

Johnson Fako Likoti and Piniel V. Shava, 'The challenges of local government in Lesotho: constraints and prospects', in Lesotho Law Journal, Volume 16 Number 2, (2006), pp.229-349.

**The challenges of Local Government in Lesotho: Constraints  
and Prospects.**

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## **The challenges of Local Government in Lesotho: Constraints and Prospects.**

### **Abstract**

*The Local Government Elections held in Lesotho, on the 30<sup>th</sup> April 2005 for the 128 Community Council were pronounced free and fair. Despite this endorsement by international observers, one year down the line, the electoral outcomes have produced more challenges than the expected results. Decentralisation of services appears to be far from making an impact on the ground. This stems from the fact that, the Ministry of Local government seems reluctant to provide required leadership, amend legislation, provide resources both human and infrastructural and sensitise stakeholders about their respective roles. These challenges have defeated the ambitious Lesotho Local Development Programme Concept Paper, which spells out what has to transpire in order to achieve development-oriented Local Authorities (LA) in Lesotho.*

### **Introduction**

The 2005 April Local Government elections in Lesotho heralded a new era of democracy. Local Government in Lesotho has been extensively studied<sup>1</sup> by many scholars from different perspectives. However, these studies have been confined to arm-chair rather than empirical research. It is for this reason that this study focuses on an empirical analysis of the post elections challenges in order to ascertain the impact of Local Government in Lesotho.

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<sup>1</sup> M. Wallis, Lesotho: Seeking Local Democracy in the Mountain Kingdom: In Local Government Democratisation and Decentralisation: A Review of the Southern African Region, PS Reddy editor (London; Juta & Co Ltd, 1999), M. Wallis, R. Van De Geer, Government and Development in Lesotho. (Lesotho; Morija Printing Works' 1984), Reatile Victor Shale, Decentralisation, Development and Conflict: Challenges Awaiting Local Authorities in Lesotho: In EISA Occasional paper No 21 (2004), 1-11, Reatile Victor Shale, Demarcating Local Authorities' boundaries for good governance versus the people-to-people relations: the case study of Lesotho: In EISA Occasional paper No 28 (2005), 1-25, Victor Khali Mofuo, Local Governance in Lesotho: In EISA Occasional paper No33 (2005), 1-15.

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The first form of government since time immemorial has been Local Government<sup>2</sup>. Local Authorities as a system of governance, have a long history. Hence, these authorities are created to render services to local communities, primarily because Central Government cannot reach people in various localities efficiently and effectively. These governmental authorities have been defined as:

*...local democratic units within a democratic system...which are subordinate members of the government vested with prescribed, controlled governmental powers and sources of income to render specific local services and to control and regulate the geographic, social and economic development of defined local areas<sup>3</sup>.*

Local Authorities are mostly distinguishable by having, a defined area, a population, authority to undertake and carry out public activities, power to collect revenue and determine budget and of course to sue and be sued<sup>4</sup>. The Local Authority is the body which formulates and implements Public policies. There are many more functions that this body performs. In fact, section 5 of Lesotho Local Government Act of 1997 details a total of 27 functions that Councillors must perform.

The introduction of Local Authorities in most developing countries has been confronted by a myriad of challenges. These include but not limited to, human resource capacity, financial management, fund raising capacity, education backgrounds of members of various Councils, relations with the Central Government and, of course, the capacity to deliver services to their localities efficiently and effectively. It has been argued that, "many Local Governments in the region lack the

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<sup>2</sup> J.S.H. Gildenhuys, A. Knipe, (1<sup>st</sup> ed) *The Organisation of Government: An Introduction*. (Pretoria; Van Schaik Publishers, 2000).

<sup>3</sup> J. Meyer, *Local Government Law*. (Durban: Butterworth, 1978), 10.

<sup>4</sup> S. Humes, S. Martin, *The Structure of Local Government: A Comparative Survey of 81 Countries*. (The Hague: International Union of Local Government, 1969). See also Section 5 of Local Government Act of 1997.

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required financial and human resources to meet public service requirements for increasing population and development"<sup>5</sup>. Despite this deficit, Local Authorities are also expected to have political and administrative capacity to inject developments in these areas. It is without question that, lack of these skills in most developing countries, presented great challenges to these Authorities.

In order to establish the up hills facing newly elected Local Authorities in Lesotho, this paper discusses the methodology that was used to capture data. It also draws from Lesotho Local Development Programme Concept Paper, which has served as a key guiding principle and framework for decentralisation and also on the literature dealing with Local Authorities from elsewhere. The paper, therefore, analyses the findings from this data in conjunction with the Concept Paper's expected outputs and concludes by providing specific recommendations about what could be done to ameliorate the challenges facing Local Government in Lesotho.

### **Methodology**

This analysis is based on data that was collected from Local Government Offices within the three districts of Lesotho; namely, Maseru, Berea and Mafeteng. The study was conducted between late December 2005 and early February 2006. The data was collected using face-to-face in-depth interviews in focus group discussions and observations. Some of the questions pursued in this study were related to the challenges facing the newly elected Local Authorities in Lesotho, their constraints and prospects for delivering quality services to their communities.

The main aim was to ascertain whether the Councillors had sufficient capacity to execute their several functions and to explore the legislations governing their relations

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<sup>5</sup> P.S. Reddy, *Local Government Democratisation and Decentralisation: A Review of the Southern African Region*, ed. (London; Juta & Co Ltd, 1999), 7.

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with other stakeholders such as Chiefs, Parliamentarians and Central Government representatives. These interviews generated extensive qualitative data that formed the basis of this analysis.

### **The framework for Lesotho Local Government**

This is a policy framework for Lesotho government which explains the process of implementing the Local Government structure. According to the Lesotho Local Development Programme Concept Paper<sup>6</sup>, the decentralisation process should be understood within the broad National Vision adopted by the government, which states that:

*By the year 2020 Lesotho shall be a stable democracy, a united prosperous nation at peace with itself and its neighbours. It shall have a healthy and well-developed human resource base. Its economy will be strong, its environment well managed and the foundations for its technological advancement well established<sup>7</sup>.*

The Official working paper of the government of Lesotho on the establishment of Local Government adopted by Cabinet on the 10<sup>th</sup> of February 2004, envisaged the Local Government system as based on political devolution and decentralisation of functions, staff and finances within the framework of a unitary state. The Concept Paper further elaborates the four fundamental principles of decentralisation as follows:

1. *Political decentralisation through integration of some previously centralised or decentralised service sectors into holistic local government structures operating within the framework of the constitution and other national policies.*
2. *Financial Decentralisation where local governments will have powers to pass their own budgets reflecting their priorities as well as mandatory expenditure required for the attainment of national*

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<sup>6</sup> Summary of Lesotho Local Development Programme Concept Paper, 11<sup>th</sup> May 2006, 1-36.

<sup>7</sup> Kingdom of Lesotho National Vision 2020.

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*standards. Local governments will also have power to levy local taxes as a source of revenue generation. Notwithstanding the powers of local governments to levy taxes as a source of council income, Central Government will remain the primary financier of Local government through the grant system.*

3. *Administrative decentralisations where local governments will have powers to recruit, discipline and dismiss own staff.*
4. *Changed central-local relations: The role of central government vis-à-vis local governments will be changed into a system of inter-governmental relations with central government having the over-riding powers within the framework of the National constitution. Line Ministries will change their roles and functions into becoming policy-making bodies, supportive and capacity-building bodies, monitoring and quality assurance bodies<sup>8</sup>.*

The Minister responsible for Local Government will coordinate central – local relations and, in particular, initiatives from sectoral Ministries, especially on issues related to Local Government.

The concept of Local Authority is the most important one in modern democratic lexicon. The value of democracy at this local level can be witnessed by high voter turnout during Local Government Elections. It is the area where citizens' participation as well as effective and professional management are at the highest level<sup>9</sup>. Local Authorities form a crucial aspect of arms and legs of people's democracy in any country. This led the South African Provincial and Local government Minister, Fholisani Sydney Mufamadi to argue that:

*...democracy makes sense when it connects with, and gives expression to, the everyday challenges of ordinary South Africans. This means that Municipal government must be at the forefront of involving citizens in all aspects of governance and development by providing them with practical and effective opportunities for participation. It also means that citizens and civil society organisations must view Municipal government*

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<sup>8</sup> Summary of Lesotho Local Development Programme Concept Paper, 11<sup>th</sup> May 2006, 9.

<sup>9</sup> J.S.H. Gildenhuys, A.Knipe, op cit.

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*as an institution that belongs to them and as a legitimate vehicle for democratic expression*<sup>10</sup>.

Similarly, the new Local Authorities in Lesotho share the above democratic principles in that they attempt to bring democracy and its sundry opportunities closer to the communities. Local Authorities face a mammoth task of achieving ambitious objectives. Politicians and civil society groups<sup>11</sup> have referred to the leading role Local Authorities play in promoting local democracy. Expectations have been raised by the view that Local Authorities are "strategic defence against powerful globalising currents and front line in the war against poverty"<sup>12</sup>. In Lesotho as elsewhere, there are high expectations for Local Authorities to succeed and deliver democracy at the grass-roots level. In hailing the success of the South African Local Government elections, Nelson Mandela argues that, "Local Government elections are a continuation of democracy (our emphasis) because there cannot be full democracy without democratic Local Government"<sup>13</sup>.

Pieterse<sup>14</sup> argues that Local Authority policies revolve around four issues. These are viability, capability, accountability and purpose-driven. The viability of Local

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<sup>10</sup> Susan Parnell, Edgar Pieterse, Mark Swilling and Dominique Wooldridge, *Democratising Local Government: The South African Experiment* editors. (Cape Town: University of Cape Town Press, 2002)VII.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid,1. See also World Bank, *Entering the 21<sup>st</sup> Century*. *World Development Report 1999/2000*. (Oxford: Oxford University Press, 2000a)

<sup>13</sup> ANC Strategy and Tactics. 49<sup>th</sup> National Conference. Cited by H. Deegan, (1999) in *South Africa Reborn: Building a New Democracy* (London: UCL Press,1994) See also Anthony Lemon, *The Role of Local Government: Local Government and the Local state: In Democratising Local Government: The South African Experiment*, Susan Parnell, Edgar Pieterse, Mark Swilling and Dominique Wooldridge, editors. (Cape Town: University of Cape Town Press, 2002). See also J.M.Kaunda, *Malawi: Local Government Democratisation and Decentralisation-An Uncertain Agenda: In Local Government Democratisation and Decentralisation: A Review of the Southern African Region*, P.S. Reddy editor (London; Juta & Co Ltd, 1999), he argued that democratisation cannot be complete without decentralisation and democratisation of Local government in Malawi.

<sup>14</sup> Edgar Pieterse, *Participatory Local Government in the Making: Opportunities, Constraints and Prospects: In Democratising Local Government: The South African Experiment* Susan Parnell, Edgar Pieterse, Mark Swilling and Dominique Wooldridge, editors. (Cape Town: University of Cape Town Press, 2002)

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Authority (LA) itself addresses the question of making each LA a workable centre of financial capability and budgetary austerities. Financial re-engineering is important, more especially in democratising the budget and allowing citizens' participation at the local level. Nevertheless, it must be pointed out that "the financial difficulties of Local Government are more fundamental than the share of national revenue allocated to Local Government".<sup>15</sup> This, however, remains more of a challenge in new Municipalities where the budgetary system never existed before.

Second, the issue of capacity always follows the financial capacity of LAs. In this area, safeguards are put in place to ensure that financial problems that may arise are avoided at all costs. This involves setting up systems to motivate rates payment and collection so that the LA has the financial capability to run its functions smoothly. This brings us to the question of accountability within the Local Council. It is worthy noting that the policy framework of most LA's "suggests that democratic practices only have meaning if the Municipality has resources and the capacity to use them effectively"<sup>16</sup>. This requires, not only democratic government and participatory planning by LA, but also efficient modern management practices. This process put service delivery at the forefront of Local Authorities functions. Democratic accountability is achieved through aggressive promotion of people's participation within the Local Authorities and through quality of service delivery within LA jurisdiction.

Finally, the LA must be purpose-driven. This is critical because, without strategic plans to develop the locality and quality service delivery, the LA would not succeed. Strategic planning model is critical because it is a powerful tool towards looking to

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<sup>15</sup> Ibid,4.

<sup>16</sup> Ibid, 5.

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the future and "strategic plans potentially enable people to agree on what is positive, where potential resides and how best to maximise these attributes"<sup>17</sup>. This enables LAs to eradicate the most pressing obstacles on their way that might delay their development plans.

### **Findings**

The Concept Paper<sup>18</sup> puts forward several expected outputs of the Local Government programme. For our discussion in this paper, four outputs will suffice. These are as follows: Ministries facilitating the management of decentralised functions, Councils operating with appropriate facilities and developing a human resources development framework, Ministries and public understanding of the decentralisation programme and Legislation amended and regulations developed<sup>19</sup>. These expected outputs were central in soliciting information from interviewees within the Ministry in relation to the extent within which these outputs have been achieved. The results of these interviews within the Ministry identified four challenges faced by the newly elected Local Authorities. These included, lack of ministerial leadership, meagre Resources, ineffective communication between elected representatives and state officials and the challenges enshrined in the local Government Act of 1997. It is these challenges that we now discuss.

### **Lack of Ministerial Leadership**

The process of decentralisation requires among other outputs, Ministries to perform a range of activities. At the national level, the Ministry of Local Government is required to provide leadership to other Ministries as well as ensuring the empowerment of

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<sup>17</sup> Ibid, 5.

<sup>18</sup> Summary of Lesotho Local Development Programme Concept Paper, 11<sup>th</sup> May 2006, 10.

<sup>19</sup> Ibid, 10-11.

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LAs, at the same time ensuring adherence to policy by LAs when performing their assigned functions. The Ministry, with its key offices, is also expected to support and assist Councils technically at the local level. For Local Authorities to have a positive impact, the Ministerial leadership is crucial, more especial in providing leadership in planning developments, financial management and its relations with the Local Authorities themselves.

Despite this constitutional mandate, the Ministry appears to have been weak in the management of departments of Rural Development and the Decentralisation Unit. These departments are central in providing the necessary leadership required by the Ministry. The department of Rural Development within the Ministry formed the crucial aspect of the Ministry in terms of its outreach function with the communities. It is through this department that the Ministry has been able to initiate/identify, formulate, implement development and monitor rural developments within the country in the past. Conversely, with the coming into being of Local Authorities in April 2005, the office was merged with the newly established office within the Ministry, the Decentralisation Unit. It was this merger which created major challenges in terms of the above roles of the Department of Rural Development (DRR).

The coming into being of the Decentralisation Unit (DU) meant that the DRR had been divested with all its functions. According to most interviewees, the DU was staffed with new employees that lacked training in rural development. They argued that, the personnel in this Unit had no job descriptions. Their roles are yet to be defined by the Ministry. It would appear that their deployment was a political expediency rather than formality. They are only accountable directly to the Minister and, therefore, execute ministerial directives as the Minister determines from time to

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time. The major challenge with the DU has been that the office does not appear anywhere in the Ministry's organisational structure. In fact, the department of Management Services under the Ministry of Public Service, which is charged with the creation and merging of government departments, is not even aware of the existence and roles of the DU within the Ministry of Local Government.

The merged staff in the previous office of DRR was mostly redeployed elsewhere while others retired. These developments left the DU office with no communication link with the rural areas in relation to how to advise the newly elected Local Authorities. In short, both members of Local Authorities and DU were new to their different tasks.

Previously, the DRR worked closely with the communities drawing their development plans. It was also anticipated that with the new structure of LA, the DRR was still going to play a dominant role in assisting Councillors in the identification and implementation of their projects. In this light, a budget was set aside for assisting Local Councillors through this office. Some Ministry Officials maintained that, since the merger of this office, the budget has not been disbursed to Local Authorities by the central government through the Ministry. They contended that, the DRR plans for community development have not taken off the ground since 2005. The in-coming Councillors have not as yet been assisted to formulate development plans or identify viable projects in their localities. Nevertheless, whether they have expertise to carry out these tasks is another issue that will be discussed below.

One of the major challenges faced by the current 128 Local Authorities in Lesotho has been lack of Ministerial leadership in this area. It is clear from the ongoing discussion that the Ministerial supervision and coordination have been virtually absent. This lack

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of leadership in the Ministry has been in the managerial role. Interviewees observed that in all government Ministries, there are management meetings. This crucial management tool has been lacking since January 2005 in their Ministry. The practice has made Ministerial supervision and co-ordination of newly elected LA's virtually impossible. In the meantime, Local Authorities are not being provided with the leadership necessary to carry out their functions. This also means that, resources needed for LAs to do their work are not being provided by the Ministry.

### **Local Authorities Resources**

The other expected output of the Local Government programme was that Councils should operate with appropriate facilities. It was expected that the Ministry would ensure that Councils were equipped with the appropriate infrastructure and equipment in their respective localities in order for them to pursue their assigned mandate effectively.

While resources in most developing countries remains a challenge, in Lesotho, this has been acute as far as Local Authorities are concerned. Most interviewees were at pains to point out that in all 128 Councils, there is virtually no infrastructure. It would appear that no proper arrangements were made for the incoming Local Authorities. The lack of office accommodation and other essential services that Councillors need for their day to day functions attested to this fact.

Infrastructural capacity appears to have limited the chances and the impact of Local Authorities in the entire country. Some Ministry Officials explained that, as a direct consequence of this situation, Councillors are forced to meet in Community Centres and sheep and goats shearing halls to conduct their business. In rural areas, where most people need their services, Councillors have to content with the above working

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conditions. What is becoming clear is that, there was no sufficient planning prior to Local Government Elections relating to the availability of office accommodation and other facilities for Councillors in the post-elections period. Most interviewees also observed that, Councillors now found themselves wallowing from shearing halls, to chief's residence and to any rural school available when they are supposed to meet in order to conduct their business. Lack of office space remains a major handicap for Councillors in executing their functions.

Some departmental heads argued that almost a year after the Local Government elections, fiscal decentralisation by the Central Government is yet to take off. The Government of Lesotho appears not to have a strategy of addressing this challenge. Probably, the reason for this intransigence on the part of government might be the fact that there is no capacity within the newly elected authorities.

Closely related to an appropriate infrastructure output above, has been that which addresses human resourced development. It was expected that the Ministry would develop a human resources framework that would ensure that Councils are equipped with relevant and skilled human resources for the performance of functions assigned. This was a tall order judging from the fact that, most members of these authorities come from challenging academic backgrounds. The problem of lack of human resources capacity may be the reason why the Central Government has not as yet disbursed funds to these Authorities.

The interviewees, pointed out that, in Lesotho, there is an emerging trend whereby educated people appear not very enthusiastic in working in rural areas and also getting involved in party politics. As already alluded to above, the majority of the current Local Authorities have been dominated by people with no academic qualifications

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and where they exist, most of them possess lower primary qualifications. This phenomenon of having uneducated Councillors can be extended to the National Parliament of Lesotho where almost 75% percent of the current Members of Parliament (MPs) are either illiterate or semi-literate<sup>20</sup>. The paper argues further that with the calibre of this leadership, it has been no surprise that Lesotho development has been adversely affected. Most senior Officials in the Ministry opined that, since the current batch of Councillors got into office, not a single development in all Local Authorities has taken off. It can, therefore, be deduced that the government has been constrained to disburse funds to these Authorities because of the above challenges.

In terms of financial management, this remains a tall order. Even though the government has a budget for Local Authorities' projects, it has been faced with enormous problems of disbursing funds to Councillors who lack capacity to handle finances. In fact, most of these Local Authorities lack the technical and managerial capacity in this area. They cannot raise funds for themselves. Therefore, they remain dependent of Central Government for funding their activities. Mofuo<sup>21</sup> argues further that lack of financial management in Local Authorities has been an endemic problem in the past in Lesotho.

According to the above Government Officials, most Councillors are ex-miners from South African mines, who were retrenched during that country's problem with the depreciation of its currency in international markets, which affected the price of gold. This situation saw several mining giants closing and dismissing thousands of miners, of whom the majority came from Lesotho. They further (Officials) maintained that, it

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<sup>20</sup> Francis K Makoa, Inter-party relations are adversarial, a situation compounded by the combination of proportional representation and first-past-the-post systems of electing MPs: In Southern African Journal of International Affairs. Volume 12, Issue 1. Summer/Autumn 2005.61-76

<sup>21</sup>Victor Khali Mofuo op cit.

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was inevitable that they (miners) found Local Government as a lucrative place to earn their livelihood. Most of these miners had acquired early primary education while others did not. This educational limitation remains the major challenge to them and Local authorities as a whole.

According to the Local Government Act of 1997, Council, among other powers, has the prerogative to make by-laws in terms of Section 12 (1), (2) and (3). The question is, how could miners make by-laws when they are not literate? In fact, the Local Government Act of 1998 does not set out an educational qualification for any member who is interested to become part of or standing for elections. Section 26 details the eligibility and nomination of candidates as follows:

*Subsection (1) subject to sub-section (2)-*

*(b) Subject to subsection (1) of section 5 every person is eligible for election as a member of a Council and may be nominated and elected as a candidate for election in the electoral division, constituted under section 6 of the Local government Act of 1996.*

This section, as already argued above, does not explicitly show educational qualifications as a bar for any member to stand for elections. This lack of academic credentials has also incapacitated their managerial capabilities, their ability to initiate projects and even influence government policy. In fact, as Government Officials have argued, most members of LAs do not understand their terms of reference clearly, because they cannot read English material or documents, which serve as guides to their day to day functions. Without managerial capabilities, these Councillors cannot be able to effectively manage and control their Councils. This is because “ineffective control and management may deprive Local Authorities of potential revenue from

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land and property taxes and appropriate rents"<sup>22</sup>. Currently, this situation has challenged their managerial and financial capabilities. Since they lack these crucial skills, it is not clear how they can be able to articulate and identify both their needs and the community needs properly. It is also incomprehensible to see how they relate to other state structures, which have an interest within these Authorities.

### **Ineffective Communication between Elected Representatives and State Officials**

The third output related to Ministries and public understanding of the decentralisation programme. The Ministry of Local Government was expected to sensitise all stakeholders about the roles of LAs. It was critical for the public at large and other stakeholders to be well informed so as to endorse and embrace the structures and systems of local governance. This was expected to bring ownership, support, communication and participation by all parties. What was crucial at this level was ensuring that each stakeholder understood his or her role in order to limit any communication challenges that would emerge. Unfortunately, like the above outputs, this did not happen.

Communication forms a viable asset in any development, more especially between all stakeholders at local level. If Local Authorities are unable to relate to these groups, this becomes a handicap to itself. Currently, there is a communication challenge between Local Authorities and the following groups; the Principal Chiefs, Members of Parliament (MPs), the local Chiefs of different areas, District Administrators, District Council Secretaries and Local Authorities.

While democracy has created several avenues for communication and development within the country, this has become a challenge between all these groups as each

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<sup>22</sup> D. Simon, *Cities, Capital and Development: African Cities in the World Economy*. (London; Belhaven, 1992), 122.

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claim's to have jurisdiction over a specific area. Interrelationships between elected and unelected state Officials in Lesotho, have emerged as a serious impediment since the enactment of the Local Government Act of 1997.

The District Administrator (DA) at the district level is a representative of the central government<sup>23</sup>. Since all the DA's in Lesotho are government appointees, their relations with Independent Councillors remains acrimonious at best. The reason here is that independents do not share the ruling party political ideology. This aspect has created unnecessary differences between the two parties. According to some interviewees, in most cases, the DA calls meetings for Councillors while the District Council Secretary (DCS) should be the main convener. This has created another communication problem between the DA and the DCS.

The DA also regards their office as superior to that of Chiefs and Councillors. On the other hand, the Chiefs and Councillors regard the DA's office as representing the Central Government, but not superior to their own offices. This does not in any way thrust more power over their office, but remains subordinate to the Chiefs of the area. There is a dire need for legal clarification in order to avoid unnecessary conflicts between these parties.

It is common cause that a Principal Chief would claim autonomy and demand to know what takes place under their jurisdiction. Similarly, each group be it Parliamentarian or Councillors would claim the same. This has created communication challenges between all stakeholders. The simmering conflicts between these groups have become acute more especially in terms of power relations. Some members of Local

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<sup>23</sup> Section 39 of Local Government Act 1997, describes at length how District Administrators in Lesotho are appointed. See Wallis op cit, 107, who argues that Local Government Act 1996 section 39 outlines that the DAs are appointed by the Minister of Local Government. Therefore, they are responsible only to the Minister.

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Government submitted that, Members of Parliament (MPs) in places like Mafeteng and Quthing districts have demanded to know what Councillors were planning in their constituencies and consequently summoned them to appear before their constituencies offices while the latter refused. They observed that most MPs have become suspect about independent Councillors who do not share similar political outlook.

It is common course that MPs expect anyone who comes to their constituency, whether for community work or any development related advice to Councillors or to the local Chief to disclose their agenda to them first. They also demand that such developmental programmes irrespective of where they come from must be in line with their ideological views. These expectations have invariably stifled many developmental initiatives in most cases by local Non-Governmental Organisations (NGOs) and other Donor Agencies in Lesotho<sup>24</sup>.

Chiefs in Lesotho are very influential within their communities. They are still regarded as symbols of unity and custodians of Basotho culture. In fact, "the government Officials, such as the Police, also acknowledge the fundamental role played by Chiefs. They refer to Chiefs as 'the first Police Officers' in the communities because the Chief is the first custodian of law at the village level"<sup>25</sup>.

Wallis<sup>26</sup> argues that Chiefs in Lesotho have always excelled in conflict management and emerged as a unifying force within their communities. It has long been recognised that "traditional leaders have considerable credibility in many local communities and that with the creation of appropriate structures for their involvement, such leadership

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<sup>24</sup> Public Eye, Newspaper May 7<sup>th</sup> 2003.

<sup>25</sup> Reatile Victor Shale op cit, 3-4.

<sup>26</sup> M.Wallis, op cit.

Johnson Fako Likoti and Piniel V. Shava, 'The challenges of local government in Lesotho: constraints and prospects', in Lesotho Law Journal, Volume 16 Number 2, (2006), pp.229-349.

can assist in the realisation of development goals"<sup>27</sup>. The Chiefs are at pains to point out that Local Authorities are interfering with their local administrations without giving them due recognition they deserve. While most interviewees share similar sentiments, they also acknowledge that, there have been several reports, which indicated that Councillors have often allocated sites within villages without informing the local Chiefs. This lack of consultation has been endemic since the post Local Government elections in many areas.

One of the outgoing supervisors in the defunct DRR, pointed out that, Chiefs on the other hand, still harbour the traditional beliefs that land belong to their fathers. While modern political system has changed in making Chiefs not the only stakeholders in their areas, it would appear that in some areas there is need for training and sensitisation programmes about the roles and responsibilities of all stakeholders. These communication challenges have raised the question of separation of powers between all the above elected and unelected groups. Shale argues that:

*...there is a dire need for government to spell out how its various sectors at the central level will be involved at the local level in order to minimise confusion and duplication of efforts hence conflict that is characteristic of the present situation. The question of central-local relations, if not well defined, can be a source of conflict<sup>28</sup>.*

Most Councillors remained ignorant about their sphere of operation in relation to Central Government. Mofua argues that "this demonstrated that training was ignored prior to the establishment of Councils. Consequently, lack of training and clarity over

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<sup>27</sup> Commonwealth Local Government Forum. Commonwealth Roundtable on Democratisation and Decentralisation for Senior Local Government Policymakers, 27-29 June (Harare; 1995),4.

<sup>28</sup>Reatile Victor Shale op cit, 7.

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roles regarding the Councillors inhibited the effective performance of the Council"<sup>29</sup>.

The Central Government is, therefore, directly challenged by these blurred lines of communication. The government must clearly define intergovernmental relations between all these stakeholders. The tug-of-war between them can be ameliorated by government getting their institutional arrangements functioning properly only when they appreciate and understand each other's roles. This could go a long way in addressing the current simmering conflict between LA and Chiefs. It appears that the Local Government Act of 1997 brought even more confusion to the relatively unstable situation between elected and unelected sectors of the community.

### **The Local Government Act of 1997**

The last output was that of legislation which was expected to be amended and regulations developed. As already alluded to above, all these expected outputs did not materialise. In relation to the expected amendment of legislation, some Senior Officials of the Ministry argued that, prior to the promulgation of the 1997 Local Government Act, numerous workshops were conducted. The rationale for these workshops is to inform the drafters of legislation about the local needs and requirements of the communities which had to inform the Act itself. Unfortunately, this was not to be. It would appear that several issues around the values and traditions of Basotho were left out during the drafting of the legislation. It is also not clear whether this was by default or design.

Consequently, several issues governing relations between Chiefs and the Central Government were left out by the Act. The failure to deliver on this important output of amending legislation and introducing new regulation to manage these relations

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<sup>29</sup> Victor Khali Mofua op cit, 10.

Johnson Fako Likoti and Piniel V. Shava, 'The challenges of local government in Lesotho: constraints and prospects', in Lesotho Law Journal, Volume 16 Number 2, (2006), pp.229-349.

meant that conflicts were bound to happen. Nevertheless, it should also be noted that the Local Government in Lesotho has been tried before from 1966 up to 1968<sup>30</sup>. The greatest deficit yet, of the Local Government Act of 1997, has been to lack of regulations. Regulations are critical to address the roles and relations of all stakeholders in these Authorities. This Act ignored the traditions responsibilities pertaining to the use of land by Chiefs. The Act remained silent about what the expected roles of Chiefs should be in this area, which they used to carry out, apart from the fact that Section 12 of Local Government Act of 1997 gives the Councils this role. It is patent that "unclearly or inappropriately divided responsibilities further handicap Local Government"<sup>31</sup>. It can also be argued that section 12 of the Act raised future cases of conflict between the two parties. For instance, it has not been clear how the relations between Chiefs outside the Council and those within the Council would be managed apart from the fact that Local Government Act of 1998 Section (1) (a) argues that:

*every person who is a Gazetted Chief, and who is a registered voter is eligible for election as a member of a Council and may be nominated and elected as a candidate to represent the Local Authority area in which such Council is Constituted under section 3 of the Local Government Act of 1996.*

The Local Government Act of 1997, makes it mandatory in section 4 (a) that, only two Gazetted Chiefs shall be elected to the Council. The Director of the Department of Chieftainship (DDC), argued that, this situation whereby some Chiefs become part of the Council while others are left out, creates a major source of conflict. Another complicated issue is that of cross-cutting boundaries between Principal Chiefs. This

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<sup>30</sup> Victor Khali Mofua op cit.

<sup>31</sup> Lemon Anthony op cit, 28.

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feature has proved to be an emotive issue in the past, between minor Chiefs who fall under different Principal Chiefs. The issue of cross-cutting Local Council boundaries created even more stressful relations. Shale puts this point more succinctly:

*The chieftaincy boundaries have, over many decades, been a source of violence between communities resulting in death and arson. The complicating factor concerning these boundaries is that there are areas where some Chiefs (even headmen) are by demarcation, placed under a different ward from the one is under their own Principal Chief. Due to their allegiance to their Principal Chief, they do not give recognition to the one under whose jurisdiction they fall<sup>32</sup>.*

The above situation has been replicated yet again by the establishment of Local Authorities boundaries. Since Local Authorities boundaries cut-across Principal Chiefs areas and also made it possible for a Chief from a different Principal Chief to become a Council member, this has fuelled speculation that conflict may arise.

Another problematic feature as observed by the DDC, has been that of consultation between Chiefs and Local Councils. This feature has created unnecessary tensions between these parties. More often than not, Local Councils (composed of minor Chiefs in most cases) have failed to consult the local Chief about their intended developments at the local Chief's area. This failure to consult, even though not regulated by the Act, has created animosity between some senior Chiefs and Council members.

There has always been a problem of recognition between Chiefs. Some Chiefs are subordinate to others. In cases where subordinate Chiefs within a Council are perceived to be undermining the authority of a senior Chief, this can become a real source of conflict. Therefore, "recognised Chiefs received statutory powers and

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<sup>32</sup> Reatile Victor Shale, op cit, 8. See also Wallis op cit.

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functions concerning law and order and general welfare, including agricultural practices"<sup>33</sup>. It must be noted that Chiefs are hereditary and as such, are appointed on permanent basis while Councils are elected for a five-year term.

If the relations between these two structures are not well managed, there is danger that developments may suffer. Since developments are made at the local Chief's area, he is bound to police such developments. The DDC also argued that, if the relations between the Chiefs and Councillors are tense, then development may suffer. This is because the Act does not explicitly say who is to police developments. It is this crucial aspect (consultative relations between Chiefs and Councillors) that has been left out by the Act.

In Lesotho, land belongs to the people, unlike in the neighbouring Republic of South Africa, where land belongs to the government. The Land Act of 1979 Section (1) states that, Land in Lesotho is vested absolutely and irrevocably to the Basotho Nation and is held by the King as representative of the Nation. This means that the issue of land allocation belongs to the people and is held in trust by the King. In terms of who has legitimate authority to allocate land and grant titles of ownership of land in Lesotho, Section 4 of The Land Act 1979 is more instructive:

*The power to grant titles to land, to grant or create servitudes, to revoke or derogate from an allocation made under Part II, to terminate or revoke a lease, license or servitude is vested in the King, as head of state, in trust for Basotho Nation and shall be exercised as provided for under this Act.*

The King himself carries out this land allocation through Gazetted Chiefs in Lesotho. This is because the Chief becomes a Chief by first being gazetted on a piece of land. Section 12 of the same Act makes this even more explicit. For instance, Section 12 (1)

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<sup>33</sup> Victor Khali Mofuo, op cit, 2.

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states that, subject to subsection (2) 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" or such other committee as the Minister may establish under section 18.

Nevertheless, Section 18 only restricts the Minister to appoint a Chairman of land committee only if the Chief of the area is unable to chair or is not available. This Act conflicts with Section 5 of The Local Government Act 1997, which enumerated the functions of Local Authorities as follows;

1. **Control of Natural Resource,**
2. Public Health
3. Physical Planning
4. **Land/Site Allocation**
5. Minor Roads
6. **Grazing Control**
7. Water supply in villages
8. Markets and many other<sup>34</sup>.

From the above functions, it is clear that there is a major challenge for Local Authorities in Lesotho. These functions and many others remained traditional functions of Chiefs with the support of the Land Act of 1979. In fact, land allocation, control of natural resources and crazing control remains traditional function of Chiefs. In most cases, "a further complication is that the legislation blurs how the allocation of functions would be shared, if at all, with other levels of government. An example of this is function 15, which is simply referred to as 'education', leaving the unanswered question of what role will remain for the Ministry of Education"<sup>35</sup>. These are cases which are yet to be resolved. In some cases, "many Chiefs, although prohibited by law, still allocate land without consulting the Councils. They

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<sup>34</sup> All the highlighted functions are traditional functions of the local Chiefs.

<sup>35</sup> M. Wallis, op cit, 105.

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deliberately allocate land in defiance of the law"<sup>36</sup>. Both the 1997 and 1998 Acts have not harmonised or clarified these overlapping functions for Chiefs and Local Authorities. It was for these pertinent issues that the legislative amendment and introduction of new regulations were intended to address. Unfortunately, these did not occur as most interviewees have argued above. Nevertheless, most Councillors do not have skills to control or manage other myriad functions in section 5 above of the 1997 Local government Act.

## **Conclusion**

The paper has highlighted several areas, which provided major challenges for the Local Authorities. Most interviewees were in concurrence that, all intended outputs of the Concept Paper were not met. It can, therefore, be argued that, these challenges reflected insufficient preparations prior to holding Local Government elections by the current government. This has been the main reason why these Authorities have not fully taken off.

The ministerial leadership appears to be lacking in coordinating both its offices within the ministry and at the district level. This calls for introduction of regulations and clear definition of roles between all stakeholders. Their interaction should be regulated in order to avoid unnecessary conflict. This is more so where all stakeholders claim jurisdiction. Members should know when and where to consult others. It is only with clear regulations that this conflict can be managed. These regulations should also state clearly as to who should police developments. Without amicable relations between Councillors and Chiefs as appears to be the case, these developments may not be enjoyed by all.

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<sup>36</sup> Reatile Victor Shale, op cit, 4.

Johnson Fako Likoti and Piniel V. Shava, 'The challenges of local government in Lesotho: constraints and prospects', in Lesotho Law Journal, Volume 16 Number 2, (2006), pp.229-349.

The role of Local Authorities cannot be overemphasised. However, it is crucial that legislation be enacted to stipulate academic qualifications for would be Councillor before standing for Local Government elections. The failure to do this creates the current situation whereby some Councillors are unable to perform because of limited educational backgrounds. It is imperative for Local Authorities to be run by people who possess requisite skills so that they can have developmental vision of their locality. Lack of sufficient infrastructure has also impacted negatively on their capacity to deliver services efficiently and effectively.

Finally, Local Authorities must have the capacity in managing and raising finances irrespective of government funding, sufficient human resources, capability and ability to mobilise their own resources. It is also important that the Local Government Concept paper be operationalised fully without delay in order to achieve all its intended outputs.