

**Consolidating Democracy through integrating the Chieftainship Institution  
with elected Councils in Lesotho: A Case Study of Four Community Councils  
in Maseru**

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By

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## Abstract

This study analyses the relationship between the chieftainship institution and the elected councils in Lesotho. Based on a qualitative case study method the study seeks to understand this relationship in four selected councils in the Maseru district and how this can be nurtured to achieve a consolidated democracy. Contrary to modernists' arguments (that indigenous African political institutions, of which the chieftainship is part, are incompatible with liberal democracy since they are, *inter alia*, hereditary, they compete with their elective counterparts for political power, they threaten the democratic consolidation process, and they are irrelevant to democratising African systems), this study finds that these arguments are misplaced. Instead, chieftainship is not incompatible with liberal democracy *per se*. It supports the democratisation process (if the governing parties pursue friendly and accommodative policies to it) but uses its political agency in reaction to the policies of ruling parties to protect its survival interests, whether or not this undermines democratic consolidation process. The chieftainship has also acted to defend democracy when the governing party abuses its political power to undermine democratic rule. It performs important functions in the country. Thus, it is still viewed by the country's political leadership, academics, civil society, and councillors as legitimate and highly relevant to the Lesotho's contemporary political system. Because of the inadequacies of the government policies and the ambiguous chieftainship-councils integration model, which tend to marginalise the chieftainship and threaten its survival, its relationship with the councils was initially characterised by conflict. However, this relationship has improved, due to the innovative actions taken not by the central government, but by the individual Councils and chiefs themselves, thus increasing the prospects for democratic consolidation. I argue for and recommend the adoption in Lesotho of appropriate variants of the mixed government model to integrate the chieftainship with the elected councils, based on the re-contextualised and re-territorialised conception and practice of democracy, which eschews its universalistic EuroAmerican version adopted by the LCD government, but recognises and preserves the chieftainship as an integral part of the Basotho society, the embodiment of its culture, history, national identity and nationhood.

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## **Dedication**

I dedicate this thesis to my mother (who passed away four days after I received the news that I have been awarded a PhD) and my loving wife and supportive partner of all time, `M`e `M`akananelo, our late lovely daughter, Margaret Kananelo, and her brothers, Tšitso and Moea.

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### **List of acronyms**

ABC.....	All Basotho Convention
ANC.....	African National Congress
BAC.....	Basutoland African Congress
BCP.....	Basutoland Congress Party
BDP.....	Botswana Democratic Party
BNC.....	Basutoland National Council
BNP.....	Basotho National Party
CIDA.....	Canadian International Development Agency
CODESA.....	Convention for a Democratic South Africa
CONTRALESA.....	Congress of Traditional Leaders of South Africa
DFID.....	Department for International Development
ECA.....	Economic Commission for Africa
FPTP.....	First-Past-The-Post
IFP.....	Inkatha Freedom Party
IPA.....	Interim Political Authority
ISAS.....	Institute of Southern African Studies
LCD.....	Lesotho Congress for Democracy
LEC.....	Lesotho Evangelical Church
LPC.....	Lesotho People's Congress
LWP.....	Lesotho Workers Party
MCC.....	Maseru City Council
MMP.....	Mixed Member Proportional
MoLGC.....	Ministry of Local Government and Chieftainship Affairs
MPs.....	Members of Parliament
MTP.....	Marema-Tlou Party
NCA.....	National Constituent Assembly
NGO.....	Non-governmental Organisations
NIP.....	National Independence Party
NPP.....	National Progressive Party
NUL.....	National University of Lesotho
PEMS.....	Paris Evangelical Missionary Society

PFD.....	Popular Front for Democracy
PR.....	Proportional Representation
PRSP.....	Poverty Reduction Strategy Paper
PSIP.....	Public Sector Improvement Programme
SACU.....	Southern African Customs Union
SADC.....	Southern African Development Community
SDU.....	Sefate Democratic Union
SWAPO.....	South West African People’s Organisation
TRC.....	Transformation Resource Centre
UFF.....	United Father Front

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# **CHAPTER ONE**

## **General Overview of the Study**

### **1.1. Introduction and context of the study**

This chapter serves several purposes. First, it provides a general introduction to this study. Second, it maps out the context of the study. Third, it provides the study's motivation and justification. Fourth, it describes the methodology and orientation of the study. Lastly, it provides an outline of the remaining chapters of this thesis.

Despite numerous attempts by many governments in Africa to either wish away traditional leadership or to actually attack it through various reform measures with a view to abolishing it (Owusu, 1997:138), many parts of the continent are still characterised by dualism of political authority (Sklar, 1999a: 168). There are modern state structures on the one hand, and traditional/indigenous political institutions on the other. This reality has sparked intense and on-going debate among academics, policy makers and politicians. The debate focuses on the relevance, role and place of these indigenous institutions of governance in political systems, since the political phenomenon or process widely described and accepted, on global scale, as the "Third Wave of Democratisation", which began during the 1980s and 1990s (Huntington, 1991). In the African context, Büsing (2002) terms this process the "Second Wave of Democratisation". It is second because it was preceded by the first wave, which began during the de-colonisation processes of the late 1950s and 1960s.

The Kingdom of Lesotho has not been an exception to these two waves of democratisation. The first wave began in 1965, when the country held its first parliamentary elections. This process marked the end of the British colonial rule and brought into office the first democratically elected government under the Basotho National Party (BNP). These first democratic gains were reversed when the BNP refused to relinquish power to its arch rival, the Basutoland Congress Party (BCP) that had won the next poll in 1970. The BNP established a 16-year long authoritarian regime (1970-1986), which was dislodged from state power by the military. The military junta subsequently ruled the country for seven years (1986-1993). It was only

after a hiatus of 23 years of undemocratic rule (1970-1993) that the country embarked on the second wave of democratisation through holding the 1993 transitional elections. These elections were won with a landslide by the BCP. The elections marked the end of seven years of military regime and re-introduced multi-party democracy. Since 1993, the BCP did not believe that the process of democratisation was complete until political power could be devolved to the local level of society. The BCP was, however, ousted from state power by its own splinter party, the Lesotho Congress for Democracy (LCD), which crossed the floor in parliament, declared itself government and relegated the BCP to the ranks of official opposition in June 1997. It was the LCD government that called local government elections, based on universal adult franchise (unlike the 1960 elections in which women were not allowed to participate by voting and standing as candidates) on the 30<sup>th</sup> April 2005.

A welcome development as it was for the country's democratisation process, the introduction of the current local government system has, however, resulted in a "dilemma" as to how the institution of traditional authority (expressed in the existing chieftainship structure) that has historically served as a source of authority at this level of society, should co-exist with the new local authorities. The dilemma has also been on the question of which of the two institutions (the chieftainship and the councils) should assume primacy over governance issues at the local level. However, this dilemma does not confront Lesotho alone. It has been experienced by other countries in many parts of Africa as well.

Consequently, the role and place of traditional authorities in democratising African political systems, how the system could co-exist with elective local authorities, and how this relationship can be mediated so that the two structures can work in harmony rather than in competition, has generated intense debate between what Logan (2008) terms "traditionalists" and "modernists" in both academic and policy circles. The gist of this debate is aptly captured by Quinlan and Wallis (2003:146) as well as by Logan (2008:1) as revolving around two positions: one which regards traditional African political institutions as outdated forms of authority and an affront to democratic rule, and with no valuable role to play in these democratising systems. As such, they should not be accorded any recognition by the modern state. Rather, they must be abolished. A pragmatic and counter position asserts that these institutions are still

relevant and legitimate, particularly in rural areas where the majority of the people live. Consequently, they should not be abolished. The reality in many parts of Africa is that these indigenous institutions exist in juxtaposition with modern state structures at the local level (Economic Commission for Africa, 2007: v) and, in some cases such as in Lesotho, even at national level. Besides, the indigenous African institutions are not in competition with their elected counterparts for political power. Rather, “the two appear to be *mutually reinforcing*” [italics added] (Logan, 2008:17).

This study takes place against this broad contextual background. It focuses on the relationship between traditional African political institutions (expressed in the chieftainship structure in Lesotho) and their modern elected counterparts, with particular reference to the local governance sphere. I seek to explore and understand this relationship and how it can be developed to facilitate the process of democratic consolidation. Although the study focuses on local government level, it does not ignore the broader continental and national contexts in order to show a comprehensive and deeper understanding of this relationship. Thus, I situate the chieftainship institution within these two contexts. At the continental level, I explore the on-going debates in the literature, drawing examples from many African countries, about the place and role of similar institutions across the continent. At the national level, I situate it within the Lesotho’s wider political and historical contexts for the same reason.

My interest in this topic started in 2004 when I was reading for a Masters Degree in Political Science at the University of Toronto, Canada. I took a course in Democratic Theory, which exposed me to the debates on democracy and democratisation at the global, national and local levels. The literature that I got exposed to did not seem to accord any recognition to forms of political authority based on other principles than an election, namely, the chieftainship. At the time, coincidentally, the LCD government in Lesotho was about to introduce an elective local government system. Having read the Lesotho’s *Local Government Act, 1997* (which provided the legal framework for a local government system and stipulated clearly that the chiefs must be “elected” in order for them to be part of the envisioned local councils) and with my origins in the rural areas of the country where chiefs still play a crucial role in the daily lives of the people, I wondered and became curious as to how a chief can be

“elected” and remain a chief without becoming a politician and losing popular legitimacy as a chief.

While I saw (and still do) the devolution of political power as a positive political development for the country, I became curious as to what this innovation would mean for the country’s chieftainship institution and democratisation process and how the chieftainship would relate and work with the new elected authorities. Upon arrival in Lesotho and resumption of my duties as a lecturer in Political Science at the National University of Lesotho (NUL), there were numerous media reports about the conflict between the chiefs and the councillors. The drivers of the conflict were not clearly presented in these reports. I felt the need to satisfy that intellectual curiosity and embark on this study for my doctoral degree programme, hence this study.

## **1.2. Justification for the study**

Justification for this study is premised on the fact that no enquiry of its nature has been done in Lesotho. While there is a fairly large body of literature on the chieftainship and local government system in Lesotho, this has not addressed the scope and specific focus of this study, which is to analytically engage the chieftainship-councils relationship since the introduction of the elected local government system following the April 2005 local elections. Previous studies conducted in Lesotho on the local government system were carried out prior to this new political dispensation (Machobane, 1990; Makoa, 1990; Rugege, 1990; Quinlan and Wallis, 2003) but they either address different issues from what this one does or they are descriptive in that they only describe how different forms of decentralisation were instituted by the country’s successive governments (Mofuoa, 2005). Others are based on desk research and, as such, lack empirical basis in terms of actually seeking the views and perspective of the key actors in Lesotho’s politics. They also sought to address different concerns (Kapa, 2005; Mahao, 2007). The latest of these studies (Pratchett, *et al.*, 2008) has a limited scope and focus in that it endeavours to assess the general strengths and weaknesses of the new local government system at the local level. It pays little attention to the main concern of this study. Besides, it does not address the broader national context within which the current local government system works yet this has profound implications for the system. In other words, it

takes the broader context as a given and as something that is somewhat conducive for proper functioning of the local structures of government. More precisely, it ignores the roles and impacts of national political parties as well as the government policies and their consequences for the relationship between the chieftainship and the elected councils. It further ignores the implications thereof for democratic consolidation.

Although these studies make some knowledge contribution in their own right, they do not address the current chieftainship-elected councils' nexus dilemma as I have outlined above. This research, therefore, builds on these works but goes beyond them in that it is anchored on different ontological, epistemological, and methodological approaches, asking and answering a different set of questions to address this topic since the advent of the elected local councils. It analytically delves into the nexus between the chieftainship and the elected councils and implications that this has for democratic consolidation in the country.

### **1.3. Key research questions**

This study sought to answer the following key questions:

- Is the chieftainship institution still relevant in the contemporary political and administrative system of Lesotho now that the country has introduced an elected local government system?
- How was the relationship between the chieftainship and colonial state structures and the country's emergent political parties in the 1950s?
- What have been the policies of the country's main political parties on and towards the chieftainship? To what extent did such policies change over time in the immediate post-independence epoch and with what kinds of impacts on the relationship between the chieftainship and these parties?
- How did the government formulate and implement the local government policy, to what extent were the chiefs involved in these processes, and with what kind of implications for service delivery at the local level?
- What challenges have emerged in the last five years and how can these be overcome so that the two structures work harmoniously to achieve democratic consolidation?

#### 1.4. Research goals

Through seeking and providing answers to the above questions, the study seeks to contribute knowledge on the topic by:

- contributing a pioneering study that addresses the gap in the literature on Lesotho's experiment with democratisation at local level since the introduction of elective councils in 2005, and
- adding on the body of literature on the dilemma integrating traditional forms of authority with liberal democratic institutions on the African continent, by specifically inquiring into this issue in Lesotho's context.

#### 1.5. Research orientation and approach

Informed by the nature of this study and based on its key goals and the questions it seeks to answer, as outlined above, I adopt a qualitative approach to data generation and analysis in which a case study method is employed. Denzin and Lincoln regard qualitative research as:

a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that make the world visible. The practice transforms the world. They turn the world into a series of representations, including field notes, interviews, conversations [...] [Q]ualitative research involves *interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring.* Qualitative research involves the studied use and collection of a variety of empirical material – case study; personal experience; introspection; [...]; interview; artifacts; cultural texts and productions; observational, historical, interactional, and visual texts – that describe routine and problematic moments and meanings in individual's life [italics added] (Denzin & Lincoln, 2005:3).

Qualitative research designs are widely used in Political Science because of their nature and purpose. According to King, Keohane and Verba:

Qualitative research *...covers a wide range of approaches, but by definition, none of these approaches relies on numerical measurements. Such work has tended to focus on one or small number of cases, to use intensive interviews or depth analysis of historical materials, to be discursive in method, and to be concerned with a rounded or comprehensive account of some event or unit.* Even though they have a small number of cases, qualitative researchers generally unearth enormous amount of information from their studies. Sometimes this

kind of work in social sciences is linked with area or case studies where focus is on a particular event, decision, institution, location, issue, or a piece of legislation [italics added] (King, Keohane & Verba, 1994:4)

Snape and Spencer (2005:3) distinguish qualitative research from other research approaches by stressing that it has as its aims, among others, an “in-depth and interpreted understanding of the social world of research participants by learning about their social and material circumstances, their experiences, their perceptions and histories”. It conducts a “naturalistic inquiry in real-world rather than experimental or manipulated settings (though methods vary)”. It uses a number of methods such as “observation, in-depth individual interviews, and focus groups [...]”. Nachmias and Nachmias (1996:280) describe qualitative research as “a method of data collection and analysis” in which researchers “must gain an empathic understanding of societal phenomena, and they must recognize both historical dimension of human behaviour and *subjective aspects of the human experience* [italics added].” These definitions and descriptions of qualitative research are useful and adopted in this study.

## **1.6. Methodology and data generation strategies**

The study employed a case study method aimed, among other things, at enabling within-case and across-case comparisons (Stake, 2000:444; Gerring, 2004:352; Yin, 2009:4) in the Mohlakeng A07, Mazenod A08, Makhoarane A09 and Lilala A010 Community Councils within the administrative district of Maseru, Lesotho. It comprised, for purposes of data triangulation, in in-depth personal interviews and focus group discussions, as well observation of the meetings of the councils. Below, I justify the decision to use the case study method and describe these data generation strategies as well as how they were used.

### **1.6.1. Case study**

The tricky question in case study research is defining, in definitive terms, what the *case* being studied is. In this study, the case studied is a *democratic consolidation in Lesotho* studied through exploring the relationship between the chieftainship and the four selected councils. This is done, in line with the qualitative interpretive paradigm, with a view to *understanding* this relationship and *how* it can be developed and enhanced to achieve the broad goal of democratic consolidation in the country. This

relationship is studied in the Mohlakeng A07, Mazenod A08, Lilala A09, and Makhoarane A010 Community Councils respectively.

As a concept and research strategy, the case study method has been defined differently in the social science literature. According to Stake (2002:436), a case study “may be *anything* from a child, a classroom or an incident such as mobilisation of professionals to study a childhood condition, an agency”. Thus, “a case study is both a process of inquiry about the case and the product of that inquiry” (ibid). Gibbs (2007:148) shares this conceptualisation in that he regards a case as “an individual unit being studied. A case may be a person, an institution, an event, a country or region, a family, a setting or an organization depending on the particular study being undertaken”.

For Eisenhardt (2002:8) a case study refers to “a research strategy which focuses on understanding the dynamics present within single settings”. Yin (2009:4), a widely cited author in case study research method, presents a two-pronged definition of the concept. He says that it is “an inquiry that investigates a contemporary phenomenon in depth and within its real-life context”, the result of which “relies on multiple sources of evidence, with data needing to converge in a triangulation fashion, and as another benefits from the prior development of theoretical propositions to guide data collection” (ibid). I adopt these conceptualisations.

The choice of the case study method in this research is informed by several considerations. Van Evera (1997:77-78) advises case study researchers to consider, among other criteria, the “resemblance of case background conditions to the conditions of the current policy problem”, the “prototypical background characteristics”, the “appropriateness for controlled comparison with other cases”, the “intrinsic importance” of the cases, and the “appropriateness for replication of previous tests” and I took all these issues into consideration. Yin (2009:9) suggests that “there is no formula” as to when a case study research strategy should be used, but the choice depends, to a large extent, on the nature of research questions posed. According to him, if the questions are descriptive and explanatory, then a case study method is to be used to explain some present circumstances. For him, when the “how” or “why” questions relating to workings of a social phenomenon the case study

method will be relevant” (ibid: 13). The case study method is relevant when a study seeks to get “an in-depth description of some present phenomenon over which the researcher has no control” (ibid: 7-8).

Stake (2005:445) concurs with Yin and submits that a “Case study is not a methodological choice but a *choice of what is to be studied* [italics added]”. He also identifies three types of case studies, namely, *intrinsic, instrumental, and collective case studies* respectively. The first refers to a case study in which investigators are interested in a case because they want to have a “better understanding of this particular case”(ibid), while in the second, the purpose is to answer research questions and also learn from it about other cases. In his words, “we will have a research question..., a need for general understanding, and feel that we may get an insight into the question by studying a particular case”. He continues, “case study here is instrumental to accomplish something other than this particular [cases], and we may call our inquiry instrumental case study” (Stake, 1995:3). Lastly, a *Collective case study* refers to the situation where researchers have “even less intrinsic interest in one particular case” but “jointly study a number of cases in order to investigate a phenomenon, population, or general condition. It is instrumental study extended to several cases” (ibid). The case study method is also used for the purposes of contributing to theoretical generalisation, rather than to populations or universe (Yin, 2009:14-15) and theory-building (King, Keohane, & Verba, 1994:46) or theory-confirming (Lijphart, 1971: 693).

In the context of this study, the case study method is more appropriate in Stakes’ first two senses than in the third. That is, the study examines *the relationship between the chieftainship institution and the councils*, in each of the councils, with a view to understanding this relationship in the selected councils and in other councils in the country as well as (by extension) in Africa. In addition, the study is intended to identify the challenges that have emerged since the introduction of the local government system in Lesotho and the effect of these on the country’s democratic consolidation process. As Gerring (2004:352) maintains, the case study method is useful (among other things) when “internal case comparability is given preference over external case representativeness”.

Another consideration, which is of more practical rather than theoretical importance for my selection of the case study method, was the resources needed to complete this study. While it would ideally be desirable to study all the 128 Community Councils in the country, or the at least all fifteen (15) of these in the whole of Maseru district, the resources at my disposal (both in terms of time and money) could not permit such an endeavour. McKee (2006:58) notices the reality confronting student researchers and indicates that the case study method is “a cheap and manageable option especially for student researchers”. I acknowledge, however, that although all the Community Councils are made up of chiefs and elected councillors countrywide, the relationships between them may and in fact do vary: they are better and harmonious in some councils than in others (see chapter six). Studying these four (4) Community Councils would allow comprehensive within and across-case comparisons and tease out the underlying reasons for those variations and/or similarities and their implications for the democratic consolidation process.

On selection of the cases, I had made a particular effort to select Community Councils outside the capital, Maseru. I was guided, in this selection, by the assumption that the study’s case would be more clearly visible in the more rural than urban settings of the district. This is because the urban residents have a lesser contact in their daily business with the chiefs than do their rurally-based counterparts. However, the urban residents do find themselves having to occasionally go back to the villages of their origin for services such as attestation of births and deaths for their children and relatives before formal birth and death certificates can be obtained from the offices of district administrators. Interestingly, even the commercial banks do require their clients to produce letters of attestation from their chiefs before they can grant loans to them. I was personally required to produce a letter from my chief by my bank when applying for a loan on several occasions. Thus, on the whole, the presence and need for the services of the chiefs in Basotho society remains strong both in urban centres and rural areas, though to varying degrees.

### **1.6.2. Data generation methods**

This sub-section describes the specific data generation methods that the study adopted and why these were used. The presentation of the methods does not necessarily

represent any strict sequence followed during the data generation processes for these were discursive. The questions in all cases were designed in ways that reflected the main themes and sub-themes the object of which was to group all similar responses under each theme and/or sub-theme. This approach became useful in not only categorising the data but also in the analysis process. In other words, similar responses to similar questions were put together after the transcription processes. This means that all the data that did not fit into the themes and sub-themes, yet useful were used to create new themes and sub-themes as was appropriate. The themes then became a basis for developing the thesis' chapters and their constituent parts.

#### **1.6.2.1. Sampling methods**

The study relied on convenience and purposive sampling techniques for the selection of the councils and research respondents respectively. Convenience sampling entails a judgmental decision to select respondents or units of analysis on the basis of three criteria, namely, their ready availability, relative less cost involved in carrying out studies and allowing researchers to conduct their studies quickly (Berg, 2007:43). However, the main criticism of the convenience sampling technique is its lack of specific characteristics that the researcher may be interested in among the study units (ibid). For this study, however, all Community Councils, country- wide, are made up of both chiefs and councillors and, as such, it would be possible to study any one council. For all the respondents interviewed, I employed a purposive or judgmental sampling method. I used my own knowledge about political parties in Lesotho to determine which of these would best serve the purpose of this study. As Babbie (2007:184) explains, this technique involves a case in which researchers “select a sample on the basis of knowledge of a population, its elements, and the purpose of the study”.

#### **1.6.2.2. Sources of data**

I used both primary and secondary sources of data. Primary data were generated through personal face-to-face interviews with different categories of respondents. I also observed meetings of the four Community Councils and held focus group discussions with the councillors. The details on how these strategies were applied are provided below.

### **1.6.2.3. Sources of primary data: face-to-face interviews, observations of Community Council meetings.**

I held face-to-face interviews with key respondents selected purposively from a stratified sample aimed at, as Nichmais and Nichmias (1996:188) state, ensuring that different groups of the sample are represented in the sample. The sample consisted of 48 respondents: academics, leaders of political parties represented in the National Assembly, policy-makers and implementers, secretaries and chairpersons of the councils, the chiefs (drawn from their category officially called Area Chiefs and their representatives within the councils or councillor-chiefs as I will call them throughout this thesis), facilitators of the consultative workshops on the *White Paper on Local Government*; and civil society. Prior to the interview processes, as many of the respondents requested, I provided them with lists of key questions as the basis for the discussions to enable them to prepare adequately for the meetings.

In many cases, especially those in which interviews were conducted with the elites (political parties' leaders, policy makers and implementers, academics), I used an audio tape to record the proceedings in order to get their views in their own words. However, this was done with the respondents' clearly expressed consent. In a few cases, respondents preferred not to be tape-recorded and I wrote down their responses to the questions I that posed. For the remaining categories of respondents, namely, the councillors and chiefs, chairpersons and secretaries of the councils, I took notes as they provided answers to my questions.

The interviews were based on a set of semi-structured questions prepared for each category. These were based on a set of pre-determined questions and special topics, with questions asked to each interviewee systematically and consistently. The main advantage of semi-structured interviews is that they allow researchers the "freedom to digress: that is, interviewers are permitted (in fact, expected) to probe far beyond the answers to their prepared standardized questions" and allow researchers to "approach the world from the *subject's perspectives* as the questions have to be framed in words that are familiar to the respondents" [italics added] (Berg, 2002:95).

With these issues in mind, and driven by the nature of the data needed, some questions were common to all categories. They were aimed at drawing comparisons from the responses provided by the respondents. As Berg (2002:99) suggests, the questions were developed along a logical sequence and key themes for purposes of facilitating both data generation and analysis. Thus, I developed the questions in a sequence that depicts the evolution of the local government system and its policy formulation and implementation processes. Although some form of order was devised for the whole process (starting at national level to get some sort of national context of the study and then move to the local level) some disruptions emerged. Some respondents could not be accessed on the anticipated dates and as previously arranged with them. To save time, I had to defer some interviews and proceed with those respondents that I could have access to with relative ease. In some cases, it took me over two months to have access to a respondent, whose perspectives would be most crucial for the study.

As indicated above, respondents were drawn from different groups. The three (3) academics were drawn from the members of the teaching and research staff of the NUL based on their interest and expertise in the area generally and in the Lesotho context in particular. They were in a better position than others to provide answers to the research questions that I posed. Having access to them was not a problem given that they know me personally as their colleague.

Following the introduction of the Mixed Member Proportional (MMP) electoral system in 2001 and the replacement by it of the erstwhile First-Past-The-Post (FPTP), ten (10) out of Lesotho's nineteen (19) registered political parties, have been represented in the national parliament in varying numbers. Since each of these parties aspires to become government (for that is the fundamental reason for political parties' formation and their political strategies), I found it imperative to get their perspectives on the role of the chieftainship institution in the country's politics both at national and local levels. Besides, almost all of these leaders have been in previous governments in different positions and at different times. Based on how the respective governments (in which they served) worked with the chieftainship institution, they were able to provide their perspectives on how the institution, as another administrative agent of

the state, should relate and work with elected councils, should their parties win elections and become government.

I was then able to interview seven (7) leaders of political parties. Gaining access to them was relatively easy. Some of them were found in their party offices, which I visited to set up appointments at times convenient to them. In cases where it was not possible to secure appointments through their offices, I called them on their mobile phones to set up appointments. Because many of them had previously participated in the research projects that I conducted on different issues (as part of work as a researcher and lecturer at the NUL), I was able to contact them on their mobile phones. The challenge that I encountered, in a few cases, was that some leaders were busy with their parliamentary work. However, I exercised patience until I was able to meet them. In cases where the leaders were completely inaccessible, I interviewed senior officials - their deputies or secretary-generals as the case would be. These were as well-placed and qualified, as the leaders themselves, to talk about the policies of their respective parties.

The decision to select the parties that I selected, rather than all parties in Lesotho, was based on the fact that those which could not make it to parliament were too miniscule and have extremely limited potential to become government. As such, their views would not be of much value for the study. Similarly, it would not be helpful to interview representatives of all the ten parties which have parliamentary representation because many of them had formed electoral alliances. Consequently, the views of those smaller alliance partners were better represented and articulated by the leaders of the bigger partners that I interviewed.

Policy makers and implementers were selected by virtue of their positions, both past and present, and their role in the local government policy formulation and implementation processes. They were better suited than their colleagues in other ministries of government to provide the information needed for the study. I held interviews with three (3) respondents from this stratum of my sample. These were responsible for the introduction of the local government system and overseeing and/or directly responsible for driving the decentralisation process from its inception in 1995.

Since this study essentially focuses on the chiefs as individuals and collectively as an institution, both at national and local levels, it was crucial to include them in them on list of my respondents. I therefore found it imperative to allow them a voice and an opportunity to define themselves, their role and place in this new political dispensation. At national level, I contacted two (2) respondents, whose views were aimed to represent those of the senior chiefs, officially styled Principal Chiefs. Although this category of the chieftainship hierarchy is prevented by the *Local Government Act, 1997 (4) (a)* to participate in Community Councils, they form part of parliament and constitute two thirds of the Senate membership, Lesotho's Upper House of the bicameral system. The Senate constitutes the helm of interaction between the chieftainship institution and the modern state, represented by elected Members of Parliament (MPs). Policy formulation and law making occurs closely here.

On these considerations, therefore, I interviewed one (1) Senator who is also the Chairman of the College of Chiefs – a body made up of all senior chiefs, responsible among other functions, for the nomination of candidates for the position of king, should a need for this arise. This Senator is also the Chief Whip in the Senate. I also held an interview with a retired Senator and Principal Chieftainess. Her selection was based on the role she has played in the national politics and her courage to speak her mind, in defence of both the chieftainship institution and the national Constitution, even during politically sensitive times in the country.

During the interviews, I discovered that the chiefs have their own organisation *Thebe ea Sechaba sa Lesotho* (THESELE) - simply translated as *The Shield of the Basotho Nation*. It is otherwise very little known to many people in the country. I also did not know it before this study. This organisation is registered with the government Law Office under the *Societies Act, 1967*, but is somewhat moribund. Its main objectives were to press the then military junta to reinstate to his throne, after he was dethroned, the late King Moshoeshoe II, to discipline the chiefs who do not do their work properly, and to resolve conflicts among the chiefs themselves. I approached the secretary of this organisation, who is also one of the Area Chiefs in his area, and had an interview with him. The objective here was to find out, from his organisation's perspective, how the chiefs (as a collective under this organisation) define their role

and place in the current political dispensation in the country, and their views about the local government project.

At the lower levels of the chieftainship structure, there are 249 chiefs (representing their fellow chiefs in all 128 Community Councils throughout the country) (Mbetu & Tshabalala, 2006:3) and a total of 1234 chiefs in the country. The latter is the number of state-recognised chiefs through the process of gazettelement, which was bequeathed by the British colonial rule in Lesotho. This number, however, does not include other gazetted chiefs, officially called Headmen, or even more chiefs defined locally as 'Customary Chiefs', whose number is difficult to tell as there are no records on it.

Structurally, the chiefs are arranged into Principal and Ward Chiefs, Area Chiefs, Headmen and Customary Chiefs respectively. However, only the Principal and Ward Chiefs and gazetted chiefs from Area Chiefs to Headmen receive monthly income in the form of salaries and allowances from the state, while the Customary Chiefs do not qualify for the same. This is again a colonial legacy left by the British rule in the country. For purposes of this study, only the thirteen (13) Area Chiefs in the study area were interviewed at their respective homes/offices. Chiefs, generally, do not have offices but use their residential houses for their official duties, while others use as offices very old structures they inherited from their parents. There are eight (8) chiefs in the four selected Councils, two (2) for each Community Councils, nominated by their fellow chiefs into the councils as per the *Local Government Act, 1997*. I managed to interview seven (7) of them and missed one (1) who was not available.

Community Councils throughout the country are made up of Electoral Divisions. The Electoral Divisions put together several villages, headed by either a Headmen or a Customary Chiefs, both of whom report for administrative purposes to the Area Chiefs. The Area Chiefs, in turn, report to the Principal/Ward Chiefs. However, the reporting arrangement of the chiefs is somewhat arbitrary. In some cases, some Headmen report directly to Principal Chiefs as a result of disputes between them and Area Chiefs over their territorial boundaries.

With this brief and general background, I move to the general description of the research areas represented by the four (4) Community Councils. I leave the detailed

description of these for chapter six. In the Mohlakeng Community Council A07, which comprises eight (8) Electoral Divisions, which in turn group together 89 small villages, I interviewed all three (3) Area Chiefs who are not members of the Council. In the Mazenod Community Council A08, there are nine (9) Electoral Divisions, which have 90 villages. Here I interviewed all three (3) Area Chiefs who are not members of the Council. The Lilala Community Council A09 has eleven (11) Electoral Divisions composed 84 villages. It has four (4) Area Chiefs. I interviewed two (2) Area Chiefs but failed to reach two (2) others because of the bad road conditions, which rendered their places inaccessible by the small car that I was using. Lastly, the Makhoarane Community Council has eleven (11) Electoral Divisions composed of 117 villages and nine (9) Area Chiefs (Government of Lesotho, 2006). I was able to hold interviews with six (6) chiefs and missed three (3), again on account of bad road conditions. My overall intention was to interview all the 19 Area Chiefs in the four Community Councils, but this was not possible for the reasons adduced above. This means that I managed to interview 14 Area Chiefs or 73.68 percent of all respondents under this category. Even having missed this target, this response rate is regarded as “very good” (Rubin & Babbie, 1997:352). Therefore, the data gathered from those that I managed to reach suffices for the purpose of the study.

In order to get some factual information regarding each of the Community Councils, I held interviews with their respective administrative secretaries. Administrative secretaries provide technical advice regarding the overall operations of the councils, and are responsible for the day-to-day management of the material and financial resources of the councils. They all have university degrees in different academic fields. They played a very crucial role in this study over and above providing the data, in terms of organising the meetings and focus group discussions with the councils for me. Fortunately, two of them were my former students at the NUL and were happy to assist me.

### **1.6.2.3. Observation of the Community Councils meetings**

I held focus group discussions with the councillors in all four Community Councils. The advantages of observation research technique are that researchers are able to collect data “on non-verbal basis”, and they are able to “discern ongoing behaviour as

it occurs...make appropriate notes about salient features” (Cohen *et al.*, 2007:28). My role was that of non-participant observer, who does not take part in the activities of those being observed (Nichmais and Nichmias, 1996:316; Cohen *et al.*, 2007:258).

The exercise was facilitated by the council administrative secretaries, as I have alluded to above. I had managed to get their mobile phone numbers from their main office in the capital Maseru. I was then able to call them to make enquiries about the dates of their monthly meetings and to request them to arrange for me to attend the meetings. The meetings are conducted in *Sesotho* (my mother tongue), and are generally open to members of the public, except when confidential issues are discussed. In all the four cases, the chairpersons asked me to recuse myself when confidential matters were discussed and then called me in when these have been dispensed with. Thus, I was able to attend the meetings listen, observe the proceedings and make my observation notes, paying particular attention to *how* the councillor-chiefs *relate and work* with the other councillors in the meetings. However, because these meetings are held monthly and in many instances on similar dates, I was not able to make multiple attendances and observations. This had a potential of posing a threat to the validity of the results of the study. Aware of this shortcoming, I employed other supplementary data collection methods, which I had planned in advance. These methods are described below.

#### **1.6.2.4. Focus group discussions**

A focus group discussion is defined, for the purpose of this study, as a research strategy “in which the interviewer/moderator directs the inquiry and the interaction among respondents in a very structured or unstructured manner, depending on the interview purpose” (Fontana & Frey, 2000:651). The strategy enabled me to have access to all the councillors at one place and at the same time. This would otherwise be difficult and financially costly. I was also able to get responses to my questions from many councillors who would remind each other of pertinent issues that would have been forgotten by their colleagues. This was particularly the case when I asked the councillors to tell me the challenges they have had to deal with and the main achievements their councils have made since they started their work. This proved to be a useful strategy for me in that I was able to probe the chairpersons and the

councillor-chiefs on issues raised in the focus group discussions. In this way, I was able to get further data, which I would have otherwise been missed.

#### **1.6.2.5. Sources of secondary data**

I further reviewed, as sources of secondary data, pertinent literature on the topic. The literature comprised texts and journal articles from different disciplines including Political Science, History, and Anthropology. I also reviewed and qualitatively analysed official government documents, relevant legal instruments, and the elections manifestos of the main political parties. This was done in order to supplement the primary data that were generated through the interviews with the political leaders and to discern any discrepancies in what the interview data would show and the parties' manifestos. As Berg (2007:5) submits, qualitative researchers combine different methods of data collection to “obtain a better, more substantive picture of reality; richer, more complete array of symbols and theoretical concepts and a means of verifying many of these elements” or triangulation. Thus, the overall objective of these multiple sources of data was to achieve data triangulation and enhance the validity of the study findings. I am reasonably confident that I have achieved this objective.

#### **1.7. Data processing and analysis**

Prior to the actual primary data analysis, all the interview data, on audio tape and on written notes as well as observation notes, were transcribed and the original tapes and notes kept for ease of reference at a later stage. Thereafter, the data analysis process employed consisted of a combination of four strategies suggested by Cohen, Manion and Morrison (2007:467-468). These authors outline five ways in which researchers can go about the data analysis process. The first way is to organise the data by *groups* of respondents drawn from different strata of the sample and to summarise similar responses. The advantage of this strategy is that “it automatically groups data and enables, patterns [responses] to be seen at a glance” (ibid, 2007:467). The downside of it, however, is that the individual's responses tend to be lost along the way. The second way is to analyse data by *individuals*, where the responses of each individual are presented and then to make appropriate comments on each individual's responses and to compare those responses with those of other individuals. The main advantage

of this approach is that individual respondent's views are given primacy. Thirdly, data may be analysed on the basis of the *issues* of concern to the researcher. Here the issue would have been identified in advance and all the data fitting under the issue grouped together. Fourth, the data may be organised by *research questions* so that all responses to each question are brought under one category (irrespective of whether they come from interviews, observations or other sources). The last approach is to organise data by *instrument* used to collect them.

The authors also warn that each of these approaches has its own drawbacks so that researchers have to be aware of such and be cautious as they go about the analysis process. I heeded this warning and used a combination of these approaches in mixes that I found appropriate. That is, I *grouped* responses to particular *research questions* on a particular *issue* from different respondents under one theme, and then analysed them and made analyses and comparisons as appropriate. I used some key themes based on key research questions to develop chapters and sections/ sub-sections of the chapters as I necessary. Although I did not employ the *individual* approach *per se* in the process, I utilised the *group* strategy. The views of individual respondents were given priority to ensure that their real voices are heard. As such, these were quoted verbatim and presented as the respondent had done. It will be clear how these approaches have been used in the relevant chapters of the thesis.

### **1.8. Ethical considerations**

In the whole process of data collection, I adhered strictly to issues of ethics, as is the requirement for any research exercise, particularly one involving human beings. I observed the principle of informed consent applicable in all research endeavours of this nature. The principle states that research participants must be fully informed about the nature, purpose and consequences of the research exercise and that they should express their willingness to participate in it. They should also be made aware that they are free to withdraw from the study at any stage of the process if they wish to do so. Cohen, Manion & Morrison (2007) liken informed consent to living in a democracy and self-determination and note that:

Consent protects and respects the right of self-determination and places some of the responsibility on the participant, should anything go wrong in the research. As part of the right to self-determination, the subject

has a right to refuse to take part, or to withdraw once the research has begun. Thus informed consent implies informed refusal (Cohen, Manion & Morrison, 2007: 52).

Thus, I introduced myself to all respondents by showing them my student Identification Card. I also showed them the letter of introduction prepared and signed by my supervisor, explaining the nature and purpose of the study and assuring them that the study results would be used solely for academic purposes. In addition, I made it clear to the respondents that they were free to decide whether they were willing to participate in the study or not. I also made them aware that even after the interviews had commenced, they would still be at liberty to withdraw from the study if they so wished. However, none of them withdrew.

Because I was using an audio recorder and taking notes in interviewing the elite category of my respondents, I asked each of them to choose the method they preferred between these two. The majority of them were willing to be audio recorded. However, a few others were not. I respected their decisions either way. Warren (2002:92) notes that there are instances during audio interview process when the respondent may ask some aspects of their responses not to be recorded. I came across such cases and, when I did, I switched off the tape recorder. I did this to allow them freedom to talk as they preferred and also to observe the ethical codes of research.

### **1.9. Limitations of the study**

As it would be expected, the study had a few limitations. My original plan was to organise focus group discussions with the councillors and purposively selected villagers. This was because the villagers would, I believed, provide some useful perspectives on the manner in which the councils provide services to them *vis-à-vis* the chiefs. But this did not turn out to work with regard to the villagers.

The main challenge was methodological. The difficult question for me was how to identify the villagers from among the general population since I did not know them. I had hoped that I would ask both the chiefs in the villages and the councillors to help me identify “people of substance” (with each suggesting to me a list of between ten (10) and twelve (12) villagers) and then draw the common names from the lists. This could not work because of resources, time constraints and the difficulty to access

some villages due to bad conditions of the roads. This was a major limitation because the villagers' views would, I believe, provide more data on the basis of which I could assess, in more detail, the overall performance of the councils in terms of service delivery in particular.

Another limitation was that I could not reach all the Area Chiefs within the study area, also because of bad road conditions. My plan was to interview all of them since they live in different areas and have potentially divergent views about how the councillors as individuals and the councils themselves relate and work with them. Despite the fact that I did not have access to all of them, I am confident that the chiefs I interviewed have provided me with adequate information on the basis of which I drew conclusions with a reasonable level of validity and confidence.

### **1.10. Outline of the thesis**

The thesis is divided into seven chapters. In chapter two, the thesis deals with the conceptual and theoretical underpinnings of the study. It reviews two competing positions based on divergent ontological and epistemological assumptions on the role, place and relevance of African indigenous institutions of governance in the continent's democratising political systems. The chapter adopts a middle ground stance and accepts the view that democracy is a social construct, which is given meaning to and finds its application in different contexts. However, I acknowledge that the EuroAmerican conception of democracy cannot be rejected by African societies because it offers some scope for people to decide who should rule them. However, it has to integrate African institutions, which are based on African culture, history and lived experiences of Africans.

Chapter three provides a historical background to and the evolution of the local government system in Lesotho. It also highlights the trajectory that the system has taken and the manner in which the chieftainship has managed to adapt to the changing contexts under different governments. In chapter four, I look closely at the different policies of Lesotho's political parties (both in government and outside) on and towards the chieftainship institution. These policies determine the relationship between these parties and the chieftainship either positively or negatively. For

purposes of the governing parties, more importantly, the policies have a bearing on the relationship between the state and the chieftainship, which in turn impacts on the country's efforts to consolidate democratic rule. Chapter five is devoted to a critical examination of the processes of local government policy formulation and implementation as well as the participation and role played by the chieftainship in these processes. It problematises the twin notions of participation and representation and what these have meant for the chieftainship institution. One of the rationales for any local government system is the efficient service delivery. The strong theoretical argument for local government is that improved service delivery is better enhanced by a local government system in any political system. Chapter six examines this argument by focusing on the kinds of relationships that have emerged since the local government policy was introduced in Lesotho and the effect that these have had on service delivery within the four selected Councils. Chapter seven concludes the thesis and provides a synthesis of all the chapters by discussing the key findings of the study and also providing the answers to the research questions. It explores the prospects for a model that could strike some form of balance between the EuroAmerican<sup>1</sup> model of democracy and the traditional African institutions. It also highlights areas of further research, which this study has not been able to cover.

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<sup>1</sup> This is Koelble and Lupima's (2008) formulation in reference to Western European and North American countries, which I find useful for its inclusivity and precision in this thesis.

## **CHAPTER TWO**

### **Conceptual and Theoretical Considerations: Democracy, Democratisation and Democratic Consolidation, Local Government, and Chieftainship/Traditional Leadership.**

#### **2.1. Introduction**

This chapter discusses the conceptual and theoretical issues underpinning democracy, democratisation and democratic consolidation, local government, and chieftainship/traditional leadership. The main objective here is to explore the prospects for integrating the chieftainship structure with elected councils in order to facilitate the process of democratic consolidation in Lesotho. To achieve this objective, I problematise and unpack liberal democratic theory and its concomitant concepts of democratisation and consolidation by reviewing the pertinent literature on these issues. The focus of this discussion is on the core issues, central to the debate, on the relevance (or otherwise) of traditional authorities in liberal democracy, namely: citizenship, accountability, legitimacy, and gender. I suggest a more workable model that eschews the universalistic EuroAmerican conception of democracy and adopts a pragmatic one, which takes into account the African context in general and Lesotho's in particular. I concur with pragmatists argument that democracy (both as a theory of government and practice) is contested, and that to understand the nexus between democracy and the place of traditional African institutions of governance, requires a contextual rather than a positivist approach, adopted by "modernists".

#### **2.2. Democratic theory and its limit in the Africa context**

The value of democratic theory is that it claims to solve some but not all problems of democracy. One of the problems that democratic theory has not been able to solve is the place and role of Africa's traditional authorities, expressed in the chieftainship institution - in the case of Lesotho and other countries in other parts of Africa within the broader context of democratisation and democratic consolidation that has been an enduring process in Africa. This "failure" of democratic theory in Africa (as analysed within the context of democratisation and its final democratic consolidation process) is a function of what democracy (as a theoretical construct and an ideal political system aspired for by many nations in the world today) actually means. In other

words, it is a function of divergent ontological and epistemological positions taken by those in favour of traditional authority and those against it. Marsh and Furlong (2002:17) assert that ontological and epistemological positions of social scientists play a crucial role in research endeavours as they “shape” social scientists’ “approach to theory and methods” which they use. Gerring conceives of ontology as:

*a vision of the world as it really is, a more or less coherent set of assumptions about how the world works*”, so that what one finds [in social science research] is contingent upon what one looks for, and what one looks for is to some extent contingent upon what one expects to find [italics added] (Gerring, 2004:351) .

Blaikie (1993: 6) defines ontology as “the claims about what exists, what it looks like, what units make it up and how these units interact with each other”. Marsh and Furlong describe ontology as a word derived from Greek a term meaning ‘existence’. It is:

a theory of ‘being’, dealing with questions such as: whether there is a real world ‘out there’ that exists ‘independent of people’s knowledge of it’. Some people may say, yes there is ‘reality’ or ‘being’ out there. Others still can say no, there is not. Reality is socially constructed by actors who also give meaning to it (Marsh & Furlong, 2002:17).

Thus, the social construction of reality is based on individuals’ vision of the world, which in turn, is based on their own assumptions. Whether or not there is reality out there, according to Marsh and Furlong, present two different ontological positions. The former represents the positivist tradition and the latter represents the interpretivist paradigm (ibid).

Epistemology refers to “a theory of knowledge” that focuses on “whether an observer can identify ‘real’ or objective relations between social phenomena, and if so, how” (Marsh & Furlong, 2002: 19). Blaikie (1993:7) is more elaborate and regards epistemology as not only a theory of knowledge but also the criteria that such knowledge must satisfy to be regarded as knowledge and not a belief. This implies the methods of discovering that which exists as knowledge. Thus, reflecting a positivist view of knowledge. It is worth noting that there is a debate as to whether ontology

precedes epistemology or which direction the causal arrow between the two actually takes.<sup>2</sup>

### **2.3. Defining key concepts: democracy, democratisation and democratic consolidation, local government, and traditional leadership/chieftainship**

For purposes of this study an important question is whether democracy exists, if it does, what methodology can be used to measure and understand it? So, what is democracy? Does it exist as a social phenomenon? To go back to Blaikies' conception of ontology, what units make it up? And epistemologically, how can democracy be understood in different contexts and times?

#### **2.3.1. Democracy**

The meaning of democracy, like other concepts in social science inquiry, is contested and a consensual conception seems far from being achieved, given the diverse expanse of area it is been applied to. As Shapiro rightly notes, the concept “means different things to different people” including “regular elections, competitive parties, and universal franchise [...] egalitarian-distributive arrangements [...] oppositional ethic [...] collective deliberation” (Shapiro, 1999:17).

Based on a list of criteria that he developed, Robert Dahl classifies regimes, which approximate the following features as polyarchy: elected officials, free, fair, and frequent elections, freedom of expression, alternative sources of information, associational autonomy, and inclusive citizenship (Dahl, 1998:85). Dahl prefers the term “polyarchy” to democracy, based on his belief that democracy (in its ideal form) has not been practised anywhere in history, not even in Ancient Greek city-states, for example. Nor can it be practicable in contemporary political systems, especially at the level of nation-state. Having realised how political systems actually work in societies regarded by democratic scholars as democratic, Schumpeter rejects the idealised conception of democracy and adopts a realist one. Cunningham aptly summarises the Schumpeterian conception of democracy as one in which the societies are:

governed not by the people or by a majority taken as a whole but by elected officials along with nonelected political party or bureaucratic

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<sup>2</sup> On this issue, see for example, Bates S. R. & L. Jenkins. 2007. ‘The profession: Teaching and Learning Ontology and Epistemology in Political Science’, *Politics*, 27, 1.

attendants. This is clearly the case on a day-to-day and year-by-year basis, when officials usually (and necessarily to avoid the chaos of perpetual elections or referenda) pursue policies in accord with their own interests or their estimates of what is best done (Cunningham, 2002:9).

Transcending the selection of public official and the actual workings of democracy, some democratic scholars have endeavoured to get deep into the issues of not only defining democracy but also actually attempting to measure it. According to Beetham (1994), democracy can be defined in terms of, and measured on the basis of two principles, namely, popular control and political equality. Thus, democracy is:

a political concept, concerning the collectively binding decisions about the rules and policies of a group, association or society. It claims that such decision-making should be, subject to the control of all members of the collectivity considered as equals. That is to say, democracy embraces the related principles of popular control, and political equality (Beetham, 1994:28).

Beetham maintains that, thus conceived and measured, democracy is universally applicable throughout the world since the modern state, itself, is universal (Beetham, 1994:41). Saward (1994:15) adds that in a democracy “substantive policy, political and administrative actions performed under substantive policy, must correspond to the express preferences of a majority of citizens”. In other words, he is advocating the notion of responsive government to the preferences of the citizens. According to him, democracy is measurable on the basis of the following indices: basic freedoms, citizenship and participation, administrative codes (such as procedures for public service employment, implementation of public decisions), redress mechanisms to the excesses of government bodies, access to public information, and social rights (such as the right to adequate health care and education) (ibid: 16-17).

Contemporarily, some independent organisations in the Western hemisphere have designed complex indices for assessing the level of global democracy, prominent among which is the Freedom House (based in Washington D. C. in the United States of America). It is an independent democracy watchdog, supporting the expansion of freedom and an advocate of democratic change, and human rights. It opposes all forms of dictatorships world-wide and evaluates, on an annual basis, the state of global freedom of individuals based on two indices: political rights and civil liberties of individuals (<http://www.freedomhouse.org/template.cfm?page=2>). Political rights

include free participation in political processes such as the right to vote freely in elections, the right to join political parties and organisations, and the right to elect representatives. Civil liberties, on the other hand, incorporate human rights such as freedom of expression and belief, associational and organisational rights, the rule of law and personal autonomy (ibid).

The Germany-based Bertelsmann Transformation Index (BTI) (2010) provides a more rigorous and robust assessment of not only the level and quality of democracy but also the state of economic and social progress worldwide. It is a comprehensive approach, which has “become a trusted measure of governance” that “underscores the importance of democracy anchored in the rule of law and market economy flanked by socio-political safeguards” (<http://www.bertelsmann-transformation-index.de/en/>). Its criteria include political and social variables such as the level of political participation, the rule of law, stability of democratic institutions, and social integration. It also assesses the socio-economic development, organisation of the market and competition, currency and price stability, private property, welfare regime, economic performance and sustainability (ibid). These conceptualisations of democracy are useful but inadequate. They have implications, in terms of this study which I will highlight later below.

### **2.3.2. Democratisation and democratic consolidation**

Democratisation has been defined as a long process that takes several generations to achieve. According to Bratton and Van de Walle, democratisation:

begins with political challenges to authoritarian regimes, advances through political struggles for liberalization, requires the installation of freely elected government, and concludes when democratic rules have been firmly institutionalized as well as valued by political actors at large” (Bratton and Van de Walle 1997:194).

According to Sandbrook (2000: 4) democratisation can be construed as involving two related processes of first, holding transitional elections that result in getting rid of an authoritarian regime installing a new government, which is able to provide citizens with political rights and civil liberties. Secondly, it ultimately achieves a general acceptance of and widespread support for democratic institutions and practices. When

these processes are complete, according to Sandbrook, democracy is consolidated. However, Sandbrook's definitions of the two concepts are rather brief and sacrifice some crucial details. According to some authors, democratic consolidation involves specific conditions that must be met before the process of transition from authoritarianism to democracy can be completed (Przeworski, 1991; Schedler, 1998; Suttner, 2004). These scholars conceptualise democratic consolidation slightly differently. According to them, democratic consolidation transcends the holding of elections. It embraces an array of other practices. For example, Przeworski submits that democracy is consolidated:

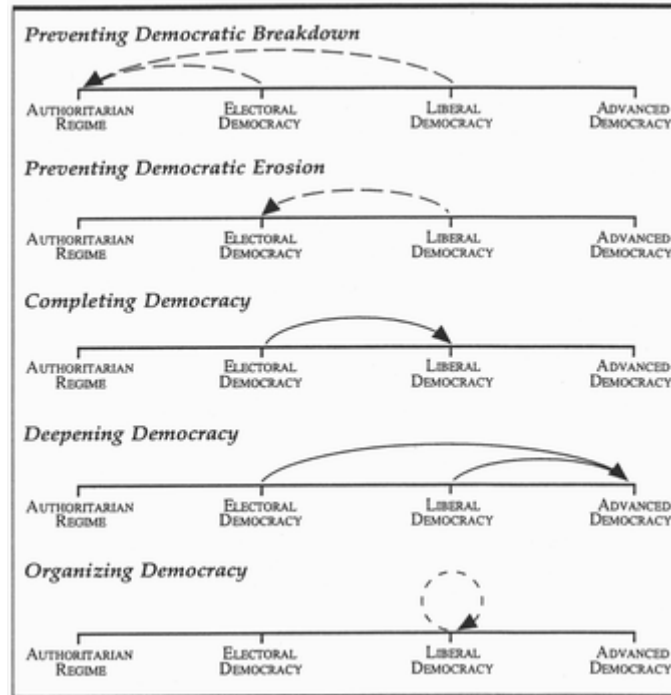
when under given political and economic conditions a particular institution becomes the only game in town: when no one can imagine acting outside the democratic institutions, when all losers want to do is to try again within the same institutions under which they have lost...when it becomes self-enforcing...when all the relevant political forces find it best to submit their interests and values to the uncertain interplay of the institutions (Przeworski, 1991: 26).

Suttner (2004: 767-769) adds that consolidation exists when there are established rules of the political game by which everybody abides and, more importantly, when citizens have trust in the democratic institutions and autonomous civil society organizations. On the other hand, Schedler (1998:92) notes that democratic consolidation is nebulous and that its meaning depends on "where we stand (empirical view point) and where we aim to reach (normative horizons)". It changes according to the contexts and the goal intended to be achieved (ibid). For Bratton (1998: 52), the process of consolidation requires regular elections, regime transition or leadership alternation, civil rights and due process of law, checks on arbitrary executive power, civilian control of the army, and independent press and civil society. While the concept was originally concerned with making new democracies survive and with preventing them from relapsing into authoritarianism, the meaning of democratic consolidation has now been expanded to incorporate other practices. Schedler defines it broadly as a system with the following features:

popular participation, the diffusion of democratic values, the neutralization of antisystem actors, civilian supremacy over the military, the elimination of authoritarian enclaves, party building, the organization of functional interests, the stabilization of electoral rules, the routinization of politics, the decentralization of state power, the introduction of mechanisms of direct democracy, judicial reforms, alleviation of poverty, and economic stabilization (Schedler, 1998:91-92).

He further develops a model (see figure 1 below) that classifies kinds of regimes into four main types, namely authoritarian regimes, electoral democracy, liberal democracy, and advanced democracy.

**Figure 1: Classification of regimes**



**Source:** Schedler (1998) “Concepts of Democratic Consolidation”, *Journal of Democracy*, 9 (2):93.

According to this model, the first stage demonstrates transition from authoritarian regime to advanced democracy and the main concern is to prevent a reversal to authoritarianism or democratic erosion. The second stage depicts completing democracy through holding periodic elections and moving from electoral democracy to liberal democracy. However, the requirements of liberal democracy have not yet been met because the system does not uphold political and civil freedoms. In the third phase, democracy is deepened, the threat of reversal to authoritarianism has been transcended and political and civil freedoms are upheld. At the last stage, the process of consolidation is complete.

While useful in its ability to classify regime types, the model is not without defects. Its first palpable limitation is that it assumes a unidirectional and teleological political development in which the regimes at the third stage cannot relapse into

authoritarianism. But there is empirical evidence that such reversal is possible and has in fact occurred in some countries such as Kenya in the aftermath of the 2007 elections (Joseph, 2008). Schedler's model has a teleological problem, in that it assumes implicitly that at the end of the continuum there is no further development. That is, it assumes that advanced democracies are perfect and desirable end points of political development yet we know that poverty, inequality, and other social ills still persist even in the so-called advanced democracies. The model is also silent about the role (if any) of civil society in the democratic consolidation process, yet democracy is incomplete without a vibrant civil society, which seeks to promote and protect the interests of divergent groups in societies against the potential and actual violation and marginalisation by the powerful political actors. Lastly, it assumes that it is possible to place all regimes at one particular point along the continuum. However, this is not always the case. Rather, it is possible to have huge overlaps between all the stages of political development, thereby rendering futile any attempt to clearly delineate or establish clear cut boundaries between the stages.

The model cannot, on the basis of these observations, be wholly discarded as irrelevant. It does help to elucidate and conceptualise democratic consolidation, at least in what Koelble and Lipuma (2008) appropriately term the "EuroAmerican" sense. However, the point is that, on both ontological and epistemological accounts, democracy is not the same in all contexts, as I will indicate later in this chapter. The EuroAmerican conception of democracy is completely silent on, and is, in fact, totally dismissive of the chieftainship/traditional leadership as a legitimate form of political authority as practised in other cultures.

### **2.3.3. Traditional leadership/chieftainship**

Although conceptualised differently in many parts of Africa, traditional leadership pre-dates colonialism rather than the modern state, which is a colonial creature. Keulder (1998:24) argues, rightly, that the concept of traditional leadership in the Weberian sense no longer applies in the so-called traditional communities. The institution has undergone the process of transformation, imposed exogenously to it through different forms of interventions by both the colonial and postcolonial state, as well as by self-transformation, in keeping with the dynamics of its socio-political

environment. According to Keulder, the effect of these processes is that the institution is now a “syncretistic blending” of tradition and modernity such that traditional leaders assume office through both ascription and appointment by the state and perform functions that promote the well-being of their community (Keulder, 1998:25). The latter mode by which individuals assume public office is, however, not new. It was in practice before the advent of colonialism in other parts Africa (Lesotho included as will be seen later in this chapter) and before Apartheid in South Africa.

What exactly is traditional leadership? Traditional leadership is generally regarded as an institution composed of individuals who assume public office through other means than conventional election. Keulder, for example, defines a traditional leader as an individual:

who by virtue of his ancestry occupies a clearly defined leadership position in an area; and/or who has been appointed to such a position in accordance with the customs and tradition of the area, real or invented, and thus has ‘traditional authority’ over an area or a tribe, or to perform *traditional functions* for them (Keulder, 1998:24).

The limitation of Keulder’s definition is that it suggests (either deliberately or by omission) that there are “traditional functions”, which are a given and fixed or on which there is agreement as to what exactly they are. These are issues of intense contestations for academics and politicians alike. Just as Keulder notes, and rightly so, that there has been “syncretistic blending tradition and modernity”, this process is not confined to the institutions of the governance alone. It has affected their functions too. Besides, there is no agreement among politicians and traditional leaders as to what exactly constitutes “traditional” and “modern” functions to be performed by traditional authorities, as will be shown later in this thesis. With these observations in mind, I concur with Keulder on this conceptualisation and note that different nomenclatures have been used to refer to Africa’s indigenous governance institutions depending on contexts. Thus, I will adopt the concept as it is used formally in a particular context, but refer to it as *chieftainship* in the case of Lesotho. The different terms used to refer to the chieftainship notwithstanding, the concept denotes a specific institution composed of public officials who assume office *largely* by virtue of their *birth* rather than by an elective principle. I use the qualifier or adjective *largely* deliberately to acknowledge that this is not always the case in all situations as it will be made clear later below. However, the birth right is a widely held conception

throughout Africa and is found, for example, in some *Setswana* and *Sesotho* proverbs such as: *kgosi ke kgosi ka a tswetswe* - a chief is a chief by birth and *morena ke morena ka sechaba* – a chief is a chief by the people respectively (Coertzee & de Beer, 2007). In other African systems where there are some disagreements and disputes over succession, following a vacancy in the chieftaincy office, the members of the concerned family (and not anybody else, I must stress) select the right candidate, usually based on their customs. This is captured by the Economic Commission for Africa thus:

A person inherits governmental authority or position mainly by virtue of membership of a particular family or clan. However, in many cases the political choice of leader is based not solely on the circumstances of birth, but involves other criteria, such as the character or other personal qualities. Where this is the case, there usually is an election between several eligible persons from the same family or clan (Economic Commission for Africa, 2005:32).

The above definition is in order, but the use of the term “election” may be confusing because it may have the connotation of an election in the conventional secret ballot mode of deciding on public office bearers in which every citizen participates. The appropriate term, in my view, is “selection” because this is a bit restrictive and describes appropriately what actually happens when filling vacancies in these circumstances.

In other cases, however, the colonial system did create its own “administrative chieftainship” (composed of those individuals who were otherwise non-chiefs appointed by the colonial authorities as differentiated from those who assumed office by birth). This was the practice in some French colonies in West Africa (Geschiera, 1993; Miles, 1993), and British colonies throughout the continent under the policy of Indirect Rule, where the existing chiefs refused to cooperate with the colonial powers. It was also in practice in South Africa under Apartheid (Mamdani, 1996, Part 1; Ntsebeza, 2005). Mamdani shows, however, that the notion of administrative chiefs was not a colonial invention. Rather, it had its genesis in the pre-colonial period where a king would appoint a person, who otherwise was not from a chiefly family, to rule some sections of the population under the overall authority of the appointing king. The king would resort to this mechanism “to offset hereditary traditional chiefs with a hierarchy of appointed administrative chiefs” owing to some internal feuds

within the chieftainship hierarchy (Mamdani, 1996:43). Such chiefs then would only stay in office at the behest of the kings who appointed them, and had their powers circumscribed by three factors, the will and capacity of the king, and the tradition as embodied in the traditional chiefs alongside whom they functioned and popular restraint (ibid). What the colonial state did, according to Mamdani, was to “undermine both popular (clan) checks on state authority and traditional constraints as embodied in the traditional chiefs” and “liberated administrative chiefs from all institutionalized constraint” and “laid the basis of a decentralized despotism” (ibid). He cites, as examples, the Zulu, Xhosa, Swazi, and Tswana in southern Africa as well as the Fanti and Ashanti in West Africa (1996:43-48). Ntsebeza (2005:14) also notes that unlike the hereditary chiefs, Apartheid-created “tribal authorities” lacked popular legitimacy and were “highly authoritarian and despotic”. They were “hated and feared by many South Africans” (ibid).

The Basotho nation was founded on the institution of chieftainship. However, it is not clear whether the chieftainship was always based on ascription prior to the coming into power of Moshoeshoe I, the founder of the Basotho nation. Several historians indicate that there were many autonomous Basotho chiefdoms before Moshoeshoe was born, himself a member of the *Bakoena ba Mokoteli* chiefdom (see for example, Ashton 1975; Machobane, 1990; Gill, 1993; Mothibe 2002). Based on his research, which is informed largely by the works of the members of the Paris Evangelical Missionary Society (PEMS) and other historians and anthropologists, Machobane traces the evolution of the Basotho nation and highlights the central role played by the chiefs in its genesis. According to Machobane, a chief meant one who “watched over the welfare” of those under him, governing with the assistance of some other people in accordance with the established and practical traditional institutions and principles, and settling disputes among the people (Machobane, 1990:3). It is clear, therefore, that without leadership qualities, chiefs would not be chiefs.

In cases of death of the incumbent or his infirmity affecting the performance of his chiefly duties, the people would gather at a *pitso* (a public assembly of all adult males, although this assembly is now open to all adults without gender discrimination) in which a successor would be introduced to the public and instructed by the elders to rule “firmly and fairly and ...heed the advice of his kinsmen and councillors” (ibid:

9). The customary practice of selecting a chief was codified into what became known as the *Laws of Lerotholi*,<sup>3</sup> the then *Morena e Moholo oa Basotho* (a Sesotho word almost equivalent to the King of Basotho, later to be called Paramount Chief under the British colonial rule, and ultimately the King in post-colonial Lesotho).

The concept of *Morena e Moholo* was not known within the Basotho society before the arrival of the Christian missionaries in the late 1880s and advent of colonialism (Machobane, 1990:11). Basotho called Moshoeshe I a chief without making a distinction between him and other chiefs, indicating lack of strict hierarchical ethos within the institution. The Basotho chiefs did not regard themselves as superior to their own people either. The chiefs also referred to their fellow men as *marena* (plural of *morena*). However, the Basotho chiefs subsequent to Moshoeshe I accepted the title of *Morena e Moholo* (and later the “King”) and adopted authoritarian practices hitherto unknown among the Basotho. Machobane (1990:11-13) submits that the birth right principle or divine right of chiefs became entrenched in Basotho society after the 1880-1881 Gun War<sup>4</sup> that was fought between Basotho and the Cape colonial government through which the British ruled Lesotho, when at a particular *pitso* held to deliberate on the War. It was during this *pitso* that some Basotho began to allude to the principle of divine right of chiefs. One Seohla Jonathan Molapo (the chief of the

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<sup>3</sup> These are a set of first ever written laws based on Basotho culture and customs which were adopted by the Basutoland National Council during *Morena Lerotholi*'s reign; hence they were named after him and have been in force to date, although with some few modifications. These *Laws* covered several areas which Basotho including issues of succession to the chieftainship; the supremacy of *Morena e Moholo* over his territory and other chiefs under him; the chiefs' rights and limits to their subjects' labour; the right to appeal by ordinary Basotho against chiefs' courts and the extent of *Morena e Moholo* in the processes; the appeals from *Morena e Moholo* to the then Assistant Commissioner and Resident's Commissioner's courts; debtors' rights to due process of the law; land allocation and forfeiture of land use; theft; seduction and abduction of unmarried women; inheritance and heirs' rights, limits and responsibilities; estates, property and the rights of widows without male children; compensation for physical injuries; jurisdiction of Assistant and Resident Commissioners' courts; and belligerent use of firearms (Machobane, 1990:92-93).

<sup>4</sup> This was the War fought between Basotho and the Cape Colonial government over a controversial attempt by the regime to disarm Basotho. The Cape Colonial government, under whose rule Lesotho was placed in 1871, attempted to disarm African kingdoms in Natal and the Eastern Cape through the enforcement of a controversial law – the Peace Preservation Act. The government also attempted to enforce this Act in Lesotho as well to “break the chiefs' powers of military organisation”. Basotho fiercely resisted the enforcement of this Act in their land, but at the same time, the Basotho chiefs became divided into two groups: one group, led by *Morena e Moholo* Letsie I, co-operated with the government and handed in its guns, and another group led by Lerotholi Letsie, the heir-apparent to the Lesotho throne and son of the then *Morena e Moholo*, Letsie I, and his uncle, Masopha Moshoeshe, and Joel Molapo, one of Molapo Moshoeshe's sons, rebelled against the government. The war was fought for about two years at the end of which the rebels emerged victorious, the Cape Colonial rule in Lesotho collapsed, and the British Imperial government resumed direct rule over Lesotho (See Mahao, 2007: 211; Machobane, 1990:11).

District of Leribe and nephew to the then *Morena e Moholo*, Mohato Letsie, Mosheshoe's son and heir) is quoted as having said:

Letsie is the only one who has a right to speak; he is Moshesh's (sic) son; what he will do will be true for me, because he is Moshesh (sic). Even if he wants us to do what is painful for us we will follow him, *because his will is the will of God* [italics original] (Machobane, 1990:11).

On the same occasion one Ramatšeatšana, a favourite councillor of *Morena* Masopha, Mosheshoe I's third son by his great wife, is also quoted as having repeated the notion of divine rights of chiefs when he said: "all chiefs are from God" (ibid). It seems therefore that the Basotho culture and their own conception of the chiefly authority had changed in a way that puts the chiefs far above the people, contrary to one that hitherto prevailed; one that saw even the chiefs using the concept of *marena* or *benghali* (masters) to refer to ordinary members of society (Ellenberger and MacGregor cited in Machobane, 1990:12). This conception is articulated lucidly by an unnamed chief when he said:

We are but your servants; men are born and die in the same manner; be they high or low; if there are some who are entitled to obedience, they derive this right from their fellows, who wield it thus for the welfare of all (Casalis cited in Machobane, 1990:12).

However, the principle of birth right or ascription alone as a criterion for ascension to the office of chief has been contested. Merit too was considered in the selection of chiefs in addition to the *placing system* to which I will return shortly. In the case of Lesotho, ascription has historically not been the sole mode of leadership selection until the *Laws of Lerotholi* were introduced in 1903 by Mosheshoe I's heir and successor, Lerotholi, in the late 19<sup>th</sup> century. Following the introduction of these *Laws* the position of chief became effectively hereditary and also recognised by subsequent governments (colonial and post-colonial), so that a chief is a chief, not by the people, but by the Government (Jingoes 1975:183). Basotho considered special qualities of their leaders over and above the birth right principle. Mosheshoe had become the chief of his *Koena* clan during his father's lifetime. If the notion of birth right were in use then, this would have been an anomaly. A son could not be a chief while his father was still alive. His father saw him as "his eyes, ears, and arms" in running the affairs of his clan on his behalf (Machobane, 1990:6), rather than a chief in his own right. Machobane continues to show that Mosheshoe had distinguished himself as a

formidable warrior during the *Lifaqane*<sup>5</sup> wars (ibid). Thus, over and beyond Moshoeshoe I's birthright, which accorded him the chieftainship of his clan, he had other commendable leadership attributes that placed him in good stead to accede to the position of chieftainship.

A virtuous and astute leader that he was, Moshoeshoe I himself, seems to have taken into consideration the national stability and unity rather than birth right alone on matters of deciding his successor. Letsie I, heir apparent, had no son in his first house<sup>6</sup>, thus no heir apparent of his own. He had a daughter, Senate, who according to the Basotho culture would not succeed her father. Moshoeshoe is said to have been aware of the potential competition for leadership between his sons from his first two wives, Letsie I and Molapo, which would potentially undermine the unity of the nation. To deal with this potential problem, he adopted the strategy that would ensure peace, unity, and stability with his nation and avoid conflict between his sons. This was an attempt to arrange a marriage between Letsie's daughter, Senate, and Molapo's elder son, Josefa so that the two would bear the successor to Letsie I. Gill captures the story when he writes:

Moshoeshoe took an unusual step to bring together houses of his first two sons, Letsie and Molapo. He had previously arranged for Letsie's daughter Senate to bear a son Motšoene through Molapo's son Josefa. In this case, however, Senate was to be the 'husband', thus ensuring that the child would be viewed as a member of the house of Letsie and not as a legal son of the house of Molapo. Moshoeshoe then urged that Motšoene should eventually succeed Letsie as '*morena e moholo*', in place of Letsie's first son, Lerotholi. In this way the two strongest houses would be united under Motšoene and the potentially explosive friction between the two brothers would be moderated during Letsie's reign and then, hopefully, overcome altogether under the reign of Motšoene (Gill, 1993:111).

However, Moshoeshoe's scheme was rejected by the elders as "uncustomary and unpopular" and Lerotholi, Letsie's senior son by his second wife, took over the throne

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<sup>5</sup> The intertribal wars fought between 1818 and 1828, which permeated many tribes in southern Africa "unleashed and sustained by Shaka, King of the Amazulu" (Machobane, 1990:1). These wars caused massive displacement of people in this part of the world.

<sup>6</sup> It was common for Basotho chiefs and other affluent men to have polygamous marriages. They would build each wife her own house separate from those of others and the first house would be that of the first wife, that is one married first. All the rights to property and inheritance would belong to the first wife's sons including the right to the chiefly throne.

after his father's death<sup>7</sup>. This development points directly to the fact that Basotho could not be dictated to by their chief. If they could, the great chief that he was, Moshoeshoe's wishes would have prevailed. It shows also that the authority of chiefs to rule was not sacrosanct or unquestionable; it could be challenged not only by the people but also by the chief's own sons, as was the case between Letsie and his brothers as Moshoeshoe foresaw. Ashton (1952:193) notes that ascension to office of chief was also based on other considerations such as "the popularity or ability of the claimant" and also cites the case of Moshoeshoe 1, and that of Griffith who took over the throne after the death of his elder brother, Letsie II, who had no heir. Ashton cites other cases of Basotho clans outside the ruling *Koena* lineage, such as the *Bataung* and *Batšoeneng*. In the case of the *Bataung*, Moletsane bypassed senior branches of his family and became chief. The *Batšoeneng* made Khiba their chief in preference over his senior brother Lekhetho (ibid). Equally, Jingoës asserts that:

The position [of chief] was only hereditary in that a particular family or lineage retained the right to rule. The choice of the actual ruler was subject to the people's approval, even though the custom was that the first son of the senior house rule. If that first son was, say, an idiot, the people would help decide who would act as ruler in his place (Jingoës, 1975:183).

To substantiate this assertion, Jingoës narrates a story in one village in the Mapoteng area in Lesotho where the people rejected a senior son of a chief because of his lack of interest in the affairs of the village and put in his place the chief's younger son.

The second historical method of recruiting chiefs in Lesotho was through the *placing system*. This meant appointment, by Moshoeshoe I and his successors, of their own

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<sup>7</sup> The question of succession to office of chief has been a source of bitter conflicts within the Lesotho's chieftainship since Letsie 1 took over the throne from the great Moshoeshoe 1. Despite having been introduced by Moshoeshoe before the people at the *pitso*, Letsie I was challenged by his younger brothers, Molapo and Masopha, precisely because both considered him as a weak leader who was unfit to succeed their father (see Gill S. J. 1993. *A Short History of Lesotho: From Stone Age until the 1993 Elections*. Morija: Morija Museum and Archives). From then on, however, the throne had been fiercely contested especially because of the polygamous marriage system, which was widely practiced among Basotho chiefs. In some cases, the first wife would not have a son who would almost automatically be an heir to the throne, subject of course to being introduced to the people by the rightful authorities. The dispute would ensue in cases where the heir apparent was not regarded in high esteem such as Letsie 1, the son to Lerotholi, Letsie 1's son, who is reported to have been extremely wanting in leadership qualities and a drunkard, for example. The detailed account of these dynastic feuds are well captured by Machobane (1990, Chapter 3) *Government and Change in Lesotho, 1800s-1966*. Houndmills: Macmillan Press LTD. The nation had to look up to the British colonial government for resolution of these disputes since Letsie 1 passed on, despite the widely known customary practices, which were later codified into the *Laws of Lerotholi*.

sons, close relatives and loyalists over other groups under their territorial control as chiefs (Hamnett, 1975:25). The primary purpose of this system was to ensure Moshoeshoe's hegemony over all the groups under his authority. Since then, a chief in Lesotho is a chief by virtue of being born a chief and being recognised by both the national Constitution, the *Chieftainship Act of 1968*, and *Order No.26 of 1970*. The Law 1 Succession to Chieftainship provides that:

Succession to the chieftainship in Basutoland *shall be by right of birth*, [Italics added] that is, the first-born male of the first wife. If the first wife has no male issue then the first-born male of the next wife in succession shall be heir to the chieftainship. Provided that if a chief dies leaving no male issue the chieftainship shall devolve upon the male following according to succession of wives (Law 1 Succession to Chieftainship, cited in Ashton, 1952:193).

*Order No. 26, 1970* section 2 acknowledged the existing offices of chief from the Principal and Ward Chief as recognised by the *Laws of Lerotholi* and the *Chieftainship Act, 1968*. The *Chieftainship Act* is more elaborate on the procedure of chieftainship succession than the *Laws of Lerotholi*. Section 103 (1) recognises the offices of twenty-two Principal Chiefs, while section 2 gives Parliament powers to make provisions for the regulation of offices of chiefs. With regard to the junior chiefs and headmen, the *Chieftainship Act, 1968, Part II* recognises the offices of chiefs and their functions and spells out the hierarchical structure of the chieftainship. At the apex of this structure is Principal Chief or Ward Chief followed by junior chiefs. Section 5 (3) reads:

Each office of Chief immediately subordinate to an office of Principal or Ward Chief has authority over the other offices of Chief in its area, and that authority is exercised through the other offices of Chief that are immediately subordinate to that office, and so in descending order of the status of each office of the offices that have immediate authority without the interpretation of any other office of Chief.

The *Act* provides further that:

It is the duty of every Chief to support, aid and maintain the King in His Government of Lesotho according to the Constitution and the other laws of Lesotho and, subject to their authority and direction, to serve the people in the area of his authority, to promote their welfare and lawful interests, to maintain public safety and public order among them, and to exercise all lawful powers and perform all lawful duties of his office impartially, efficiently and quickly according to law.

In addition to these general functions, each chief, beginning with the Principal and Ward Chief, has powers to issue out orders to others below him, and the latter are obliged to obey those orders (Section 6 (2), (3)). Section 7 (1) stipulates that it is the duty of every chief to prevent crime and is empowered to arrest and present before the nearest court or police force any person who commits crime. The chieftainship is further subject to the government through the minister responsible for chieftainship affairs, who has powers to give directives to the chiefs. The chiefs are obliged to obey such directives (Section 8).

On the controversial question of succession to the office of chief, Part III Section 10 stipulates how the process must proceed, and states that a legitimate son of a chief is the lawful heir. It reads thus:

When an office of Chief becomes vacant, the firstborn or only son of the first or only marriage of the Chief succeeds to the office, and so, in descending order, that person succeeds to the office who is the firstborn or only son of the first or only marriage of a person who, but for his death or incapacity, would have succeeded to that office in accordance with the provisions of this succession (Section 10 (2)).

In cases where there is no successor in the first house of the chief who had more than one wives, the firstborn son in the second house succeeds to that office, in that descending order as above. In circumstances where there are no surviving sons, the wives of the deceased chief in order of their seniority succeed him, or when there are no surviving wives, the legitimate eldest brother, or the eldest surviving uncle, succeeds according to the customary law (Section 10 (3), (4)).

What is clear from these provisions is that the senior most legitimate sons, and *not daughters*, become successors to the office of chief. This is because the expectation is that daughters would get married and be cut off from their lineage as they got subsumed in the affairs of their new families. In that event, they would take with them the chieftainship rights to their new families, while customarily the institution belongs to particular families. It is also clear that the wives of chiefs do also have an opportunity to succeed their husbands in cases where there are no male claimants to the office. Contemporarily at the writing of this thesis in 2010, the wives of the deceased Principal Chiefs of Phamong, Berea, Maama, `M`amathe, for example, have succeeded their husbands and are members of the Senate. It is common practice also

that senior wives of chiefs' act on behalf of their minor sons until they become of age. Even prior to independence, Chieftainess `M`antšebo Seeiso was appointed to be regent after the death of her husband, *Morena e Moholo* Seeiso Griffith in 1940 until the late King Moshoeshoe II took over the throne in 1960. Thus, the feminist arguments that the institution of chieftainship discriminates against women is not entirely accurate in the case of Lesotho.

In sum, therefore, contrary to the EuroAmerican methods of selecting leaders at different levels of society (save the constitutional monarchies indicated above), the African chiefs assume office by a complex admixture of custom and tradition and modern legal modes than by popular election. These modes are "recognized as having connections to their society's cultural and historic roots in ways that official figures do not" (Lagon, 2008:3). In Lesotho, therefore, a chief is defined in terms of *Order No.26 of 1970* and *Chieftainship Act, 1968*, which themselves are products of Basotho customs and tradition as embodied in the *Laws of Lerotholi*. This is how I conceive of chieftainship and adopt it for usage in this thesis.

#### **2.3.4. Local government**

Local government has been defined in numerous ways in political science/ public administration discourses. According to Newton and van Deth (2005:84-85), modern states are too large and complex to be governed from one power centre. These states have to decentralise their operations in the interest of democracy and efficiency. This point is corroborated by Ismael *et al.* (1997:3), who posit that local government exists for two principal reasons, namely, service delivery and promotion of democracy. Mellors and Copperthwaite provide a more elaborate definition of the term as follows:

local government develops and is modified in response to the changes in local and national needs and prevailing ideas and beliefs. The UK system of local government serves two particular purposes: the provision of a wide range of services which take account of both specific area needs...it gives direction and control of these services. [It] is a provider of services and an instrument of self-government (Mellors & Copperthwaite 1987:1).

In a way, therefore, local government is an approximation of direct popular participation models of government reminiscent of the Ancient Greek city-states. The

quest for direct popular participation as a democratic right of citizens and a value to be aspired for has been resilient despite the currency of representative democracy and its entrenchment into the Western political systems as a result of territorial expansion of the modern nation-state. This point is aptly captured by Boaden *et al.* (1982:3) by arguing that “democratic government is local government: democratic government is community government ...and democratic government is only possible in small-scale communities...”. As an instrument of the decentralisation process, local government in whatever form, is considered today within liberal democratic ideology and practice as the only workable system capable of making democracy accessible to the people at grass-roots level. This is because it has a potential, among other benefits, to promote popular participation in decision-making and better service delivery; hence democracy deepening (see for example, Crawford & Hartmann, 2008:12; Reddy, 1999:13). The service delivery thesis is premised on the assumption that, since the local government structures are or should be within the local communities, they are likely to respond more promptly to the local needs than would the central government itself (Reddy: *ibid*).

The theoretical origins of participatory democracy are traceable to the works of political theorists such as Jean-Jacques Rousseau through his Social Contract Theory. According to Pateman (1970:22), Rousseau’s entire political theory hinges on individual participation of each citizen in political decision making. This is expressed more succinctly in his General Will thesis - the idea that all citizens surrender their rights to the whole community for their own benefit, and more importantly, their own freedom and political equality. The result is the contract in which:

each of us puts his person and all his power to the common use under the supreme direction of the general will; and as a body we receive each member as an indivisible part of the whole” (Rousseau cited in Sait 1947:265; Dunning 1920:18).

What is discernible in Rousseau’s ideas is the fact that he had no faith in representative democracy. In fact, he regarded it as a “sham” in that, in his own view:

It can’t be me that my representative represents. At best, it can only be his idea of me that he represents, and much more likely, his own interest will interpose itself between him and those whom he appears to represent (Rousseau cited in McClelland 1996:271).

Local government therefore is an attempt within the broad representative democracy framework to address the concerns such as those raised by Rousseau, namely, popular participation, that the people should not only rely on their representatives at national levels for decision-making on issues, which are otherwise located at local level. The contexts in which the people live differ from one local area to another. For this reason and similar to democracy, local government must be contextualised to be compatible with the cultural and historical peculiarities of different localities in order to advance the values underpinning its establishment. In other words, it must be based on the model of mixed government as well for it to succeed in consolidating democracy. With this caveat, I adopt the above conceptualisations and regard local government *as a means of promoting and consolidating local democracy through making it possible for the people to vote for their leaders and opening channels for popular participation in decision-making processes within their own historical and cultural contexts, hence an instrument of improved service delivery*. I acknowledge the reality that in the context of African countries such as Lesotho, installation of a democratic system starts from the top. That is to say, it starts at the national level, and can be spread by the central government to the sub-national levels by the deliberate efforts of the central government, through power devolution. Service delivery is used here in a broad sense to encapsulate anything from the provision of clean water, health care, roads, land allocation for residential and other purposes, registration of births and deaths, livestock registration and other services required in different parts of the country.

#### **2.4. Traditional leadership-liberal democracy nexus debate**

Since the beginning of the third wave of democratisation process in Africa in the 1990s, there is a raging debate in academic and policy circles among what has been termed the “traditionalists” on the one hand, and the “modernists” on the other (Keulder, 1998:1-12; Logan (2008: 1) or even the “revolutionaries” (Nyamnjoh, 2003:234) regarding the position, value, role, powers and functions of traditional authorities in the continent’s democratising political systems. The thrust of the debate is captured by Quinlan and Wallis thus:

Public debate in Southern Africa about traditional authority generally revolves around two positions. On the one hand, chiefs are regarded as

outdated forms of authority, and, therefore, they should have no role in government. An extension of this argument is that the institution of chieftainship is a hindrance to evolution of political democracy and, therefore, the institution should not be recognized by the national government at all. On the other hand, the chiefs are regarded as significant forms of authority, particularly in rural areas, and therefore they have a role to play in the government of a modern state. An extension of this argument is that the institution of chieftainship stands alongside the bureaucracy of a modern state and, therefore, the institution needs to be transformed to the effect that chiefs become line functionaries within local government structures (Quinlan & Wallis, 2003:146).

These two perspectives warrant some discussion because they go a long way in terms of providing some insights regarding the position and role of the chieftainship in liberal democracy and Africa's attempts to achieve democratic consolidation. In other words, the attempt is to answer the questions of the relevance of the chieftainship in contemporary Africa to find out whether chieftainship can co-exist with democracy or not, and if so how. To achieve this goal, I will address the question from two levels of analysis, the theoretical/ideological level on the one hand and a more practical level on the other. I consider the causes for disagreements between these two positions and focus on (among other issues) citizenship, accountability, legitimacy and gender. Lastly, I suggest a workable model of ensuring co-existence of the chieftainship and elected councils.

## **2.5. Democracy-traditional leadership relationship: the modernist perspective**

The crux of the modernist perspective is that any form of public authority, which is not based on the conventional elective principle is essentially undemocratic and cannot exist side-by-side with elected structures of governance. One of the well known scholars pursuing the modernist position is Mamdani (1996) in his seminal text, *Citizen and Subject*. Mamdani calls for the abolition of the chieftainship institution on basically two grounds, that it is not subject to elections, hence undemocratic and that it was an instrument of oppression to the colonised peoples during the colonial rule in Africa and during the Apartheid system in South Africa. The latter view is also shared by Bank and Southall (1996). Mamdani outlines the history and nature of the colonial state and its relations with the colonised peoples in South Africa and Uganda specifically and Africa in general. He submits that the

colonisers could not rule large indigenous majority through a tiny foreign minority.

Consequently, to quote him directly:

the colonial state was organised differently in rural areas from urban ones, that state was Janus-faced, bifurcated. It contained a duality: two forms of power under a single hegemonic authority. Urban people spoke the language of civil society and civil rights, rural power of community and culture. Civil power claimed to protect rights, customary power pledged to enforce tradition. The former was organized on the principle of differentiation to check the concentration of power, the latter around the principle of fusion to ensure unitary authority (Mamdani, 1996:18).

Thus, according to Mamdani, “customary power” exercised by the chiefs constituted “the regime of extra-economic coercion”, which compelled the peasants into forced labour (ibid: 52), and denied rural inhabitants citizenship rights of electing their rulers. The chiefs had powers to make bylaws and execute the same as well as carrying out administrative duties in their areas. In the end, the chief had all powers: judicial, legislative, executive, and administrative “fused” in him alone like a “clenched fist” (ibid: 23). Mamdani argues that what has occurred in many parts of Africa has been the process of decolonisation without democratisation, while in South Africa the state was only “deracialised” at the national level following the demise of the Apartheid system. At the local level, according to him, the rule of the chiefs was a “decentralised despotism”, which has to be abolished to put to an end the binaries of “urban citizens” existing in juxtaposition with “rural subjects”, as he describes the inhabitants of urban areas and those of rural areas respectively. The implication here is that the chiefs’ rule lacks legitimacy because it is based on coercion, rather than consent of the people. Ntsebeza (2005) supports this line of argument and criticises the African National Congress (ANC) government for having recognised the traditional leaders in post-Apartheid South Africa through the national Constitution and the promulgation of the *Traditional Leadership Governance Framework Act, 2003*. The main objective of the Constitution and this *Act* is to provide for not only traditional communities and for the traditional leaders of different levels. He further criticises the government for passing the *Communal Land Rights Act, 2004*, which provides for the legal security of tenure within traditional communities in which traditional leaders play a key role. The core of his argument in his own words is that:

The recognition of the hereditary institution of traditional leadership in the South African Constitution while at the same time enshrining liberal democratic principles based on representative government is a

fundamental contradiction. The two cannot exist at the same time for the simple reason that traditional authorities' claim to power is by birth right and their subjects are not afforded the opportunity [that] urban-based South Africans enjoy of choosing or electing their leaders...Recognising and giving unprecedented powers to these unelected authorities amounts to compromising the democratic project that the post-1994-led government has committed itself to (Ntsebeza, 2005:256).

Like Mamdani, and other modernist democratic theorists, Ntsebeza's key argument is premised on the "liberal representative" model of democracy (2005:23) the basic tenet of which is the common citizenship. Although it can be traced as far back as the Ancient Greek city-states as reflected in the works of political theorists such as Aristotle, in which it was a preserve of only adult males, the concept of common citizenship is now an important part of the features of liberal democracies, which have been expanded to incorporate all adults in matters of the state. Political theorists are in consensus that citizens have an array of rights in a democracy including, for our purpose here, the right to vote for their representatives and to be elected to public office, to hold their representatives accountable by monitoring and judging the conduct of their leaders, questioning them, and deliberating on public policy issues (see Kymlicka, 2002:289; Sklar, 2001:2 Braghouse, 2008:243). Sklar (2001:2-3) adds an important dimension to citizenship: one of identity in the form of personal, ethno-linguistic, religious, national identities. What comes out in this conception of citizenship are the issues of legitimacy of rulers, and their accountability to the ruled, both of which are bestowed on rulers through elections. According to Ntsebeza (2005:294), the power of the chiefs is derived from their illegitimate control over the land. This was resisted by the people. But Ntsebeza's argument goes further than this, as does Mamdani's.

Both regard traditional leadership as a relic of both colonial and Apartheid systems and notorious instruments of the brutal Apartheid system in South Africa. On this point, Ntsebeza contends that to recognise these structures of government, as the ANC has done, is tantamount to returning to the Apartheid's policy of "retribalisation" (ibid:258). He suggests that "the only way in which traditional authorities could play a public and political role would be for them to abandon their hereditary status and subject themselves to the process of election by their people" (ibid: 35). What is not clear in this suggestion is whether or not by subjecting themselves to elections, the

chiefs will still be chiefs or politicians since what makes them chiefs is, in the first instance, precisely their hereditary claim to public office. It must be emphasised that conceptually, a chief and politician are different. Politicians claim their authority to rule through competitive elections and survive or die under the same process of elections, while chiefs derive their authority from several sources, principal among which are ascription and culture, as I have indicated above. Ntsebeza does concede, however, that in recognising traditional leadership, the ANC government was “influenced by political and reconciliation” imperatives (ibid: 294). In a way, then, he is aware that the transition from Apartheid to South African democracy could not have been a success without the political compromises made by the ANC-led government.

Based on liberal/procedural democratic theory arguments, some authors argue for the abolition of the country’s chieftainship institution in Lesotho (Rugege, 1990; Makoa, 1990). However, Lesotho has adopted, at independence, the British-type constitutional monarchical system with the monarchy as the head of state. Rugege (1990:156) argues that “hereditary rule is fundamentally undemocratic. The right to exercise power over their fellow citizens is not derived from a democratic mandate from the people but from the accident of their birth in a ruling family...”. Besides, in his view, the chiefs abuse their power. They are corrupt and unaccountable to their people. They are only accountable those who pay their salaries, irrespective of the nature of the regime in power (ibid). While some of Rugege’s criticisms of the chiefs may be plausible, it is unfair to them and too overarching to say that the chiefs are not accountable to the people but only to those who pay them. He fails to appreciate and acknowledge that the chiefs may also be accountable to democratically elected political leaders, as it is the case now in Lesotho. Without justifying other politically immoral actions, such as abuse of power and corruption, of which Rugege accuses the chiefs, these excesses are also rampant among the elected politicians too. In fact, the chieftainship has in some instances acted in ways that protect the citizens against abuse of power by the politicians (see footnote 12: 86).

Makoa (1990:182) also supports the chieftainship abolition thesis in Lesotho. His contribution is that since “the conditions which gave rise to these institutions no

longer exist” the institution has no future role in the post-military government dispensation and together with the military “are clearly dispensable”. He continues:

Their maintenance represents only a drain on resources. Financing the Lesotho army and chieftainship – both of them the instruments of coercion - means sacrificing crucial programmes such as education, health, agriculture, and road building etc” (ibid).

He regards the chieftainship along with the military as forces not of social stability and democracy, but rather of “social instability” because “they consume resources that ought to be re-allocated for more pressing social needs” (ibid). As such, the chieftainship “can easily be dispensed with” (ibid). Makoa’s arguments may be plausible only to a limited extent, given Lesotho’s weak economic base. But they ignore the crucial role played by the chiefs in Lesotho’s political system. Until now, no state agency can play this role because of the same resources constraints and limited state capacity. The chiefs maintain law and order and resolve conflict in the villages where there is virtually no state agencies on which the people can rely. I will show later in this thesis that the elected councils also do constitute a drain of the country’s meagre resources. Since their establishment, they have not been able to carry out their legal duties in the communities as a result of limited capacity, among other reasons. I will not get into the arguments about the relevance of the military in Lesotho’s conditions since this is outside the scope of this work.

Rugege and Makoa were writing during the height of the military rule in Lesotho, when the general political atmosphere within the wider population in the country was that the military had to hand over power to an elected civilian government. It may be surmised that, under such conditions the authors too, were unhappy with the military rule in general and the institutions supporting it. Such institution included the chieftainship. Rugege’s contribution in the chieftainship discourse is also premised on the procedural/representative democratic arguments similar to all those highlighted above.

In conclusion to this section, it is clear that the overarching argument of the modernist perspective is that traditional authority has no place in liberal democracy because it is not amenable to elections. How accurate is this argument? The next section provides an alternative argument on the issue.

## **2.6. Democracy and traditional authority: an alternative perspective**

An alternative view, which is based on a different ontological and epistemological foundations, is that traditional authority is not antithetical to democracy and the two systems can and in fact do co-exist in Africa. This perspective challenges the modernist position both on empirical and theoretical grounds. The perspective has been termed “traditionalist” (see for example, Keulder, 1998; Logan (2008). I would rather call it pragmatic or “contextual”, borrowing the latter term from Carens (2000), because it is based on the peculiar context and circumstances of non-EuroAmerican societies.

There is a large body of literature on the pragmatic and contextual approach covering almost all parts of the African continent, to which I will turn shortly. The ontological view of democracy, according to this perspective, is that it is not natural. Rather, it is socially constructed and given meaning to within the African context. On epistemological grounds therefore, it cannot be theorised and measured using the same instruments in all contexts and at all times. Non-EuroAmerican societies require a different approach to understanding democracy. They require an approach, which provides an expanded conception of the term, cognisant of the reality and the socio-cultural, political peculiarities as well as lived experiences of societies within which democracy has to function, not those with universal claims alone. This is what Carens calls a contextual approach to political theory, based on his research in Fiji (in the Asia-Pacific region). Fiji still retains the chieftainship system alongside liberal democratic institutions. In his view, a contextual approach has three interrelated advantages:

it can clarify the meaning of abstract formulations [...], provide access to normative insights that may be obscured by theoretical accounts that remain at the level of general principle,[...] can make us more conscious of the blinders that constrain our theoretical visions when they are informed only by what is familiar (Carens 2000:2).

He cautions that it is difficult to understand the meaning of general principles and theoretical formulations until these are seen in actual application in different contexts or settings. He continues:

Sometimes what appear to be conventional liberal views are radically at odds with the actual practices and policies of liberal political

communities [...] to render intelligible and test the persuasiveness of theoretical constructs, we need to consider them in context of specific cases and examples (Carens, 2000: 3).

Koelble concurs with Carens and warns that “democracy should be understood to be a social imaginary in motion and subject to negotiation rather than the only system of institutions and practices” (Koelble, 2005:9). In their latest work on the issue, Koelble and Lipuma identify the limitations of the EuroAmerican<sup>8</sup> tradition of measuring democracy, arguing that these methodologies are “epistemologically flawed because they fail to adequately grasp the way in which democracy as a concept and form of governance become re-territorialized in local/national context” (Koelble & Lipuma 2008: 3). They argue that “grasping democracy in the post colony<sup>9</sup> requires a different methodological framework in which the political culture and practices of various democracies come into focus” (ibid). Ultimately, in their view, “democracy has to be democratized” to give postcolonial attempts to establish democratic systems equal weight as in the West and the people in the postcolony define democracy in their own ways (ibid: 24).

Echoing similar sentiments, Osabu-Kle (2000:9) rejects the EuroAmerican conception of democracy. He argues that it is “only a democracy compatible with the African cultural environment [that] is capable of achieving the political conditions for successful development in Africa”. He also rejects the “wholesale transplantation of alien political organizations and ideologies” for their incompatibility with political and cultural history of Africa (ibid). He recommends the adaptation of African systems to suit requirements of modern governance instead of these ideologies and practices. These, according to him, ensured co-operation rather than competition, decentralised systems, consultative and consensual decision-making processes, and free discussion, among other values (ibid: 9). Democracy should not be construed as natural, but as a social construct and a process given meaning within different cultural settings. Weeden invokes the interpretivist/constructivist approach to democracy and argues that it is through this approach that we can grasp meaningfully

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<sup>8</sup> These are the Bertelsmann Transformation Index (BTI), Freedom House, and the United Nations Development Programme World Governance Survey.

<sup>9</sup> This refers to Africa, Latin America, and much of Asia, see footnote 11 on their article (Koelble and Lipuma. 2008. ‘Democratizing Democracy: A Postcolonial Critique of Conventional Approaches to the ‘Measurement of Democracy’, *Democratization*, 15, (1): 1-28

what democracy is. That is approach facilitates the understanding of democracy as a social construction, which is embedded in different cultural contexts. According to Weeden:

interpretivists are also “constructivists” in the sense that they see the world as socially made, so that the categories, presuppositions, and classifications referring to particular phenomena are manufactured rather than natural. There is no such thing as ethnicity or race, for example, outside of the social conditions that make such classifications meaningful (Weeden, 2004:284).

Going back to African history, several scholars have defended traditional leadership citing some features of democracy inherent in the continent’s political systems. Keulder captures many of these features in his description of the “traditionalist” perspective:

the institution of traditional leaders and its procedures of governance is not only a simpler form of government, but also a more accessible, better understood, and a more participatory one. It is more accessible because it is closer to the subjects than any other system of government; subjects have more direct access to their leaders because they live in the same village and because any individual can approach the leader and ask him or her to call a meeting [ . . . ]; decision making is based on consensus, which creates greater harmony and unity; it is transparent and participatory because most people may attend tribal meetings and express their views, directly not through representatives; and lastly, harmony and unity prevail because the interests of the tribal unit, rather than an individual or group of individuals, are pursued and expressed (Keulder, 1998:11).

Some eminent African statesmen such as the former Presidents of Tanzania, Julius Nyerere (1969) and Nelson Mandela of South Africa shared this conceptualisation too. According to both statesmen, traditional African systems exhibited remarkable democratic practices, included free debate, equality, unity, and consensual decision-making. While acknowledging some form of hierarchical power structure, Mandela characterises these systems thus:

It was democracy in its purest form. There may have been a hierarchy of importance among speakers, but everyone was heard [...]. People spoke without interruption, and the meetings lasted for many hours. The foundation of self-government was that men were free to voice their opinions and were equal in their value as citizens. [...]. Democracy meant ...a decision was taken together as a people. Majority rule was a foreign notion. A minority was not crushed by a majority. Only at the end of the meeting..., would the regent speak. His purpose was to sum up what had been said and form a consensus among diverse opinions (Mandela, cited in Koelble, 2005:15).

The above features of Africa's traditional systems of government had wide applicability throughout the continent. In the case of Lesotho, several historians hold similar views to those above as to the nature and practical application of democracy. Machobane (1990: 23), for example, not only concurs with the characterisation of these institutions and crucially the role of a chief in a *pitso* (a general public gathering attended by adult males then, but lately, it is open to all citizens irrespective of their gender). The role of the chief was one of facilitation to ensure there was an orderly discussion and to summarise what has been discussed. He was open to criticism as well. Other authors criticise the *pitso* system for having been used to achieve other ends than a fair and open forum affording all citizens an opportunity to participate in making decisions affecting their lives. Thabane (2002:72), for example, argues that the forum was used by the chiefs to "justify their claims to authority" and to present themselves as "the servants of the people" when in fact "concealing the true character of power relations and the dominant position of chiefs". It became adulterated by both colonial and post-colonial state in that it became an occasion where people were simply told about the policies from above. Yet even with this adulteration, the system is still part of life of the people particularly in rural areas. It still provided a unique opportunity for the people to contribute to decision-making in their areas. The point here is that while it had its own defects, Africa's traditional system of government was one in which chiefs played not a role of a dictator, dictating to his people what should be done, but rather listened to the views of the people even those critical to his own. Have these democratic features of traditional African systems fizzled out, and do they have no relevance to modern liberal democratic systems? I explore, below, the views of the pragmatists both in academia and public policy circles.

After the historic transitional elections from Apartheid to democracy in 1994, the African National Congress-led government embraced traditional leadership and made it part of the new nation. Defending this decision against attacks by the modernists, the then President Nelson Mandela argued that traditional leadership is not "an appendage or unwelcome addition to the plethora of institutions" already in existence. "It is...part of the pool of organizers and leaders of nation-building and reconciliation, reconstruction and development". Traditional leadership in his view ensures "African democracy in the modern world". It "ensure[s] *complementarity rather than competition between elected and traditional authorities*" [Italics added] (Mandela,

1997:1). More crucially, he sees tradition not as “a sentimental attachment to the past... but ...a dynamic force relevant to present day realities.” Traditional leaders, according to Mandela, are a vital resource for popular mobilisation for reconstructions and development projects, unifying agents of the nation, lineage-related disputes, among other values (ibid).

Like his predecessor (Nelson Mandela) the former President of South Africa, Thabo Mbeki, has been passionate throughout his presidency about the vital role of traditional leadership in South Africa’s young democracy and the whole African continent. Mbeki (2001:16) regarded traditional leadership as an integral and indispensable part of his African Renaissance project. For him, these are the custodians of African “culture, traditions, and beliefs” (ibid: 15). He acknowledges that they do not have “*an elective base and will not have one*” but they “can and should play a central role in the African Renaissance” [Italics added] (ibid). They provide an opportunity for “a new African Identity” (ibid). These are wise and pragmatic views, which not only highlight the continuing value of traditional leadership in South African democracy - and indeed sub-Saharan Africa as a whole - but also a direct response to the modernist perspective laid out above.

Similarly, several researchers acknowledge the importance of traditional authorities in many parts of the continent. It is imperative to explore the findings of their research. Pragmatists are aware of the strengths of traditional African systems at the theoretical level and challenge the arguments of the modernists: on issues of accountability/corruption, citizenship, legitimacy, gender. To capture these issues, case studies of various African communities, to which I will turn shortly, are helpful. They elucidate the value of traditional authorities in contemporary African systems of government. In particular, the following values are not part of liberal democratic systems: some sort of direct democracy through popular participation as opposed to representation, consensual decision-making, not majority rule and voting, accessibility of the governance structure, transparency, unity of community, not individualism.

The reality in many parts of Africa is that the chieftainship exists in juxtaposition with the modern state structures at the local level (Economic Commission for Africa, 2005:

v). Besides, the institution is not in competition with the elected councils, but rather “the two appear to be *mutually reinforcing*” (Logan, 2008:17). Based on his research in Ghana, Skalnik (1996:119) argues that Africa’s political institutions have, among other values, “elements of direct democracy and complement representative democracy”, and as such, they must be included in the latter. Although it derives its claim to legitimacy and authority from both pre-colonial history and customary law, traditional leadership in most African countries is not a loose cannon; rather it is subject to the authority of the state (Ray, 1996:197; Nugent 1996:204; Owusu, 1997). In cases where there may be any attempt on the part of traditional leadership to compete for power with the state, the latter has been able to limit and redefine the powers and geographic boundaries of the former through laws (Ray, 1996:198). Crook (2005:1-2) argues that traditional institutions remain a very significant element of society in Ghana and notes that the chieftainship is associated with power and authority. As such, “extreme caution should, therefore, be exercised in respect of policies which might encourage a renewal of official participation by chiefs in political life of government” (ibid: 1).

With regard to the question of legitimacy on which the modernists challenge traditional leadership for lack of it, given that it is not elective, the pragmatists have been able to respond (see for example, Oomen, 2005; Lund, 2006). Oomen’s study in three communities of Sekhukhuni, Mamone, and Hoepakranz in the then Northern Province of South Africa finds, that despite the dawn of democracy in South Africa, traditional leadership still enjoys and overwhelming 80 percent support for four main reasons. One reason is that the people surveyed expressed sentiments of traditional, cultural, and religious legitimacy of the institution as it is regarded by them as representing their these values. She quotes some people as having said:

*Bogosi* is our culture and should therefore be protected and promoted; traditional leaders are precious gifts from God and we must take care of them; this is about our royal blood, you can’t abolish that; *Bogosi* should be kept as a symbol of unity and pride in black culture. *Bogosi* is a good instrument to install our tradition; it is about consolidating our roots... without it we would not have a community (Oomen, 2005:194).

The second reason for this support is based on the performance of the institution, in which the people said: “They do things for us” although of course some had dissenting views (ibid: 195). They are regarded as having brought important

development projects such as poultry projects and communal gardens, tourism, computer projects and electricity. They are viewed as better than other state institutions such as the courts because of their easy accessibility to the people, ability to provide restorative justice, and their acquaintances with the chiefs and the absence of lawyers (ibid: 196). Third, the institution fills the vacuum left by the absence of state institutions and in this regard they chiefs are described as “guarding the people for the government” (ibid). Lastly, the institution gets support from the people “by default”, that is lack of other alternatives, rather than by the other three forms of legitimation (ibid: 197). “You see”, remarked one villager, “we are living far away from the government, that’s why this thing should remain; where else could I go if I fight with someone (ibid)? These four reasons for the legitimacy of the institution are instructive and go to show limited validity of the arguments that it lacks legitimacy. Legitimacy according to these findings is far broader than being pinned down only to election. Lund reminds us that, legitimacy is not “a fixed absolute quality against which conduct could be measured. What is legitimate varies between and within cultures and over time” (Lund, 2006:693).

In Lesotho, too, Jingoos (1975:171) asserts that “if the Basotho ever lose their Chiefs, they will cease to be the Basotho...; they will become a faceless nation”. Echoing similar sentiments, but also acknowledging the shortcomings of some chiefs including corruption, alcoholism, immorality, and preventing development and innovation proposals not benefiting them, Quinlan (1996:381) argues that chieftainship is regarded as an important source of national identity and, that rural communities “are bound to the institution more than to the government and respect it as an expression and representation of their tradition, national unity, stability and safety. As such “they are apprehensive about any reforms” that would jeopardise these values (ibid: 221). Ashton traces this public perception about the chieftainship from the observations of Casalis who wrote that: “Basotho had almost superstitious respect for their chiefs and they could scarcely conceive of any community being able to look after its own affairs without a chief in authority as its head” (Ashton, (1952:220).

It could be reasonable to argue that at that time Basotho knew no other form of public authority than the chieftainship and that with the modern state giving them rights and powers to decide who should rule them, this perception may have changed. This

position is challenged by Logan's research findings of a comparative study of 14 countries according to which Basotho rank number 4 in terms of the trust they have in the chieftainship and the Prime Minister. They accorded similar scores of 58 percent to both, while the elected councils scored 49 percent (Logan, 2008:20).

On the related notion of accountability of traditional leadership, in their study of the *Batlhako ba Matutu* community in the South Africa's North West Province, Coertzee and de Beer (2007:47) find, that a chief or a *kgosi* (as it he called there) derives his legitimacy as a ruler from his birth and gets full support from his people whom he rules on the basis of their constant advice. For them, "no *kgosi* can rule successfully without the active support of the majority of the members of *lekgotla la digosana* - a council of advisors. They continue to show that "even though a *kgosi* is legitimately born to the position of rule, he has no authority to do so if he cannot combine his position of legitimacy with acceptance as a ruler by the *lekgotla la likgosana* and, therefore by the community as a whole. This acceptance gives the chief authority to rule and is the second test for successful traditional leadership (ibid: 48).

Crucially for purposes of accountability, a chief "can be called to order by the *lekgotla la lesika* (royal family) and be indicted before *lekgotla la likgosana*." In another community, the *Bafokeng* within the same Province, Cook (2005:132-135) makes similar findings regarding the legitimacy of the chieftainship. According to Cook, people "do not see any point in bringing their problems to anyone but their *kgosi*" despite the presence of the elected councillors (ibid: 132). The latter are regarded by the people "to be corrupt in land allocation and other matters" and they see councillors as subordinates to the chiefs (ibid: 131). The people also regard the councillors as a link between them and their *kgosi* (the legitimate head of the entire community) on matters relating to infrastructural development projects. However, the councillors must be backed by *likgosana*, junior chiefs, when presenting projects to *kgosi* for funding. More importantly, the actions of the chiefs are "constantly scrutinised, debated, and assessed" by the people, and the decisions are taken not on the basis of voting but through consensus (ibid: 135). The community prefers community's best interests, rather than individual rights. In the case of Lesotho, too, Mothibe (2002:23) submits that "Basotho's political system put emphasis on

discussion, consent and consensus as far as possible rather than on force and intimidation”.

Cook makes the following powerful conclusion: “If the successful reform is measured in part by the extent to which systems of governance reflect the will of the people, then traditional forms of governance in South Africa cannot be easily dismissed” (Cook, 2005:135). In the same way, Beall, Mkhize and Vawda (2005:769) find from their research in eThekweni, Kwazulu-Natal Province of South Africa that traditional leadership is still valued by the ordinary people and that there “are areas of accommodation between the so-called traditional institutions and the so-called modern ones...”. These practices highlight both the deliberative and participatory aspects of democracy, some form of accountability and transparency reminiscent of Africa’s traditional form of democracy not known in liberal democracies’ discourses and practices. Thus the modernist perspective on democracy and chieftainship gets particularly weakened by these findings.

Another contentious issue regarding the chieftainship system is the question of ascension to office and gender considerations, highlighting the common citizenship thesis. The authors in both the modernist and pragmatist camps agree that the office of chief is based on ascription rather than on elective principle, as shown above. However, does it matter who and how one gets into public office in the African context? Pragmatists do not find this to be an issue because it is based on people’s culture and customs, which they accept and value. In the Tswana culture (of which both the *Batlako ba Matutu* and *Bafokeng* communities are part), the office of *kgosana* and *kgosi* is both assumed by virtue of birth, provided the incumbent was born directly from the royal house, a preserve for males. Coertze and de Beer posit that a *kgosi* within the *Batlako ba Matutu* community is selected from the royal family at the meeting chaired by the head of the family and attended by “senior adult males of the concerned family. Outsiders are not allowed to attend this meeting because “*Fa gare ga bana ba mpa ga go tsenwe* – outsiders may not intrude upon family affairs” (Coertze & de Beer, 2007:41). This practice has bases, in part, in mythology regarded as sacred by some communities. In a dispute (between a female and male claimants in the Venda of Masia community in the then Northern Province of South Africa) concerning the succession to the office of chief, de Beer (2004:109)

notes that, according to the culture and history of this community, the office belongs to males. As such, any attempts to allow female chiefs and any attempts to change this would “invite the intervention of by ancestral spirits” (ibid). Consequently, the female claimant’s case for her installation to the chieftainship position of the community was dismissed on accounts of customary law and culture. Claim to the chieftaincy office by any other males than those born from the royal house cannot be acceptable on similar grounds. Therefore, the arguments made by modernists that the system of chieftainship denies people democratic citizenship rights holds, at least in the EuroAmerican culture. However, it does not apply to the African context and this kind of discrimination is accepted by the communities.

At a practical level of analysis, the chieftainship institution performs vital functions in different African countries, as acknowledged and provided for in the laws governing it. The functions include land administration, providing cultural leadership to the people, political representation of their communities and community identity, mobilising support for politicians, working for the progress of their communities and, more crucially, maintenance of peace and unity. In a similar vein, Miles (1993:42-46) provides a list of roles and functions of traditional rulers in Niger, Nigeria, and Vanuatu. These roles can be generalised throughout the continent although there are variations, depending of different contexts. These include linking the population and the government, legitimating the national leaders, collecting taxes for the national state, acting as local ombudsmen and acting as symbols of national unity because of the permanence of their tenure of office.

Similarly, Sawyer (2008) finds that, in the erstwhile conflict-ridden Sierra Leone, the chiefs enjoy the villagers’ considerable support of between 78-81 percent compared to the courts and police in the rural areas of the country. They are seen as effective agents of conflict resolution (Sawyer, 2008:395). He also finds that this strong support for the chiefs is a result of them being able to “serve their people’s interests, to protect their rights, and to act as buffers against exploitative central politics. This support is not surprising, given the country’s sad history of a long civil war and failed state. Similar studies conducted in different contexts, including Lesotho, show similar observations to that Sawyer, as this study will show. He concludes that there should

not be any attempts to abolish the chieftainship institution and that the views supporting this move are misguided (ibid: 403).

In his study of the chiefdoms of *Bali* in Cameroon and the *Tshivhase* community in Venda South Africa, Fokwang finds that chieftainship has been able “to negotiate multiple kinds of competing relationships with their subjects, local and national governments as well as other chiefs” (Fokwang, 2009:vi). He concludes that “it is premature to declare the eradication of chieftaincy and naïve to treat all chieftaincies as embodiments of oppression”. He calls for the use of comparative case study methods so as to get insights into the “internal logics of these socio-political structures and the ways in which they undermine or contribute to existing democratic structures” (ibid).

In his study of Botswana, Namibia, Nigeria, and Zimbabwe, Keulder (1998:305) lists the functions performed by traditional leaders in these countries respectively as advising the National Assembly through the House of Chiefs, presiding over customary courts and enforcing customary law, supervising local (tribal) police force, acting as peace officers, regulating traffic, preventing crime, organizing and co-ordinating traditional ceremonies as well as preserving culture. In Namibia, traditional leaders ascertain, codify, administer, and execute customary law, promote culture, preserve and maintain cultural sites, art, and literary works, perform traditional ceremonies and functions, advise the Council of Traditional Leaders, promote affirmative action, provide assistance to and co-operate with government agencies in policy execution and manage community resources to ensure sustainability. In Nigeria, traditional leaders participate in State Councils of Traditional Leaders, mobilise communities for development projects, assist in tax assessment and collection, maintain culture and tradition and carry out ceremonial duties. In Zimbabwe, traditional leaders advise parliament through the Council of Chiefs, participate in Senate and represent their communities in rural development councils. Thus, Keulder (1998:306) argues that traditional leadership should be retained not only because of the important functions that they perform but also because they “enhance the state’s social control and legitimacy, especially in rural areas”.

Although it has also been criticised for clinging to culture and history and as such being resistant to change, chieftainship is credited for its agency and for its capacity to support liberal democracy while simultaneously protecting its own interests. Nyamnjoh accords credit to the agency of both the chiefs as individuals and the chieftainship institution in helping to shape the democratic system of Botswana, one of Africa's widely vaunted rare models of democracy. According to Nyamnjoh (2003:247), Botswana chieftainship has been a dynamic and adaptive agent of socio-economic and political vicissitudes of the country, and "remains central to ongoing efforts at harnessing democracy to the expectation of Botswana [...]". Thus, according to Nyamnjoh, this:

provides evidence to challenge perspectives that present chiefs and chieftaincy as an institution are trapped tradition and fundamentally undemocratic. The idea that chieftaincy and chiefs are either compressors of individual rights with infinite might, or helpless zombies co-optable by custom or by the modern state denies chiefdoms and chiefs community or individual agency (ibid).

Consequently, because of its adaptability and agency, the chieftainship makes Botswana's democracy "an unending project, an aspiration that is subject to renegotiation with changing circumstances and growing claims by individuals and communities for recognition and representation" (ibid: 248).

In Lesotho, the chieftainship long embraced modernity through education. Some of Moshoeshoes 1's sons such as Nehemiah Sekhonyana received Western education, which he used to act as his father's secretary in his correspondence with a belligerent British High Commissioner, Sir George Cathcart (Machobane, 1990:31-32). Cathcart had unleashed his military forces against Basotho accusing them of having raided the cattle belonging to the neighbouring Free State Afrikaner settlers. Although Basotho were able to ward off the Cathcart forces, Moshoeshoe appealed in a letter written by Nehemiah to Cathcart that he wanted peace with the British Empire (ibid: 32). Another literate junior son of Moshoeshoe, Tšekelo, was deputy to the leader of Lesotho's delegation, D. D. Buchanan, despatched by Moshoeshoe to Queen Victoria of England and the French Emperor, Napoleon III, to protest the decision made by the British High Commissioner, Sir Philip Wodehouse, to negotiate the boundary between Lesotho and the neighbouring Boer republic's President Brand without consultation and consent of the Basotho. Tšekelo spoke both English and French fluently

(Machobane, 1990:44-45). Moshoeshoe II, his successor, the currently reigning King of Lesotho, as well as other sons of the senior chiefs have received Western education. Thus, the claim that the chieftainship is a traditional institution is weakened by empirical evidence.

In Burkina Faso, Ouedraogo (1996:258) shows that the chiefs persistently worked with the opposition parties to overthrow the regimes that threatened their interests in 1966 and 1987, until a friendly regime came into power and worked for harmonious relations with the institution and assisted the country to move towards achieving democracy. According to Ouedraogo, this proves that “government and chieftaincy need each other: the former ensures the preservation of the latter over the rural masses, the latter makes it easy for the former to reach voters” (ibid). In South Africa, as well, Southall and Bank note in the South African case that:

*traditional rule tends to complement, sustain, and legitimate the modern state rather than undermine it. Rather than traditional authority contradicting democracy, it can provide the bedrock upon which to construct new and experimental governments, including constitutional democracies [Italics added] (Southall & Bank, 1996:407).*

My own position in this debate is similar to that of pragmatists. The pragmatist approach would enhance an understanding of the ways in which the chieftainship and elected councils can co-exist to consolidate democracy in the context of Lesotho. The argument that the traditional system is undemocratic and irrelevant to contemporary African context gets severely weakened at both theoretical and practical levels. Based on both theoretical accounts as outlined above and the findings of this study as will be seen in subsequent chapters, and the empirical reality on the ground, in Africa the view that traditional leadership should be abolished is misplaced. It is not elective and does poorly in advancing the rights of women and as such it is not perfect. No system of government is perfect, and none will probably ever be. But traditional system exists and is becoming more pronounced and visible, especially in rural Africa, owing to its agency and the shortcomings of failing states on the continent. To reiterate the point, democracy as a theory of government and practice is contested and needs to be given meaning within the broader context and socio-political environment where it is conceptualised and applied. Thus the conception of democracy in this study incorporates the liberal EuroAmerican version which recognises and preserves

indigenous institutions of governance in Africa, and the chieftainship in this context. How can the vexed issue of reconciling or integrating traditional system with the structures of the modern state be handled in a manner that preserves the former while also contributing to the process of democratic consolidation and what evidence of this is available? The following section broaches this question.

## **2.7. Democracy and traditional authority: towards a theory of mixed government**

The pragmatists' position on traditional authority and its role in Africa's democratisation fits within the theory of mixed government advocated strongly by Owusu (1983, 1997 and Sklar (1999a, 1999b, 2001). In his several seminal works on the nature and structure of modern Africa societies, Sklar (1999a, 1999b, 2001) provides a workable model and one which accommodates both systems – a mixed government. This blends both theory and practice of government in contemporary Africa. As a concept, mixed government refers to “cooperative interaction among distinct and relatively autonomous governmental institutions, each rooted securely in an ‘estate of realm’ and functional interest of groups associated with the state” (Sklar, 1999a:168). It is a “mixture of institutions designed to protect the interests of the rich with institutions that were created to assist the poor” (Sklar, 2001:5).

Sklar goes on to show that in African societies, there is a “Janus-like relationship of back-to-back” between the structures of the modern state and traditional authority, with the latter complementing rather than competing with the former. Sklar underscores this complementarity by noting that, “[i]n every African country, an overwhelming majority of citizens has dual political identities, but in no case does the second dimension vie with the sovereign dimension for sovereignty” (Sklar, 1999a:168). In the same way, Logan (2008) shares this view and argues that Africans have adapted to “hybridization” of their political institutions without being “trapped between two competing spheres of political authority in a “seamless” fashion more than it can be assumed or anticipated. This political arrangement provides Africans with “dual political identities” and helps maintain stability (Sklar, 2001:4) - a crucial and yet missing ingredient of a democratic consolidation in many parts of the continent. Sklar warns, rightly, that “democracies have never been viable without

substantial admixtures of oligarchies and democracy, which function to mitigate the less desirable effects of popular power” (1999a:175).

Owusu recommends the mixed government model as applied in Ghana and Botswana because it promotes political stability and good government. He notes that, among very few countries in Africa, Botswana has managed “to work out realistic and satisfactory modalities for modernizing and adjusting traditional institutions to the demands of modern constitutionalism [...]. It has “also managed to build and domesticate democratic values and practices [...] (Owusu, 1997:138). He also notes that in majority of other countries, such as Uganda, Ethiopia, Rwanda, Burundi, and Lesotho, new ambitious political elite embarked on an “indiscriminate attack on traditional rulers [...] in the name of ‘progress and democracy’, popular sovereignty, socialism, secular political order” and “abolished, killed or overthrew their traditional rulers or suppressed traditional political institutions” (ibid). The net result of these actions for these countries, except in Lesotho, has been “violence and bloody civil wars (ibid).

With its genesis in the ancient Western political philosophy figures such as Plato, Aristotle, and Polybius (Sklar, 2001:5), the theory of mixed government has “dominated Western philosophy and science for two millennia” (Rohmann, 2000:26). For Aristotle, for example, the best form of government would be *polity*, comprising traditional monarchy, aristocracy and democracy. This would produce a kind of regime, which would rule in the interest of all citizens (ibid: 264). Old as Aristotle’s ideas may be, they have not been discarded even in the now so-called advanced democracies. The cases in point here are the constitutional monarchies such as Britain with its bifurcated legislature comprising the hereditary head of state and the House of Lords existing alongside an elected House of Commons (ibid). Besides Britain, several democracies such as Australia, Canada, Denmark, Netherlands, Norway, Spain, Sweden, New Zealand, still retain mixed systems. Based on the elective principle alone, a crucial question may be asked: How then are these countries democratic when their highest offices, not even at sub-national levels, are not elective?

On the application of the mixed government theory/model in Africa, Sklar highlights the value of this system in Africa, reiterating the views of the “pragmatists” above. He argues in a clear response to the modernists in his conclusion that:

any serious inventory of African contribution to the theory and practice of government in our time necessarily include the modernized indigenous institutions [...] the durability of traditional authority in Africa cannot be explained away as a relic of colonial rule (Sklar, 2001:4).

Traditional leadership is “a political resource”, which does not diminish or compromise “the sovereignty of the state” (ibid: 6). Traditional authorities are “a source of moral authority in everyday life” which “if used wisely, can help to maintain civic morale and social order during the current difficult transitions to modern forms of economy and society” (ibid). Sklar continues that traditional leadership “could be used to reinforce social stability” while simultaneously and crucially “without the abandonment of democratic reforms” (ibid). He metaphorically regards traditional authority in Africa as a “superior shock absorber for the African ships of state during the stormy passages of these turbulent times” (ibid: 11). He applauds the agency of Africans in adopting the mixed system which, as the “pragmatists” have noted, ensure legitimacy of their governments. Crucially, in the context of this thesis, on the question of accountability, he notes also, that traditional leaders “hold positions of public trust in accordance with customary rules, *although their appointment and functions are normally regulated by statutory law* as well” (ibid: 5) [Italics added]. This clearly underscores the point that, traditional leadership exists, operates at the behest of and derives some of its powers from the modern state, which has a popular mandate to govern. Although not directly making reference to the mixed government model, one of the old newspapers in the immediate pre-independence Lesotho, the *Mohlabani Newspaper*, made the following important observation in its editorial about the kind of democracy suitable for Lesotho:

Democracy in the modern sense is a plant that grows in the gardens of Westminster and when we seek to plant it in the soil of Lesotho it has, perforce, to adapt itself to the prevailing climatic conditions in this country; that is to say, it must account of the customs and traditions of the Basotho as a people with their own history and their own nationhood, both of which make them a distinct entity different from the people who are ruled according to the Westminster model ( *Mohlabani* quoted in Khaketla, 1972:111).

In sum, therefore, the mixed government theory provides insights and works as a prescription, albeit not in a straight-jacketed fashion, of how Africa democracy works, or in Owusu's formulation, how democracy can be domesticated in Africa.

## **2.8. Application of the mixed government model**

The model of mixed government has found practical applicability in many parts of the African continent at different levels of the state. For the purpose of this thesis, however, my focus is on how the mixed government model has been applied as part of the democratisation process in Botswana, Namibia, and South Africa for these countries are regarded as success stories of democratisation process and well on the way to democratic consolidation (Düsing, 2002:1). In this regard, Büsing's *Traditional Leadership and Democratisation in Southern Africa: A Comparative Study of Botswana, Namibia, and South Africa* text is useful because it presents, in a comparative and comprehensive fashion, how the general mixed government model has been applied in these countries and, as I will show later in this study, how some of her ideas may be applied in Lesotho's context.

Büsing (2002:40-42) identifies five models of mixed government some of which have been adopted in these three countries. The first is what she calls *non-regulated dualism* in which there is no legally determined or regulated relationship between the traditional leaders and elected structures or legally regulated for one of these structures and usually the elected one. There is no differentiation of roles and functions between these two institutions and this may result in situations where the traditional leadership either undermines or supports policy implementation.

The second model is *regulated dualism or parallelism* under which the traditional authorities and their elected counterparts exist side-by-side, fulfilling different and legally defined functions in a parallel fashion. The arrangement is characterised by co-ordination by the central government and consultation among the two institutions. She notes that there is a high possibility for each of these to fight for independence and strong emphasis on institutional autonomy and bargaining power and that, when not carefully coordinated, the arrangement may lead to functional overlapping, inefficiency in service provision, and waste of resources.

The third model is one of *subordination* wherein traditional institution is subordinated to the democratically elected one and the functions of each are clearly defined. The traditional institutions are prohibited from active participation in party politics but must support local political decisions. If they wish to take part in politics, they are required to resign their traditional positions. As such, those fearing to be out-voted tend to accept the division of the two offices.

*Integration* is the fourth model. Here the two institutions are amalgamated into one concept of local government. The traditional leaders secure membership of local government structures on *ex officio* and quota basis. They are either directly or indirectly elected or a combination of appointment and democratic elections is used to ensure their participation in local government structures. The model then enables the chiefs and elected councillors to carry out political functions at the local level as equals.

The last model is *harmonisation*, which defines, differentiates and regulates the specialised roles of traditional leaders and elected councillors as well as other stakeholders at the local level. The roles and duties are differentiated on the basis of traditional and modern local government services. According to Büsing , the harmonisation model's attempts to make functional division on traditional and modern is often fraught with controversies between the traditional leaders and their modern counterparts as the former would be interested in securing their status while at the same time performing the otherwise modern functions of local government. On their part, the elected leaders would aspire to relegate the influence of the former to ceremonial, symbolic and cultural functions. Thus the division of the roles in my view would require proper consultations and negotiations between the two categories. It has to be stated also that naming some functions as traditional and others as modern is generally an arbitrary exercise to which there cannot be any clear scientific justification or classification. As such, there is no substitute to negotiation and consultation between the modern state agents and the traditional leaders.

On application of these models in the three countries, Büsing submits that the adoption of a mix of these has served to achieve the goals of nation-building and

multiculturalism in line with their peculiar contexts (2002:168). As such, according to Büsing, Botswana has adopted a model of *parallelism* with *subordination* of traditional leaders. The Botswana Democratic Party (BDP) government inherited at independence in 1966 the tribal councils composed of the individuals nominated by the chiefs and those elected at the village assembly, *kgotla*, and chaired by the chiefs, from the out-going British colonial administration (Büsing, 2002: 178). These councils used to be the sole form of authority at local government level (ibid), as indeed was the case in many other colonies including Namibia and South Africa, and performed several functions such as providing justice, control of agriculture, public works, trade, defence and religious activities of their tribes (Sabela cited in Büsing, ibid). The District Councils constituted the second layer of administration within the tribal areas but were subordinate to the tribal councils (Sharma cited in Büsing, ibid).

However, through several pieces of legislation, according to Büsing (2002: 207), the new government systematically subordinated the chieftainship to the elected state structures. This came in the form of the *Local Government (District Councils) Act, 1965* and the *Local Government Tax Act, 1965*, which effectively transferred the right to impose taxation from the chiefs to the new District Councils. The *Chieftainship Act, 1965* also put the chieftainship under the control of the country's president, thereby subordinating the institution to this lower arm of the state and giving the responsible minister the right to endorse the choice of tribal leaders on the recommendation of their tribes. The *Matimela Act, 1968*, also took away the collection and distribution of stray cattle from the chieftainship and placed this responsibility under the District Councils. The effect of this was to erode the capacity of the chieftainship to generate wealth as the stray cattle provided to the chiefs a huge source of wealth. The last measure to weaken the chieftainship further was to transfer communal land allocation powers to the land boards under the *Tribal Land Act, 1968* (Büsing, 2002:103; Maundine, *et al.*, 2007:40).

As it would be expected of powerful political agents such as the chiefs, they did not take this emasculation of their powers lying down but caused a setback for the ruling Botswana Democratic Party (BDP). According to Molomo and Molefe (2005:103), the whittling of the chiefs' power led to spoiling of the hitherto good relations between the BDP and the chiefs. As the authors put it, "the cohesion that existed

between *dikgosi* and the BDP experienced a noticeable rupture. The high point of this tension was when *kgosi* Bathoen II of Bangwaketse resigned from *bokgosi* to join [the opposition] BNF” (ibid). He subsequently won a parliamentary seat against a prominent BDP candidate and later the president of the country, Quett Masire, in 1969 and 1974 (Maundeni, 2005:86). The ruling BDP’s reaction to this loss to a chief by its high profile candidate was to amend in 1972 the country’s Constitution to the effect that the chiefs must have resigned five years prior to their standing for parliamentary elections (ibid: 85). The 1966 Constitution did not have this type of restriction for public officials including the chiefs. It however proscribed the chiefs and other public officials from contesting elections for parliament and local councils under section 62 (1) (ibid: 89).

Notwithstanding the above erosion of the powers of the chieftainship, however, the minor amendments to these *Acts*, according to Büsing, left intact the parallel arrangement, which still exists today. Through the amendment to the *Local Government Act, 1965*, the chiefs, were removed from the positions of *ex officio* chairmen of the District Councils. Similarly, the *Chieftainship Act, 1965* was amended to transfer the chieftainship from the direct control of the President to that of the Ministry of Local Government, Lands, and Housing (ibid: 207). Maundeni *et al.*, (2007:40) confirm the parallel system in Botswana and note that traditional leadership in Botswana “is not part of local councils” although “the local government boundaries are consistent with tribal boundaries designed by the British colonial administration”.

A parallel model is also reflected in the clearly defined functions performed by the chieftainship and the elected councils in Botswana. The chiefs have several functions ranging from maintenance of customs and traditions, organising traditional ceremonies, welcoming dignitaries in their communities, presiding over customary courts on matters of both criminal and civil nature, maintenance of law and order, encouraging communities to take part in development projects and presiding over these (Büsing, 2002:226). On the other hand, the elected councils are responsible for an array of functions including provision of primary education and primary health care, community development, water, construction and maintenance of rural, un-gazetted roads (Maundeni, *et al.*, 2007:33).

Namibia, according to Büsing (2002:187), adopted the model of “rigid subordination, in which traditional structures were entirely controlled by democratically elected institutions”. This approach is a result of fears on the part of the South West African People’s Organisation (SWAPO) government in the country that traditional leaders, who were inclined to ethnic and secessionist tendencies, would be “a source of insecurity and potential threat to Namibia’s...economic and political development after independence. Thus, while the *Traditional Authorities Act, 1995*, recognises the traditional leadership institution, the *Act* clearly states that in discharging their duties, the traditional leaders “shall give support to the policies of the central Government, regional councils and local authority councils and refrain from any act which undermine the authority of those institutions as established by law” (section 12 (1) ). Section 12 (2) provides that:

Where powers of traditional authority or traditional leader conflict with the powers of the organs of the central government, regional council and local authority council, the powers of the central Government, regional council and local authority council, as the case may be, shall prevail.

The *Act* is also clear, as is the case in Botswana, on the question of whether or not a chief should take an active part in politics. This is provided for under section 11 (2), which stipulates that:

Notwithstanding anything contained in this Act to the contrary, *no person shall while holding a political office also hold office as a chief and where any person holding the office of chief is elected to a political or appointed office, he or she shall first relinquish the office of chief before taking up the political office* [italics added].

Sub-section 5 defines political office as that of the president of the country, Member of the National Assembly, National Council or of a regional council, executive member of a political party.

As a consequence of their loss of power, some chiefs “increasingly explored politics of identity and demands for cultural group rights, in order to defend their role and status, and to strengthen the position of their respective ethnic communities” (ibid: 188). However, the SWAPO government has succeeded not only to put effectively the traditional leadership under the elected structures of government but has also relegated their powers to the cultural realm and separated their functions from those of their elected counterparts.

South Africa has chosen the subordination/harmonisation model. The Republic of South Africa Act 200, 1993 (Interim Constitution) Chapter 11 (181) recognises traditional authorities and indigenous law. It states specifically that:

A traditional authority which observes a system of indigenous law and is recognised by law immediately before the commencement of this Constitution, shall continue as such an authority and continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and custom, subject to any amendment or repeal of such laws and customs by a competent authority.

Section 182 makes traditional leaders *ex officio* members of local government structures. It says:

The traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of an elected local government...shall *ex officio be entitled to be a member of that local government, and shall be eligible to be elected or nominated to any office of such local government* [italics added].

Following lengthy processes, consultations and negotiations between the traditional leadership and the government recognised the latter and established the “national Council of Traditional Leaders and Provincial Houses (for those provinces that have traditional political institutions as local government structures and finally recognised traditional leaders as *ex officio* members of democratically elected local government structures” (Büsing, 2002:175). In the whole process of negotiations, traditional leadership was represented by the country’s two main organisations, which in theory represented its interests. These were the Congress of Traditional Leadership of South Africa (CONTRALESA) and the Inkata Freedom Party (IFP).

The two organisations had different orientations towards the manner in which South Africa would be governed. Under the leadership of Chief Phathekile Holomisa, the CONTRALESA was aligned to the ANC and declared its support for the party before the 1994 elections, with the hope that it could secure a bigger say in the politics of the country not only at local level but nationally as well. However, Bank and Southall (1996:417) note that this was not to be. The ANC could not agree to the CONTRALESA taking part in the Convention for a Democratic South Africa (CODESA) negotiations because it feared that other interest groups would also claim

to be represented. Although it suffered this setback, the organisation did succeed to have its constituency recognised by a democratic South Africa. The IFP, on the other hand, was more interested in securing status and role for traditional leadership and in particular its monarch in the new dispensation, especially in the Kwazulu/Natal Province. Bank and Southall regard the IFP as having succeeded in this regard because it got its interests met by way of Provincial constitution which granted these (1996:409).

As is the case in Namibia, South Africa has recognised traditional leadership as *cultural institution* (rather than political) responsible for cultural issues affecting the people living in the provinces, which have traditional leadership, in line with both countries multicultural approaches to state and nation-building. The functions of traditional institutions in both countries are largely *advisory* to the other state structures, especially on issues affecting their communities (ibid). Thus, each of the three countries has put in place a model of integrating traditional leadership with other state institutions suitable for its own peculiar conditions.

## **2.9. Conclusion**

By reviewing two conflicting positions between the modernists on the one hand, and the pragmatists on the other, this chapter has endeavoured to explore some conceptual and theoretical issues around the currently topical issue in Africa's democratisation and consolidation processes: the role of traditional forms of political authority in democratic consolidation. The central argument of the chapter is that democracy both as a theory of government and practice is contested. The chapter further argues that to understand democracy as well as the place of traditional African institutions of governance, requires a contextual and interpretivist, rather than a positivist, approach of the modernists.

This approach allows some scope for an expanded and contextual conception of democracy, which takes into consideration the peculiarities of the non-EuroAmerican nations in terms of history, culture, and lived experiences. Crucially, the approach creates room for co-existence of traditional forms of political authority on the one hand, and their modern, liberal democratic counterparts on the other, an imperative

for democratic consolidation in Africa. To that extent, the mixed government model, with its practical application in other parts of the African continent, and in particular in Botswana, Namibia, and South Africa, seems to be the best strategy to allow co-existence of the two systems to achieve political stability and consolidate democracy, not only at the national level but, crucially for this thesis, also at the local level. The application of this model, however, does not have to be universal as it is the case with the EuroAmerican model of democracy. Rather, it needs a careful consideration, by the political leadership, of the different contexts characterising the continent.

## **CHAPTER THREE**

### **Lesotho's Chieftainship and Local Government Structures: A Historical Context**

#### **3.1. Introduction**

In this chapter, I provide a historical context to the chieftainship institution in relation to the first modern political parties and state structures in Lesotho. I describe and analyse the dynamic relationship between the institution and these parties, with a view to understanding this interaction and the implications it has had for governance in the country. To achieve this goal, I highlight the policies and attitudes of Lesotho's first major political parties on and towards the chieftainship institution and its role in national politics in the last years of colonial rule and in the post-independence epoch. These parties are the Basutoland African Congress (BAC) (formed in 1952 by Ntsu Mokhehle and later renamed Basutoland Congress Party (BCP)), the Basotho National Party (BNP) (founded by junior chiefs, chiefs Leabua Jonathan and Patrick Mota, and a Catholic teacher G. C. Manyeli in 1958), and the Marematlou Party (MTP) (established in 1957 and later changing the name after a merger between the MTP and Freedom Party to Marematlou Freedom Party (MFP) in 1962) (Machobane, 1990:284-285; Gill, 1993:211) and the ruling Lesotho Congress for Democracy (LCD) (formed in parliament in June 1997 following a split of the BCP), which subsequently won the 1998 elections.

Central to this analysis is the agency of the chieftainship as an institution and individual chiefs to change Lesotho's political conditions in their favour and also be shaped by these conditions within the context of socio-political dynamics at different historical epochs of Lesotho. I borrow the concept of agency from Nyamnjoh (2003) in explaining how the chieftainship has managed to hone for itself an important niche in Botswana's liberal democracy. In essence the concept denotes that human beings are endowed with natural capacities and abilities to "exercise control over events that affect their lives" (Bandura 1989:1175). Thus, they can change their own environments and institutions that shape them in their favour. According to Nyamnjoh previous approaches to chieftainship studies have teleological problems in that they "rationalise away chieftaincy and its dynamism" (Nyamnjoh, 2003:235). Yet chiefs as individuals and the institution they represent are agents "seeking 'right and might'

both as ‘citizens’ and ‘subjects’ in the modern nation-state as a reality not an ideal” (ibid).

It is because of the agency and adaptability of the chieftainship in Lesotho, to respond to different policies of governments and political parties affecting them, that has made the institution an inseparable part of Basotho society since its formation, making the chieftainship very much relevant to modern day political conditions of the country<sup>10</sup>. Thus, I provide a general overview of the relationship between the colonial state and Basotho (represented by their chiefs) as well as the relationship between the modern political parties in the 1950s. I then proceed to focus directly on the chieftainship and different forms of local government authorities in Lesotho, from the District Councils of 1960 to the newly elected local government structures of 2005.

### **3.2. Local government under the British colonial administration, 1943-1960**

The history of local government system in Lesotho can be traced to 1943 when the then Basutoland National Council (BNC) (an advisory body established by the colonial administration to advise the colonial government on matters relating to Basotho and their ways of life, and composed mostly of senior chiefs and a few educated elites) discussed the possibility of “increasing popular participation” by establishing District Councils which would elect two representatives (later increased to four) per district to the BNC itself (van de Geer & Wallis, 1984:17). As part of the general decolonisation project and under pressure from the members of the then BNC members (both chiefs and ‘non-chiefs’<sup>11</sup>) the British colonial government promulgated the *Local Government Proclamation No: 52 of 1959*. The *Proclamation* provided for “the establishment and constitution of District Councils and their organization, proceedings, finance and the power to make by-laws” (ibid). The Principal and Ward Chiefs in each district and ward became *ex officio* members of these councils.

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<sup>10</sup>Although he does not use the term agency, Leduka (2006:181) acknowledges the ability of the Lesotho’s chieftainship to “transform itself to ensure its survival and relevance to the changing socio-economic conditions of Basotho society” and argues the process of urbanisation and state’s inability to meet demand for land have created conditions under which the chieftainship has assumed new roles in land allocation in the urban areas of Lesotho.

<sup>11</sup> I use the term ‘non-chiefs’ because it is neutral and helps to avoid a commonly used and potentially pejorative concept of ‘commoners’ in chieftainship discourse in Lesotho.

At the time, the chiefs had already lost to the state a considerable amount of power following earlier reforms carried out by the colonial government in the late 1920s and early 1930s. Concerned about judicial and administrative inefficiencies and abuse of power by some members of the chieftainship institution, endless chiefly feuds and conflicts over their respective geographical boundaries as well as the economic and financial problems confronting the Territory, the colonial administration instituted a Commission, led by Sir Alan Pim in 1934-5, to come up with appropriate recommendations to solve the problems (Machobane, 1990:183-5; Quinlan & Wallis, 2003:149).

Following the Pim Commission's recommendations, the country was divided into administrative districts, wards, and sub-wards (Quinlan & Wallis, 2003:149). All the chiefs from the level of Principal Chiefs down to headmen were to be appointed by the High Commissioner in consultation with *Morena e Moholo*. The numbers of the chiefs were reduced from 2,500 to 1,340. Those chiefs, who were recognised by the state, were confirmed in their position through a gazette. Besides, the High Commissioner had powers to revoke and vary appointments of chiefs as he saw fit (Machobane, 1990:185; Quinlan & Wallis, 2003:151). The reforms also abolished the "placing system" (under which chiefs appointed their sons and relatives) effectively making those chiefs recognised by the state as paid servants of the government (Leduka, 2006:183). Machobane (1990:187) notes that these reforms had severe effects on the chieftainship especially at the lower levels of its hierarchy, as many chiefs lost their positions and (more crucially) their primary source of income, upon losing power of control over local courts. The chiefs relied on the customary courts' for income accruing to fines imposed by these courts on the population. Although these reforms had such huge and adverse impacts on the chieftainship, the chiefs were powerless and could not reverse them. Since the implementation of these reforms, the fate of the chiefs' powers has been sealed "formally" with regard to land allocation. This is because (in so far as land allocation is concerned) the chiefs continued to carry out this function as will be seen later in this chapter, and was to remain so to date.

Lesotho (then Basutoland) took the first step to establish a "modern" local government with some degree of devolution of power to sub-national levels in 1943. This was when the then BNC, comprising almost exclusively of senior chiefs, began

to debate opening avenues for ordinary people to participate in the affairs of the state. However, nothing came out of this debate until 1959, about six years before independence, when the colonial government passed the *Basutoland Proclamation No.52, 1959* to pave the way for a partially elective local government system (van de Geer & Wallis, 1984:17; Machobane 1990:240). The system was partially elective in the sense that women were then not yet franchised because they did not pay tax (the Hut Tax imposed on every adult male) to the colonial state; the law excluded them (Machobane, 1990:296). The BCP won thirty-two (32) of the available forty (40) District Council seats leaving the remaining eight (8) to the BNP and the MFP (Gill, 1993:213).

A closer analysis of the 1960 elections is made by Gill (1993) who observes that although the BCP won this poll, the party did not get much out of its victory in terms of exercising political power and implementing its own programmes or those provided for in the *Proclamation*. The BCP did not control the Legislative Council established at the same time with the District Councils. The Legislative Council comprised 50 percent of the delegates from the District Councils and another 50 percent from the twenty-two (22) Principal Chiefs and appointed members. The non-BCP members often sided with both the BNP and the MFP against the BCP. According to Gill, the appointees “sabotaged the efforts of the BCP, both in the District Councils and in the Legislative Council”, leading to frustrations of the former, which in turn regarded the chiefs, the white traders and the Roman Catholic Church as reactionary elements thwarting development, self-determination and the Basotho nationhood. Thus the BCP became militant against these forces, threatening to put the chiefs under its full control at grass roots level, and reducing the influence of the Roman Catholic Church and the white traders in public life (Gill, 1993:213).

This experimental local government system composed of nominees of the colonial government and the Regent `M`antšebo Seeiso, the senior wife of *Morena e Moholo* Seeiso Griffith Lerotholi. Crucially for our purpose here, all twenty-two (22) Principal Chiefs representing their respective wards (into which the country was divided) became members and presidents of the District Councils on an *ex officio* basis, while the senior colonial officer, the District Commissioner, presided over the Councils (*The Local Government Proclamation, 1959* sections 4 and 5). In terms of section 12

of the *Proclamation*, the chairmen of the District Councils were to be elected by and from among the members. The point here is that there was no requirement for the chiefs to earn membership of the District Councils by the election procedure. They became members of the councils because they were chiefs and the councils were established in the wards under their traditional jurisdiction.

Although the chiefs were presidents of these councils, the *Proclamation* did not specify their powers and functions within the councils. It is not clear exactly what the president had to do *vis-à-vis* the chairmen of the councils. What is clear, though, is that the chiefs had no executive and quasi-legislative powers to make bye-laws, as these were vested in the councils. The arrangement appears to have put in place at local level, a system very similar to the constitutional monarchy, at national level, which Lesotho had adopted after independence. The arrangement blended the hereditary and elective systems along the lines of the mixed government model discussed in chapter two. There was no conflict within the chieftainship and between the colonial government and chiefs on which chiefs should and should not be members of the councils because both the Basotho customs and legal instruments of the state had removed any basis for this.

According to Kotze, Vosloo and Jeppe (1974:125), the powers and functions of the District Councils were to further socio-economic development of the inhabitants (provision of services for improvement of agriculture, licensing of social halls, lodging and eating houses and trading premises), provide local services (ambulance services and electricity), and act as agents of the central government, collect taxes. Other than being accorded an *ex officio* status, the senior chiefs did not have any specific powers, responsibilities, and functions within the District Councils. The more junior chiefs did not have any role to play in this system because it was hierarchically and administratively above them. There was a provision in the *Proclamation* for the establishment of additional subordinate councils at the lower level than at the District Council in which the junior recognised chiefs would probably have been members, but there is no record of these (Leduka, 2006:183). This means that the colonial government left the process of decentralisation unfinished and to be completed by subsequent governments.

### 3.3. Local government under the BNP, 1966 -1986

The District Councils were, however, abolished by the BNP in 1968 after it won the 1965 elections, which had paved the way for the granting of independence in 1966 by the British colonial government. What is not clear from the literature is why the first government following the 1965 elections did not establish a fully fledged local government system modelled along that parliament itself. The District Councils, after all, had lasted for five years – the life span of all subsequent parliaments in Lesotho. There is no evidence of the opposition BCP pressing for this development in parliament either. According to some analysts of Lesotho's politics, the BNP's decision to abolish the District Councils was based on the fact that it did not have control over them since they were dominated by the opposition BCP (Bardill & Cobbe, 1985:128; Quinlan & Wallis, 2003:157; Leduka, 2006:184). Thus the BNP's aim was to eliminate the limited local democracy and to put its own centrally appointed bureaucracy and the chieftainship in its place. This analysis misses the point that Lesotho's politics was then, as it is now, centred on the stake of the chieftainship, not only as a claimant to popular legitimacy and embodiment of the values of nationhood and identity (as reflected in chapter two above) at both the national and the local levels but also the divergent policies of the country's political parties towards the chieftainship. It could be argued that the BNP wanted to elevate the position of the chiefs from being subordinated to the elected non-chiefs politicians, and by so doing, its own position as predominantly a party of chiefs.

The policies of the first modern political parties indicated above provide an appropriate context within which the relationship between the chieftainship and elected local government structures should be analysed, explained and understood. The BNP and the MFP had broken away from the BCP because of policy differences between the three of them, key among which has been the chieftainship and its role in Lesotho's politics both at the national and local levels. The BCP advocated a "complete transformation" of the chieftainship and "wished to democratise the institution by *making it elective*" [italics added] (Nyeko, 2002:162). The then BCP leader, Ntsu Mokhehle, is quoted as having made antagonistic statements towards the chieftainship, fuelling suspicions within the chieftainship hierarchy that the institution would have no role to play under his party's government. In a statement at the

Conference of African States in Cairo, Egypt in 1961, he said:

The British officials have organized the Chiefs, the white businessmen, white missionaries and all are set against us. They have also formed, with the help of missionaries and Chiefs, small political gangs-erroneously called political parties... Early this month, the British Officers and Commanders led gangs of blanketed tribesmen to crush a two-day strike of the workers in the capital Maseru (Khaketla, 1971:56-57)

In a more pointed way, the BCP made it clear that both the chiefs and the Roman Catholic Church “will survive only if they accede to the wishes of the people and fulfil their modern roles in accordance with the general interests of society” (Weisfelder, 1969:24). Khaketla (1972:65) also notes that the BCP and its Leader, Mokhehle, threatened the chiefs by making it clear that if the BCP became government following the 1965 elections, “we will do away with the chiefs” and that “we remove the British today, and the next hurdle will be the chiefs”. Reference to the chiefs here also included the Paramount Chief, as the King was officially known then. The Paramount Chief would only be “tolerated if he abided by the constitution, which had taken care of the chiefs” (ibid). It seems that the BCP policy towards the chieftainship was largely informed by the constitutional monarchical conception of democracy, which is suitable for Lesotho since it allows some role for the chieftainship in the country’s political system. However, if implemented in its radical modernist fashion premised on the notion that the chiefs must be elected, the policy would have a potential to abolish the chieftainship and turn the chiefs into politicians. The BCP did not change this policy until it became government in 1993 and subsequently lost power, through floor crossing in parliament in June 1997, to its splinter party, the Lesotho Congress for Democracy (LCD), which in turn inherited the policy as will be seen later in this chapter.

On its part, being largely a party of junior chiefs the majority of whom were members of the Roman Catholic Church, the BNP’s policy towards this institution was friendly, and “far from advocating its abolition, the BNP felt that the chieftainship could be modified” in a way that preserves it (Gill, 1993:211). Machobane (1990:285-286) describes the BNP in terms of four features, two of which are crucial for our purpose here. First it was a party “highly patronised by the chiefs and led by a chief (Jonathan), and Mokhehle’s hostility towards the chiefs forced them to seek sanctuary

in the BNP or MFP” , second, it was a party of women in that it championed their franchise, capitalising on the BCP’s denial of this political right to them. van de Geer and Wallis (1984:50) also note that the BNP had a more conservative view towards the chieftainship and the Roman Catholic Church and as a consequence of this, the party received massive support from the chiefs and women. Its leader then, Chief Leabua Jonathan is quoted as having said:

We may adopt ourselves to modern ways, but in doing so there was no need to destroy sound traditions, culture and customs of our nation, because there were many good things to be found in them (Chief Leabua Jonathan cited in Weisfelder, 1969:19).

The third and smaller of the three parties, the MFP, was largely associated with the Principal and Ward Chiefs and the country’s monarchy. According to Gill (1993:210) the MFP represented the sympathisers of the new King Moshoeshe II and the Principal Chiefs whose ambition was to have an executive monarch in Lesotho who would “provide progressive and dynamic leadership, and reassert the role of the monarchy in Lesotho’s political development”. For others who were disgruntled with Mokhele’s perceived dictatorial leadership style, the “new Oxford-educated monarch could provide an alternative style of leadership and focus for the nation’s aspirations” (ibid). Thus the MFP advocated for executive monarchy rather than a constitutional one, the issue which separated it with the other two parties. The parties took these policy positions towards the country’s chieftainship institution into the independence period.

At the national level, however, the role of the chieftainship and that of the King has been settled through the adoption by Lesotho of the British style Westminster system of parliament, similar in many respects, to the mixed government model. The country has a bicameral parliament comprising the King as head of state, Senate, and the National Assembly. The Senate is made up of all twenty-two Principal and Ward Chiefs and eleven other nominated members (nominated by the King on advice of the State Council), while the National Assembly consists of hundred-and-twenty (120) members eighty (80) of whom are elected from the constituencies and the other forty (40) on the basis of Proportional Representation (PR) party list). The role of the Senate is largely advisory although it does have veto powers on bills aimed at amending the entrenched clauses of the Constitution. This means therefore that

Lesotho has effectively adopted the mixed government model at the national level. Paradoxically, however, the ruling LCD has adopted a different model at the local level, owing to its negative policy towards the chieftainship as will be clear later in this chapter. The point I am making is that, by forming and joining both the MFP and the BNP, the chieftainship acted in ways that protected itself from the policies of the BCP which threatened its corporate and individual interests and its very existence.

The BNP government initially suspended the District Councils through *Government Notice No: 8 of 1966*, later permanently abolishing them through the *Local Government Repeal Act, 1968*, and establishing in their place the government-appointed councils, which were supervised by a political supervisor of cabinet status (van de Geer & Wallis, 1984:19). The BNP government, however, did not complain about the actual performance of the District Councils. Rather, it believed that they inhibited a smooth flow of communication from central government to the people at the grassroots. As van de Geer and Wallis (1984:18) put it, the BNP government saw the District Councils as “complicating the lines of communication between the central government and the districts and their powers to collect revenue”, an “extra cog in a machine” that ‘created near-chaos’ in the well-established deconcentrated system with which everybody was happy” (ibid). Besides, the arrangement was too costly for the BNP government, especially with regard to the payment of staff salaries and wages and the strong District Councils had become centres of political dissent and opposition” (ibid). This is because the District Councils were dominated by the opposition BCP.

Even as the BNP regime abolished the District Councils, it did not doubt the value of local government. It merely found the system too costly at the time and politically suspect as it was dominated by the BCP. It was clear to the regime that Lesotho would, at the later stage, need a decentralised system. According to van de Geer and Wallis (1984:18), this had been stated in Sir Walters Coultts *Report on the Structure and Administration of the Government of Lesotho, 1966*, that Lesotho would need some form of local government in the near future though not necessarily on Western lines. Consequently, the BNP government made efforts through the support of donors, such as the Canadian International Development Agency (CIDA), to find ways of establishing a decentralised system of government (ibid: 19). The upshot of this effort

was the passing of the *Urban Government Act, 1983*, by the BNP-dominated Interim Parliament (1971-1985), which was to provide a legal framework for the envisaged urban councils. However, the regime did not implement the *Urban Government Act, 1983*, until it was ousted by the military on 20<sup>th</sup> January 1986.

### **3.4. The military government and its brand of local authorities, 1986-1993**

The *Urban Government Act, 1983* was implemented, albeit partially, by the military government after assuming state power in 1986. The regime established the Maseru City Council (MCC) as an elective body and pioneer project of a decentralised system, which was to be extended to other districts of the country if it succeeded. It is important to note that the three Principal Chiefs whose area of jurisdiction covers the Maseru city were allowed seats in the MCC on *ex officio* basis. But the Council has remained a Maseru city project to-date since no other municipal council has been established even after the 2005 local elections. The council's performance in service delivery in general and land allocation in particular has been minimal owing to its limited capacity, having met only about 30 percent of land demand, and having been "conspicuously absent in areas of evolving semi-legal land delivery processes where over 80 per cent of the city's population now lives" (Leduka, 2006:193).

The military government had also introduced, alongside the Maseru City Council, its own brand of *Development Committees* under the *Development Committees Order No: 9 of 1986* later amended in 1991. These councils included in their membership, the chiefs who were their *ex officio* members and chairmen at all their three levels, namely, village, ward, and district as provided for under Sections 1 (3), 9 (1), and 13 (3), respectively. On becoming members of the Committees as provided for under the *Order*, the chiefs retained their status as law and order officers. This is not surprising, however, given that the *Order* did not spell out the exact role of the chiefs in these structures. Neither did it say what would happen to the powers conferred on them by the *Chieftainship Act, 1968*. The rest of the Committee members were elected at *lipitso* or public gatherings (*Order No.9 1986*). Thus, electing councillors meant that the residents of a particular area were assembled at one place, usually that of a chief, and asked to "elect" their representatives in the Development Committees.

This was not election in a conventional secret ballot, but one in which the names candidates were suggested and people indicated by raising their hands as to which candidates they preferred for different positions until all available positions had been filled. This election excluded the positions of chairmen of the Committees as this was reserved for the senior most chief in the area. The *Order* also conferred a considerable amount of power to the Principal Chiefs because additional committees would be established as desirable “with the approval of the Principal Ward Chief of the area” (*Order No. 9 1986 (2) (1)* ).

This type of “election” could be expected under a military government because the junta had no democratic agenda. Thus, the chiefs were key players in the governance structures of the villages, wards, and districts in line with the regime’s national agenda of having bestowed executive and legislative powers in the King after it assumed power in 1986. This situation changed as Lesotho reintroduced democratic rule, following the 1993 transitional elections, which were won with a landslide victory by the BCP, sweeping all the then 65 electoral constituencies.

### **3.5. The BCP/LCD government and the introduction of elective local government system, 1993 – to date**

The BCP had promised the Basotho nation that if elected in 1993, it would ensure greater devolution of political power to the grassroots through the reinstatement of democratic local government. It said in its 1993 elections manifesto, for example:

The BCP is convinced that true development and good governance require grassroots involvement in both planning and decision-making. To that extent, the BCP government shall; (a) ensure the establishment of councils at district; constituency and village levels (b) facilitate a democratic relationship between the central and local governments (Basutoland Congress Party Manifesto, 1993:7).

Thus, as a clear commitment to a decentralised system of administration, the BCP government developed the *White Paper on the Establishment of Democratic Local Government, 1996*. The *White Paper* outlines the commitment, policy justification for and as an objective of the then envisioned local government system. It reads:

The present government has an unequivocal manifesto commitment to the country to introduce local government during its term of office. This

political commitment is highlighted in the three objectives.

- (i) Deepening and widening access to the structures of Government in Lesotho, and giving the electorate greater democratic control over development processes and making public institutions more accountable to elected representatives.
- (ii) Moving decision making, resource allocation and district level planning and local development and public services physically closer to the people
- (iii) Distributing GOL's [Government of Lesotho] human, institutional and infrastructural resources and capacity equitably across the country (Government of Lesotho, 1996:1-2).

The *White Paper* was to lay the basis for the local government law, the *Local Government Act, 1997*, which together with the national Constitution, provide a legal and constitutional framework for the local government system. The Constitution empowers Parliament to establish local authorities with powers to determine their own affairs and develop themselves both in rural and urban areas of Lesotho. It reads:

Parliament shall establish such local authorities as it deems necessary to enable urban and rural communities to determine their affairs and develop themselves. Such authorities shall perform such functions as may be conferred by an Act of Parliament Constitution of Lesotho, 1993, section 106 (1).

Section 4 of the *Local government Act, 1997*, establishes the local authorities and provides for the composition of the councils at three levels (Community, Rural and Urban or Municipal respectively), which include two "elected" gazetted chiefs. The BCP administration did not fulfil its promise by introducing the envisaged local government system, thus postponing this seemingly impending dilemma of accommodating the chieftainship within an elected local government system. What is noteworthy here is that the BCP had not abandoned its 1950s policy of seeking to "democratise" the chieftainship by making it elective. The *White Paper* sent out mixed messages, which highlight the dilemma of the government with regard to the chieftainship. On the one hand the *White Paper* claimed to acknowledge the importance of the chieftainship institution, while on the other it insisted that the chiefs must be popularly elected. It reads:

The new system of local government has been designed to reflect democratic principles of governance but also takes into account the social and cultural stability and continuity offered by traditional authorities [...] (ibid: 17).

It further says:

The new local government system will ensure that depending on the size of the local authority, between *two to four councillors will be chiefs directly elected by the local voters* from the ranks of gazetted chief within the electoral districts [italics added] (ibid).

The confusion caused by these parts of the *White Paper* is that the chieftainship institution is, by definition, not elective. If the chiefs get elected, they become politicians (Kapa, 2005:214). This move rekindled the suspicions on the part of the chiefs that the BCP was determined to abolish the institution, and these suspicions still run deep even now among the chiefs and the leaders of opposition parties and academics in the country, as will be indicated and discussed in chapters four and five of this thesis. The exact role of the chiefs within the decentralised system is not clearly spelled out in the *Act* and this has had the effect of setting the councils and chiefs on a collision course. Rhetorically, the regime has remained committed to the project, however, as this dominated its political statements until June 1997 when it split into the Lesotho Congress for Democracy (LCD).

The LCD government abolished the Development Committees bequeathed to it by the military junta. However, it did not democratise the system. Rather, it simply replaced the Development Committees with its own appointed Interim Councils in 2001 (Shale, 2004:4). According to Shale, the introduction of the Interim Community Councils heralded power contestation between the chiefs and the councils over land allocation, the outcome of which has been to “arrest development” (ibid). The chiefs continued to allocate the land without consulting the councils and in total disregard of the law because they felt that “they have been stripped of their powers” (ibid). Shale recommends, as a solution to the conflict between the chiefs and councillors, a “second track diplomacy approach” in which all stakeholders, namely, the chiefs, the councillors, and the Ministry of Local Government and Chieftainship could discuss the basis for the conflict and jointly work out a common solution (Shale, 2004:9-10).

The recommendation is in order insofar as it addresses one aspect of the issue. However, the author does not deal with the controversial issue of the membership of the chiefs on the basis of “nomination” by other chiefs as provided for in the *Local Government (Amendment) Act, 2004*, or even their “election” by the population as

envisioned by the *Local Government Act, 1997*. He notes that the government has indicated its desire to have the Senate wholly elective, thus spurring fear within the chieftainship that it will be abolished. It was as recently as March 2008 that the issue of abolition of the Senate (of which two thirds is made up of Principal and Ward Chiefs on *ex officio* basis) and the chieftainship in general emerged<sup>12</sup>. Although, Shale wrote before the government announced the date for the local government elections that established the current councils, the issues he that raises have not been addressed in the post-local elections period.

In 2000, the LCD government developed a comprehensive document, *The Lesotho Vision 2020*, which outlines the key socio-economic and political challenges facing the nation as well as the strategies that the government would put in place to overcome them. Of relevance to this study in this *Document* is the commitment by the government to implement the then long overdue local government system. The *Document* said in relation to this:

The country is working towards decentralization by implementing the Local Government Act 1997. It is envisaged that local government elections will be held in 2004 to increase participation by the ordinary citizens and the rural poor in governance process. This will enable individuals and civil society in general to contribute to the development process. The challenge in this regard is to empower the imminent local government authorities, and to improve the chieftainship as a strategy to complement governance at grassroots level (Government of Lesotho, 2000:11).

In this direction, therefore, the government prepared another policy document as a

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<sup>12</sup> The Chiefs in the House voted unanimously against this *Constitutional Amendment Bill* whose object was to make the High Court of Lesotho's judgments on elections-related disputes appealable. The Constitution provides that the decision of the High Court in these matters is final. The ruling party wanted the Constitution to be amended so that the case, which was still before the High Court, on the allocation of forty (40) Proportional Representation seats could be heard by the Court of Appeal. This was a very sensitive case, which had the potential of causing the ruling party to lose a total of twenty-one (21) seats leading to a majority of only sixty-two (62) in a 120-member National Assembly. The argument of the Chiefs in the upper House was that the *Bill* should wait until the High Court had made its ruling on the case so that the *Bill* should not be construed as an attempt to pre-empt the outcome of the case. They argued that to pass the *Bill* then would be tantamount to abuse of power by the ruling party to manipulate the Constitution in order to protect its government. The ruling party had secured a 2/3 majority required to pass the *Bill* in the National Assembly, and it had to get two thirds majority in Senate as well as per the constitutional requirement on all entrenched clauses of the Constitution. As a result of the decision by the chiefs to vote against the *Bill*, some government ministers threatened the Chiefs of the possibility of abolishing the Senate and the chieftainship. But the chiefs vowed that they were acting in national rather than partisan interests and are ready to face a referendum if need be (Kingdom of Lesotho, Parliamentary Debates of the Senate, Daily Hansard, 19<sup>th</sup> March 2008).

basis for the new local government system in 2003. This document is titled *Programme for Implementation of Local Government in Lesotho: Concepts, Structures and Roles, 2003*, and this reiterates government commitment to the local government system thus:

Lesotho's development strategy is premised on two overarching challenges, poverty reduction and improving service delivery, hence the adoption of the Poverty Reduction Strategy Paper (PRSP) and Public Sector Improvement Reform Programme (PSIRP) by the Government of Lesotho. Central to implementation of the two aforementioned programmes, is Government recognition that human development is about the people and expanding their choices to lead lives they want. This includes the creation of an enabling environment that enables a participatory approach to development, policy formulation, implementation and monitoring. It is for this reason that the Government of Lesotho remains committed to introducing Local Government as a pivotal strategy to implementing the PSIRP, the PRSP and thus realization to the National Vision (Government of Lesotho, 2003:1).

The government further passed two pieces of legislation, namely, the *Local Government Elections Act, 2003* and the *Local Government [Amendment] Act, 2004* the essence of which, for purposes of this thesis, was to provide for the electoral model, to be used in local elections, and the "nomination" of the chiefs by other chiefs into the councils respectively. Contrary to the views of the opposition parties in Parliament, which called for the use of the Mixed Member Proportional (MMP) electoral model as applied in parliamentary elections at national level, the government used its majority power to amend the *Local Government Elections Act, 1998*, at the end of 2003. This law changed the electoral model for local government elections from the MMP - introduced to make Lesotho's Lower House of Parliament more inclusive and representative of wider national interests - to First-Past-The-Post (FPTP). The intentions of the government in refusing to use the MMP, was not clear then, but it is now clear that it wanted the discredited FPTP system because this gives the government majority in national parliament, and it sought to achieve similar outcomes at local level. This observation derives from the fact that the ruling party along with its splinter party, the All Basotho Convention (ABC) formed electoral alliances in the run-up to the February 2007 elections, which effectively turned the MMP system into a Parallel one (Kapa, 2008). The Parallel model produces similar electoral outcomes to the FPTP.

With regard to the *Local Government [Amendment] Act, 2004*, the government sought to address the controversy surrounding the “election” of the chiefs into different Councils as envisaged in and provided for under the *Local Government Act, 1997*. Both Section 4 of this *Act*, and the 2003 government policy document on local government had provided that gazetted chiefs would be members of the councils if “elected”. But, the government seems to have realised the controversy around this requirement and backed down from the ruling party’s old policy towards the chieftainship through the *Local Government [Amendment] Act, 2004*, to provide that the chiefs would have to be “nominated” by other chiefs into the councils (Section 4 (1) (a)). The full membership of the councils is provided below.

In January 2005, the government announced the 30<sup>th</sup> April 2005 as the date for holding local government elections. The local elections were held within the framework of both the *Local Government Elections Act, 2003*, and the *Local Government [Amendment] Act, 2004*. Mbetu and Tshabalala (2006:25) provide some data on the councils ushered in by these elections. According to them, 3896 candidates contested the poll in 129 Community Councils. These elections were characterised by a low turnout of 33 percent, with 2360 standing as independent candidates. The ruling LCD represented by 1015, the BNP by 377, and 144 representing other parties. The independent candidates won 60 percent of the seats, the LCD 26 percent and the BNP 10 percent respectively. Women representation accounted for 58 percent, which was way above the government target of 30 percent. All chiefs in the council areas were men. Maseru District had a total of fifteen (15) Community Councils excluding the Maseru City Council, and a total of thirty (30) gazetted chiefs who were members thereof.

Structurally, the local government system consists of Community Councils, Urban Councils, Municipal Councils, and District Councils in that order (*Local Government [Amendment] Act 2004*, (4) ). In terms of the membership, each Community Council is composed of fifteen (15) popularly elected members and two (2) gazetted chiefs. The Urban Councils comprise of thirteen (13) popularly elected members and not more than two (2) gazetted chiefs. The Municipal Council is made up of between eight (8) and fifteen (15) elected members and not more than three (3) gazetted chiefs.

In all cases, the chiefs must be “nominated” by other chiefs in each of the Councils. The composition of the District Councils is determined by the Minister of Local Government and Chieftainship Affairs through a notice in a government gazette. Similarly, the two (2) chiefs become members of the District Councils through “nomination” by other chiefs from within the Community Councils.

The District Councils are headed by politically appointed District Administrators, who are followed in rank by District Council Secretaries, also appointees of the central government, while the Municipal Council is headed by an elected Mayor. There were also to be District Development Co-ordinating Committees composed of councillors and government officials whose duty would be to co-ordinate the activities the Districts. However, this structure has not been established (Mbetu & Tshabalala, 2006: 25). All these Councils have a life span of five years in terms of section 8, *Local Government [Amendment Act, 2004]*.

The councils have powers to make their own by-laws relating to an array of issues relevant to their own areas. Community Councils are empowered by the *Local Government [Amendment] Act, 2004*, to perform the several functions as they appear under *Schedule Two* of the *Local Government Act, 1997*. It may be argued that the law is clear on the functions to be performed by the Community Councils, and that there should not be any basis for any misunderstanding whatsoever. However, there appears to be a big disjuncture between what the law says, on the one hand, and the actual practice on the ground on the other: chiefs continue to perform some of these functions and the ordinary people continue to seek chiefs’ services relating to land allocation (Leduka, 2006:192). As Leduka (2006:181) argues rightly, any useful analysis of land management issues in Lesotho should not ignore the role of the chieftainship institution. This points to lack of clearly delineated responsibilities between the chiefs vis-à-vis local authorities leading to conflict between these actors (Mbetu & Tshabalala 2006:26; Leduka, 2006:205; Tsikoane *et al.* 2007:48:49). It is now over five years since the local councils were established.

### **3.6. Conclusion**

I have, in this chapter, attempted to provide a descriptive and historical background to

the evolution of the local government system in Lesotho since colonial rule until 2005, when an elective system was introduced based on universal franchise. I have focused on the policies of the major parties on the question of Lesotho's chieftainship and its role and position in the country's politics in general as a context, through which the local government system should be situated, meaningfully analysed and understood. The decision to situate and consider the chieftainship institution in broad politics of the country is guided by my conviction that without this approach, any study on the subject would be meaningless due to the cultural and historical embeddedness of the former in the latter. I have demonstrated that the 1960 local government system had blended the two structures of government along the constitutional monarchical system, which is not only advocated for African political systems by the advocates of the mixed government model but also, in my judgement, very suitable for Lesotho at local level as it has been adopted at the national level.

The agency of the chieftainship as an institution and that of the chiefs as individuals capable of adapting to and changing their socio-political conditions cannot be ignored in Lesotho's context, as it has been acknowledged in other countries in Africa. In other words, the behaviour and reaction of the chiefs as individuals and the institution of chieftainship co-vary with political parties' policies towards them (especially those of the governing party), producing different political outcomes in the process. That is to say, the behaviour and reaction become negative when policies are negative but positive when policies are positive, leading to different implications for democratic consolidation. In short, radical liberal policies towards the chieftainship institution tend to trigger a negative reaction from the institution, hence, negative outcomes such as political instability threatening the democratic consolidation process. The more accommodationist/corporatist policies by the government, leaning towards a mixed government model, tend to produce political stability and democratic consolidation. In fact Lesotho has experience with how the chieftainship can use its agency in manners that produce outcomes, which undermine rather than promote democracy. In 1994, the King overthrew the elected government of the BCP because the government had refused to reinstate his father who had been dethroned by the military government. In 1998, again, the BNP (which has been described above, essentially a party of junior chiefs) and the MFP (also representing a section of the senior hierarchy of chiefs and sympathetic to the notion of executive monarchy), were at the forefront of the forces

that almost ousted the LCD, had South Africa and Botswana not intervened militarily. At the local level, too, the chiefs may not have the capacity to produce such negative political outcomes, but may, if their relationship with the elected councils is not carefully managed, sabotage the efforts of the latter, and then inhibit the process of democratic consolidation.

Thus, if the policies of political parties in general, and those of government party in particular, had triggered a particular reaction from the chieftainship, with implications for the whole political system (positive or negative), five key questions arise at this point: what are current policies of Lesotho's political parties towards the chieftainship institution? How relevant is the chieftainship to Lesotho's contemporary politics? How do the chiefs interact and work with the current local authorities? What kinds of challenges have emerged in this interaction so far? How are and can the challenges be managed or overcome to aid the process of consolidating democratic rule in the country? These questions will guide the next section of this thesis.

## CHAPTER FOUR

### The Current Policies of Lesotho's Main Political Parties on the Chieftainship Institution

#### 4. 1. Introduction

The traditional form of authority in Africa is not only ubiquitous but is also an integral part of the lives of Africans, especially in rural areas. The Economic Commission for Africa (ECA) notes that "...large segments of the rural populations, the overwhelming majority in most African countries, continue to adhere to traditional institutions" (ECA, 2007:1). This is true in Lesotho's context too. Quinlan notes that "the chieftainship still expresses to a large extent the social relationships which constitute family and society in rural Lesotho" (Quinlan, 1996:401) and "any analysis of development management and institutional change in Lesotho cannot afford to neglect the chieftainship (Quinlan & Wallis 2003:170). Thus, any political party aspiring to assume state power has to, in one way or the other, say something about and adopt a policy position in relation to the chieftainship institution. Even the military government knew that in order to legitimise its authority, it had to rely on the support of the King, who is at the pinnacle of the chieftainship hierarchy and gave him both the executive and legislative powers, albeit temporarily<sup>13</sup> (Leduka,

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<sup>13</sup> The military junta had through *Lesotho Order No. 2, 1986*, conferred on King Moshoeshe II the executive and legislative powers. The *Order* provided under section 9 (1) that "The executive and legislative authority in Lesotho is vested in the King and may be exercised by him either directly or through the Military Council or the Council of Ministers or other officers or authorities of the Government of Lesotho". This sub-section notwithstanding, sub-section 2 made it mandatory for the King to act in the exercise of these powers in accordance with the advice of the Military Council (Order No. 2 1986 cited in Machobane, 2001:83). Thus, as Machobane (2001:80) rightly observes while the King "assumed his historic role of unprecedented exercise of political power since independence, with tenacity and sense of mission" his "power was more *de jure* than *de facto*". But he did not act simply "as a rubber stamp" to the decisions of the new rulers; he and the military men were "two visible horns on a bull's head" (ibid). Bitter conflicts and wrangling over power ensued among the members of the Military Council – in particular between the Chairman of the Military Council (the *de facto* legislative body) and Council of Ministers (the executive authority), Major-General Justin Metsing Lekhanya, and Colonel Joshua Sekhobe Letsie, the King's close relative and favourite. Subsequently, Major General Lekhanya instigated the ouster, without consulting the King, of Colonel Sekhobe and four other members of the Military Council through a mutiny by junior army officers and also had Sekhobe arrested by the military officers, convicted, and imprisoned for 15 years for complicity in the gruesome murders of Montši Makhele and Tšepo Sixishe, two former ministers in the BNP cabinet and their wives. The King exhibited extreme indignation about Lekhanya's actions and made a written demand for explanation from the government as to why it acted as it did. But Lekhanya went even further to effect a massive Cabinet reshuffle in which eight Members of the Council of Ministers known to Lekhanya to be supporters of the King were dismissed from the government. These actions exacerbated the King's anger and heightened confrontation with the government the result of which was his forced exile to the United Kingdom and, later, stripping of all the powers conferred on

2006:186). It is against this background that Lesotho's political parties have formulated policies on the basis of which they persuade the electorate to vote for them in elections.

This chapter presents and compares the current policies of Lesotho's main political parties on the country's chieftainship institution. The main objective here is to understand such policies and the potential they have for providing the basis for retaining the chieftainship and ensuring its co-existence with the elected state structures for consolidating democratic rule suitable for the country. In this regard, the key questions I attempt to answer are: what are the current policies of Lesotho's main political parties on the chieftainship institution? Have the parties been consistent or not in such policies and what factors account for these? How can the chieftainship and the elected state structures co-exist to consolidate a kind of democracy suitable for Lesotho's context, especially at local government level?

To answer these questions and to understand the policy position of the both the BCP and the LCD governments, I review the elections manifestos of these parties and some relevant government documents. I also use the data generated through the interviews that I conducted with the leadership of the seven (7) selected political parties and the Minister of Local Government representing the ruling party. I supplement these with the views and perspectives of the country's academics who have expertise on these issues.

#### **4.2. Political parties' policies on the chieftainship institution**

Elections manifestos have been widely used in studies aimed at determining and assessing political parties' policies or positions on a range of issues aimed at attracting voters in elections. These studies rely on the content analysis method based on quantitative research designs in *Large N* studies, covering not only a range of variables but also several countries case studies in Europe (see for example the widely

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him under Order No. 2 and transfer of these powers to the Military Council, and his subsequent dethronement. He was replaced with his unwilling son, then Prince Mohato Seeiso (now King Letsie III) on the 12<sup>th</sup> November 1990 by the Lekhanya regime (for a detailed account on these developments see Machobane, 2001, Chapter IX).

used Budge *et.al.* (2008) *Mapping Preferences: Parties, Electors and Governments, 1945-1998*; Benoit & Laver (2008) Rejoinder Comparative Manifesto Project (CMP).

However, the content analysis method is appropriate for both quantitative and qualitative studies. Babbie (2007:320) defines content analysis as "...the study of recorded human communication. Among the forms suitable for a [content analysis] study are books,[..] newspapers, [...] laws, and constitutions, as well as any components or collections thereof." He indicates also that it is quantitative in the case where it results in counting and that it is appropriate for "a qualitative assessment of materials" (ibid: 328). Among the advantages of a qualitative content analysis are the fact that it is economical in terms of time and money, and that it is unobtrusive in that it does not have an effect on what is being studied (ibid: 330). However, like all other research methods, a qualitative content analysis of documents has its own drawbacks. The main one, as Babbie notes, is that it is limited to the "examination of recorded communications" (ibid). Peräkylä (2005: 870) also submits that although qualitative text analysis

may be the best choice in research focusing on written texts, especially in research designs where qualitative text analysis is not at the core of the research [...] is in a subsidiary or complementary role, no more sophisticated text analytical methods may be needed (Peräkylä, 2005:870).

I use qualitative content or textual analysis, as Peräkylä suggests, to complement the data generated through interviews and to overcome the limitations that Babbie identifies.

In southern Africa, too, the manifestos of political parties have also been used in qualitative research to determine policy positions of parties on an array of issues of national importance. The Electoral Institute of Southern Africa (EISA) has commissioned a number of research projects, based on a qualitative approach in the Southern African Development Community (SADC) region on political parties and governance in which parties' manifestos were reviewed to determine a number of issues including policies (see for example Matlosa & Sello, 2005; Kadima, Matlosa & Shale, 2006).

Although it has been defined differently depending on the context and purpose for which it is used, policy is “a relatively stable, purposive course of action, followed by an actor or set of actors in dealing with a problem or matter of concern”. It “focuses on what is actually done instead of what is only proposed or intended, and it differentiates policy from a decision, which is essentially a choice among competing alternatives” (Anderson, 1997:9). This definition is useful because it does not limit policy to governments (for example, whatever governments choose to do or not to do (ibid: 4). Rather, it is more generic and encompasses other actors in political systems, which in this case include political parties as political entities aspiring to assume state power (Hague & Harrop, 2001:167). I adopt this conceptualisation of policy in this study. For political parties, however, policies remain a desire or intention to be realised only upon assuming state power, while for governments, it means an actual course of action or inaction on a particular issue, in this case the chieftainship.

As I will show, in this chapter, some political parties take a modernist position and regard the chieftainship as some kind of a “problem” to be solved through being “democratised” or abolished since they consider it as an anachronistic political authority that is inimical to democracy (Makoa, 1990; Rugege, 1990; Mamdani, 1996; Ntsebeza, 2005). Others (those calling for the mixed government model) see it as functional to democracy (Owusu, 1993, 1997; Sklar, 1999a, 1999b, 2001) and can and should be moulded to suit the needs of the Basotho society. These parties are: the All Basotho Convention (ABC), the Basutoland African Congress (BAC), the Basutoland Congress Party (BCP), the Basotho National Party (BNP), the Lesotho Congress for Democracy (LCD), the Lesotho People’s Congress (LPC), the Marematlou Freedom Party (MFP), and the Popular Front for Democracy (PFD). All these parties have representation in the national parliament<sup>14</sup>.

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<sup>14</sup> Lesotho had, at the time of writing this thesis, twenty (20) political parties, which have registered with the Independent Electoral Commission for the purposes of contesting parliamentary and local elections, and with the Law office as legal entities under the *Societies Act, 1967*. following the 2002 parliamentary elections, the first the country held under the newly introduced Mixed Member Proportional electoral model, which had replaced the hitherto First-Past-The-Post system in use since pre-independence poll of 1965, ten (10) of the country’s nineteen 19 parties secured representation in parliament. Of these ten parties, the ruling Lesotho Congress for Democracy had 79 of the 120 seats. This was followed by its then arch rival, the Basotho National Party (BNP) with twenty-one (21) seats, the National Independence Party (NIP) and the Lesotho Peoples’ Congress (LPC) with five (5) seats respectively. The Basutoland African Congress (BAC) and the Basutoland Congress Party (BCP) followed with three (3) seats respectively, and the other three smaller parties, the Marematlou Freedom Party (MFP), the Popular Front for Democracy (PFD) and the National Progressive Party (NNP)

Although my intention was to review the latest elections manifestos of all eight (8) selected political parties on the basis of which these parties contested the 2007 elections, absence of state funding for political parties and the fact that this was a snap election unknown in Lesotho's politics militated against parties developing and producing manifestos. The former leaves most parties facing serious financial constraints and thus, unable to organise and prepare themselves for elections. The latter made it difficult for the parties to seek sources of money to be used for, *inter alia*, production of manifestos. Consequently, some of them have not been able to produce manifestos in preparation for the 2007 poll. They used their 1998 and 2002 elections manifestos instead. Since the policies of these parties on the chieftainship have remained relatively similar over the years, I had to use available copies of these manifestos.

All the seven (7) political parties have policies on the chieftainship, some more elaborate than others. The ABC, BCP, BNP, LCD, MFP elections manifestos cover the chieftainship in varying degree and spell out what each party believes the role and place of the institution should be in the country's politic and administration. Although the BAC and the PFD did not have elections manifestos, their policies on the chieftainship were articulated by their senior officials, as I will show below.

#### **4.2.1. The All Basotho Convention (ABC)**

The ABC was founded in October 2006, about four months before the 17<sup>th</sup> February 2007 parliamentary elections, by the disgruntled former Members of Parliament (MPs) of the ruling LCD who crossed the floor to form the party. Its leader, Thomas Motsoahe Thabane, is one of Lesotho's long time civil servants, turned politician, with a public service record spanning more than four decades. Thabane has held ministerial portfolios in the military and LCD governments respectively. He was also a member of the LCD executive committee before he formed the ABC with his colleagues.

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securing one (1) seat each. The twentieth party, Senkatana Party, was formed after the 2007 elections by two former members of the ACB and their colleagues complaining about the latter's "authoritarian leadership style".

Although a very young party, the ABC posed an unparalleled electoral threat and challenge to the ruling LCD prompting the country's Prime Minister, Pakalitha Mosisili, to call an early election. The snap election was intended to pre-empt the new party's effective campaigns, which would give it the opportunity to reach out to the voters throughout the country thereby challenge the LCD's hold on state power. The ABC performed very well in these elections by winning unprecedented seventeen (17) constituency-based seats in Lesotho's 120 parliamentary seats, by far the largest achievement by the country's opposition party since the 1993 transitional elections. All other opposition parties ( the now defunct Sefate Democratic Union (SDU), the BNP, and the LPC have each won only one (1) constituency-based seat in 1993, 1998, and 2002 polls respectively).

The ABC's leadership's main criticism of the LCD and the reasons for leaving the latter were widespread corruption in the public sector and failure to implement the otherwise good public policies and (Matlosa & Shale, 2008:146; Kapa, 2008:351). More importantly, there was also intense power struggle and squabbles within the LCD, regarding who would succeed its leader and Prime Minister, Pakalitha Mosisili (Matlosa & Shale, 2008:146). It would have been politically dangerous for Thabane and his colleagues to remain in the LCD even when they saw that the conflicts would not be amicably resolved. The LCD would simply leave them alone until the end of the parliamentary term only to exclude them when selecting candidates for the next poll, which was due in about six months or so. They had to move swiftly to ensure their own political survival. On its policy position on chieftainship, the ABC states that:

In order to improve justice, public safety and good governance, the ABC government will respect the chieftainship institution, especially in matters concerning the *Laws of Lerotholi*, which are the embodiment of *Sesotho* culture. It will strengthen and encourage the chieftainship to participate strongly in local the government system [my translation] (ABC, 2007:25).

According to the party's leader, Motsoahae Thomas Thabane, the ABC recognises the chieftainship institution and regards it as an important part of the Basotho nation. He said:

*The ABC recognises the existence of the chieftainship due to its historical role in shaping Lesotho's politics and national development, championed by Moshoeshoe I. The chieftainship in Lesotho is*

*representative of Basotho as different identities* (Thabane 2009, interview<sup>15</sup>).

It is clear from this policy that the party regards chieftainship as an institution that can help Lesotho to achieve three objectives, namely, justice, public safety, and good governance. The party also regards chieftainship as a representative of the legacy of the founder of the Basotho nation, King Moshoeshoe 1, and an embodiment of Basotho national identities and customs codified under the *Laws of Lerotholi*. These identities are represented by the four main groups in society, namely, the *Bakoena*, *Bataung*, *Batlkoa*, and *Makhoakhoa* respectively, which formed the Basotho nation in the 1820s. The groups still have their own Principal Chiefs. Thabane's views on the chieftainship are consistent with his party's manifesto.

#### **4.2.2. The Basutoland African Congress (BAC)**

The BAC is one of the splinter groups from the BCP. The party was formed in 2002 by a group of BCP members who were dissatisfied with the party, following incessant internal wrangling and power contestations within the party. The formation of the party was an attempt to go back to the original name of the BCP (Matlosa & Sello, 2005:31). It claims to represent the interests of marginalised social groups in society while also espousing liberal democratic ideology (ibid).

The BAC is led by Dr. Deborah Khauhelo Raditapole, one of few long-time women politicians in Lesotho. She is widely respected as a person of high moral standing who is less concerned with self-aggrandisement afflicting many politicians in Lesotho. She has recently resigned from the leadership of the BAC: a rare move by Lesotho's politicians almost all of whom have never voluntarily relinquished power. She had earlier in 1996 also resigned along with Dr. Moeketsi Senaoana from cabinet positions as ministers of Trade and Industry and Finance respectively during the BCP administration in protest against the removal from office of their colleagues by Dr. Ntsu Mokhehle. The fired ministers were: Ntsukunyane Mphanya, Tšeliso Makhakhe, Sekoala Toloane, and Molapo Qhobela (Pule, 1999: 6). The BAC was able to secure three (3) PR seats in the National Assembly in the 2002 parliamentary elections, and

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<sup>15</sup> Interview with Mr. Thomas Motsoahae Thabane, 22<sup>nd</sup> January 2009, Maseru

has formed a registered election pact with the LPC and one faction of the BCP in an attempt to reunite the 'Congress' family parties. These together were able to win only two seats (2) - one under the PR list and taken by the Dr. Raditapole, and the other under the First-Past-The-Post system, which went to Mr. Kelebhone Maope of the LPC.

The BAC was not able to produce a manifesto for the 2007 elections, and could not provide a 2002 copy. Besides, I was not able to interview the BAC leader. She was not easily accessible because she was busy with her parliamentary work. I managed to interview, instead, the party's secretary-general and business man, Mr. Mohopolo Macheli.

The BAC believes that "the chieftainship is not replaceable now until some institution can replace it. Basotho can keep and use the institution if it is supportive of government" (Macheli 2009, interview<sup>16</sup>). Macheli argued that the LCD government has left the burning issue, namely, land allocation and control in the hands of the councillors and the chiefs for the two to fight over. The remedy to this problem, according to him, is a clear legislation that should define unambiguously the powers of the chiefs and those of the councils in relation to land allocation and other areas of contention. If the party's declared ideological orientation (liberal democracy) is seriously considered, it is not difficult to understand its policy on chieftainship. Given its hereditary character, the chieftainship does not have a place in liberal democracy and in the BAC's policy. Thus, the BAC attitude towards the institution is that it is transitory as it supports it in its current form but when a new system has been found it can be replaced. Another qualification of support for the institution is that it will exist as long as it is supportive of government. If not, a BAC government is likely abolish it.

#### **4.2.3. The Basutoland Congress Party (BCP)**

The post-1993 policy of the BCP towards the chieftainship in Lesotho is reflected in the party's 1998 elections *Manifesto*. The policy seems to have shifted from what it has been in the past. The party's *Manifesto* captures both the monarchy and the

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<sup>16</sup> Interview with Mr. Mohopolo Macheli, 19<sup>th</sup> January 2009, Maseru.

chieftainship and states that “the monarchy shall remain the pinnacle of State institutions in accordance with the provisions of the Constitution” and that “the King will remain an embodiment and custodian of national unity” (BCP, 1998:6). With regard to the chieftainship institution, the *Manifesto* is elaborate and states that:

Chieftainship has an important part to play in the life of the Basotho people. Chieftainship is a traditional feature of the Basotho people. The significance of chieftainship is evidenced in the songs, praises and daily activities of the Basotho people. The BCP is fully aware of the significance of chieftainship and it therefore, pledges to create and enhance harmony and good working relations between the chiefs and the people. The BCP believes that the chiefs and the public have to co-operate and share power (ibid).

The party undertakes to:

- a) ensure that the chiefs are responsible to the people and that they work hand in hand with committees/councils elected by the people,
- b) see to it that the chiefs treat people without discrimination (ibid).

The BCP commits itself that, if it becomes government, it will:

- a) amend the laws governing the chieftainship institutions and in order to clarify the roles of the chiefs and those of the people;
- b) support the chiefs to maintain peace between communities;
- c) assist the chiefs to protect the properties of the people;
- d) offer training to the chiefs to enable them to perform their duties efficiently;
- e) strengthen the offices of the principal chiefs so that they can carry out their functions fully;
- f) pay the chiefs well to curb corruption (ibid: 6-7).

It is clear from the BCP *Manifesto* that there is a marked shift from the party’s earlier and historical policy position towards the chieftainship institution, away from hostility to some kind of accommodation and recognition. It seems to have realised that chieftainship should have clearly defined roles, well paid and trained to carry out their duties efficiently. However, the *Manifesto* is silent concerning a crucial issue of how the chiefs should secure membership of local councils. It no longer says anything about the controversial election principle it sought to subject the chiefs under in order for them to secure membership of the local councils, as it did in the 1993 *Elections Manifesto*, which was later incorporated in the *Local Government Act, 1997* (see chapter three, section 3.5). It only says that:

The BCP believes that local government constitutes the very fabric of democracy [...]. The concept of local government is not completely

foreign because traditionally the Basotho people lived as communities under their various chiefs. The BCP further believes that the chiefs will have a crucial role to play in the local government, namely, assist to curb theft, solving land disputes and other crimes(ibid: 9).

It was not possible to get the views of the BCP leadership. My attempts to hold interviews with it failed. However, I managed to interview one of the party's former senior members. His views are provided later in this chapter.

#### **4.2.4. The Basotho National Party (BNP)**

Once a very strong political party, which won the first elections (held in 1965) and formed the first independent government in Lesotho, the BNP has been known as a party of chiefs, especially junior chiefs (Gill, 1993:211; Machobane, 2001:7; Nyeko, 2002:162). It had earlier (in 1968) abolished the BCP-dominated District Councils and replaced these with its own Development Committees, dominated by the chiefs, as indicated in chapter three. Because of its sympathetic attitude towards chiefs, especially at the lower echelons of the chieftainship structure, the BNP benefited hugely from the support of the chieftainship during its rule since independence until 20<sup>th</sup> January 1986 when it was deposed by the military.

As it was the case with other opposition parties, the BNP did not produce an election manifesto for the 2007 elections largely because of time constraints imposed on them by the Prime Minister's snap decision to call the poll: it contested the elections on the basis of its 2002 *Elections Manifesto*, which ironically makes no mention of the chieftainship. It is not clear whether or not this omission is deliberate given the strong historical relationship between the party and chieftainship.

However, its leader, the retired army Major-General Justin Metsing Lekhanya was able to provide insights on the party's policy on the chieftainship. Lekhanya became the Chairman of Military the Council and Council of Ministers during the military regime (1986-1990), following the ouster by the same military of the BNP government. He was himself toppled by junior army officers in 1990. He has been the leader of the party since 1999 (after the death of the then party's leader Chief Retšelisitsoe Sekhonyana) the position he has held against the wishes of many of the

party's members who have attempted but failed to remove him from the leadership because of the party's poor performance in all elections since he took over. At the time of writing this thesis, he was one of the three (3) Members of Parliament (MPs) under his party's Proportional Representation (PR).

When asked to elaborate on the BNP's policy on chieftainship, Lekhanya indicated that the BNP values the institution and that an appropriate local government must be centred on chieftainship. Thus the policy of the BNP is that:

*The chieftainship is there, it is an integral part of Basotho culture. It must be protected. It must be enshrined, developed rather than transformed. Yes they [the chiefs] are born chiefs but they can be developed through training. But they must pass that training and if for any reason, a chief is not fit to rule, there must be mechanisms to let the position pass to the next family in line (Lekhanya 2009, interview<sup>17</sup>).*

During his time in office as the Chairman of the Military Council and Council of Ministers and head of government, Lekhanya suspended, on several occasions, some Principal Chiefs such as the Principal Chiefs of Thaba-Bosiu and Likhoele, Chiefs Khoabane Letsie Theko and Chief Lerotholi Seeiso respectively because of their protest actions against the forced exile to England and ultimately dethronement of the former King Moshoeshoe II. However, the BNP's policy position towards the chieftainship is and has always been that the institution should remain an integral part of Lesotho's political system.

#### **4.2.4. The Lesotho Congress for Democracy (LCD)**

The LCD is currently the governing party, which has been winning successive general elections in Lesotho since 1998. It introduced the current local government system in the country. Its policy on the chieftainship is not reflected in its manifesto for the 2007 elections. Rather, the manifesto refers broadly to the local government system and reminds the Basotho nation that it is the LCD government that introduced the system in 2005. However, the party's policy on chieftainship is reflected clearly in the government documents reflected in chapter three of this thesis.

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<sup>17</sup> Interview with Major-General Justin Metsing Lekhanya, 19th January 2009, Maseru.

The message contained in these documents is that the chiefs must be “elected,” thereby “democratising” the chieftainship institution. The LCD government somewhat climbed down on the issue of the chiefs being popularly elected and opted, instead, for their “nomination” into local councils by their colleagues. This move does not, however, conceal the LCD’s desire to “democratise” the chieftainship as some respondents show later in this thesis.

#### **4.2.5. The Lesotho People’s Congress (LPC)**

The LPC is also a break-away faction of the LCD. It emerged in the run-up to the 2002 general elections. It was formed in 2001 by a group of twenty-one (21) long time and prominent former BCP politicians, including Shakhane Robong Mokhehle, the younger brother of the BCP leader, and later, LCD leader and Lesotho’s Prime Minister Ntsu Mokhehle. The party constitutes the core of what was known in Lesotho’s politics as ‘*Majela-thoko*’, or the “conservative elements” dominated by the former exiled members of the former BCP. The group is believed to have been instrumental in the formation of the LCD and in assisting the LCD to execute the 1997 ‘parliamentary *coup d’état*’ against the BCP and relegating the latter to the opposition ranks in parliament.

The current leader of the LPC, Advocate Maope defended this move by the LCD and challenged those opposing it to go seek redress from the courts of law, which they never did. He has maintained that these developments were not unconstitutional because the country’s constitution is clear that the voters do not technically vote for political parties in general elections, but they vote for MPs who in turn decide who should be the prime minister based on parliamentary majority. As such, in 1997, the majority of the MPs decided to support Ntsu Mokhehle as their leader and Prime Minister. Yet to the majority of the voters and ordinary people this has not been clear; they still think they vote for political parties and as such believe that once they have voted a particular party, such a party should be government under the leadership of its leader<sup>18</sup>. This development was an outcome of a protracted internal conflict within the BCP over power rather than ideological or policy differences. Although it was widely

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<sup>18</sup> Advocate Maope reiterated this point on a phone-in programme of the People’s Choice FM on Saturday 12<sup>th</sup> December 2009.

condemned on moral grounds, the usurpation of state power by the LCD, immediately following its formation, was constitutionally permissible given that Lesotho then used the Westminster parliamentary system, which gives MPs freedom to act as they see fit while in parliament (Matlosa 2008:25).

Kelebhone Maope is currently a Member of Parliament for the Seqonoka Constituency, a former law lecturer at the NUL as well as Attorney-General in the military and the BCP governments. In his capacity as the Attorney-General, he played a huge role in the drafting of the current Constitution of Lesotho. He became a Minister of Justice, Law and Constitutional Affairs, a Minister of Foreign Affairs, a Minister of Finance, and deputy Prime Minister in the LCD administration. He has been the sole LPC Member of Parliament who won a constituency seat in the 2002 and in the 2007 elections.

It could be argued, therefore, that because of the prominence of its leadership before breaking ranks with the LCD, the LPC has had a more direct role than the BCP, the BAC and the ABC respectively, in shaping and implementing the current local government system in Lesotho. This point is elaborated by its representative as will be seen below.

Like the BCP, the LPC did not produce a manifesto for the 2007 election. It used its *2002 Manifesto* to canvass for votes in the 2007 elections. The *2002 Elections Manifesto* does highlight, in very general terms, the party's policy on the chieftainship. It reads:

LPC government will implement a policy of co-operation between the Members of Parliament, Cabinet Ministers, the chiefs and civil servants to find out the needs of the people with a view to addressing them [my translation] (LPC, 2002:5).

The *Manifesto* is vague as it does not say anything more about the participation of the chieftainship in Lesotho's political system and administrative structures. To close this lacuna, I interviewed Mr. Pashu Mochesane. Mochesane was able to provide deeper insights into the party's policy on chieftainship. He is a former Member of Parliament for the Matsieng Constituency, a former Minister of Sports and Culture under the LCD government, and a former publicity secretary of the LPC itself. Attempts to

interview the current LPC leader were not successful as he was reported by the current secretary-general (Mrs M. Piti) to have other engagements and could not talk to me. The secretary-general did not feel confident to be interviewed since she was new in the office. Mochesane stated that the policy of the LPC is that:

*The chieftainship has to be democratised and that it is relevant to Lesotho's politics but it is not indispensable. It will die with time. The elected officials have to be paid more than the chiefs so that the chiefs can voluntarily abandon their hereditary status and join politics...they have a history of oppressing the ordinary people; they were used by the British as tools of oppression. They own large a number of fields when the 'commoners' are only allowed to own a maximum of three small plots. They collaborated with the British to extract taxes from the people and got paid for this, yet they did not pay taxes themselves. The LPC believes that the chiefs still have a 'cultural role' to play in Lesotho (Mochesane 2009, interview<sup>19</sup>).*

He acknowledged that the chiefs are the first reference point when people have problems in the villages. In addition, they know the people and property under their authority and, as such, they are able to resolve conflicts between the people over anything including land and other matters in their specific areas of jurisdiction.

Thus, for the LPC, the chieftainship remains relevant only because there is no other alternative structure to take over its roles in Basotho society, given that the elected councils are still at their infancy. However, it is not clear how long it will take the councils to take root and, more importantly, earn as much legitimacy from the people as the chieftainship has done. For the time being, the institution serves, according to the LPC, as a transient institution without a guaranteed future in Lesotho, should the LPC become government.

The palpable problem with the LPC's position on chieftainship is its lack of clarity as to what constitutes the "cultural role" of chiefs and the relationship between this "cultural role" and several other administrative duties that chiefs still perform in the villages. The LCD also says the same in its document, as cited above. However, the boundary between the very "cultural issues" and other duties of chiefs is not at all clear.

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<sup>19</sup>Interview with Mr. Pashu Mochesane, 19<sup>th</sup> February 2009, Maseru.

The policy that “the elected councillors have to be paid more than the chiefs so that the chiefs voluntarily abandon their hereditary positions and join politics” (Mochesane 2009, interview), has actually been implemented by the LCD government. The chiefs do not receive salaries from the state; they get monthly allowances, which were designed by the British colonial administration on the basis of the number of tax payers in each chief’s area of jurisdiction. No attempt has been made by the previous governments and the LCD to look into this rationally. The amounts of the allowances vary greatly because the number of tax payers in each area varies too. For example, one chief who is a member of Mohlakeng Community Council A07 disclosed that a chief gets a monthly allowance of M500/ R500, while a councillor ruled by the same chief receives M2, 500 per month as salary. In fact this is the current salary of councillors in all Community Councils country-wide. Another councillor-chief in the Lilala Community Council A09 also complained that the chiefs get between M400 and M800 allowance per month and that they are not happy about this disparity. In addition to their M2, 500 monthly salaries, the councillor-chiefs receive chiefly allowances. According to Mochesane, the “objective of the government was to let the chieftainship die gradually” (Mochesane 2009, interview). This point has been supported by one of the former members of the LCD executive committee, and former Cabinet Minister in the LCD administration<sup>20</sup>. He revealed that the LCD does not like chieftainship. He went into detail to show how the BCP (in the past) and the LCD (now) regard chieftainship:

*Their songs in the past were that “marena ke linoa mali” (a very strong phrase in Sesotho language showing extreme hatred, which literally “means chiefs are blood suckers, sucking the blood of the ordinary people”). Following the 1994 coup d’état [when King Letsie III toppled the BCP government for refusing to reinstate his father to the throne] some leaders of the then BCP were saying that chieftainship must be abolished. But the then Prime Minister, Ntsu Mokhehle refused arguing that chieftainship should be left alone to abolish itself. Even today, the LCD does not like chieftainship. It also does not like the Senate either. I was a member of the LCD executive committee; I know what I’m talking about. The LCD wants to see one chief per district in the Senate, and to remove others and replace them with their nominees. It still pursues the opinion that the chiefs are blood suckers and must be removed from their offices. The LCD wants the Senate to be elective. It*

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<sup>20</sup> Because of the ethical considerations and the sensitivity of the information this informant provided, despite his view that he does not mind being identified, I decided to keep his identity anonymous. I, however, have an audio tape in my possession on an interview I had with him on the 23<sup>rd</sup> March 2009 at the National Assembly premises, Maseru.

*says that it is not appropriate to “have two bulls in one kraal”. It made a decision during its annual conference in 1999 that the Senate must be democratised by being elective. It has not implemented this decision because of internal problems. The formation of the ABC caused a delay in the implementation of this resolution. If Basotho can agree that chieftainship should be abolished, there will be a serious danger. Politicians are not trustworthy. I say the chieftainship must remain part of Lesotho’s system [my translation] (Informant 2009, interview<sup>21</sup>).*

This issue has caused a great deal of suspicion among the politicians and the chiefs from different ranks. The retired Principal Chieftainess `M`antoetse Lesaoana Peete expressed this suspicion<sup>22</sup>. She indicated that the LCD government “wants to abolish chieftainship” but it has a problem because people like their chiefs. The Chieftainess disclosed that people’s views about chieftainship were sought during the preparations of the National Constituent Assembly (NCA) prior to the adoption of the current Constitution. However, the LCD government still has a covert plan to abolish chieftainship. According to her, this plan is reflected in the LCD’s current attempts to alter the nature and composition of the Senate because the government regards the Senate as an opposition. At the local government level, too, chiefs are suspicious of the government’s true intentions regarding chieftainship, as will be seen later in this study.

#### **4.2.6. The Marematlou Freedom Party (MFP)**

The MFP is one of the oldest political parties in Lesotho, whose policy has been strongly in favour of an executive (rather than a constitutional) monarchy in Lesotho. Because of this policy, the party has been described as a royalist party pursuing a pro-monarchy agenda (Matlosa & Sello, 2005:21). Despite its relatively long history, the party has not been able to enjoy much popular support, as indicated by its electoral performance since the 1965 elections. It is beyond the scope of this thesis to establish the reasons for the poor performance of the party. Suffice it to indicate only that the party has not been able to secure representation in Lesotho’s post-transitional parliament of 1993. It was only able to send a sole candidate to parliament following the 2002 elections under the PR party list system component of Lesotho’ mixed

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<sup>21</sup> Interview with Informant, 23<sup>rd</sup> March, 2009, Maseru.

<sup>22</sup> Interview with Chieftainess `M`antoetse Lesaoana Peete, 7<sup>th</sup> August 2009, Mapoteng.

electoral system, as has been the case with the majority of other opposition parties. This candidate has since then until the post-2007 elections been the party's leader, a civil servant turned politician, Mr. Vincent Moeketse Malebo, who was also, at one time, the Minister of Information and Broadcasting in the military government. At the time, the military government had very strong relations and influence from the senior chiefs, especially those of the Letsie I, the eldest son of King Moshoeshoe I's lineage. Two of these descendants of Letsie I, namely, Thaabe Letsie and Sekhobe Letsie, were members of the six-strong men Military Council, which was both the legislative and executive authority in Lesotho, as indicated above. It is perhaps not surprising therefore, that Mr. Malebo was appointed a minister in this regime. He has led the party for a large part of the post-transition period in Lesotho's politics.

The feature which sets aside the MFP from all other parties has been its consistently pro-executive monarchy policy of over four decades now. Its current policy with regard to the monarchy and chieftainship is contained in its *Elections Manifesto for 2007*. According to the *Manifesto*, the MFP regards the monarchy as the highest symbol of national unity (formed on the basis of Basotho culture and will), which binds together the Basotho nation. The policy has four elements as follows:

- The MFP affirms its believe that Lesotho is a constitutional monarchy as provided for in both the 1966 and 1993 Constitutions of Lesotho;
- according to the will of the Basotho, the King is the leader of the nation, the commander-in-chief of the armed forces;
- no government or no one has powers to change the status of the Basotho King without the expressed will of the Basotho; and
- that any actions of this nature are regarded as unconstitutional and are tantamount to high treason [my translation] (MFP, 2007:4).

It is interesting to note that, although it acknowledges the current constitutional arrangement of Lesotho in which the King has constitutional monarch status without executive powers, the MFP has not abandoned its earlier position or policy on the issue of Lesotho's monarchy. It still believes that Lesotho should be an executive monarchy, with the King as commander-in-chief of Lesotho's armed forces.

With regard to chieftainship, the MFP says:

The chieftainship has a very big role to play in Basotho society, and from time to time the institution has to be helped to conform to needs of the developing country that Lesotho is. The chieftainship exists as a result of the will of the people. The objective of the MFP is to develop and strengthen the relations between the people and the chiefs and instil in the chieftainship the spirit of being servants of the people, rather than of being served by the people. The MFP will prevent the marginalisation of the chieftainship by politicians as the chiefs are cultural leaders of the nation [my translation] (MFP, 2007:4-5).

The MFP's policy on the chieftainship was reiterated by the party's leader, Mr. Malebo thus:

*The chieftainship's prominence goes back to the history of Basotho, and that place of prominence can't disappear and this is espoused by the MFP. The institution can't be killed by throwing it away and leave a vacuum. The chiefs themselves will remain with Basotho. Thus, give them space in democracy so that they either destroy themselves or help entrench democracy (Malebo 2009, interview<sup>23</sup>).*

The MFP sets stands in contrast with all other political parties in Lesotho through its pro-executive monarchical system policy. It would, however, be interesting to see how the party would, in actual practice, work with the executive monarch, were it to become a government one day, the possibility which, however, remains very remote, given the party's dismal performance in all past elections since Lesotho attained independence forty-four years ago. Besides, all the past governments have had a hard time working with the former King whose ambition was, arguably, to have executive powers.

#### **4.2.7. The Popular Front for Democracy (PFD)**

The PFD was formed in 1984 as United Fatherland Front (UFF) but was banned, like all other parties, by the military regime under *Order No.4 of 1986* which proscribed political activity in Lesotho after the military toppled the BNP government. It was to be registered under its new name, Popular Front for Democracy (PFD), in 1991 after the *Order No.4 of 1986* was lifted, in preparation for the 1993 elections. It initially espoused socialism as its ideology but has since shifted towards the centre-left of the ideological spectrum, following the end of the Cold War. It claims to represent the interests of the workers, peasants, indigenous business, and patriotic youth (Matlosa

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<sup>23</sup> Interview with Mr. Vincent Moeketse Malebo, 15<sup>th</sup> January 2009, Maseru

& Sello, 2005:31). The PFD was not represented in parliament before the introduction of the MMP electoral system. Its leader, Lekhetho Rakuoane, a lawyer by profession, was one of the key leaders who advocated for and subsequently succeeded in introducing the current Mixed Member Proportional (MMP) electoral system in Lesotho during the all-party talks within the framework of the special political structure, the Interim Political Authority (IPA).

I could not secure a copy of the PFD's manifesto (s) when I sought the same. The leader of the party claimed that the manifesto would be at his home since he carries out the party's activities from there, owing to the fact that it does not have an office. He indicated that the PFD has no written policy on chieftainship, but it accepts and supports the existing constitutional arrangement, which recognises the institution although, according to him, it is a leftist party <sup>24</sup>

These are the Lesotho's political parties' general policy positions on chieftainship as an institution. What are the parties' policies on more specific issues, namely, the active participation of chiefs in the country's politics, the current arrangement which makes it mandatory for the chiefs to secure membership of the local councils through the process of nomination by other chiefs and the implications thereof for the country's administrative system? The next sub-sections of this chapter interrogate these questions.

### **4.3. Active participation of chiefs in party politics**

This sub-section presents and discusses the perspectives of the parties, represented by their leadership, on the active participation of the chiefs in party politics. The issue of active participation of the chiefs in party politics (by way of not only voting for their preferred political parties and candidates but also standing as candidates themselves) has caused controversies and has become one of the key reasons for condemnation of the institution by modernists (for example Mamdani, 1996; Ntsebeza, 2005; Makoja, 1990; Rugege, 1990), as indicated in chapter two of this thesis. The object of this sub-section, therefore, is to find out from the political leaders, who have a more direct stake in matters of the state and who also potentially face competition for state power

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<sup>24</sup> Interview with Advocate Lekhetho Rakuoane, 16<sup>th</sup> January 2009, Maseru.

from the chiefs. Besides, political leaders have the potential capacity to either effect changes (in the Lesotho political system) by way of defining the current and future role of the chieftainship in the country or to maintain the status quo. There is no law, currently, in Lesotho, which prevents the chiefs below the rank of Principal Chief from fully participating in party politics<sup>25</sup>. In practice, junior chiefs have always contested elections in their own right as candidates representing different parties since Lesotho's independence.

When asked to elaborate on the policy of his party on the involvement of or active participation by the chiefs in party politics, the ABC leader insisted that the chiefs “must join any party of their choice and stand for elections as other citizens do” (Thabane 2009, interview). Although this may be regarded as having a potential for eroding public confidence and neutrality of the chiefs in discharging their duties, Thabane argued that if their statutory duties are clearly spelled out in the *Chieftainship Act, 1968*, the involvement of chiefs in politics will not affect or impact on how they carry out their statutory duties. He said:

*If the basic principles on what should be done and how are clear, there will be no basis for any problems. Any disputes that may arise will be worked out in terms of those clarified principles, and the people will have no doubt about the neutrality of the chiefs in dispute settlement. Given that a chief is a chief until he dies, he is a long term investment, a unifying force within the Basotho society* (Thabane 2009, interview<sup>26</sup>).

According to him, the institution has to be moulded properly through training on its role in society, on the Constitution of the country, on the *Chieftainship Act 1968*, and the policies of any government. The chiefs must not be touched by any party, he emphasised. He rejected as invalid, the oft-made argument by the critics of the chieftainship that it is an outdated mode of authority. “If it is outdated”, he argued, “it is because governments fail to modernise it”, and that “it must grow with society or die a natural death”. Yet he was quick also to warn that “the sons of the chiefs must make up their minds as to what they want to be” (Thabane 2009, interview). The ABC seems to acknowledge the chiefs' ability to adapt to the socio-political dynamics of

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<sup>25</sup> Lesotho's civil servants are barred by section 59 (4) (a) of the country's Constitution from taking an active part in party politics by contesting elections. If they want to contest elections, they are forced to resign their public service positions. Section 59 (5) also proscribes the country's Principal Chiefs from standing for the National Assembly elections.

<sup>26</sup> Interview with Mr. Motsoahae Thomas Thabane, 22<sup>nd</sup> January, 2009, Maseru.

the country if the government provides conditions conducive for this. This in a way would give chieftainship the opportunity to be a viable dynamic institution, which does not lag behind when society moves forward.

He noted further that the *Chieftainship Act, 1968*, is outdated and the ABC government would review it because it hampers the role of the chiefs in development projects. It does not clarify and define clearly the role of the chiefs in development projects *vis-à-vis* that of the elected councils. The result of this is the fight over roles between the chiefs and councillors. According to him, “this is a simple matter resulting from bad management on the part of the government. The government does not resolve this matter; instead it encourages it to win the votes of ignorant people” (Thabane 2009, interview).

Although it has no problems with the constitutional and legal recognition of chieftainship, the PFD does not support active participation of chiefs in politics. When asked to comment on the issue the party’s leader said: “We are critical however on their [chiefs’] attitude towards politics; they should not get involved in politics and stand for elections. In fact, chiefs are like the civil servants and they have to be apolitical” (Rakuoane 2009, interview).

Similarly, the BAC was against participation of chiefs in politics. The party’s general-secretary, Macheli, argued that:

*Other than voting for a party of their choice as citizens, chiefs should not get involved in party politics; they should carry out duties (which have to do with governance and administration) such as conflict resolution and channelling those cases they cannot successfully resolve to the courts of law (Macheli 2009, interview<sup>27</sup>).*

The above discussion indicates somewhat divergent views and policy positions of Lesotho’s political parties on the country’s chieftainship. It is clear from the data above that some parties (the ABC, BNP, MFP) do not find any fault in this, while others (the BAC, LCD, LPC and the PFD) prefer a lesser and marginal role for the chiefs, as compared to ordinary citizens. However, Basotho chiefs have freely

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<sup>27</sup> Interview with Mr. Mohopolo Macheli, 19<sup>th</sup> January 2009, Maseru.

participated in politics. Many of them have been elected into parliament since the first parliamentary elections of 1965.<sup>28</sup>

#### **4.3.1. Participation of chiefs in local councils: nomination or automatic *ex officio*? Views of political leaders and academics**

The process of nominating some chiefs for local council seats is a compromise. It has been made by the LCD government because of the resistance that the regime faced from the chiefs against the initial legal provision in the *Local Government Act, 1997*, (4) (a) that they could only be members of the councils if elected by the electorate. It was not clear how the country's political parties and academics feel about this nomination requirement and its implications for Lesotho's political and administrative system. This sub-section presents and analyses the views of these two groups. The *Local Government (Amendment) Act No. 53, 2004* section 4 (a) (b) provides that gazetted chiefs can only be members of the Community Councils by being nominated by others within their respective council areas.

#### **Views of opposition political party leaders and the government**

The ABC leader argued that the current legal requirement that forces the chiefs to be members of local councils is flawed and that every chief must be a member of the councils on *ex officio* basis. The current local government structure, according to him, has to be reviewed to ensure this. In this way, he contended "there will be no basis for conflict between these structures. Lesotho can achieve a consolidated democracy based on its history and culture, central to which is the chieftainship system" (Thabane 2009, interview).

Lekhanya, the leader of the BNP, also argued that the best way to have chiefs participating in the country's politics and administration is to allow all of them membership at all levels of government *ex officio*. He asserted that the BNP accepts the military government model according to which all the chiefs were *ex officio*

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<sup>28</sup> Chief Sekhonyana Maseribane won elections under the banner of the BNP and became a care-taker Prime Minister until Chief Leabua, the party's leader, won an arranged by-election in Mpharane Constituency after losing in his own constituency. The BNP had done very well in Mpharane compared to other constituencies and the BNP found it as a safe base for its leader. Chief Leabua took over the premiership from Maseribane only after winning the by-election (see Machobane (2001:8-9) *King's Knights: The Military Governance in the Kingdom of Lesotho, 1986-1993*. Roma: National University of Lesotho.

members of the Village Development Committees, Ward Development Committees, and District Development Committees respectively. According to him the model was correct because although the chiefs were chairmen of the Committees, “they could be defeated by the majority when there were disagreements. They did not and could not dictate to the Committees” (Lekhanya 2009, Interview). He criticised the LCD government for designing the current local government system on party politics and for making the councillors to be elected on political party lines rather than merit. In his view, the councillors channel development projects only to the supporters of the ruling party. Because of these reasons, he said, if it comes to power, the BNP will:

*put aside the current local government system, work on the councils boundaries to ensure that the councils are equal in terms of population, include all the chiefs ex officio, and decentralise central government functions and budget. This has been done before! The military government did this and it gave the people autonomy to use funds as they saw fit in response to their needs. The people themselves must make their own policies and not be dictated to by the central government (Lekhanya 2009, interview<sup>29</sup>).*

He went further to say that the BNP will train the chiefs on what their specific role will be in the local government system and involve them fully in the local government policy making process, arguing that the LCD government has not done these. This, according to him, will ensure that the chiefs “accept the councillors as their people, who will help them in their work rather than those who will be fighting them” (Lekhanya 2009, interview).

He indicated that there was a rumour that the BCP government wanted to abolish the chieftainship through the introduction of the local councils, and that even now the LCD “still has plans to abolish the chiefs from the junior to the Principal Chiefs” (Lekhanya 2009, interview). This suspicion still runs deep among the chiefs. He supported this assertion by citing the current attempts by the LCD government to “restructure” the Senate and enlarge it, while at the same time reducing the number of chiefs represented in the chamber from the current 22 to 10.

According to its leader, Mr. Malebo, the MFP’s opinion is that the chiefs should be members of the councils *ex officio*. The MFP will do away with the current

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<sup>29</sup> Interview with Major General Justin Metsing Lekhanya, 19<sup>th</sup> January 2009, Maseru.

nomination requirement. The MFP government will develop the chiefs through training and pay them more than the councillors because they have more work.

Mr. Ntsukunyane Mphanya, one of the long time members of the National Executive Committee in different portfolios, including secretary-general of the BCP, Minister of Agriculture and later of Public Works under the BCP government, and now retired from active politics, was critical of the current local government model for “forcing the chiefs to be nominated by others”. He argued that it is “a serious mistake” (Mphanya 2009, interview). He revealed that when it took power in 1993, the BCP found in place the plan to implement the local government system as it is now, and that this was not the BCP’s model; it was donor-driven, and, as such, fails to work in Lesotho. The BCP, according to him, took a long time to implement this plan.

The appropriate local government system, according to the original BCP’s policy, should be modelled along the *Matsema*<sup>30</sup> system in which the chiefs are not elected or nominated (Mphanya 2009, interview). Rather, they become *ceremonial heads* of each *Letsema* (singular) in each village; they do not direct the people. Instead, the people have freedom to plan their own development projects. According to him, this is how Basotho conceptualise the local government system and how they have been ruled. He asked: “If the chief in your village got nominated into the council, will he care about other villages of which he is not chief? This system is very weak” (Mphanya 2009, interview<sup>31</sup>).

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<sup>30</sup> *Matsema* (plural) and *Letsema* (singular) refer to the system where the people provided tribute and free labour to their chiefs. They performed different functions in Basotho society. One was political in that they were an expression, on the part of the ordinary people, of political allegiance to their chiefs, and those providing this free labour were ensured access to land for their own use and other community services by their chiefs. This implies, therefore, that if anyone could not participate in the *letsema*, although this would be highly unlikely, he would not get land and protection from the chief. Another function of the *matsema* was to provide labour to the chief on his chiefly fields for purposes of cultivation, hoeing, and harvesting for the personal sustenance of the chief and his senior wives (they practised polygamy) only. The produce from these chiefly fields was used to feed the destitute, travellers passing by the chief’s place and the army. But as time went on, the *Matsema* got abused by the chiefs who demanded them even for many other fields that they owned (even now the chiefs still do have more fields than the ordinary people). The result of this abuse was that the chiefs became very rich out of this free labour. The *Matsema* were also used for community projects such as dams and road construction in which the chiefs were overseers or chairpersons. They still exist to date in the rural areas of Lesotho. People use them for many activities, such as dams and road construction, which need labour. However, since the introduction of paid labour by successive governments, the system is gradually disappearing. Those organising them do not pay for the labour so provided. Rather, they only cook food and traditional beer for the participants. (see Mothibe, 2002: 26-27).

<sup>31</sup> Interview with Mr. Ntsukunyane Mphanya, 26<sup>th</sup> March 2009, Mapoteng.

Mphanya maintained that the proper local government system must have a structure in which the chief is the *chairman* who simply endorses the decisions of the community and provides continuity because he is ever present. The politicians, he argued, come and go. What the LCD government did, he observed, was “to remove everything that was introduced by the BNP government” (Mphanya 2009, interview). According to him, the good things ought to have been retained. He regarded the election or nomination of the chiefs as undermining continuity because they come and go with politicians. The old Village Development Committees, in his view, were the BCP’s idea and Chief Leabua (the Lesotho’s Prime Minister from 1995 to 1986) “stole” it from the BCP. This is the best model for Lesotho, he contended. He affirmed, in conclusion, that, if the BCP were to become government again in which he would be part, they will reintroduce the Village Development Committees, based on the *Matsema* model. Given that the model advocated by Mphanya has a long history in Lesotho and that it does not temper with the positions of chiefs as the chiefs themselves have been accustomed to it, it is more likely to work and aid the process of democratic consolidation in the country.

The leader of the PFD, Advocate Lekhetho Rakuoane, argued that the failed attempts by the LCD government to force the chiefs to be elected into local councils would “politicise” the chieftainship institution, had the government succeeded. Similarly, according to Rakuoane, the fact that now the chiefs are nominated by their colleagues into these councils has caused confusion since in some council areas, senior chiefs have been left out while junior ones have been nominated into the councils. He indicated that the best approach would be to give the chiefs *ex officio* seats on the council.

However, Rakuoane felt that the chiefs should not have voting rights in these councils, because they are not elected by the people. According him, even at the national level, there is no reason for all the Principal Chiefs to be in the Senate. Rather, they should sit in the District Councils to ensure supervision of junior chiefs on policy implementation at lower levels. If and when the PFD becomes government, according to him, it will:

*streamline the functions, duties and powers of the chiefs and train them on their role in the country's political system, and devolve power from the central government to the lower levels. They will also be encouraged to form their own association so that they can engage with the central government on issues affecting them* (Rakuoane 2009, interview).

Rakuoane concluded that these measures would put to an end the current conflict over roles between the chiefs and councillors. In his view, the conflict is caused by the fact that there has not been any effective devolution of power.

The PFD's position appears to be contradictory. To say that the Principal Chiefs should be represented by a few in the Senate, but at the same time, with regard to local councils, chiefs should be *ex officio* members of councils seems to repeat what the LCD government has already done with junior chiefs at the local level, although the latter has allowed the chiefs to vote in council meetings. In other words, any attempt to move in this direction is likely to meet fierce resistance from the Principal Chiefs, especially because it will take some parliamentary benefits such as daily sitting allowances away from them. In addition, Rakuoane's position that the chiefs should not have voting rights is similar to the original intention of the LCD, as contained in the draft of the *White Paper on the Establishment of the Local Government*, which was however, abandoned because it was not blessed by the participants in the country-wide consultative workshops (details on these workshops are discussed in chapter five of this thesis).

The BAC presents a different position on the question of chiefs' nomination for the council seats. The party's secretary-general, Mr. Macheli, indicated that the chiefs should not be the councillors if they are to remain apolitical. According to him:

*There is no need for their nomination because the chiefs exist by law. They must not be councillors but remain chiefs because councils are political. If chiefs want to be part of councils, they should give up their chieftainship positions and become politicians* (Macheli 2009, interview).

Macheli's opinion was that if the BAC becomes government, it would (in consultation with the chiefs and ordinary people) separate and clearly define the roles, powers and functions of the chiefs *vis-à-vis* those of councillors through appropriate regulations,

which currently do not exist. In his view, this arrangement will end the confusion as to who does what within individual councils and villages. If the party would succeed in consulting effectively with the chiefs and it would take their views and those of other role players in the country's politics into consideration, then the arrangement would work. Whether or not the chiefs will agree to be excluded from the councils would be one of the issues to be addressed during such consultations.

Having heard the views of opposition politicians (and in order to understand the position of ruling party on the nomination of chiefs into councils as well as the criteria used in the process of their nomination) I interviewed the Minister of Local Government and Chieftainship Affairs, Dr. `M`atumelo Pontšo Sekatle. I asked her why the government made it a requirement for the chiefs to be nominated into the councils by their colleagues rather than replicating what already obtains at the national level, where the Principal Chiefs go to the Senate without any need for nomination. Sekatle demanded to know why I was asking questions about what happens at the national level although my research focuses on the local government level. After a lengthy explanation and persuasion on my part, she ultimately responded to the question and insisted that the chiefs do secure *ex officio* membership into councils. She argued that they had to be nominated to represent others because they are too many relative to the number of council seats reserved for them, and that there is no way they can all be members of the councils.

Sekatle emphasised that the intention of the government is not to “merge” the two structures. According to her, these are two separate institutions. That is why the government has established two directorates, one for Decentralisation, and another for Chieftainship headed by two directors respectively. If the intention of the government were to merge them it would be working towards a single structure. She went further to say: “The essence of bringing chiefs in the councils is to ensure that chiefs as peace-makers and traditional rulers in their own communities should be represented in local government” (Sekatle 2009, interview<sup>32</sup>). This dualism, which is based on no clear demarcation of powers, duties, and responsibilities, is the root cause of problems between the chiefs and the councils.

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<sup>32</sup> Interview with the Honourable Dr. Pontšo `M`atumelo Sekatle 24<sup>th</sup> March 2009, Maseru.

When asked to explain the criteria used in the nomination process and whether or not their seniority matters, she replied:

*I suppose they base their selection on merit, rather than seniority. The law says gazetted chiefs must be nominated. It does not talk about any other criterion, such as seniority although they are not equal. Junior gazetted chiefs do get nominated over their seniors. We left it to them to decide for themselves (Sekatle 2009, interview).*

The Minister cited the law as imposing the nomination requirement on the chiefs as if the law has not been made by her own party. If the ruling party and its government so wished, it could easily amend this law, given its majority in parliament over the years and even at the writing of this thesis. In fact the government did eventually amend the same law to the effect that the chiefs are nominated by others into councils.

When asked why the government changed from the earlier legal requirement that the chiefs must be “elected” by the people to the current nomination procedure, she said:

*The chiefs were opposed to their election; they were not fully behind their election. Some were arguing that we were politicising the institution because if they were to stand for election, the electorate were going to base their election on party political criteria and that would influence some of the chiefs to align themselves with political parties in order to be elected (Sekatle 2009, interview).*

Yet somewhat contradicting the response above, the Minister indicated, in response to a question asked in Parliament during the debate on the *Local Government (Amendment) Bill 2003*, that it is the chiefs themselves who said they wanted to be elected by the people during the process of collecting public views on the *White Paper on the Establishment of Local Government in Lesotho*. She said the junior chiefs were suspicious that their seniors would expect to be elected into councils by those junior to them as a sign of respect rather than merit (National Assembly Hansard 2003:46).

The Minister was asked to comment on the relations between the chiefs and the councils. She seemed to evade the question and said:

*Why are you moving away from your title! You are falling into the trap of the common or fashionable street issue that there is a controversy between the chiefs and councillors. Councils are new; chiefs have been there for centuries. Clearly, a new structure would seem to threaten the old. We have tried to educate them that we are not expecting any*

*misgivings because none of the functions performed by the councils have been removed from the chieftainship. But of course anything new tends to threaten existing structures. There has been that suspicion, which is fuelled by street talk that we want to abolish the chieftainship (Sekatle 2009, interview).*

It would naturally be expected that the introduction of a new structure and making it to work in the same geographical area with an old one such as the chieftainship would have a potential to cause some conflict between the two. Based on this expectation, I asked the Minister to highlight the challenges relating to chiefs-councillors relations, if any, and the strategies the government has taken to overcome them. She replied as follows:

*If we wanted to do away with the chieftainship we would have abolished it like the Tanzanians did! Yes there are challenges. Chiefs rule, councillors develop. Chiefs are traditional born leaders. Some councillors feel like they are chief. Chiefs feel threatened by councillors. We have embarked on education programmes. But the chiefs continue to allocate land illegally. They use the 1979 Form Cs<sup>33</sup>; it is an issue of non-compliance with the law. There have been conflict over land allocation for burial purposes, yet the councils allocate land, chiefs request places within the councils' selected area to bury the dead. There will be challenges (Sekatle 2009, interview)!*

I had not, in any way, suggested that the government wanted to abolish the chieftainship, yet the Minister raised the issue almost out of nowhere. Carefully interpreted, this response carries more meaning than the rest in the whole interview with the Minister and arguably unveils the actual long term policy of, first the BCP, and later the LCD on the chieftainship. In fact, some Cabinet Ministers charged angrily at the Principal Chiefs in Senate during the debate on the *Sixth Constitution Amendment Bill, 2008*, that the chiefs were an opposition to government and that their institution would be abolished, through calling a referendum if they do not change their ways (see footnote 2 above, and Hansard (2008:46) *Senate Debate* (2007-2012)).

In sum, therefore, the leadership of the ABC, BNP, MFP, and the former general-secretary of the BCP were unanimous that the chiefs must be *ex officio* members of

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<sup>33</sup> The Form Cs are the certificates used to indicate title to hold land in Lesotho. Since the introduction of the councils, these documents are issued only by councils and not by the chiefs as has been the case before, although the chiefs did not allocate land on their own. They worked always worked with some committees selected by the people under different local government arrangements as reflected in chapter three of this thesis.

these councils just as at the Principal and Ward Chiefs are members of the Senate by virtue of their positions the national level.

### **Views of academics**

Three academics from the National University of Lesotho were also asked to comment on the legal requirement that the chiefs must be nominated by other chiefs in order to be members of Community Councils in their respective areas. These are Professors Lehlohonolo B. B. J. Machobane, Tefetso Henry Mothibe, and Resetselemang Clement Leduca respectively. Machobane argued that the best way of making the chiefs part of the councils is the *ex officio* route. He further explained how the chiefs have developed their authority and how society has come to accept it. He noted that there is no way in which the chiefs can be elected in Lesotho because:

*A chief is someone with substance. They are born chiefs. If you say they [chiefs] should be elected, it is an insult to them. It is going to take a long time for that kind of thinking to be converted and for the people to understand. To be elected presupposes that you are the same as everybody else. Chiefs, even the poorest of them, don't think they are the same as everybody else. They think their blood is heavier than that of other people and society accepts that. Their acceptance as authority with legitimacy is a mythology that has taken centuries to develop; the mythology that there is something in the chiefs that makes them different from other people. It is very difficult to remove that from the people's mind. They have a lot of self-confidence and assert themselves as chiefs. They have a sense of authoritativeness, and society throws legitimacy over them even without them having to earn it. They are like men who consider themselves as rightful authorities in their own families (Machobane 2009, interview<sup>34</sup>).*

Machobane's narrative brings out important issues regarding the self-perception of chiefs and how society has come to accept their legitimacy. It shows that there is convergence of minds between the chiefs and society on what a chief is or ought to be. To call the way in which society has come to accept the legitimacy of the chiefs a "mythology" is accurate because there is no rational way of explaining this legitimacy other than this and reference to history. It shows also that the chieftainship is a social construction which has been developed and shaped by society itself. Machobane also brings out the issue of birth right as one factor that sets a chief apart from other people. In other words, no one can easily be accepted by society as a chief unless the

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<sup>34</sup> Interview with Professor Lehlohonolo L. B. B. J. Machobane, 16<sup>th</sup> February 2009, Roma

person is born as such. It would arguably take a very long time for an elected official to have an equal level of legitimacy as a chief bestowed on him or her, both in Lesotho and in other African societies.

Similarly, Leduka also stressed that the chiefs must be *ex officio* members of the councils in their respective areas rather than be elected. He was emphatic in his views on the matter, and exclaimed in reaction to the question as to whether or not the chiefs should be elected:

*No, chiefs can't be elected! What do you mean? The institution is based on birth right. That is how Basotho have accepted it. To say they have to be elected is meaningless. My argument has always been that every gazetted chief should be part of all structures. If elected, it won't be chieftainship! They must be assisted by both elected and appointed officials in their duties. I don't see why they can't be chairpersons of councils instead of creating a parallel structure. This is merely a political point scoring exercise to say the chiefs have to be elected or nominated. It does not work (Leduka 2009, interview<sup>35</sup>).*

Leduka's views concur with those of Machobane that the chiefs cannot be elected because the chieftainship institution is based on "birth right". This is the way it has been "accepted by Basotho society". He does therefore touch on the legitimacy issue although not directly. He goes further than this and finds no reason why the chiefs cannot be chairpersons of the councils, the sentiment which is also shared by Mphanya above.

Mothibe as well agrees with the general view held by his colleagues and the opposition political leaders that the chiefs must be *ex officio* members of the councils because this means they get recognition as chiefs. In his own words, he said:

*They must be there on ex officio basis, that is, by virtue of their birth positions. If they become members of the councils on ex officio basis, this is to assert their traditional authority and is also a sign of recognition of their role in society. So, I think they should be put there on ex officio basis (Mothibe 2009, interview<sup>36</sup>).*

It is clear from their responses above that these academics hold a similar position that the chiefs must be *ex officio* members of the councils rather than be subjected to either

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<sup>35</sup> Interview with Associate Professor Clement R. Leduka 16<sup>th</sup> February 2009, Roma

<sup>36</sup> Interview with Associate Professor Henry T. Mothibe, 16<sup>th</sup> February 2009, Roma

an election or nomination by their colleagues. In this regard, therefore, their views converge with those of the opposition leaders, in particular the ABC, BNP, MFP, PFD and the representative of the BCP respectively. The responses of the political leaders and those of the academics above have indirectly touched on another equally important question in the chieftainship-elected councils' debate – that of the relevance of chieftainship in contemporary politics of Lesotho. But to have more direct responses I posed a direct question on this to the two categories of respondents. Thus the following sub-section delves into this issue.

#### **4.4. Relevance of the chieftainship to Lesotho's contemporary politics and administration**

Given that the introduction of local authorities in Lesotho, based on the elective principle and with a legal mandate to carry out some of the functions previously performed by the chieftainship, is a new development in the country, this would arguably put to question the relevance of chieftainship. The key question at this juncture is: how relevant is the chieftainship institution to Lesotho's contemporary political and administrative system in the advent of the elected local authorities? If it is still relevant, what makes it relevant? This part of the thesis presents the responses of the respondents on these questions, starting with those of the political leaders followed by those of the academics.

##### **Views of the political leaders**

The leader of the ABC, Thabane, argued that chieftainship is still relevant because of a number of reasons. According to him, chiefs (in the villages) perform several important functions including peace keeping and conflict resolution in ways that, so far, no state agency can perform. He added that, in the past, the institution performed judicial functions in the local courts and lamented that the judicial system at local level has been “corrupted and killed by the present government” (Thabane 2009, interview). This, he maintained, has been done through allowing qualified lawyers to take part in cases in which the people represented themselves and were allowed to call their own witnesses from within their community, rather rely on lawyers in the past. This meant that the system was very simple to the people and yet highly effective. Thus, it has now become too technical and beyond the reach of the ordinary villagers.

The current system, in his view, is costly to the ordinary villagers, many of whom do not afford to pay legal fees to the lawyers. Thus, justice, which is the basis for peace and stability, is beyond the reach of most villagers, according to him.

According to Thabane, the ABC government will go back to this original system to ensure that those powers are restored to the chiefs and then promote peace and stability. However, in addition to some relevant training provided for them, the chiefs will be assisted by trained local courts presidents and checked by the government in the exercise of these powers to ensure that they do not apply them absolutely. In administrative matters, he continued, the ABC government will ensure that the chiefs are assisted by appointed and elected representatives of the people.

The ABC leader seems to be suspicious of politicians and to regard them as more easily corruptible than the chiefs. This appears to be ironical given that he is a politician himself. He observed regrettably that the powers of the chiefs have been taken away by the government and pointed out the danger of this development thus:

*You can look for an empty place and claim it is yours because nobody knows which land belongs to who [sic]. If a local councillor comes, you can either scare him/her off, or bribe him/her, and the land becomes yours (Thabane 2009, interview).*

The chiefs also keep stock registers and are able to inspect the stock on regular basis to ensure that it corresponds with the registers, thereby minimising stock theft. They are able to do this because they are ever present in the village. They also authenticate stock ownership and transfer from one villager to another. Thabane noted that it is not clear now whether the chiefs still perform these functions or the councils do. He highlighted that the current confusion is created by the lack of clarity between the roles of the councils' *vis-à-vis* those of the chiefs. He maintained that this is the duty of the chiefs and the councils may only help them in this duty.

According to Thabane, the chiefs should be the authority authenticating stock ownership. However, the chieftainship institution has now been weakened by the government and the result is that it is now easy for people to dispossess others of their property. Consequently, people are forced to rely on the police who are not on the ground. He emphasised the centrality of livestock in the lives of Basotho, noting that

it represents wealth and enables the people to perform their cultural rituals such as welcoming brides and honouring the dead. Such rituals make Basotho what they are as a nation. According to him, no one can imagine when Basotho will give up these rituals, which revolve around the traditional structure at the helm of which is the chieftainship. Thus, in his view, diminishing the authority of the chieftainship is not a wise move. He contended that implementation of government projects in the villages depends on the chiefs who work without adequate pay.

Although somewhat suspicious of the chieftainship institution as indicated earlier, the BAC, too, accepts that the institution remains relevant to the country, albeit with some qualification. The party's secretary-general said that it "is not replaceable now until some institution can replace it. Basotho can keep and use the institution if it is supportive of government" (Macheli 2009, interview).

As a representative of the BCP, Mphanya believes that chieftainship is still relevant in Lesotho and in Africa as a whole. He made the following comment on the issue: "*Here in Africa, I repeat, here in Africa, no system of government can work if it puts aside the chieftainship. This applies to Lesotho as well. Chiefs must be part of any system of government at all levels*" (Mphanya 2009, interview). He did not, however, accept a faulty chieftainship but advocated for one with certain qualities. Thus, according to him:

*Lesotho needs the chieftainship; the chieftainship is still very much relevant, but it should be one, which combines two attributes: service to the people and ability to listen and to be responsive to the needs of the people. It should not be autocratic. It is easy to mould such a chieftainship... if the chief is not doing what the people want, he should be removed from office as was the case before* (Mphanya 2009, interview).

He was quick, however, to indicate that "this should not affect the King because he is the head of the nation/ the country" (Mphanya 2009, interview). The chieftainship, in his opinion, should not be abolished, rather:

*We must find a system that will include the chiefs, give the people power to say what a chief must be like, and what powers he must have. We must understand what chieftainship is. It has a long history. It was not hereditary, but service to the people* (Mphanya 2009, interview).

Similarly, the BNP leader, Lekhanya, asserted that the chieftainship checks on the excesses of selfish politicians thus contributing to good governance. He cited the

important role, which was played by the Senate in preventing the passage in Lesotho's parliament, of *The Sixth Amendment to the Constitution Bill 2008*, the main object of which was to allow for election-related cases to be appealable, with retrospective effect<sup>37</sup>. As it is now, all cases on election-related disputes are heard by the High Court, the decision/judgement of which has no appeal. Lekhanya argued that the chiefs in the Senate acted “democratically” because “you can't legislate over the matter in court and with retrospective effect” (Lekhanya 2009, interview). The chieftainship institution, according to Lekhanya, is also able to check on the abusive behaviour of politicians and manipulation of democratic political institutions such as the legislature, the judiciary, and the Independent Electoral Commission (IEC). It performs an array of functions at the local level. He stressed that:

*the chiefs are peace officers day and night. Whenever there is a problem, people call on the chief. The police are useless without chiefs. I'm saying this through my own experience as a peace officer. If the police try to work alone, they get killed by the people. There is peace in the villages because of the chiefs. Every morning in every village, there is a pitso at the chief's place to deal with local issues on disputes and crime* (Lekhanya 2009, interview).

He substantiated this point by citing the case in which the police (in the Thaba-Tseka administrative district of Lesotho) had a serious conflict with the people over stock-theft related crimes resulting in one police officer being fatally stabbed with a spear by the villagers. The police had allegedly by-passed the local chief and gone into one village on their own to arrest an alleged stock thief.

Even the former publicity secretary of the LPC, Mr. Mochesane, who, as noted earlier had a less than positive view of chiefs, acknowledged that the chiefs are the “first reference point when people have problems in the villages” (Mochesane 2009, interview). In addition, they do have to and do know the people and property under

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<sup>37</sup> At the time, there was a case lodged by the Marematlou Freedom Party before the High Court of Lesotho contesting the allocation by the Independent Electoral Commission of 21 Proportional Representation seats in the National Assembly. The ruling party and the opposition ABC had benefited from this allocation in that they had formed alliances with their smaller partners, National Independence Party (NIP) and the Lesotho Workers Party (LWP) and put the names of some of their members on the NIP and LWP PR party lists so that they could get some PR seats. They did this because according to Lesotho's Mixed Member Proportional (MMP) electoral system, they would not get these seats because they had won more of the constituency-based seats. So the LCD pushed through a Bill in the National Assembly (the Lower House of Parliament) so that in case it lost the High Court case, it could appeal the judgement. For more details on this, see Kapa M.A. 2008. 'The Politics of Coalition Formation and Democracy in Lesotho' *Politikon: South African Journal of Political Studies*, 35, (3):339-356.

their authority because of these. They are able to resolve conflicts between the people over anything, including land and other matters in their specific areas of jurisdiction.

The leader of the MFP, Mr. Malebo argued that the chiefs remain relevant to Lesotho's political system not only because of their long history as a foundation upon which the Basotho nation has been built but also because the current local government system fails Basotho in service delivery. According to him, the chiefs have a lot of knowledge on, and interest in, public issues that no local councillor will ever have. Besides, the chiefs are always available in every single village, however small and attend to public problems and issues in a manner that no councillor will ever do; being called upon to help the people any time of the day or night. They serve as an extended hand of the central government by mobilising the people for government projects in agriculture, range management, public roads and others. They never refuse to cooperate with any government on any of its policies or projects. They keep law and order in their respective villages. He regretted that the government does not appreciate this sacrifice and commitment. It pays them a "stipend" of between M400 and M900 per month. The councillors on the other hand, according to him, earn M2, 500 as salaries per month.

The PFP leader, Mr. Rakuoane, also acknowledged the important roles of chiefs in Lesotho such as peace keeping, mediating in hereditary issues, identifying and authenticating people's livestock, land and others. He said that these issues cannot be wished away in a rural setting. Thus, according to him, chiefs have a huge role in Lesotho. He noted that the state still lacks the necessary capacity to carry out most of the duties that the chiefs currently perform cheaply for the state. He observed that there is a huge vacuum that the chiefs fill between the state and society. Rakuoane noted that despite the crucial role that they play in society, the chiefs are not appropriately paid by the government. This is why some of them get tempted to engage in corrupt activities. In his view, they have to be trained and paid well to ensure that they provide efficient service to the people.

## Views of academics

Lesotho's academics, like the politicians, were unanimous that the institution is still highly relevant. They invoked issues of culture and national identity, which they regard the chieftainship means and represents to Basotho. They also pointed to the functional or instrumental dimensions of the argument, in favour of the chieftainship as do the politicians. Professor Machobane justified the relevance of chieftainship to Lesotho's politics and administration elaborately thus:

*Yes, it is still relevant; it is also deep seated in society. You can destroy individual chiefs but not the system. It is a cultural-sociological part of Basotho. It will, for some time, be part of our society. The majority of the Basotho in the villages have known the chiefs as their first line of defence. They do not want to follow the elected officials for their general welfare, reporting property, reporting problems of field boundaries, interpersonal conflicts and so on. They don't go to the councillors, they go to the chiefs. That's whom they know! The people are suspicious that councillors are corrupt. The chiefs don't sleep. When people bring their problems, they are woken up, but councillors are not. Chiefs are consulted when visitors come to the village. They are reported to the chief. He has to know what is happening (Machobane 2009, interview).*

In the same way, Professor Mothibe pursued the national identity argument in defence of the chieftainship and said: "chieftainship is very much part of our culture, and when a *Mosotho* says 'I am a *Mosotho*' and is asked: a *Mosotho* from where? He says: 'from chief so and so'. I think it is very much relevant now more than any other time" (Mothibe 2009, interview).

Professor Leduka, was no different from his colleagues in supporting the institution. He also argued strongly that:

*Chieftainship will always remain relevant in Lesotho, whether we like it or not. The thinking that the local government should supplant the chieftainship was very wrong. This is because Basotho at the grass-roots have been accustomed to working with their chiefs. My idea has always been that you can't impose a new structure over an existing one and pretend the old one did not exist. Chieftainship will always be relevant. It is only an academic argument that the chief are not relevant. That's what politicians say when they want to score political points. If you go down to the people, it's a different reality altogether. Even in the city [Maseru], when I was doing my own research, I had to report to the chiefs; the councillors eventually took me to the chiefs*

*because they knew that communities would chase away my research assistants. This is within the capital city where the chiefs are still relevant. So what more about the rural areas? I say you need a letter introducing and recommending you to get services like passport, police clearance, and bank account and so on. This is the reality we can't ignore (Leduka 2009, interview).*

The academics also refuted the arguments that chieftainship is not accountable and that it is undemocratic because it is not elective. Mothibe argued that:

*By its very essence, chieftainship is accountable. "A chief is a chief by the people". There is no chief without the people, and the chiefs know this very well. So accountability is very well taken care of by this proverb (Mothibe 2009, interview).*

Machobane also argued that people have some socio-cultural recourse if the chiefs are not accountable. He said:

*If a chief does not command respect and performs badly, he knows the people will go to his mother as a man. They feel embarrassed as men and human beings when this happens; everyone wants to be respected. So, the chiefs are accountable to the people (Machobane 2009, interview).*

He went on and highlighted the hypocrisy of politicians in Lesotho and in Africa as a whole. He said:

*There is a paradigm in African systems that prime ministers and presidents, deep down and sub-consciously or consciously, aspire to be kings or chiefs. They want to strip power from those people who are born chiefs. They use democratic methods to become chiefs. Even those who are not yet in power do want to be kings or chiefs. So as long as this is the kind of thinking among the leaders who purport to be democrats, the same thing applies lower down (Machobane 2009, interview).*

To elaborate on this "paradigm", he briefly narrated an anecdotal story of one elderly lady in Kolonyama, the home town of Lesotho's former Prime Minister Chief Leabua Jonathan. The elderly lady, and by extension most people in Lesotho, according to him, did not see anything wrong in Leabua clinging to power by force, as he did. He said:

*An elderly lady at Kolonyama opined with another one that "I was just watching this son of a chief [Leabua]. I would think that he is an idiot if, once he was in power, he decided to come down". This is the way people think in Africa (Machobane 2009, interview).*

To sum up this part, Lesotho's political leaders and academics were categorical that the chieftainship is still very much relevant to the country's politics and administration because it performs crucial functions and defines Basotho as a nation.

#### **4.5. Conclusion**

It appears from the policies of the eight (8) main political parties that none of them rejects chieftainship outright, at least more directly. However, it would be interesting to see whether or not these parties would actually implement these, somewhat pro-chieftainship, policies if they were to become government. I must indicate here that most of the leaders of these parties have been in previous governments at different times and had unfriendly relations with chiefs. However, once they are out of government, many of them tended to use chieftainship as their political bargaining chip. Be that as it may, however, the BNP accepts the institution as it is because it says that chieftainship does not have to be transformed. Rather, chiefs have to be trained by the government to carry out their functions. But it is also cautious that chiefs "must pass the training or be removed from office and let the chieftainship pass on to the next family". The ABC's policy is also in favour of chieftainship because it believes that the institution contributes to good governance and promotes peace and stability in the villages.

There is a palpable contradiction in the MFP's policy, especially with regard to the monarchy. While claiming to accept the current constitutional arrangements providing for constitutional monarchical system, the party tends to favour an executive monarchy with powers to control the armed forces, the position it has been consistent with since its formation.

The LCD and the LPC's policies seem to converge somewhat. They are both adamant that chieftainship must be "democratised" through making it elective. And to realise this goal, the LPC is explicit that "chiefs should be paid less than the elected officials so that they would abandon their hereditary positions and join politics". The LCD government has implemented this idea in two ways. It insisted that chiefs must be nominated by their colleagues into councils and pays them less than the councillors in all Community Councils throughout the country. The statement made by the Minister

of Local Government, Dr. Sekatle, that “If we wanted to do away with the chieftainship we would have abolished it like the Tanzanians did” (Sekatle 2009, interview), and the views expressed by the Cabinet Ministers in the Senate point to the ruling party’s undeclared policy on the institution. The information provided by the anonymous informant above (see section 4.2.5: 106) is also indicative of the LCD’s position on chieftainship. In addition, the government used to refer to the ministry under which chieftainship is housed as the *Ministry of Local Government* only. It seems to have included the phrase *and Chieftainship Affairs* as an afterthought, which came after the 2007 elections.

Although not very far apart from that of the LCD and LCP, the BAC’s policy is somewhat difficult to comprehend. It says that chiefs must not be part of the councils, and if they do, they must join politics. It is difficult to imagine how the two structures, serving the same people in the same geographic areas, can exist at the same time without some form of contact with each other. Common to the functions of the chiefs and councils is the issue of land. It is inevitable for the two to serve people unless they have work together in one way or another. The chiefs know who owns the various pieces of land in each village, while the councillors do not. However, the councillors have powers to allocate land. So if the chiefs are totally removed from the processes of land allocation, serious disputes are bound to ensue among the people and between the people and the councils themselves. The policy position of these parties may be understood within the context of Büsing’s chieftainship-councils parallelism model of integration, yet these positions do not precisely state this. The result of this lack of clarity is the current confusion on the roles of the two structures in Lesotho.

The PFD’s position appears to tolerate chieftainship but prefers the institution to be apolitical, like civil servants. The BAC’s policy does not seem to depart significantly from those of the LCD and LPC. The party does not believe that chieftainship should have a role in the local councils. It prefers that chieftainship should rather perform cultural roles, whatever this means. It seems, therefore, that there is an urgent need for the political leadership and the chiefs to sit down and define collectively what constitutes this cultural role of the chieftainship.

Five of these parties, namely, the ABC, BCP, BNP, MFP, PFD, and academics are clear that chiefs should be *ex officio* members of the councils in their respective areas. They are critical of the existing legal requirement that chiefs must be nominated by others to secure membership in these councils. The policies of the main political parties and the opinions of academics on chieftainship are clear.

## CHAPTER FIVE

### **Local Government Policy Formulation and Implementation Processes: Participation and the Role of the Chieftainship**

#### **5.1. Introduction**

In this chapter, I look closely and critically into the processes of local government policy formulation and implementation and the participation and role (or lack thereof) of chieftainship in this endeavour. It may not be possible or even desirable to separate policy formulation from implementation because these processes are interlinked and feed into each other, as policy scholars correctly argue. John (1998:30) argues that “it is not possible to separate the stages of policy formulation and policy implementation. Policy does not just emerge from the intentions of ministers and senior bureaucrats because lower-level agencies and bodies have some input into decision-making”. Besides, he continues, “governments and bureaucracies need groups because they are sources of policy ideas. Groups are repositories of expertise; they can help make a policy legitimate; and their cooperation can ensure the successful implementation of a policy” (ibid: 66).

Echoing similar sentiments, Sabatier criticises the linear and cyclical or what he terms the “stages heuristic” approaches to a policy process because of four main reasons, which he regards as outdated. First, it assumes that policy process follows cyclical and linear stages: agenda setting, policy formulation, implementation, and evaluation (Sabatier, 1999:6). Yet “the proposed sequence of stages is often descriptively inaccurate” as “evaluations of existing programs affect agenda setting, and policy formulation/legitimation occurs as bureaucrats attempt to implement vague legislation (Nakamura cited in Sabatier, 1999:7). Second, there is no causal theory between different policy stages and, as such, there cannot be any “coherent set of hypotheses within and across stages” and the drivers governing the process are not identified, and that “work within each stage has tended to develop on its own, almost totally without reference to research in other stages” (ibid). Third, the approach “has very legalistic, top-down bias in which the focus is typically on the passage of a major piece of legislation” neglecting interaction between implementation and evaluation stages (ibid). Last, it “oversimplifies the usual process of *multiple, interacting cycle*

involving numerous policy proposals and statutes at multiple levels of government” (ibid). It is against this background that I look at the local government policy formulation and implementation processes holistically to have a broader picture on what happened at formulation stage and the implications for policy implementation in terms of the involvement of chiefs.

The successful implementation of the local government policy would require, *inter alia*, full, effective and meaningful participation of the chieftainship at both formulation and implementation stages. This is because the policy would directly affect the whole governance set-up throughout the villages, in which the chieftainship has hitherto been the main authority carrying out numerous functions and exercising some power in conjunction with all previous Development Committees, albeit under the overall authority of the central government. Below, I attempt to determine and understand whether, and the extent to which, the chiefs in general and those chiefs at the lower level (otherwise known and legally recognised by the modern state as Area Chiefs) participated at the two phases of the local government policy. Secondly, I attempt to establish the extent to which their views were taken on board to shape the policy.

## **5.2. Local government policy formulation process**

The current local government policy is alleged by the government to be a product of a series of consultative processes introduced by the BCP government in 1995 until the policy was implemented through the local council elections under the LCD administration on the 30<sup>th</sup> April 2005. The public consultations on the policy, in the form of *lipitso* (public gatherings) were initiated by the then BCP government with a view to soliciting the views of almost all sectors of society concerning the form, structure, composition, powers and duties of the envisioned local authorities. The *lipitso*, were organised by the senior members of the government (notably the Minister of Local Government, Rural and Urban Development and the Principal Secretary of the same Ministry) in many parts of the country. In addition to the *lipitso*, public consultations were conducted by local consultants, with financial support from external donors, notably the British government under its Department for

International Development (DFID) programmes. Semano Sekatle<sup>38</sup> indicated that these consultations were made with various stakeholders representing almost all sectors of the population, including the chiefs. Sekatle revealed that the introduction of the system was a very complex exercise, which the government decided not to carry out alone without public participation despite a huge popular mandate that it got through winning all 65 parliamentary seats in the transitional 1993 poll.

Given that the local government system was almost a new political and administrative development in Lesotho, (the first experiment with the system was abandoned by the BNP administration over 25 years ago (1968-1993)) it was, according to Sekatle, a complex system, which the government did not know how it should be in terms of structure, powers, functions, composition (among other factors). There was a consensus between the government and the donors that there had to be wide public consultations. However, the thinking of the government and that of the international donor community were divergent as to when the local government system should be introduced. According to Sekatle, this posed a dilemma for the government in that, in keeping with its promise to the nation, it wanted the system to be implemented during the 1993-1998 parliament. The donors, on the other hand, believed that there had to be wide consultations with the people to ensure proper understanding of and input into the policy. Thus, in the view of the donors, the consultations would have to take a longer time than the government wanted. If adopted, this delay would mean that the local government system would not be introduced during the life of the 1993-1998 parliament.

The public consultations have been described by Sekatle as merely “brainstorming exercises”. They hardly bore any fruit because they were open to all sectors of the population with conflicting views on the nature of the envisioned system (particularly on how to bring in the chiefs into the system) and their different understanding of the whole system. Therefore, the consultations were not helpful to the government in terms of providing a clear picture as to the form and nature of the envisaged local

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<sup>38</sup> Interview with the Honourable Semano Sekatle, 13<sup>th</sup> January 2010, Maseru. He is the current Minister of the Public Service and former Principal Secretary for the Ministry of Local Government, Rural and Urban Development when the local government was policy was introduced.

government. Besides, according to Sekatle, they turned out to be a waste of time and money.

Pressured by its own political imperatives and the that commitment it had made to the nation, according to Sekatle, the government abandoned these consultations and engaged the services of an external consultant to draft, in close consultation with senior government officials, a *White Paper on the Establishment of Democratic Local Government, 1996*. This means that the government abandoned what would have otherwise been a consultative democratic process and replaced it with a top-down driven initiative, the *White Paper*, in which the people, and in particular the chiefs, no longer had any input. Later, in 2003, the government employed a local consultancy firm, Ntlafalang Consultants, to draw up the *Programme for Implementation of Local Government in Lesotho: Concepts, Structures and Roles, 2003*. I review these two documents below with a view to understanding and determining whether or not the chiefs participated in their preparation and establish the amount of input, which they may have made therein.

### **5.2.1. *The White Paper on the Establishment of Democratic Local Government, 1996: Participation of the chieftainship in its development***

The *White Paper* was initiated and developed, like other policies, by the then BCP government alone, without any input from other actors in the country's political system. This marked a shift from the government's earlier attempt to open the local government policy to public debate, scrutiny and consultations to a more 'normal' and somewhat closed way of developing public policies. Public policy-making in Africa has been a preserve of the political and bureaucratic elites since independence. Nhema captures this issue poignantly when he notes that "public policies in Africa are very conservative and restricted, with very little public involvement and no input from wider community" (2004:18). It would have been useful for all stakeholders (and more crucially chiefs) to have been involved and to participate in its initial formulation process. This would have facilitated better understanding, public debate on, and common ownership of the *White Paper*, its consequence and the successful implementation of the local government policy itself). However, there is no evidence

that the chiefs had a role in the development of the *White Paper*. Therefore, the views of the chiefs are not adequately reflected in the document.

The *White Paper* can be described (without running the risk of repetition) as an elitist imposition from above (from the central government) without sufficient input from below, that is, from either the chiefs themselves or even all the stakeholders, who were invited (by the government) to discuss the document at the later stage. It reflects, instead, the government's unilateral position on the nature, form and structure of the current local government system. This observation notwithstanding, the *White Paper* was described by the then Minister of Local Government, Rural and Urban Development, and current Lesotho's Prime Minister, Pakalitha Mosisili as:

another significant step in our journey towards creating and consolidating deep and open democracy in Lesotho. This commitment to strengthening and promoting decentralisation is a key policy element of the Government manifesto presented to the country at the last General Election [1993]. It reflects our fundamental belief that national and local development is best achieved through transparent, democratic processes of government (Government of Lesotho, 1996: v).

The *White Paper* was intended to result in the enactment of local government legislation planned to come into being in 1997. The objective of the government, through the document, was to invite the public to join in a consultative debate on the nature and framework for the democratic local government for Lesotho (ibid). To achieve this objective, the government commissioned, through the then Ministry of Local Government, Rural and Urban Development, a team of five consultants from the NUL's Institute of Southern African Studies (ISAS) and the Department of Political and Administrative Studies (PAS) to conduct and facilitate a series of Consultative Workshops in all ten (10) administrative districts of Lesotho. In these Workshops, the *White Paper* was presented before participants who were asked to discuss it. At the end of the process, the consultants compiled the views of the various stakeholders into a report that was to inform the new local government legislation (Mapetla *et al.*, 1996:4).

These workshop participants were drawn from representatives of different sections of society, namely, the Chiefs, Civil Servants, Non-Governmental Organisations (NGOs), Churches, Business Community, District, Ward and Village Development

Committees, Political parties, Parliamentarians, Women, Youth, Teachers and the employees of donor-funded Projects (ibid: 35). The original plan of the government was to obtain the views of 1500 people on the *White Paper*. These were to be divided into 150 people per district, but eventually 1334 people participated altogether, and 227 of them were chiefs. For purposes of managing discussions, the participants were divided into five groups, each composed of representatives of all the selected sectors of the Basotho society (A, B, C, D, and E), and with an average of 50 people per district (ibid: 4). The workshop facilitators asked them to discuss a range of issues, relating to the envisaged local government system as contained in the *White Paper*. These were, *inter alia*, its nature and objectives, structure, functions, resources and the role of traditional authorities in the new local government system (ibid: 5). Deliberations of the groups were based on “consensual decision making” process wherein participants discussed issues at length until the final Workshops’ decisions would be reached (ibid).

Of relevance to this study are the three key findings that came up out of these Workshops. First, the participants accepted the idea that two seats should be reserved for the chiefs. Second, the majority of the participants accepted the proposal that chiefs should be elected by the people. Lastly, having been elected, the chiefs were to be allowed to hold key positions (council chairmanship and chairmanship of the council functional committees) in the councils and to vote for candidates for these positions (Mapetla *et al.*, 1996:2).

These findings are crucial because they were ultimately incorporated, largely unchanged, into the *Local Government Act, 1997*, and would appear to have emanated from a democratic consultative process in which the chiefs themselves participated. However, they should not be taken at face value. Rather, they should be scrutinised closely by raising and answering the following key questions: What role did the chiefs play in these Workshops across the ten (10) administrative districts of the country? Who selected the representatives of all the stakeholders? Who participated in these Workshops? How exactly were they selected? Did they have the legitimacy to represent and to speak on behalf of the groups they are purported to have represented? Were all the groups equally represented numerically and qualitatively? What is the likelihood that the views of all representatives, particularly those who may have had

different views from those of the government, were heard both during the Workshops and in the final wrap-up meeting which was held on the 16<sup>th</sup> October 1996? The answers to these questions can enhance the understanding of the role of the chiefs in these workshops.

### **5.2.2. The participation and the role of the chieftainship in the Districts Consultative Workshops: issues of representation and legitimacy**

The literature on public participation in public policy making and implementation processes is growing exponentially, particularly in the deepening democracy debate. One of the leading institutions in this field is the Institute of Development Studies (IDS) at Sussex University in the United Kingdom, which has published large volumes of work based on empirical research (conducted in many countries both in the West and the new democracies of the South) (see for example Cornwall & Coelho, 2007; Gaventa, 2006; Cornwall, 2002). This literature points to the valuable contribution of public participation in deepening and improving the quality of democracy. Booyesen (2006:172) conceives of public participation as “the direct involvement of citizens in seeking information about and making decisions related to certain specified public issues”. According to Gaventa (2007: xii) deepening democracy through creating avenues for public participation in policy making gives citizens a right to “exercise ever-deepening control over decisions which affect their lives” and that “democracy itself is extended through creating and supporting more participatory mechanisms of citizens’ engagement, which in turn are built upon, and support, more robust views of the rights and responsibilities of citizenship” (ibid). Participation or “participatory fora open up more effective channels of communication and negotiation between the state and citizens serve to enhance democracy, to create forms of citizenship and to improve effectiveness and equity of public policy” (Cornwall & Coelho, 2007:5).

Some scholars note that there are preconditions for effective and meaningful participation (Cornwall & Coelho, 2007; Carrim, 2001). These are, *inter alia*, the fact that: representatives of stakeholders must “demonstrate that they had a mandate to act as ‘representatives’ of that group, and therefore, legitimately to speak in their name and [on] their behalf” (Carrim, 2001:105); citizens must have their own political

agency by recognising themselves as citizens rather than beneficiaries or clients and they must be educated and have requisite skills and self-confidence; they must understand what participation actually means to them and what will be gained through it; participation must yield or produce some desired results rather than “just talk and talk and not seeing anything change” and open the process to be captured by the elites (Cornwall & Coelho, 2007: 8-10). Cornwall (2002:28) adds that effective participation requires, among other things, that people must be given “access to information on the basis of which to base their deliberations”.

To what extent, then, did the stakeholders in the *White Paper* Consultative Workshops meet these preconditions? Before discussing these issues, I must stress at the onset that the BCP government had, no doubt, taken a noble step in the local government policy formulation process by inviting almost all the stakeholders (including opposition political parties and crucially, for purposes of this study, the chiefs) to have an input into the *White Paper*. The current Minister of Local Government and Chieftainship Affairs, Dr. Pontšo M`atumelo Sekatle, expressed this view in Parliament during the debates on the *Local Government Elections (Amendment) Bill 2003*, when she said that the government did not want to impose its own views on the people who will be affected directly by the new system - the chiefs (National Assembly Hansard, 2003:54). Therefore, the chiefs were, without doubt, the key stakeholders in the proposed local government system.

The notion of stakeholders could be understood to mean “those who have a direct ‘stake’ (or interest)” (Carrim, 2001:105), in this case in the local government system. However, it is important to note that the notion is not neutral as stakeholders are normally defined and selected for participation in any project by those who manage such a project (the local government policy in this case). In this way, the selection process may have both inclusionary and exclusionary effect, depending on the whims and interests of those leading the process. Some people, who would otherwise consider themselves as rightful stakeholders and who would make an effective and meaningful participation in defence and articulation of their interests, may be excluded. Similarly, those who do not have strong views about the issue at hand may be brought in to help those selecting them to achieve an already predetermined outcome of the consultative process. In this way, the stakeholders may be drawn in a

numerically disproportionate fashion and from certain groups known to the drivers of the consultative process to favour a particular position. Thus the role of the stakeholders would be simply to legitimise the outcome of the process.

### 5.2.3. Numerical representation of stakeholders

The BCP government seems to have (by design or default) defined who would be stakeholders in the local government system, how many of them would be needed, and went ahead to select them, using the central government-politically-appointed District Secretaries. The key point here is that of numerical disproportionality between the sections of society, which participated in the districts' Workshops and particularly between the chiefs and the other participants. To illustrate this point, a closer look at the composition of groups of stakeholders in each of the ten districts is instructive. These groups varied greatly within and between districts (see Table 1 below).

**Table 1:** Composition of stakeholder groups during the *White Paper on the establishment of Democratic Local Government* consultative process in Lesotho's ten districts in 1996

District	Groups per district	No. of chiefs per group	No. of other participants per group	% of chiefs per group	Total participants per group
Leribe	A	9	22	29.03	31
	B	9	24	24.24	33
	C	10	21	32.26	31
	D	11	28	28.21	39
	E	8	22	26.67	30
<b>Total</b>		<b>47</b>	<b>117</b>	<b>28.66</b>	<b>164</b>
Mokhotlong	A	9	21	30	30
	B	8	23	25.81	31
	C	9	21	30	30
	D	9	22	29.03	31
	E	7	23	23.33	30
<b>Total</b>		<b>42</b>	<b>110</b>	<b>27.63</b>	<b>152</b>
Maseru	A	6	22	21.43	28
	B	6	23	20.69	29
	C	7	23	23.33	30
	D	5	20	20	25
	E	5	24	17.24	29
<b>Total</b>		<b>29</b>	<b>112</b>	<b>20.57</b>	<b>141</b>
Botha-Bothe	A	5	31	13.89	36
	B	8	28	22.22	36
	C	4	24	14.29	28

	<b>D</b>	4	28	12.5	32
	<b>E</b>	4	30	11.76	34
<b>Total</b>		<b>25</b>	<b>141</b>	<b>15.06</b>	<b>166</b>
<b>Berea</b>	<b>A</b>	4	19	17.39	23
	<b>B</b>	4	20	16.67	24
	<b>C</b>	5	18	21.74	23
	<b>D</b>	4	21	16	25
	<b>E</b>	3	20	13.04	23
<b>Total</b>		<b>20</b>	<b>98</b>	<b>16.95</b>	<b>118</b>
<b>Mafeteng</b>	<b>A</b>	1	16	5.88	17
	<b>B</b>	4	27	12.90	31
	<b>C</b>	4	23	14.81	27
	<b>D</b>	4	35	10.26	39
	<b>E</b>	4	26	13.33	30
<b>Total</b>		<b>17</b>	<b>127</b>	<b>11.80</b>	<b>144</b>
<b>Thaba-Tseka</b>	<b>A</b>	2	21	8.69	23
	<b>B</b>	2	22	8.33	24
	<b>C</b>	3	20	13.04	23
	<b>D</b>	2	21	8.69	23
	<b>E</b>	4	21	16	25
<b>Total</b>		<b>13</b>	<b>105</b>	<b>11.02</b>	<b>118</b>
<b>Qacha's Nek</b>	<b>A</b>	3	26	10.34	29
	<b>B</b>	2	26	7.14	28
	<b>C</b>	2	24	7.69	26
	<b>D</b>	3	26	10.34	29
	<b>E</b>	3	26	10.34	29
<b>Total</b>		<b>13</b>	<b>128</b>	<b>9.15</b>	<b>141</b>
<b>Mohole's Hoek</b>	<b>A</b>	1	21	4.55	22
	<b>B</b>	3	20	13.04	23
	<b>C</b>	2	19	9.52	21
	<b>D</b>	1	19	5	20
	<b>E</b>	1	21	4.55	22
<b>Total</b>		<b>8</b>	<b>100</b>	<b>7.41</b>	<b>108</b>
<b>Quthing</b>	<b>A</b>	2	15	10.53	19
	<b>B</b>	1	16	5.88	17
	<b>C</b>	1	15	6.25	16
	<b>D</b>	1	12	7.69	13
	<b>E</b>	2	16	11.11	18
<b>Totals</b>		<b>7</b>	<b>74</b>	<b>8.64</b>	<b>81</b>
<b>Grand total</b>		<b>227</b>	<b>1107</b>	<b>17.01</b>	<b>1334</b>

**Source:** Original, derived from Mapetla *et al*, (1996) Local Government Consultative Process: Report on the People's Views on the White Paper Establishing Local Government in Lesotho. Unpublished.

It is evident from Table 1 that the chiefs were unevenly represented relative to other participants in these groups. In Leribe, which had the highest representation of chiefs, there were between 8 and 11 chiefs per discussion group in groups A, B, C, D, and E

comprising between 30 and 39 members. This is followed by Mokhotlong with 7 to 9 chiefs per group with the groups' size of 30 to 31 members. Maseru was the next district with 5 to 7 chiefs in composed of between 25 and 30 members. Botha-Bothe came fourth with the number of chiefs per group ranging between 4 and 8 in relatively smaller groups made up of 25 and 30 members. Berea had between 3 to 5 chiefs per group against 23 to 25 other members. Mafeteng was number six with 1 to 4 chiefs in groups ranging from 17 to 39 members. Thaba-Tseka was number seven with between 2 and 4 chiefs in groups of between 23 and 25 members. It was followed by Qacha's Nek, which had 2 to 3 chiefs in 26 to 29 member groups. Mohale's Hoek, had no more than 3 chiefs out of between 20 and 23 members. Finally, in Quthing (where the overall participation of all stakeholders was the least) the representation of chiefs stood at between 1 and 2 in groups of between 13 and 19.

In sum, therefore, the chiefs' participation across the country constituted about 17.01 percent of the overall number of participants. However, their participation was highest in the districts of Leribe, Mokhotlong, Maseru and Butha-Buthe at 47 or (28.66 percent); 42 (27.63 percent); 29 (20.57 percent); and 25 (15.06 percent) respectively. It was much lower in the four other districts of Mafeteng, Thaba-Tseka, and Qacha's Nek at 17 or (11.80 percent); 13 (9.15 percent), 13 (11.02 percent); and 13 (9.15 percent) respectively, while Mohale's Hoek and Quthing came last with 8 (7.41percent) and 7 (8.64 percent) in that order. These figures are presented in Table 2 below in order of the number of chiefs attending the workshops per district relative to other participants (rather than in pure percentage terms to indicate the raw numbers).

**Table 2:** A summary of participants in the districts' Workshops on the *White Paper on the Establishing Democratic Local Government in Lesotho*

District	Number of chiefs per district	Number of other participants per district	% of chiefs per district	Total number of participants
Leribe	47	117	28.66	164
Mokhotlong	42	110	27.63	152
Maseru	29	112	20.57	141
Butha-Buthe	25	141	15.06	166
Berea	20	98	16.95	118
Mafeteng	17	127	11.80	144
Thaba-Tseka	13	105	11.02	118
Qacha's Nek	13	128	9.21	141
Mohale's Hoek	8	100	7.41	108

<b>Quthing</b>	7	74	8.64	81
<b>Total</b>	<b>227</b>	<b>1107</b>	<b>17.07</b>	<b>1334</b>

**Source:** Original, derived from Mapetla *et al.*, .1996. Local Government Consultative Process: Report on the People's Views on the White Paper Establishing Local Government in Lesotho. Unpublished.

Although I do not mean that the chiefs had to be numerically equal to other stakeholders (for that is impossible) these figures are significant. They reflect the huge numerical disparity between the chiefs and other participants. In addition, they also raise other equally important issues, namely, that of who exactly the other participants were, and the likely effect of this on the process of decision making, both at the level of individual discussion groups and the districts as a whole. Non-chiefs members were predominantly the civil servants (about 198), members of the then District Development Committees (about 311) and the Members of Parliament (about 42 who were all members of the BCP). The majority the members of these Development Committees had won their seats in the *pitso*-style elections that were held after the historic 1993 transitional poll that was won with a landslide by the BCP. As such, the workshop participants were predominantly BCP. In theory, civil servants are supposed to be apolitical in the discharge of their official duties, and they cannot openly disagree with any policy of government (including the local government policy in this case). Therefore, they would support the government on this policy too. It is not difficult to assume that the Members of the Development Committees and the Members of Parliament would not disagree with their party on issues presented before the Workshops.

Apart from the participants who came from other sections of the population (opposition parties and non-governmental organisations, churches, and youth organisations) were also in the minority relative to the governments' side. Their views would not necessarily be either in support of the government or the plight of the chieftainship. The government had on its side about 551 participants or 41.30 percent of all the participants, although of course this would not be an issue of numbers *per se*. The government's side also might have had other advantages over those who might have had dissenting views. It had the bureaucrats, with higher technical expertise than other stakeholders. It also had highly powerful politicians in its midst within a general political environment favouring the government as the ruling party dominated the country's entire political system. This is why it is not difficult to

surmise that the government was in full control of the consultative processes country-wide. It decided who the stakeholders would be and selected them for participation as it saw fit. It further decided the overall agenda of the Workshops in terms of what was to be discussed (or not to be discussed).

Given that as human beings, the chiefs are naturally not equally endowed with speaking abilities, their participation in the deliberations may not have been meaningful, especially when they were seriously outnumbered by other participants who comprised bureaucratic and political elites – top civil servants and parliamentarians. In addition, the conditions during these deliberations were described as “intimidating” Chief Matete (2009, interview). This would possibly mean that very few people would feel confident to challenge the government, especially the chiefs who are known to have been beneficiaries of the BNP rule and thus sympathetic to it.

#### **5.2.4. Decision making processes during the Workshops**

Although the group deliberations are said to have been based on the consensus principle (Mapetla *et al.*, 1996:5) (and there would be no reason to doubt this without any evidence to the contrary), however, this does not necessarily mean that all issues were resolved through consensus. There were cases where some group decisions would be reached by a vote. Two informants<sup>39</sup> who facilitated the Workshops refuted some of these claims. One of them revealed, instead, that some decisions focusing on more controversial issues, such as the membership and role of the chiefs in the councils, were reached through voting, when it was difficult to reach a consensus. The informant further disclosed that in all the districts the chiefs were unhappy with the proposal that they should be elected into the councils. They preferred to be *ex officio* members of these councils instead. However, they were out-voted by other participants who were in the majority. The views of this informant were corroborated by another Workshop facilitator, who divulged that the *Report* itself does not reflect the actual views of the Workshop participants. Its final draft had been tempered with, especially on the sections concerning membership and role of the chiefs and the boundaries of the councils, to portray the views of the government as contained in the

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<sup>39</sup> Interview with informants, Roma 31<sup>st</sup>, November 2009. The informants indicated that they preferred to remain anonymous and I honour this in line with general ethics of research.

*White Paper*. The informant disclosed that the general views of the participants throughout the districts were that the boundaries of the councils should be in line with those of the chiefs' areas of authority.

The views of these informants seem to suggest that the consultative process was used by the government only to rubber-stamp its own position regarding the nature of the local government system, the effect of which was to marginalise the chieftainship, in keeping with the government policy on the institution. The government had already indicated its preferred position on what the future role of the chieftainship institution should be, as reflected in the *White Paper*, namely that the chiefs would have to be "elected" by the general voters or be "nominated" by other chiefs into the councils to occupy the two seats that were reserved for them. Besides, the Workshop participants were only allowed to deliberate and recommend to the government, which of the two modes of selecting the chiefs for participation in the envisaged local authorities should apply. In other words, the government did not afford the Workshop participants an opportunity to explore other alternatives, such as the unconditional *ex officio* principle, of making the chiefs part of the anticipated local government structures. This is not difficult to understand because it would produce an elaborate structure (establishing more councils would provide the opportunity for a higher number of seats the government could tolerate). Such a number would consequently have serious resources implications as disclosed by the Minister of the Public service in an interview with the author referred to above.

### **5.2.5. Representation and legitimacy of the stakeholders**

Based on the evidence (adduced above) that the stakeholders were selected by the government through its bureaucratic machinery, the legitimacy of their representativeness is questionable. Gaventa (2006:25) argues that "participation *also* includes processes of representation through which some speak for others as intermediaries in policy or governance processes, often through claims to legitimacy other than elections". Three chiefs who participated in the Workshop held at the Co-operative College in Maseru on the 16<sup>th</sup> August 1996, (Chief Mohapinyane Tlali<sup>40</sup> of M`ahuu, Ranthomeng Matete of Morija and Chief Lerotholi Theko of Ha Ratau)

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<sup>40</sup> Interview with Chief Mohapinyane Tlali, 24<sup>th</sup> July 2009, Masite Nek.

indicated that they did not understand why the government selected them from other chiefs<sup>41</sup>. It was, therefore, not possible for them to claim that they represented the views of their colleagues and (more broadly) those of the chieftainship institution. In fact, Chief Matete went further to say:

*We were not invited as representatives of the chiefs, but as members of the public. Besides, the chiefs did not have a forum as chiefs to discuss the white paper. The workshop did not give us a chance to scrutinise the white paper, although it would affect our duties as chiefs. The environment then inhibited our participation and marginalised us because participants were largely drawn from the Development Committees of the time which were dominated by the members of the ruling party. It had an intimidating effect on us (Matete 2009, interview<sup>42</sup>).*

Had the government given the chiefs the *White Paper* in time to study it thoroughly, Chief Matete maintained, the chiefs could have advised the government accordingly in order to ensure the successful implementation of the policy. Similarly, all thirteen (13) Area Chiefs within this study research area also averred in several interviews (as will be seen later in this chapter) with the author on different dates, that they were not consulted by the government during the formulation stages of the local government policy. They were not aware whether or not some of their colleagues had been invited to represent their views in the process. They indicated that if they were invited to the Workshops or asked to select their own representatives they would have provided a constructive advice to the government with the aim of ensuring a successful local government project. It is almost obvious, therefore, that if the chiefs had an adequate input into these Workshops, they could not have preferred chiefs to be either elected by the voters or nominated by their colleagues into the councils, contrary to what the Minister of Local Government and Chieftainship claimed in an interview with the author and in parliament as shown above.

What should have the government done? There is no doubt that it would have been a time consuming and financially costly exercise for a resources-challenged country such as Lesotho, to have all the chiefs, especially the Area Chiefs (who were to

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<sup>41</sup> I should indicate here that only three chiefs falling within this project's research area were selected by the government to participate in the Maseru District Workshop. However, the third one is now too old and almost senile to remember anything about the Workshop. As such, attempts to interview him were not helpful.

<sup>42</sup> Interview with Chief Ranthomeng Matete, 24<sup>th</sup> November 2009, Maseru.

become the real stakeholders in the new local government system at local level) to participate in the Workshops. However, it would have been easy for the government to organise a special forum for the chiefs (as Chief Matete indicated) to solicit their views on the local government policy. In this way, the government would have heard (first-hand and more directly from the chiefs) what they preferred and decide what to do thereafter. After all the government had the liberty not to take the views of the chiefs if it did not agree with them as it had been given an overwhelmingly popular mandate to make public policies and govern the country through the general elections. It may be argued, therefore, as Irvin (2004:57) notes, that "...some citizen-participation programs primarily serve a marketing purpose, where the participation process consists of government representatives guiding decisions the administrator would have made in the first place". Public consultative processes, such as the ones in question here, may also be regarded as "a good deal lip-service to the idea of consulting with the public, but in practice these consultations commonly consist of getting groups of citizens together so that they can be indoctrinated with official point of view" (Rourke cited in Irvin 2004:57). What then of the other document, *Programme for Implementation of Local Government in Lesotho: Concepts, Structures and Roles, 2003*?

### ***5.3. Programme for Implementation of Local Government in Lesotho: Concepts, Structures and Roles, 2003 and chiefs' participation***

Unlike the *White Paper*, which had its own shortcomings regarding public participation as I have indicated above, the *Programme for Implementation of Local Government in Lesotho: Concepts, Structures and Roles, 2003* had no input from the public and the chiefs. The reason for this was perhaps that the government had run out of time that it had set for itself for introducing the local government system by approximately four years. It was developed by a local consultancy firm, based on the contents of the *White Paper*.

The *Programme for Implementation of Local Government in Lesotho: Concepts, Structures and Roles, 2003*, stated that there would be 128 Community Councils to be elected in clusters of villages forming electoral divisions. The membership of these Community Councils would be between 9 and 15 and include 2 elected gazetted

chiefs. Community Councils were to be legally recognised structures, which would perform the functions delegated to them by District Councils and would also draw staff and other resources from the District Councils (Government of Lesotho, 2003:3). The *Document* further indicated that there would be 10 District Councils, composed of 2 members nominated by each Community Council and 2 gazetted chiefs within each district, who would be members of the Community Councils. The District Councils would be corporate bodies with jurisdiction over the respective districts in which they would be established. Lastly, there would also be the Maseru Municipal Council formed out of a cluster of villages within the Maseru urban area comprising of between 8 and 15 members including not more than 2 elected gazetted chiefs. Similarly, this would also be a body corporate with jurisdiction over the Maseru urban area (ibid).

The membership of these authorities was tentative, pending the final verification and approval by the government. The *Document* outlined in detail the structures, nature, functions, powers, resources, and the phases of implementation and the relationships between the local government authorities and other related issues. Finally, and most importantly for purposes of this study, the *Document* attempted to highlight the roles and functions of the local area chiefs *vis-à-vis* those of the councils. Under the new dispensation, the chiefs were to perform the following functions:

- resolution of conflicts and maintenance of social justice;
- Mobilisation of communities through local area village committees;
- Participation in other council structures;
- Protection of government property and heritage sites; and
- Maintenance of cultural and traditional roles (Government of Lesotho, 2003:19).

Somewhat ironically, however, these functions were neither put into the subsequent *Local Government Act, 1997* nor incorporated into the *Chieftainship Act, 1968* (by way of amendment) or at least provided for in the *Local Government Regulations, 2005*. Besides, the chiefs were not adequately involved in the development of the overall policy, as shown above; it may be argued that they remained uninformed about these new roles. They were also not as exposed to any form of training on these new roles, as their counterparts (the councillors) were when the policy reached the

implementation stage. It must be noted that the *Report on the districts White Paper Workshops* had recommended, *inter alia*, that “in order to encourage the chiefs to support local government we recommend that: a) they should undergo appropriate training; and b) that functions they will remain with after decentralization be clearly specified” (Mapetla *et al.*, 1996:2). Had it been taken by the government, this recommendation might have eased the process of local government policy implementation, as the chiefs indicated (as will be seen later in this study).

#### **5.4. Local government policy implementation**

Marginalisation of the chieftainship did not stop at local government policy formulation, but appears to have continued at policy implementation stage as well. This was a highly top-down initiative as indicated above. The chiefs had no input at this stage either, although their involvement might have ensured a smooth implementation. The government seems to have instructed the Principal Chiefs to summon the junior chiefs (the majority of who were Area Chiefs) to their offices and “tell” them to nominate their representatives for two council seats in each of the 128 Community Councils country-wide. I will come back to this issue later in this chapter.

In a series of interviews with the author on different dates within the area of study, the chiefs were unanimous that the introduction of the local government system was in itself an important aspect of democratising Lesotho’s political system and they were in full support of it. However, they were generally unhappy with the manner in which the local government policy was formulated and implemented. All thirteen (13) Area Chiefs outside the councils and seven (7) councillor-chiefs indicated that they were not consulted by the government on the new policy yet they wished that they should have been part of the process from its inception. For example, Chief Mokhachane Letsie of Qeme Ha Phakoana decried that:

*There was no consultation with the chiefs on both formulation and implementation of the local government policy. We as chiefs had no input at all even on matters concerning boundaries of the councils. These boundaries have divided our people. In my case, the people of Ha Nkopane fall under Mazenod Community Council which is under the Principal Chief of Matsieng according to these boundaries. But they are ruled by me under the authority of the Principal Chief of Rothe. When there are development projects in the Lilala Community Council,*

*which is nearer to them than Mazenod, they do not get involved. These projects are very important as they give people some temporary jobs which give them some money to buy food and other necessities. This concerns me because I see them suffer yet I am helpless. The same situation prevails at Ha Molungoa; this village falls under the Makhoarane Community Council, which is also under the Principal Chief of Matsieng, yet it is under the jurisdiction of the Principal Chief of Rothe. If we as chiefs had been consulted, we could have advised the government accordingly so that things like these do not occur [my translation] (Letsie 2009, interview<sup>43</sup>).*

The concerns of Chief Mokhachane Letsie above have been predicted and raised by Shale (2005:2). He notes that the local council boundaries were drawn without adequate consultations with the communities concerned and this had a potential to cause conflict among the people “over an area by a council that consists predominantly of people who belong to a particular chief presupposes its legitimacy in its area of jurisdiction” (ibid:9). There has been a case in April 2009 in which there was a violent communal conflict over grazing land area at Masite Nek, a village ruled by the Principal Chief of Rothe but falling under the Makhoarane Community Council under the jurisdiction of the Principal Chief of Matsieng according to the boundaries of the councils. During this conflict, a Councillor from the Lilala Community Council sustained serious injuries (Sekhonyana Letsie 2009, interview).

Incidents like this one could have been prevented, according to Chief Mokhachane Letsie, if the chiefs had been consulted by the central government during the initial stages of the council boundaries demarcations exercises. Chief Thaabe Letsie, of Ha `M`antšebo<sup>44</sup>, expressed similar concerns. He observed that the local government system “was imposed on us and this means there is no common ownership of the project. If the chiefs had been consulted, they would have had different but useful views to ensure its success”. In the same way, Chief Takatso Joseph Maama of Mokema, opined that they were not consulted when the local government policy was formulated and implemented. He described the policy as:

*an imposition on the chieftainship by the LCD government. This is a political move by the government to abolish the chieftainship through gradual whittling of its powers. Chiefs no longer allocate land as those powers have been given to the councillors. The government is fighting*

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<sup>43</sup> Interview with Chief Mokhachane Letsie, 9<sup>th</sup> April 2009, Rothe.

<sup>44</sup> Interview with Chief Thaabe Letsie, 9<sup>th</sup> July 2009, Ha `M`antšebo.

*against the chiefs who otherwise would work for it as they have done with all other governments in the past [my translation] (Maama 2009, interview<sup>45</sup>).*

The suspicion that the government was intent on abolishing the chieftainship and replacing it with the new councils was widespread among the chiefs. For example, Chief Molatoli Khang of Ha Makoetje within the Makhoarane Community Council expressed this suspicion as follows:

*we as chiefs were apprehensive that our powers were being taken away and given to the councillors because nobody explained anything to us. When the local government came, it confused us because nobody explained to us what our role would be. We were apprehensive that our powers were being taken away [my translation] (Khang 2009, interview<sup>46</sup>).*

Chief Keneuoe Leutsoa of Tlametlu Ha Leutsoa also indicated that:

*We were not officially informed about the local government system. It was imposed on us by the government. It is a tool intended by politicians to abolish the chieftainship...There is a plan, though covert, to abolish the chieftainship. It is done gradually and starts with us here at the lower level until it will get to the King. The aim of this government is to turn Lesotho into a republic ruled by a president. These people [members of the ruling party] talk these things here in the villages. You people in Maseru do not know these things; we know them, they happen here in our villages [my translation] (Leutsoa 2009, interview<sup>47</sup>).*

The views expressed by the chiefs indicate that the chiefs were not consulted by the government when it introduced the local government system. However, it appears that the chiefs would have preferred to be consulted so that they could make their own input in the process. They reveal also some sense of apprehension, which was not helped by their marginalisation during the local government policy formulation and implementation processes. Most importantly, the chiefs do not appear to be against the system as the critics of the chieftainship institution would expect.

### **5.5. Reaction of the chiefs to the government's decision to have some of them nominated into the councils**

After they had been “told” (as they put it) by their respective Principal Chiefs that the government expected them to nominate two chiefs to represent them in the councils,

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<sup>45</sup> Interview with Chief Takatso Joseph Molapo Maama, 7<sup>th</sup> June 2009, Mokema

<sup>46</sup> Interview with Chief Molatoli Khang, 7<sup>th</sup> July 2009, Morija.

<sup>47</sup> Interview with Chief Keneuoe Leutsoa, 25<sup>th</sup> July 2009, Ha Leutsoa.

the chiefs obliged although many of them were not happy with the process, while others had no problems and in fact support it. The former generally regarded the nomination process as an attempt by the government to divide the chiefs so that it could easily abolish the chieftainship. They further disclosed that they were not happy about this instruction but had to oblige or face total exclusion from the new system. The two chiefs who sit on the Mazenod Community Council disclosed that they had to accept the nomination process to protect themselves and the chieftainship from being abolished by the government. Their colleague who is a member of the Makhoarane Community Council said that the chiefs agreed to the nomination process so that those who would be in the Council would be “a bridge between the chiefs outside the Council and the Council so that the chiefs could know what transpires in the Council” (Chief Khang, 2009, interview). This indicates some form of coherence and solidarity on the part of the chiefs when they faced a common challenge that, in their view, had the potential to abolish their institution. Concurring with his colleagues, Chief Rafolatsane Lerotholi of Makeneng Matsieng indicated that:

*Nomination was imposed on us and there was nothing we could do about it. We as chiefs are suspicious that there is a plan [by government] to abolish the chieftainship. But we have nowhere to go, we are powerless; even the King is now powerless and he cannot help us [my translation] (Lerotholi 2009, interview<sup>48</sup>).*

In another interview, Chieftainess `M`aletsie Letsie of Ha Ramokotjo also regarded the process of nomination of chiefs as an attempt by the LCD government to abolish the chieftainship, she said:

*The plan of politicians [government] was to abolish the chieftainship and replace it with the councils. The chiefs in the villages are paid only M500 per month while the councillors get M2, 500. This undermines the integrity of the chiefs. In this council, the councillors are all members of the ruling party. When we came in, we found that they had already decided among themselves to marginalise us. They have taken all key positions on the council committees [my translation] (Letsie 2009, interview<sup>49</sup>).*

However, some chiefs (such as Chiefs Thaabe Letsie of Ha `M`antšebo, Sekhonyana Letsie of Tšoeneng Ha Letsie, and Elias Ntlibi Lehloenya of Mahloenyeng whom the

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<sup>48</sup> Interview with Chief Rafolatsane Lerotholi, 22<sup>nd</sup> July 2009, Matsieng.

<sup>49</sup> Interview with Chieftainess `M`aletsie Letsie, 23<sup>rd</sup> March 2009, Koro-Koro.

author interviewed at their respective homes on the 30<sup>th</sup> April 2009, 7<sup>th</sup> July 2009, and 23<sup>rd</sup> July 2009 respectively) regarded the nomination process as the only workable way that would allow them participation in the new system because not all of them could be in councils. They were also critical about the behaviour of some sons of chiefs and highlighted the need for all the chiefs to be educated so that they can perform their duties better. These were among others. According to Chief Thaabe Letsie, “the nomination principle is appropriate because if elected, the chiefs would go into the councils on a political ticket”. He also criticised some sons of chiefs whom he said “do not want to go to school because they know their chiefly positions are guaranteed. They are ill disciplined. Even when workshops are organised for them they do not have any input”. The low salaries of chiefs, according to him, make them fall prey to bribery.

Chief Sekhonyana Letsie also argued that there is nothing wrong with the nomination principle because not all the chiefs can be in the councils. He went further to say that there are some sons of chiefs who are not brought up in the way chiefs should be; as such they misbehave when they take office. They also do not want to go to school, he continued, although they are expected to rule those who are increasingly being educated. For this reason, he suggested, the government should make sure that no chief takes office unless he/she has at least a secondary education qualification. His view was that, it would be improper to consider only seniority over other criteria for one to be a chief merit too is needed.

Chief Lehloenya shared the same opinion as his colleagues. He described the nomination principle as a good idea and said that there should be no reason for the chiefs to panic about it. He advised that:

*Chiefs should change with times so that they are not fearful of changes. Education is very crucial in this regard. The sons of chiefs should be educated. I have ordered the Headmen under my authority to send all their children to school. I have sent the names of all the chiefs sons to the Principal Chief of Matsieng so that none of them will become a chief without education [my translation] (Lehloenya 2009, interview<sup>50</sup>).*

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<sup>50</sup> Interview with Chief Elias Ntlibi Lehloenya, 23<sup>rd</sup> July 2009, Mahloenyeng.

It is interesting to note that some chiefs (such as the three mentioned above) do not seem to fear changes such as the controversial nomination issue. This should not be surprising because they have had a better exposure to the general administration of the country than their other colleagues. Chief Lehloenya is a retired senior civil servant with a university degree, hence his passion for education. He also disclosed that his own son is pursuing a Master of Arts degree with one university in South Africa. Chief Sekhonyana is a retired soldier with a secondary education, while Chief Thaabe was a Member of the Military Council following the 1986 military coup d'état and had the experience of working with the chiefs during his term in office. This is why he is able to recognise the shortcomings of some chiefs, which have implications for the chieftainship institution.

The majority of the chiefs who did not support the nomination process, but said they had to accept it without choice to ensure the survival of the chieftainship institution, were either too old, without public service experience at the national level or did not have education beyond primary school level. They were less enlightened, in comparison with these three. This does not mean that the fears of this group of chiefs are baseless. Without proper and adequate consultation and information from the government, they were bound to have these fears and suspicions, especially when there is a general feeling among different sections of the population (including senior chiefs, opposition politicians) that the LCD government still harbours a plan to do away with the chieftainship institution and to replace it with the politicians. The threats made by some ministers in parliament that the chieftainship institution would be abolished through calling a referendum, do sound credible to many less educated people. These threats do not help the situation either.

#### **5.6. Did the chiefs in councils act as representatives of their colleagues?**

After the April 2005 local government elections, chiefs did nominate their colleagues to occupy two seats per council as the government wished in terms of Section 4 (1) (a) the *Local Government (Amendment) Act, 2004*, provision. However, the responses to the critical question of whether or not those in councils acted as true representatives of their colleagues were mixed, depending (to a large degree) on individual councils. The majority of the chiefs in the Matsieng Ward-based councils complained that the

councillor-chiefs were not behaving like their representatives, while those in the Rothe Ward answered in the affirmative.

The former complained that the councillor-chiefs did not report to them as could be expected. Chief Thaabe Letsie complained that the councillor-chiefs “appear to be part of the councillors rather than chiefs’ representatives. When they do go to those chiefs whom they are supposed to be representing (although they very seldom do) they go as councillors rather than as representatives of the chiefs”. Chief Leutsoa also expressed his disappointment towards the chiefs’ supposed representatives and said: “They are effectively politicians. They are in councils for money and not for service to the people. They do not report to us. When they speak, one will not think that they are chiefs. They speak like politicians”. Similarly, Chieftainess `M`aletšabisa Taelo Lerotholi of Phuthiatsana Thota-Moli lashed out at the Councillor-chiefs and said:

*They do not report to other chiefs. I have never seen them since their nomination. They do not do anything for the chiefs. They have become politicians and not our representatives. They are useless, they do not report to us. We do not know what is going on in the council. It would be better if all the chiefs were in the council so that they could solve people’s problems. There are no services to the people and nobody tells us what the problem is. People have applied for sites but nothing is being done by the council and those chiefs in there [my translation] (Lerotholi 2009, interview<sup>51</sup>).*

It is unfortunate that the councillor-chiefs and the councils themselves are blamed for non-delivery, especially on issues of land allocation. There are problems beyond their control. In all the four councils, the councillors disclosed that the Minister of Local Government and Chieftainship had issued a moratorium on land allocation country-wide. The reason for this moratorium, they said, was that the Minister had promised them that the government would send some physical planners to ensure that the sites are planned to prepare for better provision of services such as roads, water, and electricity. However, the people do not know this and do not accept it when the councillors tell them about it. At the time of writing this thesis, the process of land allocation was still stalled although it is one of the most important aspects of life both in the villages and throughout the country. In the Makhoarane Community Council area, the Councillors expressed their frustration about the moratorium, complaining

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<sup>51</sup> Interview with Chieftainess `M`aletšabisa Taelo Lerotholi, 10<sup>th</sup> July 2009, Thota-Moli

that it has prevented investment that could help create jobs and boost economic development in the area.

Chief Lehloka Setenane Mofoka of Qhomane Ha Mofoka also supported his colleagues and complained that: “the chiefs in the council now look down upon those outside council. They earn more money than we do and this makes them feel more important than us”<sup>52</sup>. The councillor-chiefs receive two salaries, the normal monthly allowances as chiefs and the monthly salary earned by all the councillors. This situation may be causing some jealousy on the part of the chiefs outside the councils. As it were, these complaints came largely from the Matsieng Ward which has three Community Councils, Mohlakeng, Mazonod, and Makhoarane respectively.

In the Rothe Ward, which is home to the Lilala Community Council, the chiefs outside the council were generally positive about the behaviour of their representatives. Chief Moeketsi Molikeng of Ha Raphae expressed satisfaction and some degree of pride in the councillor-chiefs. He indicated that their relations are very good. He further said that the councillor-chiefs report to the chiefs about council-related issues and seek the opinions of their colleagues on these on the 5<sup>th</sup> of every month at the Principal Chief’s office. He even went further to say “I have no problem nominating them again in the next elections” (Molikeng 2009, interview<sup>53</sup>). Chief Mohapinyane Tlali also agreed with his colleague and confirmed that their representatives report to them monthly at the Principal Chief’s offices.

## **5.7. Conclusion**

In this chapter, I have attempted to look retrospectively and critically into the local government policy formulation and implementation with a view to understating the nature of participation of and the role played by the chiefs as key stakeholders in these processes. The conclusion drawn from this analysis is that the chiefs were not adequately consulted by the government in these processes. Consequently their role has been almost negligible at best and non-existent at worst. This is largely because the government was under pressure to implement the new local government policy

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<sup>52</sup> Interview with Chief Lehloka Setenane Mofoka, 11<sup>th</sup> February, 2009, Ha Mofoka.

<sup>53</sup> Interview with Chief Moeketsi Molikeng, 22<sup>nd</sup> July, 2009, Ha Raphae.

before the end of the 1993-1998 parliament's life span, in keeping with its promise to the nation in the run-up to the 1993 parliamentary polls. However, the government failed to fulfil this promise for about six years.

The government had to abandon the process of public consultations on the nature, powers, composition and related matters of the envisioned local authorities because these were taking too long and proved to be costly. It then initiated a highly top-down approach by unilaterally developing the *White Paper*, reflective of its own position rather than one informed by the views of those mostly affected by the policy or key stakeholders – the chiefs. Having developed the *White Paper*, the government was rhetorically still intent on seeking the people's views on the envisaged local government system, but this did not adequately open up the policy for a meaningful debate by and input from the key stakeholders. The stakeholders' legitimacy (especially of the chiefs') as true representatives of their constituencies was highly in question.

Thus, the consultative process became a sham or a window-dressing exercise as it was numerically dominated by the pro-government bureaucratic and political elites. Besides, it was controlled fully by the government in terms of deciding the overall agenda for discussion, who had to be involved, in what numbers and what to do with the outcome of the deliberations. The net effect of the process was to rubber-stamp the government's own position on the nature of the new local government system.

To make the consultation process meaningful and yield positive outcomes, the government could have arranged a special forum for the chiefs and presented the *White Paper* to them so that it could get their collective views. The chiefs could have happily agreed to this as they knew that the policy would affect them directly in terms of reducing their powers. What then were the implications of these processes for the functioning of the new local government system? How did they affect the relations between the chiefs and the new councils and councillors, following the local government elections, and with what kind of impact on service delivery to the people in the villages? The next chapter broaches these questions.

## CHAPTER SIX

### The Chieftainship-Councils Relationship and Service Delivery

#### 6.1. Introduction

That the LCD government adopted a top-down approach to the local government policy formulation and implementation, thereby pushing to the margins the chiefs as the key stakeholders, as the preceding chapter has shown, raises several questions. These include: how would the observed marginalisation of the chiefs affect the chiefs-councillors relations and with what kind of implications for service delivery in the four selected Community Councils and the country as a whole? Would the chiefs and the councillors understand their respective roles and then carry out these as stipulated in the local government legislation or would both sides fail to understand their respective roles thereby having conflicts over those roles? Did the government train the chiefs and the councillors so that they would know what they had to do? I set out, in this chapter, to answer these questions by outlining the data generation methods, presenting and analysing (in a comparative fashion) the data derived from the observations of the council meetings, focus group discussions with the Councillors, interviews with the chiefs who are members of the councils within the four selected Community Councils and those who are not, the council secretaries and the chairpersons of the councils in that order respectively.

In all the four Community Councils constituting the research area for this study, I attended one monthly meeting per council. The procedure was standard in all cases. In line with prior arrangements I had made with the respective council secretaries and the chairpersons, I was asked by the chairpersons to introduce myself and to explain the purpose of my visit. Thereafter, I outlined the procedures I intended to follow for the processes of observation and subsequent focus group discussions and interviews. Then the councillors introduced themselves to me. The meetings proceeded as I observed and took notes. Each of the three data generation strategies had its objectives. First, the observations were aimed at getting first-hand information about how the councillor-chiefs interact and relate with other councillors and how they participate in issues under discussions in the meetings. Second, the focus group discussions were intended to provide insights on the nature of the relations between

chiefs in the council itself and those outside it, its functions-vis-à-vis those of the chiefs, progress on the council work in terms of the projects they wanted to implement, the challenges confronting them and how these could be overcome. The questions were open-ended to allow respondents the freedom to express their views and share their experiences with me in a free fashion. Last, the primary object of the interviews was to determine and understand (from the respondents' perspectives) the nature of the relationship between the councillor-chiefs and the other councillors and the effects that this relationship may have on service delivery.

As indicated under the methodology section in chapter one, I adopted this three-pronged data generation strategy to achieve two goals. The first strategy was to supplement the data generated by one strategy with those generated by the other two. The second was to assist the process of data triangulation in order to enhance the validity of the results. In addition, I held separate interviews with the chairpersons, secretaries and the councillor-chiefs in order to minimise potential bias in the responses that might have emanated from interviewing them collectively.

I acknowledge, however, that the observations I make below about the conduct of the councillors in the meetings might have been influenced by my presence. To minimise the impact of this potential effect on the research findings and conclusions that I draw, I assured the councillors that I would not interfere with their meeting and asked them to carry out their work as if I were not present. I acknowledge that their conduct might have changed if I had the opportunity to attend more of these meetings. Unfortunately, I was under serious time constraints to do so. The meetings are held once a month and this would require more time than I had. However, I am reasonably confident that the three data generation strategies I employed have minimised the degree of bias that would otherwise have a potential to threaten the validity of the findings and conclusions of this research.

## **6.2. Chieftainship-councils relationship in the Mazenod, Mohlakeng, Lilala, and Makhoarane Community Councils**

Naturally, the introduction of a new political institution (in this case the elected local government) would tend to threaten the existing one (the chieftainship), which has

over a long time, spanning decades, enjoyed the exercise of power and particularly when there has been marginalisation of the old one in the processes leading to a new dispensation. Despite the provisions in several legal instruments, there is still confusion among both the ordinary citizens and some of the chiefs outside the respective councils concerning the powers and functions of the chiefs, on the one hand, and those of the councils, on the other hand. It is imperative to highlight the pertinent statutory provisions on land- related issues and the role of the chieftainship *vis-à-vis* that of the Community Councils in land allocation processes. This would provide foundations for the analysis of the chiefs-councillors relations.

Community Councils are empowered by the *Local Government [Amendment] Act, 2004* to perform the following functions as they appear under Schedule Two of the *Local Government Act, 1997*:

- Control of natural resources (e.g. sand, stones) and environmental protection (prevention of dongas and pollution)
- Land and site allocation
- Provision of minor roads and maintenance of bridle paths
- Grazing control
- Water supply in villages
- Markets provision and regulation
- Burial grounds

The *Chieftainship Act No.22, 1968* spells out the powers and functions of the chiefs under section 6 (1). This reads:

It is the duty of every Chief to support, aid and maintain the King in His Government of Lesotho according to the Constitution and other laws of Lesotho, and subject to their authority and direction, to serve the people in the area of his authority, to promote their welfare and lawful interests, to maintain public safety and public order among them, and to exercise all lawful powers and perform all lawful duties of his office, efficiently and quickly according to law.

Section 7 (1) empowers the chiefs to prevent crime in their areas. It reads:

It is the duty of every Chief to interpose for the purpose of preventing, and to the best of his ability to prevent, the commission of any offence by any person within his area of authority. *A Chief who knows of a*

*design to commit an offence by a person within his area of authority may arrest, the person so designing, if it appears to the Chief that the commission of an offence cannot otherwise be prevented. A person so arrested, unless released within twenty-four hours of his arrest, shall be taken immediately after the expiry of that time before the nearest court to the nearest member of the police force [italics added].*

Other than the above functions, powers and duties of every chief, there are numerous other unwritten functions that the chiefs performed in the past and continue to perform in their respective villages. These functions include, but are not limited to, issuing birth and death certificates to the people, making attestation letters for the people to get services such as opening bank accounts and securing loans, securing passports from the state agencies, disputes resolution (Pratchett *et al.*, 2008:14). Since the introduction of the *Old Age Pension Scheme* for the citizens aged 70 and above in 2004, the chiefs have an additional role of acting as attestation officers of the state for those eligible for this pension, to minimise potential fraudulent practices by the impoverished and desperate unqualified citizens (Makoa & Kapa, 2009:46).

It may be argued that the *Local Government Act, 1997* is clear on the functions to be performed by Community Councils as listed above, and that there should not be any basis for any misunderstanding. However, there appears to be a big gap between what the laws say and the actual practice on the ground. For example, some chiefs continue to perform some of the functions which, by law, should be the responsibility of the councils. Ordinary people continue to seek services from the chiefs relating to these. In particular, they go to the chiefs for land allocation. Land allocation has always caused a large degree of controversy because of the economic benefits that are associated with it and lack of clarity concerning the precise role of the chiefs therein. As Leduca (2006:181) argues, any useful analysis of land management issues in Lesotho should not ignore the role the chieftainship institution. This observation points to the lack of clearly delineated responsibilities between the chieftainship institution and the local authorities leading to conflict between these actors (Mbetu & Tshabalala, 2006:26; Leduca, 2006:205; Tsikoane *et al.*, 2007:48-49).

The existing legal instruments do not appear to have settled these controversies. Instead, there appears to be a large degree of ambiguity and contradictions concerning which of the laws, between the *Land Act No.17, 1979*, the *Local Government Act No. 16, 1997*, *The Laws of Lerotholi*, take precedence in land-related matters. Land

allocation is governed by and provided for under the *Land Act No. 17, 1979*. Section 12 (1) of this *Act* establishes Land Committees, the membership of which includes the chiefs of the areas where such committees may be established. In particular, the section makes the chiefs automatic *ex officio* members of these committees. It reads: “the power to grant title to land shall be exercised by majority decision of the Land Committee established for the area of jurisdiction, of which the Chief having jurisdiction shall be chairman ‘ex officio’ [...]” This *Act* was amended by the *Land [Amendment] Order No. 6, 1992*, which replaced the Land Committees as land allocating authorities with the village Development Committees under section 3 (3). However, the amendment did not change the status of the chiefs: they remained *ex officio* members of the Development Committees and chairmen.

Because there are no other amendments to the laws relating to land allocation to the effect of removing the chiefs from land allocation processes, it seems that all chiefs in the villages still had powers in land matters. Although the *Local Government Act No.6, 1997* attempted to proscribe all other chiefs who are not members of Community Councils throughout the country from taking part in land allocation, it also has not taken away the right of the chiefs insofar as land allocation is concerned. In addition, the *Act* has not repealed the *Land Act No.17, 1979*. Although always vigilant and very careful about the laws governing them, especially those at the Principal and Ward Chief levels, it is surprising that the chiefs have not realised and questioned this contradiction. Even the government seems to have either ignored or not noticed this legal shortcoming until late 2009 when it introduced *The Land Bill, 2009*.

The objective of *The Land Bill, 2009* is it:

proposes the consolidation of the *Land Act, 1979* amendments and related laws. It introduces reforms in land administration and land tenure security, with a view to promote efficiency in land services and enhance the use of land as an economic asset in Lesotho. The *Bill* repeals the *1979 Land Act (The Land Bill, 2009:1)*.

The *Bill* identifies some of the inadequacies of the *Land Act, 1979* thus:

the following have been found to be some of the shortcomings in the 1979 Land Act: a) Dual tenure system: (customary law and statutory law). Section 7 (1) of the Laws of Lerotoli provides for customary

land tenure and Land Act 1979 section 3 (2) and section 5 reiterates customary acquisition of land under which chiefs have allocating powers and also creates new allocating authorities (ibid).

It goes further than this and brings about what has been interpreted as opening the Lesotho's land for economically powerful foreign forces by making the land a saleable commodity. This was not the case before the introduction of the *Bill*. According to the *Bill*, the *Land Act, 1979* places a "limitation of land holding to foreigner – section 6 (c) as amended by section 4 of the Land Amendment Act No. 27 of 1986" and the *Bill* contends, "This section is to the economic detriment of the country".

This *Bill* has caused a huge controversy across different sections of the Basotho population – non-governmental organisation, opposition political parties and their youth leagues, academics, and the chiefs as reflected in the local media (see for example, Tlali, 2010). Because of the centrality of land to the lives of Basotho and the controversies sparked by the new *Land Bill*, it is crucial to devote some close attention to this *Bill* and the kinds of reactions it has triggered from some sections of the population. The issues of contention about the *Land Bill* are (for purposes of this study) the clauses on land appropriation by the state, allowing foreign enterprises to own land in Lesotho, the nature and scope of public participation in the discussion of the *Bill*, and the removal of the chiefs from land allocation process. I outline below some reactions of some sections of the Basotho society on these issues.

The *Bill* was presented before the members of the public by an appropriate *Parliamentary Cluster Committee* in which the views of the people were solicited, albeit the general feeling among the people, as represented by their different political and social formations is that the consultations were neither adequate nor properly done. The civil society organisations complained that "the Bill had to be delayed to allow for the debate to unfold so that it comes at the end as a product of the debate – not the cause of the debate" (Nyane, 2010: 1). Nyane notes further that "...the Bill suffers hugely from lack of public participation", which he regards as one of the key "principles of democratic governance" (ibid). Civil society organisations sought to push the government to subject the *Bill* to an elaborate public participation process and debate as:

the Land Bill proposes a great departure from its predecessor, the Land Act 1979 as it extends the right to land holding to foreign enterprises [...]. Because this new arrangement [the Bill] also goes with open sale of land, it makes the poor vulnerable to the Asian hawkers and other land grabbers who have notoriously plagued African countries with money. Civil Society Organisations regard this to be a major shift which should be referred to the people through open and participatory process where voices of the majority poor holding land could be heard and dully inform the finalisation of the law. It is against this background that Civil Society Organisations called for a broad public participation programme that subjects the Bill to public scrutiny (Shale, 2010: 15).

Similarly, Victor Shale (2010: 4-5) is critical of the government's decision to allow private land ownership arguing that "the decision will...without doubt open flood gates for business interests" leading "not only to loss of land by the locals but will also result in poverty". According to him, the Chinese and Pakistanis are already running more than half to three quarters of the entire businesses in the capital, Maseru, and they are also making inroads in the rural areas. These people, he continues, will accumulate land in the name of investment, yet they have not made any meaningful difference in the lives of Basotho, while the government is facilitating this process.

Mashinini (2009:170) commends the government for having made attempts to seek public views on the *Bill* through multiple public forums. These were held in the northern region (comprising the administrative districts of Mokhotlong, Botha-Bothe and Leribe), the southern region (represented by the Qacha's Nek, Quthing, and Mohale's Hoek), and the central region consisting of the districts of Maseru, Mafeteng, Berea, and Thaba-Tseka). However, he raises several controversial issues contained in the *Bill*. These include what he terms "half-hearted and pseudo" and insufficient public consultations because only three of these were held country-wide, thereby limiting seriously the scope of public participation (Mashinini, 2009:176). In his view, at least one forum per district, rather than only one per region, could have been held in each of the ten administrative districts to broaden the consultative process and give the people an opportunity to express their views on this critical issue. He also criticises the justification made by the government that the *Bill* seeks to ensure security of tenure under a 90 year lease hold, whereas under the customary land tenure system the land belongs to an individual for life and is passed on to the

next generation. According to him, “the puzzle and irony is on how it is that a life time right with intergenerational transfer of title to land under the customary tenure can be insecure yet a 90, 60 and even 30 years lease right is deemed to be secure!” (ibid: 177). According to him, therefore, the *Bill* was based on “Eurocentric rationality” and only sought to serve the interests of the foreigners without regard to the “reality borne out of local empiricism” (ibid). Of more importance to this study, Mashinini notes that the *Bill* sought to marginalise the chiefs in land administration as it puts land management and allocation in the hands of the elected councils. He warns that this is likely to be “disastrous rather than constructive for sustainable development” (ibid: 174).

The *Land Act, 1979* section 3 (1) provides that “Land in Lesotho is vested absolutely and irrevocably in the Basotho Nation and is held by the State, as representative of the Nation”. Sub-section 2 provides further that “no person, other than the State, shall hold any title to land except as provided for under customary law or under this Act”. In terms of the *Land Act, 1979*, therefore, foreigners were allowed to own land in Lesotho only if they formed joint ventures with Basotho in which the latter would have at least 51 percent share holding (see *Land Act, 1979* (6) (1) (c) ).

As it were, the LCD government attempted, and succeeded through this *Bill*, to reverse this arrangement. These public participation exercises produced somewhat mixed results: some people supported the *Bill* while others rejected it on the grounds that it seeks to take away the land from the Basotho people. The concern of those opposing the *Bill* was that the LCD government is introducing private ownership of land under Clause 6 (1) (c) (d) the effect of which, they argued, will be to dispossess the poor Basotho of their land, which is their only resource, as the foreigners will be allowed to buy land. Another controversial Clause is 43, which provides for abandoned land. This says among other things, that land will be regarded as abandoned when a person who has been allocated it is “no longer capable, without significant expenditure and remedial work, of being used for purposes...where the land in question is for agricultural purposes, the lessee or allottee has failed to cultivate it for at least 3 consecutive years” (Clauses 43 (d) (i), (e).

The Institute for Southern African Studies (ISAS) organised (on December 8<sup>th</sup> 2009) a forum in which the *Bill* was debated. Because the organisers of the forum know about

my interest in the subject, I was invited to and took part in this forum. It was an open event in which some NUL senior academics had been asked by the organisers to scrutinise the *Bill* and comment on its clauses. The general feeling of this forum was that the *Bill* would deprive the poor Basotho people of their land once it is made a private property, which can be sold in the open market. The forum was generally critical also of some clauses of the *Bill*, which provide that people could be dispossessed of their land if they do not utilise it for the purposes it has been allocated. The key argument of the forum on this point was that the government must not dispossess the people of their land simply because they do not use it productively. Rather the government must investigate the reasons for the people's failure to use the land as allocated to them and provide resources for the people to use the land. The concern of the forum was also that the people do not use their land not because of their own choice; they simply lack resources to put the land into productive use.

At almost the same time, I made a follow-up telephone call on one chief whom I had interviewed earlier to clarify some issues that he had raised. After answering my questions, the chief expressed serious misgivings about the *Bill* and said to me:

*Mr. Kapa, what are you, educated people, doing to prevent the passage of this diabolical Bill into law? This Bill has caused public anger in the villages here. The Chinese<sup>54</sup> will take all our land if this Bill becomes law. I tell you, there will be bloodshed of unimaginable proportions if we as the Basotho do not stand up to prevent this Bill. What are you people doing about this?"* [my translation] (Chief Mohapinyane Tlali 2009, interview<sup>55</sup>).

I told him that the *Bill* is being discussed country-wide, even at the NUL, and hopefully the controversial clauses will be addressed. But that was not to be. The *Bill* has gone through the National Assembly, despite the opposition Members of Parliament's walk-outs (as a sign of protest) during its debate. The *Bill* has attracted

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<sup>54</sup> The Chinese nationals have come in large numbers into Lesotho, as indeed is the case in other African countries, and their presence in the country has created a sense of some degree of unhappiness if outright hatred. They became targets of general public in the early 1990s and had their retail businesses torched and many of them injured why mobs angered by the killing of one woman by the security personnel of one clothing shop for allegedly stealing a T-shirt from the shop. Although the shop was owned by a South African company, the public went on a rampage and looted and burned many of the businesses owned by the Chinese nationals. In other subsequent violent disturbances triggered by political conflicts the Chinese businesses have been mostly affected, suggesting clear dissatisfaction about their presence in the country. It is not surprising then that they are now suspected to be the potential beneficiaries of the current *Land Bill* even though they may not be connected directly to the issue.

<sup>55</sup> Telephone interview with Chief Mohapinyane Tlali, Maseru, 7<sup>th</sup> December 2009.

negative reaction from ordinary Basotho, both supporting the ruling LCD and the opposition alike. One villager is reported to have made the following remarks at the opposition ABC's by-election rally in Mpharane Constituency in Mohale's Hoek district:

I am very disappointed with the Land Bill. Land is the only thing that the poor still have in this country. If land becomes available for sale like any other commodity, only the rich will afford it and that will be the end of us (Hoeane, 2010).

In a similar fashion, at the rally held by the governing LCD, one member of the party is reported to have said: "I am deeply disturbed by the little that I know about the new law [the *Land Bill*]. If it means losing our land to foreigners, I might consider voting for the opposition. I have been with the LCD since it was founded in 1997" (Hoeane, 2010). Yet another Mosotho wrote a letter to the editor of the local weekly newspaper, *Public Eye*, in which he expressed deep sentiments about land, which he regards as his birth right that no one has a right to take away from him. He said:

My mother lay groaning in a hut on March 6<sup>th</sup> 1973 as I, new born baby, lay sleeping. My grandmother took my umbilical cord and buried it in the fertile soil, mingling it with Lesotho, and giving me a birthright to guard dutifully and jealously with pride and reverence. What will our children say when they come of age and learn that we awarded land to foreign blood (Hlalele, 2010)?

These sentiments speak volumes about the way in which some Basotho, arguably the majority of them, emotively regard their attachment to land. For them land is not only an economic resource, as the government perceives it, that can be sold in a free market. It is far more than that. They appear to be prepared to fight for it if the land goes into foreign hands.

They seem to be generally powerless now when the *Bill* has been passed in parliament. It is not clear yet how they will react when the new *Land Act* is implemented. The fact that the ruling party's MPs have used their parliamentary majority to push the *Bill* through Parliament, the government has had its way as it usually does. During the debate in the Senate, one prominent chief who is also a Member of Senate, Lesotho's Upper House of Parliament, Chief Khoabane Theko of Thaba-Bosiu, is quoted as having described the *Bill* as an "unfortunate piece of legislation that would take away the rights to land of Basotho"

(<http://www.intelserv.co.ls>). Under the customary land tenure, the *Laws of Lerotholi* section 7 (1) provides that every chief and headman recognised by the High Commissioner in the Gazette in terms of 1938 *Basutoland Proclamation* section 54 of the *Laws of Basutoland* has the responsibility under his area of jurisdiction to allocate land to his people, and it is his responsibility to see to it that land allocation is done justly and without discrimination [my translation].

There was (and still is) lack of clarity on the powers of and functions performed by the local councils on the one hand and those of the chiefs on the other hand. This lack of clarity was responsible for exacerbating fear and mutual mistrust between the two. This is in spite of the fact that the provisions of the *Local Government Act, 1997*, the *Second Schedule* and the *Chieftainship Act, 1968* section 6, attempted to define and separate such powers and functions of the chiefs and councils. This observation has been confirmed by respondents in the four Community Councils, as will be shown below.

### **6.2.2. The Mazenod Community Council**

Mazenod Community Council sits at Mazenod, a small town about 10 to 13 kilometres south of Maseru, the capital city. It has a Roman Catholic Mission, a high school, and several small retail businesses. It is prominent perhaps because it has Lesotho's second oldest printing houses owned by the Catholic Church. In addition, one of Lesotho's oldest newspapers, *Moeletsi oa Basotho* is produced here. In the past, the paper was associated with the then ruling Basotho National Party (BNP) majority of whose members were also Catholics. Thus, it was known for publishing pro-BNP propaganda between the mid-1960s and mid-1980s. The area falls within the Qeme Constituency, which was won by the BCP in the 1993 elections, and by an independent candidate who could not get the endorsement of the BCP's executive committee during the subsequent by-election that followed the death of its parliamentary representative. Since the 1998 parliamentary election, the Constituency has been won by the ruling LCD candidates in all subsequent polls.

The Council is composed of nine members representing nine (9) Electoral Divisions. According to the Government of Lesotho (2006: 98), the Mazenod Community

Council has approximately 6152 households, with a total population of about 26 140, and a gender distribution of 12 650 males and 13 760 females. Apart from the two chiefs, six of the councillors are members of the governing LCD, and only one a member of the BNP. The meeting started at 8:00am on the 3<sup>rd</sup> March 2009 as scheduled. It was opened with a prayer after which the chairperson introduced the agenda for the meeting.

#### **6.2.2.1. Observation of the Meeting**

The meeting was conducted in a surprisingly formal and respectable fashion, befitting national legislatures. This is surprising given that the Council is made up of no more than ordinary citizens with limited formal educational qualifications. The members avoided wasting time on trivial issues. They observed strict formal administrative rules and procedures that could be expected of any formal meeting in a public institution, such as a national parliament. They addressed each other as “*Mohlomphehi*” so and so, an equivalent of “Honourable” so and so. They allowed each speaker to raise a point relating to the agenda item under discussion, deliberate on it, raise point of order when this was necessary. The discussions were based largely on consensus without any need for a vote. All members exhibited a remarkable freedom of speech without any interruption from others. There were also no visible partisan political party divisions in the deliberations of the meeting. This may be explained by the numerical preponderance of the governing party in the Councils and also the familiarity and close working relationships between all the Councillors, irrespective of political party affiliation. This bodes well for the functioning of the Councils.

#### **6.2.2.2 Focus group discussions**

The councillors acknowledged that the initial stages of local government implementation were characterised by acrimony, mutual mistrust and lack of co-operation between the chiefs and the councillors as a result of lack of understanding over what each had to do under the new political dispensation. According to them, some chiefs refused to organise *lipitso* for the councillors and even boycotted these if the latter managed to call them. They also indicated that they were left on their own by the government to sort out their differences. The government had held training

workshops for the councillors (including the councillor-chiefs) and left out the rest of the Area Chiefs, hence the confusion over roles and powers. Some chiefs also continued to allocate land to the people illegally and without any consultation with the Council. Left on its own, therefore, and aware that it would have to work together with the chiefs despite their differences, the Council became innovative and used the councillor-chiefs to reach out to and persuade their colleagues to work with it. It invited the otherwise hostile chiefs to its meetings so that they could learn how it works and assure them that the councillors would not take away their powers.

The strategy seems to have worked because, with time, the relationship between the chiefs and the Council began to improve: the chiefs stopped allocating land illegally and began working co-operatively with the Council. The councillors felt that the government should have organised joint training workshops for the councillors and all the Area Chiefs to ensure that both sides acquire similar knowledge and understanding on the local government system and how they had to work. However, they lamented that this was not done by the government. Instead, they revealed that, it was the Transformation Resource Centre (TRC) - a local non-governmental organisation - that took it upon itself to organise joint training workshops for all the Area Chiefs and the councillors. According to the organisation's Human Rights and Democracy officer, Lira Theko,<sup>56</sup> the TRC has given itself a mandate to work in the areas of democracy activism, promotion of human rights and local government. It stepped in to improve the relations between the chiefs and the councillors. It organised a successful workshop at Morija (one of the small towns in the country and the seat of the Makhoarane Community Council) upon its realisation that the local government system is a novelty in Lesotho and that it was highly politicised as the councillors were elected on political party tickets thereby causing divisions based on political party affiliation. In addition, there were some myths that the local government was going to appropriate people's fields and sites; and that there were tensions between the chiefs and the councillors over their roles, powers and responsibilities.

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<sup>56</sup> Interview with Mr. Lira Theko, 11<sup>th</sup> May 2009, Maseru

According to Theko, the Area Chiefs and those below them (the Headmen) were apprehensive that the councillors were going to take away their powers. They might have been right because they did not understand their role *vis-à-vis* that of the councils. The TRC, he continued, wanted to make sure that the local government system works and therefore organised a series of workshops for the ordinary people, the chiefs and the councillors. He went on to show that the TRC was not invited by the government to organise these workshops. However, the government allowed the TRC to go ahead with the workshops. As it came out, the intervention of the TRC had a positive outcome for the chiefs-councillors relations in the four Councils under this study.

### **6.2.2.3. Interviews**

The observation and focus group discussion were followed by separate interviews with the chairperson of the council, the councillor-chiefs, and the council's secretary (the officer responsible for the overall administration of the council's affairs and resources). The chairperson disclosed that:

*the councillor-chiefs co-operate very well with other councillors and remind other chiefs outside the Council of their functions. They comply with the decisions of the Council. However the chiefs outside the Council do complain about the role of their colleagues in Council, especially on monies collected from grazing fees charged to the villagers, as these have been taken away from them. They are envious about the allowances that the Councillor-chiefs get from the central government [my translation] (Khoanyane 2009, interview<sup>57</sup>).*

It is not difficult to understand the concerns of the chiefs outside the Council about the loss of this income since they have been accustomed to collecting and using it without having to account to anybody. They also get very low allowances from the state, as I have already shown in the preceding chapters.

Similarly, the Council's secretary noted that although the relationship between the chiefs and the Council was bad at the beginning, due to lack of understanding on the part of the chiefs as to what their roles, powers, and responsibilities were under the new dispensation, they have since improved. The main source of tensions was the grazing fees and land allocation. Since the Council called them to its meetings and

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<sup>57</sup> Interview with Mrs `M`antsane Khoanyane, 3<sup>rd</sup> March 2009, Mazenod.

appealed to the Principal Chief of Matsieng (under whose jurisdiction the Council falls) to intervene, the situation has significantly improved for the better. He went on to show that the Principal Chief and the Council reminded the chiefs about their powers and function as contained in the *Chieftainship Act, 1968*, and those of the councils as stipulated in the *Local Government Act, 1997*.

The councillor-chiefs also indicated that they had “good relationship with the other councillors” and attributed this to the training that they received from the government and donor agencies. They described their role in the Council area as being that of protecting development projects brought about by the Council, while the councillors on the other hand bring these projects within the Council area. It was remarkable that the response to this question was similar and standard in all four Councils. They said: “councillors are developers; chiefs are protectors of development projects”. This response was provided by the Minister of Local Government and Chieftainship Affairs and seems to have been imparted to the councillors through training workshops. This is a learned response, which suggests similar understanding of what constitutes the work of the chiefs’ vis-à-vis that of the councillors. The respondents also highlighted the main challenges confronting the Council as:

- that ordinary people still did not understand the local government concept and how the local government system works
- lack of funds to finance development projects such as roads, water supply, foot bridges
- small office space which is also rented

The rented office has two rooms, one used for the Council meetings and another small one used by the secretary and his clerical assistant. The limited space means that it would be difficult for ordinary people to come to the Council meetings although these are open to all citizens except when issues to be discussed are deemed by the Council to be confidential.

The findings emerging from the Council meeting observation and the interviews with the councillors are that the relations between the councillor-chiefs and their colleagues were initially characterised by mutual suspicion but that these have since

improved, due to the agency of the Council and the individual chiefs who were invited to resolve all the issues spoiling these relations.

#### **6.2.2.4. Service delivery**

It is also clear from the data that service delivery to the people within the Council was not affected adversely by these relations as a sole variable. Other variables, particularly limited funding for development projects including water supply, foot bridges and roads, came into play. The only recorded success of the Council was the construction of the 7 kilometre road in the Council area from Ha `M`antšebo to Ha Nkopane. However, the councillors indicated with some sense of concern that the central government had not decentralised important functions and accompanying budget to the Council. They noted that even the on-going road construction and water supply projects were still the responsibility of the central government.

#### **6.2.3. The Mohlakeng Community Council**

The Mohlakeng Community Council is situated within the Koro-Koro national parliamentary Constituency, which has never been won by any opposition party since the 1993 transitional elections. The Council is made up of eleven (11) Electoral Divisions. It has approximately 4366 households and a population size of approximately 19 248, of which 9420 are males and 9828 females (Government of Lesotho, 2006:96). In terms of political parties' representation, Mohlakeng Community Council has 8 LCD members as councillors and one ABC member. It is a relatively "rural" Council without basic utilities such as electricity, telephone lines, and a sewerage system. It has a primary and high school, a Roman Catholic Church (RCC) Mission. The Council uses rented premises for office space. Unlike the other three Councils, which do not have a power supply, the Mohlakeng Community Council has solar power. It has good furniture and a computer with a printer.

### **6.2.3.1. Observation of the meeting**

As was the case with Mazenod, the Council granted me the opportunity to observe its meeting on the 24<sup>th</sup> March 2009. The meeting began with a prayer, followed by the introduction of the agenda items for discussion. Almost a similar approach to that of Mazenod was followed in terms of introductions and the purpose of my visit as well as the manner in which I wanted to proceed with my work. The conduct of the meeting here was less impressive as compared to the Mazenod case. The meeting started at 11:00 am rather than at 8:00 as scheduled. The late start of the meeting put a lot of pressure on both the Council and me to have a detailed discussion on similar issues to those discussed with the Mazenod Community Council. Besides, the meeting lasted until after 5:00 pm. This meant that I could only observe how the meeting was conducted and later have only a brief discussion with the chairperson and the councillor-chiefs. I had to postpone the interview with the secretary for the following day.

The councillor-chiefs and other councillors seemed to work well and without any palpable tensions. The councillor-chiefs contributed in the discussions freely as did their fellow councillors. One councillor-chief, a female, appeared to be more knowledgeable than other councillors in issues concerning the administrative procedures and formalities. She would, from time to time, bring the discussion to focus and provide guidance when the Council appeared to go astray. She would also correct the chairperson on procedural issues such as insisting that the issue under discussion had to be concluded before the meeting could move to the next item. When the meeting became rowdy, as this appeared to be frequent, she would ask the chairperson to call the other members to order from time to time. The chairperson himself did not exhibit adequate leadership qualities in terms of having effective control of the meeting and proving direction to it as was the case with his counterpart in Mazenod, and the other two Councils as will be seen below. This female councillor-chief would probably have been a better person to be the chair of the Council. But she could not be the chair because of the politics involved in the election of candidates for key positions in the Council. This point was stressed by the two councillor-chiefs as will be seen in the next sub-section. However, my general

observation of the meeting was that the relations between the councillors and the councillor-chiefs were not clearly bad as to affect the meeting and the work of the Council itself.

### 6.2.3.2. Interviews

I was able to have interviews with the chairperson and councillor-chiefs on the same day. Because of limited time, I had to postpone the interview with the secretary of the Council for the following day. The chairperson revealed that the relationship between the councillor-chiefs and the other councillors were “good” and that the councillor-chiefs conduct themselves as “councillors”. They contribute to the Council meetings positively and provide advice to the Council in areas where they have experience and expertise.

In a separate interview held with them later, the two councillor-chiefs disclosed that their relations with the other councillors are still fraught with problems emanating from the assumed superiority of the councillors over the chiefs. They said that this is all because the councillors are members of the ruling party, whose policy is “to undermine the integrity of the chiefs or even abolish the chieftainship.”<sup>58</sup> This is why the councillors always attempt to dominate them in the meetings. They also revealed that when they joined the Council, they found other councillors already having caucused to allocate themselves key positions in the Council and to relegate the chiefs to more insignificant posts. At issue here was the membership of key committees such as land committee of the Council, the responsibility of which is to deal with land allocation. For this reason, they said they had to assert themselves, to adhere strictly to the administrative procedures and to check on the abuse of the Council committee by their colleagues. This was clear to me during the observation of the meeting, as I have noted above.

The Council secretary also described the relations between the chiefs and the councillors as generally good. According to her, the chiefs “do organise *lipitso* for the Council to disseminate important information from the central government and from

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<sup>58</sup> Interview with Chieftainess `M`aletsie Letsie and Mr. Tšiu Tšiu, 23<sup>rd</sup> March 2009, Koro-Koro.

the Council itself.”<sup>59</sup> Even on the otherwise thorny issue of land allocation, she indicated, there are no problems generally, except for a chief of one area (Ha Nko). This chief had a conflict of personal nature with the councillor for the area. This chief was reported to be continuing to disregard the law and the Council by allocating land unilaterally and illegally. To resolve the matter, the Council had to write letters to this chief imploring him to work with the Council. Since then, he has been co-operative. My attempts to interview this chief to get his side of the story were unsuccessful as he was not at his home on three occasions when I went to interview him. He did not even let me know when he would be available, despite the messages that I left with his children that I wanted to see him. This notwithstanding, the overall picture emerging is that there are no problems, serious enough to hamper service delivery to the communities in the Council.

### **6.2.3.3. Service delivery**

As was the case with the Mazenod Community Council, the Mohlakeng Community Council has made a limited progress in service delivery, particularly in road construction. Other projects of the Council had not started due to limited capacity and resources and the fact that many of the functions are still under the central government as is the case with the Mazenod Community Council and the two other Councils, as will be seen below. At the time of conducting this research, there was a road construction project going on between Ha Mofoka and Ha Khoeli. According to the secretary of the Council, the total cost of the project was about M1.6 million<sup>60</sup> yet the Council had only M173, 000 or a paltry 10.8 percent of the total cost. She also indicated that the Council lacks technical expertise in road construction. According to her, the Council had to delay this project because it had to wait for the central government to make available civil engineers and surveyors to it.

While concurring with the secretary on limited human and financial resources, the Council chairperson complained, in a separate interview, that the central government had taken all the funds due to the Council to purchase road construction equipment

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<sup>59</sup> Interview with Miss Celina Jane, 23<sup>rd</sup> March 2009, Koro-Koro.

<sup>60</sup> Since Lesotho’s currency is pegged to South African Rand, all the figures quoted in Lesotho’s Maloti have the same value as the Rand.

and trucks. The result of this action was to delay the road construction project, which had stalled. What the data suggests here as well is that the limited progress in service delivery in the Council area is not caused by the nature of relations between the councillors and the chiefs. Rather it is caused by other factors, principal among which are limited decentralisation of functions and the accompanying lack of financial resources.

#### **6.2.4. The Makhoarane Community Council**

The Makhoarane Community Council offices are within the Morija town, which is about 45 kilometres south of Maseru. It has eleven (11) Electoral Divisions. Morija is a national heritage centre where the first Christian missionaries of the Paris Evangelical Missionary Society (PEMS) settled in 1833. It has become the headquarters of the now Lesotho Evangelical Church (LEC). It has the Morija Museum and Archives centre and the oldest printing facility in Lesotho, where the LEC-owned *Leselinyana la Lesotho* Newspaper is printed. This newspaper has been aligned to the BCP is and anti-BNP. It was once known as one of the prominent education centres in the country and has produced many important people in Lesotho. Besides, it has a Hospital at which the current King of Lesotho, King Letsie III was born. It is also within the Matsieng Constituency which, like all other three, has never been won by the opposition. The Council itself is dominated by the ruling LCD, which has eight (8) members while the ABC has only one (1). The Makhoarane Community Council has approximately 6381 households and a population of about 26 116 of which 12 811 are males and 13 305 are females (Government of Lesotho, 2006:102).

On the 7<sup>th</sup> April 2009, I was granted a chance by the Council to observe its meeting, hold focus group discussions with the councillors and separate interviews with the chairperson, one councillor-chief and the secretary respectively. The Council operates from rented premises, comprising a bigger room used for the Council meeting and another one serving as an office for the secretary.

#### **6.2.4.1 Observation of the meeting**

The meeting started at 9:00 am rather than at 8:00am as scheduled. It was a generally well conducted meeting compared to the case of Mohlakeng, but less so in relation to the Mazenod case. Some high degree procedural formalities were observed by the councillors and the discussions were held fairly properly. However, the chairperson tended to dominate the discussions and to determine the direction of the meeting. There was only one councillor-chief in attendance; the second was reported to be sick. This chief was less active in the discussions than other councillors and seemed to have a rather low esteem compared to those in Mazenod and Mohlakeng respectively. However, there were no observable bad relations between the chief and other councillors.

#### **6.2.4.2. Focus group discussions**

The councillors described their relations with the councillor-chiefs as “very good” and that they both work as one. They indicated that the councillor-chiefs and other councillors work “very well together”. However, they reported that some chiefs outside the Council cause problems for the Council. They indicated that there was still a power struggle between these chiefs and the councillors in some areas within the Council over range management fees. These chiefs want to continue keeping the money collected from the villagers through the impounded livestock instead of handing these to the Council. They refuse to work with the councillors and influence the other junior chiefs to oppose the Council decisions on range management-related matters. They singled out the Area Chiefs of Ha Leutsoa, Ha Toloane, Ha Moruthane, Mankoaneng, and Phahameng as troublesome chiefs. According to the councillors these chiefs charge the villagers illegal and high grazing fees (such as M150 per animal rather than the legal M10) when the villagers’ livestock are impounded. They keep the money to themselves. These chiefs declare these areas as “theirs” and incite the people not to observe the decisions of the Council to declare some range areas reserved. They also do not encourage or instruct the people to impound the stock grazing on the reserved areas. They further refuse to organise *lipitso* for the councillors. These chiefs, according to them, behave in this way because they refused

to attend the training workshops organised by the TRC for all the Area chiefs and the councillors.

The councillors concluded that the relationship between the Council and the chiefs is still not what it should be. It appears that unlike in other Councils, the Makhoarane Community Council has not been able to resolve conflicts with the chiefs. The Council could have done better to improve the relationship between itself and the Area Chiefs if it could have adopted the strategy used by the Mazenod Community Council. But there was no indication that the Councils share their own experiences and learn from each other. I have already indicated above that the central government seems to have left the Councils and the chiefs on their own to deal with the problems that they encounter in their operations. If the central government had intervened by among other ways organising joint training programmes for the chiefs and the councillors, these problems might have been resolved. To leave matters like these in the hands of the non-governmental organisations, which have no formal authority on what should happen in the councils, serves to contribute to conflicts rather than solve them. The Makhoarane case is unique in terms of persistent conflict between the chiefs and the Council and needs urgent attention by the central government.

#### **6.2.4.3. Interviews**

During the interview with the chairperson of the Council, he reiterated the issues emanating from the focus group discussion and disclosed that there relations between the councillors and the councillor-chiefs were cordial. The chairperson reiterated that some of the chiefs who are outside the Council do co-operate with the Council while others do not. As it were, the people approach the Council for land allocation without first consulting with their chiefs, and some chiefs such as those in question resent this. Having realised this problem, he indicated, the Council decided to refer all applicants to their chiefs before approaching the Council. The chiefs then write letters of recommendation to the Council for the applicants to be allocated land. This approach, according to the chairperson, seems to be working well towards improving the relations between the chiefs and the Council.

The chairperson acknowledged the important role of the chiefs in land matters and described them as people who look after the land on behalf of the King. If chieftainship were to be abolished, as some people would prefer, “there would be chaos; there would be serious conflict with nobody resolving it, not even the central government”<sup>61</sup>. The people in the area, according to him, “do not respect the councillors. They still respect and have confidence in the chiefs”. The chiefs “are also responsible for the preservation of the Basotho culture and customs such as *Mabollo*, traditional initiation schools, in which the councillors have no knowledge or interest”.

The Council secretary also expressed similar sentiments to those of the chairperson and the other councillors. According to him,

There were problems between the chiefs and the Council on matters pertaining to range management and land allocation at the beginning of the Council work. Some chiefs were not ready to the receipt books, money collected from grazing fees and land allocation forms hand over to the Council. Others continued to issue land allocation forms to the applicants, but have since stopped and now comply with the law after the intervention of the District Administrator and his staff (Ntšenyi 2009, interview<sup>62</sup>).

In cases where the problems persist between the chiefs outside the Council and the Council, he continued, the Council mandates the councillor-chiefs to mediate and the outcome of this approach has been positive. Relations between the chiefs and the Council have improved. However, the secretary noted that the relations between the councillor-chiefs and the other chiefs outside the Council are marked by resentment on the part of the latter, due to the monthly allowance that the former receive from being members of the Council. This point has resonated in the other two Councils above.

#### **6.2.4.4. Service delivery**

The problem of limited financial resources was reported by the councillors as a huge impediment to service delivery in the Makhoarane Community Council. The Council has not been able to meet the needs of the people through many development projects it has in its plans. As was the case in the other three Councils, Makhoarane has made

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<sup>61</sup> Interview with Mr. Tšepo Talanyane, 7<sup>th</sup> April 2009, Morija.

<sup>62</sup> Interview with Mr. Morapeli Ntšenyi, 7<sup>th</sup> April 2009, Morija.

some limited progress in road construction projects. These are in the villages of Ha Tšilo, Ha Makoetje and Mauteng. Other than these, there have been some water supply projects at Ha Toloane. The councillors however lamented that this is insignificant given the many villages needing clean water supply, public toilets, clinics, and speed humps on the main road from Maseru to Mafeteng to reduce road accidents caused by over speeding motorists. According to the councillors, the sluggish progress in service delivery is caused by the dependence of the councils on the central government especially for funding. This is because the central government has not put fiscal decentralisation into effect. The government has not also transferred almost all functions (which according to the local government legislation ought to have been transferred) from the central government to all the councils in the country.

Even more worrying for the councillors, was the fact that the councils have no powers to generate revenue from local sources. Whatever little money they raise through fines charged to stock owners for grazing on the reserved areas is taken over by the central government. “We do not even have a bank account”, they said. They expressed concern also that the central government allocates councils money but later on transfers it unilaterally to buy heavy road construction machinery. While they appreciated the construction of roads, slow as it was, the councillors did not understand why the central government would buy its own equipment, which takes almost all the budget instead of allowing the private sector to construct roads and use the money to pay them in close consultation with the councils.

Of critical importance to the councillors also was the issue of land allocation. They expressed their frustration that the central government has instructed all the councils to stop allocating land until further notice in order to allow it to have properly planned system of land allocation based on sound physical planning. They complained that they are under serious pressures from the people who have lodged applications for sites both for residential and commercial projects. They indicated that the delay in processing land applications for commercial activities has frustrated the efforts of the business persons to start businesses and reduce unemployment in the area.

### **6.2.5. The Lilala Community Council**

The Lilala Community Council offices are located at Rothe, less than a kilometre away from the offices of the Principal Chief and about 45 kilometres from Maseru. It uses the premises rented from a local businesswoman, who is also one of the only two independent members of the Council. The rest of the members stood for elections under the banner of the ruling LCD. Following the split of the ruling party in the run-up to the 2007, one of the members joined the new splinter party – the All Basotho Convention (ABC). Thus the Council now has eleven members out of which only three are not members of the governing party. The Council has approximately 4 824 households, and a population of about 22 786 of which 11 434 are males and 11 352 are females (Government of Lesotho, 2006:100).

Like Koro-Koro, where the Mohlakeng Community Council is situated, the Rothe area is relatively rural. It has no electricity supply, no telephone lines. It has a few small retail shops. However, it has a post office, which also serves as a pension pay-point for the recipients of the state *Old Age Pension*, introduced by the government in 2005. Besides, it has a high school and a mission owned by the country's third largest church, the Anglican Church. There are also three primary schools belonging to other churches.

The Council secretary arranged for me to observe the meeting of the Council on the 9<sup>th</sup> April 2009. The meeting started at 8:00 am as scheduled. I also managed to hold a focus group discussion with the members and to interview the chairperson and one councillor-chief on the same day. Interviews with the other councillor-chief and the secretary were to follow later, as will be shown.

#### **6.2.5.1. Observation of the meeting**

The meeting was a well conducted event with strict observance of administrative procedures, as had been the case with the Mazenod Community Council. It was highly formal, with members bringing up and discussing issues freely and frankly. They did not interrupt each other when speaking. They “hit the table” to second a point raised. They also addressed each other as *Mohlomphehi* as had been the case in

the other three Councils. The chairperson allowed the members to express their opinions even if they differed from those of his own. Decisions were reached through a consensus. The two councillor-chiefs appeared to conduct themselves like all other members. They spoke freely like everyone else. One of them was more active than the other members and made constructive comments on issues deliberated upon.

At the same time, there were officials from the Ministry of Forestry and Land Reclamation. They attended the meeting in order to inform the Council about the land reclamation projects their ministry was carrying out throughout the country. They had approached the Council to request it to work with them on these projects. The Councillors were generally agreeable to the idea but indicated that the Member of Parliament (MP) for the whole constituency had to be informed first so that he could approve of the project. Thus, the Council declined to select the areas in which the projects could be implemented. While this idea was good (as it helps to reverse environmental degradation caused by soil erosion) the politics surrounding it also become palpable. Ideally, the Council would not have to seek approval from or consult with the MP for the area to have the project implemented. It could only inform him and proceed with the project. After all, environmental protection is one of the functions listed in the *Local Government Act, 1997*, for the councils throughout the country. However, because the Council does not have autonomy and appears not to be eager to fight for it from the central government and the MP, it could not make a decision on this important project without the approval of the MP.

After the government officials left, other visitors came into the meeting. These came from a non-governmental organisation (New Start) working on HIV/AIDS related issues. They had come to the Council to request access to the people in the Council area. The Council welcomed this and indicated that the HIV/AIDS issues were on its priority list. However, the Council said that it would first have to consult with the chiefs in the area to seek their co-operation. It asked the visitors to come at a later date. This decision was indicative of the good relations between the Council and the chiefs and of the recognition that the Council accords to the chiefs. Therefore, there were no signs of conflict between the councillor-chiefs and other members.

### **6.2.5.2. Focus group discussions**

The relationship between the councillors and councillor-chiefs was described by the councillors as generally having been “bad” before, but they have improved for the better. They acknowledged, like others in the Mazenod, Mohlakeng and Makhoarane Community Councils, that the improved relations between them was a direct result of the training workshop organised by the TRC the year before (2008) at Morija. In their views, the training workshop helped the councillor-chiefs, councillors as well as the Area Chiefs to appreciate their roles, powers, and duties as contained in the *Local Government Act, 1997*, and the *Chieftainship Act, 1968*. However, like their colleagues in the other three Councils, the councillors expressed their frustration over the moratorium issued by the Minister of Local Government and Chieftainship Affairs on land allocation. They indicated that this move had brought the processing of the people’s land allocation applications to a complete halt. They expressed surprise that there is no legal instrument on this moratorium. The Minister has only issued a “Circular Notice” to all councils throughout the country. They were not sure whether or not the Circular had legal standing to stop this important service to the people. But they had not taken any action to seek clarification from the Minister on this and seemed powerless over this issue. They also indicated that the people were complaining about this moratorium, accusing the councillors of not being helpful to them.

### **6.2.5.3. Interviews**

The interviews with the councillors revealed the role of party politics and the marginalisation of the councillor-chiefs in the work of the Council. One councillor-chief did indicate that sometimes he and his colleague are out-voted when crucial issues are discussed and that it is difficult to reach a consensus. According to him, party politics do come to the fore and this marginalises the councillor-chief as the Council is dominated by the ruling party members.<sup>63</sup> Another councillor-chief, who is also a retired soldier, opined that the main cause of the tension between themselves and the other councillors was the misunderstanding over their respective roles, powers

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<sup>63</sup> Interview with Chief Mokhachane Letsie, 9<sup>th</sup> April 2009, Rothe.

and duties as well as the conception of the nature of these new local authorities.

According to him:

*the role of councillors is to develop their areas. It is surprising that the councils are called “Makhotla a Pusō ea Libaka” in the Sesotho language or local government. However, there had always been government structures at all levels even before the advent of this new system [the local government system]. This conception in the minds of many councillors led them to believe that they can rule because the word “pusō” implies “to rule” and this is what the councillors aspire to do. They would rather be called “Development Councils” so that they become aware and clear that their role is to develop and not to rule. The role of the chiefs on the other hand is to “rule” and to protect development projects brought into their areas of jurisdiction by the councils. This crucial distinction was made by the central government during the training workshops held for all councillors, which unfortunately left out the chiefs outside the councils. This led to misunderstanding between the chiefs and the councillors [my translation] (Chief Sekhonyana Letsie 2009, interview<sup>64</sup>).*

Given his background as a retired soldier, it may not be surprising for the councillor-chief to reminisce about the earlier *Development Committees* and their presumed apolitical character. At the time of the military rule and when he was still a soldier, the general political atmosphere in the country was essentially anti-politics. The military junta had banned all forms of political activities under a decree styled *Order No 4 of 1986*, and established the *Development Committee*, as I have elaborated in chapter three of this thesis.

He also criticised the councillors for being partisan and discriminatory against the people on the basis political party affiliation when providing services to them. He asserted that the chiefs are neutral. According to him, the councillors prefer that the disputes between the people should be resolved through the courts, although the courts do not create peace among the conflicting parties. In contrast, the chiefs prefer discussions leading to reconciliation when there are disputes between the people. He continued:

*The chiefs work even when they are not paid. Their service is a service to God. They do not strike yet they work under very bad conditions. They do not claim overtime from the government. They work 24 hours, seven days a week. They do not have annual leave like other public servants. They accept to be woken up at night to help the people whenever there are problems. They are brought up as servants of the*

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<sup>64</sup> Interview with Chief Sekhonyana Letsie, 11<sup>th</sup> April, 2009, Tšoeneng Ha Letsie

*people. The women acting as chiefs fail to work for the people in non-partisan manner because they are not brought up like their male counterparts* [my translation] (Chief Sekhonyana Letsie, 2009, interview).

The Council secretary also described the relations between the councillors and the councillor-chiefs as “generally good”<sup>65</sup>. She noted that when the Council started its work, the relations between these two were tense. However, with time, this changed following the training that was provided by the TRC. If there are disputes, she elaborated, the concerned individuals are called by the Council to have them solved. She cited a case in which the councillor for the Ha Mokhalinyane Electoral Division had conflicts with the chief of that area over range management. The issue was successfully resolved after the Council’s intervention. According to her, the chiefs have a way of treating the people under their areas of jurisdiction impartially, while the councillors serve the interests of the members of their political party only at the expense of other people. According to her, the chiefs are not only more accessible to the people than the councillors but they are also more effective in their work than the councillors. This, according to her, leads to the enhanced confidence on the part of the people towards the chiefs. She also observed that the Ministry of Local Government pays the councillors more money in the form of salaries/allowances than it does the chiefs. This, she noted, has created some degree of envy and jealousy on the part of the chiefs as well as spoiling the already fragile relations between the two parties. She suggested that the government should remunerate the two parties equally and expose all the Area Chiefs to the same training as the councillors.

In a separate interview with the chairperson of the Council, he concurred with the views of the secretary on the improved relations between the councillor-chiefs and other councillors. He applauded the TRC for having organised a workshop for them. He noted, however, that the problem still persists with regard to the chiefs outside the Council. These, he indicated, are not happy with the huge disparity between their allowances and those of the councillors. They do not always co-operate with the Council.

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<sup>65</sup> Interview with Mrs Tšepiso Mohajane, 30<sup>th</sup> April 2009, Maseru.

He cited party politics as another cause of conflicts and strained relations among councillors within the Council. He disclosed that his colleagues attempted to remove him from his position as the Chair of the Council after he defected from the ruling party, under whose banner he was elected a councillor and subsequently the chair of the Council, and joined the new political party – the All Basotho Convention- when it was formed in 2006. His colleagues became angry with him for abandoning their party. They, however, failed to remove him from his position because the move was illegal. The *Local Government [Amendment] Act, 2004*, provides for the removal from office of the Mayor, Deputy Mayor, Chairperson, Vice Chairperson and councillors respectively. Section 14 (1) provides the following as the reasons for which such a removal can be effected by the Council:

- (a) abuse of office
- (b) corruption
- (c) incompetence
- (d) misconduct
- (e) failure or refusal without justifiable reasons to implement lawful Council decisions
- (f) in case of the Chairperson or the Mayor, failure to call a Council meeting for more than three months without reasonable cause

As such, there is no mention in the Act of belonging to any political party as a reason for the removal of these officials from office. Section 14 sub-sections (2), (3), (4), (5), and (6) inclusive, lay out the procedures to be followed by the Council in removing these officials. Thus the chairperson remained in his position after the intervention by the office of the District Administrator.

#### **6.2.5.4. Service delivery**

During a focus group discussion, the members of the Council highlighted some of the achievements they have made and the challenges they faced. They indicated that they have built a foot bridge over the Mpetsana River at Ha Damane, linking the villages on both sides. Apart from this, the Council had repaired damaged water supply pipes in the Rothe village. Besides these two small projects, according to the councillors, there were no others. However, there are many more projects on their priority list at the top of which are the roads connecting the villages.

There are many challenges that the Council has not been able to address so far. The first, according to them, is meagre financial resources, lack of road construction equipment and technical expertise. The Council has access to only one machine used for road construction projects. It is shared between the four Councils constituting the research area of this study. Thus, road construction projects move at a very slow pace. Besides, there is a serious shortage of road construction experts to help plan and guide projects. Although the Council had submitted its annual work plans to the central government, which includes roads construction as a primary need of the area, not much has been achieved at the time of writing this thesis. The problem of limited service delivery is exacerbated by a limited budget of the Council and by the fact that funds disbursements from the central government come very late. The councillors lamented that when the funds do come, they are not used as planned because the financial year would be over. They get returned to the central government and this frustrates both the Council and the people who need services. Apart from this, the central government does not allow the Council to keep and use the paltry fines that it collects from the people. This issue has been strongly stressed by the Makhoarane councillors. These are taken over by the central government and the effect is that the people get angry and complain that they would want to have their own money spent to develop their area.

### **6.3. Conclusion**

Several key issues emerge from the data presented above. The first is that the relationship between the councillors and chiefs was sour at the beginning of the local government project in Lesotho. This was attributable largely to lack of clarity over the roles of each under the new political/administrative dispensation. The chiefs seem to have been apprehensive that the councillors were set to take away their remaining powers and render them redundant. This is not without legitimate reasons. The central government had not done much to allay the fears of the chiefs by, among other measures, providing the necessary joint training to the chiefs and the councillors on their respective roles, powers, and responsibilities (although this was recommended very early during the country-wide consultative processes on the *White Paper on the Local Government*) and on delineating the roles of the chiefs and those of the councillors and amending all the laws relating to the thorny land issue.

This finding is similar to that of another recently conducted empirical joint study by the research team from the Local Governance Research Unit (LGRU) of the De Montfort University in the United Kingdom and the NUL's ISAS. This research team generally commented the government for having managed what was otherwise a difficult process of balancing the roles between the chieftainship and the elected council, while also acknowledging that more work has to be done to improve the relations between these two institutions. Specifically, the team finds that there continuing controversies between the chiefs and the councillors revolving around land related issues, namely, land grazing boundaries, burial sites allocations, pastures and natural resources. The chiefs were not properly consulted by the government on issues of drawing the council boundaries the effect of which has been confusion on the part of the chiefs over their jurisdictional responsibilities on grazing land and service delivery by the two structures (Pratchett *et al.*, 2008:15). Addressing these issues would be mandatory, given that the government is the sole authority entrusted, through the popular vote, in ensuring that all public policies, including the local government policy itself, are successfully implemented for the generally good.

The government seems to have abdicated these responsibilities, allowing mutual suspicions between the chiefs and the councillors to take root and to spread. This mistrust has the potential to inhibit the smooth operation of the new local government system in the country. As it were, the improved relations between the chiefs and the councillors are an outcome of different innovative efforts taken by individual councils though the success rate is not similar across all the councils. More importantly, had the TRC not taken the move to organise training workshops for the councillors and the chiefs to clarify their respective roles under the new local government system, it seems reasonable to suspect that the tensions between the chiefs and councillors would have escalated to the level where they would undermine the whole decentralisation process.

The huge pay difference between the councillors and the chiefs outside the councils is another factor causing dissatisfaction among the chiefs. The councillor-chiefs are at an even more enviable position as they receive income in the form of monthly chiefly allowances and the membership of the councils.

There are inconsistencies or contradictions relating to the powers of the chiefs in the many land-related laws. However, the chiefs did not seem to have noticed these. The government has also ignored them, since the promulgation of the *Local Government Act, 1997*. It was only in late 2009 that the government attempted to deal with these inconsistencies/contradictions through effecting amendments to the *Land Act, 1979*. This attempt has sparked serious controversies among different sections of the population because they are generally perceived to harbour the government's ambitions to take away the land from the Basotho the majority of whom are poor and powerless rural inhabitants. It is not yet clear how the people will react when the new land law is implemented. What is clear, however, is that despite all forms of protestations, the government is determined to have the *Land Bill, 2009*, implemented sooner rather than later. It would have been prudent for the central government to have considered these issues seriously to ensure that the local government project takes root in the country and to help the process of democratic consolidation.

It becomes clear from the data also that the central government has not as yet decentralised the key functions and appropriate accompanying resources to the councils throughout the country generally and to the four Councils more specifically. The LGRU and the ISAS research team make similar findings, namely, that the councils depend "highly" on the central government for fiscal revenue, which comes with "strings attached", thereby denying the councils power to decide on its expenditure. Besides, the councils are not able to raise sufficient revenue locally. Even when they have made some collections, these are taken over by the central government (ibid: 29). The effect of this has been extremely limited autonomy and capacity on the part of the councils and to cause frustrations for the councils and the people that they have to serve under the new dispensation.

Of more particular concern to the councillors is the moratorium imposed on the councils by the central government on land allocation. Consequently, service delivery in the Councils has been severely affected. The Councils have not been able to provide services to the people throughout the five year period. Out of the seven key functions of the local authorities listed under Schedule Two of the *Local Government*

*Act, 1997*, also reflected above, these four Councils have not been able to perform their functions because of extremely limited capacity and autonomy.

## CHAPTER SEVEN

### **Conclusion: Consolidating Democracy through integrating the Chieftainship Institution with the elected Councils**

#### **7.1. Introduction**

This study sought to explore the relationship between the chieftainship institution and elected local government authorities in Lesotho, with a view to understanding how such a relationship may be developed to facilitate the process of democratic consolidation. The study was guided by the following key questions: Is the chieftainship institution still relevant to contemporary political and administrative system of Lesotho now that the country has introduced an elected local government system? If it is, then how exactly has the chieftainship institution been working with the elected councils in practice? What challenges have emerged in their interaction and with what kind of implications for efficient service delivery in the country? How can the challenges be overcome so that the two structures can work harmoniously to achieve a democratic consolidation? The main thrust of this concluding chapter, then, is to answer these questions through providing in a synthesised fashion the findings of this study. The chapter first deals with the challenges with which the new local government system in Lesotho had to contend and explores the possible ways in which these challenges may be overcome within the framework of the mixed government model. The last part of the chapter recommends further research for the area that this thesis could not cover.

#### **7.2. The enduring challenges for the local government system**

This study finds that, from the onset, the local government system in Lesotho was beset by a myriad of challenges, which can be explained in terms of inadequacies of the government policies, most of which have affected and shaped the relationship between the chieftainship and the local councils and, in turn, the pace of democratic consolidation in the country. In fact, by its own admission, the government indicates, through the Ministry of Local Government and Chieftainship Affairs (MoLGC) that the many challenges that the decentralisation process had faced are a result of “the absence of a comprehensive policy on decentralisation” (Government of Lesotho,

2009:11). Thus, it was only in August 2009 that the Ministry came up with its *Decentralisation Action Plan*, the objective of which was to “provide a programmed approach to implementation of government’s decentralisation agenda within the confines of the Local Government Act 1997 and the Local Government Service Act 2008 for the 2009/10-2010/11 fiscal years” (Government of Lesotho, 2009:1). Many of these challenges had still not been overcome at the end of the councils’ five year term in April 2010. These are: defining in precise terms the nature of local democracy suitable for Lesotho and the role and place of the chieftainship in governance at the local level; the nature of policies of the country’s main political parties towards and on the chieftainship; the marginalisation of the chieftainship in local government policy formulation and the imposition by the central government of the policy on them; the nature of the relationship between the chieftainship and the elected councils as a consequence of unclearly defined roles between the chieftainship and the elected councils; the huge pay disparity between the chiefs and the councillors; the boundaries of the councils, which do not conform to the original chiefly boundaries; the acute lack of capacity and autonomy of the new councils to provide public services to the people; and lack of clear central-local government relations and the interference of the former in the affairs of the latter.

### **7.2.1. The nature of democracy suitable for Lesotho at the local level**

The findings of this study on the nature of local democracy suitable for Lesotho is that there is no way in which any system of government can work, at least for now and in the near future, without some arrangement that involves the chieftainship institution. In this regard the views of Mr. Ntsukunyane Mphanya (captured in chapter four) are instructive and have to be repeated here for purposes of emphasis. He said: “Here in Africa, I repeat, here in Africa, no system of government can work if it puts aside the chieftainship. This applies to Lesotho as well. Chiefs must be part of any system of government at all levels”. In realisation of this fact, it appears, the British colonial regime had provided a blue-print of the local government system in the form of District Councils modelled, as it were, along its own imperial government and the new national government in the post-independence Lesotho. This made it possible for the chieftainship to have a direct role in local affairs and established a model of democracy suitable for the country. This arrangement was continued by the BNP

regime until 1968 when it abolished the District Councils and established its own version of local government, devoid of any political power. Instead of re-introducing the District Councils model bequeathed by the British, the LCD government reversed this arrangement and introduced the current local government system, apparently motivated by its own pro-modernist policy disposition.

A large body of the literature on African political systems points to divergent views between the modernists and the Africanists/traditionalists (or what I prefer to call pragmatists for the reason that they acknowledge the crucial role played by these indigenous African institutions in the lives of African) on the nature of democracy suitable for the continent as discussed in chapter two of this thesis. The BCP and later the LCD government seems to have been inclined to the modernist position, which seeks to marginalise, if not abolish the chieftainship institution on claims that the institution does not fit into the liberal democracy model. This is evident from the policies of the ruling party, which themselves reflect continuity from the times of the LCD's parent party, the BCP, since the 1950s.

The BCP/LCD's insistence that the chieftainship must be "democratised" through the chiefs securing membership of the local councils on the elective principle under which they were to be elected by the general electorate. This comes out clearly in the *White Paper on the Establishment of Democratic Local Government, 1996*, which laid the basis for the *Local Government Act, 1997*. The chieftainship "democratisation" project of the government met resistance from the chiefs. This resulted in the government dropping the "election" requirement and introducing, under the *Local Government [Amendment] Act, 2004*, the "nomination" principle under which the chiefs were able to become members of the new councils. This has been attested to by the Minister of Local Government and Chieftainship Affairs indicated in an interview with me (see chapter four: 120). The threats made by some Cabinet Ministers, notably, the Minister of Trade, Industry, Co-operatives and Marketing, Mr. Popane Lebesa, to the Principal Chiefs during the debate on the *Six Constitution Amendment Bill, 2008*, that the Senate itself will be abolished through a referendum because it is an opposition to the government as reflected in chapter four, are also indicative of the ruling party's policy position on chieftainship.

As discussed in chapter four, this kind of policy and the attitude of the ruling party towards chieftainship have resulted in suspicions that still run deep among the chiefs and opposition political parties that the government has ambitions to abolish chieftainship. It must be said, however, that any attempts to abolish both the chieftainship and the Senate will require constitutional amendments, which would only be effected through approval by a two thirds majority in both the National Assembly and the Senate itself or through a referendum as provided for under section 85 of the Constitution. As such, it cannot be an easy exercise. The point is that these threats only have the effect of heightening and fuelling the already deep suspicions that if opportunity may come up, the LCD government will abolish the chieftainship. This does not bode well for Lesotho's democratic consolidation process, given the crucial role played by chiefs in the country and the manner in which the respondents in this study (and possibly the majority of the general Basotho) regard the chieftainship institution. It is reasonable to surmise that the chiefs will use their agency to resist any attempts to abolish their institution as they have done in the past.

### **7.2.2. The relevance of the chieftainship to Lesotho's contemporary political system**

The relevance of the chieftainship institution to Lesotho's political system has not been put to question by the introduction of the elected councils. The institution does not exhibit antithetical posture towards liberal democracy and its elected structures. It has used its political agency only in reaction to any moves that threaten its interests. The chief complied with the central government's instruction that they should nominate their representatives for the reserved council seats to ensure that the new councils do not put their interests in jeopardy. For all the chiefs in the four Community Councils, democratic structures are welcome if they are not intended to replace the chieftainship. They have indicated a strong support for the councils and agreed, willingly and voluntarily without the central government's intervention, to talk and resolve mutual conflicts with the Community Councils. However, these Councils have no power whatsoever to issue instructions to the chiefs. This finding disproves the arguments advanced by the modernists, as discussed in chapter two, that the institution is essentially anti-democracy and competes for political power with democratic structures.

For all other main parties, as well, the accommodationist policies towards the chieftainship are based on the fact that they are aware of the institution's centrality and deep embeddedness in Basotho's culture as well as the historical role that it played in founding the Lesotho nation-state. They argue for the chiefs' automatic *ex officio* membership at all levels of local government. The policies of most of these parties also reflect continuity rather than discontinuity. This position is congruent with the views of the pragmatists as outlined in chapter two. For these parties and the selected academics from the NUL chieftainship is still highly relevant to Lesotho and has to remain part of the country's political and administrative system. However, it must be modelled by the government to be responsive to the popular needs and changing conditions of the country.

Even for the self-declared leftist PFD, chieftainship cannot be abolished, as it carries out important functions that the state has so far not been able to perform in the villages. Principal among these functions are law and order, peace-keeping, social cohesion, and national identity of Basotho. The ruling LCD and its splinter party, the LPC, also acknowledge the importance of the institution, despite their scepticism about it as shown in chapter four. As such, the reality that the institution cannot be simply wished away resonates throughout most parts of the African continent as discussed in chapter two. Interestingly, however, although the leaders of opposition political parties claim to be sympathetic to the plight of the chieftainship, many of them were part of the previous administrations, which in all cases had serious troubles with the chieftainship leading even to the dethronement of the monarch who is still in the eyes of ordinary Basotho, the pinnacle of the chieftainship hierarchy. Their views, while they are outside government, need to be interpreted carefully, as they seem to portray populist and opportunist character. They seem to know that the chieftainship is still popular among Basotho and aspire to use the institution to assume state power.

### **7.2.3. The local government policy formulation and implementation and implications for chiefs-councillor relationship**

The top-down approach in which the local government policy formulation process unfolded had the effect of systematically marginalising the chieftainship, as discussed

in detail in chapter four. While the government had taken a democratically commendable move, by opening up the local government policy for public participation in which it sought to solicit and incorporate the views of almost all stakeholders, including the chiefs, and was supported in this endeavour by the international donor community, the government abandoned this exercise and hastily changed to a quick and top-down approach.

The government was pressured to make this change by its own promises to the nation that it would introduce the local government system during the 1993-1998 parliament term. It unilaterally drafted two policy papers, the *White Paper on the Establishment of Democratic Local Government, 1996* (through engaging the services of external consultants) and the *Programme for Implementation of Local Government in Lesotho, 2003* (with the assistance of a local consultancy firm) respectively. As it were, and in keeping with its policy on and towards the chieftainship institution, the new approach had an effect of marginalising the chiefs in the public deliberation processes on the policy. The selection process of the “stakeholders” was problematic because it was never clear (even to those chiefs who were selected themselves) why some particular chiefs were selected by the government and not others, and in the numbers they were selected as well as the extent to which these represented their colleagues so that they could claim legitimacy. The chiefs were seriously under-represented numerically and substantively. In any exercise in which the term “stakeholders” is used, such stakeholders are defined, selected, and have their mandate determined by those selecting them, in line with their predetermined position on an issue in question.

In the end, the consultative processes seem to have simply rubber-stamped the government’s own position on the nature, structure, powers, duties, and composition of the local authorities. The decision-making processes were no less problematic. Although these are claimed to have been consensual (Mapetla, *et al.*, 1996:5), they resulted in putting the chiefs in a compromised position with regard to their participation in the new local government councils. Two informants who were members of the country-wide consultative workshops dispute the argument that decisions during these workshops were taken on a consensus basis. Rather, they disclosed that when the groups discussing the *White Paper* could not agree, the Workshop participants reached decisions by a vote, and that this happened in

particular on contentious issues regarding “election” of chiefs for the local authorities seats.

The marginalisation of the chiefs did not stop at local government policy formulation process but continued into the implementation stage. The chiefs were simply “told” (as many of them put it in my interviews with them, see chapter five 5.5) by the government through their respective Principal Chiefs to nominate their representatives for the new councils’ seats. This is why the chiefs regard this approach as an “imposition” by the government. They were not adequately consulted or allowed any role in both policy formulation and implementation processes. They obliged with the government’s directive because they were afraid that if they did not co-operate, they would be left out of the councils and not be able to know what actually goes on in the councils that might put their collective interests in danger. The outcome of having nominated their colleagues did not generally seem to be working in their favour. In the Matsieng Ward (comprising the Mazenod, Mohlakeng, and Makhoarane Community Councils respectively), the chiefs were unanimous that their representatives do not report back to them on council activities but have, in the words of one of them, “become councillors even in the way they speak”. In the Rothe Ward, within which the Lilala Community Council is situated, however, the chiefs were happy with the conduct and performance of their representatives in the Council because the latter report to the former on a monthly basis.

As discussed in chapter six, the net result of the chiefs’ marginalisation in the local government policy processes was the initially hostile relationship between the Councils and the chiefs in the early days of the Councils. However, the relationship later improved for the better towards the end of the five-year term of the councils. This relationship could have, arguably, escalated to the level where it would be almost impossible for the Councils to work had the different actors not taken the initiatives to ensure co-operation of the chiefs. The Councils invited the chiefs to their meetings, discussed their mutual problems and resolved these. These happened in the Mazenod, Mohlakeng, and Makhoarane Community Councils respectively. The TRC intervened to train the councillors and chiefs on what their respective roles are as contained in the *Local Government Act, 1997* and the *Chieftainship Act, 1968*.

The councils depend, without choice, heavily on the chiefs' co-operation in mobilising the local population through *lipitso* for any activity requiring public participation in the villages, settlement of disputes relating to land ownership, keeping the impounded livestock in chiefs' kraals among other things. The relations were hostile due to the fact that the central government has, for whatever unknown reasons, not involved the chiefs in several training workshops, which it held for the councillors from all parts of the country. As to whether the government deliberately continued to marginalise the chiefs through their exclusion from these training programmes so that the chieftainship institution may lose credibility and legitimacy from the people is not difficult to imagine, given its long term policy as the preceding parts of this thesis.

#### **7.2.4. The roles, functions and duties of the chiefs vis-à-vis those of the councillors'**

It is clear from this study that the government has failed to define clearly the roles, functions and powers of the chiefs *vis-à-vis* those of the councils', especially on the land, a contentious issue throughout many parts of Africa. The many contradictory laws relating to land have not helped the situation either. The *Local Government Act, 1997*, pushed out the chiefs from land allocation processes, while the *Laws of Lerotholi* and the *Land Act, 1979*, still had provisions that allowed the chiefs a clear role in land allocation. Although it was only through it that the government attempted to address these legal contradictions through amending the *Land Act, 1979*, the *Land Bill, 2009* itself has sparked its own controversies. In particular, the controversies centred on the provision in the *Bill* that sought to make land in Lesotho a private commodity, which can be sold and bought in the open market even by foreigners. Another issue of equal concern to many sections of the population is a clause providing for land expropriation by the state if those to whom the land has been allocated for use fail to work on it. Because of these provisions, the *Bill* has received scathing criticisms from civil society organisations, academics, opposition political parties, and the chiefs, as an attempt by the government to dispossess the poor people of their land.

The irony with the *Bill* is that it makes Lesotho move in the opposite direction from other countries ( for example, South Africa, Namibia, Zimbabwe) in the region, which

are talking of and attempting to redistribute land from the hands of the few rich to the majority of the poor people. The manner in which the *Bill* was circulated by the government for public participation and discussion has also been a matter for controversy among these groups, which feel that it was inadequate and elitist since it left out the majority of the people who will be directly affected by it, thereby putting into serious question the whole notion of public participation.

#### **7.2.5. The pay disparity between the chiefs and councillors**

The huge pay disparity between the chiefs, especially those outside the councils, and the councillors has had the effect of further spoiling the already fragile relationship between the two structures. The exception in this regard is the councillor-chiefs who receive double pay in the form of their chiefly monthly allowances and salaries as councillors. This arrangement puts them at a higher pay level than both the other councillors and their fellow chiefs outside the councils. The pay disparity creates a sense of envy and anger among the chiefs and they regard it as a sign of discrimination against them by the government. However, this could again be interpreted as a deliberate attempt by the government to lure the chiefs away from their hereditary positions towards making them politicians, in line with the government's project of "democratising" the chieftainship institution. This issue was articulated clearly by one respondent as reflected in chapter four. The issue has further implications of creating a hitherto unknown and highly competitive situation, which may even fan conflict when the chiefs have to nominate others for seats in the next local government elections in 2011, hoping that these will be held after all. Instead of their names being suggested by their colleagues as has been the case in 2005, individual chiefs, irrespective of their rank within the chieftainship hierarchy, are more likely to seek to be nominated for the council seats so that they can make money for themselves. In short, this may have an effect of creating disunity among the chiefs.

#### **7.2.6. The capacity and autonomy of the councils**

The councils throughout the country have severe lack of capacity and autonomy from the central government and Members of Parliament. Although the councils are empowered by section 47 of the *Local Government Act, 1997*, to establish their own Council Funds, in which all monies generated through the various means (including

any fines and penalties; rates, taxes, duties, fees, and other charges revenue from property, all donations, gifts, grants, and all funds appropriated to them by the central government), no Council Funds were established throughout the period 2005-2010. On this issue as well, there is still no clear policy on how these funds will be managed and accounted for by the councils as again by its own admission, the government notes that “Councils are collecting revenue but it is not clear how the funds are accounted for and reported on items for use” (Government of Lesotho, 2009:9). The result is an extreme lack of capacity to provide service to the people. Even in a few cases where the councils were able to collect little amounts of money in the form of charges to the farmers for grazing their animals on reserved pastures, these were taken over by the central government. The councils also do not have bank accounts despite the fact that section 48 of the *Local Government Act, 1997* provides for this. In the end, the councils rely heavily and without choice on the money appropriated to them by the central government, which itself is insufficient and disbursed late for them to carry out their functions, as indicated in chapter six.

Related to lack of capacity is also lack of autonomy that the councils face. The councils are not able to decide their own development programmes and to implement these as they would prefer. The central government interferes heavily in the council programmes. In all four Community Councils, the councillors revealed that they had to stop allocating land for both residential and business purposes because the Minister of Local Government and Chieftainship Affairs had declared a moratorium on land allocation until qualified surveyors could be made available to them to ensure planned sites. However, the surveyors never came until the end of the term of office of the councils in April 2010. While this may be a noble idea, which would result in planned sites that would make provision for requisite infrastructure in the villages, its immediate effect has been the denial of services to the ordinary people and frustration on the part of the helpless councillors and, by extension, an affront to the whole decentralisation project.

#### **7.2.7. Decentralisation of central government functions to the councils**

Apart from this lack of autonomy, the central government has not decentralised all the functions that, by law, ought to be performed by the councils. This has been revealed

by the (MoLGC), which also rather surprisingly blames lack of conceptual clarity on the part of other government ministries on the type of decentralisation policy of the same government. The MoLGC notes:

Currently, the Local Government Act 1997 which seeks to operationalise constitutional provisions to decentralise also provides for empowering the people, but falls short of an explicit indication of the type of decentralisation being pursued. Consultations with stakeholders reveal a number of clauses in the LGA [Local Government Act] which point to limited clarity of the type of administrative decentralisation being pursued by Lesotho. Line Ministries are of the view that they have decentralised with deconcentrated structures whereas, in the view of MoLGC some of those deconcentrated functions are expected to be devolved to Local Authorities as per Schedules I and II of LGA. The limited clarity on policy and strong political direction of the reform has *led to situations of resistance from a number of Line Ministries to devolve functions* [italics added] (Government of Lesotho, 2009:5)

The views of this government ministry may be interpreted to mean weak co-ordination of the functions of government and unwarranted competition on the functions of the ministries. More precisely, as I have indicated above, they reflect serious policy inadequacies that ought to have been overcome during the local government policy formulation processes. Be that as it may, however, the councils have not been able to perform, throughout the duration of their five-year term, even one of the many functions provided for in the *Local Government Act, 1997, Second Schedule*. Even the road construction projects that had started in mid-2009 were done and managed by the central government through the Ministry of Public Works in conjunction with the MoLGC at the national level. The councils had no direct influence or say in these projects. The paltry budgetary allocations to the councils from the central government have undermined the capacity of the councils and were always disbursed late in the government financial year. Besides, the councillors reported that when the budgetary allocation money did come, this would either be returned to the central government, on account that the financial year had ended, or the central government would unilaterally and without consultation with them take it to buy heavy machinery for road construction projects. That the central government acted in this manner reflects, it may be argued, its lack of confidence in the councils and that it undermines their autonomy. It is also, in a sense, a negation of the government's own privatisation policy inherited from the military junta, which has led to a massive sale of former state owned-enterprises and encouragement of the private

sector to play a lead role in different economic activities in the country, including road construction projects.

#### **7.2.8. Demarcation of the council boundaries and services to the villagers**

The process of demarcating the boundaries of the councils has not been done in ways that conform or respect the boundaries of the country's chieftainship. The effect of this has been to remove some villagers from councils nearer to them, thereby denying them easy access to services at places closer to them. It has also led to violent clashes over grazing places falling under different chiefs' jurisdiction, as indicated by the councillors in the Makhoarane Community Council and one councillor-chief in the Lilala Community Council, as reflected in chapter five.

In conclusion to this section, it is worth noting that the government had committed itself to the decentralisation policy to achieve four main objectives, namely, deepening and widening public access to the structures of government, bringing services closer to the people and improving service delivery, promoting popular participation in decision making, planning and implementation of development programmes and promotion of equitable development throughout the country through distribution of human, institutional and infrastructural resources (Government of Lesotho, 2003). These objectives were to be achieved through the establishment of a local government system underpinned by political decentralisation which, would result in devolution of political power and decision making, financial decentralisation in which local councils would be able to levy taxes locally while they would also receive funding from the central government as major sources of their income (ibid: 5). On the basis of the findings and challenges above, it may be argued that the logic of having introduced the whole local government system, without neither the necessary autonomy nor requisite capacity to deliver services to the people, appears to have been nothing more than a severe drain on Lesotho's meagre financial resources. There are 1508 councillors at the Community Council level country-wide (Mbetu & Tshabalala, 2006:25) who receive M2, 500 salaries per month, which is adjusted upward annually. However, they are not really providing any services to the ordinary people. In addition, there is a bureaucracy intended to support the councils. It also gets funding from state coffers. This reality puts into question the very existence of

the councils as instruments for local decision-making processes and service delivery throughout the country. In the light of the above challenges, are there any prospects for a workable system of local government in Lesotho?

### **7.3. Future prospects for local government in Lesotho: the mixed government model**

In line with pragmatists, I have shown and argued in chapter two that democracy as a theory of government and actual practice is contested, and that it requires different ontological, epistemological, and methodological approaches, based on the lived experiences, culture and history of the people in which any model of democracy that is adopted must be taken into cognisance (Carens, 2000; Osabu-Kle, 2000; Weeden, 2004; Koelble, 2005; Koelble & Lipuma, 2008). African context requires such approaches rather than the hegemonic EuroAmerican one. In this regard, the mixed government model strongly advocated by Richard Sklar (1997, 1999a, 1999b) and Owusu (1983, 1997) holds great promise. But the model needs to be adopted carefully, depending on the individual context peculiar to any country, including Lesotho. In her text, *Traditional Leadership and Democratisation in Southern Africa* Büsing (2002) compares how Botswana, Namibia, and South Africa have adopted different variants of the mixed government model to integrate traditional leadership structures with their elected counterparts at different levels of the state to achieve the two broad goals of democratisation and nation-building within multiculturalism contexts, as shown in chapter two. Of interest to this study is the local level at which she identifies five models of integration, namely, *non-regulated dualism*, *regulated dualism or parallelism*, *subordination*, *integration* and *harmonisation* respectively.

In Lesotho's context, the mixed government model has been adopted at national and lower levels of society as well. At the national level, the country has successfully adopted some semblance of a combination of regulated dualism or parallelism and subordination models. This has been done through establishing the British-style bicameral parliament with the National Assembly composed exclusively of elected 120 representatives and a Senate comprising almost exclusively the 22 Principal and Ward Chiefs together with 11 other appointees of the King, acting on the advice of the Council of State (*Constitution of Lesotho*, section 55). This advice is, in fact, mandatory on the part of the King. The Principal Chiefs are barred from becoming

members of the National Assembly under section 59 (5) of the *Constitution* and from being members of the local councils under section 4 (a) of the *Local Government Act, 1997*.

This arrangement indicates the subordination model in that on his own, the King cannot appoint any member of the Senate without being advised to do so by the State Council under the chairmanship of an elected prime minister. The Senate plays a more advisory role in the legislative processes. It is allowed, under section 80 (1) and (3) of the *Constitution*, to propose amendments to the bills emanating from the National Assembly. However, such amendments may either be accepted or rejected by the latter. The model also exhibits dual parallelism in that the two houses exist side-by-side as separate institutions led by the President, in the case of the Senate, and the Speaker, in the case of the National Assembly. The *Constitution* does not permit dual membership of the two houses, as shown above.

At the local government level, however, the situation seems to be rather muddled. The British colonial government had established District Councils, modelled along almost the same lines as parliament in that the chiefs were *ex officio* members of these Councils as shown in chapter three. The problem with this model, however, was that it deviated from regulated dualism/parallelism, exemplified by the current parliament of Lesotho, more towards something like integration. This is because the chiefs were *ex officio* members of the councils forming one political authority while simultaneously being chiefs in their respective areas. In addition, it could not be classified as integration because that would mean chiefs relinquishing their chiefly positions for the political offices. This did not happen.

This arrangement was inherited with some modifications in other respects, except for sticking to the idea that the chiefs have to be members of the local councils, by the successive post-independence governments in the country. First, the BNP administration abolished the autonomous District Councils and came up with its own subordinated and politically powerless local authorities in order to put to an end the alleged dissenting voices of the BCP, which controlled the District Councils as indicated in chapter three. The military junta too did not restore the autonomy of the Development Committees that it had established. Its emphasis was on “development”.

This is why the military regime named these structures “Development Committees”. Thus, the nature of these structures was typically apolitical in line with the junta’s policies of banning political activity in the name of national reconciliation. Lastly, the LCD government introduced the current local authorities, which are based on an elective principle, with their own autonomy and powers, to decide the fate of the local population and an emphasis on gender equity, through reserving one third of the seats to women. As indicated in the previous chapters, the LCD government also introduced a requirement that the chiefs would no longer be part of these structures unless, first, they were elected (by the electorate) and later changed this to say they would have to be nominated by their colleagues for reserved council seats.

This system presents some confusion in terms of classification. It is not clear whether it is based on regulated dualism/parallelism or integration models or both. If it were dual parallelism, then the chiefs would not be members of the councils as it is the case, for example, in Botswana. It should be noted, however, that the *Chieftainship Act, 1968*, does define the functions and powers of the chieftainship, while the *Local Government Act, 1997*, also spells out the functions of the councils, thereby apparently making a functional separation between the two institutions. The fact that the chiefs are also allowed to be members of the councils under the *Local Government Act, 1997*, as amended in 2004, goes against the parallel model, and shifts to something like the integration model, where the two institutions would constitute one concept and structure of local government. Yet the intention of the LCD government, articulated by the current Minister of Local Government (see chapter four: 116), was and still is not to “merge” the two structures. The fact that there are two different directorates (one for decentralisation and another for chieftainship affairs) within the MoLGC also points to the direction explained by the Minister.

In practice, however, the LCD government appeared to be moving towards the integration and subordination models in that it has sought to “democratise” the chieftainship through making it elective. The problem with this approach is that, that which is not by nature democratic cannot be democratised without losing its character (Kapa, 2005). It pays the chiefs far less compared to the councillors, in order to make them abandon their chiefly positions and take on the political ones (as Mr. Pashu Mochesane has shown in chapter four section 4.1.5). The effect of this pay disparity

has been to create general feelings of anger, a potential division and competition among the chiefs for council seats in the next local elections. But the approach indicates subordination of the chieftainship to the councils.

#### **7.4. Which model of chieftainship-councils' integration is appropriate for Lesotho?**

The answer to the above question depends entirely on what the country's authorities want to do. However, the following suggestions would be useful in this regard. First, the authorities could make a clear policy decision on which model they prefer for the country. If the regulated dualism or parallelism is preferred, there must be consultation, co-ordination and communication between the chieftainship and the councils in the discharge of their clearly defined functions. This must be facilitated by the central government. The government must also improve the pay conditions of the chiefs and bring them at par with those of the councillors.

The chiefs must not be allowed to hold political positions by being either councillors or members of parliament, as it is actually the case currently with the Principal Chiefs. In this regard, the policy positions of the BAC and PFD on the chieftainship (as shown in chapter four sections 4.2.2 and 4.2.7) seem to be appropriate. Ensuring that the chiefs do not take an active part in party politics would potentially result in a number of advantages conducive for democratic consolidation. One advantage would be that they will be better suited to discharge their respective duties and functions, extremely important among which is village conflict resolution. This would be more likely to enhance their political neutrality, credibility, and legitimacy among their communities. Another advantage would be that the general feeling of fear, suspicion, and uncertainty among them and other political actors that the government harbours intentions to abolish the chieftainship, through the controversial election or nomination, will end if the chiefs are not part of the councils, as it is the case in Botswana, and in Lesotho itself at the national level. In other words, there would be no need for either the election or nomination of the chiefs for political office. This would result in fewer problems for the government as well.

In carrying out all these measures, the process must be truly participatory in that the chiefs must be active participants throughout. If the government consults and approaches them genuinely, they are more likely to accept the new changes since these would not be putting in jeopardy their positions and interests. They have, in fact, not rejected the current local government system although it has put them in a compromised position. They have almost unanimously said that they accept and embrace the local government system in principle, except for the concerns that they have raised with regard to their marginalisation in the processes leading to its establishment. The government must also train them to ensure that they understand their exact roles especially where these overlap with those of the councils and on land-related matters. All these will require a huge budget but if the goal is to consolidate democracy, financial cost need not be a prohibiting factor.

The alternative and financially cheaper but politically costly approach would be for the government to make a firm policy decision as to whether or not Lesotho really needs such an elaborate local government structure as the one currently existing in the first place. In fact it could be argued that given its geographic size of about 30, 355 square kilometres, Lesotho is already essentially a local state. Currently, the country has budgetary constraints due to declining Southern African Customs Union (SACU) revenue sources. These constraints were well elaborated by the Minister of Finance and Development Planning in his 2010/2011 Budget Speech to Parliament in February 2010.<sup>66</sup> There is no certainty that they will be overcome in the near future, and this puts into question the retention and sustainability of the current local government structure.

Perhaps other ways of ensuring efficient service provision to the people would be to strengthen the capacity of the already existing government departments in the districts and wards by the government. The government should also instil a strong sense of public consultation in the MPs to ensure that they constantly get in contact with the people and have a clear sense of their needs. The MPs would then relay these needs to

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<sup>66</sup> The SACU revenue has been the main source of Lesotho national income, contributing no less than 60 percent of the national budget. But in 2010/11 fiscal year, this was projected to decline by a staggering 60 percent from M4, 900 million to just about M2, 161 in 2010/11 and decline even further in 2011/12 fiscal year to a mere M1, 695million ( see Thahane, T. 2010. Budget Speech to Parliament for the Fiscal Year 2010/2011).

the government for appropriate action. This would be a rational way of improving the delivery of public services. However, the approach would not meet the democratic values of giving power to the people to design and implement policies for the betterment of their lives. This approach, however, may sound too radical, given that the local government system already exists.

A more workable approach, although still politically sensitive and unavoidable under the circumstances, would be to abolish all Community Councils and to limit the local government structure to the level of wards, as represented by the Ward Chiefs' boundaries. In this way, all the Ward Chiefs would be *ex officio* members of the councils within an integrated model. This approach would be politically costly and unpopular in that all the 1508 councillors within 128 Community Councils country-wide would lose their positions and money (of which at the time of conducting this research was at the rate of M2, 500 per councillor per month). Although this amount may appear insignificant in other contexts, it means more for people who did not have it before. Besides, the councillors also have other privileges and benefits, which would go as well. Thus, they are more likely to be unhappy with this move. However, simply establishing a system that puts people in positions and paying them without adding any value to the population does not serve the purposes of any local government system, principal among which is to provide better services to the people than the central government would do. It is true, however as shown above, that the councillors cannot bear the blame for lack of service delivery in their respective councils, but the problems caused by the central government. Limiting the scope of the local government structure to the district level would, therefore, go a long way in cost saving and solving the problems of boundaries between councils themselves and councils and the chiefs.

## **7.5. Conclusion**

I have, in this chapter, synthesised the findings emerging from both the primary and secondary data as presented in the preceding chapters. I have highlighted the challenges emanating from government policy inadequacies, which have been confronting the local government system since its inception in 2005, and argued that these challenges (especially the ambiguous model of integrating the chieftainship with

the councils the government has adopted, and the failure by the government to define precisely and in close consultation with the chiefs, the roles, functions, and powers of the councils *vis-à-vis* those of the chiefs, marginalisation of the chiefs in the local government policy formulation and implementation processes, and the huge pay disparity between the councillors and the chiefs) affect and shape the nature of the relationship between the chieftainship and the elected councils, and inevitably the pace of democratic consolidation in the country. In other words, the chieftainship institution and its relationship with the elected local councils are not necessarily inimical to democracy as a system of government or the process of democratic consolidation in Lesotho. Rather, as political agents, the chiefs as individuals and the chieftainship as an institution, use their political agency, irrespective of the consequences for democracy and democratic consolidation process, in reaction to and in the protection of their corporate interests when such interests are threatened by political parties, especially the governing party at any one time. Thus, the arguments often put forward by modernists (that traditional African political institutions are antithetical to democracy and its institutions, compete with their democratic counterparts for power (as shown in chapter two), are misplaced in the case of Lesotho. I have also highlighted the different models of integrating the chieftainship institution with the modern state structures both at national and local levels in Lesotho, indicating the shortcomings of these insofar as promoting harmonious relations between the two.

I have suggested that Lesotho authorities have to make a firm decision, politically sensitive as it may be, on whether or not the country needs the fully fledged local government system with such an elaborate structure, at the cost and at the current time when the traditional source of national revenue is declining at such an alarming rate. As a solution both to the challenges of resources constraints and smooth running of the local government system and retaining the chieftainship institution, I have suggested also that it would be rational for the government to do away with the current Community Councils and to establish local government authorities under the integrated model, based on the existing boundaries of the Ward Chiefs. All the Ward Chiefs would then be allowed *ex officio* membership of the new authorities and serve also to supervise their subordinates at Area Chief and Headman levels. In this way the local government system would work in ways that avoid huge costs, and the

controversial election or nomination of the chiefs at lower levels into the councils, and align the councils' boundaries with those of the Ward Chiefs, thereby resolving the boundaries clashes between the councils and the chieftainship.

Alternatively, a parallel model based on the territorial jurisdiction of the Ward Chiefs could be established by the government. In this way, the chieftainship would exist as an entirely separate entity from the elected councils and serve only to advise the latter as and when necessity arises. This could serve not only as a cost minimising mechanism but also promote the main goals of decentralisation, namely, creating avenues for people to design and implement their own policies through their local representatives in order to realise better service delivery. The arrangement would also make possible the establishment of a kind of democracy suitable for Lesotho by retaining the chieftainship while at the same time allowing the people to elect their own representatives at sub-national level and achieving improved service delivery. In this way, prospects of consolidating a democratic rule would be enhanced. While such prospects are good, their realisation or otherwise depends entirely on the political choices that those in power would be willing to make.

The study makes new knowledge contribution, in three main ways in Lesotho's context. First, it provides some insights, which no other work has done, on how the chieftainship and the councils actually work in practice since the introduction of the local government system in 2005. It goes further to show how the adoption of the universalistic EuroAmerican ideas and practices such as democracy in other contexts, without regard to their socio-cultural and historical peculiarities, creates problems of workability.

Second, and more importantly, the study underscores the political agency of the chieftainship (which is widely acknowledged in the democracy-chieftainship discourse literature, and in particular by Nyamnjoh (2003) as the thesis has shown in chapter two). The agency of the chieftainship has been marked by its remarkable ability to adapt to its environment and political dynamics in pursuit and protection of its interests, and its success in extracting some concessions from the government in its favour, despite its failure to avoid its marginalisation in the local government policy formulation and implementation processes. This is reflected in the fact that the

government attempted to adopt and put in practice the universalistic and minimalist conception of democracy in the country, the potential effect of which was to endanger the survival interests of the chieftainship. Because of its agency, the institution was able to have the government back down on its initial policy of seeking to have the chiefs elected into local council seats and adopt a compromise approach, which saw them nominated by their peers into these seats.

The chieftainship's political agency (and, I must acknowledge, that of the councils as well) also made it possible for the initial hostility that characterised the relationship between these two structures to come under control, thereby leading to the councils being able to carry out their functions with the co-operation of the chiefs. The result was the establishment at the local level (as is the case at the national level) of a re-contextualised democratic practice, in which people exercise their right to elect their rulers (the councillors), participate in decisions that affect their lives, better service delivery and crucially neutralisation of actors (the chiefs in this case) with potential to undermine the system (Schedler, 1999), while at the same time retaining recognition for the chieftainship which is the embodiment of their culture, history, identity and nationhood. The Botswana's model, as I have indicated, would be a useful starting point for Lesotho. The point here is that the chiefs would (as they have indicated in this study) support all the activities of the elected councils, rather than seek to undermine them, and help promote better service delivery to the people, while continuing to perform their conflict resolution functions. In this way, Lesotho would be placed at the better footing for a consolidated democracy.

## **7.6. Future research**

Although my initial aim (as indicated in chapter one section 1.8) was to get comprehensive views, perspectives and opinions of as diverse sections of Lesotho's population as possible on the relevance, role and place of the country's chieftainship institution in contemporary politics and administration, this was not achieved. The main inhibiting factors were methodological and resources constraints at my disposal. It would have been useful, in terms of having more insights from the ordinary people in the villages how they view and interpret the kind of system that has been ushered in by the new decentralisation policy. This would have been particularly important in

that it is the people themselves more so than the elites either at national or local level that get affected directly by the new system in their daily lives. I have indicated they could not be reached. This means that there is still a gap as to what their views and perspectives are on the whole debate on the topic. Thus, future research is needed to fill this gap.

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## Appendices

### Appendix 1: Data Generation Instruments

#### Questions for the chiefs, councillors, community councils' secretaries, policy makers and implementers, and academics

##### i. Chiefs

- a) How did you as a chief know about the introduction of the local government system in Lesotho?
- b) Did you participate in any deliberations on the introduction of the system?
- c) Were your contributions, if any, taken on board by the government?
- d) Are you a member of the Community Council in your area?
- e) What do you think about the relevance of the Chieftainship institution since the introduction of the local government system?
- f) What exactly are the functions of the chiefs be vis-à-vis those of elected councillors?
- g) How do you think you should secure membership of the local government system?
- h) How do you take the fact that the chiefs get this membership through *nomination* by other chiefs?
- i) What factors guide the chiefs in *nominating* others for the Council's membership?
- j) What implications, if any, does this have for the chiefs discharging their functions to the community?
- k) How would you explain the relationship between the chiefs in the Councils and the elected councillors?
- l) How do chiefs in the Councils and those outside relate?
- m) What are the implications of this relationship for the local governance and service delivery in the Council area?

- n) What do you think should be done to ensure that the local government system is works best for the people?

## ii. Councillors

- a) How would you describe the performance of your Council since it was established?
- b) What challenges, if any, has the Council faced in carrying out its functions?
- c) What has been done to overcome those challenges?
- d) What specific functions does the Council perform vis-à-vis those of the Chieftainship institution?
- e) How does the Council relate to the chiefs in this area in discharging its functions?
- f) How do you take the fact that the chiefs have to be *nominated* by other chiefs to be members of the Councils?
- g) What implications, if any, has this *nomination* had on the relationship between those chief within the Council and those outside it?
- h) Do you think Lesotho still needs the Chieftainship given that it now has elected Councils?
- i) If it does, what exactly should be the role of the Chieftainship in the current local government system?
- j) What should be done to ensure that the local government system works best for the people?

## iii. Secretaries of Community Councils

- a) How would you assess the performance of your Council since it was established?
- b) What key challenges would you say the Council has faced since it was established?
- c) What specific functions does the Council perform vis-à-vis those of the Chieftainship institution?
- d) How does the Council relate with the chiefs who are not its members in this area in discharging its functions?
- e) How do the chief who are members of the Council interact and relate within councillors in meetings and other duties of the Council?
- f) How do the chiefs who are members of the Council relate with those outside?
- g) What should be done to ensure that the local government system works best for the people?

## iv. Leaders of political parties

- a) What is the policy of your party on chieftainship institution in Lesotho's contemporary political system?
- b) Is the chieftainship still relevant in Lesotho's political system now that the country has elected local councils?
- c) If it is, what role should it play in the country's politics vis-à-vis the elected councils?
- d) What is your party's policy on local government and the chieftainship institutions?

- e) If your party becomes government, what policy changes would it make regarding the chieftainship and elected councils?
- f) Would it require the chiefs to be *nominated* into councils as the ruling party does?
- g) Why would your party require them to be nominated or not to be nominated?
- h) How does your party assess the performance of local councils?
- i) What strengths and weaknesses does the local government have?
- j) How will your party deal with these weaknesses when it becomes government?

**v. Government representatives (ministers and senior civil servants)**

- a) What is the government's policy on Chieftainship institution in Lesotho's national politics currently and in the future?
- b) What was the rationale behind the introduction of the local government system in Lesotho?
- c) To what extent have the various actors (the chiefs, the villagers, non-governmental organisations etc) in the local government system been involved in the formulation of the local government policy?
- d) What specific input did these actors make in the local government policy formulation process?
- e) What policy objectives did the government hope to achieve?
- f) To what extent have these objectives been achieved so far?
- g) What specific challenges, if any, has the policy encountered at implementation stage?
- h) What strategies has the government taken to overcome these challenges?
- i) How have the Community Councils and the Chieftainship been working in realising the objectives of the local government policy?
- j) Why did the government make it a requirement that the chiefs must be *nominated* by other chiefs to be members of the Councils rather than allowing them membership on *ex officio* basis as is the case at national level?
- k) What criteria do the chiefs use in *nominating* others for the Council's membership?
- l) What have been the impacts of this *nomination*, if any, on the performance of the Councils and the chiefs in their respective areas?
- m) On the basis of the country's experience regarding the introduction of the local government system, what improvements, if any, does the government intend to make on it?

**vi. Academics**

- a) What are your views on the introduction of the local government system in Lesotho, was it an appropriate move?
- b) What are your views on the relevance or otherwise of the Chieftainship institution in Lesotho's contemporary political system?
- c) Should the country retain the Chieftainship structure even when it has introduced an elective local government system at local level?
- d) If so, what role should the Chieftainship play in village governance?
- e) How best can the two systems be integrated to consolidate democratic rule in the country?

- f) What is your assessment of the performance of the local government system so far in local service delivery?
- g) What improvements on the local government system do you deem necessary to assist the country to achieve a consolidated democracy?

## Appendix 2: Profiles of respondents, dates and venues of interviews

Names of Respondents	Occupation	Date of Interview	Venue of Interview
Mr. V.M. Malebo	Leader: MFP	15/01/2009	MFP Offices
Advocate L. Rakuaokane	Leader: PFD	16/01/2009	Parliament Offices
Mr. M. Macheli	Sec. Gen*: LPC	19/01/2009	Ha Thetsane
Maj. Gen. J. M. Lekhanya	Leader: BNP	19/01/2009	BNP Centre
Mr. T. M. Thabane	Leader: ABC	22/01/2009	ABC Offices
Mr. P. Mochesane	Former Pub. Sec. **: LPC	10/02/2009	Lancer's Inn
Mr. N. Mphanya	Former ECM: BCP	26/03/2009	Mapoteng
Hon. Dr. P. M. Sekatle	Minister: MoLGC	24/03/2009	Moposo House
Chieftainess M.L. Peete	Retired Senator & Chieftainess: Mapoteng	07/08/2009	Mapoteng
Mr. M. Molapo	Director: Chieftainship Affairs	25/03/2009	Moposo House
Hon. S. Sekatle	Minister: Public Service	13/01/2010	Government Complex
L. B. B. J. Machobane	Retired Professor: NUL	16/02/2009	Roma
H. T. Mothibe	Associate Professor: NUL	16/02/2009	Roma
R. C. Leduka	Associate Professor	16/02/2009	Roma
Mrs. M. Khoanyane	Chair: Mazenod CC***	03/03/2009	Mazenod
Chief M. Motemekoane	Member: Mazenod CC	03/03/2009	Mazenod
Chieftainess M. Makhobalo	Member: Mazenod CC	03/03/2009	Mazenod
Mr. T. Kabi	Secretary: Mazenod CC	19/03/2009	Mazenod
Ms. C. Jane	Secretary: Mohlakeng CC	24/03/2009	Koro-Koro
Mr. T. Lekarapa	Chair: Mohlakeng CC	23/03/2009	Koro-Koro
Chieftainess M. Letsie	Member: Mohlakeng CC	23/03/2009	Koro-Koro
Chief T. Tšiu	Member: Mohlakeng CC	23/03/2009	Koro-Koro
Mr. Talanyane	Chair: Makhoarane CC	07/04/2009	Moriya
Chief M. Khang	Member: Makhoarane CC	07/04/2009	Moriya
Mr. M. Ntšinyi	Secretary: Makhoarane CC	13/03/2009	Moriya
Mr. M. Molikeng	Chair: Lilala CC	09/04/2009	Rothe
Chief M. Letsie	Member: Lilala CC	09/04/2009	Rothe
Chief S. Letsie	Member: Lilala CC	11/04/2009	Tšoeneng Ha Letsie
Ms. T. Mohajane	Secretary: Lilala CC	30/04/2009	TRC Offices
Chief M. Tlali	Chief: `Mahuu	22/07/2009	Masite Nek
Chief R. Matete	Chief: Morija	24/11/2009	BNP Centre
Chief T. Theko	Secretary: THESELE	06/03/2009	Sea-Point
Chief M. T. J. Maama	Chief: Mokema	07/07/2009	Mokema
Chief L. S. Mofoka	Chief: Qhomane	07/07/2009	Ha Mofoka
Chieftainess M. Khoeli	Chieftainess: Ha Khoeli	08/07/2009	Ha Khoeli
Chief T. Letsie	Chief: Ha `M`antšebo	09/07/2009	Ha `M`antšebo
Chief S. Lerotholi	Chief: Ha Teko	10/07/2009	Mankoaneng Ha Teko
Chieftainess M. T. Griffith	Chieftainess: Thota-Moli	10/07/2009	Thota-Moli
Chief M. Molikeng	Chief: Ha Raphae	22/07/2009	Ha Raphae
Chief R. Moonyane	Chief: Matsieng	22/07/2009	Matsieng
Chieftainess M. Rantsala	Chieftainess: Mauteng	22/07/2009	Mauteng
Chief E. N. Lehloenyana	Chief: Mahloenyeng	23/07/2009	Mahloenyeng
Chief K. Leutsoa	Chief: Ha Leutsoa	24/07/2009	Ha Leutsoa
Mr. L. Theko	Democracy Educator: TRC	11/05/2009	TRC Offices
Informant	Facilitator: Workshops on White Paper on Local Government	31/11/2009	Roma

Informant	Facilitator: White Paper on Local Government	31/11/2009	Roma
Informant	Former ECM: LCD	23/03/2009	Parliament Offices

**Note:** \* Publicity Secretary, \*\*Executive Committee Member, \*\*\* Ministry of Local Government & Chieftainship Affairs, and \*\*\*\* Community Council