Parliamentary Democracy in Lesotho: Balancing Representation with Participation

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Outline

- Foundations of Parliamentary Democracy in Lesotho – the Constitution
- Representation and Participation – the sensitive balance!
- Appraising the Avenues of Participation in Lesotho Parliament
- Revisiting the debate about the functions of parliament/MPs
- Conclusion
The constitution of Lesotho establishes the country as ‘a sovereign democratic Kingdom’ (sec 1(1)).

Section 2 further pontificates that the constitution is ‘the supreme law of Lesotho’.

So the confluence of these two sections read together establishes the Kingdom as a constitutional democracy.
If then the Kingdom is established as a constitutional democracy, it calls for a sensitive balance between majoritarianism (democracy) and restriction (constitutionalism)

Many a time this balance eludes us here in Lesotho.

We tend to over-emphasise majoritarianism in our parliament – thereby bordering on tyranny of the majority
For our purposes one of the most important clauses of our constitution is s 20. Section provides:

(1) Every citizen of Lesotho shall enjoy the right (a) to take part in the conduct of public affairs, *directly or through freely chosen representatives*. (b) to vote or to stand for election...

© to have access ... to the public service
Section 20 augments section 1 by expounding on the nature of democracy that Lesotho espouses. It clarifies that our democracy is both representative (indirect) and participative (direct). This too requires a very careful balance in operation. It has also eluded us many a time. No one strand is important than the other.
The Sensitive Balance!

- One of the most challenging aspects of our parliamentary democracy has been the balance between representation and participation.
- Most of the time emphasis is placed on representation (election) against participation.
- Representation has proven easier through electoral route.
- Institutionalising participation has been a great deficit of our parliamentary democracy.
Election has in recent days is inadequate to advance democracy. Therefore all public institutions are bound by the notion of participatory democracy. As one commentator puts it and Others as thus,

‘...twentieth century democracy brought about a sometimes **contradictory fusion** of the institutions of liberal state with the politics of participatory democracy’ (Luckharm 2003:16)
Public Participation has emerged as one of the prerequisites of parliamentary business in modern parliamentary practice. When impugning the legislation that is wanting in public participation the Constitutional Court of SA once said, ‘One of the basic and fundamental objectives of our constitutional democracy is to establish a democratic government... our Constitution contemplates a democracy that is representative and that also contains elements of participatory democracy’ (Matatiele Municipality and Others v The President of the Republic of South Africa and Others 2006 (5) BCLR 622(CC).
Avenues of Public Participation

- The new parliamentary practice regime ushered-in by the new standing orders has gone long way in opening up the avenues of public participation.
- However, more can (and indeed should) be done to give more meaning to some of these avenues
Committee system

- Committees hold a lot of potential for public participation.
- However, due to resources and legislative framework, committees still lack an institutionalised process of reaching-out.
- Public participation is still not a *conditio sine qua non* – a prerequisite for legislative process.
- Committee system is the fertile ground for public participation.
Petition: The new practice regime allows for petitions. This is a process by which a person or a group of persons directs the attention of parliament to a certain matter. Either for parliament to intervene or to be aware of it. This avenue is still not so popular in Lesotho. Probably because it is little known.
Submission: This is a process by which interested groups or individuals submit a perspective or opinion on a certain parliamentary process under consideration eg Bill, Budget, Motion etc.

This process has only been popular with budgetary processes only, and only for those groups of the society that have been invited.

It has also been popular with controversial Bills like the Land Bill, 2010 and Education Bill.
Constituency MPs offices

- The decentralised offices of MPs in the constituencies also hold a lot of potential for public participation. Even countries that are not using the constituency-based electoral system have found a need to decentralise parliament. e.g. SA is introducing the Parliamentary Democracy Offices (PDOs).
These offices in Lesotho have largely been perceived as partisan thereby threatening free flow of engagement between the MP and the constituents.

Perhaps these offices can be strengthened by:

(a) Strengthening support to them through the office of Clerk – Making them direct offices of parliament (decentralisation of parliament)

(b) Holding them accountable (planning, reporting etc)
Revisiting the debate about the role of Parliament

- Our political system being cast on Westminster, the parliament is the bedrock of the system. Our system is parliamentary in that our *election* is parliamentary, our government (*executive*) is parliamentary, our *Prime Minister* is parliamentary, even our *King* is parliamentary.
- Therefore parliament is central to our political system
The functions of parliaments in a democracy have been a subject for considerable debate in contemporary parliamentary discourse in Lesotho. But I always take comfort in the statement of Deputy Chief Justice of Papua New Guinea Mr Justice Kapi, when saying:

Every member of the Parliament represents the interests of the common people including the unemployed person living in the squatter settlement in Port Moresby to the ordinary subsistence farmer living in a remote village in the outback. The Parliament is there to serve the interests of the people.
The statement obviously gives parliament the widest mandate. So the parliament is the centre of the political life of Westminster constitutional democracy like it is the case in Lesotho.

In essence, no political issue in a country, it be roads, health, water schools etc can and should escape the touch of parliament.
The Conflict of Views (GPR, 2012)

In the opinion of parliamentarians:
- Law-making: 52.3%
- Holding government to account: 17.2%
- Financial oversight: 6.9%
- Supporting political party policy: 6.9%
- Solving constituents’ problems: 6.9%
- Promoting the interests and economy of a constituency: 3.8%
- Working with civil society organizations: 3.8%
- Other: 1.9%

In the opinion of citizens:
- Law-making: 20.3%
- Holding government to account: 16.2%
- Financial oversight: 6.0%
- Supporting political party policy: 1.5%
- Solving constituents’ problems: 1.5%
- Promoting the interests and economy of a constituency: 13.1%
- Working with civil society organizations: 4.3%
- Other: 2.2%
In its broad political representation mandate, the following have been identified as the methods through which parliament exercises its broad political mandate:

1. **Providing Personnel to Government:** By Westminster constitutional conventions, ministers and Prime Minister are drawn from parliament
2. Legitimization:

- The parliament legitimizes government policy by assenting to government measures. This measures enjoy general acceptability by virtue of having been endorsed by country’s elected chamber.
- Secondly, parliament legitimizes government itself. Government derives its primary political legitimacy from being constituted by parliament.
Thirdly, parliament legitimizes public debate by providing an authoritative outlet for the expression of different views and tensions in a society. e.g Land debate.

3. Scrutiny and Influence: Parliament by reason of the doctrine of separation of powers, it does not make policy. Instead parliament scrutinizes and influences policy.
Parliament scrutiny and influence can be seen at two levels – macro and micro levels.

At macro level parliament is expected to subject measures of public policy embodied in legislative Bills or in executive actions to scrutiny and influence before assenting.

At Micro level Parliament is expected to scrutinize and respond to the effects of policy on the communities. This function is best discharged through Members as representatives of constituencies. These advantages MPs as policy resource persons.
Functions...

- Members represent constituencies and seek to defend and pursue the interests of their constituents and groups within their constituencies.
- Whereas at macro level MPs will be concerned to debate the public policy in general, usually within the party ideology, at micro level they are more concerned with the practical implications of policy on their constituents.
4. **Other Subsidiary Functions.** Because of its nature as the repository of political legitimacy in a country parliament has come to discharge other political functions such as:

- Appropriating public funds (Budget allocation)
- Receiving Reports of oversight bodies (Ombudsman etc)
- Appointing Heads of Public Institutions
- Hosting high profile state visits
- Endorsing foreign policy and international agreements
Like it is the case across the globe, 21st Century has brought fresh challenges to parliamentary democracy.

Traditional conceptions of ‘representation’ have come under serious strain.

Parliament of Lesotho is no exception.

Public participation is increasingly becoming indispensable in parliamentary practice.

Clearly there is not going to be the ‘one-size-fits-all’ model – innovative ways of participation will have to be employed.