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## **Conditions for Success: Democratic Decentralization and Public Participation**

**An Analysis of Local Government in the Kingdom of Lesotho**

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## **List of Acronyms**

CAP	Community Action Plan
CC	Community Council
CSO	Civil Society Organization
DA	District Administrator
DC	District Council
DCS	District Council Secretary
DDCC	District Development Coordinating Committee
DED	German Development Service
DPE	Development for Peace Education
DPU	District Planning Unit
EU	European Union
FIDA	Federation of Women Lawyers
GTZ	German Technical Cooperation
IEC	Independent Electoral Commission
LCD	Lesotho Congress for Democracy
LCN	Lesotho Council of NGOs
LGA	Local Government Act
MoFDP	Ministry of Finance and Development Planning
MoLGC	Ministry of Local Government and Chieftainship
NGO	Non-Governmental Organization
TRC	Transformation Resource Centre
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme

## **Explanation of Terms**

Mosotho (pl. Basotho):	Citizen of Lesotho
Sesotho:	Besides English the second official language of the Kingdom of Lesotho, spoken by 98% of Basotho.
Loti (pl. Maloti):	Currency of Lesotho, pegged at par with the South African Rand, 10 Maloti = 1 €
Pitso (pl. Lipitso):	Public gathering called by the village chief, used as a tool of information distribution, consultation and discussion of community issues.
Basotho Chief:	Hereditary chiefs represent Lesotho's traditional system of leadership with the King as head of all chiefs, existing side-by-side with elected government, responsible for various administrative and judicial tasks.

## 1) Introduction

Since the 1990s, a world-wide trend toward decentralization has been observed with the concept of local governance increasingly being seen as a precondition for poverty reduction. In this context, decentralization is seen as an instrument for more responsive, efficient and equitable service delivery by bringing government closer to the people and involving citizens in decision-making processes (Grote & von Braun, 2000; Bonfiglioli, 2003).

However, decentralization can take different forms, and not all of them have been successful in delivering these benefits. As this paper will show, evidence from the literature suggests that two fundamental conditions regarding the design of local governments need to be met: First, the type of decentralization needs to be one of devolution, or democratic decentralization, that creates autonomous local governments with real decision-making powers and the capacities to implement these decisions. Second, such a devolved system needs to provide for meaningful citizen participation, i.e. participation that allows citizens to effectively influence decision-making processes and hold local governments accountable. This means, as the above use of the term “governance” has signalled, that this paper’s interest extends beyond the mere functioning of political and public sector institutions, or “government”, and includes mechanisms, processes and institutions through which members of civil society<sup>1</sup> articulate their interests and exercise their legal rights (United Nations, 2000).

After its return to democratic rule in 1993, the government of Lesotho took up the task of decentralization with the aim of promoting participatory and efficient governance. This process led to the 2005 local government elections re-introducing a local government structure after 40 years of highly centralized administration (Shale, 2008). This paper analyzes whether Lesotho’s newly established local governments meet the proposed conditions for achieving the possible benefits of decentralization. To what degree can Lesotho’s local government system be classified as a devolved system and to what degree does it allow for meaningful citizen participation? What are the remaining challenges on the way to meeting these conditions and what implications does this have for donor organizations working in the field of decentralization?

The paper is structured as follows: First, I will present a typology of decentralization and explore the linkages between decentralization, its possible outcomes, and participation. Then I will go on to drawing up a set of criteria and indicators for the measurement of the degrees of devolution and participation. Following the analysis of decentralization in Lesotho, the paper will give recommendations on how remaining challenges can be addressed.

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<sup>1</sup> In this paper, the term civil society relates to individuals and groups, organized or unorganized, that interact socially, politically and economically, and are regulated by formal and informal rules and laws. It includes civil society organizations as well as individual citizens and communities (United Nations, 2000).

## 2) Conceptual framework

The use of the term decentralization can create considerable confusion as it is a broad concept entailing different ways of restructuring the politico-administrative system (Ribot, 2002). Thus, this section will give a definition of different concepts of decentralization before going on to exploring the linkages between the design of decentralization and its outcomes.

### 2.1) A typology of decentralization

In general, decentralization describes the transfer of authority for public functions and resources from national to sub-national levels. This transfer has three dimensions – a fiscal, administrative and political one – and can come in various degrees (Corsi & Jütting & Stockmayer, 2005; Ribot, 2002). There is no generally agreed upon typology of the different degrees of decentralization in the literature. While some authors focus on the presence and mixture of the three dimensions of decentralization (See e.g. Grote & von Braun, 2000), this paper goes beyond such typologies and puts its emphasis on the power relation between central state and local authorities as well as on the role of accountability. As will be shown below, these two aspects are of great importance to the success of decentralization reforms.

#### ➤ *Delegation*

Delegation can be described as the weakest form of decentralization. Some public functions are transferred to the local level where local authorities within or outside the government structure are to implement programs on behalf of a government agency. Although some decision-making authority might also be delegated, ultimately the central state remains in charge, reserving control over key aspects of policy, and being in a position to hold local authorities accountable (Ribot, 2002; Oxhorn, 2004).

#### ➤ *Deconcentration*

Deconcentration, also known as administrative decentralization, can be described as a somewhat more extensive concept (United Nations, 2000). It implies a process whereby governmental functions and resources, such as civil servants or budgetary funds, are reallocated downwards within the state bureaucracy (Corsi & Jütting & Stockmayer, 2005; Grote & von Braun, 2000). Yet, this is done without weakening the hierarchy of the system: deconcentrated units remain subordinate to central authorities, with which decision-making power remains. Although some downward accountability may be built into their functions, local civil servants' primary responsibility is to their supervising ministries who appoint local staff and determine its powers (Jütting et al., 2004; Bossuyt & Gould, 2000; Ribot, 2002).

## ✦ *Devolution*

In contrast to such administrative forms, decentralization can also be political entailing the transfer of decision-making powers to local citizens and their representatives (Corsi & Jütting & Stockmayer, 2005; Grote & von Braun, 2000). Democratic decentralization<sup>2</sup>, or devolution, thus entails all three dimensions of decentralization (fiscal, administrative, political) transferring resources, functions *and* decision-making power to autonomous territorial units. These can act largely or wholly independent of central government within the scope of their functions. Such autonomy also entails that local units are not primarily accountable to the centre, but downwardly to their electorate. Democratic decentralization therefore is a process of changing the balance of power from the central to sub-national levels and counts as a “strong” form of decentralization from which the literature indicates the greatest benefits can be derived (Ribot, 2002; United Nations, 2000; Bossuyt & Gould, 2000).

### 2.2) Possible benefits of decentralization

Most scholars agree that in theory, decentralization holds great potential for development. This view is based on the assumption that, as local governments operate closer to the people, citizen participation will be enhanced leading to more responsive, efficient, and equitable service delivery (Lankina, 2008; Goldfrank, 2002; United Nations, 2000; Bossuyt & Gould, 2000). Thus, the latest wave of decentralization in its rationale is moving away from the traditional argument of strengthening national cohesion (Ribot, 2002).

The Lesotho government acknowledges this rationale and defines the aim of decentralization as improved services delivery through promoting “people’s participation in decision-making, planning and implementation of development programmes” (GoL, 2004, p.2; MoLGC, 2003).

The core argument behind this rationale follows the public choice logic: Better matching of services to needs and preferences follows from government being closer to the governed, both spatially and institutionally (Ribot, 2002). From the perspective of information and transaction costs, externalities on the other hand provide an argument for centralization, given that the centre has the ability to gather, process and disseminate relevant information (Grote & von Braun, 2000). Yet, in many cases, central authorities do not have this ability, lacking the “time and place knowledge” to implement policies reflecting local people’s real needs and preferences. Thus, decisions drawing on local knowledge and citizen participation which is likely to consider the full range of negative and positive consequences, are likely to result in a more appropriate allocation of resources and improved public services in terms of access,

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<sup>2</sup> This paper uses the terms democratic decentralization and devolution interchangeably.

quality and targeting efficiency (Crook, 2003; Goldfrank, 2002; Galasso & Ravallion, 2005; Bossuyt & Gould, 2000). The consideration of efficiency gains is closely linked to questions of legitimacy since efficiency can enhance a government's legitimacy (United Nations, 2000). Furthermore, decentralization provides many opportunities for large parts of the population to participate politically, either directly in government through elective offices or more indirectly through local elections and watching government at work close by. Due to this proximity, local officials can be more easily monitored and held accountable by local communities than officials in central government, increasing transparency and predictability of decision-making (United Nations, 2000; Corsi & Jütting & Stockmayer, 2005). While most scholars emphasise that decentralization and participation are not goals in themselves but instruments for improved governance and service delivery (Grote & von Braun, 2000; United Nations, 2000), some scholars argue that public participation and citizen involvement was good in itself (Agrawal & Ribot, 2000; Ribot, 2002), in that sense making decentralization to a central pillar of democratic governance (United Nations, 2000).

In addition, by engaging the poor and other formerly excluded groups in planning, operating and monitoring public service delivery, local democracy may positively affect the distributional equity of local government decisions reducing poor people's vulnerability and promoting poverty reduction from the bottom up (Ribot, 2002; Bonfiglioli, 2003; Jütting et al., 2004). Thus, although decentralisation cannot be said to serve the direct purpose of poverty alleviation, the ensuing changes in the institutional architecture can be important factors in broadening citizen participation, improving local governance and enhancing the efficiency of public service delivery, all of which are important variables for pro-poor outcomes (Corsi & Jütting & Stockmayer, 2005; Jütting et al., 2004).

### 2.3) Conditions for the attainment of possible benefits

The above discussion shows that decentralization's possible benefits – improved responsiveness, efficiency and equity in service delivery – hinge on one central notion: decentralization's ability to make citizen participation possible. This makes decentralization and participation two separate but complementary concepts, in that the former can be viewed as a means to achieve the latter (Goldfrank, 2002; Bonfiglioli, 2003).

Relatively little empirical research has been done to assess the linkages between decentralization and its presumed benefits (Ribot, 2002). The empirical evidence that does exist, however, clearly supports the above outlined central role of citizen participation as one condition for success, given that participatory processes are inclusive and allow citizens to



effectively influence decision-making processes and to hold local governments accountable. A comprehensive OECD Development Centre study by Jütting et al. (2004) comparing 19 decentralizations in the developing world finds that decentralization has had a positive, pro-poor impact only in countries characterized by meaningful and strong community participation, namely in Bolivia, the Philippines, and West Bengal, India. For instance, local governments in the Philippines are characterized by improved transparency and downward accountability, a strong role of NGOs in decision-making processes and services delivery, and the creation of special local bodies for citizen involvement. The importance of participation for the success of decentralization reforms is confirmed by less extensive studies by Vedeld (2003) and Crook (2003) whose study of decentralization in Sub-Saharan Africa emphasizes citizen's ability to hold local governments accountable.

Such participation, however, is only effective if local governments enjoy significant domains of autonomy in political, administrative and fiscal terms, within the range of their functions. Only such a devolved system can guarantee the implementation of participatory decisions taken at the local level (Ribot, 2002; Corsi & Jütting & Stockmayer, 2005). While a deconcentrated system, being closer to the field of operation, can act with a better knowledge of the situation and thus might improve the efficiency of service provision, further benefits are unlikely to be realized as deconcentrated units are not downwardly accountable, but upwardly to the centre (Ribot, 2002; United Nations, 2000; Manor, 1999). Again, this fact is illustrated well by the country studies of Jütting et al. (2004) and Vedeld (2003) that find that successful countries adopted a comprehensive approach entailing administrative, fiscal and political decentralization including the transfer of substantial powers in all three fields. As a result, for instance the Philippines display increased efficiency and better targeting of services with positive effects on the level of poverty. Bad performers, on the other hand, such as Mozambique or Malawi, chose deconcentration over devolution (Jütting et al., 2004).

Yet, as democratic decentralization threatens many actors through the transfer of power, few decentralizations take the form necessary to realize the benefits predicted by theory, failing to entrust downwardly accountable representative actors with significant domains of autonomous power (Ribot, 2002). Accordingly, only in seven out of the 19 studied cases by Jütting et al. (2004) were outcomes described as positive (Brazil, Philippines, West Bengal) or somewhat positive (China, Mexico, Ghana, South Africa).

#### 2.4) Measurement and criteria

As has become clear from the literature review, it is the combination of democratic decentralization and meaningful citizen participation that can be seen as the key to improving



government performance. It should be kept in mind that irrespective of decentralization's design, there are a number of country specific characteristics that can facilitate or hamper the attainment of pro-poor outcomes of any government or development programme, including decentralization. These include for instance economic performance, educational attainment and the strength of civil society (Jütting et al., 2004; Vedeld, 2003; Lankina, 2008). Also, the literature identifies further conditions related to the design of local governments ranging from the size of jurisdictions to the number of local councillors and their remuneration. Yet, these can be described as supplementary conditions, in contrary to devolution and participation which clearly emerge as the most fundamental of all with the greatest impact on the success of decentralization (Vedeld, 2003; Jütting et al., 2004; Ribot, 2002; Lankina, 2008).

In order not to go beyond its designated scope, this paper thus focuses on the conditions of devolution and participation. Hence, my guiding hypothesis for the analysis of decentralization in Lesotho is: *"The higher the level of devolution and the higher the level of meaningful participation, the greater the benefits of decentralization will be."* In the following these two concepts will be decomposed into sets of criteria and their indicators allowing for the measurement of their degree of attainment.

#### a) Devolution

Decentralization is a complex process which makes it difficult to measure. Measures often used to determine the degree of decentralization include the proportion of sub-national expenditure in total government expenditure (See e.g. Grote & von Braun, 2000) or local employment as a proportion of overall government employment. Yet, such measures say nothing about the character, functioning or autonomy of decentralized structures (Crook, 2003; Vedeld, 2003). In measuring the degree of devolution, this paper thus focuses on power relations within the local government structure and between local and central levels. As defined in section 2.1, the devolution of state authority creates local governments autonomous in political, fiscal and administrative terms. Based on this definition, democratic decentralization can be decomposed into three criteria: political, fiscal and administrative autonomy. Sets of indicators, drawn from the literature and shown below, will be used to measure the degree of attainment of each of these criteria, consequently allowing for the determination of the degree of democratic decentralization. Of course, besides the two levels depicted in the table below, there are various intermediate degrees displaying a mixture of characteristics from both high and low levels.

Table 1: Criteria and indicators for the measurement of devolution

Criterion	High	Low
<b>Political Autonomy</b>	<ul style="list-style-type: none"> <li>▪ Elected councillors hold decision-, rule- and policy-making powers in fields relevant to local communities incl. adequate human capacities</li> <li>▪ Powers transferred in form of constitutionally/legally guaranteed rights</li> <li>▪ Clearly defined roles and responsibilities at and of all levels of government</li> <li>▪ Decisions are made at the local level without interference from central gov.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Decision- and rule-making powers rest with central government appointees and/or exclude the power to formulate policies; insufficient capacities</li> <li>▪ Powers only in fields of little relevance and/or powers can easily be revoked</li> <li>▪ Unclear definition of roles and responsibilities</li> <li>▪ Central government interference in local decision-making</li> </ul>
<b>Fiscal Autonomy</b>	<ul style="list-style-type: none"> <li>▪ Sufficient and stable funds</li> <li>▪ Funds provided through raising own revenues and system of guaranteed grants</li> <li>▪ Power to decide on spending</li> </ul>	<ul style="list-style-type: none"> <li>▪ Insufficient or unreliable funding</li> <li>▪ Conditional grant system and/or no power to raise own revenues</li> <li>▪ Budget to be approved by central gov.</li> </ul>
<b>Admin. Autonomy</b>	<ul style="list-style-type: none"> <li>▪ Elected councillors can enforce implementation of decisions and sanction non-compliance</li> <li>▪ Elected councillors recruit own staff</li> <li>▪ Elected councillors hold administrative bodies accountable</li> </ul>	<ul style="list-style-type: none"> <li>▪ Elected councillors have no authority over implementing bodies and/or no sanctions at their disposal</li> <li>▪ Administrative staff recruited at central level and answerable to central government authorities</li> </ul>

### ➤ Political autonomy

Political autonomy first of all entails the *power to make meaningful decisions*. Local governments must therefore have discretionary and comprehensive decision-making powers including the formulation of policies in fields relevant to local communities. In order to ensure autonomy this power should not rest with central government appointees who are upwardly accountable, but with elected councillors. Yet, local actors without *adequate human capacities* will not be able to make use of these powers. The second aspect is the *power to create or modify rules* within which decisions are taken, and rules that ensure compliance with local government decisions. Furthermore, the *means of transfer of power* need to be analyzed as fully specified mandates from above do not constitute a discretionary power. Rights too, however, may not create a domain of autonomy if there are no means to exercise them. Furthermore, powers can be transferred in more or less sustainable ways ranging from administrative orders to legal rights or constitutional guarantees (Agrawal & Ribot, 2000; Ribot, 2002; Selee & Tulchin, 2004). In any case, the transferred powers need to come with *clearly defined roles and responsibilities* since unclear mandates are often used to allow for *central government interference* (Jütting et al., 2004; Vedeld, 2003; Crook, 2003).

#### ➤ Fiscal autonomy

The criterion of fiscal autonomy has three dimensions. First, local authorities need *sufficient resources* to be able to fulfil the tasks assigned to them and to be able to make use of their rights and powers. Secondly, local government resources need to be *predictable and stable* in order to ensure planning security. In order to avoid an overly strong dependency on the centre, local governments should have the *power to generate own revenues* (Bonfiglioli, 2003). Yet, where local governments are funded only through local revenues, decentralisation often increases interregional disparities. Thus, ideally, resources should come from both the central government and local revenues (Corsi & Jütting & Stockmayer, 2005; Jütting et al., 2004). In any case, however, central government *transfers need to be unconditional* in order to allow local governments to tailor expenditure to local preferences (Lankina, 2008). Finally, in order to be truly autonomous, local governments need to have the *power to decide on the use* of resources, which goes hand in hand with the power to make policy decisions (Jütting et al., 2004; Lankina, 2008; Agrawal & Ribot, 2000; Ribot, 2002).

#### ➤ Administrative autonomy

The power to make policy or fiscal decisions is meaningless unless it is accompanied by the power to control the *implementation of rules and decisions*. This entails the *power to sanction* those who do not comply with their roles in order to guarantee implementation (Agrawal & Ribot, 2000; Ribot, 2002). In order to avoid that centrally appointed local executives exercise more power than locally elected councillors, it is crucial that elected councillors are able to *recruit own staff* and *hold administrative bodies accountable* as this is the only way elected councillors can control the implementation of their decisions (Jütting et al., 2004; Blair, 2000; Grote & von Braun, 2000).

#### b) Citizen participation

Ultimately, participation in political processes is about power. It is the redistribution of power that enables citizens presently excluded from political and economic processes to be deliberately included in the future, and to influence the process of formulation, passage and implementation of public policies. Such individual or collective participation can have various dimensions such as voting, running for office, consultation, or public hearings (Conge, 1988; Gaventa & Valderrama, 1999; Arnstein, 1969). Following from this, a local governance system providing for meaningful citizen participation can be described as one promoting inclusive processes that allow citizens to effectively influence decision-making, including the power to hold decision-makers accountable, in fields relevant to their lives. Criteria for the

measurement of citizen participation thus are decision-making power, accountability and inclusion, using the following indicators to determine their degree of attainment:

Table 2: Criteria and indicators for the measurement of participation

Criterion	High	Low
<b>Decision-making Power</b>	<ul style="list-style-type: none"> <li>▪Citizens and citizen groups can propose and decide on policies, spending, rules and the management of projects in fields relevant to their lives</li> <li>▪Participatory decision-making is institutionalized and legally guaranteed</li> <li>▪A clear framework determining the role of civil society in local governance</li> </ul>	<ul style="list-style-type: none"> <li>▪Citizens and citizen groups are only involved administratively and/or only in fields of little relevance</li> <li>▪Participatory processes are not institutionalized but happen on an ad-hoc basis</li> <li>▪No clear determination of the role of civil society</li> </ul>
<b>Accountability</b>	<ul style="list-style-type: none"> <li>▪Citizens can hold local government officials effectively accountable, i.e. officials are answerable to citizens who can enforce sanctions</li> <li>▪Regular, free, fair local elections accompanied by formal monitoring and grievance procedures</li> <li>▪Citizens have access to relevant and independent information</li> </ul>	<ul style="list-style-type: none"> <li>▪Officials cannot be held accountable by citizens, i.e. are not answerable and/or sanctions cannot be enforced</li> <li>▪Local elections are not free or fair and/or only sanction available</li> <li>▪Citizens do not have sufficient access to information or receive false information</li> </ul>
<b>Inclusion</b>	<ul style="list-style-type: none"> <li>▪All citizens have access to information and decision-making processes</li> <li>▪Participatory processes are biased in favour of disadvantaged groups and the electoral system provides for their representation</li> <li>▪Citizen groups involved in decision-making are representative and democratic</li> </ul>	<ul style="list-style-type: none"> <li>▪Only privileged elites have access to information and decision-making</li> <li>▪Participatory processes benefit elites, no representation of marginalized groups</li> <li>▪Involved citizen groups are not representative of the population</li> </ul>

#### ➤ Decision-making power

In order for decision-making power to be meaningful citizens should not only have the power to decide on *detailed proposals* but also on the *underlying policies, rules*, and questions of *spending*. Thus, citizens should be involved in the legislative process at an early stage. Furthermore, citizens need to have the *right to put forward proposals* as proposals highly influence the following policy debate (Coenen & Hofman & Huitema, 1998; United Nations, 2000). Substantive decision-making powers stand in contrast to mere *administrative involvement*, the opportunity to provide information (Goldfrank, 2002). Inviting citizen opinion, e.g. through community consultation or attitude surveys, can be a legitimate step towards full participation, but only if it is combined with other modes of participation that assure that citizen concerns are taken into account. The power to hold local governments

accountable is a crucial issue here (Arnstein, 1969; United Nations, 2000; Crook, 2003). A further question is whether participatory processes are *institutionalized* in law and local governance practice. Citizen participation depending on the good-will of government officials is less sustainable than if it comes as a legally guaranteed right. A good way of realizing this is a civil society friendly *local governance framework* laying out clear roles and expectations for citizens and citizen groups (United Nations, 2000; Olowu & Wunsch, 2004).

#### ✦ Accountability

The literature is very clear that only when local governments are *downwardly accountable* in political and fiscal terms can there be sustainable and successful decentralisation with a pro-poor impact. Corruption and clientelism, which tend to be more prevalent at the local level, can only be minimized through truly democratic local institutions accountable to local populations. Such accountability entails institutionalized processes of *answerability*, the obligation to provide explanations for decisions and actions, and *enforcement*, the ability to apply sanctions when unsatisfactory answers are given (Jütting et al., 2004; Ribot, 2002; Goldfrank, 2002; Manor, 1999; Vedeld, 2003). *Free, fair and regular elections* with universal suffrage are one of the most direct forms of imposing sanctions. Yet, they occur at wide intervals and address only broad issues. Thus, further accountability mechanisms, e.g. formal *monitoring and grievance procedures*, need to be in place (Blair, 2000; Lankina, 2008).

Yet, only with *sufficient and independent information* on their rights and options, which is intelligible to ordinary people and not designed in a way to control people's perceptions and decisions, can citizens make meaningful decisions and hold officials accountable. A transparent flow of information can be realized for instance through active and free media and civil society organizations, regular meetings or statements on local government activities (Blair, 2000; Jütting et al., 2004; Arnstein, 1969; United Nations, 2000; Manor, 1999).

#### ✦ Inclusion

*Access of all citizens* to decision-making processes and to the information needed to hold officials accountable is crucial in order to prevent decentralization from reinforcing existing inequities among communities by granting traditional, economic or bureaucratic elites a disproportionate role as this often results in investments which benefit elite interests rather than the poor (Vedeld, 2003; Olowu & Wunsch, 2004; Bonfiglioli, 2003; Botes & van Rensburg, 2000). Thus, in order to ensure inclusiveness, participation initiatives must go beyond involving those most willing to take part, and must be *biased in favour of disadvantaged groups*, in order to seek the views of those most disengaged from political

processes, for instance through the use of focal group discussions. One of the most important means in this respect is the reservation of council seats to ensure the *representation of marginalized groups* (Lankina, 2008). Participatory processes furthermore need to stress the *representativeness and democratic character of civil society organizations*<sup>3</sup> that it involves. Involvement of upwardly accountable groups representing elite interests or mere fractions of society will not improve the meaningfulness of participation (Ribot, 2002).

### 3) The degree of devolution and participation in Lesotho

This chapter will analyse to what degree the Lesotho local government system fulfils the conditions of devolution and meaningful participation. Following the first elections after the end of military rule, the Government of Lesotho tackled the task of decentralization. In 1995, a Local Government White Paper was drawn up, based on consultative stakeholder workshops leading to the formulation of the 1997 Local Government Act. After repeated delays, in 2005 local governments were finally voted into power, replacing meanwhile appointed Interim Village Development Committees. 128 directly elected community councils in turn chose ten district councils forming a two-tier local government structure (GoL, 2004; MoLGC, 2003; MoLGC, 1998). Prior to decentralization, central ministries alone were responsible for planning and developing policies, while today, the scope of central planning is limited to national policies and the setting of minimum standards (Kayila, 2005). Local planning includes the development of community and district development plans and the responsibility over the management of a number of services such as water supply and land allocation (GoL, 2004). Some of these functions, in particular in regard to land, were previously performed by the traditional leadership, the chiefs. Thus, although two seats in each council are reserved for chiefs, and they still perform various administrative and judicial tasks, chiefs overall had to give in powers in the course of decentralization (Kapa, 2005).<sup>4</sup>

#### 3.1) Methodology

This report is based on four months of field work in the Kingdom of Lesotho from April 1<sup>st</sup> – July 31<sup>st</sup> 2008, using the structures of German Development Service (DED) and German Technical Cooperation (GTZ), who are jointly running the “Decentralized Rural Development Programme”. After the analysis of legal documents and government papers relating to the

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<sup>3</sup> The term “civil society organization” (CSO) is used to cover several types of highly diverse groups, including e.g. non-governmental, faith-based and community-based organizations. CSO have an institutional structure, but are separate from the state and not-for-profit. CSO membership is not legally required and they attract some level of voluntary contribution of time or money (United Nations, 2000).

<sup>4</sup> See Annex for more information on the structure and functions of Lesotho local governments and chieftainship system.

decentralization process in Lesotho, a total of 68 semi-structured interviews with various stakeholders in the decentralization process was conducted. One-on-one interviews were complemented by two group interviews with community councils in Qacha's Nek and Mochale's Hoek, collecting data on the questions how decentralization is implemented in practice, which challenges local governments face, and which dynamics are operating at the local level. Groups of stakeholders were identified based on literature review and discussion with DED and GTZ staff, and included local and central government representatives, traditional leaders, the media, research institutes, donor organizations, and civil society organizations (CSO), including faith-based organizations, local and international non-governmental organizations (NGO) and NGO networks. In selecting CSO the main focus was on those engaged with local governments and those representing marginalized groups, while donor organizations were selected on basis of their engagement in the fields of decentralization or civil society support. Due to practical reasons many interviewees were selected on basis of recommendations by DED and GTZ staff. The geographical focus lay on Maseru and the four southern districts of Mafeteng, Mochale's Hoek, Quthing, and Qacha's Nek, selected for reasons of feasibility as it is these districts in which DED is working with local governments. As explained later on, Lesotho is an ethnically, linguistically and culturally very homogeneous country with the greatest economic and social differences referring to geographical factors and the degree of urbanization (BMZ & MoFDP, 2003). The five visited districts cover all geographical levels present in Lesotho as well as urban, semi-urban and rural areas and combined inhabit approximately half of Lesotho's population (Bureau of Statistics, 2007). Thus, the selected districts are well representative of the whole of Lesotho.<sup>5</sup>

### 3.2) Devolution

The Lesotho Government's official decentralization program envisages the local government system as "based on political devolution and decentralisation of functions, staff and finances" operating on the basis of discretionary powers (GoL, 2004, p.5). In order to determine if this vision is implemented in practice, I will go along the proposed indicators for the measurement of devolution's three dimensions: political, fiscal, and administrative autonomy.

#### a) Political autonomy

The question of political autonomy is twofold: It concerns the power relation between the local and the central level as well as the question which actors within the local government structure hold the powers assigned to the local level.

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<sup>5</sup> See Annex for a list of interviewed persons and a map of Lesotho.



➤ *Do local governments have the power to make decisions and create rules and policies in fields relevant to local communities?*

As determined by the Local Government Act (LGA), service functions of local governments range from land allocation to water supply and the control of natural resources – services of vital importance to daily village life.<sup>6</sup> They correspond well to national poverty reduction priorities, drawn up in a consultative process described by international observers as exemplary and outstanding (Grottenthaler, 2005; ADB & ADF, 2006). Within the range of these functions and based on a participatory approach, local governments are supposed to formulate community and district development plans that form the policy-basis for service-delivery projects, to implement and monitor them and to create by-laws necessary for the fulfilment of their functions (GoL, 2004). Yet, none of these powers is discretionary: By-laws, development plans and relating budgets all have to be approved by the Ministry of Local Government and Chieftainship (MoLGC) (Kayila, 2005). Section 12 of the 2005 Local Government Regulations even gives the minister<sup>7</sup> the power to “approve, alter or reject any proposed by-law as he or she may think fit”. According to MoLGC’s senior legal officer, at the time of research by-laws were still in the making, and none had been approved yet.

➤ *By what means are powers transferred to local governments?*

Section 106 of the Constitution of Lesotho obliges parliament to “establish such local authorities as it deems necessary to enable urban and rural communities to determine their affairs and to develop themselves”, performing functions conferred by an Act of Parliament. Thus, decentralization is prescribed constitutionally, but not its design. The right to make by-laws and the mandate to draw up development plans are conferred by the Local Government Act in sections 42 and 27; yet some crucial details are put down only in the government’s policy paper on decentralization, such as modalities concerning the membership and selection of non-governmental organizations to the District Development Coordinating Committee (DDCC), which has to approve the district development plan (See GoL, 2004).

Most crucially, however, all local powers can be revoked by the minister who has, according to LGA section 65, the power to dissolve a council in case of “refusal, failure or inability” to adequately discharge any of its functions. As the grounds for dissolution are no further defined by the Act, local councillors complain that this provision allows the minister to exercise pressure and influence local decision-making. Local councils, thus, neither have discretionary nor guaranteed powers.

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<sup>6</sup> See Annex for a detailed list of Lesotho local government functions

<sup>7</sup> Unless further specified, the term “the minister” refers to the Minister of Local Government and Chieftainship

➤ *What is the power relation between elected councillors vs. appointees?*

In many African countries, and to some extent in Lesotho, local executives exercise much more power than the legislature (Olowu & Wunsch, 2004). The District Planning Unit (DPU) is a technical team of sector ministries' representatives and economic-, physical-, and land use planners from MoLGC. Its functions include the consideration of draft development proposals by the councils and the preparation of a district development plan, ensuring its conformity to national plans. After taking into consideration DDCC recommendations, it is the DPU who finalizes the district development plan (Fricker et al., 2007; Yorke, 2007). District councils, on the other hand have the power to make proposals, and must approve the plan. Yet, the fact that elected councillors cannot hold administrative bodies such as the DPU accountable, discussed in more detail below, leaves councillors with little powers in the actual formulation of such plan. Secondly, it is the District Council Secretary (DCS)<sup>8</sup>, appointed by and answerable to MoLGC, who in certain cases can have a strong influence on council decisions. As explained by DED staff, due to a lack of literacy in English, local councillors often depend on information from their secretary, especially when it comes to legal issues, since the LGA has not yet been published in Sesotho. Furthermore, strong links to the minister or the ruling party can put the DCS in a position to exercise pressure on councillors, as pointed out by representatives of Maseepho Community Council, whose case is described in detail below.

➤ *Are roles and responsibilities clearly defined?*

One of the most common difficulties of decentralization in Sub-Saharan Africa are vague provisions on the division of powers between central and local governments, with overlapping functions leading to conflict and to paralysis in the delivery of services (Alberti & Bertucci, 2003; Bonfiglioli, 2003). This is also true for Lesotho with some LGA provisions being extremely vague. For example, what does it mean to list "education" or "agriculture" as functions of local authorities? No law or policy document gives an explanation or shows how local authorities will relate to central government in the execution of their functions. For instance, local authorities are to control natural resources, but the LGA does not differentiate different types of natural resources nor does it state which ones will remain at the centre. Secondly, the Act is silent on the role of the District Administrator (DA)<sup>9</sup> vis-à-vis the District Council Secretary. The relationship of these two offices, the chain of command, and who is

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<sup>8</sup> The DCS can be described as the Chief Local Government Executive at district level who monitors staff assigned to local councils, e.g. legal or human resource officers, and advises councils in the conduct of their work, e.g. ensuring council meetings are arranged properly (Mbetu & Tshabalala, 2006; TRC, 2005).

<sup>9</sup> The District Administrator is appointed by the central government and is representing its interests at district level (GoL, 2004). The DA is responsible for co-ordinating the duties and functions of all public officers in the district other than those employed by local authorities (Fricker et al., 2007; Letsika, 2007). According to LGA section 39, the DA is directly answerable to the Minister of Local Government.

supposed to be the head of local government, is not clear (Fricker, et al., 2007; Green, 2007). According to a recent report, as a result NGOs have found it difficult to formally declare their presence in the districts and establish contacts with local governments (Shale, 2008).

Furthermore, a major concern among interviewees is the fact that the legal framework does not clearly define the relationship between elected councillors and traditional authorities, the chiefs. One out of many examples in this respect concerns illegally trespassing animals. As chiefs are – by law – regarded as the first line of police such incidents are usually reported to the chief who then imposes a fine. Yet, local councillors feel they are responsible since it is them who have authority over land issues (Mbetu & Tshabalala, 2006).

Such lack of policies and frameworks has been attributed both by donors and government sources to a lack of planning and management capacities within MoLGC. A recent report points out that the central government level is now the main obstacle to achieving successful decentralization (MoFDP, 2007). The vast majority of interviewed stakeholders is concerned that unless resolved soon, poor definition of roles and responsibilities will seriously impede on local empowerment, preventing the formulation and implementation of service delivery projects. According to government staff, at the time of research MoLGC was developing a strategic plan for the ministry and reviewing the legal framework, yet outcomes were unclear. The result of unclear roles and responsibilities are conflicts at various levels with those between councillors and chiefs being the most severe. Literally every interviewee asked about this issue described it as one of the major challenges of decentralization.

The baseline of the conflict is that in the eyes of some chiefs councillors have stepped into chiefly preserves such as land allocation and conflict resolution, while councillors describe some chiefs as un-cooperative and opposed to decentralization. As Letsika (2007) points out, many chiefs still believe they are entitled to allocate land under customary law<sup>10</sup> and are often asked to do so by their communities while in fact it is the councillors who are empowered to do so by the Local Government Act. This conflict is reinforced by the fact that those chiefs who are not members of a council<sup>11</sup> are excluded from government trainings. It is them who are discontent and do not understand their new role. A frequent complaint is that they were neither educated on the law nor consulted on issues of decentralization and thus feel neglected by the government and belittled by council members. In many cases, a deadlock has been reached, as expressed by Morena Lerotholi, Principle Chief of Likhoele: “We will fold our arms and do nothing until the government makes the first move to involve all chiefs”.

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<sup>10</sup> Customary law exists side by side with general law and is applied by chiefs in the conduct of their functions. See Annex for background information on the chieftainship system and its standing in Basotho society.

<sup>11</sup> Two seats in each council are reserved for chiefs nominated by all officially recognized chiefs of the area.

Not only does this conflict slow down service delivery, but it also impedes on citizen participation. One defining characteristic of Basotho society, agreed upon by all groups of interviewees, is that especially in rural areas, communities hold their chiefs in high esteem. Chiefs, councillors, and independent observers confirm that there is a risk that communities will also “fold their arms” and will not show interest in future local government processes. Yet, as reported by donor representatives working closely with the ministry, despite the conflict’s severity, no conflict resolution strategy on the side of MoLGC exists.

➤ *Are local decisions made without interference from the centre?*

In its draft local government strategic plan MoLGC (2008) admits that in reality, many of the functions legally subscribed to local governments remain at the centre, justified by a lack of capacity at district and community level. However, this excuse is often used to hide a lack of political will to devolve power (Corsi & Jütting & Stockmayer, 2005; Bossuyt & Gould, 2000). That it can be assumed that this is true for Lesotho, is exemplified by several cases.

In the district of Qacha’s Nek draft development plans drawn up in a participatory process that prioritized the issue of drinking water supply were rejected by the ministry. Members of Qacha’s Nek Community Council univocally complained they were “forced to make roads” instead, explaining they did not resist because as political newcomers they felt inferior and knew little about their rights. Similarly, in the district of Quthing a plan for road construction that had been approved previously, was changed by the ministry without giving reasons, and a different road as envisaged by the council was built. A statement by the Qacha’s Nek District Council Secretary says it all: “Sometimes, the minister knows better what’s important”.

Thus, it is not surprising when community councillors complain they can only make independent decisions on minor issues. But sometimes, even minor decisions provoke interference. A well-known example concerns the building site of the Maseepho Community Council Centre in the district of Qacha’s Nek. The council decided on a site with three out of eleven councillors disagreeing. These three “super-councillors”, as named by Community Council Secretary N’tate Leuta, happened to have strong political links to the DCS and the ruling party, Lesotho Congress for Democracy (LCD), and issued a complaint. As a result, and despite a lack of legal grounds, the minister declared her overruling the council’s decision. One official familiar with the case asserts that “the minister was clearly personally motivated”, another that “MoLGC is sabotaging councillors”. The case is still pending as Maseepho Community Councillors have refused to accept the minister’s decision. This reaction, however, is quite unusual, as those familiar with the case were quick to point out. Usually, instructions from the top were followed out of fear that the minister might make use

of her power to dissolve a council – a powerful threat considering the lack of alternative employment. “If we talk, we will lose our jobs”, explains one councillor and the fact that most interviewees do not wish to be quoted on this issue, speaks louder than words.

✦ *Do local governments have adequate human capacities?*

As the African Development Bank (ADB & ADF, 2006) asserts, civil service in Lesotho lacks adequately qualified technical, non-technical and managerial manpower due to a brain-drain to neighbouring South Africa. This is evident at the local level with councillors complaining about a lack of trained technical personnel, and donors complaining about a lack of capacities among often illiterate councillors and badly qualified Community Council Secretaries.

As empirical studies on successful countries have found, capacity does not necessarily need to precede decentralisation reforms, but can be built up in a “learning by doing” process (Jütting et al., 2004). To some extent, this has happened in Lesotho with a recent “Donor Partners Mission” confirming that capacity constraints at the local level today are less of an obstacle than three years ago (MoFDP, 2007). In order to build on this development, a clear capacity building strategy is essential. Yet, despite a number of manuals and reports no such strategy exists on the side of MoLGC (Fricker et al., 2007). As a result, as pointed out by the GTZ component manager for human resources and organizational development, training in respect to content, output and target groups is done in an unsystematic way making progress monitoring difficult. Thus, again it is the lack of strategic direction that presents the major challenge.

b) Fiscal autonomy

In an official statement the Government of Lesotho (2004, p.5) declares that “local governments will have powers to pass their own budgets reflecting their priorities [...] and to levy local taxes as a source of revenue generation.” In practice, however, this is not the case.

✦ *Do local governments have access to sufficient and stable funds?*

Fiscal resources that correspond to responsibilities and particular conditions of local governments are a critical part of all their powers. Without them, local authorities may not be able to implement or enforce their decisions (Ribot, 2002). In Lesotho, the most frequently mentioned critique on the side of local governments concerned the severe lack of funds.

The existing government grant has two elements: the operational grant for running costs and the capital grant for investments. Only the operational grant is guaranteed and has been sufficient to cover all costs. Looking at development funds, the situation is different. The capital grant, recently raised to 21 million Maloti, equals only approximately €15.000 per community council per year, presenting severe financial constraints (Fricker et al., 2007). In

2006, the capital grant made up as little as 10% of all fiscal transfers to local governments (Pfeiffer et al., 2006). The grant is distributed on the basis of a weighted formula, taking population and area into account, but not special conditions due to which some councils have higher costs than others, e.g. mountainous terrain (MoFDP, 2007; Metz & Nkum, 2006). Additionally, delays in the provision of funds have been reported from the side of donors. Again, the problem goes back to a lack of policy guidance. As N'tate Masasa, Ministry of Finance and Development Planning (MoFDP), explains, as long as the responsibilities of councils are unclear, their fiscal needs are unclear, too. Without a strategy on political decentralization, it is impossible to match funds to political and administrative tasks.

One important step underway in order to improve local governments' financial situation is the integration of sector ministries' district budgets into the budget provision for MoLGC (MoFDP, 2007). So far, district priorities are not integrated into the sector plans of line ministries who run their own, separate projects. Thus, in order to link planning and budgeting at the district level, the establishment of a composite budget is crucial (Fricker et al., 2007).

✦ *Are funds provided through a mix of own revenues and unconditional grants that allow local governments to decide on spending?*

The legal framework does not indicate what the major source of funding for local governments is supposed to be (Kayila, 2005). But it does prescribe for the minister to publish a list of items subject to any tax, levy, or service charge imposed by local councils (LGA section 57). Until today, no such provision has been made. As a result, local governments cannot impose fees for their services, and the existing charges that they collect, e.g. grazing fees, must be transferred to the centre through the DA's office. It must be noted that due to economic factors, local revenue generating capacity is limited. Even if given the right to raise own revenues, especially rural communities will still depend on government transfers (Yorke, 2007). Yet these transfers are far from unconditional. Although the allocation of the capital grant is formula-based, councils can only apply for it after its development plans have been approved by the minister. As this process is often marked by central interference, the disbursement of the budget is often done without adequate regard to council priorities, and without adequate respect for their internal decision-making processes (Fricker et al., 2007).

### c) Administrative autonomy

According to the government's decentralization concept, local governments should have the power to recruit, discipline and dismiss own staff (GoL, 2004) and thus be able to enforce the implementation of their decisions.



➤ *Do elected councillors recruit their own administrative staff and hold them accountable?*

Although envisaged by government policy papers (see e.g. GoL, 2004), in practice, administrative decentralization is not yet in place, hampering planning efforts of local councils (Fricker et al., 2007): Almost all ministries have deployed personnel to the districts, operating at present under the supervision of the DA, and owing their allegiance to their parent ministries in Maseru (Kayila, 2005). Local councils do not have authority over them as it is the parent ministries that provide for resources and salaries. As Green (2007, p.9) asserts, the saying that “he who pays the piper calls the tune” applies in this context with line ministries consulting their parent ministries on all major issues. In this context, as pointed out by the DED country coordinator, the Local Government Service Act 2008 is an important step towards administrative decentralisation with its intention of integrating the deconcentrated sector ministries into the local government system. Once implemented, line ministries’ civil servants will be supervised by the DCS. This will shift powers from the DA, representative of central government, towards the DCS, who is supposed to represent districts and communities. Whether this change will truly enhance local control over planning activities remains to be seen, as the position of the DCS is similar to that of the DA in the sense that both are central government appointees answerable to MoLGC.

➤ *Can councillors enforce their decisions and sanction non-compliance?*

As described above, administrative staff of the sector ministries who is responsible for the implementation of council plans is not accountable to elected councillors, but solely to their head of department in Maseru. Councillors thus have no means available to enforce the implementation of their decisions, and there is no certainty that line ministries will take into account plans developed at the local level. This chain of command strengthens the planning authority of the centre and weakens the decision-making power of the councils (Fricker et al., 2007). When it comes to sanctioning non-compliance, according to LGA section 42 by-laws made by a council may provide for a fine or even imprisonment for any contravention of the by-law. Yet, as pointed out by Yorke (2007), it is unclear whether once they are made by-laws will be enforced through civil courts or the national police force, and until this question is resolved, the effectiveness of by-laws will be limited.

d) Summary

At first glance, the picture is devastating: Lesotho’s local governments are far from autonomous, neither in political, fiscal nor administrative terms, with none of their major



powers being discretionary: By-laws and development plans require approval, local authorities have neither control over the budget of sector ministries nor over the capital budget provided by MoLGC, and elected councillors are sidelined by administrative staff that they cannot hold accountable. Major obstacles to realize devolution include a lack of political will as repeated cases of central interference in local affairs suggest, and a lack of capacities at the central level, leading to a lack of policy guidance and strategic planning. This in turn impedes on central aspects in the decentralization process, for instance local capacity building or the realization of fiscal decentralization, and fuels severe conflicts due to a poor definition of roles and responsibilities. On the other hand small steps are being made in the right direction, such as the increase of capital grants, the integration of line ministries' staff into the local government system, and the planned establishment of a composite budget.

### 3.3) Citizen participation

On paper, the Lesotho Government explains that “the extent to which Basotho will own and drive the process of Local Government will determine [its] success” (MoLGC, 2003, p.3). In order to enhance the proper functioning of local authorities, the most crucial aspect was to link them effectively with communities at the village level (GoL, 2004). The following section will analyze to what extent this rationale is realized in practice.

#### a) Decision-making power

Citizen participation in political and legislative processes is only meaningful if citizens can effectively influence decision-making. This means that it is not enough to promote citizen voice, but citizen voice must be heard (Crook, 2003).

➤ *Do citizens have the right to put forward proposals and to decide on issues relevant to their lives including policies and spending?*

Local development planning is supposed to follow a participatory bottom-up approach (MoLGC, 2005) based on the identification of citizen priorities in each electoral division through a public gathering, or pitso<sup>12</sup>, held by the respective councillor after announcement by the local chief. Electoral divisions' priorities are consolidated into a community action plan (CAP) by the respective community council containing a multisectoral list of prioritized projects for the community as a collective with cost estimates and provisions for community participation. On the district level DPU and District Development Coordinating Committee

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<sup>12</sup> The tradition of the pitso (pl. lipitso), still a vital part of village life, goes back to the times before colonial rule when decisions were made on consensual basis after consultation with a large proportion of adult Basotho males by the village chief (Gay & Green, 2000; Grottenthaler, 2005).

(DDCC) on the basis of the CAPs prepare a district development plan to be approved by the district council and MoLGC (Land & Dejgaard, 2006; Tsikoane et al., 2007).

This planning process, implemented by all community and district councils, is a novelty in Lesotho, as until 2005 central ministries were responsible for planning and implementing their activities without much community participation (Fricker et al., 2007). In the district of Qacha's Nek, for instance, more than 100 lipitso were attended by around one third of the adult population (District Council Qacha's Nek, 2006). In theory, thus, this process is to be applauded, as citizens are given the opportunity to make and rank proposals for development projects laying the foundation for a district development policy. Furthermore, these priorities are supposed to become the agenda of the respective community councillor who is, according to the law, to "maintain close contact with his/her electoral division" (MoLGC, 2005, p.38) allowing citizens to monitor progress on the implementation of their development priorities.

In practice, however, the system has a number of flaws. Due to the non-existence of a clear agenda for the transfer of competences and resources to local councils, communities lack crucial information and community plans tend to be unrealistic. This, in turn, can be used as grounds for central interference in the making of district development plans (see section on political autonomy), rendering citizen participation meaningless. Furthermore, as will be shown below, communities cannot effectively hold councillors accountable. Thus, there is no guarantee that development plans and budgets will reflect community priorities.

The second access point for citizen participation is the DDCC which, according to LGA section 81, is to consider and approve district development plans submitted by the DPU, while ensuring the coordination of different sectors (Fricker et al., 2007; Yorke, 2007). Besides district councillors, traditional authorities and representatives of the administration, DDCCs include representatives of civil society organizations (CSO). DDCCs could thus provide the necessary platform for CSO and district authorities to share experiences and plan together, if not in practice they were dysfunctional (Shale, 2008). In none of the five visited districts is the committee fully functioning and often it seems to exist "only on paper", as DED advisor in Mohale's Hoek, Anne Kress, points out. This situation is usually blamed on a lack of political will on the side of the DAs who are to be the committee's secretaries (Green, 2007).

#### ➤ *Can citizens influence the legislative process?*

The 2005 Local Government Regulations prescribe that draft by-laws must be displayed "in a prominent place" to allow citizens to comment on them before they are finalized by the councils. Despite a high literacy level of over 80% (Prins, 2008), Basotho are described as lacking a reading culture and often capacities to understand legal texts. A government official

thus concludes that “this system does not serve the people”. Much more effective would it be to discuss draft by-laws at a pitso, as envisaged by the official decentralization working paper (GoL, 2004), a provision never translated into law. When the Maseru Municipal Council had by-laws discussed with the audience on Harvest FM<sup>13</sup>, an independent and critical radio station, they received orders from MoLGC not to do that again. The political will to realize meaningful citizen involvement in legislative processes thus seems to be lacking. Citizens are not given a realistic chance to give inputs, and there are no guarantees their input would be taken into account. This is confirmed by NGOs such as LCN and FIDA<sup>14</sup> who have been consulted on national legislative issues and who complained that they had the feeling the decision had already been made and they were only used to legitimize the process on paper.

➤ *Are participatory processes institutionalized in law and practice with a clear framework in place determining the role of civil society?*

Although the participatory planning approach is not legally guaranteed, it has been institutionalized by a range of policy documents (e.g. GoL, 2004; MoLGC, 2006), and it was confirmed in all districts that local councillors regard the determination of community priorities as one of their major duties. On top of that, section 9 of the Local Government Regulations obliges a councillor to “maintain close contact with his or her electoral division and consult the voters on issues to be discussed in the Council meeting where necessary” and to “report to the voters the general decisions of the Council and the actions it has taken to solve problems raised by the residents” at least once a month. Yet, as will be shown in the discussion of accountability, although institutionalized by law, regular community meetings are not translated into practice. When it comes to CSO involvement, other than via the DDCCs, there is no institutionalized CSO-local government dialogue, and neither the Local Government Act nor a policy framework makes clear provision how these should be involved. Although local governments are described by a range of NGOs as more open towards NGO input than central government, every interviewed NGO complained about little initiative from the side of local governments. Since many CSO were working as political opposition until the establishment of a multi-party system in the 1990s, even today they are at times categorized as political opponents and are regarded with scepticism (Grottenthaler, 2005). Thus, as donor representatives point out, CSO-local government cooperation remains fragmented, its quality and extent dependent on the attitude of each councillor. As a result of this lack of institutionalization, informal influence through family and party ties is paramount, disadvantaging those who belong to

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<sup>13</sup> For background information on Harvest FM and the situation of the media, see Annex.

<sup>14</sup> LCN (Lesotho Council of NGOs) is a national umbrella body representing 84 member organizations; FIDA (Federation of Women Lawyers) provides legal advice on women rights and does advocacy work.

none or the wrong political party. “It is not easy to get things done when you de-associate yourself from party politics”, explains ‘Mé Mosala from the Lesotho Council of Women.

## b) Accountability

Accountability mechanisms are essential in order to fight clientelism, policy making that is based on the “reciprocation of benefits” (Lankina, 2008). In Lesotho, first and foremost clientelism takes the form of deeply entrenched party politics.

### ✦ *Are officials answerable to citizens who can enforce sanctions?*

The only local government officials formally answerable to citizens are community councillors as these are directly elected by the people. As pointed out above, by law every councillor is to regularly report back to his/her electoral division and to consult the voters (MoLGC, 2005). That in practice little reporting is done is confirmed by all groups of interviewees, and admitted e.g. by the members of Qacha’s Nek community council. The main reason for this situation seems to be that many community councillors have made promises they cannot keep, and are scared to go back to their at times furious communities. Again, this is a result of unclear roles and powers, since councillors promised to tackle issues that now turn out to be outside the scope of their powers, not least due to the lack of fiscal independence. The second reason might be a lack of awareness on democratic principles. Several NGOs criticized and the GTZ component manager for human resources confirmed that council trainings only concerned administrative issues, not issues of good governance.

Furthermore, citizens are not able to effectively sanction councillors. Their only available sanction – the power to vote councillors out of office – is not sufficient, as the discussion below shows. The Local Government Regulations provide for sanctions for breaching the Code of Conduct of Councillors regulating the consultation of voters, but as it is the respective council that has to impose them, sanctions are unlikely to be applied.

At the district level, due to their indirect election, councillors should be held accountable by community councils. Yet, the law is silent on this issue and in practice, it does not seem to receive much attention either. One district council official admits never to have considered this issue; another explains that district councillors felt superior to their counterparts at the community level and thus did not report back to them.

Finally, regarding financial accountability, the current budgeting system in Lesotho lacks an effective system for expenditure control (ADB & ADF, 2006) with mechanisms for fiscal accountability from below being almost non-existent. Since at district level presently no composite budget exists, i.e. no integration of departmental budgets (see section on fiscal

autonomy), it is difficult to determine how much money actually flows into a certain district (Fricker et al., 2007). Considering this lack of transparency and information how could citizens or CSO monitor local government spending?

➤ *Can citizens chose councillors in regular, free and fair elections?*

Community councillors are elected for terms of five years using the First-Past-the-Post system. Local Government elections follow a different schedule than national elections in order to avoid them being dominated by national issues. The 2005 elections were widely recognized as free, fair, peaceful and transparent (Lynch & Odah & Otekat, 2005). Of all candidates, 60% were independents and 26% from the ruling party, Lesotho Congress for Democracy (LCD), the rest from various opposition parties (TRC, 2005). Yet, LCD gained 76% of council seats, independents only 19% (Pfeiffer et al., 2006). This result shows how strongly party politics characterize elections in Lesotho. In general, Basotho resort to voting along party lines – irrespective of the candidate’s qualities and capabilities (Shale, 2008).

This tendency was reinforced by a clear lack of information among voters, denying voters the chance to make an informed choice. In particular, people were confused about the purpose and responsibilities of local governments and the functions of councillors versus those of the chiefs (Gay, 2006). The main reason for this situation was the poor sensitization campaign by the Independent Electoral Commission (IEC), who had the primary task of conducting voter education, described by an IEC official himself as “not good compared to usual IEC standards” as it “did not reach everyone properly”. NGOs reported they could not access financial assistance for their independent voter mobilisation, neither from the ministry nor from donor organizations (Shale, 2008) and a lack of information on the side of the media consequently affected their ability to spread information (Lynch & Odah & Otekat, 2005).

Furthermore, in the 2005 elections voter turnout was as low as 33%, compared to 60-70% in national elections. It was especially low in urban areas with turnout for Maseru City at 8,3% (Aristi et al., 2005; Gay, 2006). Although it must be considered that these were the first elections, low turnouts, uninformed voters and the supremacy of party politics give reason to believe that elections alone will not provide for meaningful accountability.

➤ *Are formal monitoring and grievance procedures in place?*

Communities are supposed to take part in monitoring and evaluation of community council activities through lipitso who are to consider and approve annual progress reports presented by their councillor (GoL, 2004). None of the interviewees asked about this issue could recall any such case, and considering the general lack of engagement of councillors with

communities there is reason to believe that annual reports are not done as supposed to. It has been reported, e.g. from Masepho community council, that citizens write letters to the council secretary or attend council meetings if they have a complaint to make. But there are no structured mechanisms how such complaints are to be dealt with, and no guarantees they are dealt with at all. There are no formal grievance procedures in place by which communities could take issues to higher levels such as a local government ombudsman or the district level.

✦ *Do citizens have access to relevant and independent information?*

As pointed out above, citizens were not well-informed about local government prior to the 2005 elections. According to the MoLGC Senior Information Officer, this situation has not changed much, and often “basic understanding is still lacking”, especially about citizen rights, for instance that councillors are obliged to report back to their communities.

Currently, NGOs such as Transformation Resource Centre (TRC) or Development for Peace Education (DPE)<sup>15</sup> are providing information to communities by such means as lipitso, newsletters, or leaflets, but by far do not have the capacities to serve all communities. As 68% of Basotho get information from the radio, compared to 16% for TV and 20% for newspapers (Afrobarometer, 2005), the radio is a powerful tool for information distribution. MoLGC makes use of this through a local government programme on Radio Lesotho. The back draw is that Radio Lesotho is state-owned and not an independent provider of information, but the only one with nation-wide coverage. Many Basotho, thus, do not have access to independent media, which on the other hand rarely actively engages in “hot topics” such as political education due to a recent deterioration of media freedoms.<sup>16</sup> Although according to the 2005 Local Government Regulations council meetings are open to the public, and minutes of council meetings and by-laws are accessible against a small fee, reporters complained about a lack of transparency as local governments were reluctant to have media attend council meetings. One reporter explained that meetings she wanted to attend were simply declared confidential without giving satisfactory reasons. Attendance by citizens themselves is practically limited as the majority lacks both time and money to travel to the meeting venues.

### c) Inclusion

Lesotho's population is ethnically and linguistically very homogeneous; 98% are Sesotho speaking Basotho with very few AmaXhosa in the southwest (Prins, 2008). Although made up of several tribes, Basotho seem to define themselves in national terms. Living conditions

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<sup>15</sup> TRC is Lesotho's major advocacy NGO on human rights and democracy; DPE works mainly in the field of conflict resolution providing civic education.

<sup>16</sup> See Annex for background information on freedom of media in Lesotho.

and political influence are similar across all ethnic groups (Afrobarometer, 2005). Thus, marginalization does not relate to ethnicity; it relates to gender, age and economic situation.

Women are in general better educated than men, yet unequal gender relations feature the political and judicial system (Tsikoane et al., 2007), and a majority (58%) thinks that women should not have equal rights as men (Afrobarometer, 2005). An indication of the marginalization of young people is the fact that the 1998 Local Government Elections Act allowed only persons 28 years or older to vote, a provision only changed to 18 years in 2004. As N'tate Mohapi, founder of the Lesotho Youth Federation, points out, there are no platforms for the youth to organize or voice their interests. Thirdly, due to disparities in political awareness, information, and resources poor people in general are less capable to hold politicians accountable (Lankina, 2008). One in four Basotho households today exists in extreme poverty (MoFDP, 2007). Besides these traditionally underrepresented groups, the issue of party politics emerges again. In LCD dominated areas, opposition members are likely to be marginalized in terms of access to services, information and political processes, and vice versa. Even 'Mé Mosala from Lesotho National Council of Women asserts that one's party affiliation can be a greater obstacle than one's sex.

➤ *Does everyone have equal access to decision-making and information?*

Besides voting, political participation in Lesotho takes place mainly through lipitso and informal lobbying and contacting of political authorities. Surprisingly, a recent survey found that in Lesotho, the poorest are most likely to attend lipitso, or to contact a local authority (Gay & Mattes, 2003). Thus, it is not necessarily the economic elite that capture local political processes, but members of the dominating party: As NGOs working in the field of democracy point out, there is little awareness that a councillor is supposed to represent everyone, neither on the side of councillors, nor on the side of voters. As a result, councillor's lipitso are dominated by his or her party affiliates. Similarly, contact and lobbying between NGOs or individuals and government highly depends on interpersonal trust with party affiliates being clearly advantaged in terms of access to information and influence on decision-making.

Furthermore, young adults and women are generally described as being less vocal at lipitso than male elders who dominate the community discourse. Yet, there are no focus group lipitso for women or the youth, they were not specially targeted in voter sensitization programmes, nor are participatory processes biased in their favor in any other way.

➤ *Is the electoral system biased in favour of marginalized groups?*

For the first time in the history of Lesotho, a women quota was installed, based on an agreement of the Southern African Development Community to increase the number of



women in politics. One third of all electoral divisions was reserved for women candidates (Reinhardt, 2005). As a result, an astonishing 56% of councillors are women, far more than the stipulated one-third (Gay, 2006). At the time of the elections, 7 out of 10 appointed DCS, along with 4 out of 10 DA were women (TRC, 2005). Another positive regulation is that district councils must include members from opposition parties which hold at least 25% of the seats in any community council, what is the case in three districts (GoL, 2005).

Although there are no provisions in place to promote poor people running for office, local councillors cannot be said to be representing the economic elite, but are widely described and experienced by myself as “ordinary people”.

➤ *Are involved citizen groups representative and democratic?*

The only formal involvement of CSO in local government is their membership in District Development Coordinating Committees (DDCC). LGA section 78 prescribes that CSO are to be appointed by the minister; a process marked by a lack of transparency, say representatives of LCN and of FIDA, who asked government officials about the criteria of selection, yet never received an answer. As a result, DDCC are dominated by handpicked international NGOs, such as the Red Cross or World Vision, and small, local ones that might be more representative of the local population are sidelined. Contrary to that, an official government paper says that CSO are to be “nominated by the forum of NGOs operating in the district” (GoL, 2004, p.21). According to TRC, a local advocacy NGO, this happened in one case, when Lesotho’s NGO umbrella body, LCN, nominated TRC for the Maseru Committee.

When it comes to the internal democracy of CSO, donor representatives active in the field of civil society support assert that with few exceptions CSO in Lesotho show little transparency and an overly strong executive. The 1966 Societies’ Act that regulates CSO does not make adequate provisions for accountability and transparency contributing to CSO’s weak internal management systems (ADB & ADF, 2006; Land & Dejgaard, 2006). Furthermore, as confirmed by all interviewed donors, Lesotho’s CSO are extremely reliant on donor money and in practice are accountable to donors only, not to their communities.

d) Summary

Summing up the extent of citizen participation, for all three dimensions a pessimistic picture must be drawn. First of all, there are no guarantees citizen priorities will be implemented, and the access point for CSO input, the DDCCs, are not functioning yet. Thus, citizens and citizen groups both lack meaningful decision-making powers. Secondly, as citizens have little access to independent information and lack knowledge about their own rights and councillors’

duties, the prerequisite for being able to hold councillors accountable is missing. In practice, councillors are not answerable to their electorate as reporting is not done as supposed to. Elections are the only sanction available to citizens, but in practice, voting choices are neither informed nor meaningful. Finally, due to a lack of effective institutionalized means of participation, informal influence through personal and party ties is paramount, disadvantaging large parts of the population. Positive aspects such as the women quota are overshadowed by the issue of party politics, the major obstacle to inclusive participation.

#### 4) Conclusions and recommendations

Although in the case of devolution some small steps towards greater autonomy of local governments are being made, such as the increase of capital grants and the integration of line ministries' staff into the local government system, overall, the Lesotho local government system resembles one of deconcentration rather than devolution. None of the three criteria – political, fiscal and administrative autonomy – are fulfilled satisfactorily as in all three cases key aspects of decision-making power remain at the centre, both by statute and in practice. By-laws and development plans require approval, elected councillors lack control over funds as well as over administrative staff that they cannot hold accountable, and central interference is shaping local decision-making and implementation processes. Participation, on the other hand, is neither meaningful, nor does it follow a positive trend. Again, none of the three criteria – decision-making power, accountability and inclusion – is fulfilled in a satisfactory way. Citizen priorities are not given due respect by MoLGC and district planning officials, citizens cannot hold local councillors accountable effectively as they lack adequate information and the opportunity to make informed choices, and participatory processes are far from inclusive. As a result, to some extent citizen voice is promoted, but it is not heard by power-holders, and local development plans and projects often do not reflect citizen priorities.

Therefore, it must be said that the proposed conditions for success have not been met and are far from being attained by the Lesotho local government system. My guiding hypothesis – the higher the levels of devolution and meaningful participation, the greater the benefits of decentralization will be – is confirmed in the sense that due to the lack of autonomy and meaningful participation, increased time and place knowledge acquired through community consultations could not be translated into responsive policies.

Judged against the situation before the introduction of decentralization, when planning processes of sector ministries were characterized by high levels of centralization and hardly allowed for citizen participation (Fricker et al., 2007), the participatory planning process on

community and district levels, in principle, can be welcomed as a positive novelty. However, this improvement will remain meaningless as long as there are no mechanisms in place ensuring that community priorities will be adequately respected in the formulation and implementation of development plans.

Due to the short time-span since the introduction of local governments, there are no comprehensive studies available yet which would allow for the analysis of concrete outcomes of decentralization in Lesotho in terms of service delivery in different sectors. Assessments of interviewees were generally negative, ranging from no perceived improvements to minor improvements, mostly in relation to roads development. This negative assessment corresponds to an African Peer Review Mechanism survey<sup>17</sup> in which Basotho rated responsiveness and performance of local governments very poorly. Accordingly, a government paper admits that the linkages between political decentralisation and improved service delivery were “far from complete” (MoFDP, 2007, p.xii).

In light of this disappointing résumé a number of issues can be tackled by the donor community,<sup>18</sup> including lobbying central government and assisting it in the definition of roles and responsibilities, the establishment of a clear decentralization policy, and a framework for fiscal decentralization. In particular, however, I wish to highlight the following three aspects:

➤ Civic education

As the analysis of participation in local government processes has shown, a lack of information and understanding among citizens is one major obstacle in realizing meaningful citizen participation. In order for citizens to make informed choices and to demand democratic practice from their leaders it is crucial to provide training on the role of local governments, citizen rights and democratic principles as well as on skills necessary to participate actively. On the other hand, as a result of Lesotho’s experience of decades of undemocratic rule there is low awareness of democratic principles among politicians (Gay & Green, 2000). Thus, civic education should go hand in hand with training of local government councillors and staff on principles such as accountability and inclusiveness in order to promote dialogue with civil society, including marginalized groups and political opposition.

➤ Institutionalization of a local government/civil society dialogue

The deeply entrenched situation of party politics on the one hand and government scepticism towards CSO on the other hand, calls for the institutionalization of a local government/civil

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<sup>17</sup> Information according to N’tate Mokitimi from Christian Council of Lesotho; Survey not published yet at time of research

<sup>18</sup> Donor programmes include the “Decentralized Rural Development Programme” of DED and GTZ in Lesotho’s south; UNDP and UNCDF “Lesotho Local Development Programme” in central Lesotho; and the EU’s recently initiated “Local Government and Non-State Actor Support Programme” focussing on northern Lesotho.

society dialogue in order to make the different sides work together and break down prejudice. Donors should lobby for and facilitate regular meetings between local councils and civil society groups and support the work of the DDCCs, which are – despite their flaws – so far the only forum of contact between CSO and local governments. Furthermore, focal group discussions divided by age and gender between local councillors and their communities deserve attention and support.

#### ➤ Involvement of traditional authorities

Basotho chiefs are held in high esteem by their communities, who regard them as custodians of peace and stability, especially in rural areas, home to 75% of Basotho. Consequently, citizen's engagement in local government can be influenced by their chief, a fact widely confirmed by all groups of interviewees. As members of Thaba-Mokhele community council point out "communities belong to their chiefs and follow them". Low levels of popular trust in government institutions (Gay & Green, 2000) can be seen as the major reason for this: "The people do not trust politicians but their chiefs" explains N'tate Lehloenya, District Administrator of Mafeteng. Thus, the conflict between chiefs and councillors does not only impede on the efficiency of service delivery but it can also block participation when communities decide to stand by their chief if he is in conflict with the local councillor.

This shows that the design of decentralization reforms must carefully evaluate and take into account existing systems of governance at the local level, as disregarding socially embedded local authorities is likely to impede on the success of decentralization reforms.

For Lesotho, this means that workshops for chiefs and councillors in order to clarify roles and responsibilities need to be scaled up. NGOs such as DPE who have already conducted such workshops univocally say they have helped to reduce conflict. Furthermore, some councils, as in Thaba-Mokhele, have arranged regular meetings with all chiefs of the area in order to iron out differences. There is a great need to build on such initiatives in order to bring all chiefs on board, as such joint meetings can come up with their own solutions on how and to what degree to involve chiefs in the work of the respective council. Thirdly, all chiefs need to be educated on local government's structure, purpose and legal framework. But most crucially, while this conflict represents one of the greatest threats to decentralization, its resolution and successful integration of traditional and modern governance on the other hand holds great potential. If integrated successfully, chiefs' high standing in local communities could be used positively as chiefs might be able to distribute information, help monitor councils' work, and provide a politically neutral link between citizens and local governments.

ANNEX I List of interviewed persons

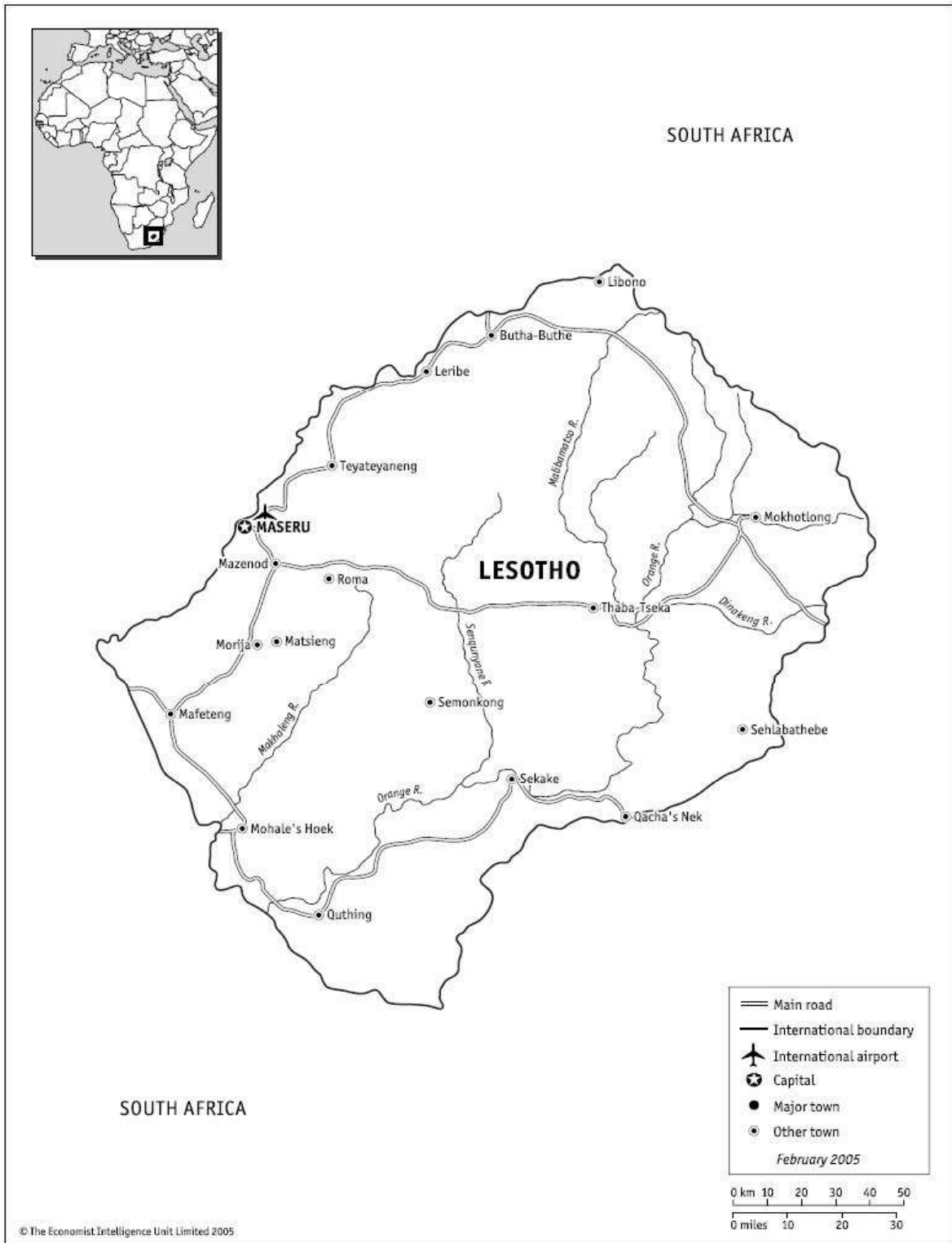
<b>Civil Society Group</b>	<b>Name</b>	<b>Position</b>
Africa Inland Mission in Lesotho Tebello	August Basson	Reverend
Anti-Corruption Committee	Matulan Mosesili	Secretary Qacha's Nek
Assemblies of God	Samuel Matsoso	Pastor
Catholic Relief Services	Ian de la Rosa	Programme Manager
Christian Council of Lesotho	Seeisa Mokitimi	Poverty Reduction Team
	Eliphace Mohale Gugushe	Reverend
Commission for Social Concern, Justice & Peace	Booi Mohapi	Executive Secretary
	Lucia Leboto	Promoting Policy Dialogue
Development for Peace Education	Shale Sofonea	Programme Coordinator
International Federation of Women Lawyers	Thusoana Ntlama	Programme Coordinator
	Mary Khachane	Legal Aid Officer
Herd Boy Association	Khotso Lehloka	
Lesotho Council of NGOs	Hoolo Nyane	Democracy Programme
Lesotho National Council of Women	'Mathabiso Mosala	Director
Makhathatema Youth Development Group	Agatha Seboka	
	Tsuinyane Tselisehang	
Rural Self-help Development Association	Reentseng Pebane	Member Dairy Project Mafeteng
Telejane	Letlafuoa Makhekhe	Director of Operations
Transformation Resource Centre	Mabusetsa Lenka Thamae	Community Trainer
	Lira Theko	Democracy Educator
World Vision	Thabiso Lerata	Agriculture Officer Malumeng
	Khalaki Nthejane	Agriculture Officer Sekameng
<b>Local Governments</b>	<b>Name</b>	<b>Position</b>
District of Mafeteng	Khojane Makhetha	Head of Department Water Supply; Member of DPU
	Paul Teboho Lehloenya	District Administrator
	Zulu Khotle	District Council Chairperson
	Rekhotsofetse Matela	District Council Secretary

District of Mohale's Hoek	Tefo Mofolo	Mohale's Hoek Community Council Secretary
	Kali Masiloane	Mohale's Hoek Community Councillor 2005-2007
J. Buno, M. Khanyane, N. Lebakae, M. Lesuhlo, M. Makobeka, M. Makopong, M. Masiu, T. Matlanyane, M. Mlakanyane, M. Mohale, M. Monyatse, M. Motsoloane, A. Ntepe, M. Pakela, M. Ramollo		Thaba-Mokhele Community Council group discussion, translated by Korabo Mabuthile
District of Qacha's Nek	Francis Lekhotla Ts'eane	District Council Secretary
	Pholoana Moholehi Translator: Selome Leuta	Masepho Community Council Deputy Chairperson
	Selome Leuta	Masepho Community Council Secretary
	P. Khumale, M. Makatile, T. Mosoang, M. Nkoli, M. Phalo, M. Sehahle, M. Senavoane, R. Setofolo, T. Thamae, M. Ts'aeute	Qacha's Nek Community Council group discussion, translated by 'Makatlheho Mohasi
	'Makatlheho Mohasi	Qacha's Nek Community Council Secretary
District of Quthing	Ramoseme Mantsepi	District Council Secretary
<b>Central Government</b>	<b>Name</b>	<b>Position</b>
Independent Electoral Commission	Motloi Sekoala	District Electoral Officer
Ministry of Finance and Development Planning	Malefetsane Gerard Masasa	Department of Development Planning
Ministry of Local Government & Chieftainship	Neo Ntho	Senior Information Officer
	Lerato Ramotsekhoane	Senior Legal Officer
<b>Chieftaincy</b>	<b>Name</b>	<b>Position</b>
	Tseliso Matala Translator: T. Tselisehang	Chief of Ha Matala
	Fako Lerotholi	Chief of Likhoele
	Mikia Molapo	Director of Chieftainship at MoLGC
	Seeiso Lerotholi	Principle Chief of Likhoele; Senator
	Khoabane Theko	Principle Chief of Thaba-Bosiu; Senator
	Phalo Phatela Translator: Selome Leuta	Representative of chiefs in Masepho Community Council

<b>Donor Organizations</b>	<b>Name</b>	<b>Position</b>
European Union	Jesper Stig Andersen	Programme Officer Socio-economic cooperation
	Peter Fricker	Consultant Local Gov. and Non-State Actor Support Programme
German Development Service	Reinhard Grömping	Civil Society Support Programme
	Iris Knabe	Country Coordinator
	Anne-Karin Kress	Planning Advisor DA Office Mohale's Hoek
	Wolfgang Pührer	LED Advisor DCS Office Mohale's Hoek
	Kordula Rommel	Planning Advisor DA Office Qacha's Nek
	Verena Schramm	Planning Advisor DA Office Mafeteng
	Wolfgang Vollmer	Planning Advisor DA Office Quthing
	Jan Wendt	LED Advisor DCS Office Qacha's Nek
	Olaf Zieschang	LED Advisor DCS Office Mafeteng
German Technical Cooperation	Rajeev Ahal	Advisor Decentralization and Rural Development MoLGC
	Laura K. Beres	Advisor HIV and AIDS
	Elisabeth Zimmermann	Human Resources and Organizational Development
Irish Aid	Tlelima Phakisi	Programme Advisor Civil Society Support Programme
United Nations Development Programme	Daniel Stolz	UN Volunteer, Governance Unit
<b>Political Institutes</b>	<b>Name</b>	<b>Position</b>
Institute of Southern African Studies, National University	Tsoeu Petlane	Researcher
Lesotho Institute for Public Admin. & Management	Sharon Makoae	Local Government Program Course Coordinator
<b>Media</b>	<b>Name</b>	<b>Position</b>
Harvest FM	Rev. Adam Lekhoaba	Manager
Lesotho News Agency	Maleshoane Mache	News Officer Mafeteng
	Esther Mohale	Reporter, Maseru



Annex II Map of Lesotho



### ANNEX III Political system and political culture in Lesotho

Lesotho is a bicameral constitutional monarchy with King Letsie III as head of state, whose post entails representative functions. Head of government is Prime Minister Pakalitha Mosisili from the ruling party, Lesotho Congress for Democracy (LCD). LCD has won the last three elections, but its dominance is gradually diminishing as conflicts within the party have led to breakaway movements. The All Basotho Convention (ABC) broke away in 2006 and has since provided a significant challenge to LCD (Matlosa, 2003; Pins, 2008).

The 80-member National Assembly, the lower house of Parliament, is elected by proportional representation and made up of twelve political parties, while the upper house, the Senate, consists of the country's 22 Principal Chiefs plus eleven members nominated by the King (Prins, 2008). In order to be passed, any bill must be approved by the National Assembly and considered by the Senate. According to the Constitution of Lesotho the two houses must come to a consensus, exemplifying the country's tradition of deliberation and consensus. Yet, if a consensus cannot be reached, the lower house alone can pass the law (Shale, 2004).

The origins of Lesotho as a nation date back to the 19<sup>th</sup> century, the time of the inter-African wars, when King Moshoeshoe I asked the British to declare a protectorate over his kingdom. After independence in 1966, almost three decades of undemocratic and military rule followed. Finally, in 1991, a bloodless coup set the way for democratic elections in 1993. The 1998 election resulted in a landslide victory for LCD, winning 78 out of 80 seats, possible due to the First-Past-the-Post electoral system. Opposition parties challenged the result and riots broke out. An intervention force of South African and Botswanan troops stepped in and eventually quashed the dissent (Fricker et al., 2007). In order to prevent future outbreaks of violence national elections are now held according to proportional representation.

One of the most common features of Lesotho's political parties is their fragmentation along personality lines with breakaway movements being largely motivated by personal rivalries. Political parties thus hardly present any alternative sets of policies (Olaleye, 2003; Prins, 2008). Furthermore, the major parties are displaying serious deficiencies in terms of internal democracy, shutting down the flow of information and free debate within the party (TRC, 2005; Likoti, 2005; Olaleye, 2003).

On the other hand, Basotho rarely demand democratic practice from their leaders as Basotho seem to lack an advocacy and criticism culture resulting in little drive for more democracy from the grassroots (Gay & Green, 2000; ADB & ADF, 2006). As described by a number of interviewees, Basotho society is a highly hierarchical one in which criticism against leaders is rarely practiced. As N'tate Kali explains, a "culture of loyalty" which was promoted in

decades of undemocratic rule still seems to be prevalent among large parts of the population, and is changing only slowly. Furthermore, 50% of Basotho think they always or often have to be careful about what they say about politics (Afrobarometer, 2005). In part, this explains why advocacy work is neither a defining feature of Basotho political culture nor of mainstream NGO activity (Grottenthaler, 2005).

On the other hand, an Afrobarometer study found that 65% of Basotho agree to the statement that “as citizens, we should be more active in questioning the actions of our leaders”. Yet, whether this would translate into action is questionable. Although the vast majority of Basotho would oppose undemocratic actions by the government such as closing down media or banning political parties, more than half would do “nothing” about it, the highest percentage out of all surveyed Southern African countries. Furthermore, 54% say they would never take part in a demonstration or protest, and only 3% – far fewer citizens than in other Southern African countries – said they had taken part in a protest march in the previous year (Afrobarometer, 2005; Gay & Green, 2000). This shows that unlike discussion, protest is not seen as an acceptable form of political activism (Gay & Mattes, 2003).

#### ANNEX IV Structure and functions of Lesotho local governments

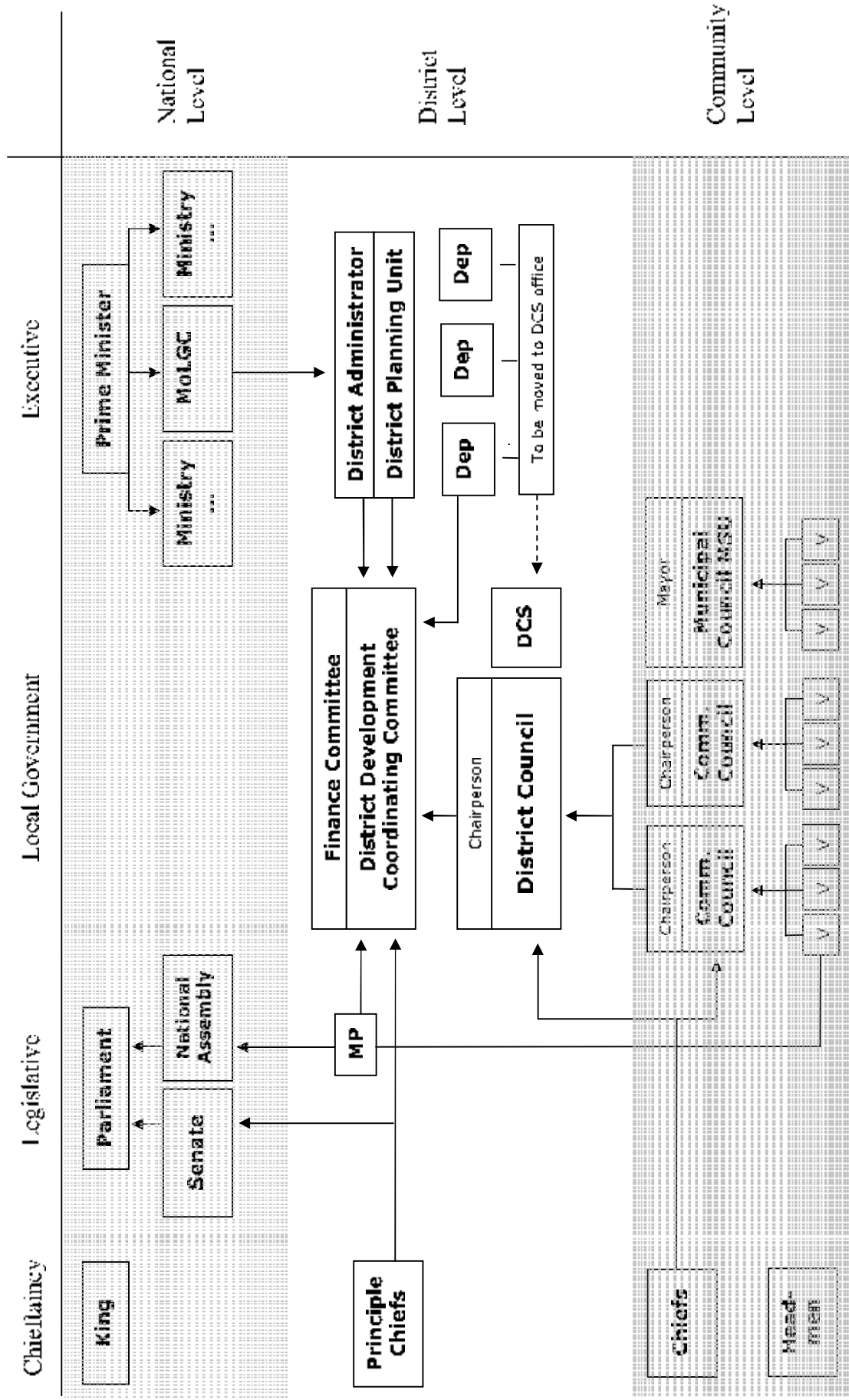
Before Chief Moshoeshe I took power in the 1820s and unified the Basotho people all government was local, in the sense that every village was a clan-based entity on its own (Gay, 2006). In modern Lesotho, decentralization is also not a new idea with attempts to establish local administration in almost every decade since the 1930s. Yet, these previous moves were to last for only a few years before they were abandoned or allowed to exist for mere political reasons (Kayila, 2005; Mofuoa, 2005).

The 2005 Local Government Elections created 128 Community Councils, ten District Councils, and one Municipal Council for Maseru. Each Community Council consists of between nine and 15 elected members and nominates two of its members for the respective District Council. In each council two seats are reserved for chiefs, who are nominated by all legally recognized chiefs of that area (Gay, 2006; GoL, 2004; Fricker et al., 2007).

Each council elects a chairperson from among its members who is to forward policy directives to the council secretary, who is appointed by the central government and who is to assist the council in its work. Also appointed is the District Administrator who is responsible for co-ordinating the work of public officers in the district. Currently, all line ministries at district level operate under the DA's supervision. Further important players are the Finance Committee, made up of District Councillors, which is to approve the district budget, and the DDCC which must approve the District Development Plan (Fricker et al., 2007; Letsika, 2007). A graphical depiction of the local government structure is given on the next page.

Generally speaking, local governments are concerned with the social development of their communities through community-based planning and the provision of public services. Council's service delivery functions are set out in the first and second schedules of the Local Government Act, the most important of which are listed on page 39. Furthermore, community councils are supposed to provide a forum of contact between community representatives, local leaders and politicians. They are supposed to coordinate development activities of voluntary organisations and local agencies, and national activities in their respective areas. District Councils are to assist Community Councils financially and technically in the provision of services. Furthermore, they are to coordinate and monitor the implementation of the District Development Plan, and of the performance of Community Councils, line ministries and other service providers (GoL, 2004). In this two-tier structure Community Councils can be regarded as second-tier authorities as they perform fewer responsibilities and have only few staff of their own compared to District Councils (Kayila, 2005).

# LESOTHO LOCAL GOVERNMENT STRUCTURE



DCS – District Council Secretary, appointed by MoLGC  
 Dep – Department/Line Ministry, staff deployed by parent ministry  
 MoLGC – Ministry of Local Government and Chieftainship  
 V – Village MSU – Maseru MP – Member of Parliament

Functions of local councils<sup>19</sup>

Functions	Community Council	District Council	Municipal Council
Area Economic Planning	x	x	x
Rural Access Roads; Bridle Paths	x	x	x
Secondary Roads and Traffic		x	x
Physical Planning		x	x
Land Use Planning		x	x
Land Allocation	x	x	x
Agriculture & Veterinary Services		x	x
Grazing Control	x	x	
Control of Natural Resources	x	x	x
Pollution and Environmental Conservation	x	x	x
Refuse Collections and Disposal		x	x
Water Supply	x	x	x
Food Inspection and Hygiene		x	x
Public Markets Control	x	x	x
Sports and Recreation	x	x	x
Cemeteries and Burial Grounds	x	x	x
Pre Primary Education	x	x	x
Primary and Secondary Education		x	x
Libraries and Resource Centres		x	x
Maternal and Child Care		x	x
Abatement of Public Nuisances		x	x
HIV and AIDS Coordination	x	x	x

<sup>19</sup> Taken from the Local Government Act as amended and Kayila (2005).

## ANNEX V Civil Society Organizations in Lesotho

The origins of many Civil Society Organizations (CSO) in Lesotho go back to missionary activities in colonial times. Still today, the educational system is to large parts in the hands of church organizations. Another segment of Lesotho's CSO developed in the course of the Anti-Apartheid struggle in neighbouring South Africa (Deutscher Entwicklungsdienst, 2003). CSO in Lesotho are generally described as having four functions: delivery of basic services such as primary health care and education; delivery and coordination of emergency aid; promotion of democracy and the rule of law; and voicing of societal interests vis-à-vis the government. However, a lack of political neutrality among CSO personnel is hampering their function as spokespersons of society (Deutscher Entwicklungsdienst, 2003).

In general, CSO in Lesotho are described as weak, lacking both human and fiscal capacities to effectively monitor government transparency and accountability (ADB & ADF, 2006). Lesotho's CSO still suffer from the drastic loss of funding following the fall of the South African Apartheid system with numerous donor organizations redirecting funds to South Africa. Hence, besides dependence on donor money, CSO work today is characterized by stiff competition for funds and the commercialization of services. Consequently, few CSO are able to remunerate their staff adequately, leading to a loss of qualified staff to better paid positions in South Africa (Grottenthaler, 2005; Deutscher Entwicklungsdienst, 2003). Nevertheless, CSO in Lesotho continue to play a critical role in all spheres of development, for instance in raising awareness about HIV and AIDS, as well as in strengthening democracy, in particular through their engagement in voter education, election monitoring and civic education (Commonwealth Foundation, 2003).

As some NGOs were working as political opposition until the establishment of a multi-party system, cooperation between NGOs and the government remains problematic. Therefore, involvement in the formulation of policies and the shaping of political processes is not a major field of activity for Lesotho's CSO. Yet, some CSO including faith-based organizations have recently been involved in the drafting of national strategy papers and legal bills (Grottenthaler, 2005; Commonwealth Foundation, 2003). Lesotho's CSO are at times described as too centralized in Maseru, with few visible organizations on the local level. This situation might be changing considering that in the course of donor support for decentralization funds will be redirected more and more into decentralized structures (Grottenthaler, 2005). Such a trend can be observed with a small number of CSO, for instance the Herd Boy Association which, according to N'tate Khotso, is strengthening its local structures as a reaction to decentralization.

## ANNEX VI Freedom of media in Lesotho

Due to internal censorship, state media tends not to be critical of the government. Still, media in Lesotho has generally been described as fairly free since there are several independent newspapers and radio stations (Prins, 2008). This description, however, might not be accurate anymore. The relationship between government and private media has been deteriorating as the government has become more sensitive towards critique since the formation of the new opposition party All Basotho Congress (Reinhardt, 2007). Repeatedly, critical journalists have been harassed, leading Reinhardt (2007, p.2) to speak of an “anti-media campaign” by the LCD government. Accordingly, Reporters Without Borders, an NGO monitoring press freedom, ranks Lesotho’s press freedom as having “noticeable problems” (Prins, 2008, p.7).

One example is the case of Harvest FM, a Maseru-based radio station, known for its critical reports on political affairs. Harvest FM was closed down in July 2008 by the Lesotho Communications Authority, accused of broadcasting “inaccurate, malicious and defamatory” information. According to the Lesotho Times, this was the first time a “voice of dissent” was shut down (Mareka, 2008, p.1). A few months earlier, authorities had deported the station’s manager, N’tate Lekhoaba, for breaching Lesotho’s immigration laws by possessing a South African as well as a Lesotho passport. Such dual citizenship is prohibited by the Lesotho Constitution, yet, media revealed that the Prime Minister and several cabinet members themselves possess multiple passports. It appears to be obvious that the issue of dual citizenship was raised only because of the critical nature of some of Harvest FM’s programmes (Mareka, 2008; Reinhardt, 2007; Legalbrief Africa, 2008).

The trend of limiting media freedoms still seems to be prevalent in Lesotho: At the time of research the Parliament of Lesotho (2008) had just introduced a bill amending the Lesotho Communications Act 2000. The bill makes provision for the Minister of Communications to close down communication services without prior hearing “in substantial, exceptional and compelling circumstances” (section 5), yet without defining these grounds for closure any further.



## ANNEX VII The Lesotho chieftainship system

The chieftainship system in Lesotho may be more than in other African countries associated with the country's traditions. Chieftainship in Lesotho clearly predated colonialism, while in other cases it was colonial rule that created or highly shaped systems of local leaders (Kapa, 2005). In pre-colonial times, village democracy was built around the pitso, where all adult males would discuss community issues, the final word being taken by the local chief. As time passed, chieftaincy developed into a highly formal and hierarchical system. Chieftaincy today consists of the king, 22 principal chiefs, seven of which are women, and hundreds of lower chiefs and headmen. At the bottom of the hierarchy, there are about one thousand customary chiefs, who are recognized by their communities as chiefs, but not by the legal system (Shale, 2004; Gay, 2006; Mbetu & Tshabalala, 2006). Decisions made by a chief can be appealed by the aggrieved party who can ask the respective chief of next higher rank to review the decision. Finally, a principle chief's decision can be appealed by the minister of local government and chieftainship. But disputes involving chiefs can also be taken to conventional judiciary courts that run parallel to the chieftaincy (Gay, 2006).

Powers and functions of chiefs are regulated by the Chieftainship Act of 1968, according to which chiefs are responsible for many administrative tasks such as handing out permissions and birth certificates or registering cattle. Most importantly, by applying customary law, chiefs are supposed to settle disputes, prevent crime, charge offenders, protect community projects and serve as the first contact person in cases of crimes (MoLGC, 2005). Chiefs are thus often referred to as "the first police officers" at village level (Shale, 2004). In rural Lesotho, where government services such as conventional courts or police are often unavailable, villagers depend on the chief to charge offenders and resolve conflicts by applying customary law. Another reason why this practice is widely accepted is that large parts of the population are deeply divided along party lines so that a member from any party settling a dispute would be regarded as biased by the community (Kapa, 2005). Chiefs, on the contrary are generally regarded as politically neutral with principle chiefs being obliged by law to be non-partisan (Tsikoane et al., 2007). Thus, it is often argued by proponents of the chieftainship system that abolishing Basotho chieftaincy would leave a vacuum in most villages, and that transforming the hereditary office of chief into an elective office would undermine their status as politically neutral arbiters enjoying trust from a wide range of the population (Kapa, 2005). This is illustrated by a recent survey according to which 60% of Basotho trust traditional leaders "a lot", more than the Prime Minister, political parties or any other questioned group (Afrobarometer, 2005).

Chiefs thus are regarded by large parts of the population as symbols of unity and identity (Shale, 2004), functions which are not yet fulfilled by the elected government or a shared concept of democracy. This follows from a recent Afrobarometer survey that found that Lesotho is very different from other Southern African countries in the sense that Basotho display little demand for democracy. While most Basotho reject a range of non-democratic political systems, their attitude towards democracy and the present democratic arrangement seems to be one of indifference, apathy or confusion. One in five did not understand the word “democracy” even after translation into their local language and just over half were able to give some kind of broad definition of the concept of democracy. 42% of respondents are not very or not at all satisfied with how democracy works in Lesotho, while almost one third agreed to the statement that for someone like them “it doesn’t matter what kind of government we have”. As the authors of the study point out, the explanation for this situation can partly be found in Lesotho’s political history: In other Southern African countries the struggle for independence and democracy represented a unifying force since it involved building a nation where there had been none before. Basotho, on the contrary, had been unified by a chief – King Moshoeshoe I – and democratic rule has just been one out of various political systems over the past 200 years (Afrobarometer, 2005; Gay & Green, 2000).

Thus, although especially in urban Maseru there is an increasing number of Basotho who object the system of inheritance associated with the chieftaincy, the vast majority of Basotho interviewed for this study were of the opinion that as long as democracy is not regarded as a driving force of stability and unity, the majority of Basotho will cling to their chiefs, and will respect them as their community leaders.

ANNEX VIII Picture gallery



*Hiking to Tebellong village in the district of Qacha's Nek, home of Masepho Community Council, with Community Council Secretary N'tate Leuta and Jan Wendt, DED Advisor at the DCS office, Qacha's Nek*



*Members of Qacha's Nek Community Council after group discussion*



*Traditional village near Malealea, district of Mafeteng*



*Improved service delivery?  
Secondary school in Quthing district*



*En route to Semonkong ("Place of  
Smoke"), district of Maseru*



*Interview with N'tate Kali  
Masiloane, former member of  
Mohale's Hoek Community Council*

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