict within the DC manifested and escalated to crisis level. Moleleki, The DC Deputy Leader, had not been happy with the fact that Mosisili led the government after the 2015 elections. He thought and expected that Mosisili would step down after elections to allow Moleleki to reign.

The allegedly corrupt awarding of government fleet management to the Bidvest car hire services divided the DC leadership into two factions. However, this divide understandably went along with the already existing discontent about benefits accruing from coalition power-sharing. Those who felt that the Bidvest issue was used to peddle corruption were generally those who believed that DC deserved better than what it was getting from the coalition. The reality was that Moleleki was not the Prime Minister, not even the Deputy in the DC-led government. At the same time, Metsing, way junior by credentials and numbers, a defector who earlier revolted against Mosisili, was second in command. This was seen as an insult to the disciples of Moleleki. They were to benefit from his inauguration. For this faction, within the DC, the stay of Mosisili in power was seen as a creed and a simple plan to bar Moleleki from ascending to the premiership. This conflict has gone unattended for too long in DC, just like many party conflicts. It spilled into the LCD, and it finally affected the coalition. The faction revolted against Mosisili and mooted a move to remove him from the party leadership. This attracted sympathy for Mosisili from other coalition members, with the LCD leader being at the forefront.

The leader of LCD led the DC and the coalition partners' march of confidence on Mosisili, an act that isolated Moleleki. Ironically, the majority of the national executive committee of DC did not attend the event. The Moleleki faction sat in the national executive committee

meeting, suspended Mosisili and claimed to have withdrawn the DC from the coalition it was leading to form a new one with the ABC. The contest over DC leadership ended in the courts of law, which endorsed Mosisili as the leader. Mosisili suspended Moleleki and other committee members, and the special conference confirmed their six-year suspension. The election of Mathibeli Mokhothu as an interim Deputy Leader marked the end of the road for the long-lasting political friends in Mosisili and Moleleki.

Instead of challenging the glaring irregularities of the special conference, the Moleleki faction formed the Alliance of Democrats, crossed the floor in parliament and successfully moved the motion of no-confidence in Mosisili. As a result, Mosisili could not just hand over power to Moleleki, whom the motion proposed as an alternative Prime Minister on a platter. Instead, he advised the dissolution of parliament and elections.

The DC-led coalition collapsed due to the passage of a motion of no-confidence in parliament orchestrated by DC members who jumped ship and formed AD. Right from the initial stage, no attempt has been made to define the conflict, understand, and generate options. Instead, factional battles when one strived to defeat the other ensued. The conflict mechanism provision in the agreement did not work because not even the contemplated structure was formed (Rakuoane,2021). In this way, the traditional conflict-handling styles leading to party splits and proliferation were implored, this time leading to the demise of the coalition.

In 2017-2020, Thabane abused his position of power. The Lesotho government was crippled by “bedroom politics”. The wife of the Prime Minister interfered with governance matters and meddled with party affairs. This created a conflict that the party was not only unable to solve but which removed Thabane from the office and destroyed ABC as an organisation.

The ABC, AD, BNP and RCL coalition enjoyed international approval and had a moral high ground when it entered governance. However, this was not so much for what it deserved but mainly due to the errors of the previous regime. This coalition came determined to correct almost all the wrongs that the previous regime committed. As a result, Thabane got the opportunity to demonstrate how much better he was compared to Mosisili. The relatively negative performance of Mosisili, mainly his mishandling of the unruliness of the military, placed Thabane well to prove himself better. Besides, this new coalition seemed to have given Moleleki comfort, seeing Mosisili and Metsing out of government. It was somehow a confirmation that he had won the battle in which both were ganging up against him. However, the coalition failed to utilise this relatively conducive environment due to its proneness and vulnerability to conflict.

The coalition seemed to be pulling well together on the government front until the national executive committee elections contest in the ABC became heated. The contest for the

vacant Deputy Leader position was seen as a determinant for the future leadership of the ABC. The leader and his faction did all they could to block Nqosa Mahao from contesting, but the court approved his participation only hours ahead of the conference. It has to be noted that this was not the conflict itself but manifestation while it had already taken shape, developed, and progressed. The candidate unwanted by the leader, Mahao, won the highly contested position (LCN, 2019:6). In this contest Mahao beat Moeketsi Majoro, now the Prime Minister, Motlohi Maliehe and Prince Maliehe.

The ABC lost the opportunity to reconcile when the losing faction refused to hand over power. The election outcome was challenged, but the courts endorsed the elections facilitated independently by the Lesotho Council of NGOs. The contestations within the party characterised by the court petitions, party infighting and violence within the party structures, spilt over into the government. The undue interference of the Prime Minister's wife in both party and governance affairs complicated the situation.

The faction of the leader did not only lose the battle, but the coalition collapsed, the leader himself was removed from the premiership, and the party entered into a new coalition led by a non-executive committee member.

In the ABC Deputy Leader-led faction's orchestrated move, which was also labelled graceful stepping down of the Prime Minister, the ABC, BNP and RCL in parliament pulled out and withdrew their support to the coalition. This was in lieu of a motion of no-confidence. The next move was for the ABC, BNP and RCL together with DC and their allies to support the new ABC-DC coalition. Effectively this was negotiated by one of the factions of the ABC though all ABC members voted. This paved the way for the formation of a grand coalition between ABC and the DC featuring allies of both to the exclusion of AD and the LCD. Thabane, as the ABC leader and the Prime Minister, had failed to control the situation, which escalated to the level where his wife commanded one of the factions of the party, paralysing the government and holding the party to ransom. The ill-health of the Prime Minister made him vulnerable to manipulation by the wife and the cohorts. As a result, many bad decisions were either made in his name or he was pushed into making them. One of those was for the ABC Leader to refuse to accept the executive committee elected by the conference. It was this displaced and abused political power that ABC could not resolve that hampered governance and the party at the same time. Had Thabane sat down with ABC leadership and sought ways of averting the wife's undue influence, a different destiny could have been reached.

Although the ABC may wish to be a unified body, it is not. The intra-party conflict that led to the demise of the ABC, AD, BNP and RCL coalition paving the way for the ABC-DC grand coalition still exists though changing in form and shape.

The ABC had a dysfunctional leadership. The leader did not attend executive committee meetings, and when he did, he was whispered to and written notes by one faction to pronounce which decisions should be made. The ABC did not command respect in all its MPs, and the government leader became a non-executive committee member. The situation was deliberately left so for internal party-political expediency. The choice of the cabinet members was contested bitterly within the party. As the Prime Minister, Dr Moeketsi Majoro was expected to handle the intra-party conflict and ensure that all performed well in their positions, yet he could not call the shots. He fired the RCL leader and replaced her with the ABC member who defeated the RCL leader in the constituency. Further, he replaced one former First Lady, Prince Maliehe as the Minister of Defence, with yet another loyalist Lekhetho Mosito. This has been received with a fierce contest by members who did not support him for the position of a leader. Indeed, he succumbed to the pressure and removed the new minister in two weeks.

Both Mosisili and Thabane lost power, not because the conflicts were insurmountable but because of the inadequate mechanisms in the coalition agreements. These ineffective mechanisms left parties with no alternative but to relapse to the traditional ways of dealing with conflicts. Motsamai (2021) contends that the Thabane-Metsing conflict and the Mosisili-Moleleki internal conflict, and the discontent over succession were not addressed. Unfortunately, the current grand coalition is not immune from similar challenges.

4 Impact of conflict and its management on coalition governments

The coalition governments in Lesotho have not been able to finish their terms in office not because it is impossible to finish the term for coalition governments. The reason is that parties in the coalition faced conflicts but were not able to handle them effectively. Given Lesotho's conflict-ridden history, parties are used to conflict. What has come out clearly is that the failure to handle conflict and the internal democracy deficit resulting in party splits and proliferation has a similar effect on the stability of coalitions. The conflict has been universal to the coalition parties and consistent over time. Delgisie (2018:40) contends that at one time, all 2012-2015 ABC-led coalition members were struggling with intra-party conflict with dire impact on the functionality of government.

As argued above, conflict is inevitable wherever there is human interaction. The coalition government parties in Lesotho are not exceptional. The peculiarity and similarity of the situation in Lesotho is that conflicts were neither addressed nor attempted. In all the cases analysed here none has been defined and accurately so, analysed, and solution attempted. Matlosa (2008:46) argues that if the conflict is not managed constructively, it develops

into a crisis with a deleterious impact on democracy. This is real for conflicts that Lesotho coalition governments have been faced with. The conflicts escalated to the crisis level until coalition governments collapsed before their time.

The SADC-led reforms process, aimed at helping the country to be able to deal with conflicts better, is itself not an easy yet very necessary route.

While the Lesotho national dialogue process aimed at facilitating the implementation of the multi-stakeholder reforms which includes political parties and different stakeholders was started with the support of SADC in 2018, the continued infighting between the government and opposition parties also threatens the process. The reform process had stalled due to the bickering between the government and opposition over the latter's demands for a Government of National Unity (GNU) and an independent Truth and Reconciliation Commission (TRC) (Feyissa, 2019:10).

The inter-party conflicts during all coalitions have been characterised by contests aimed at blocking each other. During the 2012-14 coalition, DC, as an opposition, was determined to break it. Critical was drawing the security forces into the inter-party conflict (Matlosa, 2016:143) where Police backed the Prime Minister while his Deputy was supported by the army (Vhumbunu, 2015:6). Later the ABC, BNP and RCL in opposition fiercely challenged the DC-led coalition government. They did all they could to bring it to its knees. The ABC, AD, BNP and RCL coalition was similarly not spared until the grand coalition replaced it.

The impact of intra and inter-party conflict and its management on the stability of the coalition government is glaring in the Lesotho context. The foregoing overview of coalition governments and the synopsis of intra-and inter-party conflict provides a basis for the conclusion that providing for conflict mechanisms in the agreements was not adequate. Sellinyane (2021) believes that coalitions in Lesotho since 2012 were brought to their knees by conflicts that were not resolved. However, what is fundamental for the analysis of the collapse of these coalitions is not the conflict but the cause. He argues that parties fight over the sharing of spoils on the looting of the state. This argument makes a lot of sense and falls within the main argument that no attempt has been made to deal with that which parties differ on.

5 Prospects for effective conflict handling

It is widely believed that the proliferation of political parties in Lesotho has to be dealt with, internal party democracy be strengthened, and conflict-management capacity be built (Matlosa & Shale, 2008:151; Kapa, 2013:73; Deleglise, 2018:45; Kapa & Shale, 2014; Shale; 2008:122-23). This resonates with the concerns raised by Basotho in the consultations for reforms.

In particular, Basotho are concerned about the proliferation of political parties, their number and their size. This is evidenced by the citizens' recommendations that the number of supporters required for registration of a political party be changed from 500 to 5 000 on the one hand and on the other that a law that governs the registration ensures party compliance with set standards and controls unhealthy proliferation yet without curtailing democracy and freedom of association (NDPC, 2019:7-8) be enacted. This proposal presents an excellent opportunity for party regulation and guidance. In effect, this proposal shall relieve an Election Management Body from regulatory functions bestowed on it by the National Assembly Electoral Act (2011), which it does not effectively do anyway (Matlho, Motsamai, Shale, 2018). Another important submission on the reforms is that Lesotho should "create a new chapter on political conflicts that will create a structure on conflict resolution or look into the possibility of reviewing the Council of State" (NDPC, 2019:3). This is in line with the previous recommendations that there be national peace architecture (Vision 2020, 2004; PRS, 2004; APRM, 2010; NSDP, 2012).

These proposals carefully crafted into the law have the potential to improve conflict management in Lesotho. For the contemplated Registrar of Political Parties to be helpful, it has to do both regulatory, backup and support roles on democracy and conflict handling. The proposed coalition regulation laws (NDPC, 2019:3) should incorporate conflict handling and agreement negotiation.

6 Conclusion

The coalition governments in Lesotho inherited the weakness of handling conflicts from the constituting parties. Although all coalitions collapsed before their term because of conflict, none of them was unresolvable or unmanageable; it is just that the parties did not attempt them. This seems to have been made possible by the poor insertion of conflict mechanisms in the agreements. Parties did anticipate in all coalitions that conflict might arise. Still, the mechanisms to deal with it were weak in terms of orientation and arrangements through which they link and relate with existing power structures both in parties and government.

Given this weakness, the agreements' provisions on conflict were hardly applied. In all but one agreement, the conflict structures were not even set up. Effectively, parties found themselves using self-help means exacerbating, not ameliorating the conflict. The SADC intervention was relevant, but its energy was excruciating and protracted instead of ameliorating the conflict in Lesotho.

The reforms that the country is undergoing have the potential to change the situation. However, this is not given. The reforms process has to be carefully managed to deliver the desired changes.

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TRACING REASONS FOR COLLAPSE OF COALITION GOVERNMENTS IN LESOTHO, 2021-2020

11

Mokete Pherudi

1 Introduction

After the 1998 general elections, the Interim Political Authority (IPA) recommended departure from the First-Past-the-Post (FPTP) model as it contributed to instability in the country with endless rejection of the election outcomes, sometimes coupled with violence. Subsequently, the country adopted the Mixed Member Proportional (MMP) model which is a combination of Proportional Representation (PR) and FPTP. After its incorporation in the Constitution, the MMP was tested during the 2002 elections, and it delivered on its intended objectives including broadening representation in parliament (Pherudi, 2016:51-53; Rakhare, 2019:16). Elections after 2012 produced hung parliaments, with no outright winner and the political parties resorted to alliances or coalitions to form governments. Consequently, three coalition governments: 2012-2015, 2015-2017, 2017-2020, and the 2020 grand coalition came into being. The first three coalitions were formed within a short period, without considering essential factors such as policy convergence and programmes and could be termed “quick-fix products”. Likoti (2021) shared a similar view that the lack of preparedness by politicians to negotiate and cooperate after the elections precipitated rushed coalition formations. Managing the coalition governments presented a challenge because of individual sentiments and political party preferences. In most instances, political parties were more interested in serving their party interests than the national development agenda. This chapter traces the reasons for the collapse of the coalition governments in Lesotho from 2012 to 2020.

This chapter contends that Basotho accepted coalitions with great expectations that they would end instability, redress the economy, fight corruption, and serve the national development agenda. The majority were disappointed when coalitions collapsed one after the other due to conflicting ideologies and policy standstills (Mahlakeng, 2016). This disadvantageous dilemma is evidenced by the collapse of the three coalition governments and resurfaced to haunt the 2020 grand coalition government. There is cynicism about the political process, lowering trust in legislative leaders and their ability to solve problems for Basotho, especially creating job opportunities for the unemployed youth and the nation in general.

There are generic intra-party factors that contributed to the collapse of the coalition governments, including heightened corruption, the enhanced politicisation of the public sector, the misuse of the motion of no-confidence in the Prime Minister (PM), and undue judicial interference in political matters. Inter-party factors such as misuse of floor-crossing are also explored. The unique factors for the collapse of each of the coalition governments are also discussed. The first coalition government led by Thomas Thabane comprised All Basotho Convention (ABC), Basotho National Party (BNP) and Lesotho Congress for Democracy (LCD). The political cracks became evident from day one when they contested the ministerial spoils, and there were personality stand-offs between ABC and LCD (Pherudi, 2016:198-204; Salomao, 2019:164). The second coalition led by Pakalitha Mosisili comprised seven political parties, namely: the Democratic Congress (DC), LCD, Marematlou Freedom Party (MFP), Basotho Congress Party (BCP), National Independent Party (NIP), Lesotho People's Congress (LPC) and Popular Front for Democracy (PFD). The coalition collapsed due to a motion of no-confidence in the Prime Minister (Southall, 2020) and the reign of terror perpetuated by some rogue members of the Lesotho Defence Force (LDF) under the command of Retired Lieutenant General Tlali Kamoli, who once referred to himself as "The Right Honourable" (Matlosa, 2020:6).

The third coalition government led by Thabane comprised four political parties, namely: ABC, BNP, Reform Congress of Lesotho (RCL) and Alliance of Democrats (AD). Its demise was mainly due to an intra-party conflict within ABC following its February 2019 elective conference. The ABC's new national executive committee (NEC) was elected with Nqosa Mahao as the deputy leader. The old NEC refused to recognise the new NEC, and they fought battles in the courts of law. Even the party leader Thabane could not reign over the party factions. Two prominent blocs emerged from within the ABC: the State House faction supporting Thabane and the *Likatana* supporting Mahao, the then deputy leader. The name *Likatana* was coined after Thabane savaged Mahao, saying he was "just a rag"-*sekatana* who should not be elected to deputise him. Thabane later apologised but the supporters of Mahao were referred to as *Likatana* (Mohloboli, 2019). The State House

and *Likatana* factions held different rallies arguing their cases, respectively. The allegations of murder against Thabane and his wife 'Maesaiah Thabane compounded matters that resulted in the third coalition's collapse.

The grand coalition government led by Moeketsi Majoro came about because of Thabane's resignation on 19 May 2020. It comprised two large political parties, ABC and DC. Other smaller political parties such as Movement for Economic Change (MEC), BNP, Democratic Party of Lesotho (DPL), PFD, BCP, RCL, NIP, and MFP supported them. The grand coalition was threatened with being collapsed two days after its inauguration (Lesotho Office of the Prime Minister, 2020). Barely two months into its tenure, the grand coalition was beset by serious problems. Majoro's own ABC party remained deeply divided. Some members were livid at being overlooked for cabinet posts, while others were pressuring Majoro to violate the Constitution by ordering charges against Thabane and 'Maesaiah to be dropped. The infighting within ABC heightened when some NEC members wanted Thabane to be the face of the party's 2022 elections, a proposal that was rejected by Mahao and his supporters. Subsequently, Majoro fired Mahao, the then Minister of Justice including Police Minister Mamoipone Senauoanae, Forestry Minister Motlatsi Mapelepo and Health Deputy Minister Nto Moakhi. This move was seen as an attempt to purge his cabinet of potential detractors. In response, Mahao formed a new party called Basotho Action Party (BAP) (Moffat, 2021). The breakaway of Mahao from ABC clearly demonstrated that the infighting within the party was far from over.

Expressing his view about the coalition governments, Likoti (2007:10) asserts that coalition politics are usually prone to a pernicious combination of ideological incoherence and policy stalemate. At the same time, Mohlamanyane (2018:48) describes them as "marriages of convenience" that cannot stand the test of time. To support the first coalition government to understand the coalition governance system, the Commonwealth Secretariat commissioned Rajen Prasad, who, together with some members of the first coalition government and civil society, undertook a mission to New Zealand to learn more about coalition politics. Prasad produced a report titled *Governance in Lesotho: Repositioning for success – report on the study visit to New Zealand by delegation from Lesotho* (2013). However, the first three coalition governments made no efforts to implement Prasad's recommendations. The collapse of the first three coalitions could mainly be attributed to what Retired Major-General Metsing Lekhanya (2002) described as "*motho le motho o batla matla a puso*" which is translated as: "each person wants governing power".

The methodology of data collection applied is qualitative and aims to achieve a deeper understanding of the reasons leading up to the collapse of the coalitions. The current literature on political coalitions such as newspapers, journals and archival sources were used. To supplement information from these sources, interviews were also conducted.

2 Generic reasons for the collapse of the coalition governments and the key role players

2.1 Heightened corruption

Chikane (2013:219) describes corruption as a universal problem and a highly contagious disease. It goes deeper and involves the awarding of tenders, contracts etc. Therefore, Lesotho is no exception to this universal problem. According to Transparency International's Corruption Perception Index (2020), Lesotho ranked number 83 out of 180 countries in 2020; an improvement from the ranking of 85 in 2019. Since the return of multi-party democracy to Lesotho in 1993, successive governments have shown a sustained commitment to combating corruption and extending participatory rights to citizens. The successful trial of several senior public officials and various multinational companies for their alleged involvement in bribery and embezzlement proved to be an important milestone in the country's fight against corruption. The Lesotho government tried to address corruption through several laws over the past decades, including the anti-corruption law that requires public officials to disclose their assets (Ardigó, 2014:1). In 2020, the grand coalition government also emphasised the need for disclosure of assets by ministers and senior government officials.

The ABC gained more votes during the 2012 elections due to its anti-corruption drive (Smith & Aerni-Flessner, 2014:3). Thabane also identified corruption as Lesotho's worst enemy after HIV and AIDS (Motsoeli, 2013:2). After he took office in 2012, the Directorate for Corruption and Economic Offences (DCEO) brought criminal charges against then Minister for Natural Resources and Deputy Leader of DC, Monyane Moleleki; then Deputy Prime Minister (DPM), Mothejoa Metsing and former Minister of Natural Resources, Timothy Thahane. The LCD perceived the charges as a political witch-hunt targeting only LCD ministers. However, Thabane and his ABC disputed the claim, saying that the crusade targeted anybody who engaged in corruption, regardless of his or her political background (Pherudi, 2016:208). The Moleleki and Thahane cases were withdrawn due to a lack of sufficient evidence. The temporary suspension of Metsing's prosecution was a result of an agreement between the third coalition government and the opposition parties facilitated by the Southern Africa Development Community (SADC) through Clause 10 as a way to ensure that a national dialogue takes place (Ngatane, 2018).

After the passing of the SADC Clause 10, the families of the late Maaparankoe Mahao, Mokheseng Ramahloko and others, challenged it successfully after arguing that it violated a number of constitutional provisions (Ngatane, 2018). After Metsing and Selibe Mochoboroane, leader of the MEC, were charged with treason (Phakela, 2020), they challenged the High Court's decision on the same and on 26 November 2020, the High Court upheld its initial ruling that Clause 10 remained unconstitutional (*Metsing v The Director of Public Prosecutions*, 2020).

Not all the parties to the coalitions had a common strategy to redress corruption in the country, hence intra-party differences. Despite public exposure by some rogue businesspersons, no action was taken against those implicated. In Lesotho, rogue Chinese-born businesspersons included Messrs. Yan Xie and Stone Shi, as well as British businessperson Arron Banks had allegedly bankrolled some politicians in the country. According to Sejanamane (2019), Xie, Shi, and Banks found a haven in Lesotho as long as self-seeking politicians whose primary concern is to use public office for primitive wealth accumulation govern the country. Xie allegedly sponsored politicians who mattered most in Lesotho through Jackpot Supermarket, where some ministers got free groceries. In return, Xie was well looked after with government tenders and the acquisition of government businesses. Sejanamane (2019) also opined that the picture, which emerges out of Xie's dealings, is of a highly devious person whose business *modus operandi* is that of a corruptor and ruthless "tenderpreneur". The free offering of groceries resonated with the view of Chikane (2013:238) that in many instances, bribes in all disguises are paid to influence the decision-making process. The benefit of the bribe may not be immediate between the corrupted and the corruptor. It becomes evident when tenders are advertised or to be advertised that the corrupt would provide an early warning to the corruptor on the tender requirements. Corruption, therefore, becomes an intractable part of life to the detriment of the poor.

This situation also heightened when the third coalition led by Thabane embraced Xie and appointed him the head of Special Projects and the Prime Minister's Special Envoy and Trade Adviser on the China-Asia Trade Network. Opposition parties objected and accused Xie of wielding too much power and using his influence in the Prime Minister's office to advance the interests of the Chinese community at the expense of indigenous Basotho. In an interview published by *Amabhungane* in 2018, Xie boasted of bankrolling almost every political party or politician in Lesotho, including the weddings of Thabane to 'Maesaiah, and that of Thato Nkhahle (née Mosisili), the daughter of Mosisili respectively when Mosisili was still Prime Minister. He also allegedly funded Metsing's birthday party held in Ladybrand; allegedly accommodated Thabane in his Hillsvue mansion after returning from exile in 2017, and offered financial assistance to Thabane and some members of the ABC while in exile in South Africa (Ntsukunyane, 2020). So far, none of the implicated politicians have disputed these allegations. It is also unclear whether the DCEO is following these public pronouncements for verification and possible prosecution. Following Thabane's resignation in June 2020, Xie fled the country to Australia. The DCEO and the Financial Intelligence Unit started investigating him on several criminal issues, including the construction of Thabane's house in Makhoakheng, Maseru (Kabi, 2020e).

Some government officials who are tired of glaring corruption are on the crusade of exposing it. For example, in November 2019, Khothatso Tšooana, former Principal Secretary in the Ministry of Local Government and Chieftainship, reported to the Public Accounts Committee (PAC) that two former Cabinet Ministers, Mahala Molapo (Local Government and Chieftaincy) and Chalane Phori (Small Business Development, Cooperatives and Marketing) and 'Maesaiah persuaded him to award a M340 million Mpilo Boulevard tender to Xie's company (Kabi, 2019b). The ministers should take cognisance that they are not Chief Accounting Officers. They should at all times avoid invading the territory of the Principal Secretaries (Sejanamane, 2017:296).

Shi allegedly convinced the third coalition government to make regulations that gave his company, Maseru Dawning Company, monopoly in the trade of wool and mohair to the detriment of a South African broker, BKB, which had traded with Lesotho farmers for 44 years (*The Post*, 2018). Shi delayed the payments and paid far less than BKB, and that resulted in the unpopularity of the third coalition government. In 2019, thousands of farmers marched to Maseru to force the government to repeal the controversial Regulations (*The Post*, 2018).

In 2012, Arron Banks allegedly bankrolled Maseribane's BNP election campaign to the tune of £350 000. He also allegedly bankrolled both Maseribane and Thabane while in exile in South Africa in 2015. They admitted to receiving funding from Banks but denied that the money was meant to influence the government to favour him (*Lesotho Times*, 2020:9). In 2014, Banks was allegedly granted a mining license after paying £65 000 into Maseribane's personal account. Part of £16 000 was allegedly paid to Maseribane a few weeks before processing the license (*Lesotho Times*, 2020:9). Interestingly, on 21 September 2018 the DCEO reported that it had found no evidence of malpractice or use of any undue influence from Maseribane as minister (Matlosa, 2018). The bankrolling of the key political figures often denies local entrepreneurs an opportunity to compete favourably for business opportunities in the country. It is for this reason that some politicians use being in government as an opportunity for self-enrichment.

The effect of corruption is felt everywhere, including Lesotho, where it has ravaged the social fibre of society. It gnawed away public confidence in the state because of the decay of morality and ethical practice among those who have been entrusted to manage and run public affairs. As a political commitment to combating this vice, Lesotho has signed a number of protocols, including the 2006 African Union Convention on Combating Corruption and has established internal entities such as the DCEO to deal with corruption. However, some politicians and their fellow economic saboteurs continue to undermine these efforts. Consequently, they contribute to bad governance and the collapse of the coalition governments.

High levels of corruption threatened stability of coalition governments and resulted in the misuse of the anti-corruption entities in the country. The DCEO was abused as a tool against political opponents. It became functional and alive when detecting and investigating money deposited in Metsing accounts, yet it could not investigate an obvious link between a donation to a politician and his influence in organising a mining lease for the donor (Matlosa, 2018). When there is no clarity about who is responsible for tenders, the struggle about tenders continues and inevitably that would be the beginning of the fall of government (Sejanamae, 2017:296-297).

After opening a corruption docket for Metsing, an attempted coup was launched on 30 August 2014, threatening the first coalition government. The Director of Public Prosecutions (DPP), Advocate Hlalefang Motinyane, has alleged that Sub-Inspector Mokheseng Ramahloko was killed after he failed to produce dockets regarding fraud and corruption charges levelled against the then DPM Metsing. Metsing was accused of corruption in which Big Bravo Pty Ltd was awarded M120 million contract to refurbish roads in Matala Ha Leqele, Maseru in 2013 (Phakela, 2020). Had the coup been successful, the likelihood is that the dockets would be destroyed and there would be no case. Therefore, Metsing was allegedly determined to topple the first coalition government in order not to face the law. He is currently facing treason charges with Mochoboroane in relation to an attempted coup.

2.2 *The abuse of floor-crossing*

In the southern African region, countries such as Botswana and South Africa had legislated floor-crossing, and it has contributed to destabilising parliaments (Carter, 2008; Lephogole, 2020). Botswana had a floor crossing clause after independence while South Africa introduced floor-crossing in 2002. In 2020, Botswana passed a constitutional amendment to put an end to floor crossing. A key proviso for MPs is to cause a vacancy in the seat of an elected member of the National Assembly who, having been elected to the National Assembly as a candidate for a political party, resigns from the political party. This applied to councillors who wished to cross the floor (*Government Gazette*, 2020). In 2009, South Africa passed the Constitution Fifteenth Amendment Bill that proposed abolishing floor crossing in the National Assembly and provincial legislatures. It was accompanied by the Constitution Fourteenth Amendment Bill which abolished floor crossing in municipal councils (Constitution Fourteenth Amendment Bill, 2009; Constitution Fifteenth Amendment Bill, 2009), as it disadvantaged smaller political parties such as Inkatha Freedom Party (IFP). Its former leader, Mangosuthu Buthelezi described those who crossed the floor by joining other parties as “crosstitutes” (*Sunday Express*, 2020). They were no different from prostitutes who cast aside morality and principles to sell themselves to whoever offered them powerful posts and material riches. His party and small others suffered greatly due to poaching by the majority African National Congress (ANC).

Makoa has opined that floor-crossing is a nuisance because it destabilises governments and exacerbates turmoil rather than stability (*Sunday Express*, 2020). Makoa also observes that in most cases, those who ditched their parties were enticed with various inducements dangled in their faces. Consequently, the practice is not good for any country as it erodes development and allows a party to have parliamentary seats even where voters had rejected it. It led to the break-up of parties and the subsequent political dysfunction in parliament. This dysfunction often leads to a crisis of legitimacy for the parties in government (Motsamai, 2015:7).

Various factors contributed to floor-crossing in Lesotho, including a lack of democratic culture among the politicians. It is seen as a license to access state resources and has been used to address intra-party fights. Matlosa and Shale (2006:10-11) argued that floor-crossing, among other things: (i) changed the political character of the parliament by altering the outcomes of the general election results; (ii) weakened political parties and undermined the country's democracy; and (iii) created mistrust of both MPs and the political parties, particularly when voters vote for a representative who constantly switches political allegiances.

After the establishment of the grand coalition government on 20 May 2020, legislators Sello Mooki and Mokherane Tsatsanyane ditched the ruling ABC for the opposition AD. They expressed grief that Majoro overlooked them for positions, instead of rewarding them for getting rid of Thabane.

Due to endless differences between ABC and LCD during the first coalition, in June 2014, LCD signed a new coalition deal with DC. That same year, Thabane prorogued parliament out of fear of the collapse of his government. These differences led to SADC intervention and the ultimate demise of the first coalition government and then the snap elections were held in February 2015. In 2020, ABC formed a grand coalition with DC, which was supported by other small parties and that marked the collapse of the third coalition.

2.3 Enhanced politicisation of the public sector

The other factor that complicated the coalition governments was the politicisation of the public sector. Politicians, in their effort to retain state power, often politicise social identities and ethnic cleavages. Consequently, the fierce elite struggle for state power and the battle over state resources marked post-election conflicts in Lesotho (Matlosa, Khadiagala & Shale, 2010:197). Such conflicts continue even during the era of coalition governments in the country. Consequently, almost all political parties that come to power feel immense pressure to favour their supporters in public service appointments and award public sector contracts. More often, little or no consideration is given to qualifications and

experience. This contributes to persistent political instability in Lesotho in two ways. First, the public service is destabilised each time a different party comes into power. Secondly, appointments are done to serve the ruling party, and public servants appointed by previous ruling parties see themselves as part of the opposition against the newly elected ruling party, so they participate in political and other activities intended to undermine the newly elected government (Thabane, 2016:313). Party membership and loyalty, not merit, play a critical role in securing a job in the public service.

According to Kapa, the politicisation of the public service started when the country shifted from a merit-based recruitment system to political appointments (Ntaote, 2017). In 2013, Thabane differed with the LCD Minister, then Foreign Affairs Minister Mohlabi Tsekoa, one of the partners in the first coalition, over diplomatic posts to foreign missions. The ABC leader wanted the lion's share of his party's postings (Weisfelder, 2015:63). For his part, Seabata Motsamai said political patronage practices were meant to deepen political parties' influence in the public service and should be abolished (Ntaote, 2017). Such practice crippled the civil service and state bureaucracy performance.

In early 2017 Moleleki, as former Minister of Police, admitted that he was part of a corrupt act of recruiting police and correctional service officers along party lines during the second coalition government (Ntaote, 2017). The recruitment of public servants on political party lines and admission by some high-ranking politicians showed the country's deep-rooted politicisation of public service.

In March 2021, the ABC and the DC were at each other's throats. The ABC-controlled Ministry of Police and Public Safety recruited 200 trainee Lesotho Mounted Police Service (LMPS) officers. DC complained that their supporters were not considered for any recruitment. Instead of recruiting deserving candidates, the governing parties use the posts to reward loyal supporters and retain patronage. According to the DC sources, the DC had hoped that the ABC would reciprocate its "kind gesture" after the DC-controlled Home Affairs ministry reserved some posts for ABC members when it conducted its own recruitment exercise late in 2020 (Kabi, 2021). Recruitment to government posts has always been a cause of disagreement with reports of partisanship and nepotism dominating the exercise.

The political conflict flowing from the fragility of the coalition government soon spread to the security sector, culminating in volatile relations between the security organs that deteriorated to such an extent that open, armed conflict was a real possibility. Although there were several interconnected factors that led to tensions, the partisan nature of senior personnel within the security organs was central to the conflict (Motsamai, 2015:6-7). At the time, there were reports (Ntaote, 2014; Pherudi, 2016:202-204), indicating that the LDF under Kamoli was pro-LCD while the LMPS under Tšooana was pro-ABC. The tensions

were to the extent that the then DPM Metsing had scheduled a meeting with Tšooana, who was the Commissioner of LMPS. Tšooana did not honour the meeting and indicated that the former DPM should have arranged the meeting through the office of the Minister of Police, who was, at that time, Thabane (Pherudi, 2016:203-204; Rakhare, 2019:18).

Politicians used the army to achieve their political objectives. Politicians used the army to settle political scores in their contestation for the control of state power. In this process, politicians in Lesotho have used and abused the army for their self-serving political gains, much like the army used and abused politicians for their own corporate and/or personal interests (Matlosa, 2019b:13). If this trend is not contained, the army runs the risk of being perceived as an armed wing of a party or a coalition of parties. Chief Khoabane Theko (quoted in Boloetse, 2017:1) observed that: “politicians think they cannot do anything if they do not have backup from the army”. Sharing similar sentiments is Motsamai (2015:12-13), that:

The military’s involvement in Lesotho politics is still an aberration and symptomatic of a malfunctioning political system. It also underlined the inevitability of the politicisation of security institutions because the security forces have been drawn into high-level political disputes.

Thabane attempted to abuse the security apparatus for self-political gains by ordering the LDF and National Security Service (NSS) to investigate his governing ABC rivals, whom he accused of plotting to topple his government. He also deployed the LDF onto the streets of Maseru, claiming some people and institutions were undermining the rule of law and abusing the courts. The people and institutions he was referring to were the Police Commissioner Holomo Molibeli, Thesele Maseribane and Keketso Rantšo, leaders of BNP and the RCL, respectively. Molibeli had exposed the alleged role of both Thabane and Maesaiah in the death of Lipolelo while Maseribane and Rantšo – who were part of the coalition government and had joined the opposition parties in opposing Thabane’s prorogation of parliament (Ngatane, 2020a). This abuse of office to fight personal and political battles was a contributory factor in Thabane’s eventual downfall. The LDF leadership refused to be drawn into the political battles, instead acting as peace mediators in what appeared to be a power struggle within the LMPS and reiterated their commitment and adherence to the Constitution.

Politicisation of the public sector contributed immensely to dividing the Basotho and collapsing the coalition governments in the country, particularly, the first coalition. Lesotho’s politics have divided Basotho into two groups – congress supporters and nationalists. This situation fuels the fires of hatred. Moreover, it is evident that if either of these parties gains power, they would ensure that the only citizens who benefit from government would be their own and those closest to the people in leadership position.

2.4 Misuse of the motion of no-confidence

In Lesotho, the motion of no-confidence in the Prime Minister is a constitutional provision, but politicians have misused it on several occasions for self-gain. In 2014, the opposition parties tried to pass a vote of no-confidence in Thabane, which he thwarted through the prorogation of parliament (Letsie, 2015:92-93). In June 2016, the DC became a battlefield over the leadership of the party between *Lirurubele* (butterflies) linked to the deputy leader, Moleleki and *Lithope* (girlfriends) aligned to the leader, Mosisili. On the other hand, Mosisili staged a fierce fight to retain power within DC by replacing Moleleki, and the latter left with 23 MPs and formed a new party called AD. Mosisili remained with 42 coalition MPs and rallied them to resist any attempt to oust him. He stated that he would not hand over power to anybody if he lost the motion of no-confidence in parliament. On 1 March 2017, he indeed lost a vote of no-confidence. Consequently, he advised His Majesty King Letsie III to dissolve parliament (Legal Notice No. 22 of 2017). Consequently, the country held snap elections on 3 June 2017. Mosisili wanted the elections for three reasons:

- (i) he was still in control of the unreformed state apparatus and could use the military as an electoral strategy,
- (ii) to avoid or postpone the implementation of the SADC recommendations arising from the Phumaphi Report which investigated the circumstances around the assassination of Brigadier Mahao in 2015, and
- (iii) to complete the deployment of all his allies in all strategic areas of government so that he could rule from the grave if he lost power (Sejanamane, 2017:206-208). He became disappointed when SADC confined the army to the barracks. Therefore, his strategy of using the army to win the elections was frustrated. The implementation of the Phumaphi recommendations could not be avoided forever, as they became a priority of the third coalition government (Sejanamane, 2017:206-208).

The protracted war of attrition between the outgoing and incoming NECs of the ABC resulted in ABC legislator Motebang Koma filing the motion of no-confidence against Thabane, seconded by the DC's deputy leader Motlalentoa Letsosa. Siphiri Motanyane, Speaker of the National Assembly, submitted that the motion did not meet procedural and constitutional requirements. He accepted advice to seek a legal opinion before ruling on its admissibility. On 6 August 2019, the former Attorney General (AG), Haae Phoofolo, confirmed that a no-confidence motion against Thabane was valid (Lesotho Attorney General, 2019:1-2). The passing of the motion of no-confidence and the outcome of the legal opinion made Thabane's position as Prime Minister more vulnerable and threatened his stay in power. However, at the end of 2019, Motanyane rejected the motion as inadmissible. This lengthened Thabane's days in power for a short while.

On 19 March 2020, Thabane prorogued parliament through the *Government Gazette* Legal Notice 21, 2020, ostensibly, to manage the Covid-19 pandemic. In reality, he wanted to prevent parliament from meeting and passing the motion of no-confidence in him. At

the time, he was almost certain to lose the vote as many MPs of his own ABC party had made it public that they wanted him out. The ABC and opposition parties challenged the prorogation in court. Consequently, on 17 April 2020, the Constitutional Court ruled that the proroguing of parliament was irrational and invalid (Ngatane, 2020b). The court outcome did not augur well for Thabane, as he was more vulnerable politically. His legacy would always be associated with the prorogation of parliament, as he had done it more often than any PM.

In November 2016, the then deputy leader of DC, Moleleki broke ranks with the party and formed Alliance of Democrats (AD). Moleleki, Thabane, Maseribane and Rantso participated in the vote of no-confidence in the second coalition led by Mosisili, which resulted in the 2017 elections after the dissolution of parliament. The grand coalition was also threatened when Mahao formed BAP with nine MPs crossing the floor with him. SADC became concerned about this development within ABC and despatched an assessment mission to confirm stability in the country. In June 2019, the ABC itself filed a motion of no-confidence in its leader Thabane and this destabilised the third coalition government from discharging its mandate. The no-confidence motion was a culmination of a protracted war of attrition between the outgoing and incoming NECs of the ABC.

For fear of a vote of no-confidence, Thabane prorogued parliament from 19 March to 19 June 2020. He wanted to prevent parliament from meeting and passing a vote of no-confidence in him, which would have ended the third coalition government (Legal Notice 21, 2020). Lesotho's leaders were fully aware that they could lose power through a vote of no-confidence.

In August 2021, Tefo Mapesela, the leader of Basotho Patriotic Party (BPP) filed a motion of no-confidence and demanded the use of a secret ballot. Even though Mapesela's motion is more about politicking than substantive issues, Majoro's enemies within his party may seize the opportunity to try to frustrate him as there are more 'backstabbers' than unified supporters in the ABC (Mpaki, 2021:4). This was evident when Phori, Chairperson of ABC announced his support for the motion, but later reneged after the party's NEC called him to order (Kabi, 2021:4). Though a motion of no-confidence is a conditional provision, the frequency at which it is passed in the Lesotho is worrying. Among, other things, it creates uncertainty and threatens potential investors that the country so badly needs.

2.5 Undue interference in judicial matters

In 2014, Thabane's first coalition government attempted to retire both AG Tsokolo Makhethe and Director for Public Prosecutions (DPP) Leaba Thetsane due to age – both had reached 55 years (Pherudi, 2016:200-203). Ironically, in 2018 he appointed Phoofole

as AG, despite being 71 years old at the time. It became evident that it was not about age but having party-preferred candidates in such positions. Makhethe and Thetsane were perceived as agents of the previous government, an allegation they rejected.

In April 2014, Thabane forced Justice Michael Ramorebodi to resign after losing a case before Court of Appeal in which he wanted to stop the impeachment initiated against him by Thabane. In January 2015, weeks before the February 2015 general election, Thabane appointed Justice Kananelo Mosito as the President of the Court of Appeal. After winning the 2015 snap elections, Mosisili moved to impeach Mosito; the move Mosito pre-empted resignation in December 2016 after the Tribunal had recommended his removal. In May 2017, Mosisili appointed a retired South African judge Robert Nugent as President of the Court of Appeal. Following the 2017 snap election, Thabane became the Prime Minister. He in turn revoke Nugent's appointment and reinstated Mosito. Thabane further facilitated the resignation of Justice Mahapela Lehohla and was replaced with Justice Nthomeng Majara at the helm of the High Court. Nugent (Zihlangu and Tlali: 2013; Tefo: 2015).

He also replaced Majara with Acting Justice Masefora Mahase following an attempt to impeach her on allegations of being too close to the second coalition government. The two reached out-of-court settlement (Pherudi, 2016:200-204). Thabane wanted to appoint Mahase to head the High Court but his own party differed with him and Justice Sakoane Sakoane was appointed instead.

This constant tinkering with senior leadership of the judiciary destabilised the courts and deprived them of continuity and the capacity to fulfil their democratic mandates. Thabane's attempt to impeach Majara in 2017 was one of the many instances of executive interference with the judiciary, which encourages the perception that judges must give allegiance to the Prime Minister to keep their jobs. Such perceptions contribute significantly to the lack of public confidence in the justice system (Monyake, 2020b:8). Thabane tried several times, without success, to dismiss Mosito after he had overturned decisions of the High Court regarding the ABC power struggle. Mahase, who was seen as Thabane's ally, delivered the High Court judgments that favoured Thabane's faction. More often than not, the smooth functioning of the High Court and Court of Appeal were disturbed as the political wrangles and interference ensued. Almost all the PMs in Lesotho interfered with the judiciary for selfish interests.

Appointments in the judiciary have a political flavour which threatened the coalition governments and the independence of judiciary. From 2012, some politicians wanted to use the DPP's office to settle political scores. Thabane tried to dismiss Thetsane in 2014 and 2017 respectively. Thetsane was suspected of discharging his responsibilities with a political agenda, a charge he denied (Muzofa, 2017). Two reasons contributed to an attempt at his first dismissal. First, in 2012, there was a fabricated charge of M53 million against

Metsing which went to court without his knowledge. The DPP subsequently withdrew the case to the dissatisfaction of ABC leadership. Secondly, he refused to dance to the tune of the politicians (*Lesotho Times*, 2017). Consequently, Metsing vowed to fight for Thetsane to the bitter end and orated that: “they are likely to threaten the DPP and if they are going to threaten him, we are ready to die along with him” (Tefo, 2014). Differences within coalition governments affected the functioning of the state organs including the office of DPP.

After the 2017 elections, ABC was not happy with the charges against Mosito for tax evasion. Lebohlang Hlaele, the then Minister of Law, Constitutional Affairs and Human Rights approached the DPP to withdraw the case against Mosito, and he refused (*Lesotho Times*, 2017). The third coalition government facilitated his retirement and Motinyane was appointed after acting for a while in that position.

3 Unique reasons for the collapse of the coalition governments

3.1 The collapse of the first coalition

The first coalition experienced serious internal squabbles as it became personality-driven with a standoff between Thabane and Metsing. Squabbles were expected, as they differed in ideological orientations, comprising the nationalists and the congress. Consequently, the coalition collapsed after only two years in power because of poor leadership, tensions, and misunderstandings between coalition partners, especially between ABC and LCD (Mahlakeng, 2016). Poor leadership became evident when Thabane did not consult other partners on issues of mutual interest. He considered himself a senior partner, and that created a personality cult around him. He thought he could do things without consulting or informing other coalition partners. He often showed little respect to other coalition partners, especially Metsing. Consequently, tensions heightened. The political misunderstanding was evident when Thabane dismissed Kamoli, and Metsing publicly announced his disapproval and non-recognition of the dismissal (Ntaote, 2014).

What also contributed to the fragility of the coalition governments was a lack of cohesion, discipline, unity and effectiveness. The parties did not have a uniform developmental plan for the country, except focusing on the gains of individual parties and their membership. As a result, comprehensive service delivery was compromised. Lesotho’s political history is marked by recurrent conflict with contending political parties that have been and are deeply adversarial towards and mutually distrustful of one another (Makoa, 2008). They also clashed over the division of spoils in allocating key ministerial and government portfolios. It was more about the acquisition of power and less about governing the country more effectively and efficiently.

Likoti (2021) opines that the fears of the first coalition partners were not grounded on ideology but motivated by an office-seeking mentality. The first coalition was also driven by anti-Mosisili sentiments (Mothibe, 2017:71). Metsing accused Thabane of running the governing coalition like a “one-man” show and of making crucial decisions without consulting other partners. The two leaders were bent on undermining each other at any given time. For example, Thabane attempted to reduce the number of the Senate and the ministerial positions of the LCD. He also removed the Lesotho Highlands Water Project from the LCD and brought it under the ABC control (Pherudi, 2016:202-204). In summary, the first coalition government collapsed due to: (i) differences about the powers of the PM; (ii) the modalities of parties’ working relations; and (iii) lack of effective conflict resolution mechanisms (Deleglise, 2018:31; Nyane, 2019:97). Both ABC and LCD undermined and despised each other publicly. As a result, they drifted apart instead of cohering for the progress of the country.

3.2 Collapse of the second coalition government

Two key factors contributed to the collapse of the second coalition government: first, the misuse of the vote of no-confidence, as reflected earlier in the chapter. Secondly, there was an escalating reign of terror by the military. The mid-2015 saw the emergence of a new strategy dubbed “Team 20” comprising LDF members led by the late Major Bulane Sechele and Col. Tefo Hashatsi aimed at eliminating the enemies or perceived antagonists of the second coalition government (Motsamai, 2019). The “Team 20” launched an operation to abduct and arrest soldiers who were suspected of supporting Mahao, under a pretext of mutiny. This resulted in the mafia-style abduction and arrest of 23 soldiers, tortured, and locked up at Maseru Maximum Security Prison while others fled the country for their safety. Kamoli also refused to avail them before the SADC Commission of Inquiry to testify against their alleged role in the mutiny. The SADC Commission of Inquiry concluded that all soldiers who had been detained and charged for mutiny must be given an amnesty since there was no substance to the charges of mutiny (SADC Commission of Inquiry, 2015:61). They were only acquitted on 18 December 2017, after some of the key witnesses confirmed that they were coerced to implicate the 23 officers. With all plots having failed to get rid of Mahao out of the LDF, on 25 June 2015, members of the LDF assassinated him on his way from his home village, Mokema, near Maseru (Pherudi, 2018:123). He was perceived as the enemy of both the government and the LDF, and after assassinating the LDF submitted that he resisted arrest, a version disputed by Mahao’s family on the basis of the account given by a nephew who was with him at the time. According to the nephew, Mahao had surrendered and thrown his hands up as soon as the three LDF vehicles blocked his way but they fired anyway (Ambrose, 2015:32). It could also be argued that the involvement of high-ranking officers of the LDF as the foot soldiers in the operation indicated its political importance because eliminating him reduced a threat to Kamoli’s position.

The LDF created a serious reign of terror in the country, including sporadic bombings of private residences, including that of Tšooana. Some who experienced the wrath of the LDF included Lloyd Mutungamiri, the editor of *Lesotho Times* newspaper, who was shot in the face but survived; Ramahlolo, who was brutally killed at the Maseru Police Headquarters at the dawn of the 30 August 2014 coup for refusing to provide dockets of Kamoli and Metsing; Lisebo Tang – killed on 9 May 2014; Khomotso Makibinyane, Lekhoele Noko and Molise Pakela, who were thrown into the Mohale Dam (Pherudi, 2019:100-101). Their bodies were tied with stones to ensure they did not surface above the 145m high and 700m long dam. No suspects were arrested during the tenure of the second coalition because they were allegedly shielded by Kamoli. They were only arrested after the 2017 snap elections.

It took more than three years to prosecute most of the suspects in this regard. In fact, at the time of writing, none of the cases had been concluded due to various delaying tactics by the suspects and some of their legal representatives (Kabi, 2020g:4).

3.3 *The collapse of the third coalition government*

The collapse of the third coalition government was self-inflicted. There are four key factors that were contributory to the collapse. First, there was a power struggle between Thabane and his Deputy leader, Mahao, following the ABC's elective 2019 elective conference. The conference produced a new NEC with Mahao as deputy leader. The old NEC, including Thabane, refused to recognise the new NEC. Subsequently, factions, namely *Likatana* and the "State House" factions led by Thabane and Mahao, respectively, crippled the ABC. The "State House" faction was also known as *Malumara* (underwears), a name coined due to an allegation that Thabane had ceded his constitutional power to his wife, 'Maesaiah, who was accused of interfering in the party and government affairs (Kabi, 2019c). Some members of the State House faction, such as Motlohi Maliehe complained that the ABC NEC elections were rigged while Koketso Sello, Mohapinyane Mohapi and Habofano Lehana lodged a High Court petition. On 8 May 2019, the High Court verdict favoured the State House faction but *Likatana* won the matter on appeal. Other reports indicated that even the director-general of the NSS, Pheello Ralenkoane, advised Thabane to resolve the crisis in his party and that it would be in his best interests and that of the stability of the nation for him to accept and accommodate the new NEC (Kabi, 2020d). Instead of addressing the internal party conflict, Thabane expelled four members of the new NEC from the party. They challenged their expulsion through the courts, and were reinstated. In trying to resolve the ABC power struggle, Thabane offered to deploy Mahao as ambassador to Belgium, an offer he rejected. The deployment was seen as a divide-and-rule strategy. This was an easy attempt at resolving the conflict within the party and it did not hold as Mahao rejected the offer.

The second factor was Lesotho's former First Lady allegedly meddling in the country's politics and allegations of murder: 'Maesaiah was accused of having captured the government. In May 2018, the then chairperson of the ruling ABC, Maliehe, launched a blistering and unprecedented attack on 'Maesaiah, accusing her of unduly interfering in the party and government through constant meddling in the work of ministers and officials. Some members of the party also complained that Thabane had allowed his wife to run the government through what they termed a bedroom *coup* (Mohloboli, 2018:2). Theko (Kabi, 2019a) expressed concerns that Thabane was in breach of the Constitution by allowing an un-elected individual, his wife, to exercise powers only given to the PM. Theko accused 'Maesaiah of interfering in the ABC and cabinet matters and for instigating the fallout between Thabane and his son-in-law, Lebohang Hlaele (former Cabinet Minister and member of the new NEC). He also claimed that Thabane was no longer consulting his party or coalition partners. Instead, decisions were taken unilaterally at the State House. This situation is reminiscent of Mrs Grace Mugabe, who involved herself in Zimbabwe's politics leading to the resignation of former President Robert Mugabe (Sejanamane, 2017; *Lesotho Times*, 2018). Thabane also resigned due to pressure from his party, partly because of 'Maesaiah's unconstitutional role in governance. Since then, the role of first ladies has become a subject of research in other areas.

On 14 June 2017, Thabane and 'Maesaiah were implicated in the killing of Lipolelo Thabane. At the time of the murder, Lipolelo was still legally married to Thabane (Southall, 2020). The first attempt to kill Lipolelo failed on 12 June 2017. They were also accused of having promised to pay 3 million Maloti in cash to Lipolelo's killers as well as providing jobs in government for executing the murder. To date, it is alleged that M400 000.00 has been paid (Kabi, 2020h). Thabane was accused of shielding his wife from prosecution.

The third factor is that as political pressure mounted on Thabane to resign, he announced that he would resign on 31 July 2020. However, he only resigned on 19 May 2020. To stop the abuse of prorogation by PM, which Thabane was likely to follow, the Lesotho parliament adopted the Ninth Constitutional Amendment that stated:

The Prime Minister shall not advise dissolution under this section, unless the dissolution is supported by a resolution of a two-thirds majority of the members of the National Assembly" (*Lesotho Government Gazette*, 2020:371-372).

This amendment was implemented immediately after adoption by the National Assembly ('Nyane, 2020:2). It curtails the PM's power to advise the king to dissolve parliament and call for elections. Through this amendment, the country was spared having to hold another snap election. In fact, at the time, there were fears that Thabane could advise Letsie III to dissolve parliament.

The fourth factor was the mass resignation of ABC MPs. On 8 May 2020, 33 ABC MPs announced their resignation from the third coalition government with a view to joining the grand coalition comprising ABC and DC. Other small parties supported both parties.

Likoti (2021) argues that the grand coalition was not based on any ideology but on their desire to oust Thabane without holding another snap election. The two ABC factions reached a transition arrangement, and top of their priorities were: (i) ensuring a dignified exit for Thabane; (ii) ensuring that ABC would remain leader of government. Majoro was part of that truce between the two factions (Mutasa, 2020). Subsequently, Thabane's third coalition collapsed on 11 May 2020 and on 19 May 2020, he announced his resignation.

Majoro, an economist and former executive at the International Monetary Fund and Lesotho's Finance Minister, became PM. Majoro had been Thabane's long-preferred candidate associated with the State House faction.

The fifth factor was the misuse of the security agencies, especially the LMPS. Their brutality resulted in an outcry in the country. Some cases of police brutality were reported with little action (Mohase, 2019). This further resulted in calling for LMPS Commissioner Molibedi to be dismissed, but the call and the attempts by Thabane to dismiss him did not materialise as he implicated Thabane and his wife 'Maesaiah in the murder of Lipolelo Thabane.

4 Political and socio-economic impact of the coalition governments in Lesotho

According to Likoti (2021), all the coalition governments in Lesotho did not complete their five-year tenure because they were hastily formed, with no proper preparations during the pre-negotiation period. Parties usually had two weeks to negotiate, which is far from sufficient. Ironically, the state at which the coalitions collapsed before they completed their tenure also suggested that no lessons were learned from the previous ones. After a hundred days in office, Majoro accepted that it was difficult to be in a coalition government as people with different ideologies and objectives established it. Coalitions are often characterised by differences and the threat of collapse. Therefore, it was not surprising when conflict within the coalition escalated, resulting in some members collaborating to collapse the government with a view to better political rewards in the newly formed coalition. This was evident when leaders of minority parties were rewarded with ministerial positions during the second coalition government.

The corruption that permeated through various coalition governments, in particular, the first three, denied the citizens service delivery. Most politicians advanced their personal gains and those of their friends. Bohloa (2020:2-3) succinctly explained the situation thus:

Like scavengers, everything is done with sole purpose of self-gradation. They eat everything from their prey until bones are exposed and nothing is left. That is the nature and mind-set of our politicians.

As a result, politicians themselves contribute to the country's poverty levels and the misery of the already vulnerable groups in the country.

Corruption has created its resistance movement and sowed the seed of destruction. Coalition politicking has led to an increase in government expenditure, largely because of rampant corruption. The size of cabinet and political deployments has almost doubled over the past nine years of coalition governance in Lesotho (Monyake, 2020a). This is because the national cake is extremely small and grossly insufficient for the political elites (Moloto, 2021).

The 2020 grand coalition is holding under a cloud of being collapsed by some disgruntled members of the ABC. This has been the trend since the 2017 coalition due to inter-party conflict. Some disgruntled members of the ABC expressed dissatisfaction with the appointment of the BNP and RCL leaders, Maseribane and Rantšo respectively, to Majoro's cabinet ahead of the ABC MPs. As a result, two MPs, Tsatsanyane and Mooki, dumped the party to join the opposition AD (Kabi, 2020). Monyake opined the defections of the two proved that the ABC had still not solved its internal problems despite ousting Thabane from the government. The duo was aggrieved that cabinet posts that should have been for ABC members were given to BNP and RCL leaders. On 27 August 2020, Majoro admitted that his government had survived countless attempts to overthrow it and that the first attempt began two days after he was inaugurated. He also said that his government was used to being toppled, as it was an everyday issue (Lesotho Office of the Prime Minister, 2020).

The coalitions did very little to improve unemployment levels, including that of the youth (ages 15 to 24) in the country. Since 2012, the youth unemployment rate was as reflected in Table 11.1 below:

Table 11.1 Youth unemployment between 2012-20190

NO	YEAR	PERCENTAGE%
01	2012	35.33
02	2013	34.53
03	2014	34.08
04	2015	34.16
05	2016	33.96
06	2017	33.19
07	2018	33.22
08	2019	33.01

Source: Pletcher, 2020

Table 11.1 above shows that the first three coalition governments have done little to provide much-needed opportunities for the youth. Theko (2020:4) also lamented the country's high unemployment rate and that hiring of Basotho was done through politics and nepotism. As a result, politicians took the country for granted as they continued this evil practice at the expense of the high rate of unemployed young people. According to Ramdeen (2017:55), states are responsible for creating an enabling environment that promotes youth employment. Therefore, through job opportunity programmes the country could avoid protests similar to the Arab Spring that swept through the north of Africa around 2010. Whether the current coalition would last until the expiration of its life span in 2022, only time will tell as some members of parliament have a history of collapsing their own governments.

Lesotho politicians have too often abused the public trust and confidence in government by expanding the cabinet and their benefits of getting into government while under-delivering on public service and development programmes. The coalitions have spent more time negotiating the terms of their agreements and jockeying for ministries than governing (Aerni-Flessener, 2021). This happens at the expense of popular programmes such as old-age pension and universal primary education.

The grand coalition has experienced challenges from two fronts: continued inter-party conflict within the ABC and the intra-party differences between ABC and DC. On 3 February 2021, Majoro reshuffled the cabinet and, among others, appointed Lekhetho Mosito as Defence and National Security Minister. Mosito was dismissed barely two weeks after his appointment into the post due to ABC internal pressure groups (*Lesotho Times*, 2021).

The politicisation of the public sector is still rife, as evidenced by LMPS recruitment of March 2021. Instead of DC imploring ABC to adhere to the merit-based recruitment process, it lamented that its supporters were not considered. Therefore, the governing parties continue to use the posts to reward loyal supporters and retain patronage.

The coalition governments also had positive spin-offs for the country. It ended one party dominance of the LCD that had been a feature of Lesotho's democracy for decades. The then ruling LCD was an unrestrained force (Makoa, 2008). It also increased political party representation in parliament.

5 Conclusion and recommendations

The chapter identified the key role players, generic and unique factors that contributed to the collapse of the coalition governments in Lesotho. In redressing some of the challenges bedevilling the coalitions, the following is recommended:

Regarding the fight against corruption, the government should provide more resources for anti-corruption entities, continue showing zero tolerance on corruption, encourage whistleblowing and provide protection thereto. The non-involvement of political office bearers in tender processes would go a long way in curbing unnecessary influence for preferred bidders or corruptor and corrupted relationship.

Lesotho should consider abolishing floor-crossing or amend the Constitution to provide for by-elections whenever people defect to allow people to choose the party that they want to represent them. The country could also learn from Botswana, where any member of parliament or councillor wishing to cross the floor from one party to the other first must resign their position and pave the way for fresh elections. (Lephogole, 2020).

The country should undertake multi-sectoral reforms as recommended by SADC Commission of Inquiry into the Circumstances Surrounding the Death of Brigadier Maaparankoe Mahao (Final Report, 2015) and other SADC entities including SADC Observer Mission to Lesotho (SOMILES), which were deployed to Lesotho by SADC to resolve political stalemate between partners of the first coalition. Reforms should be aimed at building an institutional framework within which elites could solve political conflicts in a non-violent way.

Coalitions should work towards peace and stability in the country because it needs peace for development as Santho (2017:128) argues: "Lesotho needs peace, security, good governance and stability in order to realise inclusive growth and development..." Peace and stability are prerequisites for successful countries, and Lesotho, without doubt, would benefit from both. Aerni-Flessner (2012) opines that coalitions could win public trust through basic service delivery.

Finally, the first three coalition governments were crippled by disunity, scepticism, and intra-party conflict. These characteristics impacted negatively on service delivery, including dealing effectively with HIV and AIDS and recently addressing the devastating effects of the Covid-19 pandemic. The failure of the coalitions is emblematic of the failure of the government to listen to and address the needs of its constituents including lack of convergent national policies aimed at national development and poverty alleviation.

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PARTY COALITIONS AND THE CHANGING NATURE OF THE SECURITY CRISIS IN LESOTHO

12

Tlohang Letsie

1 Introduction

When establishing its different security agencies, Lesotho hoped to build a foundation for a conducive environment within which all would prosper. On the one hand, the police and other agencies such as intelligence and the prison services would focus on public security, which concerns itself with day-to-day law and order. On the other hand, the army would take care of national security concerned with external aggression. However, the army would, as provided for by the Lesotho Defence Force Act 1996, Sect 5 (c), assist (the relevant institutions) in the preservation of life, health and property, and specifically assist in upholding law and order in support of the police as directed by the government. Therefore, the expectation was that the different security agencies would have cordial relationships to ensure the achievement of the objective of their very survival – orderly and peaceful Lesotho.

Contrary to expectations, the greater part of Lesotho's political history is marked by instability and protracted conflicts. At the heart of this political instability and conflict, lie the country's formal security institutions, particularly the army. The security crisis in Lesotho is mainly rooted in the politicisation of the security agencies and has over the years resulted in a chronicle of events ranging from disloyalty of the security forces to the incumbent civilian governments; abduction and assassination of ministers; assassination of army bosses; Prime Minister going into exile and returning to the country under the guard of the South African security personnel – against his forces. The persistent security crisis has mostly diverted the national focus from development to the search for lasting peace

within and among different security agencies. Pherudi (2018:118) observed this and wrote that: “for as long as the armed forces have been politicised, the Lesotho government and civil society have been engaged in debate about how to reconfigure Civil Military Relations (CMR) and professionalise the army”. On many occasions, the crisis has transcended national boundaries. Over the years, Lesotho’s political and security conflicts have attracted foreign countries and organisations’ attention. As Vhumbunu (2015:3) notes: “Lesotho is a prominent conflict agenda item at SADC summits and extraordinary summits, having experienced political disturbances and internal conflicts before in 1974, 1986, 1991, 1994, 1998 and 2007”. The resultant interventions have even rendered questionable the very sovereignty of Lesotho.

In democratic countries, the relationship between the government and security agencies should be guided by the objective/liberal model of CMR. Under this model, “there is a clear division between political and security agencies’ roles and the security agencies are kept out of politics” (Heywood, 2007:408). The security agencies are subordinate to the civilian rulers, who are accountable to the public. Civilian rulers have a responsibility of policy-making – including defence-related policies – and the security agencies’ role is to provide expert advice and implementation of the policy (Ibid.). However, in Lesotho, this has hardly been the case as the security agencies have dabbled in politics from time to time.

Due to politicisation, the security agencies, particularly the army, have at times been at loggerheads with the civilian governments or certain factions of such governments that are perceived to have different political leanings from these security agencies. The former was mostly the case in the immediate years after returning to democratic rule in 1993, while the latter emerged in the era of coalition governments beginning in 2012.

This chapter is mainly historical and descriptive. It discusses Lesotho’s different security crisis patterns after the return to democratic rule in 1993 and after the emergence of coalition governments in 2012. It shows that the changing patterns of the security crisis were attributable to the politicisation of the security agencies. A combination of books, academic journals, policy documents and other documented sources provided the secondary data, while interviews with selected individuals provided the primary data. The chapter is divided into five main sections, including the conceptualisation of the central concepts; examination of the primary security institutions in Lesotho; the emergence of party coalitions in Lesotho politics; historical overview of Lesotho’s security crisis and conclusion.

2 Conceptualising security and security sector

This section introduces two central concepts to this chapter. These are the security and security sector.

2.1 Security

The term “security” is broad, and its meaning has varied according to contexts as determined by different eras. For instance, the meaning of security in the post-Cold War period differs substantially from during the era of the “war”. During the Cold War, security was mainly defined in terms of states, while the Post-Cold War saw the emergence of individual-centred human security (UNDP Human Development Report, 1994:22). For this chapter’s purpose, the focus is mainly on the traditional understanding of security, which sees armed forces as central to protecting states from external aggression and the prevalence of law and order in any country.

Traditionally, security was understood in terms of the classical approaches, which defined it more in terms of the nation-states than people. This approach was based on Thomas Hobbes’ view of individuals as selfish and having self-preservation as the main motive. The same view was later applied in the analysis of the behaviour of states. For this classical approach, security was limited to each country and implied the protection of a country from external aggression. This view regarded any co-existence between states as conflict-ridden and dangerous, hence requiring states to rely on their military capabilities for security (Pisani, 2007:15). With this traditional approach, security provision is categorised into three: national, public, and citizen security.

Kincaid (2001:40-41) differentiates between these three types and defines national security as safeguarding the state sovereignty over the territory and the population within its borders. This, according to him, implies policies to confront any threat to that sovereignty. He takes public security to imply the maintenance of civil order necessary for the execution of the basic societal functions and the upholding of the rule of law. Lastly, he defines citizen security as the capacity of individuals and organisations to enjoy or exercise the political, economic, and civil rights that correspond to a citizen’s status in society.

Of the three, national security is the prime consideration, and it is the responsibility of national armies. On the other hand, the police and the judicial systems have to take care of matters relating to public security. Citizen security is mainly the responsibility of civilian politicians who make relevant laws and policies and exercise relevant control over all institutions – including the armed forces – that otherwise pose a threat to this security.

The three dimensions of security are highly interrelated and cannot be easily divorced from one another. For instance, it can be argued that public security is a prerequisite of citizen security. This is so because people cannot enjoy their rights within a disorderly environment. Similarly, there is a need for monitoring and striking a balance between individual rights, which are elements of citizen security and public order. Excessive and unregulated individual rights can compromise public security. The three security dimensions are also interrelated when it comes to the functions of their members. For

instance, despite having external aggression as their traditional concern, armies worldwide get involved in public security and support the police. This normally happens when police are overwhelmed during attempts to maintain or prevent the collapse of public order or during times of natural disasters or mass riots.

2.2 Security sector

Each nation has unique components of the security sector. However, countries at the same level of development generally have almost similar components. The following is a summary of general components of the security sector in the African context:

- (i) *Primary Security Institutions*: such as the armed forces, the police, gendarmerie and other law enforcement agencies, presidential guards, anti-terrorist units, border management, customs and immigration authorities, Office/Directorate of the State Department, as well as any other services set up by a Member State;
- (ii) *Specialized Intelligence and Security Institutions*: such as those in charge of finding and using intelligence to preserve state sovereignty and security and defend vital national interests. These may be involved in security activities such as counter-espionage, counter-terrorism and the fight against all forms of organised crime;
- (iii) *Public Oversight and Management Bodies*: such as the executive, the justice ministries, the legislature, national security advisory bodies, parliamentary sub-committees, anti-corruption bodies, customary authorities, the Pan African Parliament, and regional parliamentary bodies;
- (iv) *Justice and Rule of Law Institutions*: such as the judiciary, prisons and other correctional facilities, Office of the Attorney General, Office of the Public Prosecutor, ombudspersons, traditional and transitional justice systems, human rights commissions, tribunals and courts;
- (v) *Civil Emergency Units*: such as search and rescue services, fire fighting, riot control, natural disaster management and natural resource protection units; and
- (vi) *Non-state Security Bodies*: such as private security companies, informal, traditional and customary authorities and others, as may be decided by each member state (African Union Policy Framework on Security Sector Reforms, 2014:4-5).

A closer look at the above-listed security components reflects that Lesotho is no different from other African countries when it comes to the nature of the security sector. However, the main focus of this chapter is on Lesotho's primary security institutions and specialised intelligence and security institutions, as defined in (i) and (ii) above.

3 Primary security institutions in Lesotho

Lesotho maintains its security through a number of agencies. Collectively these agencies are known as armed forces. These include the Lesotho Mounted Police Services (LMPS), the National Security Services (NSS), Lesotho Defence Force (LDF) and Lesotho Correctional Services (LCS). A brief discussion of each follows.

3.1 Lesotho Mounted Police Services (LMPS)

At independence in 1966, Lesotho did not have an army (Makoa, 1998:17). As a result, security was solely the responsibility of the colonial police – the Basutoland Mounted Police (BMP). The police were renamed the Lesotho Mounted Police (LMP) when the country changed its name to Lesotho upon independence. The military government changed the name to Royal Lesotho Mounted Police in 1986 to symbolise its collaboration with the monarchy (Ibid.). The name was later returned to the Lesotho Mounted Police following the return to democratic rule in 1993. Later, the service element was added to the name, and now the institution is known as the Lesotho Mounted Police Services (LMPS). The police service is concerned with public security and as such, tasked with the daily maintenance of law and order. The Lesotho Mounted Police Service (LMPS) consists of various units, including regular police, traffic police, Criminal Investigation Division (CID) and the Special Operations Unit [SOU].

3.2 National Security Services (NSS)

Established through the National Security Services (NSS) Act of 1997, the NSS is an intelligence agency whose function is the protection of national security (National Security Services (NSS) Act of 1997:Section 5(1)). A detailed description of the functions of NSS shows that:

Without prejudice to the generality of subsection (1) the service shall

- (a) Protect the state against threats of espionage, terrorism or sabotage which may infringe on national security; and
- (b) Protect the state from activities of agents of foreign powers and from actions of persons intended to overthrow or undermine democracy by political, industrial or violent means (Ibid.:Section 5 [2]).

National Security Services work hand in hand with other security agencies and share any information of interest with the relevant institutions for appropriate action.

3.3 Lesotho Correctional Services (LCS)

A strange observation during this chapter's research stage was the scarcity of documented information relating to the history of the Lesotho Correctional Services (LCS). This necessitated an interview with some of the senior officials to complement the few sources obtained. The following is a summary of the history of LCS. The summary is a combination of primary data obtained during the interviews, as well as secondary data obtained from a few documented sources.

The now LCS is part of colonial history and was then known as Prisons Service (Basutoland Prison Proclamation, 1957:1). Until 1957 the Prisons Service was a department of the police service. Interesting to note is that the recruits who were to become prison officers underwent the normal police training and would only be deployed to the prison service on the day of pass-out. Through the Basutoland Prison Proclamation, 1957, the prisons and other institutions for offenders and related matters came to be independently regulated (Ibid.). Together with other members of the country's armed forces, the prison's personnel came to be regulated through the Public Service Order. This remained the case until 1995, when the Public Service Order was repealed and replaced by the current Public Service Act that separated members of the armed forces from the public service in terms of Section 137 of the Lesotho Constitution. In 2004 Section 149 of the Constitution of Lesotho was amended to provide for the change of name from Lesotho Prisons Service to Lesotho Correctional Services (LCS) (Fifth Amendment to the Constitution Act, 2004). With this amendment also the head of the Lesotho Correctional Services (LCS) ceased to be called Director of Prison. It was now to be referred to as the Commissioner of Correctional Services (Ibid.).

3.4 Lesotho Defence Force (LDF)

Lesotho only came to establish an army in 1979 – 13 years after independence. Providing a brief background of the army in Lesotho, Mako (1998:17) writes that:

the Lesotho Mounted Police (LMP) performed a dual role, acting as a law enforcement organ and a military unit until 1979 when the Prime Minister at the time, Leabua Jonathan, forged the Lesotho Para-Military Force (LPMF) out of what was the LMP's riot squad, the Police Mobile Unit (PMU), in response to attacks by the South African-backed Lesotho Liberation Army (LLA) formed by the exiles of the Basutoland Congress Party (BCP).

The LPMF became the Royal Lesotho Defence Force (RLDF) after the overthrow of Jonathan in January 1986. The inclusion of "Royal" in the name of the army symbolised the collaboration of the army and the monarchy in the few years of the military junta. The army was further renamed the Lesotho Defence Force (LDF) after returning to democratic rule following the 1993 elections.

The primary role of the Lesotho Defence Force (LDF) is to protect the territorial integrity and sovereignty of Lesotho and uphold the Constitution of Lesotho. The secondary roles include:

- Assistance in the preservation of life, health and property;
- Provision and maintenance of essential services;
- Upholding law and order in support of the police as directed by Government;
- Support to State Departments as directed by Government;
- Compliance with international obligations like peacekeeping support operations and regional military cooperation (Ministry of Defence and National Security, 2015; see also the LDF Act 1996).

4 Emergence of party coalitions in Lesotho politics

Party coalitions normally occur when different political parties join together to form a government. This mostly happens when there is no single party with enough seats, as stipulated by constitutions, to form a government. The rationale for the formation of party coalitions can, according to Kadima (2006:5), be understood in terms of office-driven and policy-oriented theories. On the one hand, the “office-driven theories are based on the assumption that the main goal of the political parties is to access power. On the other hand, the assumption on which the policy-oriented theories are based is that party coalitions are justified by policy goals” (Kadima, 2006:5-6).

The emergence of party coalitions in Lesotho is quite a recent phenomenon that came into place in 2007. The 2007 coalitions were, however, different from those that followed in that the former were pre-election in nature while the latter were formed after the announcement of election results. Both sets, however, fitted the classification of the office-driven theories of coalition formation as given by Kadima (2006) above. In an effort to increase their chances of winning the February 2007 polls the two largest contenders, the Lesotho Congress for Democracy (LCD) and the All Basotho Convention (ABC), formed electoral alliances with the smaller National Independent Party (NIP) and Lesotho Workers Party (LWP) respectively. The alliances were designed to allow the bigger partners access to the Proportional Representation (PR) compensatory seats that, in terms of the Mixed Member Proportional (MMP), are rarely available to parties that win constituencies (Letsie, 2013:77). Eventually, the coalition helped the LCD/NIP coalition to win 82 seats and subsequently the state power in the country’s 120-member National Assembly.

4.1 May 2012 elections

Post-election coalitions came to be seen in Lesotho for the first time following the results of the May 2012 elections. For the first time in its electoral history, Lesotho had produced a hung parliament where no single party had garnered the minimum 61 seats – as stipulated by the country’s Constitution – to form a government. The two largest contenders, the Democratic Congress (DC) and ABC, had won 48 and 30 seats, respectively (IEC, 2012). The ABC successfully persuaded the LCD – with 26 seats, and the Basotho National Party – with five seats – to join it in a three-party coalition government with a total of 61 seats. Considering the earlier relations between the ABC and LCD leaders, this has frequently been referred to as an “uneasy coalition” (Vhumbunu, 2015:6).

4.2 February 2015 snap elections

The February 2015 snap elections gave birth to the second coalition government in Lesotho. The elections came two years earlier than scheduled in accordance with the national Constitution. The elections were a result of the premature dissolution of the

Eighth Parliament. The early dissolution resulted from the falling-out between the three-parties' leaders that formed a coalition government after the May 2012 elections. The main issue leading to the collapse of the three-party government was Deputy Prime Minister Mothejoa Metsing's accusation that Prime Minister Thabane was running the tripartite coalition like a "one-man show" and making crucial decisions without consulting other partners (Letsie, 2015:88). As will be seen later in the chapter, some of the alleged unilateral decisions concerned the security sector and contributed to the security crisis that this chapter is about.

Twenty-three political parties contested the February 2015 elections (IEC, 2015). The results saw 105 out of 120 seats distributed between three parties, the DC, ABC, and LCD, at the rate of 47, 46 and 12, respectively (Ibid.). Since none of the two largest scorers could form a government on its own, there began horse-trading for the formation of yet another coalition government. Subsequently the new government resulted from a seven-party coalition consisting of "DC [47 seats], LCD [12 seats], Popular Front for Democracy (PFD) [2 seats], Marematlou Freedom Party (MFP) [1 seat], Lesotho People's Congress (LPC) [1 seat], Basutoland Congress Party (BCP) [1 seat], and the National Independent Party (NIP) [1 seat]" (IEC, 2015). Thus the total number of the coalition seats became 65, enough to form a government. The new government was to be led by Pakalitha Mosisili of DC with Mothejoa Metsing of the LCD as his deputy.

4.3 June 2017 elections

The seven-party coalition government did not last long, and the new elections held in June 2017 gave birth to yet another coalition government. When final results were announced it emerged that the ABC and DC had once again dominated with 48 and 30 seats, respectively (IEC, 2017). Even the ABC, with its highest score, had not met the constitutional requirement for forming a government, hence a need for the two parties to seek coalition partners. On 6 June, the ABC announced that it would form a coalition government with the newly-formed Alliance of Democrats (AD), BNP and Reformed Congress of Lesotho (RCL). ABC's Tom Thabane was to be a prime minister while Monyane Moleleki of AD was to be his deputy (EISA, 2017). Together the four political parties had 63 seats in the National Assembly, two more than the 61 required to form a government. Later, two members of parliament defected from DC to AD and increased the ruling coalition seats in the process.

4.4 Coalition government without elections

Like those that came before it, the four-party coalition government did not last and finally collapsed due to the fallout between the two largest parties – ABC and AD – and internal instability within the ABC. In April 2020, the ABC and DC national executive committees announced a coalition that would see the DC replace AD as the second-largest party in

government. Combined, the two parties had 80 seats in parliament, far more than the 61 needed as the minimum for government formation. Despite their large number of seats, both parties roped in their smaller allies, giving the coalition an unassailable advantage. Under the new coalition, former Finance Minister Moeketsi Majoro replaced Thabane as the new Prime Minister. Thabane's ouster was a result of the factional fighting within his party as well as a condition by the DC for the establishment of the new coalition.

In this new arrangement, DC leader Mathibeli Mokhothi was to be Deputy Prime Minister. Notable about this shift is that it happened without the need for fresh elections after the parliament voted to strip an incumbent prime minister's power to advise the King to call elections in the event of a loss of a vote of no-confidence. Had it not been for this constitutional amendment, Thabane would have probably resorted to the dissolution of parliament considering the unceremonious way through which he was ousted from power.

5 Lesotho's security crisis: Historical overview

To fully appreciate the danger of having a security crisis, one must understand the functions of the state, to which security is integral. This is captured below:

The essence of the state is the promotion of good life and the creation of political conditions that would enhance the welfare of the citizenry. The state cannot perform the first primary purpose of the state unless maintenance of law and order is achieved. Therefore, internal security is quite an important aspect of national security/development. It was for lack of security that the Hobesian state of nature rendered life brutish, nasty and short (Egbefo & Audu, 2014:179).

The above explanation will be vital in appreciating how a lack of stability in the security sector can hinder the efficient functioning of any state.

Noteworthy about this section is that most of the discussions revolve around the LDF while other security agencies appear sporadically. The LDF has been part of the security crisis since its establishment, while other agencies only came to be involved in recent years. Therefore, the dominance of the LDF in this paper should not be interpreted as a lack of relevance for the other security bodies. The chapter takes a brief overview of the series of events of the security crisis in which security agencies' members got involved. A timeline is drawn from 1993, when Lesotho returned to democracy after 23 years of authoritarian rules until the current year, 2021.

5.1 Security crisis in the new democratic dispensation

Despite the Lesotho Defence Force (LDF) relinquishing power to the civilian rulers in 1993, the security crisis posed by the army's interference in politics was not dead and buried. After the country's return to civilian rule, the army engaged in various acts, some of which

undermined the democratically elected government of the Basutoland Congress Party (BCP). In January 1994, there was a serious security crisis when the country experienced a fifteen-day armed confrontation between two LDF factions. Five soldiers lost their lives in this confrontation (Makoa, 1998:16).

Following a 100% pay rise to the members of parliament LDF members demanded an equal pay hike (Mothibe, 2017:65). The demand did not get overall support in the army and resulted in two factions within the LDF members who ultimately engaged in fierce exchanges of mortar and gunfire. It is easy to infer that the BCP government had used patronage to divide the army. Read in part, the report compiled by Presidents Mugabe and Masire on this crisis shows that the Commander of the Royal Lesotho Defence Force (LDF) “felt that certain Cabinet Ministers had contributed to the current crisis by trying to solicit support from the army” (Mugabe & Masire, 1994:11).

According to Barry (1994), the larger LDF group appeared to owe their allegiance to the opposition Basotho National Party. While the main source seemed to be the demand for the pay rise, some diplomats said the wage demands were a smokescreen for a political power struggle that held the threat of a coup d'état (Ibid.). Matlosa and Pule (2002:52, cited in Mothibe, 2017:63) corroborate this and observe that: “the faction fighting was also about the disagreement within the armed forces as to whether to accept or undermine the authority of the BCP” (see also Pherudi, 2018:120). The warring factions finally agreed to a cease-fire following international mediation. In response, the BCP government awarded the LDF a pay rise of 66% and improved allowances (Mothibe, 2017:65).

In April 1994, a group of soldiers took hostage four government ministers – including Mosisili, who was later to become a long time prime minister – and in one of the skirmishes, the Deputy Prime Minister, Selometsi Baholo was killed. Later in August 1994, the soldiers guarding the Royal Palace reacted heavy-handedly to a demonstration of the BCP sympathisers who had marched to the palace to air their disapproval of King Letsie III's dissolution of the BCP government. The soldiers opened fire on the demonstrators and killed three people in the process (Sejanamane, 1996:66).

Enticed by the LDF fortunes, the Lesotho Mounted Police went on a strike for three weeks in May 1994 demanding a 60% pay increase and, in the process, abducted the acting Minister of Finance. Below is a summary of the reaction of the BCP government to the police strike and its implications.

As the country seemed set to slide into chaos, the government ordered the LDF to quell the mutiny and to arrest all the mutineers. The LDF did as ordered: they stormed the Police Headquarters and Maseru Central Police Station and disarmed all the RLMP members who

were occupying the buildings, barring the two supposed ringleaders, Second Lieutenant Molise and Sergeant Makateng who fled to South Africa. The LDF ended the mutiny, killing two policemen (Makoa, 2010:15).

Later, the government caved in and awarded the LMP a pay rise of 42% and improved allowances (Makoa 1997, cited in Mothibe, 2017:65).

Back to the BCP government/LDF relations, the crisis emanating from the two institutions can be explained mainly in terms of ensuring self-preservation and protection of self-interests by the latter. The protection of institutional interest (financial) can also be used to explain the police strike. When it came to power following its landslide win in 1993 elections, the BCP demonstrated a hostile attitude to the army it perceived as an instrument of its rival and predecessor in government, BNP. This attitude existed despite the fact that the same army had earlier overthrown the BNP and later orchestrated the efforts of bringing the BCP exiles home before the 1993 elections. Senior BCP figures, including Prime Minister Ntsu Mokhehle consistently made anti-army statements, with Mokhehle saying among the five enemies of democracy in Lesotho was the army (Mothibe, 1999:48). The attitude of the BCP government towards the army created an atmosphere filled with suspicions. The “dominant suspicion was that the army was going to be disbanded and replaced by the Lesotho Liberation Army (LLA) at worst or be neutralised at best” (Ibid.:49).

The lack of support of the incumbent civilian government by the army once again became evident during the political crisis that followed the highly disputed 1998 elections. As the opposition alliance challenging Lesotho Congress for Democracy (LCD)’s electoral victory staged protests outside the Royal Palace urging King Letsie III to dissolve the LCD government, the army did very little to help the police bring the situation under control. LCD was a breakaway party from the BCP and was formed by the very members who displayed hostility towards the LDF, including Mokhehle himself. Army’s failure to assist the police is noted by Mothibe (1999:57) when he writes that:

during the unfolding of this political saga, members of the military were visible in and around Maseru presumably with the purpose of keeping law and order. As things turned violent as a result of forced stay-aways and clashes between the protesters and supporters of the government, members of the military hardly ever intervened.

The army’s sympathy for the protestors against the LCD government was not only limited to failure to assist the police to disperse them. In some instances, the army obstructed the police’s efforts to disperse what had now become illegal protests and gatherings. In one of such cases on the 3rd September (1998), when the police attempted to disperse the opposition members camped at the Palace gates, automatic gunfire was exchanged with members of the LDF on duty at the Palace (Ibid., 1999:59). This clearly signalled an inter-agency security crisis. The protestors were finally dispersed when the South African

National Defence Force (SANDF) entered Lesotho on the dawn of the 22nd September to “prevent anarchy and restore order” (Vhumbunu, 2015:5). The very first casualties of the SANDF intervention were the 16 LDF members guarding the Lesotho Highlands Water Development Authority’s (LHWDA) Katse Dam (Makoa, 1999:84). Further chaos and destruction that followed this military intervention is well documented in Lesotho’s political literature. Without a doubt the events of 1998 reflected the greatest security crisis in Lesotho’s history.

As briefly highlighted above, incidents of security crisis discussed above can mostly be explained in terms of institutional interests. Through their demands, the soldiers and police officers were fighting for financial gains. But most importantly, the LDF was fighting for a continued survival amid the threat posed by the hostile governments of BCP and its successor, LCD. The hostility between the BCP government and the army derived from the latter’s politicisation during the BNP rule. Matlosa and Pule (2001:65) take note of this fact when they write that: “as an institution of state, the Lesotho military has always been marred by controversy and steeped in intrigue. Its controversy spans from its politicisation and use by incumbent leaders as an instrument not only to ward off external threat, but also to emasculate internal opposition”. The internal opposition, in this case, being the BCP itself.

5.2 Security crisis in the era of political party coalitions

As noted earlier in this chapter, the first decade of the 21st century saw the end of Lesotho’s single-party rule. However, this shift did not bring any positive results as far as the security situation was concerned. Lesotho continued to go from one security crisis to another. The persistent security crisis mainly derived from the security agencies’ continued politicisation, as partly discussed in the previous paragraph. To reiterate, much as the effects of this politicisation contributed to the security crisis after 2012, the actual politicisation gained momentum earlier. Therefore, it is befitting to discuss how this phenomenon manifested before we see its contribution to the political crisis in the current era of political party coalitions.

5.2.1 Appointment of heads of security sector agencies by the Prime Minister

The politicisation of the state institutions that had started during the BNP era took a ‘turn for the worse’ when the parliament passed legislations that gave political control of the security sector institutions (’Nyane, 2017:94). With these legislations, the incumbent prime minister got the powers to appoint and remove heads of the security agencies from office. This marked a departure from the earlier practice where such appointments and removals were the Defence Commission’s responsibility as stipulated in the Constitution

of Lesotho. The Defence Commission consisted of (a) the Prime Minister as Chairman; (b) the Commander of the Defence Force; (c) the Commissioner of Police; (d) the Director of the National Security Service; (e) the Assistant Commissioner of Police; (f) the Deputy Director of the National Security Service; and (g) the Deputy Commander of the Defence Force” (Constitution of Lesotho, Section 145 [1]). In relation to the appointment or removal of the heads of the security agencies, or any member of the Commission other than the Prime Minister, Section 145[3] of the Constitution directed that the member concerned would not take part in the respective deliberations of the Defence Commission.

These Acts giving incumbent prime ministers extra powers include the Lesotho Defence Force Act, 1996; Police Service Act, 1998; National Security Act, 1998; Lesotho Correctional Services Act, 2016. Focusing specifically on the army and commenting on the impact of the new powers to prime ministers Nyane (2017:94) observes that: “the new regime of the civilian-military relations enhanced the civilian control of the army and forthrightly designated the Prime Minister as the commander-in-chief of the army”.

The exercise of powers of appointment and removal of heads of the security agencies (by the incumbent prime minister) has proved to be the main catalyst for the contemporary security crisis. All the heads of the security agencies who different prime ministers appointed have in one way or another, rightly or wrongly, been associated with various political parties, something highly detrimental to democratic rule. For instance, former LDF commanders Tlali Kamoli and Maaparankoe Mahao have been viewed by many people as associated with the DC/LCD and ABC, respectively. Both were appointed under somewhat controversial circumstances. On the one hand, Kamoli was appointed and promoted from the rank of Major General to Lieutenant-General by DC leader Mosisili in 2012, just three months before the national elections. The political strangeness of this appointment is that Mosisili’s LCD was perfectly aware that an election was looming; the appointment should have, at least, waited until a new government was installed after elections (Matlosa, 2017:142).

On the other hand, Mahao was hurriedly appointed and promoted from Brigadier to Lieutenant-General by Thabane of the ABC in August 2014. This followed the firing of Kamoli, whose relations with Thabane had soured. Explaining the interplay of party politics in the appointments of the army commanders, Southhall (2017:3) writes that:

Mosisili had sought to shore up his increasingly fragile political position through the support of the army. Thabane had sought to counter this by replacing Mosisili’s appointment of Lieutenant-General Tlali Kamoli as Commander by Lieutenant-General Maaparankoe Mahao.

Upon returning to office following the 2015 elections, Mosisili terminated Mahao’s appointment as the Commander of LDF and demoted him to Brigadier. He then re-appointed Kamoli, Commander of the LDF and backdated his appointment to the day

he was dismissed. According to Pherudi (2018:123), Mosisili's re-appointment of Kamoli intensified a CMR regime characterised by the politicisation of the military and the militarisation of politics.

Similarly, Lesotho Mounted Police Services (LMPS) former and current commissioners have also been seen to be affiliated to certain political parties. Former Commissioner Khothatso Tsooana was always seen as being the "ABC commissioner" after being appointed by Thabane in 2012. Tsooana was fired by Mosisili upon the latter's return to government in 2015. He was replaced by Molahlehi Letsoepa who, like all his predecessors, carried a political tag as he was perceived as a DC man. Similarly, the incumbent Commissioner, Holomo Molibeli, has also been labelled an ABC man. Thabane also appointed him upon return to State House in 2017.

National Security Services have also not been spared this controversy. Opposition parties have, on a number of occasions, complained about its incumbent Director Pheello Ralenkoane's suitability for the post arguing he is an active member of the BNP (*The Post*, 2021). The party has since 2012 been a reliable coalition partner of ABC. Ralenkoane was appointed for the first time by Thabane in July 2017, and his contract was renewed for a further three years in January 2021. His predecessor Tumo Lekhooa – an army colonel – had been appointed by Mosisili and seconded from the army to the NSS in what many saw as Mosisili's attempt to have complete control over the security establishments. Lekhooa was a close ally of LDF's Kamoli.

The Lesotho Correctional Services (LCS) has seen a similar trend of politically motivated appointments and removals. Former Commissioner 'Matefo Makhalemele, who was seen as pro-LCD, was in June 2017 fired by Thabane when the LCD and its 2015 government coalition partners made way for the new ABC-led coalition government. Thabang Mothepu replaced her under circumstances that could only be described as odd and controversial. Mothepu "was not the most senior officer. He leapfrogged two ranks into commissioner's office; ...was on special leave (a punishment) for the alleged release of some prisoners" (*The Post*, 2020). Mothepu was highly associated with the leader of the Alliance of Democrats (AD), Monyane Moleleki. The two originate from Machache. AD was the second-largest party in the new coalition government. Mothepu has since been fired a few weeks after DC replaced the AD in yet another ABC-led coalition government.

5.2.2 Politically motivated recruitment spreads to the lower ranks

With party politics having influence in the heads of the security forces' appointment, there was no doubt the same influence would trickle down to the lower echelons. Politically motivated recruitment of security personnel eventually trickled to the lower divisions of the agencies. In recent years there have been reports of corruption where recruitment into

the security agencies is based on political party affiliations. This points to a recipe for a disaster as security personnel need to be politically impartial. The following are just three examples of such numerous cases of corruption. Upon breaking away from DC and forming his party in 2017, AD leader Moleleki admitted to having been part of the corrupt act of enlisting 250 police recruits from the seven parties (in the DC-led coalition government) for employment into the police service. He pleaded:

I am one of the people within government that made 22 000 young men and women of this country to wait for long hours in the sun with hope they would get jobs when we knew we already had our people listed somewhere for the police jobs.... but, we together with Ntate Mosisili had already divided the vacancies among ourselves to say DC was going to get 181, LCD 45, and so on ... (Ntsukunyane, 2017).

Moleleki further stated that there were 100 vacancies at the Lesotho Correctional Services (LSC) and those too were divided among the parties in government (Ibid.). In 2018 77 officers hired during the Mosisili-led seven-party coalition government were dismissed from the NSS because their hiring was “irregular” (Tefo, 2018). Opposition parties are crying foul that the current group of police recruits have been enlisted on the basis of their affiliation to the ABC. For instance, AD alleges that from the 25 recruits from Thaba-Tseka district, 19 are from Minister Senauoane’s Thaba-tseka number 74 constituency while the other six come from the district’s remaining four constituencies. Senauoane is the Minister of Police and ABC MP for Thaba-tseka number 74 Constituency.

6 Implications on the security situation

There is a chronicle of security instability incidents that are directly linked to the competition over the security agencies by political parties, particularly those who have at one time or another been in coalition governments. Thus, the use of security agencies in Lesotho goes beyond what Thomas and Mazrui (1992:160) have called the repression of the “enemy within”. In this context, the state controls the security agencies and uses them to repress other institutions it competes with. On the contrary, in the Lesotho context, the state itself is divided between various coalescing parties that all compete over security agencies that they use to repress one another. Thus the enemy is not only within the country but within the government itself. The following examples illustrate this point.

When cracks began to widen between the post-2012 election’s coalition government partners ABC and LCD, Prime Minister Thabane used his constitutional powers in October 2014 and dismissed Selibe Mochoboroane of LCD from his position as the Minister of Communications, Science and Technology. Mochoboroane’s leader Mothejoa Metsing rejected the dismissal on the grounds that he was not consulted. Enjoying the support of his leader, Mochoboroane refused to vacate his office. Under normal circumstances, the army

was supposed to have withdrawn Mochoboroane's security personnel immediately after his dismissal was announced. However, this was not the case as its Commander Kamoli had fallen out of favour with Thabane and was enjoying a cordial relationship with Metsing.

With the army on his side, Mochoboroane defied Thabane and the latter remained helpless. Thabane's conundrum can also be explained in terms of the ministerial allocations in his cabinet. The Minister of Defence was Metsing's deputy in the LCD Tseliso Mokhosi. The hostility between Thabane and LCD leadership implied that despite him being "commander-in-chief" (Nyane, 2017:94) Thabane competed for the control of the army with Mokhosi. Section 12 of the Defence Force Act of 1996 rendered the Commander of the army answerable to the minister on all matters under his charge in the day-to-day discharge of his duties (Ibid.:95).

The show-down between Prime Minister Thabane and Kamoli reached a climax when on 29 August 2014 Kamoli was fired by the King through the Legal Notice No. 64 of 2014, on the advice of the Prime Minister as the Lesotho Constitution stipulates. With the same legal notice, Brigadier Maaparankoe Mahao was promoted to the rank of Lieutenant-General and appointed the new Commander of the LDF. However, Kamoli resisted dismissal and forcefully remained in office. Despite his appointment, Mahao never physically occupied the office. Mosisili and Metsing publicly denounced the dismissal of Kamoli and "supported his unconstitutional refusal to leave office" (Sejanamene, 2016:1). Noteworthy about the duo's denouncement of Kamoli's dismissal is that Metsing was part of the government, yet he publicly denounced his leader's action. The undue support of Kamoli by Mosisili and Metsing gave credence to Pherudi's (2018:123) assertion that in Lesotho, "the politicians and army officers supported and protected each other to entrench their stay in power".

Deputy Prime Minister Metsing's support for Kamoli's unconstitutional act was a clear ingredient of further conflict in the already divided army. One faction, including the Special Forces and Military Intelligence, supported Kamoli, and another in support of Mahao (Matlosa, 2017:148). Refusal by Kamoli to leave office had implications beyond the security crisis. Kamoli had effectively defied a civilian order, which is one of the cardinal principles of the civilian-military relations in a democratic setting marked by constitutionalism and the rule of law (Matlosa, 2017:144).

On 30 August 2014, the army stormed Prime Minister Thabane's official residence in what many local commentators and the international community almost unanimously labelled an attempted coup. Numerous international organisations and the international community expressed concern and distaste over this coup. Notable among them were the United States of America, the United Nations and the Commonwealth that all called for the respect of the rule of law and upholding of democracy (Vhumbunu, 2015:7). However, on the night of the State House's attack, the soldiers found that Thabane had been tipped off of their plans

beforehand and had subsequently fled to South Africa. Thabane came back to Lesotho days later under the guard of the South African security personnel and remained under their guard – against his country’s armed forces – until he vacated office following the 2015 snap elections. This was not only absurd but also a mockery of the very premiership of Thabane.

On the same night of the State House attacks, the army launched a midnight operation on three main police stations in the capital Maseru. The army and the police were politicised, and the factions had emerged, with Thabane backed by the police and his rival Metsing having the support of the army (Vhumbunu, 2015:3). The army operations on the police stations resulted in a shootout between the army and police and left one police officer dead and several injured. The army claimed their raiding of the police stations was meant “to confiscate firearms the police were about to give to ABC youths, which (sic) go by the name Under The Tree Army” (Mohloboli, 2014). This marked a clear link of the security crisis to political parties in the coalition government. The link is also marked by Former LMPS Commissioner Khotatso Tsooana’s allegation that members of the LDF who raided three Maseru police stations were looking for the dockets relating to the corruption trial of the then Deputy Prime Mothejoa Metsing (Mohloboli, 2014).

Metsing’s address to his supporters after the announcement of the 2017 elections result also gave credence to the claims of a dangerous relationship between the army and the LCD. He claimed they had to protect the members of the army from Thabane’s arrest. He told his followers they had ‘been in government because of the soldiers who had put their “necks on the block” for them. The events of 30 August 2014 were followed by a litany of confrontations between the army and the police. Apart from the State House and the police stations, the army attacked the home of the newly-appointed Commander Lieutenant-General Mahao. Although Mahao survived what was clearly an assassination attempt, considerable damage was done to his property by army’s bullets.

As seen in previous sections, Mosisili reinstated Kamoli as LDF Commander upon returning to power in 2015. Thabane, together with his partners in the previous coalition government, namely Maseribane (BNP) and Rant’so (RCL), subsequently fled the country fearing for their lives because they believed Kamoli would be vengeful for his earlier dismissal. This goes to reflect the deep intertwine between party politics and the conflict within the security sector. With the coming back of Kamoli, Mahao’s August 2014 survival proved to be temporary as his subordinates finally assassinated him on 25 June 2015. The LDF claimed the intention was to arrest him for his alleged involvement in a mutiny plot within the army (SADC Commission of Inquiry into the circumstances surrounding the death of Brigadier Maaparankoe in Mahao, 2015:6). It is well documented how Mahao’s assassination attracted reaction from the international community, particularly SADC.

In yet another occasion that marked its seemingly endless intervention in Lesotho SADC established a Commission of inquiry whose mandate was to investigate the circumstances surrounding the assassination of Brigadier (sic) Mahao. Among others, this Commission found that Lesotho's security sector was heavily politicised with LMPS being largely ABC supporters while the army leadership was also heavily active in politics with Kamoli having participated in meetings at Mosisili's residence in Roma (SADC Commission of Inquiry into the circumstances surrounding the death of Brigadier Maaparankoe in Mahao, 2015:Section 126). Similar observations pertaining to the politicisation of the security agencies had previously been made by various commissions and missions. For instance, earlier in 2015, the AU Election Observation Mission, headed by former Kenyan prime minister Raila Odinga, noted that: "the two security agencies [the Lesotho army and the police] are reported to be politicised and were caught up in tensions between coalition government partners" (Vhumbunu, 2015:10)

Despite Mosisili's resistance, Kamoli was ultimately fired in 2017 following pressure from the international community. He was replaced by Lieutenant-General Khoantle Motsomotso, who also came to be cold-bloodedly killed by the pro-Kamoli faction of the LDF. Ironically, his assailants, Colonel Tefo Hashatsi of the Special Forces and Brigadier Bulane Sechele, who led the operation in which Mahao was killed, were also killed shortly after murdering Motsomotso. The duo accused Motsomotso of "selling them out" by agreeing to hand the army suspects to the police. Lieutenant-General Motsomotso's murder once again exposed Lesotho to external supervision when SADC deployed a standby force to "quell any possible coup attempt by disgruntled soldiers and provide security during the implementation of SADC-mandated multi-sectoral reforms which encompass the military" (Staff Reporters, 2017).

In a manner that showed the seriousness of the hostility between the army and the police, Kamoli had, during his last days in office, consistently refused to hand soldiers suspected of criminal acts to the police as is the normal practice. Interestingly, once out of office, Kamoli himself complied with the summoning and handed himself over to the same police he earlier refused to hand suspects over to. He was subsequently arrested and had a litany of cases opened against him. He remains in custody, awaiting the finalisation of his cases. Kamoli faces a treason charge in connection with 30 August 2014 coup attempt against the first government of Thabane. Notable about this case is that two former LCD leaders, Metsing and Mochoboroane, are tried alongside Kamoli and other soldiers. This also shows the dangerous level at which the politicians had infiltrated the security agencies, especially the army.

The international community's intervention appears to have paid some dividends as there is currently relative stability and a sense of professionalism in the army. However, the entrenched politicisation is yet to be eradicated. In February 2021, the incumbent

Commander Lieutenant-General Mojalefa Letsoela warned the army parade “the army command will not hesitate to discipline errant soldiers who dabble in politics and undermine civilian authority” (Kabi, 2021:5). There remain sporadic incidents of instability in other security agencies, particularly police. These are, however, not that serious and do not pose as serious a crisis as those within the army. There is some hope that the on-going multi-sectoral reforms, including security reforms, will find a lasting solution and end the detrimental security crisis that has been synonymous with the country’s history.

7 Conclusion

This chapter has discussed the security agencies’ involvement in the incidents of instability that translated into a security crisis in Lesotho. The discussions have covered the period starting from 1993 when Lesotho returned to a democratic rule, to February 2021. The focus has been on the four components of the security sector: the Lesotho Mounted Police, Lesotho Defence Force (LDF), National Security Services, and the Lesotho Correctional Services (LCS). While all the security agencies have got involved in the crisis at one point, the army appears consistently at the centre of the crisis. The main explanation for the security agencies’ unenviable involvement in the security crisis is the politicisation of these agencies. While the security agencies’ politicisation started during the BNP era, it worsened in the post-1993 era when parliament passed legislation that gave control of the security agencies to incumbent prime ministers.

The persistent security crisis in Lesotho has manifested itself in inter-agency and intra-agency confrontations, sometimes armed, and between the security agencies and incumbent civilian governments. From time to time, the resultant crisis attracted the attention of the international community, particularly SADC, and ultimately rendered Lesotho the “bad boy” of this organisation as Lesotho is usually a prominent conflict agenda item at SADC summits and extraordinary summits. Contrary to the conventional role of the armed forces, protecting their states, the Lesotho army has at various times had confrontation with the very government it is meant to protect. In the immediate post-1993 era, the IDF’s confrontation with the government was an attempt to protect institutional interests, particularly self-preservation. The army’s survival was threatened by the hostile BCP government that harboured ambitions to dissolve the army, or at least neutralise it by incorporating members of its erstwhile military wing into the army. The BCP had always viewed the LDF as the “BNP army” as opposed to the state army.

The passing of the legislation that gave the incumbent prime ministers powers to appoint and dismiss heads of the security agencies allowed for the politicisation of other security agencies. The emergence of coalition governments starting from 2012 somehow changed the nature of the security crisis. While inter- and intra-agencies confrontations remain

almost the same, the confrontation between the security agencies and the civilian rulers took another turn. This is mainly because what appeared to be a threat of dissolution or at least neutralisation of the army by the BCP and LCD administrations, no longer exists. The parties in coalition governments compete over the security agencies and render them part of their conflicts. As a result, the security agencies are at one point or another in bed with certain parties in government, or those that have earlier been. In the process, they have confrontations with the rival parties. With the new developments, security agencies cease to be used to suppress the “enemy within” the country (opposition parties) – as is the case in most African countries – but now suppress the enemy “within” the government itself. The country remains hopeful that the on-going multi-sectoral reforms will dawn a new era and solve the persistent security crisis.

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PART 4
PUBLIC PARTICIPATION,
ECONOMIC IMPACT,
GENDER DYNAMICS AND
COMPARATIVE PERSPECTIVES



PUBLIC PARTICIPATION EXERCISE IN LESOTHO'S PARLIAMENTARY REFORM PROCESS: OF WHAT VALUE? 13

Motlamelle A Kapa

1 Introduction

In the context of fragile coalition governments, political and security crises after the 2012 parliamentary elections, Lesotho political elites started, under the facilitation of the Southern African Development Community (SADC), inclusive and comprehensive institutional reforms to achieve stability, peace, and national reconciliation. When the reform process commenced in 2019, the citizens of Lesotho arguably expected not only to have the opportunity to make inputs into the process but also to have those inputs shape the outcome of the reform process. The reforms cover seven thematic areas, but this chapter focuses on parliamentary reforms. A victim of three dissolutions within one five-year term (2012-2017), the Lesotho parliament has been a highly unstable and fragile institution. Each move to dissolve parliament resulted in a snap election within six years organised at the huge financial cost (estimated at around M728 792 880 or USD45 549 555) that the country could have utilised to provide crucial public services (Matlosa, in this volume:150).

Drawing insights from the reports emanating from comprehensive and inclusive public participation processes and interviews with three informants who were close the process, I reflect on the public participation process in parliamentary reforms, questioning the value of public inputs in shaping ultimate decisions adopted in the final policy document, styled *Plenary II Report, 2019*. I argue that the political elites turned the public participation initiative into a window-dressing exercise, serving to confer some modicum of legitimacy to what, in effect, was a self-serving project. Gathered under a final decision-making forum, the Plenary II, which they dominated both numerically and on issue-by-issue deliberations,

political elites hijacked the reform process by rejecting public inputs that directly threatened their parochial interests at the expense of those of the nation. The final product of the reform process ultimately reflects more the interests of the political elites than those of the citizens, yet the latter were promised that their voices would be heard and given effect in the implementation of reforms (National Reforms Authority Act, 2019:sec(3)). The structure of the chapter is as follows: theoretical and conceptual issues; the context of Lesotho parliament; the reform process, structures, and their roles; interpretation of the decisions of Plenary II; and a conclusion.

2 Theoretical and conceptual issues: Popular participation in the public policy-making process

It is useful to highlight some theoretical and conceptual issues around popular participation, as I do below. The purpose is not to delve deep into issues of theory but just to provide a broad theoretical and conceptual framework for the chapter. The process and practice of public participation in public policy decision-making have their origins in participatory and deliberative democratic theories. Participatory democracy has its roots in the works of Rousseau, who believed that participation of each citizen in political decision-making is vitally important to the functioning of the state (Michels, 2010:479). The value of participation is that it gives citizens a say in policy decision-making processes; fosters the inclusion of individual citizens in policy processes; increases the legitimacy of decisions; and leads to rational decisions based on public reasoning (Michels, 2011:278). The rational decision-making function of participation takes us close to the deliberative democracy model. According to Florida (2013:3), deliberative democracy is characterised by “exchange of reasons and arguments involving all those who are affected by a public issue and have a say in it” and “its procedure is based on public debate and reciprocal reason-giving, and may aim to attain rational consensus or shared solution, or at producing better decision”. Procedurally, deliberative democracy approaches include “face-to-face large scale deliberations meetings or citizens’ juries – many of which seek to gain participation through some form of a representative sample of citizens, who then deliberate together to propose new – and arguably more reasoned solutions to public issues” (Goventa, 2004:18). For Bibbio (2019:41) participatory democracy opens avenues for collective decision-making and combines direct and representative democracy in which “citizens have the power to decide on the policy and politicians assume the role of implementation”. Florida (2013:6) makes a distinction between participatory and deliberative models of democracy and submits that the two should not be equated because the former is “founded on the direct action of citizens who exercise some power and decide issues affecting their lives” and the latter on “argumentative exchanges, reciprocal reason-giving, and on a public

debate which precedes decisions". After all, some forms and types of participation do have some deliberative dimensions or quality, but not all forms of participation are deliberative (Florida, 2013:3).

Rowe and Frewer (2005:255-256) operationalise the concept of participation and distinguish it from other related concepts of public communication and public consultation. Public communication only allows information from the sponsors to the public; consultation creates room for information flow from the public to the sponsors, while public participation allows a two-way process of information flow between the sponsors of participation (those commissioning the engagement initiative) and the public, some degree of dialogue involving representatives of both parties in different proportions. I adopt this conceptualisation in this chapter since it captures the spirit of the reforms process in Lesotho.

The Lesotho reforms process, including parliamentary reforms, is based on participation within the framework of participatory and deliberative democracy models. The key government document, which serves as a blueprint for the reforms process, *The Lesotho We Want: Dialogue and Reforms for National Transformation: Vision, Overview, and Roadmap* (u.d:8), captures the principles guiding the reform process, three of which are instructive in the context of this chapter. The first principle is *Ownership by all Basotho*: the reforms will only succeed if Basotho fully owns them through a consultative process. The second is *Inclusiveness and participation*: the reforms will involve the full diversity of Basotho without discrimination of political, social, or another status. All Basotho will have a voice through public input on the content of programmes and policies – either directly or through legitimate intermediate institutions that represent their interests. The third principle is *Dialogue and consensus-building*: the reform process will be guided by the Basotho culture of consultation and consensus-building and by established international standards of democratic participation. In the same spirit, the government of Lesotho "... affirms the participatory and consultative nature of the reforms" and regards this document as the government's "contribution to the consensus-building and dialogue process" (Government of Lesotho, u.d:4).

The reform agenda is premised on the participatory and deliberative models of democracy. The National Reforms Authority Act (2019), establishes the National Reforms Authority (NRA) as an institution mandated to deliver reforms. The objectives of the Act as provided for under section 3, include, for this chapter and in line with the spirit of participatory and deliberative democracy, "to safeguard the reforms process by ensuring that the citizens' voices are heard and given effect" and to "promote stakeholders' consensus on the reforms and long-term national stability, unity and reconciliation".

3 Lesotho parliament in the context

Lesotho adopted, at independence from Britain in 1966, a Westminster bicameral parliamentary system, with the 33 member-senate comprising 22 Principal Chiefs and 11 other members appointed by the King, the National Assembly currently with a total of 120 members, 80 of whom are elected based on the First-Past-The-Post system and the remaining 40 elected on the Proportional Representation (PR) variant of Lesotho's Mixed-Member Proportional (MMP) electoral model. While the size of the Senate has remained constant at 33, the National Assembly has grown from 60 in 1965 to the current 120 in line with the population growth and attempts by the political elite to accommodate parties that consistently failed to win constituency seats contested under the erstwhile FPTP electoral system (Makoa, 2018:187). These parties caused political instability marked by very violent protests post-1998 elections. The change was negotiated under a political structure, the Interim Political Authority (IPA), composed of all twelve political parties that had contested the 1998 parliamentary elections. The Interim Political Authority Act (1998:sec(6)) empowered the Authority to "review the electoral system to make it more democratic and representative of the people of Lesotho" and "recommend changes to existing laws, including the constitution [...]". The outcome of the IPA negotiations was the introduction of the current Mixed-Member-Proportional (MMP) electoral model to ensure parliamentary inclusivity, representation, and, in turn, political stability. Under the MMP system, the size of the National Assembly has increased to 120 seats; 80 constituency-based seats and the other 40 based on Proportional Representation (PR) (Fourth Amendment to the Constitution, 2001:sec (2)).

The MMP did promote parliamentary inclusivity when the elections were held in 2002 in which 10 out of 19 parties secured representation in the National Assembly, thus ending political instability, albeit temporarily. But Lesotho parliament has features that inhibit its effective functioning as an independent and separate entity from the other two branches of government: the executive and the judiciary. One key feature of Lesotho parliament, as is the case in Westminster parliamentary systems, has been the "fusion of legislative and executive powers" (Dragnich, et al. in Makoa, 2004:13) in that the majority parties in the House constitute the executive. In terms of The Constitution of Lesotho (1993:sec(4)), members of the cabinet must be appointed by the King, acting in accordance with the advice of the prime minister, from among the members of the National Assembly or from among the Senators. In this arrangement, there is "no real separation between the two when they engaged in parliamentary, as opposed to government, business" (Makoa, 2005:63). Another feature is the low calibre of parliamentarians due to the low level of educational qualifications. The Constitution of Lesotho (1993: sec(58)(2)(c)) provides, among others, that to qualify for membership of the National Assembly citizens of Lesotho should be able to read and write in either the Sesotho or English language well enough to take an active

part in the proceedings of the House. That is only as far as it goes regarding the level of education required for the members of parliament. Makoa (2004:18) finds that members of parliament and civil society representatives agree that only people with a “sufficiently high level” of educational qualifications should be elected to parliament for them “to comprehend, contextualise, analyse and formulate responses to the challenges facing the country”.

The members of parliament who have a low level of education and the huge size of parliament are issues forming part of the weaknesses that Basotho have highlighted during the consultative processes, as will be seen in this chapter. The absence of a higher educational requirement for eligibility for parliamentary seats also applies to the Senate. Other than the 22 Principal Chiefs, who become senators by virtue of their positions and not on any stated qualifications, the 11 appointees of the King are not required to have any stated qualifications. While the 1966 Constitution of Lesotho had provided that the appointment of the 11 senators other than the principal chiefs had to be based on their expertise, that requirement has been removed in the current 1993 Constitution (’Nyane, 2019:32). Consequently, this leaves the Senate to be used by prime ministers as “a means of extending patronage to their supporters and allies by bringing them into the Senate and others into the cabinet (Makoa, 2004:16-17). ’Nyane advocates for strengthening of the Senate through accommodating other marginalised groups in society such as women, the youth, and people with disability. By Lesotho’s current constitutional design, the Senate is subordinated to the National Assembly in the performance of its legislative functions. ’Nyane (2019:32) notes that the Constitution of Lesotho (1993) has removed a requirement that Lesotho Senate has only dilatory powers in relation to the National Assembly. That means it can only delay Bills emanating from the National Assembly but not change them in that even in cases where the Senate may propose amendments to the Bills, those proposals may be overturned by the National Assembly.

The above discussion provides a context for the Lesotho parliament as it exists. But it must be acknowledged that the features identified above persist and have been expressed by the citizens of Lesotho in the two-legged consultative reform process in the country and outside. Parliament had already made attempts to reform itself through its multi-party committee, comprising membership of the executive and backbenchers to oversee the reform process. The committee has revised parliamentary standing orders and expanded the committee system to include portfolio and cluster committees. However, nothing has been achieved to enhance the autonomy of parliament in that the envisaged parliamentary service commission has not yet been established (Government of Lesotho, u.d:10-11).

The advent of coalition politics and coalition governments, following 2012 elections, exposed further the weaknesses of parliament, and this necessitated the current reform efforts under a comprehensive programme, covering seven thematic areas: constitution;

parliament; public service; security; justice; economy; and the media. The overall vision of the comprehensive reform process, inclusive of all seven sectors, is “[to transform] 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” (Government of Lesotho, ud:7). The objectives of the parliamentary reforms are to (1) “take measures to enhance political stability including those to bring parliamentary practice into line with the MMP system particularly relating to the representation, political parties, and government formation); (2) to strengthen parliament by enhancing its autonomy and its ability to fulfil its legislative, monitoring, and oversight functions” (Government of Lesotho, ud:10).

4 Parliamentary reforms: Process, structures and their roles

The parliamentary reforms process and the overall reforms covering other thematic areas were to be pushed by some structures established by the National Reforms Dialogue Act (2018). The first of these structures were the National Leaders’ Forum (NLF) and the National Dialogue Planning Committee (NDPC), established for purposes of facilitating:

the national dialogue on the transformation of Lesotho into a just, prosperous, and stable society marked by effective institutions through promoting long-term national stability; unity, and reconciliation; creating professional and efficient institutions for effective management of public affairs, service delivery and development; building a national consensus and implementation of constitutional changes as needed; and promote stakeholder consensus on reforms and long-term national reconciliation (section 3).

More specifically, the NLF was established for purposes of forging political consensus on the reforms and national reconciliation; contributing to trust and confidence-building among political leaders; providing a forum where they could meet from time to time to promote reforms; facilitating national dialogue; bringing political leaders together to seek political-level consensus and common ground for broader national dialogue (see section 6). The NLF was composed of all 33 leaders of political parties registered with the Independent Electoral Commission (IEC); 33 women representing each of these parties; 18 members representing the National Assembly based on the principle of proportionality; seven members representing the Christian Council of Lesotho (CCL); four members representing the College of Chiefs; two members representing civil society organisations; two members representing the former and serving Speakers of the National Assembly; three members representing former and servicing Presidents of the Senate; and any other leader who participated in the NFL (see section 5). The total membership of the NLF was 103, out of which 84 or 81.55% were politicians.

The NDPC consisted of 18 members drawn from the ruling coalition of All Basotho Convention (ABC), Alliance of Democrats (AD), Basotho National Party (BNP), and Reformed Congress of Lesotho (RCL); opposition parties in parliament; opposition parties outside parliament; mother body of civil society organisations; academic; the youth; the media; persons living with disabilities; College of Chiefs; and the business sector. Out of these 18 members, political parties had eight members, constituting 53.33%. In terms of the National Reforms Dialogue Act (2018:sec (11) (1)), the functions of the NDPC were to:

- a) design and plan the national dialogue plenaries, including topics and themes, speakers and facilitators, and parallel thematic sessions;
- b) develop criteria for representation at the national dialogue and drawing of a list of participants;
- c) develop a true and impartial final report of the dialogue process and make it available to the public;
- d) sensitise and communicate dialogue plans to the public to ensure meaningful participation;
- e) provide technical support to the dialogue process;
- f) develop draft guidelines for district consultations to be endorsed in the National Dialogue Plenary I;
- g) oversee the district consultations in conjunction with the lead implementing partner and present them to the National Dialogue Plenary II; and
- h) perform any other functions necessary for the efficient and successful conduct of the national dialogue.

The NDPC was also empowered, under the National Reforms Dialogue Act (2018: sec (11) (2), to co-opt any person as may be necessary based on technical expertise or any other specific skill.

The other two structures were the National Dialogue Plenaries I and II, consisting of a representative sample of Basotho from top leaders to community representatives and included plenary and group discussions around different issues and sectors for reform. In this forum, critical issues affecting peace and causing instability were defined, discussed, and options for national reconciliation and a way to reforms were agreed upon. Outputs of Plenary I were a consensus on issues affecting peace and stability; how these could be addressed through reforms; and agreement on In-District consultation (Government of Lesotho, u.d:48).

The reforms process covered two phases, namely, In-District and diaspora consultations. These were conducted by credible civil society organisations in line with the format agreed in Plenary 1. Reports were submitted to the NDPC for consolidation to form an input into Plenary II. The output of these consultations were the proposals on pathways to national

healing, reconciliation, and discussion on issues affecting peace and stability and how these could be addressed through reforms. Plenary II was the last structure, which concluded the national dialogue process. It was to agree on the way forward regarding the reforms and make proposals for national reconciliation and its implementation (Government of Lesotho, u.d:49).

For purposes of implementing the decisions and resolutions made during Plenary II, the National Reforms Authority (NRA) was established through the National Reforms Authority Act, 2019, as a successor to the NDPC. The rationale for the establishment of the NRA was to safeguard the national reforms process by ensuring that citizens' voices are heard and given effect; promoting stakeholder consensus on the national reforms and long-term national stability, unity and reconciliation; providing effective and efficient management, coordination, oversight and strategic leadership in the national reforms process, and expediting the national transformation of Lesotho through independent, transparent and accountable structures of the law reform process in the implementation of the resolutions and decisions of Plenary II (National Reforms Authority Act, 2019:sec (3)). However, the NRA also suffers from the same weakness of domination by politicians.

Out of its 56 members drawn from different sections of the Basotho society, in keeping with the principles underpinning other structures above, 35 of them or 64.29%, are politicians (National Reforms Authority Act, 2019:sec(5)(1)). They dominate in all committees of the NRA, including the parliamentary reforms committee itself. It remains to be seen how all these committees will work and the kind of product they will produce. It is under the above processes and structures that the parliamentary reforms were conducted as part of the overall comprehensive reform covering the seven thematic areas. The citizens of Lesotho expressed their views as to what they considered as the key challenges confronting the nations in the seven areas, including for this chapter, their parliament.

The design of the national reforms process favoured politicians over other actors in Lesotho's politics. At the risk of repetition, it is worth citing the figures to stress the point. Politicians constituted 81.55%, 53.33%, and 64.29% in the NFL, NDPC, and NRA, respectively. This was a very serious blunder for the success of the reforms, and it is not clear why everyone, including the SADC facilitator, allowed this to happen.

5 The views of the citizens of Lesotho on the content of parliamentary reforms

The inclusive, participatory and deliberative nature of the parliamentary reforms process opened avenues for the citizens of Lesotho to make their inputs that would help define and shape the nature, composition, and size of a parliament they wanted under the coalition arrangements. These views were solicited through two phases of public consultations

highlighted above. These public views were consolidated by four experts (two domestic and two international) co-opted for that purpose by the NDPC. The original views of the citizens and the interventions of the experts on those views as well as those of the Plenary II are summarised in Table 13.1. Plenary II was tasked with concluding the entire process and agreeing on the way forward regarding the reform mechanisms, and making proposals for national reconciliation and its implementation (Government of Lesotho, u.d:49).

The NDPC was responsible for designing and planning the national dialogue plenaries, including topics and themes, speakers and facilitators, and parallel thematic sessions and developing criteria for representation at the national dialogue and drawing of a list of participants, in terms of the National Reforms Dialogue Act (2018:sec(11)(1)). However, the actual decision on who participated in which session out of the seven thematic areas of the reform process seems to have been left with individuals. Consequently, every participant joined the session of their choice. Three key issues have to be understood. One is who participated in the parliamentary reforms thematic area Plenary II sessions? What transpired in those sessions, leading to the final Plenary II Report, 2019? And what kind of decisions were made by the forum, and to what extent do those decisions reflect the inputs of the citizens? It is difficult to know who and in what numbers participated in the parliamentary reforms Plenary II sessions because there is no attendance list of participants. All the efforts to access such a list failed. To make sense of what took place in those sessions, I interviewed three informants who were close to the process. On the question of who participated in the sessions, three of them were unanimous that the sessions were attended by representatives of the youth organisations, civil society, and politicians (both in government and opposition and some members of the cabinet). The data below will assist in answering the last question above.

Informant 1 disclosed that under the NLF, politicians were reluctant to approve the report from the experts, arguing that: "the report did not reflect the views of the citizens". He also indicated that members of the NLF had not read the report before the meeting, although it was made available to them in advance, arguing that: "it was too bulky". For these reasons, the NLF meeting endorsed a suggestion from civil society representatives in the body to establish a sub-committee made up of representatives of civil society to "synthesise and simplify" the report for easy consumption by the NLF in its next meeting.

Thus, a three-person sub-committee of the NLF was set up. After interacting with the experts, who had authored the report, and agreeing on its contents, and synthesising and simplifying it, he continued, the sub-committee submitted a "synthesised and simplified" version of the report, along with the original experts' report before the NLF. The report was then approved for presentation in the Plenary II sessions. He further indicated that in Plenary II sessions, the representatives of the youth organisations, civil society, and politicians participated but the politicians dominated both in numbers and deliberations, which were very heated, leading to a prolonged session that ended after 11 pm. He further

showed that participants from the youth and civil society left before the sessions ended, leaving the politicians to make decisions. That is why, according to him, the final report has decisions like “retain the status quo” on issues that the citizens have suggested changes. Informant 2 agrees with his colleague that the politicians were a dominant force in the sessions and bitterly objected to the reform proposals from the citizens, especially on those issues affecting politicians directly. He revealed that the departure by some representatives of the youth and civil society organisations made it easy for the politicians to reject some of the inputs of the citizens (Interview with the Informant 2, 2021). Informant 3 concurred with informants 1 and 2 on the numerical preponderance of politicians in the sessions and the delayed closure of the last session, and the final decisions that “a status quo” must be retained on key issues (interview with Informant 3, 2021). In the end, the politicians got their way over the preferences of the citizens, as reflected by asterisks in Table 13.1 below.

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
<p>*1. Parliamentary floor crossing is not regulated and it results in instability, early elections hence an abuse of public funds, and shortening of the parliamentary term. MPs do not consult their constituencies before crossing the floor.</p>	<p>(i) Floor -crossing should be provided for in the Standing Orders in accordance with the Constitution (as may be amended). (ii) Floor-crossing should be provided for in the Constitution and regulated by an act of parliament. (iii) MPs must resign their seats if they want to cross the floor and by-elections held in their constituencies</p>	<p>(i) National Assembly Electoral Act, 2011 should be amended to regulate floor crossing to ensure stable government. (ii) MPS who want to cross the floor should resign and by-elections called in their constituencies because 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.</p>	<p>(i) Allow floor-crossing after 3 years in the life of parliament.</p>

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
2. Benefits of ministers and MPs 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	(i) Interest-free loans for ministers, MPs, and other authorities should be abolished forthwith. (ii) 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) should be amended. (ii) Loans must be charged interest and paid back by their beneficiaries	(i) Abolish interest-free loans
3. Lack of self-representation of persons with disabilities makes them face socio-economic and political exclusion.	(i) There should be self-representation of persons with disabilities (male and female) in both Houses of Parliament.	(i) National Assembly Electoral Act, 2011 should be amended to make it mandatory for political parties to include persons with disabilities on their PR lists (ii) Among the nominated Senators, at least one should be from the people living with disabilities.	(i) Provide for a special seat for People with disabilities in parliament
4. Children's Parliament is not legislated, therefore there is no formal platform from whence their issues can be addressed.	(i) Legislate for recognition of the Children's Parliament	(i) It is not a general practice in the world to legislate for children or youth Parliament. In recognising the need for the youth to have their voices heard, Youth Parliaments are organised by national youth councils in collaboration with government ministries responsible for youth and usually meet at least once a year.	(i) Pursue Child Protection and Wellbeing Act amendment proposing Children's Parliament by law and pursue a policy that provided for Youth Council and other platforms like youth development legislation

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
<p>*5. Lesotho has too many political parties which add no real value to the country's democracy and there are a low threshold and poorly regulated lists for registration of political parties.</p>	<p>(i) 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. (ii) Abolish party funding.</p>	<p>(i) Existence of political parties should be provided for in the Constitution and Political Parties Act with appropriate regulatory mechanisms should be promulgated to address all these concerns. (ii) Abolishing party funding would disadvantage opposition parties. Party funding makes the electoral terrain fair in line with regional and global trends.</p>	<p>* (i) Enact a party registration law that governs the registration, ensures party compliance with set standards, and controls unhealthy proliferation but does not curtail democracy and freedom of association.</p>
<p>6. The MMP system allows candidates who would otherwise not be in parliament to get in for personal rather than the public good.</p>	<p>(i) The MMP System should be abolished in favour of the First-Past-The-Post (FPTP).</p>	<p>(i) The National Assembly Electoral Act, 2011 should be amended to provide for a predetermined 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. (ii) Returning to the FPTP system would take Lesotho back to the crisis, which led to the change of the FPTP system.</p>	<p>(i) Retain MMP with amendments on the threshold, two ballots, and submission of lists after elections in relation to performance.</p>

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
7. Parliamentary Practices and Procedures are outdated and need to be revisited and updated.	(i) Review and update Standing orders 29 and 65.	(i) Parliamentary Standing Order 29 and 65 should be revised.	(i) Revise standing orders.
8. There is a need to harmonise the relationship between the Senate and the National Assembly	(ii) 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 the parliament of Lesotho already operates separate and joined standing orders and joint committees.	
*9. MPs continue to be in parliament even when voters feel they no longer represent them properly.	(i) Create a mechanism for the recall of MPs.	(i) The practice in all parliamentary systems is that MPs are voted to serve the full term of parliament. It would be extremely cumbersome and disruptive to recall MPs before the end of the parliamentary term.	*Reject recall of MPs.
*10. The size of parliament is too large for a small country like Lesotho.	(i) The size of the National Assembly should be reduced from 120 to 80 members.	(i) The Fourth Amendment to the Constitution Act, 2001 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 constituency-based seats.	*Retain status quo.

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
*11. No provision as to the academic qualifications of the parliamentarians	(i) Section 58 (2) (c) of the Constitution should be amended to spell out minimum academic qualifications for members of parliament, as may be specified by an act of parliament from time to time. (ii) Candidates for parliamentary seats must have at least a Bachelor's degree qualification.	(i) Section 58 (2) (c) of the Constitution 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. (ii) It is recommended that MPs must have at least "O" level qualifications.	*Retain the status quo.
*12. Abuse of the bicameral nature of parliament allows for candidates who have been rejected by the voters to be appointed into the Senate without regard to any merit principle.	(i) Composition of the Senate should be left open for debate. (ii) Retain the two houses of parliament, but the Senate should accommodate experts and marginalised groups.	(ii) Section 55 of the Constitution should be amended to provide for nomination into the Senate, only people with special expertise to add value to the legislative processes. (ii) The current composition of the Senate should be retained as it is reflective of the nature of Basotho as a nation. (ii) Marginalised groups can be represented in the National Assembly through the PR component of the MMP system.	*(i) Retain the status quo.

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
*13. The composition of the Senate is not fully representative.	<ul style="list-style-type: none"> (i) The Senate should be abolished. (ii) Chiefs in Senate must be elected by the people and (ii) Principal Chiefs must be abolished. 	<ul style="list-style-type: none"> (i) No action is recommended because: In a constitutional monarchical context, of which Lesotho is part, the 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. (ii) Chiefs cannot be elected lest they lose their status as chiefs 	*(i) Retain Senate and improve by including Baphuthi, Bafokeng, Bathepu, and Matebele; nominate professionals and representatives of different sectors of society as members.
*14. The 11 nominated members in the Senate are too many and should be reduced and their nomination is not based on merit per se but political consideration.	<ul style="list-style-type: none"> (i) 11 members of the Senate who are nominated should be reduced. (ii) Their nomination must be based on their expertise and the prime minister must adduce proof of such expertise to the King before appointing them. (iii) Review the composition of the Senate to make the House politically neutral and non-partisan. 	<ul style="list-style-type: none"> (i) Section 55 of the Constitution should be amended to reduce the number of nominated Senators to six to save national resources. (ii) This nomination should be based on special expertise and not on political criteria. 	* Retain the status quo.
15. The provision for the prorogation of parliament in the Constitution is too broad.	<ul style="list-style-type: none"> (i) Prorogation of parliament should be retained as a democratic tool that is used to mark the Sessions of Parliament. (ii) Amend Section 82 of the Constitution to reduce the period of prorogation. 	<ul style="list-style-type: none"> (i) Section 82 of the Constitution should be amended to reduce the period of prorogation of parliament. (ii) The conditions under which parliament can be prorogued should also be stipulated to prevent the abuse of this practice. 	(i) Regulate the time limit depending on the reason for prorogation.

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
16. Vote of no-confidence in the prime minister has resulted in the dissolution of parliament and early elections. This is costly for the country	<p>(i) When a vote of no-confidence against the Prime minister succeeds, the Pprime Mminister should not be given the option of choosing whether or not to resign or dissolve parliament, but should resign and a new Prime Minister be elected from the existing parliament to finish the remaining term of parliament.</p> <p>(ii) The King should have absolute authority to decide whether elections have to be called</p>	<p>(i) Section 83 of the Constitution should be amended to prevent a vote of no-confidence to have an impact on the continuity of parliament.</p> <p>(ii) The prime minister should resign once a vote of no-confidence against him/her succeeds as it is a practice in parliamentary systems.</p> <p>(ii) In democratic constitutional monarchical systems, kings/ queens do not have absolute authority to call elections. Lesotho should not be an exception.</p>	<p>(i) Prohibit the prime minister from advising the King on dissolution after a successful vote of no-confidence. The Prime minister does not ordinarily have the power to advise on dissolution unless it is supported by a 2/3 majority of the National Assembly.</p> <p>(ii) Remove Prime Minister by 2/3 majority of the National Assembly, or</p> <p>(iii) Keep a simple majority since in the current arrangement a motion of no-confidence may not be done more than once in a session.</p>
17. There is a 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.	<p>(i) Prime minister and deputy prime minister should be eligible for a pension after serving a five-year term.</p> <p>(ii) Former prime ministers and deputy prime ministers should be disqualified from members</p>	<p>(i) Section 59 (4) of the Constitution on disqualification for membership of parliament should be amended to include former pensionable prime ministers and deputy prime ministers</p> <p>(ii) The Prime Minister and Deputy Prime Minister (Retirement and Spouse's Benefit) Act 2011 should be amended to provide that the prime minister and deputy prime minister should be eligible for a pension after a five-year term.</p>	<p>(i) Keep the status quo subject to change in the provision for the life of parliament.</p>

Table 13.1 The views of citizens, experts and decisions of Plenary II on issues affecting parliament (continued)

Issue and the challenges it poses	Views of citizens	Views of experts	Plenary II Decisions
18. There is no separation of powers between the executive and legislative arms of the state. Parliament relies on the executive for financial and human resources.	(i) 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	(i) An Independent Parliamentary Service Commission should be established to empower parliament to control its resources and enhance its independence from the executive.	(i) Establish Parliamentary Service Commission. (ii) Empower parliamentary committees. (iii) Limit the influence and excess of the executive to parliament and judiciary. (iv) Explore possibilities of excluding members of parliament from being members of the executive and compare practices elsewhere.
19. There is a lack of symmetry in the conditions of service for the members of A the two Houses, resulting in the sense of seniority and superiority, and inferiority.	(i) Conditions of service of members of these Houses should be standardised and harmonised.	(i) Establishment of the Independent Parliamentary Service Commission could address these issues	(i) Establish Parliamentary Services Commission

NB: *indicates key issues on which Plenary II rejected or modified the views of the citizens and those of the experts

Source: Compiled by the author

6 Interpretation of the decisions of Plenary II

As Table 13.1 indicates, the views of the citizens and those of experts were not all endorsed by Plenary II. This means that there will be very little or no changes at all concerning the issues marked by asterisks, each with adverse implications both for the quality of parliamentary processes, governance, and crucially on the national economy.

The parliamentary practice of floor-crossing with its effects of distorting proportionality of seats to votes parties receive and instability of government will continue, albeit in a slightly modified form in that it will occur after three years into the term of parliament. But parliament will finish its five-year term beginning with the current one (2017/2022) because members of the National Assembly initiated and successfully passed through the two houses of parliament the Ninth Amendment to the Constitution (2020).

The Act bars the prime minister from advising the King to dissolve parliament, as he has done in the past unless he obtains majority support of the members of parliament. The move unveiled the self-serving character of Lesotho's politicians in that they picked this issue out of all those indicated in Table 13.1 to protect their jobs. This is because they feared that then Prime Minister (Thomas Thabane) would advise dissolution.

Members of parliament will remain unaccountable to the voters in that they will cross the floor without the mandate of the voters, who may have not have cautiously elected them but the parties they represented. Regulating floor-crossing would simply require an amendment of the National Assembly Electoral Act (2011), not even a constitutional amendment. Because it would not be in their interests to regulate this practice, members of parliament have not done anything about it despite the recommendation from the Commonwealth Expert (Prasad, 2014:37). The current arrangements allow parliamentarians to be elected under the FPTP variant of the mixed electoral system to cross the floor to punish the parties under whose banner they entered parliament or get cabinet seats. The net implication of this practice has been to destabilise and collapse governments since the advent of coalition politics in the country.

Regulation of political parties will remain poor, and politicians will still form outfits masquerading as political parties even when they do not have a noticeable following from the population. Each of these micro-parties will continue to receive public funds for an electoral campaign in terms of the National Assembly Electoral Act (2011:sec(70)), yet many of them fail to secure enough votes to win a single PR seat in parliament. For example, in the 2017 elections 23 of the 35 parties (65.71%) failed to win about 2 700 votes constituting a quota for a PR seat (see IEC, 2017:37).

Rather than reducing the size of both Houses of Parliament, as the citizens preferred, politicians have resisted this move, thus making Basotho one of over-represented nations, given the geographic size of the country and its population. In the case of the Senate, politicians have decided to enlarge the House while also leaving it open as a channel for patronage usually extended to the losers in elections and political allies of sitting prime ministers. They have also decided to leave the calibre of the Senators as it is or worse, depending on who will join it in the future. So in the end, politicians ensured that they constructed the reform structures that will protect their interests in the form of parliamentary perks amidst conditions of extreme poverty, institutional inefficiencies, and ineffectiveness, lack of service delivery, and generally poor governance, all of which were to be addressed through the reforms agenda. SADC, which was responsible for facilitating the reform process, has not helped Lesotho avoid this outcome.

7 Conclusion

As part of the comprehensive national reforms, covering seven thematic areas, Lesotho parliamentary reforms exercise was rhetorically intended to grant the citizens a direct voice in the reforms process under what was supposedly an inclusive, participatory and deliberative framework. But the very flawed design of the process has allowed the political elites who were to be constrained, for the general good of the nation, through the reforms instrument, an enormous opportunity to undermine the whole process. The structures that were to drive the process (from the NLF, NDPC, and Plenary II) became dominated by the political elites, who seized the opportunity to retain and entrench their interests in the process at the expense of those of the nation on whose taxes they live. They vetoed all inputs of the citizens on issues that directly threatened their interests, thus putting to question the value of public participation in the parliamentary process and turning the whole process into a window-dressing exercise, serving only to confer some legitimacy on what is a self-serving project entrenching the interests of the elites rather than a truly institutional transformative device. There is indeed very little hope that the NRA, which is similarly dominated by politicians, will be able to rescue the voices of the citizens and give them effect in the outcomes of the parliamentary reforms.

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UNSTABLE COALITIONS AND BACKSLIDING HABITUAL VOTERS IN LESOTHO 14

Moletsane Monyake

1 Introduction

The onset of coalition governments since 2012, a manifestation of inconclusive elections, has witnessed a trend of declining voter turnout in Lesotho. Lesotho's voter turnout has declined by 26% points since the country's return to democracy in 1993 and by 3.63% since 2012 (IDEA voter turnout database). This remarkably large drop in political participation coincided with a series of changes to the institutional environment, beginning with an electoral system's reform from the First-Past-The-Post (FPTP) model to the Mixed Member Proportional (MMP) system. The change of electoral rules spawned a large increase in the number of electorally active political parties, the formation of formal and informal electoral alliances and since 2012, inconclusive electoral outcomes and a series of unstable coalition governments. This chapter focuses on the relationship between this institutional environment and changes in voter turnout in Lesotho. It focuses, specifically on the impact on apathy, of the mushrooming of political parties, inconclusive election results, unstable coalition government formations and the frequency of elections.

The bulk of the analysis revolves around persistence in voting, and thus, focuses on a small subset of voters – the habitual voters. These are individuals who have been voting consistently over at least five consecutive general elections. There are two major reasons for limiting the analysis to persistent or customary voters. The first is the expectation that those who vote out of habit are less likely to react negatively to the institutional dynamics that are known to depress voter turnout including voter fatigue and coalition governments (see Blais & Dobrzynska, 1998). In other words, analysing habitual voters provides a litmus test for

the argument that changes in the institutional environment culminating in the formation of coalition governments contribute significantly to voter apathy in Lesotho. The second reason is that while the view of political behaviour as an automated response is widely accepted in the political science literature, research on causes, processes, and dynamics of customary voting is limited (Gerber, Green & Shachar, 2003; Dinas, 2012). As Gerber, Green and Shachar (2003:541) point out, the question of what accounts for “persistence in voting is seldom the subject of theoretical reflection or empirical investigation ...” Further to that, and more importantly for this chapter, research in political science has not come to grips with the institutional conditions under which the habit of voting might be broken. For these reasons, this chapter is potentially useful for students of political behaviour, elections, and institutions beyond the case of Lesotho.

This chapter draws on nationally representative survey data to examine the link between the party system’s fragmentation, resulting in unstable coalition governments and the rising voter apathy among the Basotho. To provide a tougher test of the arguments being raised, the chapter focuses on the habitual voter. The chapter, thus, makes two main contributions. First, it sheds light on the impact of contextual conditions, particularly the party system and stability of coalition governments, on voting consistency in emerging democracies. Second, and at a more theoretical level, the chapter unpacks the habituation model’s assumption that habitual voters are more intrinsically motivated and that system-level factors should not have a major effect on their willingness to cast a ballot.

2 Electoral systems, coalitions, and voter turnout

Voter turnout refers to the proportion of eligible voters who cast their votes on polling day (Blais & Dobrzynska, 1998). Eligible voters are people who have officially been registered to vote by the Election Management Body (EMB) or who would have attained the voting age, usually 18 or 21 years old, by the polling day (Powell, 1986; Blais & Dobrzynska, 1998). Voter turnout models focus on two major classes of variables: micro-level attributes (i.e. demographic, attitudinal, and economic) and contextual factors (e.g. systemic and institutional factors) (see Almond & Verba, 1963; Kostadinova & Powell, 2007). Under the first category, scholars usually examine the impact of such individual-level variables education, age, gender, ethnicity/race, socio-economic status, political interest, strength of partisan attachments, political efficacy, and cognitive skills (Powell, 1986; Verba, Schlozman & Brady, 1995).

Within these broad streams of research are scholars who labour under the rational actor model and those who anchor their analysis on the culturalist and behaviouralist traditions (Dinas, 2012). The leitmotif of the rationality theory is that individuals are likely to turn out when they feel that the expected utility of voting exceeds the cost of abstaining (Uhlener,

1986; Aldrich, 1993; Dean & Croft, 2009). For example, a rational actor will only vote when s/he perceives that her/his preferred candidate is likely to win. In this connection, the model predicts that turnout will be higher in closely fought elections than in less competitive ones (Riker & Ordeshook, 1968; Aldrich, 1993). The cognitive and physical demands of voting, including time spent on voting queues, convenience of the voting stations, the safety of the electoral environment, are also important considerations in analysing voter turnout from the rational actor perspective.

According to the behaviouralist tradition, the experience of voting leaves a strong psychological imprint so that regardless of what initial forces inspired one to turn out in the first instance, the act itself increases the propensity to vote in the future (Green & Shachar, 2000; Gerber, et al., 2003; Denny & Doyle, 2008; Dinas, 2012). Green and Shachar (2000:562) have referred to this phenomenon as *consuetude* (i.e. habit or custom) in voting, pointing out that:

if two people whose psychological propensities to vote are identical should happen to make different choices about whether to go to the polls on election day, these behaviours will alter their likelihoods of voting in the next election. In other words, holding pre-existing individual and environmental attributes constant, merely going to the polls increases one's chance of returning.

Based on the analysis of experimental data, Green and Shachar (2000) and Gerber, et al. (2003), show that variables capturing habitual voting explain far more variation in turnout patterns than well-known socio-economic, social-psychological, and demographic factors. Likewise, Aldrich, Montgomery and Wood (2011:535), find that the standard socio-psychological and rational choice variables are more important explanations of turnout for individuals “who do not have a strong habit of turnout”. Dinas (2012:433), analysing American elections, found that voting in 1968 appeared to “increase the probability of voting in 1970 by approximately 25% points” holding other variables constant. Similarly, Denny and Doyle (2009) report that voting in past elections increased future voting by 13%, *ceteris paribus*. According to Aldrich, Montgomery and Wood (2010:6), habitual voters turn out to vote even when they are not too concerned about the outcome of the election or “no longer believe that [voting] is the right thing to do”. As they argue, for habitual voters, “the responses involved in voting (e.g. driving to the polling station) are activated in memory when they perceive simple context cues (e.g. political signs posted in the neighbourhood, election day headlines in news reports...)”. Repeated voting may also cultivate a sense of identity as a “voter” so that those who regularly turn out to vote ultimately do this as an expression of who they are, not necessarily because they expect their vote to change or preserve the status quo (Green & Shachar, 2000; Denny & Doyle, 2008). Abstention, on the contrary, weakens this self-conception and the feelings of obligation that grow out of it (Green & Shachar, 2000).

To summarise, the habituation model suggests that the more an individual takes part in national elections (i.e. presidential, or parliamentary), especially, as opposed to local elections, the more likely they are to participate in future elections (Green & Shachar, 2000). While no studies have been conducted to test these conclusions in the African context, the work of Lindberg (2006) comes the closest to some of the habituation arguments. Analysing more than 200 African elections, Lindberg (2006) found a strong positive effect of elections on the development of democratic attitudes and values – a finding that is robust to the quality of elections. In other words, Africans are more likely to embrace and cherish democratic principles and display attitudes and behaviours, the more they participate in elections.

Scholars interested in the contextual or institutional factors of turnout often operate within the rational institutionalist framework and examine the impact of the incentive structures on the decision to vote (Blais & Dobrzynska, 1998). Two most important structural incentives, for this chapter's purpose, are the electoral and party systems (Blais & Dobrzynska, 1998; Robbins, 2010). According to Hix and Hagemann (2009) and Mattila (2003), for example, turnout tends to be higher in electoral systems that allows voters to *personalise* their vote by electing individuals (i.e. candidates) rather than organisations (i.e. political parties). Candidate-centric systems provide a stronger link between voters (in a specific district) and their representatives. It also offers voters the power to recall poorly performing representatives rather than wait for the party to do so. This creates a sense that voters have greater control over how they are governed. In sharp contrast, other scholars find that more party-centric systems such as Proportional Representation (PR) yield relatively higher turnout figures than the candidate-centric ones (Blais & Dobrzynska, 1998; Kostadinova & Power, 2007; Karp & Banducci, 2008). One of the prominent causal mechanisms appears to be related to the tendency for PR to encourage proliferation of political parties since contestants “do not need to secure a majority or plurality of votes to gain representation” (Robbins, 2010:662). Political parties do not need to have support in any particular area (i.e. strong-holds) to win a seat in parliament. In addition, an increase in the number of contestants can encourage parties to develop clearer ideological and policy positions, thereby differentiating themselves from their competitors and catering for the needs of a specific group of voters (Karp & Banducci, 2008; Robbins, 2010).

However, where political parties are ideologically identical and their policy disagreements cosmetic, as is the case in Lesotho (see Kapa & Shale, 2014), proliferation can erode both citizens' confidence in multi-party politics and their willingness to vote. Too many political parties, and thus a longer ballot, can also complicate the decision-making process – a phenomenon commonly described as decision or choice fatigue (Blais & Dobrzynska, 1998). Moreover, as the number of political parties increases, and depending on the nature of both the electoral model and party system, the likelihood of an inconclusive election outcome and subsequently, a coalition government increases (Blais & Dobrzynska, 1998).

Citizens are likely to be disappointed and discouraged from voting when, in their view, the formation of a government is decided less by the *demos* than by a small coterie of political elites (Karp & Banducci, 2008).

Mixed electoral systems, including the mixed-member proportional (MMP), take advantage of both candidate-centric (e.g. FPTP) and party-centric (e.g. PR) models as they often allow voters to split their votes between candidates and political parties. Nevertheless, the MMP tends towards a contradictory trend: an increase in the number of electorally active political parties on the one hand and an increase in the number electorally inactive voters on the other. In the case of Lesotho, this double jeopardy is accentuated by unstable coalition governments. Lesotho has experimented with four differently constituted coalition governments and three legislative elections in eight years (2012-2020). Coupled with the extremely short lifespan of the coalition governments, the mushrooming of political parties in the country creates a sense among voters that political leaders are only interested in the material rewards that come with gaining a seat in parliament.

The major weaknesses of the existing literature are the exclusive focus on the average voter, and failure to examine how institutional arrangements affect different types of voters. Karp and Banucci (2008) are among the few scholars who pay attention to the differential effects of electoral arrangements on turnout, focusing on large-party supporters and their small-party counterparts. They show, for example, that increased turnout among supporters of smaller parties that was observed in New Zealand after switching from a plurality-based system to PR provides some proof that the electoral system can affect categories of voters differently. Similarly, Augenblick and Nicholson (2016) suggest that too many election contestants and a resulting long ballot can have different effects on voters. Importantly, those who are likely to abstain may have different motivations and preferences to those who do turn out, and the latter are, as a result, likely to cast their ballots in ways that differ from how they would have voted had the ballot been shorter, and the choice easier to make (Augenblick & Nicholson, 2016).

Such cross-level analysis of voter turnout provides the basis on which to expect the institutional outcomes of party-centric models, such as the proliferation of parties, inconclusive elections, and coalitions, to have varying effects on voting behaviour in emerging democracies. Particularly important for this study is how these institutional outcomes affect voter turnout among habitual voters who are ideally more resilient to institutional configurations and changes in the political environment. To what extent are factors linked to institutional configurations likely to cause the habitual voters to backslide? Lesotho is a particularly suitable case for investigating these questions for three major reasons. First, as I note in the next section, the country has experimented with both candidate-centric and party-centric electoral models since its return to democracy in 1993. Second, considering

its small voting age population compared to other parliamentary democracies in the region, Lesotho has a curiously large number of electorally active political parties. Third, Lesotho is the only country in Southern Africa where inconclusive election results have necessitated the formation of coalition governments.

Based on the habitual voter model canvassed in previous paragraphs, the unusually high frequency of general elections (at least since 2012) may reinforce rather than erode the willingness to vote in future elections. That is, *ceteris paribus*, an individual who has consistently voted in major elections will have a higher probability of voting in the future than an individual who has not. Nevertheless, it is also likely that habitual voters are not created equally, and that they have different views about the political environment, including the proliferation of political parties and the formation of government. The interaction between these differences and other factors known to influence turnout may explain why, if at all, some habitual voters backslide at a higher rate than others.

3 Voter turnout in the advent of coalition politics in Lesotho

Turnout patterns in the past 25 years in general, and since 2012 in particular, show a decline of 26% points from 72.3% in 1993 to 46.4% in the 2017 National Assembly elections. This large drop in political participation coincided with a switch from the FPTP system to the MMP system, and the subsequent mushrooming of political parties beginning in 2002. At the time of writing this chapter, for instance, there were 39 registered political parties, 28 of which had contested the recent 2017 National Assembly elections. To put this in perspective, although 12 parties registered to contest the 1993 legislative election, only two – the Basotho Congress Party (BCP) and Basotho National Party (BNP) – fielded candidates in all the 65 constituencies (see Matlosa, 1997:146). The Marematlou Freedom Party (MFP) contested 51 constituencies while Popular Front for Democracy (PFD) and Hareeng Basotho Party (HBP) fielded candidates in 17 and 13 constituencies, respectively. Perhaps as a sign of their overwhelming dominance, the BCP and BNP received 97.3% of the total votes cast.

The number of political parties contesting the 2002 general election, which occurred under the MMP model, increased by 53%. As the number of political parties increased, voter turnout was beginning to decline (see Figure 14.1). As Figure 14.1 demonstrates, the largest drop in turnout occurred in 2007 and continued steadily in the subsequent National Assembly elections. Preceded by a major split in the ruling Lesotho Congress for Democracy (LCD), the 2007 legislative elections also marked the first time Lesotho experimented with coalition politics (Kapa, 2008). This took the form of formal and informal election pacts between at least nine political parties (Kapa, 2008). The formal election pact between three

congress parties, namely the Basotho African Congress (BAC), Lesotho People's Congress (LPC) and a faction of the Basotho Congress Party (BCP), was duly registered with the Independent Electoral Commission (IEC) under the banner of the 'Alliance of Congress Parties (ACP) (Kapa & Shale, 2014:98). In stark contrast, informal electoral pacts were not registered with the Commission and did not have a legally enforceable agreement.

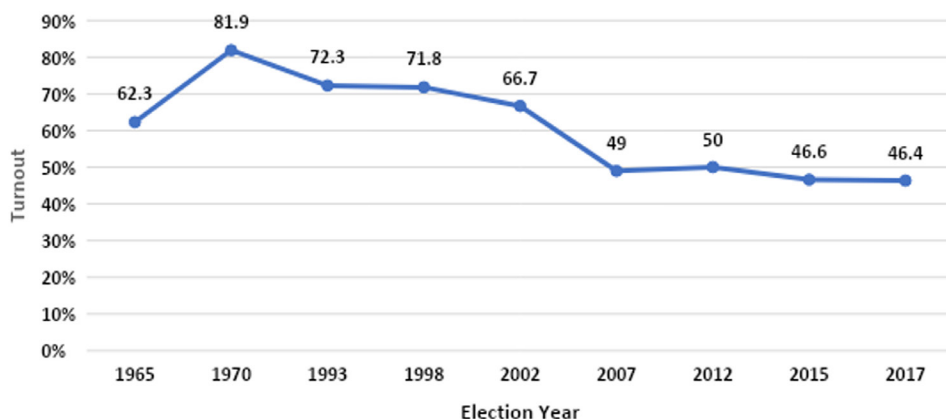


Figure 14.1 Voter turnout in Lesotho general elections (1965-2017)

In violation of the compensatory spirit of the MMP model, the informal election pacts offered the bigger parties the opportunity to field candidates on the FPTP ticket while the smaller parties only contested the PR ticket (Kapa, 2008). The All Basotho Convention (ABC) formed barely a year to the 2007 election, as a splinter group from the then ruling Lesotho Congress for Democracy (LCD), entered into an unregistered electoral alliance with the Lesotho Workers Party (LWP). In a similar fashion, the LCD coalesced with the National Independent Party (NIP). Approximately seven out of the ten names at the top of the Proportional Representation (PR) lists that both NIP and LWP submitted to the IEC were those of known members of LCD and ABC, respectively. Given that supporters of the bigger parties voted for NIP and LWP, two historically small parties suddenly found themselves with enough votes to secure more than 10 seats in parliament (Kapa & Shale, 2014). However, most of these seats were allocated to the high-ranking members of the LCD and ABC, thereby undermining the corrective intent of the MMP (Matlosa, 2008). To pre-empt further defacement of the model and indeed reinforce its compensatory element, the parliament jettisoned the two-ballot feature of the model in favour of one ballot for both FPTP and PR components ahead of the 2012 legislative elections (Letsie, 2013).

In the runner-up to the 2012 election, the factional battles within the LCD culminated in another split when the party leader and Prime Minister, Pakalitha Mosisili, crossed the floor of parliament with 44 MPs to form the Democratic Congress (DC). The voter turnout in the 2012 elections improved by one percentage point from the 49% turnout figure reported for 2007 (see Figure 14.1). Although the DC emerged from the 2012 election as the political party with the largest vote share (47.5%), it was unable to secure enough votes to form a government alone and was required to persuade other political parties to form a coalition government. But none of the political parties with significant vote share, notably the ABC, was willing to enter a coalition with the DC. Instead, ABC coalesced with LCD and BNP, and agreed to appoint ABC leader Thomas Thabane as Prime Minister deputised by the leader of LCD, Mothetjoa Metsing. This marked an epoch in the politics of Lesotho as it simultaneously ended Mosisili's 14-year premiership and replaced a single-party government with a coalition government. Thus, the process of party system fragmentation, which had intensified in 2007, yielded a hung parliament and a new chapter in Lesotho's electoral politics.

This first coalition government proved shaky from the beginning, hanging as it did, on one seat majority in parliament. That slim majority was soon threatened when two ABC parliamentarians terminated their party membership and Deputy Prime Minister Mothetjoa Metsing indicated his intention to shift his loyalty to the DC. This heralded a downward slide towards the collapse of the government, culminating in Thabane's invoking a constitutional prerogative to prorogue parliament and attempted coup d'état a few months later in August 2014. This prompted SADC intervention, and a subsequent snap election in February 2015. This election took place amid fears of possible post-election violence, given the highly charged pre-election environment, which made it necessary for three security chiefs – Lieutenant General Maaparankoe Mahao, Lieutenant General Tlali Kamoli and the Police Commissioner Khothatso Tšooana – to take a leave of absence out of the country. The election was strongly contested, particularly by the ABC and DC, even as voter turnout figures showed a four-percentage point slump from 50% (in 2012) to 46%. The DC won 47 of the 120 parliamentary seats while ABC won 46, leading to another hung parliament and necessitating the formation of a coalition government, this time by seven parties led by the DC. The longevity of this coalition government was immediately threatened by the factional battles and increasingly fragmented party system, which had by now, become a permanent feature of politics in Lesotho.

In December 2016, the DC suffered its first split when its deputy leader, Monyane Moleleki, defected with 14 legislators to form the Alliance of Democrats (AD). Around the same period, the Secretary-General of LCD, Selibe Mochoboroane, formed the Movement for Economic Change (MEC). Both these developments numerically weakened the ruling coalition. As a result, on 2 March 2017, a vote of no-confidence was successfully passed against Prime Minister Mosisili, paving the way for a snap election on 3 June 2017. This

poll was contested by 27 of the 30 political parties registered with the IEC. Despite the extremely short period IEC had to prepare for the 2017 election, it mounted a creative and vigorous voter education campaign with the support of local civil society organisations (CSOs) and some development partners. The aim was to achieve a voter turnout target of 85%. However, based on the official turnout figure of 46.37%, this ambitious campaign proved unrealistic. Several reasons have been advanced to explain this lowest voter turnout in the history of election in Lesotho.

Reports by international observer missions tie the low voter turnout to election logistics, particularly with regards to the time allocated for voter registration and transference of voters between constituencies. For instance, according to the EISA Election Observer Mission report, “the registration for 17-year-olds and transfer of voters from constituencies was done from 13 to 19 March 2017, which was only a week after the dissolution of Parliament and calling for elections” (EISA, 2017:28). Similarly, the Commonwealth Observer Mission noted that “some citizens had faced challenges in registering during this short period” more especially those who “needed to travel some distance to the relevant IEC Constituency Office” (Commonwealth, 2017:6). There were also reports that the Independent Electoral Commission (IEC) did not receive the required funding timeously to prepare for the snap election.

Another explanation is related to the decline in public support for electoral democracy. As data from Afrobarometer indicate, there is a significant drop in the number of Basotho who believe that elections ensure that voters’ views and preferences are reflected in national laws and policies. Furthermore, in the most recent nationally representative survey that Afrobarometer conducted, only 42% of Basotho expressed unconditional support for democracy as a form of government. During the 2008 Afrobarometer survey, Makhetha and Malephane found out that the 2007 political instability dented Basotho’s commitment to democracy. They, however, also noted that following the 2012 elections, Basotho’s faith in democracy recovered somewhat (Makhetha & Malephane, 2014). The ongoing governance reforms in Lesotho have to address this problem of voter turnout in order to enhance public faith in the country’s democratic system.

4 Data and measures

The analysis draws from a nationally representative survey of 1 811 respondents, conducted for four weeks in April 2019. The ideal way to measure habitual voting would entail counting all respondents who have voted all in elections since Lesotho’s return to democracy in 1993, thus confining the analysis to a sub-sample of individuals who were at least 21 years old in 1993 (or born on or before 1972). Such individuals would have been aged 47 years or older when this survey was conducted. In line with national demographics, respondents who

met these criteria are quite few. Consequently, adopting this inclusion criterion results in significant loss of data. Apart from data loss, asking respondents to remember events that occurred over the past 15 years risked producing biased data due to problems of recall.

To minimise such biases and attrition without compromising conceptual rigour, I consider a habitual voter as any individual who has voted *consistently* in the last five national elections (2007, 2012, 2015 and 2017) and the local elections of 2011 and 2017. The short interval between elections and the fact that local elections usually attract far less voters than the national elections, provide a more solid measure of voting as a habit. While some casual voters may target the well-advertised national elections, very few of them can consistently vote for local elections. Thus, I argue that the majority of the respondents who voted in all five elections – who constitute 40% of the sample – qualify as habitual or customary voters.

Respondents were asked to answer yes/no to the question whether they voted in the a) June 2017 legislative election, b) October 2017 Local Government election and c) any other general election in the post-independence Lesotho. Importantly, the survey asked whether respondents were intending to vote in the hypothetical future election. I use this question as an outcome variable measuring the voter's propensity, intention, or willingness to cast a ballot in the future. Three in five (61.08%) of the respondents were willing to vote in the future. The statistical models estimated in this chapter control for the socio-demographic and psychological variables known to influence voter turnout, including among others, poverty, age, gender, education, employment status, urban-rural residence, performance evaluation, interest in politics, sense of civic duty and perception of election competitiveness.

5 Results and discussions

The results indicate, as expected, that individuals who have voted consistently since 2007 are more willing to vote in the future than those who have been inconsistent. What separates the individuals who have voted consistently since 2007 (i.e. habitual voters) from their inconsistent counterparts? Compared to habitual voters, inconsistent voters are 8% less likely to vote as their dissatisfaction with the number of political parties increases from minimum to maximum values. To be sure, the perception that political parties are too many has an overall negative effect on the willingness to vote in the future. That is, regardless of consistency in voting, an individual who is unhappy with the number of political parties is less likely to vote than one who is satisfied. In addition, compared to habitual voters, inconsistent voters are significantly less likely to vote when they are not satisfied with the performance of the national government, the local government, the electoral commission, and their own members of parliament. Another major point of difference between the

two groups lies in changes in individual interest in politics. For instance, one third of habitual voters (32%) and 44% of inconsistent voters feel that they are “interested” or “very interested” in politics.

5.1 *Institutional arrangements and habitual voters*

Let us focus on the differences between the habitual voters willing to vote in the future and those not intending to do so (hereafter, “backsliders”). I consider a “backslider” as an individual who has voted consistently since 2007 but is not willing to vote in a hypothetical future election. Out of 609 habitual voters in the sample, 184 (or 30%) qualify as backsliders. In the analysis that follows, I explore whether and the extent to which backsliding is related to institutional dynamics such as the proliferation of parties, frequency of inconclusive elections and performance evaluations. Four in five (81%) backsliders are unsatisfied and very unsatisfied with the frequency of general elections. Conversely, slightly over two thirds (69 %) of the habitual voters willing to vote in the future (i.e. strong habitual voters) feel the same way about election frequency. The analysis shows that the difference between these groups is statistically significant ($\chi^2(4, N = 599) = 12.63, p = 0.013$). Substantively, these results suggest that the post-election coalition formations produce the abnormally high government turnover in Lesotho, which is partly responsible for declining turnout, especially among people who have been voting consistently over the years.

Another difference between these groups lies in their feelings about the large and increasing number of political parties in Lesotho. The proportion of individuals who are satisfied and very satisfied with the number of political parties is significantly lower within the backsliding group than among the habitual voters willing to vote in the future. Relatedly, the two groups differ in their view of the often-inconclusive general election results in Lesotho ($\chi^2(2, N = 584) = 11.5, p = .003$). Both results communicate a single coherent message, which is that the institutional environment characterised by the mushrooming of political parties, inconclusive election results and the formation of coalitions may account for the early onset of apathy among consistent voters.

Because survey questions about voting often elicit social desirability bias, respondents are often asked to comment on the behaviour of neighbours or other people in general. Following the same principle, respondents were asked to explain why turnout was declining in Lesotho. A significantly higher percentage of backsliders agreed that “Basotho are tired of elections” and that “voting makes no difference”. They also held comparatively more negative views about the role of politicians in the rising voter apathy. For example, 77% of the backsliders felt that the self-centred conduct of political leaders is the main reason why turnout is declining. This was mentioned by slightly over half (57%) of the habitual voters intending to participate in future elections (see Figure 14.2).

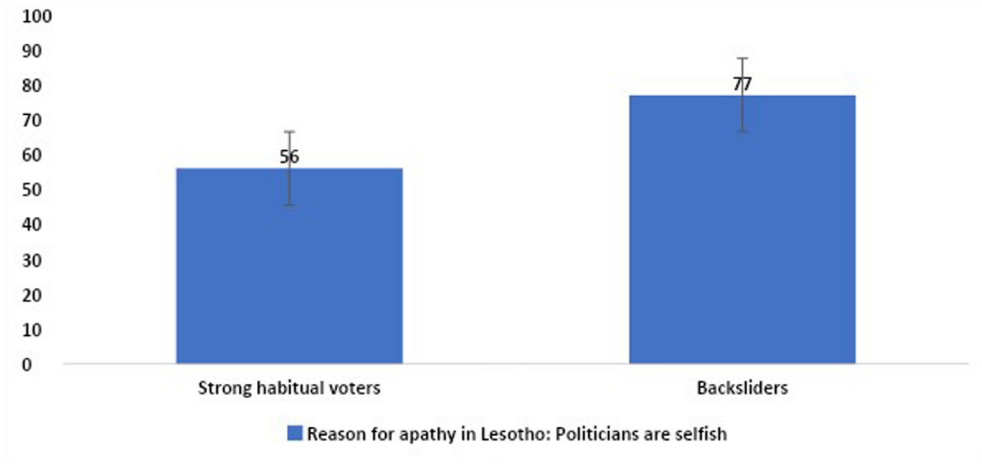


Figure 14.2 Reason for apathy in Lesotho: “Politicians are selfish”

The most important difference between the two groups of habitual voters lies in their personal motivations for voting in the 2017 legislative elections. Those willing to vote in the future mentioned the desire to make a difference (42%) and voting as a civic duty (43%) as their main reasons for turning out to vote in the 2017 general elections. Only 15% felt that the need to support their party was the underlying motive for voting. As shown in Figure 14.3, the majority (66%) of the backsliders mentioned, as their main reason for voting, the desire to make a difference, followed by the need to support a political party (21%) and, lastly, a sense of civic duty (12%).

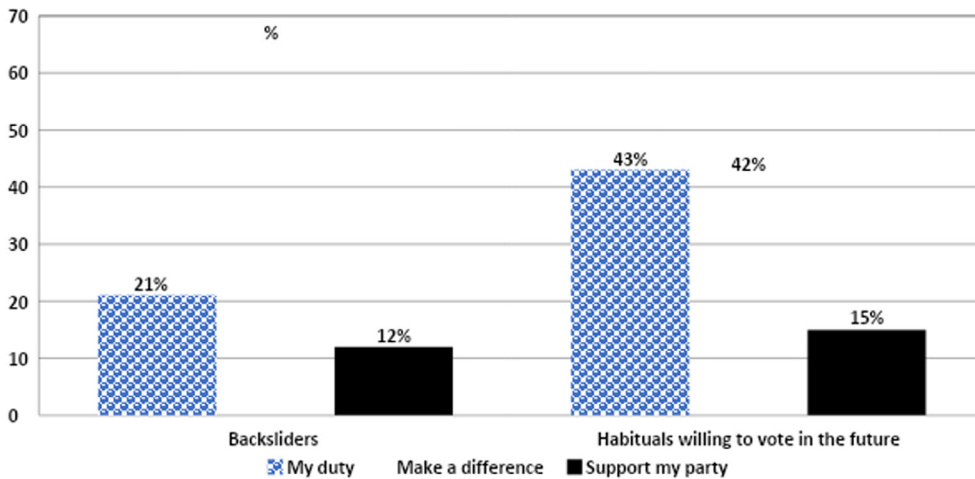


Figure 14.3 Main reasons for voting in June 2017

The main implications of these results are, first, that strong habitual voters are primarily motivated by a sense of duty as citizens to elect a government. That sense of obligation to the political community is missing among the backsliding voters, who appear to be primarily motivated by the desire to influence change on the ground. Second, to the extent that the backsliders' underlying motive for voting is the desire to influence change, their political behaviour is likely to be more sensitive to institutional performance. Indeed, 73% of the backsliders are very dissatisfied with the performance of the coalition government while 84% are unhappy with the performance of their constituency representatives. In sharp contrast, only 42% of the habitual voters intending to vote in the future are unhappy with the government while 56% are unhappy with the performance of their representatives.

Third, the fact that the proportion of strong habitual voters who mentioned the desire to make a difference is almost equal, the proportion that mentioned civic duty may imply that consistency in voting is neither entirely automated nor is it explained solely in terms of cultural variables such as civic duty. Strong habitual voters are still concerned with the outcome of the election and its implications for national as well community development. Finally, the fact that less than 20% of both sets of habitual voters were motivated by the desire to support their political party suggests that support for political parties is not the primary reason why people consistently vote. One possible factor could be the relative effectiveness of civic and voter education initiatives undertaken by both the Independent Electoral Commission and civil society organisations.

6 Conclusion

The results communicate a single coherent message. First, the institutional environment characterised by the mushrooming of political parties, inconclusive election results and coalitions could be responsible for the onset of apathy among consistent voters. Second, this means that turnout is likely to continue the downward trajectory if the institutional factors that depress it are not given the attention they deserve. Third, it may well be that not all habitual voters are driven by the psychological benefits that accrue from the act of voting, and which underpin the decision to continue despite undesirable election outcomes and lack of meaningful changes. Finally, since 2019, the country has initiated a process of institutional reforms aimed at strengthening its governance system. It is imperative that the National Reform Authority (NRA), which is tasked with spearheading the reform agenda, devise innovative ways of arresting the deepening trend of voter apathy as it threatens Lesotho's democracy and legitimacy of government.

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GENDER DYNAMICS IN COALITION GOVERNMENTS' MINISTERIAL APPOINTMENTS IN LESOTHO

15

Mamello Rakolobe

1 Introduction

Despite national, regional and global efforts to address gender inequality in politics, the number of women in public decision-making bodies remains low. For instance, the global average women representation in parliament is 25% as of 1st January 2021, and Sub-Saharan Africa stands at 24.9% (IPU, 2021). Women heads of state are 6.6%, and women heads of government are 6.2% as of 1st January 2020 (UN Women, 2020). On average, women constituted 22% of the global ministerial positions as of 15 October 2020 (United Nations, 2020). This indicates that after 25 years since the Beijing Platform for Action, the presence of women in public decision-making structures is still far below parity.

Lesotho is not excluded from this global problem. It faces the under-representation of women in all spheres of life. There is a low presence of women in parliament, in the cabinet, in the judiciary and in the security sector as high-ranking public officials. For instance, since its independence in 1966, Lesotho has never had a female Prime Minister under both a one-party rule, between 1966 and 2011 and coalition government rule, since 2012 to date. Additionally, it has never had a significant number of women in the National Assembly and the cabinet. The same is true for high-ranking officials in the public service and the security sector.

The under-representation of women in public policymaking structures is deleterious to good governance, democracy and general national development. The literature indicates that the presence of women at all government levels is a social, economic, and political

good (Asiedu, Branstette, Babulal & Malokele, 2018:2; Mumporeze & Nduhura, 2019:357) and is an essential aspect of democracy and all forms of development. As a result, the international community has established the legal and institutional frameworks that are meant to address the under-representation of women in the public sphere, such as, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter on Human and People`s Rights, 1981, the 2030 agenda for sustainable development, the Protocol on the African Charter on Human and People`s Rights on the Rights of Women in Africa, 2003, the 2007 African Charter on Democracy, Elections and Governance and Southern African Development Community Protocol (SADC) on Gender and Development, 2008.

This chapter seeks to explore the institutional arrangements that determine ministerial recruitment in Lesotho. The focus will be on the formal and informal rules, norms, practices and procedures that influence the appointment of women into ministerial positions. To identify the formal institutions, the study analysed the constitution of the country and those of the political parties, coalition agreements, parliamentary rules, past research papers and government reports. The study uses secondary data from past research reports and newspapers to identify the informal rules, practices, and procedures. The analysis focuses on the parties with at least three ministerial positions in any of the coalition governments.

The political parties have a role to play as gatekeepers for women to access the national parliament and to become ministers consequently. The coalition agreements also have a bearing on women`s propensity to be appointed to the ministerial positions as they stipulate the formulae to be followed when partners share in the spoils that come with being the ruling parties. The parliamentary rules also influence the composition of the National Assembly and, consequently, women`s ability to become ministers.

The chapter is structured as follows: the first section focuses on tenets of institutionalism on gender and power. The second section presents the literature on the benefits of gender diversity in public decision-making bodies, specifically the cabinet. The third section deals with the formal and informal institutions that influence the presence of women in ministerial positions. The penultimate section is an analysis of the Lesotho situation. The fourth section presents the conclusion and recommendations.

2 Theoretical framework

2.1 Institutionalism

Institutions are the rules, norms and practices that influence political life (Colley & Van Acker, 2020:3). Lowndes (2020:547) defines institutions as the rules of the game guiding both the individual and collective actors. In applying institutionalism to the study

of politics, Claveria (2014:1160) states that political institutions refer to the characteristics of the political system and can have two effects, namely; political system effects, which refer to characteristics and practices of institutions in each country; and party organisation effects, which include the norms and procedures of the parties in government.

Institutions can be formal, for instance, contracts, codes of conduct, laws, policies, procedures and informal, such as norms, practices and narratives (Lowndes & Roberts, 2013 in Galea, Abigail, Loosemore & Chappe, 2020:3). Institutions reflect and constitute the roles, relations and identities of actors in politics (Lowndes, 2020:544). Formal and informal institutions have gendered consequences and can result in the political underrepresentation of women (Colley & Van Acker, 2020:6).

Both formal and informal institutions are embedded in organisational life, established by actors and continuously evolving through a process of negotiation, conflict and contestation (Galea, Abigail, Loosemore & Chappe, 2020:3) and produce relatively predictable and stable political outcomes (Lowndes, 2020:548). In the same vein, Julia, Azari and Smith (2012:38) note that the written and unwritten rules prescribe patterned behaviour that is common in political life.

Informal norms and practices are difficult to study, mainly because they are unwritten and seldom discussed publicly or explicitly. These factors mean that informal norms become more visible when dishonoured or challenged than routinely respected (Franceschet & Thomas, 2015:661). Informal rules and norms are more difficult to identify because they are hidden from public scrutiny. However, with appropriate methods, they can be identified, for example, through practitioner or journalist accounts (Annesley, Franceschet, Beckwith & Engeli, 2014:11). In the same vein, Lowndes and Roberts (2013, 47 in Annesley, 2015:24) acknowledge the difficulty in identifying the informal institutions; nonetheless, they note that they can be described and explained to the researchers by actors and also in the form of insider accounts or observations by experts.

In adopting an institutionalist approach to a study of cabinet formation, researchers identify the rules that govern ministers' appointment to executive office (Annesley, Franceschet, Beckwith & Engeli, 2014:12). They focus on the rules that govern the selector/s of ministers, the eligibility criteria, and how these rules are gendered (Annesley, Franceschet, Beckwith & Engeli, 2014:11). The institutions may be gendered to disproportionately distribute cabinet positions to either men or women and, consequently, fuel gender inequality in ministerial positions. The following section presents the rationale for the inclusion of women in cabinets as they have historically experienced exclusion in public decision-making structures.

3 Why women in cabinets?

John Stuart Mill (in Reynolds, 1999:548) argued that for a government to be efficient, it should represent both the majority and minority. By the minority, Mill included women who were a disenfranchised “minority” at the time. Cabinets with just a small number of women are inadequate and undemocratic (Franceschet & Thomas, 2015:643). The cabinet is the most important structure in government decision-making (Annesley, 2015:2; Escobar-Lemmon & Taylor-Robinson, 2016:16) and is the highest level of political power (Rashkova & Zankina, 2019:221) as it oversees substantial amounts of the national budget and policy initiation and implementation (Silvia, 2014:4).

In agreement, Suraj, Scherpereel and Adams (2014:322) state that members of the cabinet control the states’ resources, manage the public service, and oversee government expenditure of funds. As a result, their positions offer them authority in government. In addition, unlike individual legislators, cabinet ministers initiate policies and make and approve many important political decisions in their ministries (Shan-Jan & Banaszak, 2016:8). Ministers oversee government departments, oversee the implementation of government policies and partake in discussions of policy and political strategy (Franceschet & Thomas, 2015:646).

Additionally, the gender composition of the cabinet is highly likely to have a bearing on both substantive and symbolic representation of the women community (Silvia, 2014:5). On symbolic representation, Shan-Jan and Banaszak (2016:7) argue that most cabinets are small, and this increases the visibility of ministers because they become heads of government ministries.

On substantive representation, Goddard (2019:631) argues that the appointment of women to cabinet posts is necessary for the views of the women community to be represented at the highest levels of decision-making in government. Similarly, Annesley and Gains (2012:724) point out that women should be represented in the cabinet to present a variety of perspectives and experiences for government decision-making.

Though the literature on the need for the presence of women in cabinets abounds, the number of women ministers is still low as indicated in the introductory section of this paper. This can be attributed to several political institutional factors. The following section presents the institutional factors that impact on the representation of women in cabinets.

4 Political and institutional factors that impact the number of women in cabinets

A study on advanced industrial democracies, Claveria (2014:1167), found that fewer women get ministerial posts in coalition governments than in single-party cabinets. This is because senior coalition partners trade cabinet seats to other partners for government stability. Consequently, intra-party competition for the available posts increases, thereby increasing the likelihood of men being appointed (Claveria, 2014:1161). Along the same line, O'Malley (2006:324) notes that in coalition contexts, it is imperative for Prime Ministers (PMs) to appoint a cabinet that will be supported by the legislature. As a result, PMs use the cabinet-formation process to build coalitions of parties and even coalitions within a party. Additionally, coalition governments limit the autonomy of PMs in ministerial appointments because their partners appoint their own candidates for the ministerial posts they have negotiated.

In a situation where the PMs command the majority, they would appoint a gender-balanced cabinet provided they have the will to do so. For instance, Prime Minister David Cameron failed to deliver on his 2008 pledge of one-third women in his 2010-15 coalition cabinet, partly because of the failure of his coalition partner to nominate any female ministers. He was able to deliver on his promise in his 2015 majority government (Annesley & Gains, 2010). Krook and O'Brien (2012:843) weigh in and point out that coalition governments reduce the number of cabinet positions available per party, thereby affecting the chances for women to get ministerial posts. They explain that in most cases, parties are led by men; as such, it may be more difficult for women in large coalition settings to be given a seat in the cabinet.

In most countries, the allocation of women to cabinet positions is still determined to a large extent by the stereotypical beliefs that women belong in the home and the public arena is the preserve of men (Escobar-Lemmon & Taylor-Robinson, 2009:21; Krook & O'Brien, 2012:842; Annesley, Franceschet, Beckwith, & Engeli, 2014:17). As such, women are skewed to the traditionally feminine portfolios such as gender or women's affairs, culture, family affairs, sports and tourism, health and education; while their male counterparts are given positions in defence, foreign affairs, finance, foreign affairs, home affairs and agriculture, commerce and industry, justice and security, labour and social security, mining and energy, transportation and public works (Reynolds, 1999; Escobar-Lemmon & Taylor-Robinson, 2009:21; Suraj, Scherpereel & Adams, 2014:326; Goddard, 2019:637; Rashkova & Zankina, 2019:237). The ministries that do not fall within the two categories are placed in the "unclassifiable" or gender-neutral group. They are environment, justice, planning and development, sports, tourism and communications (Escobar-Lemmon & Taylor-Robinson, 2009:22). This gendered approach to ministerial appointments disadvantages the women MPs because they are confined to certain ministries and are faced with a glass ceiling. This

limits the number of ministries available for them and, ultimately, their presence in the cabinet. Besides their gendered nature, cabinet portfolios also differ in the amount of media attention they receive, the extent to which they can be used as a stepping stone to higher office, and their authority within the cabinet (Krook & O'Brien, 2012).

Factionalism also has a bearing on the PMs' cabinet appointments. They at times select both their loyalists and opponents. They do this to garner support in the cabinet and quell opposition and offer rewards for support and encouragement to others (O'Malley, 2005:17). Heppell (2012:212) concurs by arguing that appointments need to ensure the appropriate factional balances that will make the party's management easier. The leader must also reward the factional grouping to which he/she may also be aligned to accommodate the party elites with a sizeable amount of influence.

Another factor that influences ministerial appointments is one's presence in the top hierarchy of the party leadership. Annesley (2015:12) notes that few women have secured leadership positions in political parties' structures, setting up ministerial opportunities. Cabinets are composed of political party leaders who are also responsible for the formation of the cabinet. They usually allocate cabinet posts to the highly visible members of the political parties (Shan-Jan & Banaszak, 2016:6-7).

In their study on the conditions that determine the acceptance or rejection of the changes that bring about gender equality by the party or parties in power, Franceschet and Thomas (2015:651) compared two gender parity cabinets: the first appointed in 2004 by Spain's prime minister, Jose' Luis Rodri'guez Zapatero, and the second appointed in 2006 by Chile's president, Michelle Bachelet, and found out that Bachelet could not appoint a parity cabinet because the party wanted to maintain the tradition whereby ministers are selected from the party leadership.

The above section has brought to light the combination of institutional factors that determine the appointment of women to ministerial positions. In the following section, the chapter presents the composition of the Lesotho cabinet since 2002 followed by the analysis of the formal and informal institutions that have contributed to the low presence of women ministers since the dawn of coalition politics in 2012.

5 Women in cabinet in Lesotho and the institutions that determine the number of women in ministerial positions

The presence of women in the Lesotho cabinet has been below parity in the past six elections cycles. Since 2002, the percentage of women surpassed the 30% threshold only once, that is, in 2007. The table below shows the representation of women in ministerial positions since 2002.

Table 15.1 Women representation in cabinet in Lesotho since 2002

Year	Number of parties in government	Number of cabinet members	Number of Women	Percentage (%)
2002	1	14	2	14
2007	1	19	7	37
2012	3	20	4	20
2015	7	35	7	20
2017	4	37	7	18
2020	6	36	7	19

Source: Compiled by the author

The picture portrayed by the statistics in the above table is that Lesotho is experiencing a disturbingly poor representation of women in one of the most important public decision-making bodies. This is in contradiction to the gender equality protocols to which Lesotho has acceded. It also indicates that the country is missing out on the benefits that accrue from the inclusion of a significant number of women as public decision-makers.

5.1 Formal institutions

5.1.1 The constitution of the country

Section 87 of the Constitution of Lesotho specifies that the Prime Minister (PM) has the prerogative for appointing ministers and advises the King on the choice. The King appoints ministers from among the legislators, that is, from the National Assembly and the Senate. The Constitution does not specify the need for gender parity in the cabinet. As such, the Prime Minister and the coalition partners are not obligated by the highest law in the country to ensure gender equality in ministerial appointments. As much as the Constitution bestows the ministerial appointment powers upon the Prime Minister, in reality, the Prime Minister does not unilaterally select the ministers. In coalition governments, the parties that have formed the government are at liberty to choose ministers according to their own criteria and then submit the list to the Prime Minister.

Additionally, in effect, the Prime Minister does not make appointments even from his own party. The national executive committee (NEC) of his party plays a significant role in the appointment process. For instance, after the appointment of the ministers in the 2020 coalition government led by Moeketsi Majoro, some disgruntled All Basotho Convention (ABC) MPs who were against the inclusion of MPs from Basotho National Party (BNP) and Reformed Congress of Lesotho (RCL) in cabinet stated that the Prime Minister informed them that the NEC made decisions on who was to be appointed. He told them that cabinet appointments were not his prerogative (*Lesotho Times*, 2020). Consequently,

even a pro-gender equality Prime Minister and the leaders of political parties in government have no powers on the gender composition of the cabinet. This arrangement disadvantages the women, as often, the NECs are male-dominated and will therefore serve men more than women. Obviously, even the parliamentary caucus of the party is not involved, as the discontented party members were MPs but were not involved in the formation of the cabinet.

5.1.2 Party constitutions

The constitutions of some of the parties that have had the opportunity to recruit more than three ministers (DC, AD and LCD) specify that women will constitute a minimum of 30% in all the parties' structures and in all political posts in governments under their leadership. LCD and DC have even gone further to put in place some measures that would be taken to ensure the presence of a minimum of 30% of women in all the structures of the party. They mention that women with the requisite abilities will be voted for and those with the most votes will be incorporated into the party structures until they constitute 30% (Democratic Congress Constitution, 2012:6; Alliance of Democrats Constitution, 2016:12; Lesotho Congress for Democracy Constitution, n.d: 5).

They are, however, silent on measures for ensuring that women constitute at least 30% in government political posts under their parties' rule. So, in the absence of formal mechanisms for ensuring the 30% presence of women in government posts, cabinet included, informal institutions take centre stage. Galea, et al. (2020:14) argue that where internal recruitment criteria are absent, the recruiters resort to the informal practice of "picking your team" and "taking your team with you" and these require interpersonal links and male sponsorship. The situation on the ground contradicts the contents of the political parties' constitutions as the 30% quota is hardly implemented. The examination of the formal institutions does not sufficiently shed light on the recruitment process for one to become a minister.

This indicates that the informal institutions might be dominant in determining one's eligibility and chances of being a cabinet member. This is in line with Franceschet and Thomas's (2015:647) argument that the absence of legal rules about ministerial recruitment does render cabinet formation as entirely an ad hoc process. Instead, the appointment of cabinets is frequently governed by informal norms and practices that follow regular patterns, although the patterns are not static. The ABC and BNP are silent on the gender composition of their party structures; as a result, it is befitting to say that the informal institutions solely determine their cabinet appointments. A look at their ministerial cabinet trends indicates that their performance in gender equality is unsatisfactory. For instance, in the 2012 coalition government, which comprised 20% women, ABC women constituted 18% while LCD women constituted 25% of the women ministers. In the 2015 coalition government, which consisted of 20% women, DC had 24% of its ministerial posts occupied by women while LCD had 33%. In 2017, the cabinet comprised 18% women, of which 10% was from ABC, 33% from AD and 25% from BNP (GoL, 2012, 2015, 2017).

AD fulfilled its pledge in appointing more than a minimum of 30% women to cabinet positions. The LCD and DC have at times failed to live up to their pledge of 30% representation of women in all political posts in government under their leadership. This could mean that coalition governments are limiting the gender equality cautious parties to live up to their promises or the informal selection criteria gets to be informally institutionalised within political parties by being broadly known, accepted, and executed by institutional actors, while the formal selection criteria may fail to be institutionalised and employed as posited by Bjarnegård and Kenny (2015:752).

Bjarnegård and Kenny (2015:750) state that party regulations do not tell us much about the nuances of recruitment processes on the ground. They, therefore, advise researchers to look further for the role played by the informal rules, norms, and practices in shaping behaviour and outcomes. Thus, the following paragraphs delve deeper into the role played by the informal norms and practices in the appointment of ministers. The paper adopts a periodisation approach to identify the patterns that emerge in coalition governments.

5.2 Coalition governments and informal institutions

5.2.1 The 2012 coalition government

The 2012 elections resulted in a hung parliament. As a result, no single party had enough seats to form a government on its own. This resulted in the first coalition government that was formed by three political parties, namely, All Basotho Convention (ABC), Lesotho Congress for Democracy (LCD) and Basotho National Party (BNP). The percentage of women in the cabinet stood at 20%. The constitutions of ABC and BNP are silent on the representation of women in the party structures and in government positions that are filled with political appointees. LCD was the only coalition party that had made the commitment to ensure 30% representation of women in all governance structures in its constitution. However, it failed to live up to its pledge. Women comprised 25% of the ministers representing LCD, a massive decline from 2007 whereby the cabinet included 37% of women. Women from the ABC, which had a larger share, only made up 18% of the party's ministerial representation. This is not surprising since ABC has not made any promises about improving the participation of women in the party and government structures.

So, what explains the renegeing of LCD on its pledge? The formal rules were not enforced, leaving space for the informal ones. This boils down to the unwritten rules regarding who qualifies for appointment as the constitutions are silent on the backgrounds and abilities required for one to be a minister. This could be explained based on the political environment that was prevailing just before the 2012 elections. The LCD had experienced internal fighting that led to the formation of the splinter party, the Democratic Congress (DC). It is, therefore, safe to say that the LCD leader was bound to reward those who had

stood with him during the conflict that led to the splitting of the party. This corroborates the observations by O'Malley (2005:17), who argues that leaders use cabinet posts to reward their supporters. Women do not thrive in an environment characterised by heightened conflict; only men do. As a result, more men than women had to be rewarded for their loyalty to the LCD and women were left out of the cabinet.

Another notable issue in the allocation of the ministerial post was that most women were placed in the traditionally feminine portfolios. Mrs Doti was placed in the Ministry of Social Welfare, Mrs Mamahle Radebe in the Ministry of Tourism, Environment and Culture, Mrs Makabelo Mosothoane in the Ministry of Education and Training and Mrs Keketso Rantšo in the Ministry of Public Works and Transport. Unexpectedly, the Ministry of Gender, Sports and Recreation was given to a male, Mr. T. Maseribana. His party had few seats in parliament and was a junior partner. The core portfolios were given to the males. This indicates that the coalition partners in government allocated posts based on the traditional gender roles. Women are seen to be unfit to lead core ministries such as finance and defence. This stereotype limits the number of portfolios to which women may be appointed and therefore disadvantages women. This corroborates the assertion by Escobar-Lemmon and Taylor-Robinson (2009:21), Krook and O'Brien, (2012:842) and Annesley, Franceschet, Beckwith and Engeli (2014:17) that women are confined to the traditionally feminine portfolios and are thus able to access a limited number of ministerial positions.

Moreover, membership in the executive structure hierarchy in the party of a political party plays a vital role in ministerial appointments. Party leadership position has already been alluded to, in that party leaders, who are predominantly male, are guaranteed positions in the cabinet in coalition governments. The same is true for deputy leaders and the rest of the executive committee. The leaders of the three parties that formed the coalition government and their deputies were given ministerial posts. The members of the NECs (mostly men) for LCD and ABC were given a larger share of the cabinet seats. Women were, therefore, side-lined. This observation substantiates the findings of Annesley (2015:2), who states that ministerial appointments are determined by membership in party leadership positions and that few women secure such advantages. Shan-Jan and Banaszak (2016:6-7) made a similar argument that political party leaders are guaranteed a place in cabinet and usually appoint the highly visible members of the parties to the ministerial positions.

5.2.2 The 2015 coalition government

The 2015 coalition government comprised of seven political parties, namely, the DC, the LCD, the Popular Front for Democracy (PFD), the Marematlou Freedom Party (MFP), the Lesotho People's Congress (LPC), the Basotho Congress Party (BCP) and the National Independent Party (NIP). There was no known pre-elections factionalism amongst the political parties that formed the 2015 coalition government. However, the fact that the

bigger parties, DC and LCD, that led the coalition, sought the support of smaller parties to bolster the stability of the government meant that they had to reward their small partners with cabinet seats. The leaders of the big and small parties scored ministerial positions for themselves; all had male leaders. Six cabinet posts were allocated to the five small partners; each got one post except PFD, scoring two (one for the leader and the other for the deputy leader as deputy minister). From the beginning, women were already side-lined on the basis that political party leaders of the parties forming the government automatically deserve to be in the cabinet. The deputy leaders of the political parties all got into the cabinet, and they were all males. This brings to light that seniority in political party structures determines the propensity for one to be appointed into the cabinet. This also has gendered effects because women rarely occupy senior positions in political parties' national executive committees (NECs). Consequently, the NEC seniority criterion disadvantages the women; hence their numbers in the cabinet were low.

Another factor that was factored in during the cabinet posts allocation was the rewarding of the ABC member of parliament (MP), who had crossed the floor to join the DC, namely, Thabiso Litšiba. Thabiso Litšiba was a former ABC secretary general who defected to DC on 15 May 2015 and was placed as the minister of Small Business Development, Cooperatives and Marketing. This factor has not been alluded to in the literature. The analysis of the coalition governments that followed elucidates whether it is a factor that matters or a once-off phenomenon.

Regarding portfolio allocations, the trend of placing women in feminine ministries continued except for Dr M. Khaketla and Mrs. 'Mapalesa Mothokho, who were given Finance and Agriculture and Food Security ministries, respectively. Other women were placed in either feminine or neutral portfolios. Interestingly, the Ministry of Social Development was given to a junior coalition partner representing Lesotho People's Congress (LPC). It is proper to say that women and males from the junior coalition partners share the feminine and neutral portfolios. It is important to note that the number of cabinet posts was increased from 20 to 35 (Gol, 2015). In such a situation, one would have expected that the percentage of women in the cabinet would increase. Unfortunately, it remained at 20% as it was in 2012. The increase benefited the coalition partners from the junior parties, who were all men.

5.2.3 The 2017 coalition government

The 2017 elections also resulted in a coalition government between four parties: ABC, BNP, Alliance of Democrats (AD), and Reformed Congress of Lesotho (RCL). The 2017 coalition government appointed the lowest number of women ministers ever since Lesotho's beginning of coalition politics. The presence of women in the cabinet stood at 18%. This can be explained based on the stance of political parties that formed the government and the political environment leading to the elections. The political environment was marred

with intra-party conflict in the Democratic Congress (DC). The DC conflict led to the birth of the Alliance of Democrats (AD). After the 2017 elections, the AD rewarded the MPs that had defected with the leader with cabinet positions. For instance, at the height of the conflict, the then PM, Pakalitha Mosisili shuffled his cabinet, and in doing so, he fired some of the well-known Lirurubele faction members (the name given to the supporters of Moleleki faction) such as Dr M. Phamotse and Dr M. Molapo and transferred the leader of the faction to a junior ministerial post. He tried to destabilise the faction by luring Mrs M. Phohleli and Mr Mokhele Moletsane to his side by giving them ministerial posts. Mr. Moletsane refused and was rewarded with a ministerial post during the AD, ABC, BNP and RCL coalition government that was formed post-2017 elections. Mrs Phohleli took up the offer by Mr. Mosisili, which she later rejected. She also got rewarded with a ministerial post by her party. Additionally, most of the AD women who were given ministerial positions in the 2017 coalition government were members of the Lirurubele faction. They were Dr M. Phamotse, who became the Minister of Education and Training, Mrs. M. Phohleli who was rewarded with the deputy ministerial post in the Ministry of Health and Dr M Molapo who became the Deputy Minister of Agriculture and Food Security.

The other aspect that seems to have been considered when appointing ministers was floor crossing. For instance, immediately after the elections, Mr Tlohelang Aumane and Mr. Mothepu Mahapa jumped ship by defecting from the opposition DC to the coalition government partner AD. They were rewarded with ministerial and deputy ministerial posts in the Ministry of Development Planning and Ministry of Education and Training, respectively. Another MP from DC, Mr S. Sekatle was given a ministerial post in the Ministry of Tourism, Environment and Culture; he then left the DC to join ABC (*Lesotho Times*, 21 December 2018). In an interview with *Lesotho Times* (21 December 2018) Mr. Sekatle stated that he would not have considered crossing to ABC if Tom Thabane had not offered him a ministerial post. The rewarding of floor crossers, as was the case with Mr. T. Litšiba repeated itself. The tendency to reward floor-crossing has a gendered effect as the country's parliamentary rule does not allow Proportional Representation (PR) list MPs to cross the floor but only those with constituency seats. Most women access the National Assembly through the PR list and are therefore unable to sell their seats for cabinet posts.

Additionally, membership in the executive structure hierarchy of a political party played an important role, even in this case. Party leadership position has already been alluded to in the preceding sections. The deputy leadership follows the leadership position when the ministers are selected. For instance, most of the AD ministers held positions in the NEC, which was true for the ABC.

The issue of gendered portfolio allocation happened again even in this government. Women bagged the feminine ministries, and the small coalition partners were allocated the neutral ones. The allocation restricts women further as they seem to be only eligible for the feminine and neutral portfolios. This, therefore, reduces further the number of portfolios available for them.

5.2.4 The 2020 coalition government

The resignation of Prime Minister Tom Thabane in 2020 followed a bitter fight for power within the ABC that had started in February 2019 during the elective conference for the national executive committee (NEC) of the party. The ABC conflict resulted in two factions namely, *likatana* and "state house". In 2020, after many court battles, the *likatana* faction won the war. Almost all the MPs that were from the *likatana* faction got ministerial positions. Most were men, with the exception of Mrs Doti who was the only female MP who was publicly known to be a member of the *likatana* faction. So, it is safe to say that one's loyalty to the winning NEC served as a qualification for appointment.

Lesotho Times (30 September 2020) corroborates the observation when reporting that the ABC MPs and members of the NEC accused Prime Minister Majoro of neglecting their recommendations for him to reward those who took part in bringing down the previous government of ABC leader, Thomas Thabane by appointing them to high-ranking government posts. Instead, Prime Minister Majoro was said to be appointing his favourites to such positions. An anonymous source informed *Lesotho Times* newspaper that the party members had agreed that people from the constituencies of the MPs who had supported the NEC but failed to secure cabinet positions must be considered for PSs and ambassadorial positions to appease the constituents for their support during the fight. The utterances by the MPs indicate clearly that there is an unwritten rule that those who supported the winning faction must be rewarded with key posts in government. This expectation has a gendered outcome because, at times, the warring factions engage in violent activities, a situation that most women would avoid at all costs. As a result, most women would take up a back seat and, in the end, when the war has been won, they would be highly unlikely to get appointed to lucrative cabinet posts.

Additionally, some ABC MPs were angry that although they won constituency seats, they were left out in Prime Minister Majoro's cabinet, stating that it was unfair for the leaders of both BNP and RCL to have been given cabinet posts despite having won no constituency (*Lesotho Times*, 2020). This also has a gendered effect because more men than women win in the constituencies. Therefore, if the expectation is to have a constituency to qualify for a cabinet post, most women would be left out.

Like the coalition governments that came before, the leaders of the six (ABC, DC, BNP, MEC, PFD, RCL) political parties that have formed the government have scored ministerial appointments. It is important to note that the small coalition partners have been allocated the neutral portfolios. And this seems to have been the case in the coalition governments that came before. This phenomenon has also not been raised in the literature, but it seems to be a norm in Lesotho coalition governments.

The leader of ABC retired, and the ABC MPs and the NEC elected Moeketsi Majoro to replace him (*Lesotho Times*, 2020). This was because his deputy, Nqosa Mahao was ineligible for the Prime Minister position as the Constitution of Lesotho requires that one must be a member of the National Assembly to become the Prime Minister (*Lesotho Times*, 2020). He joined the Senate at a later stage and was given a cabinet post. Nonetheless, the leader of ABC was a member of the cabinet before he retired.

Moreover, membership in the executive structure hierarchy in the party of a political party played an essential role in ministerial appointments. For instance, most members of the ABC NEC who are MPs are ministers except Mr. Hlaele, who was said to have refused a cabinet post citing his commitment to reuniting the fractious ABC as his reason for the refusal and Mr Phori, who was siding with the anti- Mahao faction. The same is true for DC. Therefore, in all instances, party leadership and one's membership in the high echelons of the political party structure serve as a golden ticket to the cabinet seat.

6 Conclusion and recommendations

The political parties in Lesotho do not have known criteria for the appointment of candidates for cabinet posts. A few that acknowledge the need to ensure gender equality in the appointment of members to the party structures and government posts do not specify the requirements for one to qualify. Since there are no explicit formal rules on ministerial recruitment, one can aptly argue that the informal rules are predominantly followed in undertaking that exercise. The formal and informal rules and norms that have been identified in this chapter are gendered in a way that they distribute power within executives towards the male actors.

Several patterns have come to the surface in this analysis. The most glaring one is the post-factionalism trend wherein the supporters of the winning faction get rewarded with ministerial posts when they get into government. The few women who were brave enough to publicly be seen to be supporting leaders of certain factions secured themselves some cabinet posts. However, as indicated earlier in this chapter, this criterion disadvantages women as factionalism results in violence, something which most women would try to avoid.

Another factor that has emerged is the floor-crossing in the National Assembly. Most of the MPs that crossed the floor were rewarded with cabinet posts by the parties to which they had defected. Mr T. Litsiba, Mr T. Aumane and Mr S. Sekatle crossed the floor and were all given cabinet posts. Floor crossing can only be done by MPs who have constituencies; those who entered the National Assembly through the PR list are barred from crossing. Most women MPs are PR list beneficiaries, which means that they cannot trade their seats by crossing the floor in exchange for ministerial posts. Only a few women have constituency seats. As such, the bargaining powers of women for cabinet positions is highly limited.

Additionally, more women than men have occupied ministerial positions in ministries that deal with soft tissues such as gender, social welfare, and health in all coalition governments. Women have been confined to the soft ministries, limiting the number of ministries available for them, and consequently, their number in the cabinet is restricted. The ministerial portfolio allocation exercise is highly gendered.

Based on these observations, it is appropriate to conclude that the formal and informal institutions guiding the recruitment of ministers in Lesotho are highly gendered. As a result, they limit the chances for women to access the cabinet, which is the pinnacle of public decision-making. Women are being overlooked when appointments for core portfolios are made. As a result, the core portfolios have not benefited from the experiences and perspectives of women. Ironically, the male MPs who may have competencies and interest in the so-called feminine policy areas are also side-lined as they are confined to the traditionally masculine portfolios. As a result, the country is missing out on the diversity of skills and knowledge available from both the female and male MPs, which could bring positive development to the nation.

Moreover, the data suggest that the coalition governments in Lesotho have in a few cases appointed women to the traditionally masculine policy areas such as finance, foreign affairs and agriculture. Since the birth of coalition governments in 2012, a woman has been appointed to the ministry of finance, agriculture, and foreign affairs only once. That is, in 2015, whereby Dr Mamphono Khaketla and Mrs 'Mapalesa Mothokho were appointed to the ministries of Finance and Agriculture respectively and in 2020 where Mrs. Matšepo Ramakoae was appointed to the Ministry of Foreign Affairs and International Relations. As far as the Defence and Home Affairs ministries are concerned, only men have had the privilege to be ministers in such. There is a stark difference between the core portfolios and non-core ministries. Regarding the neutral ministries, MPs from coalition partners with few seats seem to be getting appointed to the neutral portfolios. As the literature points out that women are more likely to be appointed to the less salient and neutral portfolios, this practice reduces the chances of women being appointed to the cabinet in satisfactory numbers.

In order to arrest the pervasive gender inequality in the appointment of ministers, the chapter recommends the following institutional reconfigurations. Firstly, political parties may consider establishing selection procedures for cabinet posts to give formal rules more weight than informal ones. In so doing, they will have to assess the likely gendered effects of the formal procedures on the composition of the cabinet. Franchet and Thomas (2015:647) state that the informal rules are frequently disadvantageous to women because there are no formal authorities to whom demands for gender-friendly change can be addressed.

There is also a need to introduce a gender quota system for both parliamentary and ministerial posts. Claveria (2014:72) points out that party quotas effectively increase the number of women in the cabinet than other political factors. Presently, the political parties submit gender-balanced PR lists for only 40 of the 120 seats in the National Assembly. This is not enough. As such, provision should be made for a quota system regarding constituency seats. Measures should be put in place to motivate political parties to comply. Political parties should commit to that to make it easy for the Prime Minister to appoint a gender-balanced cabinet. Krook and O'Brien (2012:850) posit that enhancing the number of women in parliament increases the pool from which to select and consequently increases the number of women in the cabinet.

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THE ECONOMIC COST OF CONFLICT WITHIN COALITION GOVERNMENTS IN LESOTHO FROM 2012 TO 2020

16

Selibe Mochoboroane and Keneuoe Mots'oene

1 Introduction

Lesotho has the coalition model of governance, characterised by a perpetual in-fighting between coalition partners since the beginning of the coalition governments in the country in 2012 with economic costs. The introduction of the mixed electoral system, with a strong proportionality element, brought about a paradigm shift from the dominant party system to inclusive politics and brought about a new phenomenon of a coalition government (Nyane, 2017). Therefore, it was expected that, with the transition from a one-party government to a dispensation of coalitions since 2012, Lesotho would prosper through the realisation of economic development. However, political instability has kept the country's economic development sluggish. Within the last five and a half years, from January 2015 to June 2020, the country has held two snap elections due to political instability. Needless to add, the cost of maintaining coalition governments in Lesotho since the first coalition in 2012 to 2020 is massive compared with the lesser economic development of the country.

Nowhere in history has Lesotho experienced so much loss of public revenue than it has during the coalition government, with remarkable negative effects on the country's socio-economic development in the period from 2012 to 2020. The ensuing conflict that arises within and between the parties that form the coalition seems to be the main cause of the mortality of these coalitions, exposing the country to unavoidable costs which are directed to the individual citizens of Lesotho during and at the end of the coalition. The inter- and intra-party conflicts have not given the country a chance to realise its development

potential, given that some of its resources are siphoned continuously for self-enrichment by individuals in their serving capacity as government officials. The economy is seriously constrained to generate the growth needed to adequately serve the needs of the nation, mainly the basic needs of the poor masses.

In exposing the economic cost of political conflict on the development of the country from 2012 to 2020, it is because this period attracted the attention of the researchers as it is when the country had different parties engaging in coalitions to form the government. Within seven years, Lesotho has had four coalition governments that all could not finish their term of five years. In undertaking the study, the researchers aimed at ascertaining the economic cost of political conflict during coalition governments in Lesotho from 2012 to 2020 and find out the manifestations of this cost. The research further intended to come up with suggestions for remedial actions to the government of Lesotho to bring about stability in future coalition governments.

This study used both the qualitative and quantitative approaches. Studying diverse economic costs of conflict within coalition governments and the extent to which conflict impacted the socio-economic development of the country warranted a qualitative approach. The researchers also conducted personal and telephonic interviews with the political leaders, political activists, civil society organisations, National Assembly speakers, clerks, government officials and security agencies to collect primary data.

The costs of conflicts within the coalition governments also attracted a quantitative presentation and explanation. The study adopted some economic indicators to measure the performance of coalition governments from 2012 to 2020, including the capital budget, among others. It was deemed necessary to reflect on certain variations in the data in the period given. However, it was necessary for some economic indicators to expose a full picture of their behavioural pattern over this time period through graphs, variations and trends that could only be understood when shown a few years earlier than 2012 and after 2020 using projected data. Most of this data was derived from various documents. Therefore, secondary data was to support and strengthen the primary data. The documents that were used included reports, papers, receipts, digital or analogue media such as audio tapes or CDs.

All collected data were grouped into themes created from the research objectives and subthemes were derived from the research questions. The interpretive analysis was adopted to give full meaning to the data to unfold the existing scenario on the economic cost of political conflict on Lesotho's development.

1.1 *Lesotho coalition governments and political conflict*

One of the most difficult issues to control and which has an unbearable impact on social and economic development in developing countries has been political instability. Political instability is explained as a situation or process whereby society is drenched in obvious and concealed conflicts, which in turn result in serious threats to its social being (Matlosa, 1997). Matlosa argues that Lesotho, a developing country, is not excluded from the general tendency of instability which is generated by various conflicts, prominent among them being political conflicts.

Lesotho's 2012 general elections were historic. The country moved from a single-party government under the Lesotho Congress for Democracy (LCD) led by the former Prime Minister, Pakalitha Mosisili, in 1997, to a coalition government of three political parties. In 2011, the intra-political conflict within the LCD produced strong political factions known as "Fire Extinguishers" (*Litima-Mollo*) and "Fire Absorbers" (*Lija-Mollo*). The unresolved political power struggle within the LCD resulted in a split that gave birth to the Democratic Congress (DC). The resulting circumstances forced the then Prime Minister Mosisili to dissolve parliament and call for fresh elections. On the eve of the announcement of the poll results by the Lesotho Independent Electoral Commission (IEC) on Tuesday 29 May 2012, it was clear that no party had amassed the requisite 61 out of 120 seats in the National Assembly to form a government. This resulted in confusion and controversy (Motsamai, 2012). The DC, being the leading party with 41 seats, failed to win the outright majority but was threatening to form a minority government.

From Lesotho's independence in 1966 to 2012, successive governments were formed by single political parties because they each managed to garner a sufficient majority to form the government. Given the situation, there was no controversy, hence no need to negotiate the formation of government. The situation came to a halt following the 2012 general elections when Lesotho experienced the first coalition government. Circumstances forced political parties to negotiate the formation of a coalition government. The leaders of the All Basotho Convention (ABC), LCD and Basotho National Party (BNP) held a press conference to announce their intention to form a coalition government. They subsequently wrote a letter to the King, the Head of State, informing him about their intention. The first coalition government did not complete its five-year term. It collapsed within two years, plunging the kingdom into a new era of political uncertainty. There was an inter-party conflict between ABC and LCD. The then Deputy Prime Minister, Mothejoa Metsing, was accusing the Prime Minister, Thomas Thabane, of making unilateral decisions to the exclusion of other coalition partners. The conflict was exacerbated by the prorogation (suspension) of parliament for nine months and ultimately a snap election in 2015.

The situation of a hung parliament recurred in the aftermath of the 2015 snap elections. The elections gave birth to yet another hung parliament where no single political party had won the majority of the seats in the National Assembly. The 2012 general elections results had set a precedent, so the 2015 elections, failing to produce an outright winner, necessitated negotiations that led to the formation of the second coalition government, which was composed of seven political parties led by the former Prime Minister, Mosisili. Within a short space of time, the Mosisili-led coalition of political parties was unstable. The instability emanated from within the DC, which was the senior partner in the coalition of the seven political parties which displayed intra-party conflict.

The DC infighting had heightened to the birth of two factions, “Butterflies” (Lirurubele) and “Girls” (Lithope), with the former said to be pro Mosisili while the latter was said to be sponsored by his Deputy, Monyane Moleleki. As tensions mounted, a motion of no-confidence was filed against Mosisili’s government. Having lost the vote of a no-confidence motion in parliament, Mosisili dissolved parliament in 2017 and called for snap elections. Consequently, for the second time, Lesotho’s government could not complete its first five-year term (Nyane, 2016).

Following the 2017 snap elections, the ABC, having won 51 out of the 120 parliamentary seats, was not an outright winner. As a result, the party negotiated with the Alliance of Democrats (AD), the Basotho National Party (BNP) and the Reformed Congress of Lesotho (RCL) to form the third coalition government.

The total cost of the three snap elections in Lesotho in the space of five and half years is estimated to be M900 000 000.00 (Nine Hundred Million Maloti) (Public Accounts Committee Report, 2019). Given this background, this raises a concern about the coalition governments failing to complete the five-year term, mainly due to conflicts that have proved far too costly. The chapter examines the economic cost of conflict as a result of inter and intra-political disagreements between coalition partners in Lesotho from 2012 to 2020. The chapter looks at the conflict in Lesotho from the insights provided by other scholarly works which similarly explained conflict and how such conflict could display itself as provided in the following section. These are the definitions on which this study was anchored in explaining what caused conflict during Lesotho coalition governments.

2 Conceptual framework

2.1 Conflict

Scholars have come up with several definitions of conflict. Conflict is an existing state of disagreement or hostility between two or more people. This occurs when two or more parties do not have an agreement and areas such as two different parallels on the same issue.

It, therefore, suggests the pursuit of goals that are not compatible. Conflict means a collision course; it also refers to opposition to an existing view, stands or position (Nicholson, 1992).

Morgenthau (1948) (as cited by Pham, 2009) asserts that conflict is the most noticeable feature of human society. He further argues that men fight even if they do not have arms or when the tools of violence are not accessible. When there are no arms to fight with, men fight even with their bare fists. From birth, a baby begins the journey of conflict by crying, which is a flash of conflict, according to Morgenthau (1948). As the child grows up, he/she bites with the teeth and scratches with the nails on the little fingers when upset. These actions presuppose that people will continue to fight as long as they have emotions that have the potential to love or hate, to be happy or sad, to be pleased or angry. As long as man has other men around him, there will be issues of disagreement because interests differ and interests do clash subsequently, leading to disagreement or confrontation.

Nicholson (1992) further defines conflict as an existing state of lack of consensus or unfriendliness between two or more people. According to Follett (2011), conflict is the appearance of differences, the difference of opinion, and interest. He argues that in a conflict, there is a strong tendency to attribute the blame to other people. Austin (1976) (as mentioned in Bornstein, 2003) also defines conflict as a disagreement between two or more individuals or groups. Each individual or group tries to gain acceptance of its view or interests over others.

Viewed from an extreme and religious perspective, conflict represents one of the two natures of man. One nature is "evil". Its opposite embodies the second, which is the "good" nature of man. St. Augustine (2050) maintains that conflict manifests in disagreement, anger, quarrel, hatred, destruction, killing, or war. Any untoward attitude capable of charging up the political or social environment is likely to culminate in conflict. Greed, covetousness, self-centeredness, discontent, envy, arrogance, rudeness, impunity, among other acts, are capable of producing a breakdown in human relations. In a way, these vices are innate attributes of the "conflict nature" of man.

Louis (2017) defines conflict as an antecedent condition. For instance, scarcity of resources and policy differences among individuals lead to conditions of conflict. It is a process that begins when one party perceives that another party has negatively impacted something that the first party cares about. Conflict is also a psychological state of mind when people are in a dilemma concerning whether to do or not to do something.

From this explanation, we can conveniently define conflict as a disagreement characterised by antagonism and hostility among groups or individuals. In the political sphere, this is usually fuelled by one party's opposition to the policy of another in an attempt to reach an objective different from that of the other party. Researchers have called these "political conflicts".

3 The economic impact

The period under which Lesotho had coalition governments exposed the most critical constraints that stalled the country from achieving its long-term economic development objectives of inclusive and sustainable growth, employment creation and poverty reduction. Economic development is a broad concept, encompassing the country's social and economic progress. The extent to which a country has achieved economic development considers a range of economic indicators, mainly capital budget, as a share of GDP. The capital budget is particularly important because it is the portion of the government budget that comprises funds that are mainly appropriated for programmes and investment projects that are expected to yield a positive return to the economy. According to Ogujiuba and Ehigiamusoe (2014), capital projects include the construction of roads, bridges, hospitals, schools, prisons, public administrative buildings, highways, dams and irrigation systems, acquisition of machinery and equipment, the supply of water and electricity, availability of transport, health and educational facilities. Therefore, if the capital budget is well-executed, it is likely to boost the general economy of a country. While other indicators such as investment appraisal and prioritisation, government revenues, capital absorptive capacity and budget support also contribute significantly to the performance of the economy.

3.1 Capital budget as a share of GDP

From 2012 to 2020, the proportion of capital budget allocation has always been below that of the recurrent budget as a result of conflict among coalition partners. The Public Expenditure and Financial Accountability (PEFA) assessment conducted in 2012 further confirms that the execution of capital projects in Lesotho deviates considerably from the budget outlines. Further, in 2017 the PEFA indicated that the expenditure budget was a major concern for service delivery, as the original intentions of the budget as approved by parliament to meet service delivery were derailed by in-year decisions to the reallocation of budget. Table 16.1 depicts the split between the capital and recurrent expenditure budget for the Fiscal year 2011/12 to 2019/20.

Except for a few years, the proportion of the capital budget allocation has been below that of the recurrent. The government planned to eventually have them at par as per the 2010/11 budget speech. This was somehow achieved in the 2011/2012 fiscal year at a speed of 53 to 47% in favour of the capital budget. However, over the years and particularly in the 2019/20 budget allocation, 73% of the budget had been allocated to recurrent expenditure, leaving only 27% for the development component. This shows a huge imbalance in the development prioritisation of the country.

Amongst the major contributing factors to the ballooning recurrent budget is the emergence of the coalition governments since 2012 that kept on expanding the Cabinet significantly. In the 2013/2014 budget speech, the Minister of Finance, Leketeketse Ketso admits that annual budgets are just a constitutional formality without any meaningful transformation to the lives of Basotho. He stated that the huge allocation of the annual budget towards the recurrent expenditure compromises resources required for service delivery, public investment and the incentive for the private sector engagement. It, therefore, leaves too little room for development.

Based on the findings of the study conducted by Olatunji, et al. (2017) in Nigeria, capital expenditure implementation is appropriate to maintain and sustain economic growth as it can influence the growth of the economy in the long run for some sectors. However, the declining capital budget in the case of Lesotho does not augur well for economic growth and could explain the picture depicted of declining GDP growth (Table 16.1). Figure 1 also illustrates declining capital expenditure over a time period after 2012, a further negative impact on the development of the country.

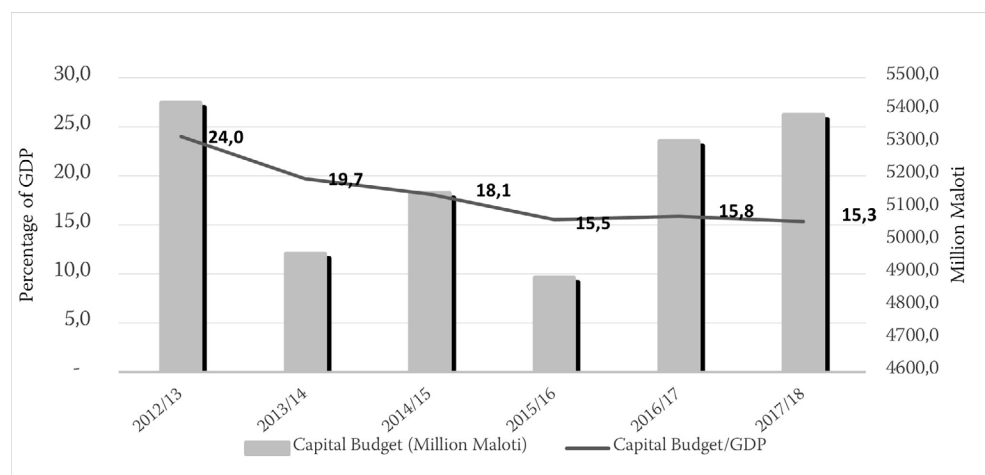


Figure 16.1 Capital budget, 2012/13-2017/18 (Million Maloti and as a share of GDP)

Source: Ministry of Finance (2019)

The table above shows a decline of the capital budget as a share of GDP from as high as 24% in 2013/14 to 15.3% in 2017/18 and it further declined to 14.76% by 2019/20. It should be noted that recurrent expenditure has been growing (Table 16.1). Table 16.1 shows the proportion of the Capital Budget to Recurrent Budget for the period 2012/13 to 2019/20.

Table 16.1 Proportion of capital budget to recurrent budget

Financial year	Total capital budget allocation	Total recurrent budget allocation	Total budget	Capital/total budget (%)	Recurrent/total budget (%)
2011/12	5 134 411 105	4 613 266 118	9 747 677 223	53	47
2012/13	5 369 743 527	11 310 894 848	16 680 638 375	32	68
2013/14	4 828 264 951	4 126 205 225	8 954 470 176	54	46
2014/15	5 027 655 788	10 821 072 856	15 848 728 644	32	68
2015/16	4 133 677 015	14 440 245 575	18 573 922 590	22	78
2016/17	5 865 687 917	11 744 564 000	17 610 251 917	33	67
2018/18	5 716 112 819	12 463 533 000	18 179 645 819	31	69
2018/19	5 545 776 549	14 778 493 000	20 324 269 549	27	73
2019/20	5 168 475 415	13 843 576 000	19 012 051 415	27	73

Source: Ministry of Finance (2019)

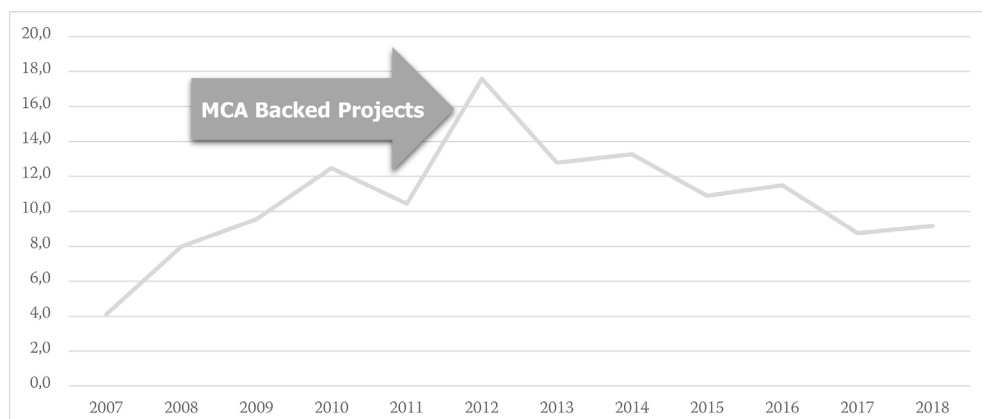
**Figure 16.2 Increase in capital expenditure**

Figure 16.2 illustrates that the capital expenditure registered an average increase of 34.8% between 2007/08 through 2010/11. Between 2008/09 and 2009/10 there was an increase of 53.2 and 52.1% respectively, resulting from the additional capital injection from the Government of Lesotho as well as the increased counterpart funding of projects. There was a slight decline in 2010/11 due to the adoption of the expenditure reduction policy and the significant decline in foreign loans. As a result, nonfinancial assets grew by an average of 50.5%. This included, among others, the up-grading of the Likalaneng to Thaba-Tseka road, construction of secondary schools, and construction of a new referral hospital (QMMH) funded by MCA. The capital expenditure registered 39.2% in 2011/12, before increasing by 27.8% in 2012/13. This growth was attributed to the construction of the

Metolong dam, which was at full scale in 2013/14 and 2014/15. An average decline of 18.6% was observed in the following years as the MCA projects and other donor-funded projects were phasing out.

3.2 Declining government revenues 2012/13-2017/18

Since 2012, coalition governments were not able to increase tax revenues as this component stayed constant at around 20% (Figure 16.3). In the 2017/18 budget speech, the then Minister of Finance, Moeketsi Majoro, pointed out that over the years, the government of Lesotho was unable to generate adequate domestic revenue for the economy. Among others, he attributed this to the mounting political instability that dampened the prospects for the growth of the economy and that there is no significant involvement of the private sector for productive activities that create sustainable jobs and the required tax revenue.

Figure 16.3 depicts the trend of revenue from 2013 to 2018 as a share of GDP. With the onset of the global financial crisis, SACU revenues declined from 13.3% of GDP in the financial year 2010/11 and financial year 2011/12, respectively, thereby leading to a call for a sharp fiscal consolidation. Because of the drop in SACU revenues, the Government had to cut the recurrent spending by 10% of the GDP in the financial year 2010/11. The Country embarked on a fiscal consolidation programme, supported by the International Monetary Fund (IMF) Extended Credit Facility (ECF), in response to the rising fiscal pressures. It managed to cut expenditures by 11% of GDP in 2010. However, capital spending was mostly preserved. As soon as SACU revenues rose again in the financial year 2012/13, during the first coalition government, expenditures also started to rise. As already stated the ballooned cabinet expenditure became high.

Despite this, SACU revenues declined from 25% in the financial year 2014/15 to 13.6% of GDP in FY 2016/17, mostly due to the slower growth in South Africa. The overall revenue declined from 56% of GDP at the beginning of the NSDP 1 to 43% of GDP at the end of the plan. This reflects declining SACU receipts while tax revenue had been constant at around 21% of GDP. Grants declined from 4% to 2% of GDP while other non-tax revenues increased by 1% between FY 2012/13 and FY 2016/17 before declining back to 4% of GDP in 2017/18. The decline in SACU revenue narrowed the fiscal space and has led to a considerable decline in fiscal buffers. The country missed an opportunity to make a gradual adjustment in FY 2016/17. Lesotho's fiscal deficit reached 8% of GDP in FY 2016/17. Due to limited borrowing opportunities, the Government financed the deficit through a drawdown of government deposits at the Central Bank resulting in a decline of the reserves. The reserve coverage declined from 6.1 months of imports in FY 2015/16 to 4.2 months of imports at the end of FY 2016/17 (World Bank, 2017). This indicates clearly that the country generates lesser revenue for its fiscal spending, resulting in a depletion of national reserves to finance the spending. The declining revenue implies that fiscal space for further capital expansion is limited.

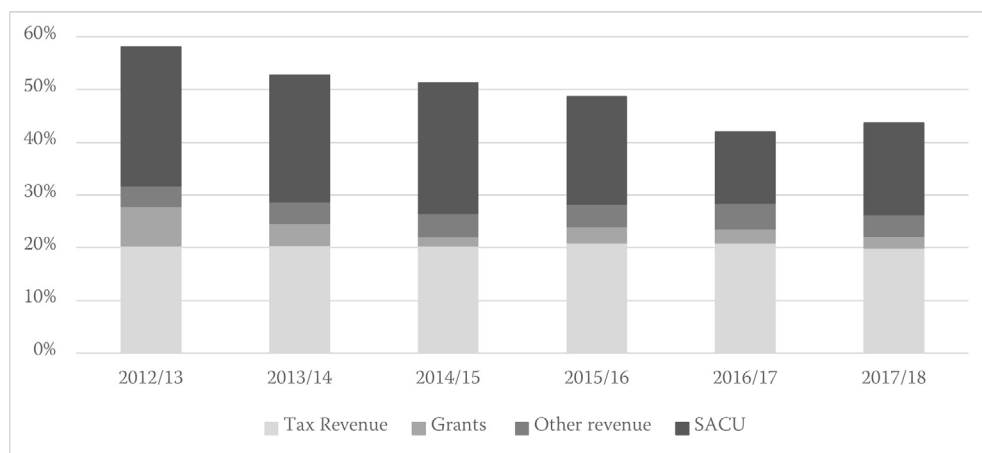


Figure 16.3 Sources of government revenue, 2012/13-2017/18 (share of GDP)

3.3 Lack of project investment appraisal and prioritisation

Due to the conflicts within the coalition governments, there were occasions where certain projects were implemented without being subjected to PSIC. As a means to address the projects' implementation failure, the cabinet established the Public Sector Investment Committee (PSIC) in September 2013 as a body that appraises project concepts and proposals to ascertain their financial and economic viability and sustainability as well as their technical, institutional, environmental and social aspects, in accordance with the set project appraisal guidelines. The projects that meet the requirements form part of the Public Sector Investment Programme (PSIP) and are recommended for funding.

The intention of the PSIC is to institute a uniform and transparent process of project formulation and appraisal. In government, all projects must be approved by the PSIC before they are recommended to the Cabinet budget sub-committees as pipeline prospective projects for inclusion in the PSIP. This principle also applies to the projects that are funded, wholly or in part, by Lesotho's external development partners to ensure that the assistance rendered by the donors and loan providers addresses the national priorities. Nonetheless, project failure was quite remarkable from 2012 to 2020.

For example, the construction of the Principal chiefs' offices in the Ministry of local government and chieftainship was started in most of the wards in 2012. However, for some of the offices such as Maama, Matsieng and Maqhaka construction started in the past seven years has not been completed till now. Each of them was supposed to be built at the cost of a maximum of M3 million (Ministry of Finance, 2019). This project became too costly for the government.

In addition, the Palace construction project, which started in the 2011/12 financial year during the first coalition government in Lesotho, did not go through proper appraisal processes. Later, the construction works audit was done. Its report revealed many technical and construction defects that necessitated a revisit to the project, thus adding to its costs and life cycle. Garmann (2014) argues that it is difficult for coalition government partners to agree on certain policy areas when there is conflict among them. As a result, coalitions are likely not to approve some projects in cases where there is no consensus. In these cases, there is the potential for projects to be undertaken without appraisals or not to be undertaken at all and thus be costly in the long run.

Evidence shows that the costs are contained where the guidelines to project implementation have been properly followed, as is the case with the Mokhotlong road construction that started in 2012 in the first coalition. This project was completed on time with small variations that were known and approved. The variations included an additional cost of around M16 million for a footbridge and paving around and beyond the Sani border gate, costing around M11 million. Because of proper planning throughout the appraisal process of this project, its implementation was a success, and it was executed within the planned period.

The following projects (Tables 16.2 and 16.3) are examples of the success and failure scenarios as a result of the set assessment requirements.

Table 16.2 Construction of the Royal Palace

Project name	Construction of the Royal Palace
Appraisal Date	Not appraised
Initial Estimated Cost	M136 000 000.00
Start Date	2011/12 (August 2011)
Initial End date	2013/14 (August 2013)
Additional financing Appraisal Date	August 2017
Revised Cost	M474 676 747.89
Expenditure to date (as at end of Dec 2019)	M401 127 664.01
Revised End Date	2018/19 (September 2018)
Re-Revised Cost	M540 127 664.00
Re-revised End Date	2020/21 (August 2020)

Source: Ministry of Finance (2019)

Table 16.3 Construction of a 44km road from Mokhotlong to Sani Pass

Project Name	Construction of Mokhotlong – Sani Pass Road
Appraisal Date	2010/11
Initial Estimated Cost	M740 000 000
Start Date	May 2012
End date	Dec 2015
Actual Expenditure	M767 000 000

Source: Ministry of Finance (2019)

3.4 Low capital absorptive capacity

Not only does the capital budget as a share of GDP decline but there is also evidence of delay in the execution of projects and an under-spending of the capital budget during the period of coalition governments. This delay is depicted in Table 16.4 that shows a weak absorptive capacity in the implementation of the capital budget. According to the Cabinet sub-committee on a budget (2015/16), reallocation of the capital budget was made and unused funds were allocated to the ministries with a high absorptive capacity. For instance, in 2015/16 the capital budget was reallocated to those ministries that fully utilised their initial capital budget, hence the 77% of implementation of the development budget that year. Minister Khaketla's (2015) budget speech indicated that the Ministry of Energy was the only ministry that managed to utilise the capital budget within two quarters and was reallocated more funds in the financial year 2014/15.

Some reasons explain the weak absorptive capacity of the capital budget. The frequent changes to the political and administrative leadership of the ministries have delayed the policy making and the execution of policy in Lesotho. For instance, in the key ministries such as Finance, Health, Education and Public Works there have been major reshuffles, with the ministry of Finance standing at a high of four reshuffles since 2012. UNICEF (2017) points out that cabinet reshuffles are highly disruptive to the work of government, as new ministers normally take time to settle in and familiarise themselves with the policy, legislation and programmes of a particular ministry. This, in return, results in the bureaucratic and irregular cycle of policy-making and eventually affects the economy negatively.

In addition, the lack of checks and balances and the increasing levels of corruption in the public sector is exacerbated by the political executive interfering in the procurement process. The irregularities in this process also delay capital spending, resulting in continuous underspending of the capital budget. For instance, in the 2017 budget speech, the then Minister of Finance, Moeketsi Majoro, reminded the newly appointed ministers not to be tempted to involve themselves directly in the procurement process as their role is the

political direction and general supervision of the ministries. He pointed out that the Bidvest Bank fleet decision was one clear example of how far things can go wrong when the cabinet is directly involved in procurement decisions. This was the biggest scandal of awarding the government tender to a foreign firm that ended up draining the government coffers by almost M1 billion. Another example where ministers got involved in the procurement process, and thus caused delays in capital budget execution, was in the awarding of a tender for Mpilo Boulevard, which was meant to reduce traffic congestion in the city and to reduce car accidents. In this case, Ministers Chalane Phori and Mahala Molapo ordered that the award of M380 million tender be given to their preferred bidder.

Table 16.4 Trends in capital absorptive capacity

Financial Year	Approved	Expenditures	%
2011-2012	5 134 411 105	2 829 517 996	55
2012-2013	5 369 743 527	1 909 142 770	36
2013-2014	4 828 264 951	2 215 028 705	46
2014-2015	5 027 655 788	3 252 443 956	65
2015-2016	4 133 677 015	3 179 230 661	77
2016-2017	5 865 687 917	1 440 961 345	25
2017-2018	5 716 112 819	2 866 653 450	50
2018-2019	5 545 776 549	3 349 788 110	60

Source: Ministry of Finance (2019)

3.5 Loss of budget support

Given that Lesotho had episodes of difficult political transition periods before 2012, there was little scope for stepping up government investment to support inclusive growth at the time. This is mainly because the government size had almost doubled, following the 2012 coalition government which led to a further expansion of recurrent expenditure, especially in the wage bill, coupled with the weakening of the revenue collections.

Subsequent to the political events of 2012 and the following years, the Lesotho government suffered a loss of budget support that it had been receiving from its development partners. The capital grants from the development partners dwindled, as Figure 16.4 illustrates. As the trend shows, after the formation of the first coalition government in 2012 and the political events that followed thereafter, the Lesotho Government suffered the loss of budget support that it had been receiving from its development partners. This had a negative impact on the capital budget as some of its components were affected. For instance, capital grants from development partners had been declining. Project grants in 2019/20 stood at M1 262 million, the highest since the fall of capital grants in 2013/14 and well above the 6-year average of M984 million between 2013/14 and 2017/18 before falling to M1 108.4 million

(2.9% of GDP) in 2020/21. Grants are expected to average M1 164.8 million (2.8% of GDP) between 2021/2 and 2022/23. The government lost another EU budget support in 2015/16. This further contributed to the declining capital budget. Figure 16.4 depicts the current and projected trend in budget support.

UNICEF (2017) disclosed that some interviewed officials noted that the inability of the Lesotho government ministries to meet their agreed targets had driven development partners away from their budget support. The implications of declining revenue sources may push the government to borrow more and thus increase debt ratios above the indicative thresholds.

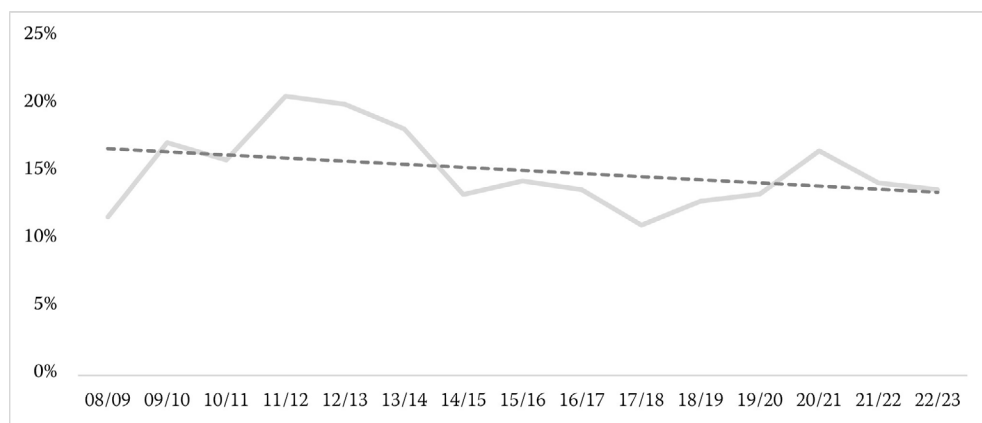


Figure 16.4 Loss of actual and estimated budget support

4 Conclusion and recommendations

Conflict has been the feature of the Lesotho political landscape since independence. However, coalition politics worsened it because of intra-party and inter-party clashes. Several factors contributed to the conflict. The fight over power-sharing was imminent between the coalition partners with setbacks on the economy. The ensuing effects of this political conflict were more remarkable from 2012 to 2020 in the reign of the coalition governments negatively affecting economic development in many ways. The decline of the capital budget as a share of GDP from as high as 24% in 2013/14 to 15.3% in 2017/18 and a further decline to 14.76% by 2019/20, with the recurrent expenditure growing (Table 16.2), indicates that less attention is given to development because it is from the capital budget that the country finances the infrastructure development needed for economic growth accumulation. The proportion of the capital budget allocation has always been below that of the recurrent budget though the plan was to eventually have them at par. In the 2019/20 budget allocation, 73% of the budget went into recurrent expenditure while 27% remained for capital development, compromising the welfare of the masses of the poor, while, SACU

revenues have been declining steadily from 2009/10 from 30% of GDP due to the slow growth in South Africa to 4% of the GDP in 2017/18. This means that the country was further becoming constrained to meet fiscal spending, as most of the expenditure is met from the collected revenue, further creating a bottleneck towards development.

In addition, there were projects that were not properly appraised but were allocated funds. These were the projects that attracted additional funding because they were not properly appraised. Examples are the construction of the Royal Palace and the Construction of a 44km road from Mokhotlong to Sani Pass. The loss of money with the development projects which have to be backed up to reach completion create serious budget constraints and stresses the already sluggish economy because other development priorities have to be postponed. Whereas, in 2016/17, Lesotho experienced the lowest capital budget absorptive capacity, attaining only 25% of the funds' utilisation. As conflict continuously manifests itself in Lesotho's coalition politics, the coalition partners focus on how to deal with conflict among themselves, losing the focus on undertaking economic development activities. This means a lesser utilisation of allocated funding to reach out to the nation through services delivery.

Due to constant political instability in Lesotho, the country lost budget support from the European Union to the tune of M473 460 000. With an already fragile economy from the political unrest, losing extra opportunities to support the economy means taking a step backwards in achieving development because some of these funds are earmarked for services delivery at the grassroots level. Furthermore, the country has missed some economic opportunities as investors constantly ran away for fear of losing their lives and property during the conflict in the three consecutive coalition governments.

In order to ameliorate the deteriorating socio-economic conditions which are severely affected by perpetual political conflict among the partners in the coalition government, some remedial measures that can be undertaken to take Lesotho to a socially, economically and politically sustainable path are as follows:

In order to increase the declining capital budget share of GDP used in financing capital development necessary for the country's growth, the government needs to allocate more capital funding. This will enhance its capacity to invest in capital development projects that will generate more growth in the economy to meet the nation's basic services demands.

The Government should financially boost and support the private sector so that individual citizens may start their businesses. This will further increase the GDP from which the country can meet its development activities. Furthermore, this will help to create more jobs for the growing labour force. This will also reduce the competition for parliamentary seats and ministerial positions, which are the sources of political instability in Lesotho.

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COALITIONS IN LESOTHO, KENYA AND MAURITIUS: A MIRROR OF TENSION BETWEEN DEVELOPMENTAL VALUE COALITIONS AND POLITICAL EXIGENCIES

17

Victor Shale and Robert Gerenge

1 Introduction

Most studies on coalition politics on the African continent have paid much attention to the rationale for coalition formation and less on coalitions' utility (Karume, 2003; Kadima, 2006; Oyugi, 2006; Biegon, 2008; Shale, 2007; Kapa & Shale, 2011). Although coalitions have existed as early as the 1960s on the continent for national and local spheres of government, they only gained traction in the past two decades. Mauritius has had coalition governments since the mid-1970s. At the same time, in the early 1990s and early 2000s, the Kenyan political landscape became a breeding ground for some of the coalitions that have changed the political landscape in the East African nation to date. In 2012, a hotly contested election in the Kingdom of Lesotho ushered in coalition politics that have arguably thrown the country into a dark political abyss. Using the case studies of Lesotho, Kenya, and Mauritius, we submit that coalitions on the continent are yet to offer tangible dividends in socio-economic development. We hold that there ought to be a balance between the democratic value of coalitions and developmental outcomes. The former cannot be pursued in lieu of but as a means to attain the latter.

Much of the literature's preoccupation has focused on why and how coalitions are formed and less on their accountability and value addition. The three countries offer comparison in terms of coalition types, the theoretical rationale for their formation and their impact on party systems. Secondly, the three countries share commonality as members of the Commonwealth in terms of electoral systems. Thirdly, we assess how the Kenyan and Mauritian politics marked by deep ethnic identities and Lesotho's politics that do not have

manifest identity complexities shape coalitions. Put differently, to generate comparative lessons for the rest of the continent of Africa, the chapter navigates the historical evolution of political culture and institutions and their impact on party coalitions in the three countries.

This chapter comprises five sections. After this introduction, the second section provides conceptual clarity on coalitions and their types to locate and analyse the cases of Lesotho, Kenya and Mauritius. The third section delves into the theoretical landscape within which we anchor our main argument on value addition. In the fourth section, we further explore the notion of developmental value coalitions to demonstrate that coalitions are not an end in and of themselves but as vehicles to an end which entails generating socio-economic dividends of democracy. The fifth section of the chapter makes conclusions emerging from the three case studies.

2 The coalition politics: Conceptual entry point

Conventionally, political party coalitions are conceived as organised collective parties that pursue a common goal. However, as it will be demonstrated in the case studies, this is not always the case. In some instances, coalitions are formed to pursue conflicting interests, which necessitate a minimum agenda convergence. In most instances, coalitions may be between two or more opposition parties or between a ruling party and an opposition party or several opposition parties (Kadima, 2006; Kapa & Shale, 2011). When forming coalitions, parties usually enter into a formal commitment, a memorandum of understanding (MoU), to pool their resources together. In the MoU, the parties set the coalition goals, coalition framework and outlook, structure, division of labour and power distribution.

The predominant types of coalitions in the literature are power-sharing (*sui generis*), grand coalition, the government of national unity, and coalition governments. We briefly look at each *in seriatim*. Power-sharing (*sui generis*) occurs in societies that are chronically divided by deep ethnic, racial, religious or other social cleavages. They are engineered to minimise friction between the groups and to promote decision making by consensus. On the other hand, a government of national unity is a type of coalition where transitional measures are adopted following a conflict situation. It holds the belligerent parties together to restore constitutionalism.

The 1994 South African and the 2008 Kenyan and Zimbabwean experiences are cases in point (Baregu, 2009). It follows, therefore, that the *sui generis* and the GNU coalitions serve ends *à la* Lijphartian consociationalism. Ashiagbor and Tørå (2015) posit that coalition governments usually occur when no single political party wins a clear majority in the parliament. In parliamentary systems, typically, the largest party in the parliament reaches an agreement with like-minded parties to form a cabinet, a legislative majority and a basis for government. Based on the coalition's policy agreements, the cabinet includes

representatives from the different member parties. Its policy proposals are typically supported by members of parliament (MPs) drawn from member parties. Main parties of a country form grand coalitions. These parties often have the largest electoral support; hence, their coalescing and maintenance of the coalition can be tricky due to their propensity to contest state power as individual parties. In the following sections, we look at the three selected countries to determine which of the foregoing coalition typologies obtain.

2.1 Lesotho

The Kingdom of Lesotho is a parliamentary, constitutional monarchy whose governance system is analogous to the Westminster type. It operates a Mixed Member Proportional (MMP) electoral system, introduced in 2002. The MMP is a combination of the First-Past-the-Post (FPTP) and Proportional Representation (PR) electoral systems. National Assembly (NA) comprises 120 elected members of parliament (MPs), of which 80 are on an FPTP basis and 40 on a Proportional Representation (PR) basis. Since its independence from Britain on 4 October 1966, Lesotho has scarcely enjoyed prolonged political stability. The country experienced a de-facto one-party rule from 1970 to 1986, a military dictatorship from 1986-1993, the intra- and inter-state institution conflicts especially involving the security forces between 1994 and 1996, post-election violence in 1998 and again in 2007. There is extensive analysis of these historical epochs and need not detain us here (Khaketla, 1971; Weisfelder, 1972; Makoa, 1996; Mothibe, 1999; Machobane, 2001; Matlosa & Pule, 2003; Elklit, 2008; Matlosa, 2017; Shale, 2017; Thabane, 2017). Suffice to mention that Lesotho's political instability continues to manifest since the country entered a dispensation of coalition politics in 2012.

The 2012 Lesotho general elections did not produce a clear winner in terms of the requisite constitutional threshold of 61 seats for the formation of the government. Before this election, the Independent Electoral Commission (IEC) reformed the electoral system to address the post-2007 election-related conflict over the distribution of parliamentary seats. Three election pacts were formed ahead of the 2007 elections. The Lesotho Peoples' Congress (LPC), the Basutoland African Congress (BAC) and Mahatammoho formed the Alliance of Congress Parties (ACP). The All Basotho Convention (ABC), the Lesotho Workers Party (LWP) and the Social Democratic Party (SDP) also entered into an electoral pact. The then ruling Lesotho Congress for Democracy (LCD) also agreed with the National Independent Party (NIP). Among these three election pacts, the APC was the only adequately constituted alliance in compliance with the electoral law because it registered with the Independent Electoral Commission (IEC) as one entity for the 2007 elections. The other two registered with the IEC as independent parties.

The problem arose when the IEC allocated seats after the announcement of the election results. The major contention was the two main political parties, the ABC and the LCD, violation of the MMP electoral system when they entered into election pacts with the LWP and NIP, respectively yet registered to contest elections as separate entities, unlike the APC, which as explained above, registered as an electoral pact. With the LWP and NIP, the ABC and LCD respectively mobilised their supporters to vote for the ABC and LCD in the constituency ballot, and LWP and NIP in the party ballot. Therefore, the supporters effectively voted twice as if they were different voters while they ipso facto belonged to different parties. They gave the ABC and LCD and their allies extra seats that ought to have been allocated to the other smaller parties (Shale, 2021).

The post-2007 elections reform eliminated double voting and produced more accurately the electoral support of contesting parties. However, it also inadvertently created conditions for a hung parliament as the electoral competition gap between major parties narrowed when the previously “inflated” support was eliminated by the electoral reform. No one party secured enough seats (61 seats) to form the government alone. Therefore, the electoral outcome forced the parties to enter into negotiations to form the government.

The negotiations ushered in Lesotho’s first coalition government comprising the ABC, Basotho National Party (BNP) and LCD in 2012. None of these parties reached the 61 parliamentary seats required to form the government as an individual party. The coalition only lasted three years as another coalition government replaced it in 2015. This coalition comprised seven political parties and was led by the Democratic Congress (DC). The other parties were the LCD, NIP, Popular Front for Democracy (PFD), Basotho Congress Party (BCP) LPC, Basotho Batho Democratic Party (BDP), and Marematlou Freedom Party (MFP). The second coalition also failed to complete a full 5-year election cycle as a third coalition government replaced it in 2017, made up of the ABC, Alliance of Democrats (AD), BNP and Reformed Congress of Lesotho (RCL). This 2017 coalition government was replaced by a grand coalition comprising the biggest parties, the ABC, and the DC in 2020. The two partners are each supported by several small parties. We will later explore the formation and fluidity of these successive coalitions. Still, we may point out here that they were marred by logic-defying political bickering, intra- and inter-coalition party competition at the expense of service delivery and development. They have transmogrified into conflict-breeding machines, the result of which was “*ho itja sekhababa*” (which in Sesotho means devouring one’s umbilical cord).

2.2 Kenya

From independence in 1963, the Kenya African National Union (KANU) led Kenya until 2002 when it was ousted from power by an opposition alliance. The country experienced a *de facto* one-party system (1969 to 1982), a *de jure* one-party state (1982 to 1991) and a

multi-party system from 1991 following a constitutional amendment. The 1992 and 1997 elections were contested under the FPTP electoral system that allowed KANU to win elections with simple majority votes that fell significantly below 50% of the total votes cast. Incumbent president Daniel Arap Moi won presidential elections with 36.8% in 1992 and 40.51% in 1997 (Electoral Commission of Kenya Results in 1992; 1997).

Pre-election alliances and coalitions have been a permanent feature of Kenya's political landscape characterised by constant splinters and balkanisation of ethno-regional alliances since the advent of multi-party democracy in the early 1990s. Most notable was the Forum for Restoration of Democracy (FORD) creation in August 1991, an alliance of old-guard politicians who fought for Kenya's second liberation from the KANU autocratic regime (Khadiagala, 2010). The liberation from British colonialism was dubbed as the first liberation by the opposition political class. During the 1992 and 1997 elections, KANU successfully pursued the strategy of divide and rule of the opposition alliances in electoral competition. For instance, the indomitable force of FORD, which was instrumental in a successful push for the return to multi-party democracy, was neutralised by KANU by orchestrating for the breakup of the alliance FORD-Kenya led by Jaramogi Oginga Odinga and FORD-Asili led by Kenneth Matiba during the 1992 elections. In the 1997 elections again, through the same KANU tactics, the opposition failed to coalesce around a single candidate to oust KANU from power.

Drawing from their past failures, two opposition movements comprising fifteen political parties led by, among others, two prominent politicians, Raila Odinga and Mwai Kibaki, among other political stalwarts, coalesced in 2002 to form the National Rainbow Coalition (NARC). NARC forged a formidable pre-electoral alliance that compellingly ousted President Arap Moi's KANU, which had been in power since independence. However, it soon experienced a fallout largely attributed to the controversies around the distribution of coalition dividends among the coalition partners. The tensions within the NARC culminated in a spectacular defeat of President Kibaki in a constitutional referendum in 2005 when he attempted to change the Constitution to grant excessive powers to the presidency. He was fiercely opposed and defeated by Raila Odinga-led opposition bloc of parties under a newly formed movement called the Orange Democratic Movement (ODM).

The ODM referendum victory was widely seen as a referendum against Kibaki. It set the stage for a throat-cutting electoral contest in the 2007 general election between Kibaki and Odinga. Kibaki of the Party of National Unity (PNU) controversially won the 2007 general elections even though, in a twist of ironies, the Chairperson of the Electoral Commission of Kenya (ECK) later claimed he did not know who won those elections (Shale, 2010). The elections were followed by gruesome post-electoral violence between December 2007 and early 2008 that threatened to decimate its delicate political fabric. Post-electoral violence

resulted in the death of at least 1 200 people and 300 000 became internally displaced and refugees with attendant regional socio-economic effects that were palpable not only in East Africa but also in the eastern parts of the Democratic Republic of the Congo (Gerenge, 2014).

Within the context of political and institutional reforms that were carried out in the post-2007 transition period under the aegis of the Government of National Unity between Mwai Kibaki and Raila Odinga, a new constitution was adopted in 2010 through a referendum. The 2010 Constitution substantially redefined the country's political, social, and economic architecture. With particular regard to the electoral system, the new system was designed to promote inclusive politics. In a departure from the previous simple majoritarian system noted earlier, Article 138 (4) of the Constitution stipulates that:

A candidate shall be declared elected as President if the candidate receives:

- a) more than half of all the votes cast in an election; and
- b) at least twenty-five per cent of the votes cast in each of more than half the counties.

Despite the raft of constitutional reforms that also involved introducing devolution, Kenya still maintained a relatively strong presidency, which was arguably the product of self-serving elite bargaining. This was in anticipation for future ascension to political power.

In the new political dispensation and leading up to the March 2013 general elections, two major coalitions emerged. The first one was Jubilee, formed in 2012 composed of the National Alliance (TNA) of Uhuru Kenyatta, the United Republican Party (URP) of William Ruto, the National Rainbow Coalition (NARC) of Charity Ngilu and the Republican Congress Party of Kenya (RC) of Najib Balala. The other one was the Coalition for Reforms and Democracy (CORD), also formed in 2012 and led by the ODM of Raila Odinga, Wiper Democratic Movement (WDM) of Kalonzo Musyoka, and FORD-Kenya of Moses Wetangula, among others. The other CORD members were Kenya Social Congress (KSC), KADU-Asili, Peoples Democratic Party (PDP), Mkenya Solidarity Movement (MSM), Chama Cha Uzalendo, Muungano Development Movement Party of Kenya, United Democratic Movement, Chama Cha Mwananchi, and Federal Party of Kenya. There was a third coalition, the Amani alliance, established in January 2013 under the leadership of Musalia Mudavadi. Although comparatively small, it could have bolstered the NASA votes, which could have made it difficult for the Jubilee to win the 2013 elections. Its members were the United Democratic Forum Party (UDF), KANU and New Ford Kenya

From the foregoing, two main coalition types have existed in Kenya since independence. These are a coalition government (2002-2007), a power-sharing coalition (2008-2013) and another coalition government (2013-2017). Apart from the 2008 power-sharing arrangement, all the coalitions were negotiated ahead of the elections such that the

distribution of key positions and division of labour among the partners was predetermined before the polls and used to mobilise electoral support. The 2010 constitutional reform partly introduced an electoral system that makes pre-election alliances and the formation of coalitions almost indispensable in the democratic architecture of the country in a bid to promote politics of geometrical tolerance across the deeply divided socio-political spectrum.

In the run-up to the 2017 general elections, the Jubilee coalition morphed into a political party founded on 8 September 2016 following the merger of eleven parties. The Jubilee party controversially won the October 2017 presidential elections against the National Super Alliance (NASA). NASA was an alliance formed by the Coalition for Reforms and Democracy (CORD) coalition that included other smaller parties, and it was led by Raila Odinga. The Supreme Court nullified the first round of the presidential election results in Kenya after NASA successfully petitioned the Supreme Court. The repeat presidential elections in Kenya were held on 26 October 2017 but were boycotted by NASA paving the way for Kenyatta to win. The nullification was a historical judicial outcome as it was the first time that the court nullified the results where the incumbent President had won. Malawi followed in 2019 on the same lane in nullifying the presidential results, paving the way for a repeat presidential election in 2020 where the opposition subsequently won the election.

2.3 Mauritius

Since independence from Britain in 1968, Mauritius has operated a unique mixed electoral system. It consists of two components: the First-Past-the-Post (FPTP) electoral system that has been operational since 1886 and the “best loser” system, both of which have led to countless permutations and combinations of pre-election alliances (Kadima & Kasenally, 2016). The FPTP comprises sixty members of parliament (MPs) elected through the FPTP formula in 20 constituencies of three members each. The compensatory Best Loser System serves to return three MPs among under-represented communities in parliament and two from and the Island of Rodrigues (Sithanen, 2003; Kadima & Kasenally, 2016). The Best Loser System accepts four constitutionally accepted communities: Hindu, Muslim, Chinese, and General Population. Demographically, 51% of people are of the Hindu faith who migrated from different parts of India, 16% Muslim (also of Indian origin), 30% general population consisting of people of African origin, coloured and a small white minority and 3% Chinese (Sithanen, 2003:4).

Mauritius leads the pack in terms of a tradition of party coalitions in the Southern African Development Community region (SADC). It had coalition governments even before independence when the Labour Party (LP) and its allies won the 1967 general elections against the Parti Mauricien Socialiste Democrate (PMSD). The allies were the Independent Forward Bloc (IFB), the All Mauritian Hindu Congress (AMHC) – and the Muslim party/

the Comité d'Action Musulman (CAM). Therefore, the LP-led coalition ushered the country into independence in 1968 (Sinathen, 2003; Kadima & Kasenally, 2006). Since then, power alternates from one coalition government to another. Except for the first coalition government in 1967 negotiated after the elections, Mauritian coalitions are generally established ahead of the election. Parties agree on a common platform and programme, on the sharing of key posts, especially the top posts of Prime Minister, President, Deputy Prime Minister, Minister of Finance and the Speaker of the National Assembly.

Ethnicity plays a major part when parties coalesce despite mobilising on a national scale and portraying themselves as nationalist in outlook. The reality is that ethnic-based support is their lifeblood, and therein lies the peculiarity of Mauritian politics. For example, during the 1983 and 1987 elections, Kadima and Kasenally (2006:79) paint a picture of ethnic support lines where the “MMM had come to represent the urban areas, where the Creole and Muslim communities were largely located, while the MSM and LP reigned supreme in the rural areas...”. Sithanen (2003:5) adds that the allegiance and loyalties primarily along ethnic and sub-ethnic lines have made it impossible for a single party to win an overall majority of seats on its own to form the government. Parties are forced to negotiate partnerships beyond their support base to raise sufficient majorities for government formation.

Thus far, it is necessary to underscore the coalition typologies in Lesotho, Kenya, and Mauritius. Lesotho and Mauritius exhibit the coalition government attributes. On the other hand, Kenya has a coalition government interposed with power-sharing during its multi-party democracy. In all the cases, the coalition type has been a product of election system engineering, which promotes the accommodation of minorities.

3 Coalition causes and courses: Theoretical propositions

In accounting for coalition formation, coalition theories have focused on three main propositions. The first one is the cooperative game theory that gained traction through William Riker's (1962) seminal work, *The Theory of Political Coalitions*. The thesis of this explanation is the office-seeking (rent-seeking) tendencies of would-be coalition partners. It holds that parties' main reason to form coalitions is to maximise electoral economies of scale to form the government. According to Riker (1962), parties' aim was not to over-kill but to get a sufficient threshold to attain a majority. Hence, he opined that it was not necessary to form coalitions comprising many political parties. All that is required is a minimum winning coalition (Tsebelis & Ha, 2013; Kapa & Shale, 2014). The second strand is the Non-cooperative Game-Theory, which pays more attention to institutions than the size of coalitions. For this school of thought, institutions' role is key to determining a coalition, policy direction, and its longevity (Strøm & Müller, 1999; Kadima, 2006; Tsebelis

& Ha, 2013). Tsebelis & Ha (2013) provide clarity on this theoretical foundation of Baron's 1991 dimensions' model. They point out that:

...Baron develops a model with three parties in two dimensions based on two rules of selection: (1) a sequential rule for the selection of a *formateur* (candidate from the largest party); or (2) a random selection rule (where the probability of selection of a party is proportional to its size). Each process produced significantly different outcomes. The logic of Baron's model is that the *formateur* will apply a mixed strategy regarding which party to whom he will make the offer to join him in the government formation, and that each party will estimate its 'continuation value' in the government formation game (i.e. it will see what its utility is from rejecting the offer and letting the game continue according to the rules). In equilibrium, these utilities would be equal to each other. (The proposing party is indifferent between the two alternative proposals it can make, and both recipients are indifferent between accepting and rejecting.) As a result of this logic, 'equilibrium policy proposals reflect the parties' preferences out, as well as in, the government' (Baron, 1991:156).

The third theoretical proposition is agenda-setting based on regime type. Tsebelis & Ha (2013) call this the veto-players' approach. They maintain that the regime type, be it presidential or parliamentary, is key in shaping the coalition. They posit that:

...The distinction between these regime types is clear: a division of powers in presidential systems, stemming from separate elections of the executive and legislature and the lack of political responsibility of one to the other, and a collaboration of powers in parliamentary systems originating only from the election of the legislature, and the ability of the legislature and the executive to dissolve each other and go back to elections. (Tsebelis & Ha, 2013:4-5).

The agenda-setting school of thought as espoused by Tsebelis pays attention to both the number of players and the ideological distance of individual or collective actors whose agreement is necessary to change a status quo (agenda-setting power). He regards presidential systems as having a greater number of veto-players and more considerable ideological distances than parliamentary systems. In addition, in presidential systems, the legislature controls the legislative agenda, while in parliamentary systems the executive controls the legislative agenda.

For purposes of this chapter, we regard the foregoing propositions applicable in some cases but they do not adequately explain other instances on the African continent, as illustrated in the discussion on coalition courses. There is no gainsaying that the causes of coalition formation are almost universal, but this is not necessarily the case with their courses. Courses are the evolutionary trajectories taken by the coalitions, midwifed through historical, socio-economic, political and cultural conditions and peculiarities that shape and infringe on the process and progression of developmental agenda. We not only interrogate coalitions in Lesotho, Kenya, and Mauritius to decipher whether they formed to close ranks to seek rent (*cause*) but also their value addition in terms of whether they address development policies (*course*). We contend that coalitions emerging from the preceding milieu of causes

must espouse developmental values by design rather than by mere choice to offer policy direction that deals with the pre-existing societal imbalances that persistently pose threats to the social and political order.

3.1 Lesotho

The causes of the Lesotho coalition governments match the cooperative game theory rationale. The motive is largely to seek rent by political elites and, by extension, to benefit from the fiscus in an economy characterised by extreme poverty and limited, if any, alternatives for wealth accumulation (Kapa & Shale, 2014). To elucidate the rent-seeking behaviour, Bhorat, et al. (2017) offer a plausible connection: the development process entails adopting policies and direct or indirect resource allocation to respond to the challenges and create a modern transformed industrialised economy that can support the wellbeing of society. The resource allocations are the rents which when done, result in a flow of potential benefits to specific economic actors (whether these are businesses, households, or public institutions). The competition to access these flows creates the conditions for rent-seeking. Therefore, legal, ethical rent-seeking, such as lobbying or legal interventions, benefit certain groups. Rent-seeking can also be corrupt, however, and lead to state capture and repurposing. Corrupt rent-seeking behaviour can undermine the development agenda by diverting resources into the hands of unproductive elites.

Kapa (2008) describes Lesotho political parties as elite circulation instruments wherein the parties' names are different. Even so, the leading faces have been seen in the country's politics before, albeit under different appellations. He contends that none of these elites during their time in public office has articulated or implemented any inconsistent policies with the neo-liberal ideology since the return to multi-party politics in 1993. He adds that the policy-influence thesis (institutional theory) also seems to be less plausible in the context of Lesotho. Thus, even the proposition by Wade Jacoby (2017) suggests that grand coalitions such as the one entered into by the All Basotho Convention and the Democratic Congress seek to pursue policy goals unreachable in smaller coalitions is negated. As we intimated above, some of the theoretical explanations do not fit in some of these case studies. For instance, the rent-seeking theory runs short of explaining all the elements of the causes of coalition formation in Lesotho. Therefore, its offering on the course of the coalition would be equally limited. Similarly, the *formateur* thesis is limited with regard to the causes of coalition formation in Lesotho and their courses. We offer two brief additional explanations to the causes, which intrude on the country's potential course and progression.

The first one is the preservation of the political elite against a common threat. Lesotho's volatile political history is marred with conflict and gross human rights violations committed by different governments and political elite, which have never really been addressed (*Mail &*

Guardian, 2016). These unresolved political and historical issues are sources of the cyclical and intractable political conflict, and they compound mistrust and hostility between and among political elites.

Lesotho cannot be said to have transitioned from conflict. It is only beginning to move in that direction with the current national reforms process that deals with some of the root causes of the conflict. However, we hasten to point out that there is no guarantee that the reforms will achieve this from a distance. Frankly speaking, the process seems to be highly dominated by the political elite, and that is a dangerous sign that portends possible self-serving outcomes for the political elite. In the meantime, coalitions appear to provide a safe space for some political leaders who form them. When they are formed after the elections, there is hardly any consultation with the rank-and-file membership. The *maferehano* (which literally means “courting” in Sesotho) for coalition formation is the preserve of party leaders and their inner circle (the national executive committees [NEC] of part of these committees as it also depends on factionalism). The decision on who to partner with is highly influenced by the personal rivalries of the party leaders.

Some of the political elite are suspected of corruption and perpetration of past human rights violations. They find sanctuary in the political capital generated from coalitions compared to single parties. Incidents of actual or attempted politically motivated disruptions to transitional justice measures since the coalition dispensation are common, with protagonists claiming that transitional justice is weaponised to purge them. Scanlon and Muddell (2009:10) define transitional justice as many judicial and non-judicial approaches to address past human rights abuses, including gender-based violence (our emphasis). To illustrate the tension between elite preservation through coalition arrangements and transitional justice, the following examples are worth mentioning, albeit briefly.

Firstly, the Lesotho Defence Force’s alleged refusal to hand over soldiers suspected of the 2014 attack on police headquarters and murdering a police Sub-Inspector to the criminal justice system. On the face of it, this was a case of the army’s intransigence and exercise of its options on how those accused officers were to be prosecuted. However, it has since emerged that some of the then coalition leaders were implicated somehow, judging by the fact that they are now being prosecuted with the suspected army officers (*Lesotho Times*, 2020). This case is yet to play itself out in the courts of law. Its relevance to this point is the possibility that the army’s defiance enjoyed a political backing for the army’s sake as much as for elite preservation ends. Secondly, it is the government’s failure to unequivocally support the investigations of the assassination of Lieutenant General Maaparankoe Mahao in 2015 and other alleged crimes, including acts of torture, kidnapping, and extrajudicial killings by the security agencies that are intricately connected with some political elite (Jordan, 2015). All these examples illustrate contributory factors that have influenced the cause, sustained, or punctuated course of coalitions in Lesotho, with some coalitions having collapsed in the process.

Another account for the formation of coalitions in Lesotho is the notion of *Lela-le lapileng ha le na tsebe* (which in Sesotho means that an empty intestine has no ear, which also signifies that a hungry man knows no reason because his logic is overwhelmed by the urge to eat) (Shale, 2017). Whereas in the past political elites would hop from one party to the other to secure their income, they now innovatively use coalitions to be in government, not to respond to the challenges besetting the country, but to tap from the allocated rent that often flows through corrupt means. One of the traits of coalitions motivated by the preservation of the political elite is the lack of accountability to the electorate. Cheibub and Przeworski (1999:225) quoted in Maravall (2010:86), define accountability as: “a retrospective mechanism in the sense that the actions of rulers are judged ex-post by the effect they have.” They consider accountability as the main instrument to preserve “rule by the people” adding that the only effective weapon of popular control in a democratic regime is the capacity of the electorate to vote a party out of power based on its performance. Maravall points out that coalition governments make this popular control of incumbents difficult because citizens are not able to hold the many groups and individuals involved in a coalition government accountable.

3.2 Kenya

Current literature has accorded significant attention to the role of ethnicity and the attendant arithmetic calculus (cause) that inform elite bargaining. This has in effect resulted in the formation of alliances and coalitions in a bid to maximise chances for winning elections in Kenya and on the continent of Africa more generally (Gandhi & Reuter, 2013; Matlosa & Shale, 2013; Owuor & Kadima, 2014; Chaisty, et al., 2018). We have highlighted earlier some of the epoch-making coalitions in Kenya. We now shift our focus to the causes and courses to the 2013-2017 Jubilee coalition. The Jubilee coalition warrants closer examination since it is the first to have formed and won two successive presidential elections, in 2013 and 2017, respectively, since the promulgation of a new constitution in 2010 after the gruesome 2007/2008 election-related violence. By their nature, first- and second-generation elections following [election-related] armed conflict tend to generate distinct electoral politics, which are typically different from ordinary cycle-based elections (Gerenge, 2017). Innately, electoral politics that follow widespread violent conflicts, as was the case of Kenya in the post-2007 and post-2010 constitutional dispensation, tend to be saddled with peace and developmental mantras in a bid to break from the dark past and create a political and social renewal of the society.

In the run-up to the 2013 general elections, Uhuru Kenyatta and his running mate William Ruto were facing an indictment by the International Criminal Court (ICC) for allegedly masterminding the 2007/2008 post-electoral violence perpetrated mostly by Kikuyu and Kalenjin ethnic communities on opposing fronts. Like the causes of the Lesotho

coalitions as explained above, the Jubilee coalition was formed largely in response to the political and individual survival of the two alleged protagonists, who were on opposing sides during the 2007 violent general elections. Kenyatta was one of the political bigwigs in the Kibaki camp, while Ruto was in the opposing Odinga camp. The two, therefore, portrayed the elections as a referendum against the Western-backed ICC (Gerenge, 2014). The ICC factor makes the Jubilee coalition a peculiar case to cooperative game theory because it was driven by rent-seeking motives and a quest to thwart an external threat to individual survival. The pursuit for transitional justice kept the Kenyan society deeply divided and raised the stakes ahead of the 2013 elections. The alleged crimes against humanity committed during the 2007/2008 electoral violence called for the prosecution of those who bore the most responsibility in the violence at the ICC. Thus, the question of transitional justice and the urgency for a peaceful outcome also became subject to instrumentalisation across the political spectrum during the 2013 general elections.

The Jubilee Coalition Manifesto – the policy blueprint on what the coalition promised to deliver to the citizens once elected to govern, contained significant policy and economic proposals which included balancing ethnicity in addressing historical distributive injustice (Jubilee Manifesto, 2013-2017). In this regard, the manifesto offered the substance of value-coalition. However, to guarantee victory, and mindful of the external threat, the Jubilee also maximised on ethno-regional mobilisation rather than mere developmental value-addition promises. This approach became the main fulcrum that catapulted Jubilee to power in 2013 against an equally formidable ethnic-driven CORD led by Odinga.

Consequently, salient ethnic identities remain entrenched and the country deeply divided in the ensuing period following contested elections in 2013 (International Crisis Group, 2013) and during the first term of the Jubilee government through various public sector appointments of predominantly Kikuyu and Kalenjin tribes. According to Owiti (2014:552):

...in the 20-member cabinet, the Luhya, Luo, and Kamba communities (the second, fourth and fifth largest ethnic communities as per the 2009 census, and which make up roughly a combined 40% of the national population) each have only one cabinet secretary. The Kikuyu and Kalenjin communities on the other hand, which make up the core of the governing coalition and constitute roughly 30% of the national population, each have six cabinet secretaries.

To understand the picture portrayed by Owiti above, it is easy to fall into the trap of adopting the ethnic cliché analysis by looking at the predicament as a perpetuation of ethno-regional domination. Such analysis' high logic would lead to a suggestion of equitable distribution of cabinet appointments among the ethnic groups that constitute the Jubilee coalition to contribute to social cohesion. A nuanced explanation should be in terms of the coalition courses. It must be remembered that the new Kenyan Constitution provided for a

technocratic cabinet which was a departure from the era where the cabinet were also MPs. Thus, the new constitutional dispensation sought to create a technocratic competency-based cabinet. In keeping with this constitutional outlook, it was to be expected, therefore, that the dominant Kikuyu and Kalenjin component of the Jubilee coalition would seek to dominate agenda-setting *à la* Baronian *formateur* thesis in place of the constitutional prescripts of ethnic balance. This agenda-setting dominance is also in sync with the rationale for a coalition's cause under the institutional theoretical model. Therefore, this theoretical perspective negates Owuor and Kadima's (2014) belief that coalitions necessarily promote social cohesion. Notably, the Kenyan case study shows that coalitions continuously restructure the dichotomies of ethno-regional salient identities, thereby creating persistent clamour for distributive justice in society. Therefore, social cohesion cannot be sustained through party coalitions alone but must include conscious developmental policy shifts that transform the social and economic imbalances of society.

3.3 Mauritius

The Mauritian coalitions exhibit the cooperative game theory's attributes similar to the Lesotho and Kenyan coalitions. Having survived what Phaahla (2019:5) refers to as "potentially destabilising elections of 1967 which served as a referendum for the country to sever ties with Great Britain", Mauritius' political culture was from the beginning set on a slippery route of coalition politics. From the first coalition in 1967, all coalitions were rent-seeking arrangements. Whereas the 1976 post-election coalition between the Labour Party (LP) and the Parti Mauricien Socialiste Démocrate (PMSD) was, according to Kadima and Kasenally (2016:152), ideological, this may have meant little as they reacted aggressively to the formation of the leftist party, the Mouvement Militant Mauricien (MMM). They sum up the objectives of the 1976 post-election coalition as having been about the self-interest of the losing parties, the preservation of the national economic bourgeoisie who had been frightened by the MMM's socialism, and the external forces threatened by the MMM's leftist ideology. Therefore, it follows that in this case, Mauritius offers a variation in terms of the pure rent-seeking logic. It shows that over and above the rent-seeking ends, class considerations and external dynamics such as the potential communist threat can influence the coalition cause.

Interestingly, though, the perceived external threat does not necessarily come in the form of a formidable force such as communism only. The existing literature suggests that political parties leverage ethnic diversity for rent-seeking ends throughout the different coalition formations. This is axiomatic in Mauritius. However, we argue that those who seek to form coalitions do not always have a choice but to consider coalescing with ethnic group-based parties, big or small. Whereas Baron's model makes a persuasive argument that the *formateur* (leader/candidate of the bigger party) applies discretion on which party

to coalesce with, the Mauritian case study reveals that ethnic groups' trump card is their residual power. Their common shared attributes, such as traditions, ancestry, language, history, society, culture, nation, and religion, make them more powerful, cohesive, and influential than politicians would care to admit. This means that because ethnic groups/societies have the effect of shaping the environment within which political parties exist, parties must either establish proper structures in those societies or form coalitions with parties entrenched in those societies (Shale, Moloji & Nemaheni, 2011).

Regardless of their size, ethnic groups' exclusion from a coalition or failure to accommodate their interests could be to the detriment of the *formateur* more than to themselves. Therefore, a consideration to invite ethnic group-based parties even if they are from small ethnic groups is a rent-seeking move as much as it is a calculated move to prevent the threat that an ethnic group could pose if its interests are excluded from the coalition. Hence, we find a problem with Kadima and Kasenally's analysis when they point out that the MMM, which had the "certainty" of sizeable electoral support from the Muslim community's decision to ally with a Hindu-backed party as a risk-mitigating measure (2016:138). Yet, they suggest that certain political parties in Mauritius and, by extension, their coalition partners, operate a carrot and stick policy – encouraging and rewarding ethnic groups that support them while punishing those that oppose them. This analysis is contradictory as it portrays ethnic groups as helpless victims in a political game. We argue that, on the contrary, ethnic groups possess residual power or social capital that most parties lack.

Drawing from the three case studies, we note that preservation, as in Lesotho, is one of the causes beyond the rent-seeking motives. The external transitional justice threat and the ICC process were among the Jubilee coalition formation considerations in Kenya. Finally, in Mauritius, rent-seeking motives were accompanied by the equally pressing exigencies for pacifying the ethnic groups.

4 Developmental value coalitions

There is no doubt that coalitions will continue to manifest due to different causes and will pursue various courses in their evolution. There is an abundant supply of political elite and political class to give oxygen to coalitions. However, what is doubtful is whether the citizens can keep up with the self-serving political elite by holding them accountable for their political acrobatics and outcomes to ensure that the coalition courses yield collective dividends for the citizenry. According to Häusermann (2006:5), value-coalitions of parties form alliances based on a premium of shared values and beliefs, which are made possible in a consensus democratic institutional context. The three case studies suggest that coalitions do not always form for reasons advanced by Häusermann. Although the Kenya constitution provided for a consensus-based democratic context that allows value coalitions to thrive,

political exigencies loomed largely. In the cases of Lesotho and Kenya, we have noted how transitional justice, which is aimed at adding value to societal transformation, was and continues to be undermined through coalitions. Illustratively, after Jubilee formed the government, they used the government machinery to mobilise continental pressure against the ICC, including through the African Union (AU) and its leaders were both subsequently acquitted.

Coalitions causes and courses also impact party systems and, in turn, on the value of the coalitions to transformative and developmental agendas. The Lesotho, Kenya and Mauritian coalitions have significantly impacted on the overall political culture and the interaction among parties and between parties and governance institutions. We use the Kenyan case to elucidate this point. The Jubilee Coalition's campaign against the ICC during the 2013 elections served its purpose to the extent that the leaders were acquitted and transitional justice for the common good was undermined. The party system has equally been affected by the coalition. Firstly, when Kenyatta's case was dropped in December 2014, Ruto's continued until 5 April 2015, creating tension between the two leaders and their supporters. The Kalenjin community leaders (Ruto's ethnic group) regularly voiced their concern that while Kenyatta used state power to clear his name, he had abandoned their man (Banda, 2016). After the bruising 2017 electoral contest, which we indicated earlier saw the presidential results nullified, President Kenyatta and his arch political rival Raila Odinga buried the hatchet. In a show of reconciliation, they publicly shook hands (dubbed as the 'handshake' in political communication in the country) and committed to put the election disputes behind them and pursue the common good for Kenya.

We consider the "handshake" as having been the launch of another type of coalition between the Jubilee Party and NASA. Although this was not declared as a coalition as conventionally known, it resulted in the Building Bridges Initiative (BBI) whose expected outcomes include constitutional reforms that could see the creation of Prime Minister and Deputy Prime Minister positions. The handshake partners justify the BBI as the quest to balance the distribution of public office positions across different ethnic groups to promote social cohesion. The handshake has caused consternation in the Ruto camp, which suspects it is a bid to derail Ruto's succession bid and possible ascension to the presidency in 2022 (Kiruga, 2020). As a result, Ruto's supporters in Jubilee (some of whom are Senators and MPs) have now formed a new political party, the United Democratic Alliance (UDA). Notably, in a microcosm demonstration of future political intent, the UDA fielded candidates for the March 2021 by-elections to compete against Jubilee candidates (Ng'etich & Nyamori, 2021; Kibor, 2021). Clearly, this is a manifestation of a fragmented party system that does not augur well for a country with deep socio-political cleavages.

On the surface, Lesotho, Kenyan and Mauritian cases show that in their different appellations, coalitions would appear value-additive. A more in-depth look shows that this is not necessarily the case. In effect, they are instruments of a political rope-skipping game where political elites repeatedly jump in and out of power. For example, the 2012 ABC, BNP and LCD coalition in Lesotho was formed for rent-seeking and as a repudiation of the Democratic Congress (DC), which had engineered a power grab from the LCD through a parliamentary process in 2011. In 2014 the LCD jumped into power with the DC after it fell out with the ABC, which led to the 2012 coalition. The ABC and DC hopped into a grand coalition government in 2020, leaving the LCD in the cold, at least for now. Yet, not long ago, these two parties were sworn political foes, especially after the ABC leader Thomas Thabane fled Lesotho and lived in exile in South Africa from 2014 to 2017, citing fears for his life under Prime Minister Pakalitha Mosisili's led DC.

In Kenya, it should be recalled that during the watershed general elections in 2002, William Ruto was with Raila Odinga and Mwai Kibaki in the NARC coalition, which jettisoned KANU out of power. Then, both Ruto and Odinga skipped out of the NARC to form the ODM while Uhuru Kenyatta, a KANU leader affiliated to the PNU led by Kibaki. Ahead of the 2013 elections, Ruto and Uhuru jumped out of their camps (ODM and PNU, respectively) and established the Jubilee Coalition, which contested 2013 against Odinga's new coalition home, CORD. We have pointed out that since 2018 Kenyatta's Jubilee party is in unofficial courtship with Odinga's ODM and, we must add, to the chagrin of the other NASA members who have been left out of the handshake courtship and are understandably disappointed as they see this development as a betrayal by Raila. Thus, this is a political rope-skipping game par excellence that has nothing to do with the value-coalition objective.

Mauritius is no different. Kadima and Kasenally (2016:140) remind us that the country is prone to the never-ending permutations and combinations to which political parties lend themselves. They add that the various coalition governments reveal a systematic pattern of triumphant electoral victory followed by alliance decay and an early poll. In what appears to be similar to the cases of Lesotho and Kenya, Kadima and Kasenally further point out that the Mauritian political parties "have forged alliances with other parties that have been historically and ideologically in opposition to them or with the very parties with whom relationships broke down when they were in a coalition government" (2016:140). This was notably the case in the recall of the LP leader, Sir Satcam Boolell to the corruption-accused MSM coalition government that had fired him and his party from the MSM/LP/PMSD coalition in the first place.

Besides the impact of coalitions on party systems, coalitions have not necessarily enhanced accountable governance premised on developmental value cooperation among the partners forming the government, as illustrated through various multi-million-dollar

scandals that have rocked coalition governments. Cases of suspected or actual corruption in which senior coalition governments' leaders were implicated in Lesotho are illustrative. These include (a) the 2012 Matala road construction saga where the then Deputy Prime Minister was charged with illegal authorisation of a construction contract worth millions of Maloti. He was alleged to have had suspicious deposits of USD 23 429 and USD 8 428 in different banks (Kapa, 2017) (b) the 2015 multi-million Bidvest saga where the Minister of Finance was alleged to have pocketed over 4 million Maloti for the hiring of government vehicle fleet (Lesotho Times, 2017), and (c) the awarding of a contract to a controversial Chinese businessman in 2018 after the introduction of the *Agricultural Marketing (Wool and Mohair Licensing) (Amendment) Regulations, 2018*. The regulations prohibit exporting wool and mohair unless prepared, brokered, traded, and auctioned in Lesotho ostensibly through the facility of the controversial Chinese businessperson's facility, which is the only facility in the country. Although no charges of corruption have been made, this case is often cited as a corrupt activity by the court of public opinion because of the involvement of the Chinese businessperson. He has previously been fingered in dubious government dealings.

In Kenya, during the first term of the Jubilee coalition, the government was rocked with a raft of corruption scandals. These include scandals such as Eurobond loan, primary school education laptops projects, National Youth Service (NYS), Standard Gauge Railway (SGR) and so forth to the extent that one of the leading anti-corruption champion in Kenya dubbed the Jubilee Government as the most corrupt in the post-independent history of Kenya (Githongo, 2016). In a countrywide research survey carried out by Kenya's anti-corruption commission in 2016, 75% of the population thought there was a remarkably high level of corruption in the country (BBC, 2016). Similarly, as mentioned earlier, the MSM coalition government in Mauritius was rocked by corruption scandals, especially in the mid-1980s.

Based on the foregoing, the three case studies clearly show that value coalitions remain substantially nominal. They cannot be established and sustained through politics of patronage, which include sharing of public appointments between the coalition's partners to the detriment of the rest of the members of the political community.

5 Conclusion

This chapter has shown that Lesotho, Kenya, and Mauritius have vibrant political cultures marked by highly competitive elections. It has become a norm that no one party can win elections to form a single-party government in these countries. It is fitting, therefore, to make the following conclusions. Firstly, we conclude that at the heart of coalitions is the quest to pursue and safeguard elite circulation amorphaously through political rope skipping instead of the impetus for developmental value cooperation. The various coalition governments'

behaviour (skipping into power), fallouts (jumping out of power) and reunions attest to this conclusion. Secondly, because of the high premium placed on elite survival, political party coalitions can become vehicles for countervailing efforts aimed at restorative justice. Hence, we believe that future research needs to accord further attention to political party coalitions' impact on transitional justice. Thirdly, even if the coalitions' public policy pronouncements (in their agreements, manifestos or through statements by leaders) are value-ridden, the three case studies have shown that coalitions continuously restructure the dichotomies of ethno-regional salient identities. They create persistent clamour from citizens for equitable and accountable distribution of the dividends of coalition type governments. Fourthly and finally, coalition governments are, therefore, arguably poised to be confronted with paradoxes that mirror the tension between nominal developmental value-coalition and political exigencies' realism.

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PART 5 CONCLUSION



CONCLUSION AND LESSONS LEARNT 18

Motlamelle A Kapa and Hoolo 'Nyane

1 Introduction

The phenomena of coalition formation and coalition governments are almost ten years old in Lesotho, having first emerged as an outcome of hung parliaments since the 2012 parliamentary elections. As could be expected of any new phenomenon, coalitions attracted some interest among researchers as an area of study, albeit within their own disparate disciplines. Yet, the coalition phenomenon in the country is multidimensional and has implications in different aspects of human life. This calls for an approach that will allow its holistic analysis, interpretation and understanding, hence this book volume.

The primary purpose of the volume is to close this gap by drawing insights on this phenomenon from scholars and practitioners in different disciplines. Thus, the volume is deliberately multidisciplinary in approach, drawing insights from the following disciplines: political studies, constitutional studies, conflict studies, gender studies, socio-economic and development studies. Hopefully, this approach will allow the readers to have a broad and comprehensive understanding of this phenomenon in terms of its implications for the general governance of the country. What are the core themes emerging from the volume, and what lessons can be learned from Lesotho's lived experience with the coalition phenomena? In this concluding chapter, we reflect on this question by distilling some key themes/issues emerging from the chapters in the volume.

2 Major themes covered

2.1 *Conceptual and ideological dynamics of coalitions*

The coalitions in Lesotho exist within the broader theoretical framework for coalitions (Riker, 1962). Lesotho coalitions subscribe to this broad theoretical framework. There are, however, specific features unique to political culture in Lesotho. The study confirms that the coalitions that the country has seen since 2012 have not really been policy-seeking. Rather, they have been based on office-seeking and portfolio allocation models of coalitions. Hence, the pre-existing ideological alignments and configurations do not play any role in the formation and sustenance of coalitions.

Since 2012, all major political blocs which have existed since independence have been shattered. This era has seen even the longtime rivals – the “national” and “congress” parties – coming together to form coalitions. While this classification of political parties into “national” and “congress” parties does not have any major ideological significance to the political landscape in Lesotho, the historical rivalry between these two blocs has had a bearing on the political landscape of the country (Kheketla, 1972). It would be expected that these historical configurations would have some influence on how coalitions are formed. The study has confirmed that these historical configurations have played little or no role in the formation of coalitions.

2.2 *Coalition agreements and their value in conflict management*

Since the formation of modern political parties in Lesotho in the 1950s (Weisfelder, 1999), managing internal party conflicts has been a serious challenge, with parties undergoing splits and counter-splits. Failure to manage and resolve intra-party conflicts has been a trend that has gone on unabated even during the coalition era (Thabane, 2017). Instead, the situation has become dire. What emerges pointedly from the chapters in the volume is that all four coalitions hitherto (2012, 2015, 2017 and 2020) have signed their constitutive coalition agreements, which spell out, among others, how coalition partners will handle conflict. But once they assume state power, coalition partners neglect these provisions, resulting in the rupture and ultimate collapse of the coalition arrangement. In the last three elections held within no more than six years, Lesotho used M728 792 880 or USD45 549 555 to fund elections. This outcome came at a huge cost to the country with an already weak economic base.

The failure to manage the conflict between the ABC and the LCD during the post-2012 polls, despite a provision in their agreement for conflict management, led to the collapse of the country’s first coalition government. The post-2015 election coalition of seven parties also collapsed because of the inability to manage conflict within the leading party in the

coalition – the DC. The post-2017 election four-party coalition of the ABC, AD, BNP and RCL suffered the same fate of internal power struggle within the leading ABC, resulting in its split into Basotho Action Party (BAP) in 2020. The failure of parties to manage conflicts seems to be an insurmountable challenge confronting Lesotho's coalition politics. The coalitions that the country has had since 2012 have collapsed – and consequently leading to the collapse of government – because of conflicts that were either intra- or inter-party.

2.3 Coalitions and Lesotho's Westminster constitutional design, the exercise of executive authority and formation of government

The advent of coalition politics and governments within the current Westminster constitutional design is another emerging theme from the chapters in the volume. In particular, the constitutional provisions on the formation of the government after the election and unfettered powers of the Prime Minister. Owing to the long history of one-party governments, the rules on government formation under coalition arrangements do not exist. Political parties and parliament have not developed such rules or conventions to deal with the formation of a government in the case of a hung parliament. The constitutional provisions oblige parliament to convene fourteen days after elections to elect the speaker. It has been a practice that the Prime Minister emerges from a party with the most seats and his deputy from the second biggest party in the coalition; without an investiture vote and the government announced based on the agreements parties would have hastily cobbled. This does not allow sufficient room for parties to negotiate their coalition deals. The chapters in this volume point to a need for codification of the conventions on the formation of government and caretaker governments to avoid uncertainty in the aftermath of the election – the period that is generally volatile in Lesotho.

The exercise of the executive authority under the current Westminster constitutional design has proved to be a challenge in that it confers excessive power in the sitting prime minister. Nothing constrains the coalitional Prime Ministers from exercising executive power as if they lead a single-party government and without regard to their coalition agreement which provides for consultation. As such, the incumbents are at liberty to make unilateral decisions on key issues without regard to the views of other partners in the coalition and even parliament itself. Coalition partners of the prime minister oftentimes presume that they have a stronger say in government when they are in a coalition. The height of this difference was the stand-off between Prime Minister Thabane and his Deputy, Mothetjoa Metsing, during the maiden 2012 coalition government. The Deputy Prime Minister constantly alleged unilateralism in decision-making by the Prime Minister on key issues. A similar pattern recurred when the then Prime Minister Thabane attempted to prorogue parliament in a bid to dodge his ouster through a parliamentary motion of no-confidence in 2020.

2.4 Coalitions and state institutions

Lesotho's state institutions have increasingly suffered from undue politicisation; the erosion of professionalism and political impartiality over the years after the return from a military regime to multi-party politics (Mwangi, 2016; Rakolobe, 2019). Given that the current constitutional design confers powers to appoint and dismiss heads of key state institutions in the King who has to act on the advice of the prime minister, the advent of coalition politics led to the prime ministers using these powers for their own political expediency by attempting to appoint those they would arguably have influence over in the discharge of their duties, leading to instability within these institutions, the government and the whole political system. The chapters in this volume demonstrate this executive overreach with regard to the judiciary, the office of the Attorney General, and the security agencies. The politicisation process has undermined the normal functioning of all state institutions under a democratic political order. The independence of the judiciary has been under assault through attempts (some successful and others unsuccessful) to remove the heads – the President of the Court of Appeal and the Chief Justice - by each incoming coalition government. The office of the Attorney General and the security agencies have similarly been embroiled in partisan squabbles between coalition partners in government.

2.5 Coalitions, electoral system and gender

After returning from military rule to multi-party politics in 1993, political instability remained common in Lesotho. Consequently, the constitutional and electoral reforms were implemented, and the country witnessed some semblance of stability as parliament, which had hitherto excluded the losing parties in the electoral contest, became more inclusive. But this was not without unintended consequences of elections producing hung parliaments since 2012 and coalition governments. Chapters in this volume show that the change of the electoral system has spurred the formation of coalitions due to inconclusive election results in which no one party has been able to secure sufficient seats to form a government alone. With regard to gender parity, especially in the cabinet appointments, it emerges that distribution of power within the executive has been gendered in favour of men. More women than men occupy ministerial positions in ministries that deal with soft tissues such as gender, social welfare and health, although coalition governments have in a few cases appointed women to the traditionally masculine policy areas such as finance, foreign affairs and agriculture.

2.6 Public participation and institutional reforms

Almost all the chapters in this volume demonstrate a large degree of optimism that the institutional reform process that the country engaged in will help overcome the challenges of political instability and to achieve long-lasting peace and reconciliation. This optimism may

be well placed given the amount of resources committed and effort put by almost all sectors of the nation, the SADC and the country's development partners. But the final outcome remains to be seen. It is one thing to have the National Reforms Authority (NRA) deliver on its mandate in terms of developing relevant policy, legal and constitutional principles and quite another to have these actually pass in parliament in the form of reformed constitution and different pieces of legislation in the seven thematic reform areas. It has emerged that it would be useful to have some reservations given the manner in which the process and structures of reforms have been dominated from the onset by politicians. The study reveals the tension between politicians' interests and the public. Due to their numerical advantage in the NRA and throughout the reforms process in general, the politicians have entrenched their own interests at the expense of those of the nation.

In a similar manner, when the era of coalition politics replaced the era of single-party governments in 2012, there was enthusiasm and excitement amongst the members of the public. However, this has not translated into an uptake in voter turnout. The study shows that even the voter who has been habitual has backslid during this period of coalition politics. The net effect is that voter turnout has been in a steady decline.

2.7 Comparative perspectives from other African experiences

The phenomenon of coalitions seems to be an emergent pattern in contemporary African politics (Kadima, 2014). Hence, Lesotho only provides a case study for a trend that is well established in Africa. The coalitions in Africa have similarities and dissimilarities. There are two main common features of the African coalition – they are office-seeking and their configuration is not necessarily based on ideological alignments. Lesotho subscribes to this general pattern (Kapa, 2013).

The study has taken lessons from Kenya and Mauritius. The Kenyan experience provides an intriguing scenario because political alliances that end up in government are often formed prior to elections. They get into elections with predetermined arrangements. This is not necessarily the case in Lesotho. In Lesotho, there are sometimes alliances before elections, but the trend since 2012 is that coalitions are formed after elections on the basis of performance during the election and post-election political expediency. The Mauritian experience is not very different from Lesotho's. The formation of a coalition is often driven by office-seeking motives rather than policy or any ideology.

3 Conclusion

Hence, there may be numerous lessons Lesotho's experiment with coalitions can offer to other countries. But the following appear to be prominent. The first one is that coalitions do not necessarily resolve political instability. This could be because the struggle for political

power in economically weak countries such as Lesotho is necessarily a struggle for the economic survival of the political elite, and it shall always stoke incessant conflict that may sometimes lead to instability if not properly managed.

The second lesson is that parties may draw up their coalition agreements with fairly well thought out conflict-resolution mechanisms but using this when conflict does ensue seems to be a challenge. Thus, parties have to commit genuinely to their agreements and effectively use the in-built conflict management and resolution structures when conflict erupts.

The third lesson is that coalitions become a strain on the national budget, especially when coalescing parties are desperate to form a government and end up bringing in too many partners. This has led to bloated cabinets in Lesotho at a high cost to the taxpayer.

Lastly, coalitions may lead to heightened inter-party competition instead of cooperation in governance and balkanisation of the government. Each party feels it has full control and ownership of the ministries of government it has been allocated. The result may be poor or lack of delivery of public services and poor governance generally. On the whole, Lesotho's case could provide valuable lessons for other countries in making careful choices that will assist them in avoiding the challenges analysed in this volume.

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Ever since independence from Britain in 1966, Lesotho has been an experimental laboratory of various governance models. The country has experienced multi-party models, plain dictatorships, one-party dominated models, military juntas and, recently, coalition governments. The advent of coalition politics since 2012 has brought a paradigmatic shift in the entire socio-political landscape in the country. This era has, hitherto, largely remained under-studied. *Coalition Politics in Lesotho* is the first book-long study specifically dedicated to this significant era in the country's history. Edited by the two leading politico-legal scholars on Lesotho, the book is a multi-disciplinary study of the implications of coalitions for governance and development.



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