



**AFRICAN DEVELOPMENT BANK  
AFRICAN DEVELOPMENT FUND**



## **KINGDOM OF LESOTHO**

### **COUNTRY GOVERNANCE PROFILE**

**COUNTRY DEPARTMENT  
North, East & South Region  
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## **Table of Contents**

|                                                                                                      |              |
|------------------------------------------------------------------------------------------------------|--------------|
| <b>EXECUTIVE SUMMARY.....</b>                                                                        | <b>i-iii</b> |
| <b>I. INTRODUCTION.....</b>                                                                          | <b>1</b>     |
| 1.1 Preamble.....                                                                                    | 1            |
| 1.2 Background.....                                                                                  | 1            |
| <b>II. AN ASSESSMENT OF MAJOR GOVERNANCE ISSUES IN LESOTHO.....</b>                                  | <b>3</b>     |
| 2.1 Accountability.....                                                                              | 4            |
| 2.2 Transparency.....                                                                                | 19           |
| 2.3 Stakeholders' Participation.....                                                                 | 21           |
| 2.4 Legal and Judicial Systems.....                                                                  | 27           |
| 2.5 Combating Corruption and Money Laundering.....                                                   | 32           |
| <b>III. GOVERNMENT'S GOVERNANCE AGENDA.....</b>                                                      | <b>35</b>    |
| <b>IV. DONOR COORDINATION IN GOVERNANCE AND POTENTIAL AREAS<br/>FOR BANK GROUP INTERVENTION.....</b> | <b>37</b>    |
| 4.1 Donor Coordination in Governance.....                                                            | 37           |
| 4.2 Some Specific Donor Interventions.....                                                           | 38           |
| 4.3 Previous Bank Group Interventions in Governance.....                                             | 40           |
| 4.4 Potential Areas for Bank Intervention.....                                                       | 40           |
| <b>V. CONCLUSIONS AND RECOMMENDATIONS.....</b>                                                       | <b>41</b>    |
| 5.1 Conclusion                                                                                       | 41           |
| 5.2 Recommendations                                                                                  | 41           |

## **List of Tables**

|         |   |                                                                       |
|---------|---|-----------------------------------------------------------------------|
| Table 1 | : | Governance Indicators for Selected African Countries                  |
| Table 2 | : | Transparency International Corruption Perceptions Index (CPI) 2005    |
| Table 3 | : | Areas of Interventions on good Governance by Key Development Partners |

## **Boxes**

|       |   |                                                          |
|-------|---|----------------------------------------------------------|
| Box 1 | : | Highlights of Lesotho's Economic Setting                 |
| Box 2 | : | Human Resource Capacity Constraints in the Civil Service |
| Box 3 | : | Public Sector Improvement and Reform Programme           |

## **Annexes**

|         |   |                  |
|---------|---|------------------|
| Annex 1 | : | List of Statutes |
| Annex 2 | : | References       |

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### **Acronyms and Abbreviations**

|         |   |                                                               |
|---------|---|---------------------------------------------------------------|
| ACCA    | : | Association of Chartered Certified Accountants                |
| ADR     | : | Alternative Dispute Resolution                                |
| AIDS    | : | Acquired Immuno deficiency Syndrome                           |
| AML/CFT | : | Anti-Money Laundering and Combating Financing of Terrorism    |
| BCP     | : | Basotholand Congress Party                                    |
| BLNS    | : | Botswana, Lesotho, Namibia, Swaziland                         |
| BNP     | : | Basotho National Party                                        |
| BSL     | : | Bureau of Statistics of Lesotho                               |
| CAAT    | : | Computer Assisted Audit Techniques                            |
| CBEP    | : | Capacity Building in Economic Planning Project                |
| CBOs    | : | Community Based Organisations                                 |
| CEDAW   | : | Convention on the Elimination of Discrimination Against Women |
| CGP     | : | Country Governance Profile                                    |
| CMA     | : | Common Monetary Area                                          |
| CPI     | : | Corruption Perceptions Index                                  |
| CSOs    | : | Civil Society Organisations                                   |
| CSP     | : | Country Strategy Paper                                        |
| CTB     | : | Central Tender Board                                          |
| DCEO    | : | Directorate on Corruption and Economic Offences               |
| DCI     | : | Development Cooperation Ireland                               |
| DDPR    | : | Directorate of Dispute Prevention and Resolution              |
| DfID    | : | United Kingdom's Department for International Development     |
| EDAL    | : | European Donor Agencies                                       |
| ESAAMLG | : | Eastern and Southern Africa Anti-Money Laundering Group       |
| EU      | : | European Union                                                |
| FATF    | : | Financial Action Task Force                                   |
| FIA     | : | Financial Institutions Act                                    |
| FPTP    | : | First-Past-The-Post                                           |
| GTZ/KfW | : | German Technical Assistance/Kreditanstalt fur Wiederaufbau    |
| GoL     | : | Government of the Kingdom of Lesotho                          |
| GOLFIS  | : | Government of Lesotho Financial Information System            |
| HIV     | : | Human Immuno Deficiency Virus                                 |
| IASC    | : | International Accounting Standards Committee                  |
| IEC     | : | Independence Electoral Commission                             |
| IFAC    | : | International Federation of Accountant                        |
| IFMIS   | : | Integrated Financial Management Information System            |
| ILO     | : | International Labour Organisation                             |
| INTOSAI | : | International Organisation of Supreme Audit Institutions      |
| JSC     | : | Judicial Service Commission                                   |
| LADB    | : | Lesotho Agricultural Development Bank                         |
| LCCI    | : | Lesotho Chamber of Commerce and Industry                      |
| LCD     | : | Lesotho Congress for Democracy                                |
| LCN     | : | Lesotho Council of NGOs                                       |

|          |   |                                                           |
|----------|---|-----------------------------------------------------------|
| LEC      | : | Lesotho Electricity Corporation                           |
| LIA      | : | Lesotho Institute of Accountants                          |
| LLRC     | : | Lesotho Law Reform Commission                             |
| LTDC     | : | Lesotho Tourism Development Corporation                   |
| LRA      | : | Lesotho Revenue Authority                                 |
| LS       | : | Law Society                                               |
| MMP      | : | Mixed Member Proportional                                 |
| MOFDP    | : | Ministry of Finance and Development Planning              |
| MOLG     | : | Ministry of Local Government                              |
| MOPWT    | : | Ministry of Public Works and Transport                    |
| MoU      | : | Memorandum of Understanding                               |
| MTEF     | : | Medium Term Expenditure Framework                         |
| NGOs     | : | Non Governmental Organisations                            |
| NUL      | : | National University of Lesotho                            |
| PAC      | : | Public Accounts Committee                                 |
| PFM      | : | Public Financial Management                               |
| PRS      | : | Poverty Reduction Strategy                                |
| PSIRP    | : | Public Service Improvement and Reform Programme           |
| RMCs     | : | Regional Member Countries                                 |
| RSA      | : | Republic of South Africa                                  |
| SACU     | : | Southern Africa Customs Union                             |
| SADC     | : | Southern African Development Community                    |
| SCOs     | : | Civil Society Organisations                               |
| UK       | : | United Kingdom                                            |
| UNCITRAL | : | United Nations Commission and International Trade and Law |
| UNDP     | : | United Nations Development Programme                      |
| WTO      | : | World Trade Organisation                                  |

## EXECUTIVE SUMMARY

1. **Introduction:** The promotion of good governance in Regional Member Countries (RMCs) has become central in the implementation of the Bank Group's mandate of poverty reduction. Both the Bank Group Vision Statement and Strategic Plan for the period 2003-2007 emphasise the promotion of good governance in RMCs as one of the important building blocks for the fight against poverty. In order to effectively implement the Bank Group's Policy on Governance, the production of Country Governance Profile (CGPs) has emerged as the main analytical instrument for operationalising the Bank's policy agenda. The overall objective of the Lesotho CGP is to present a comprehensive analysis of major governance issues in the country and to identify possible areas for the Bank Group's intervention.
2. **Background:** Lesotho is a constitutional monarchy, with the King as Head of State, the Prime Minister as Head of Government and a dual legal system – consisting of traditional customary law and the common Law. The legislative branch is bicameral with a 120-seat member Parliament and a 55-seat Senate of which 22 are permanently held by principal chiefs and 11 other senators who are appointed to represent the wider interests of society. The judiciary, which is the arm of Government headed by a Chief Justice, consists of the Court of Appeal, as the highest court, the High Court, Magistrates' Courts, and the local courts. While the country's nascent democratic institutions are gradually evolving, its political stability and tolerance have been frequently tested. Although political stability has been achieved through the adoption of a relatively more inclusive electoral system as of 2003, strengthening the democratic institutions and culture remains a challenge to the country.
3. **Assessment of Governance Issues:** Five elements of good governance are emphasised in the Bank Group's Policy on Good Governance. They are accountability, transparency, combating corruption, stakeholder participation, and legal and judicial framework.
4. Concerning financial accountability, the current budgeting system in Lesotho lacks an effective system for monitoring and evaluation and expenditure control. Second, the performance of the office of the Accountant General has in the recent past been unsatisfactory. For five consecutive years, between 1996/97 and 2000/01, the Accountant General failed to prepare the public accounts. Under the insistence of the Public Accounts Committee (PAC), the accounts for the period 2001/02 and 2002/03 have, however, been prepared and audited and work to clear the backlog is set to commence in 2006. With regard to public sector auditing, although from a legal perspective the Auditor General's office is well established with its independence recognised in Lesotho's legislation, including the Constitution, the primary law setting up the institution, the Audit Act of 1973 is quite outdated and needs to be revised. Furthermore, the operations of both the offices of the Accountant General and the Auditor General have been hampered by inadequate institutional capacity.
5. In the area of public procurement, a number of weaknesses still exist including a weak and outdated legislative framework, over-centralization of procurement within the Central Tender Board and inadequate capacity of the Central Tender Board (CTB), which compromise its transparency. It is, however, noteworthy that through the Public Sector Improvement and Reform Programme (PSIRP), the Government of the Kingdom of Lesotho (GoL) has already started

undertaking measures to enhance public financial management systems by way of: (i) developing and implementing integrated planning and budgeting processes based around Medium Term Expenditure Framework (MTEF) approach; (ii) strengthening the Accountant General's office through reorganisation, training and replacement of the financial management system; (iii) strengthening the role of oversight through a new Audit Act that is ready for submission to Cabinet; and, (iv) fast tracking reforms of the procurement system to introduce standard procurement documentation, decentralise the procurement function to line ministries and transform the CTB to a regulatory body.

6. With regard to transparency, access to information, although it is a fundamental human right for all *Basotho*, loopholes in the country's legal framework on financial management, poor transmission of information and poor coordination of institutions involved in financial management constrain access. In addition to this, Civil Society Organisations and the private sector in Lesotho are weak and hardly have the capacity to engage government on its programmes and intentions.

7. As for stakeholders' participation, Lesotho is gradually implementing a decentralised system of functions, resources and authority from the central government to local authorities in order to improve the coordination of the public service sector and promote popular participation. Against this background, the first elections of local government structures were conducted in April 2005. However, GoL faces challenges in implementing the decentralisation process in terms of lack of capacity at the Ministry of Local Government level to monitor and advise the local authorities effectively and lack of additional sources of revenue for the local authorities.

8. Concerning private sector legal framework, a number of impediments to private sector development still prevail in the country. This is essentially due to the fact that the Companies Act remains archaic and the procedures it provides for the registration of firms are unnecessarily long and complex. Further, some of the Acts that regulate and facilitate industrial development are not consistent with the government's shift to a market-based economy. In addition to this, investors face certain cumbersome administrative obstacles and the Land Act does not allow foreigners to own land. There are no debt recovery laws and a commercial court in Lesotho. In response to the need for Lesotho to find ways of eliminating structural and institutional impediments to the growth of the private sector, the government is reviewing its whole private sector development strategy.

9. Regarding the legal and judicial systems, there are concerns that the judiciary is slow in response and people generally lack confidence in the capacity of law enforcement agencies to investigate crimes, enforce the law and protect the Constitution. Although a commercial division of the High Court was established in 2001, it was short-lived. Commercial cases are, thus, heard in regular courts that are already bogged down with backlogs, an issue that is of grave concern to the business community. The government and the Central Bank of Lesotho (CBL) are, however, working together to improve the functioning of the Commercial Court to facilitate litigation in cases of default and, thereby, enhance access to credit.

10. Although corruption is said to be present in Lesotho, it is not endemic. The enactment of the Prevention of Corruption and Economic Offences Act 1999 and the subsequent establishment of the Directorate on Corruption and Economic Offences (DCEO) in April 2003 attest to GoL's

commitment to fight corruption. However, this law has shortcomings and the sanctions it provides for corruption and corrupt practices, which include fines and terms of imprisonment, are grossly inadequate. Added to this is the fact that DCEO is understaffed and inadequately funded, which hamper its integrity and effectiveness. In order to improve the effectiveness of DCEO, Cabinet has approved an amendment to the Prevention of Corruption and Economic Offences Act and a Money Laundering Bill, which are awaiting the submission to Parliament.

11. **Government's Governance Agenda:** Governance issues ride high on the current government's agenda and governance is one of the main pillars of both the PRS and the National Vision for Lesotho for the realisation of socio-economic development in the country. The main objectives are to deepen democracy, improve governance at all levels, increase safety and security and improve the efficiency of the justice system. In order to address governance and other challenges in the country, the government has embarked on an ambitious PSIRP, which is being supported by some development partners, including DCI, DfID, EU and GTZ/KfW. The programme is a multi-dimensional reform package and its objectives are to improve the effectiveness and efficiency of public service delivery and enhance public financial management in order to facilitate economic growth and reduce poverty.

12. The Law Commission is also reviewing and updating several outdated laws with a view to modernising and bringing them in accord with current conditions. These include,; the Judicial Education Institute Bill that is intended to provide professional training to judicial officers; the Council on Law Reporting Bill; and the Administration of Justice Bill that seeks to improve the role of the JSC in the appointment of the Chief Justice and the President of the Court of Appeal and envisages the appointment of an Administrator of the judiciary in order to remove the judiciary from direct political control.

13. **Potential Areas for Bank Intervention:** It can be observed that Lesotho faces a number of challenges in the overall governance framework. The potential proposed areas for Bank Group intervention to enhance governance in Lesotho are determined on the basis of the priority needs identified in this report. The selected areas would take into account the fact that the Bank's focus would be selective and closely aligned with Lesotho's PRS. The PSIRP provides the ideal framework within which the Bank could channel such intervention in Lesotho. These include the strengthening of public financial management and deepening decentralisation.

14. **Conclusion and Recommendations:** Although the implementation of reforms has been slow in most areas, the Government of Lesotho has shown its commitment to promoting good governance. The principles of good governance are included in the country's PRS, which recognises that governance is one of the missing and weak links in the government's efforts at poverty reduction. While the recent initiatives by GoL to improve governance in Lesotho are commendable, there is scope for further intervention. It is, therefore, recommended that the Bank should continue to support the Government of Lesotho's efforts to implement its good governance agenda by: designing a programme that would support key governance issues in the country; engaging government in dialogue on governance challenges; and collaborating with other development partners in the area of governance.

## **I. INTRODUCTION**

### **1.1 Preamble**

1.1.1 The promotion of good governance in Regional Member Countries (RMCs) has become central in the implementation of the Bank Group's mandate of poverty reduction. The Bank Group's Policy on Governance was adopted in 1999 with a central message that it is critical to incorporate good governance in the Bank's activities. Both the Bank Group Vision Statement and Strategic Plan for the period 2003-2007 emphasise the promotion of good governance in RMCs as one of the important building blocks for the fight against poverty. Strengthening the framework for good governance is, therefore, an important focus of the operational activities of the Bank in support of the poverty reduction efforts in RMCs.

1.1.2 In order to effectively implement the Bank Group's Policy on Governance, the production of Country Governance Profiles (CGPs) has emerged as the main analytical instrument for operationalising the Bank's policy agenda. The CGP is intended as a tool for diagnosing the governance situation in RMCs with a view to improving the focus and effectiveness of Bank Group assistance for good governance. It also aims at enriching Bank Group's dialogue with RMCs on key governance issues and providing a valuable input into the preparation of the Country Strategy Paper (CSP). The overall objective of the Lesotho CGP is, therefore, to provide a comprehensive analysis of major governance issues that Lesotho faces and to identify the most appropriate areas for the Bank Group's intervention. It was prepared in a participatory manner based on the findings of an ADB CGP preparation mission to Lesotho that was held in February and December 2005, and existing reports and literature on Lesotho including UNDP Country Programme for the Kingdom of Lesotho (2005-2007), Kingdom of Lesotho's Poverty Reduction Strategy (PRS) 2004-2005 – 2006-2007, National Vision for Lesotho 2020, among others.

### **1.2 Background**

1.2.1 Lesotho is a mountainous country and has the unique characteristic of being completely surrounded by its neighbour, South Africa. Known as the mountain kingdom, its size is approximately 30,350 square kilometres of which only 13% is cultivable. The country was placed under British protection in 1868, became the protectorate of Basutoland, which was later annexed to the Cape colony. After nearly 100 years of British rule, Basutoland was renamed the Kingdom of Lesotho upon attaining political independence in October 1966. The Constitution provides for a clear separation of powers among the legislative, executive and judiciary branches of government. The country is a constitutional monarchy, with the King as Head of State, an elected Prime Minister as Head of Government, and a dual legal system consisting of traditional customary law and the common law. Succession to the throne of Lesotho is regulated by the Council of Chiefs. The executive authority is vested in the King who, subject to the provisions of the Constitution, exercises his powers through officers or authorities of the government of the Kingdom of Lesotho (GoL). The legislative branch is bicameral with a 120-seat member Parliament and a 55-seat Senate, of which 22 are permanently held by principal chiefs and 11 other senators who are appointed to represent the wider interests of society. The judiciary, which

is the arm of government headed by a Chief Justice, consists of the Court of Appeal headed by a President, as the highest court, the High Court, Magistrates' Courts, and the local courts.

**Box 1: Highlights of Lesotho's Economic Setting**

The Kingdom of Lesotho is a small, mountainous, landlocked country situated in Southern Africa, which is completely surrounded by the Republic of South Africa (RSA). Its population was estimated at 2.3 million inhabitants and GNP per capita at about US\$ 580 in 2003. Its land area is approximately 30,350 square kilometres of which about 10 percent is cultivable. The political system is a constitutional monarchy in which the King is the Head of State. The executive powers are vested in the Prime Minister, who is Head of Government. The country's economy is highly dependent on an insufficiently diversified textile-based manufacturing sector and on remittances from mineworkers in RSA. Lesotho has made significant progress in achieving macroeconomic stability, structural reforms and attracting Foreign Direct Investment (FDI). However, the policy instruments and options for the country are largely influenced by its small base of production, limited export capacity and strong regional linkages. The country, which until the 1990s was highly dependent on remittances from mineworkers in South Africa, is now one of the largest exporters of textiles and clothing in Sub-Saharan Africa due to the opportunities presented by the United States' African Growth Opportunities Act (AGOA) and the industrial sector has become the main source of economic growth and employment. Lesotho has continued to cooperate closely with the IMF and has implemented the following programmes since 1988: (i) Structural Adjustment Facility (SAF, 1988-1991); Enhanced Structural Adjustment Facility (ESAF, 1991-1994); Stand-by Arrangements (SBAs, 1994-1995; 1995-1996; and 1996-1997); and Poverty Reduction and Growth Facility (PRGF, 2001-2004). The country has made significant progress in achieving macroeconomic stability, attracting FDI, privatising major parastatals, improving monetary policy implementation and strengthening the banking system. However, Lesotho's efforts to achieve its medium-term growth targets are constrained by a number of factors, including: the phasing out of the quota regime under the World Trade Organisation (WTO) Agreement and Textiles and Clothing in 2005; excessive dependency on the declining Southern Africa Customs Unions (SACU)<sup>1</sup> customs receipts; declining remittances; recurrent droughts; inadequate skilled technical and managerial manpower; weak public financial management; and the rising toll of the HIV/AIDS pandemic. According to available data, the incidence of poverty is high in the country with about 60% of the population living below the poverty line. The incidence of poverty is very high in the rural and mountainous areas.

1.2.2 Political developments in Lesotho since independence have been a major source of instability with negative consequences on economic and human development. The country endured a number of years of undemocratic rule from 1970 to 1986 and military rule from 1986 to 1993. Under military leadership from 1986 to 1993, the country returned to multi-party in 1993 with the election of a government led by the Basotho Congress Party (BCP). The BCP split in 1997 and the majority of the members of Parliament followed the prime minister into a new party, the Lesotho Congress for Democracy (LCD). The last political unrest witnessed in the country came in the wake of the 1998 parliamentary elections, when the LCD won all but one of the seats contested. Although the elections in 1998 were certified as "free and fair", opposition parties, led by the Basotho National Party (BNP), refused to accept the results and mobilised their supporters to oppose them. The political unrest that ensued led to looting and burning of businesses and public property in Maseru. It was quelled by Southern African Development Community (SADC) troops from South Africa and Botswana.

1.2.3 Experience in the 1990s revealed that the electoral model was itself inappropriate. Lesotho had been using the first-past-the-post electoral model (FPTP), which did not translate the national vote into a proportionate share of seats in the National Assembly. Consequently, an Interim Political Authority (IPA), set up by political leaders following the 1998 post-electoral

<sup>1</sup> Lesotho is a member of SACU, which governs trade for the member countries of Botswana, Lesotho, Swaziland, Namibia and South Africa. The Union has a common external tariff and guarantees free movement of goods amongst member countries. SACU's revenues were 42% of government revenue in FY 2002/03.

conflict, recommended the adoption of a new mixed-member-proportional electoral system<sup>2</sup> that combines FPTP and Proportional Representation (PR) in order to ensure that the national vote approximates the proportion of seats that each party receives in the National Assembly. Lesotho holds its legislative election every five years and its next parliamentary elections are scheduled for May 2007. The most recent elections held in May 2002, which were won by Lesotho Congress for Democracy, were based on the new and fairer electoral model. The elections were well received internationally and signalled a strong push for democracy that provides a sound basis for political stability. This notwithstanding, strengthening the democratic institutions and culture remains a challenge to the country.

#### **Box 2: Human Resource Capacity Constraints in the Civil Service**

In Lesotho, there are supply gaps of qualified and trained personnel in all sectors of the economy, especially in the civil service. Besides, those who are employed generally lack the necessary skills. One of the major limitations for Lesotho to achieve its poverty reduction goals, therefore, emanates from inadequate skilled and qualified technical, non-technical and managerial manpower, which contributes to the poor level of public service delivery. Given that the country is completely surrounded by the Republic of South Africa (RSA), which offers better-paid jobs than it, the country's educated, skilled and experienced professionals have found it easier and more attractive to migrate to that country. This problem is worse in the civil service because, even locally, it cannot offer remuneration and conditions of service to match those in the private sector and parastatals. Furthermore, although the civil service guarantees job security for its employees, there are no mechanisms to instil the required performance standards. The civil service also is bottom heavy with a large number of support staff and very few professionals and decision makers.

The public service in Lesotho, therefore, still needs to undergo comprehensive reform aimed at improving service delivery. In order to retain its educated and skilled personnel, the Government will also need to improve the remuneration and conditions of service for civil servants and to introduce tools that would ensure the required performance of civil servants. Consequently, the Government is undertaking reforms, most notably, within the framework of the Public Sector Improvement and Reform Programme (PSIRP), aimed at redressing such shortcomings. In addition, a new Public Sector Act and an Amendment to the Act were passed by Parliament in 2005 with the objective of developing and maintaining a stable, efficient and effectively managed public service. It is worth noting that the civil service in Lesotho, with about 35,000 employees which translates into 4 percent of the total formal employment, cannot be said to be over-bloated compared with neighbouring countries. This should be compared with South Africa whose civil service comprises 12 percent of total formal employment. The budget spent on civil service wages in Lesotho is 13 percent of GDP, compared with an average 12 percent of GDP in other SACU countries<sup>3</sup>.

## **II. AN ASSESSMENT OF MAJOR GOVERNANCE ISSUES IN LESOTHO**

Five elements of good governance are emphasised in the Bank Group Policy on Good Governance, namely: accountability; transparency; combating corruption; stakeholder participation; and legal and judicial framework. This paper's assessment of the status of governance in Lesotho is, therefore, organized and highlighted along these elements. Based on this assessment, it can be concluded that, albeit haltingly, Lesotho has made good progress in creating institutions necessary for good governance in general and political accountability in particular. Indeed, Lesotho is one of the countries selected by the United States, together with 15

<sup>2</sup> The mixed-member-proportional electoral system allocated 80 seats under the FPTP method and 40 seats under the proportional representation.

<sup>3</sup> IMF, Sixth Review Under PRGF, July 2004.

other countries from a list of 77 low-income countries, as eligible for the Millennium Challenge Account assistance. Countries were selected on the basis of democracy, respect of human rights and the rule of law and efforts in human development, as well as implementing policies that promote sustainable economic growth through creating a better legal and regulatory environment. The extent to which Lesotho compares with other selected countries on various governance indicators is shown in Table 1 below. It can be observed from the table that while Lesotho ranks above the average for Sub-Saharan African countries on the concerned governance indicators in terms of percentile rankings, the country's rankings have not improved much between 1998 and 2004. The country, therefore, still faces a number of challenges to enhance the framework for good governance and, consequently, the promotion of good governance has been included as one of the priorities of the PRS.

**Table 1: Governance Indicators for Selected African Countries**

|                 | <b>Governance Indicator – Percentile Rank (0-100)*</b> |             |                            |             |                                 |             |                           |             |                    |             |
|-----------------|--------------------------------------------------------|-------------|----------------------------|-------------|---------------------------------|-------------|---------------------------|-------------|--------------------|-------------|
|                 | <b>Voice &amp; Accountability</b>                      |             | <b>Political Stability</b> |             | <b>Government Effectiveness</b> |             | <b>Regulatory Quality</b> |             | <b>Rule of Law</b> |             |
| <b>Country</b>  | <b>1998</b>                                            | <b>2004</b> | <b>1998</b>                | <b>2004</b> | <b>1998</b>                     | <b>2004</b> | <b>1998</b>               | <b>2004</b> | <b>1998</b>        | <b>2004</b> |
| Botswana        | 70.7                                                   | 68.9        | 79.4                       | 69.4        | 75.4                            | 76.9        | 72.2                      | 79.8        | 79.1               | 70.5        |
| <b>Lesotho</b>  | <b>50.3</b>                                            | <b>54.9</b> | <b>60.6</b>                | <b>54.9</b> | <b>44.8</b>                     | <b>42.3</b> | <b>45.1</b>               | <b>42.4</b> | <b>54.6</b>        | <b>53.1</b> |
| Malawi          | 47.1                                                   | 33.3        | 51.5                       | 35.9        | 27.3                            | 22.1        | 46.2                      | 27.6        | 35.7               | 45.4        |
| Mozambique      | 47.1                                                   | 43.2        | 22.4                       | 41.7        | 22.4                            | 41.7        | 34.8                      | 40.9        | 11.4               | 34.8        |
| South Africa    | 72.3                                                   | 72.3        | 21.2                       | 38.3        | 64.5                            | 74.5        | 60.3                      | 64.5        | 67.0               | 60.9        |
| Swaziland       | 20.4                                                   | 10.2        | 44.2                       | 53.9        | 29.0                            | 31.3        | 51.6                      | 37.9        | 53.5               | 19.3        |
| Tanzania        | 36.1                                                   | 38.3        | 62.4                       | 35.0        | 38.8                            | 40.4        | 51.6                      | 29.1        | 48.6               | 39.6        |
| Zambia          | 46.6                                                   | 37.4        | 38.8                       | 41.3        | 40.4                            | 20.7        | 59.8                      | 31.0        | 42.2               | 38.2        |
| Zimbabwe        | 27.7                                                   | 9.2         | 32.1                       | 4.4         | 9.8                             | 10.6        | 32.1                      | 1.5         | 61.1               | 3.9         |
| Sub-Saharan Av. | 34.2                                                   | 32.7        | 32.9                       | 32.8        | 34.4                            | 27.6        | 32.9                      | 29.5        | 26.7               | 23.0        |
| Nigeria         | 9.4                                                    | 30.1        | 15.8                       | 4.9         | 6.6                             | 14.4        | 27.2                      | 9.4         | 4.3                | 4.8         |
| Chad            | 24.6                                                   | 18.9        | 9.7                        | 12.6        | 30.6                            | 7.7         | 22.8                      | 19.2        | 13.5               | 10.1        |

Source: D. Kaufmann, A. Kraay and M. Mastruzzi 2005: Governance Matters IV: Governance Indicators for 1996-2004, World Bank Website ([www.worldbank.org](http://www.worldbank.org)).

\* The figures indicate the percentile rank on each governance indicator. Percentile rank indicates the percentage of countries worldwide that rate below each country. Higher values imply better governance ratings.

## 2.1 Accountability

2.1.1 Accountability is the obligation to render an account for a conferred responsibility. It is in a sense a reciprocal relationship between those who have been entrusted with certain responsibilities and those who expect those responsibilities to be fulfilled. Public accountability, thus, requires public officials to respond to the requirements of the citizens without prejudice. There are various forms of accountability, but three are important in the current context. These are political, financial and administrative accountability. Political accountability relates to holding those elected into government, including Parliament, responsible for their actions. Financial (budgetary) accountability involves holding designated officials responsible for the use and control of government funds, assets and properties while administrative accountability involves holding public officials responsible for tasks and assignments bestowed on them.

## Political and Administrative Accountability

2.1.2 The country's Constitution, in terms of which a democratically elected civilian government acceded to power in 1993, was a major achievement in the country's quest to establish a working democracy after many years of unconstitutional rule. Since its enactment in 1993, the Constitution has proved to be a major instrument for promoting transparency and accountability in the conduct of public affairs in Lesotho.

2.1.3 Regular "free and fair" elections, although not a perfect gauge of good governance, are indicators of achievement in Lesotho's governance record since they provide an opportunity for the people to call into account the record of the government. Lesotho has so far had three national elections - in 1993, 1998 and 2002 - in which the *Basotho*<sup>4</sup> have come out to vote for a government of their choice. For the ordinary citizens and the various organizations of civil society and the private sector, the elections have provided a momentous occasion to influence the shape of the government policies in Lesotho.

2.1.4 Although Lesotho has committed itself to strengthening the principles of transparency, accountability and participation in the affairs of government, the country's democracy remains fragile and is in need for consolidation. The country is still haunted by its history of military and civil society actors and the opposition in Parliament generally lack the muscle to hold politicians and civil servants accountable or do not have access to the means to expose government shortcomings. Worse still is the fact that social consciousness about government use of its power is very low and the *Basotho* society lacks a formidable 'civic culture', which is important in any democracy. There is, thus, need for the consolidation of the democratic process in Lesotho and strengthening of all governance institutions, including civil society organisations (CSOs).

2.1.5 To be more responsive and accountable to the needs of the *Basotho*, GoL is implementing a programme of decentralization (see section 2.3 on participation). The current government is highly centralized in Maseru and nine other districts (Butha-Buthe, Leribe, Teyateyaneng, Mafeteng, Maseru's Hoek, Quthing, Qacha's Nek, Thaba-Tseka and Mokhotlong). The intention of the government is to further devolve power to local authorities/councils. The policy framework to facilitate implementation of local government is in place. The Local Government Act 1997 (amended in 2004) outlines the institutional framework for the envisaged local government system and the Local Government Elections Act 1998 (amended in 2004) provides the procedures, rules and regulations for the conduct of elections. Elections for the new local government structures took place in April 2005. The Ministry of Local Government is currently making efforts towards preparing communities to participate in the local government structures. However, until now, the government is yet to come up with a comprehensive plan for fiscal decentralisation. Since decentralisation is meaningful if financial responsibility is also bestowed on the councils, there is, thus, an urgent need for the government to work out modalities of fiscal decentralisation, including mechanisms for accountability and transparency for funds to be disbursed to the new institutions.

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<sup>4</sup> *Basotho* are people of Lesotho.

## Financial accountability

### *The budget process*

2.1.6 A government uses the annual budget to operationalize its policies and implement its plans. In Lesotho, the preparation and presentation of the budget is a constitutional requirement as stipulated in Section 112 of the Constitution and the Finance Act provides a legislative framework for receiving, recording and reporting revenues and expenditure. National budgeting in the country is an annual process made up of four critical stages: budget formulation, implementation, monitoring and evaluation. Budget formulation entails the preparation and consolidation of budget estimates based on sector ministries submissions, which are guided by macroeconomic guidelines provided by the Ministry of Finance and Development Planning (MOFDP). Once all the estimates are received, the ministry prepares a budget estimate book that is presented to the Cabinet and Parliament. In Parliament, the estimates are presented as a Budget Appropriation Bill which when passed gives the government the authority to raise revenue through a wide range of taxation measures and to incur expenditure. It is worth noting that, currently, no consultations are made between government, the private sector or the civil society organisations (CSOs) at the budget planning and preparation stage in Lesotho.

2.1.7 The next stage of the budget process is the implementation stage at which sector ministries use their budget allocations to implement set government policies spelled out in sector goals, objectives and strategies. The ministries spend their allocations only with the authority of the Treasury. In Lesotho, allocation to ministries is done on a quarterly basis. Although the flow of resources to spending ministries is, therefore, predictable, this may be quite limiting for purposes of effective execution of projects given government bureaucracy. To ensure accountability and monitoring in the usage of public funds, the sector ministries are by law required to submit monthly financial and physical progress reports to MOFDP, although this is not systematically followed. The last stage is the evaluation. At this point, the office of the Auditor General evaluates the usage of public funds after the Accountant General has produced the Public Accounts. The evaluation is supposed to take place within six months of the end of the previous financial year. The evaluation report by the Auditor General is usually submitted to Parliament and taken up by the Public Accounts Committee (PAC), Parliament's oversight body.

2.1.8 The current budgeting framework in Lesotho has a number of weaknesses. First, the annual budget is not very useful as a tool for channelling resources towards national development priorities for reducing poverty because of lack linkages between the policies, strategies, programmes and outcome targets in planning documents and those funded in the budget. Second, although the budget is fairly comprehensive in terms of the extent to which it is able to capture all central government heads and line items, there are a few issues that sometimes tend to slip through budgetary controls partly due to the problem of accounting rather than the budget process itself. Third, the recurrent and capital budgets are not fully integrated given that, until recently, there was inadequate coordination between the offices responsible for budget and planning were in two different ministries. As a result, recurrent costs of public capital projects are sometimes not being properly budgeted. Fourth, the operations of parastatals are not fully included in the government budgeting system. Fifth, although supplementary and revised budget

are common tools in the budget processes and provide flexibility in the use of public resources, wherever they are used, proper procedures and guidelines must be followed otherwise they can easily be abused. In Lesotho, supplementary and revised budgets are instituted virtually in every year and although regulations and procedures for authorising and utilising such funds are laid down, the common practice is that authority is rarely obtained before hand. Ratification has been in most cases ex-post. Contingency reserves have also largely been spent in the same way. The challenge is, thus, one of putting in place better appropriation and approval processes in the use of public funds in order to ensure that both the Cabinet and Parliament are placed in a better position to make tough budget policy choices and trade-off based on sufficient information given the limited resources. In some cases, all what is required by government is to adhere to the laid down regulations and rules.

2.1.9 As already mentioned, the budgeting process also to a large extent excludes external participation by the private sector and civil society organisations. There is currently no policy or legal framework on engaging the civil societies and the private sector, although this is contemplated within the Medium Term Expenditure Framework (MTEF) mentioned below. Also lacking in the current budgeting system in Lesotho is an effective system for monitoring and evaluation and expenditure control. Although all accounting officers are supposed to keep within the budget allocations, there are numerous cases of over-expenditure detailed in the Auditor General annual reports. Unfortunately, most finance-related legislations in Lesotho do not have enforcement clauses to deal with such non-compliance and the legal structure does not provide clarification of responsibilities. Furthermore, with the decentralisation process currently underway, there are, therefore, a number of challenges that will need to be addressed.

2.1.10 Cognisance of the need to address some of the above mentioned shortcomings, the government is already in the process of implementing a number of reforms to improve Public Financial Management (PFM) systems. Such reforms, which should lead to the development and implementation of integrated planning and budgeting processes based on the MTEF approach to the preparation of the annual budget, are being pursued by GoL in the context of one of the components, namely Improving Financial Management Accountability, of the Public Service Improvement and Reform Programme (PSIRP) (see Box 3 for details on the PSIRP). GoL adopted the three-year MTEF in September 2004 in order to provide a link between the PRS and the annual planning and budgeting processes, as well as to deepen expenditure control and management. The MTEF is being implemented gradually, commencing with the budget for the 2005/06. During the pilot phase, the government is focusing on introducing MTEF in the ministries of agriculture, education, employment, gender, health and tourism before it is rolled out to other government structures. Once fully introduced, it is envisaged that the introduction of the multi-year budget process should also enable GoL and other stakeholders to monitor pro-poor expenditures given that, currently, the existing budget classification is not sufficiently disaggregated and does not facilitate a linkage of the allocation of public resources to GoL's poverty reduction and other development objectives outlined in the PRS.

### *Accounting and Financial Reporting*

2.1.11 The preparation and submission of the annual public accounts within the stipulated time is a key component of financial accountability. The Accountant General's office is responsible

for the preparation of the accounts of GoL in accordance with Section 27 of the Finance Order 1988. The Accountant General is the head of the Treasury Department within MOFDP. The office reports directly to the ministry on all matters relating to the finances of the GoL. Like in many other countries, accounting and financial reporting is a constitutional requirement in Lesotho. At the end of each financial year, the Accountant General is responsible for the preparation of the public accounts for audit as required by the Finance Order. According to this law, the Accountant General is required, within a period of six months, to prepare all the accounts showing fully the financial position of the Consolidated Fund and other funds. The public accounts include an abstract of receipts and payments, the assets and liabilities (including pension and contingent liabilities) of the GoL at the close of the financial year, and such other statements as may be required by the National Assembly or the minister responsible for finance. Once prepared, the accounts are submitted to the Auditor General through the Principal Secretary, MOFDP.

2.1.12 Public accounting in Lesotho is carried out on cash basis. A number of senior officers in the Accountant General's office have been trained on the accrual accounting system courtesy of the International Federation of Accountant (IFAC), of which Lesotho is a member. GoL uses a semi-computerised accounting system, referred to as the Government of Lesotho Financial Information System (GOLFIS). Strictly speaking, the system is obsolete and not an accounting package and was developed specifically for GoL. The accounting system is as such not integrated with other management systems, such as budgeting and debt management. Due to the heavy reliance on manual accounting and the weaknesses of GOLFIS, the accounting system in Lesotho is susceptible to inaccuracies and delays in financial accounting and reporting. In the report of the Auditor General for the year ending 31<sup>st</sup> March 2003, a number of irregularities, which are evidence of the weaknesses of the accounting system in Lesotho, are pointed out. These include: non-reconciliation of ministries/departments accounts with Treasury/accounts; non-maintenance of proper books of accounts, weaknesses in the accounting system and controls; inadequacies of the GOLFIS; and mispostings, as well as misclassifications of expenditures.

2.1.13 The performance of the office of the Accountant General has in the recent past been weak. For five consecutive years, between 1996/97 to 2000/01, the Accountant General failed to prepare the Public Accounts for the GoL. The failure to prepare and submit public accounts for this period in effect resulted in non-accountability of parliamentary budgetary appropriations amounting to M 13, 881,064,831 (approx US\$ 2.5 billion) and M 11, 049,818,572 (approx US\$ 2 billion) in respect of capital and recurrent expenditure, respectively. Under the insistence of the PAC, the accounts for the period 2001/02 and 2002/2003 have, however, been prepared and audited. According to the Minister of Finance in his 2005/2006 budget speech to Parliament, work on the backlog is set to commence in 2005. The challenge, it seems, will be in getting reliable records to prepare the accounts given the fact that most government ministry buildings and records were burnt down in the 1998 civil strife.

2.1.14 The Accountant General's office, which is a key governance office, is currently grossly understaffed and lacks people with adequate training in accounting and record keeping. There is, therefore, need to enhance the capacity of the office to enable it to attract and retain qualified accounting staff. As part of the PFM reform programme under the PSIRP, MOFDP is taking

steps to restructure the Treasury in order to enhance its operations. The reforms also involve putting in operation a new Integrated Financial Management Information System (IFMIS), supported by appropriate Information Communication Technology infrastructure, to eventually replace the GOLFIS. Alongside extensive on-the-job training that will be undertaken as the IFMIS is being developed and put into operational, the government intends to explore options to establish a professional public sector accounting and financial management training and development programme in Lesotho.

### *Internal Control and Auditing*

2.1.15 Internal control and auditing are an integral part of a sound financial management system. They are key in the prevention of fraud and detection of error in the financial management system. These functions are perhaps the weakest and least established in the financial management structure of GoL. There is actually no established system of internal control in the financial management structure of Lesotho or specific policies and directives or laws and regulations governing this function. This renders the financial management system susceptible to errors and fraud, some of which are reported in the annual Auditor General's reports.

2.1.16 There is within the GoL an internal audit cadre headed by the Chief Internal Auditor in the Internal Audit Department based at the MOFDP. There are, however, no internal audit units in the ministries/departments and districts, meaning that the audit function is highly centralised. International best practices, however, require that in-house internal audit functions be available in each ministry to concentrate on high risk and priority areas. For the entire GoL, there are about 25 internal auditors, of whom only six meet what should be regarded as the minimum level of qualifications having recently become members of Internal Auditors Institute of South Africa. In carrying out its duties, the Internal Audit Department selects the ministries to be internally audited based on perceived risks. About seven ministries are audited per year. Generally, the auditing exercise involves the perusal of records kept and interviews with accounting officers in ministries/departments and the districts. The biggest challenge in this exercise has been finding well-kept records in ministries and departments for auditing purposes. The department at the moment carries out no pre-audits.

2.1.17 Strengthening internal control and audit system is key for sound public financial management in Lesotho. Given that there is currently no law governing the internal audit function and no established policy/regulations for internal control, perhaps the very initial step should be to put in place the legal and regulatory basis for internal control and audit, for instance, through the introduction of an Internal Audit manual and Internal Audit Charter. Decentralization of the internal audit function into ministries and institutionalisation of pre-audits is also important as a strategy for revamping internal control and auditing within the GoL. The establishment of an effective internal audit will also require extensive training in relevant areas.

### *Public Sector Auditing*

2.1.18 The audit of public accountants is a constitutional requirement provided for in Section 177 of the Lesotho Constitution and Section 5 of the Audit Act of 1973. According to these

provisions, the Auditor General is required by law to examine all the necessary accounts relating to the Consolidated Fund and other public funds and ascertain whether such reports are properly kept and that money has been expended for purposes for which it was appropriated by the National Assembly. According to Section 6 of the Audit Act 1973, this should be done within 90 days of receipt of the Public Accounts from the Accountant General.

2.1.19 As constituted, the office of the Auditor General is an independent institution within the Lesotho financial governance structure. In exercising its functions, the Auditor General is not supposed to be subjected to the direction or control of any person or authority. The Auditor General is appointed by the King, acting in accordance with the advice of the Prime Minister and can be removed from the office only by the King on the advice of a tribunal. The Auditor General reports directly to Parliament. From a legal perspective, the Auditor General's office is well established with its independence recognized in Lesotho's legislation, including the Constitution. The primary law setting up the institution, the Audit Act of 1973 is, however, quite outdated and needs to be revised. For instance, *inter alia*, the Act does not have enforcement clauses with regard to failure by auditees to respond to audit queries and does not give the Auditor General control to engage and dismiss members of his/her staff. The office of the Auditor General though has its own vote and sets its own auditing priorities and plans.

2.1.20 In exercising its duties, the office of the Auditor General has access without hindrance to all public records of GoL and has the express authority to audit all revenues and expenditure of government, including the military. The Auditor General also audits public enterprises in which the government has financial or other interests and has full powers to investigate the use of money either appropriated or not appropriated by the National Assembly. However, there are no enforcement clauses in the legislation to force Accounting Officers to respond to audit queries. In recent years, PAC has stepped in to hold Accounting Officers to respond to audit queries.

2.1.21 Although public sector auditing in Lesotho is carried out in accordance with standards set by the International Organization of Supreme Audit Institutions (INTOSAI) and the International Auditing Standards, fiduciary systems in the country cannot be regarded to be fully in line with international standards. Regarding the performance of its work, the Auditor General relies on audit manuals. Currently, the Auditor General relies on the Financial Auditing Manual which is, however, fairly old and needs updating to keep up with modern accounting and auditing practices. There is at the moment no Performance Auditing Manual. Although the Auditor General is mandated to carry out performance audits alongside financial audits, this function has largely remained inexplicit. Nevertheless, the Auditor General's functions are fairly computerised and reports are prepared using computer spreadsheets. The office also uses Computer Assisted Audit Techniques.

2.1.22 Although well established, the operations of the office of the Auditor General have been hampered by a number of internal and external factors. Its performance is intricately linked to the performance of other governance institutions, particularly the Accountant General's office. Practically, the Auditor General cannot prepare audit reports on time unless it receives the public accounts from the Accountant General. As already indicated, the Accountant General failed to prepare public accounts for five successive years between 1996/97 and 2000/01. As a result, the Auditor General did not prepare and submit reports to Parliament. For this and other reasons, the

Auditor General's office has always been accused of late submission of audit reports. Other reasons for this poor performance of the office include lack of the necessary financial resources and suitably qualified and skilled audit personnel to discharge its mandate. The office has failed to retain such personnel due to the fact that its employees are subject to civil service conditions of service and recruitment procedures.

2.1.23 The government has recognized the importance of the office of the Auditor General and is putting in place measures to strengthen it. The office is among the governance offices which are being targeted for strengthening as part of the PFM reforms under the PSIRP. In this connection, Development Cooperation Ireland (DCI) is providing assistance to the Auditor General to develop manuals, procure computers and audit software as well as to undertake study tours. A new Audit Act is also ready for submission to the Minister of Finance for onward transmission to Cabinet, which should strengthen the independence of the Auditor General. In collaboration with the Accountant General, the Auditor General needs to develop an action plan on how the backlog of the 1996/97-2000/01 public accounts will be addressed.

### *Legislative Scrutiny of Public Financial Management*

2.1.24 Legislative scrutiny of public financial management in Lesotho, like in all other Commonwealth countries, is a constitutional requirement. The body charged with this responsibility is PAC, whose establishment is governed by the Public Accounts Committee Order 1972. The practice in Lesotho is such that the committee summons accounting officers from government ministries and departments to appear before it and give explanation of government expenditure mismanagement. The committee proceeds by way of interrogation of witnesses. During committee sittings, the Auditor General is in attendance and gives it the necessary influence and expertise. Treasury officials are also present while the Clerk of the National Assembly is the Committee's secretary. After receiving evidence from all concerned accounting officers, the committee makes recommendations for adoption by Parliament. Implementation of the recommendations is monitored by the Treasury which prepares a Treasury Memorandum on the Committee's recommendations.

2.1.25 It is satisfying to note that legislative scrutiny of public financial management in Lesotho Parliament oversight is back on track after several years of inactivity. Progress has been made in the recent past by PAC in reviewing and conducting hearings on the audited accounts for the years 1993/94-1996/97, substantially reviewing and conducting hearings on the audited accounts for 2002/02, issuing reports on time and bringing pressure to bear on the executive to act on its recommendations. However, its work has been constrained by a numbers of factors, including delays in submission of audit findings by the Auditor General's office. This affects the timing and the effectiveness of its legislative oversight role. Second, Parliament itself has no implementation committee to follow up on recommendations adopted by the House to ensure that action is taken by chief accounting officers in government ministries as recommended. Third, the scrutiny of government expenditure by the committee is always done on past events rather than on current issues. This does not help much in the prevention of possible embezzlement of public funds by public officers entrusted with the custody of such funds. PAC also lacks adequate information to enable it to perform its role effectively. This is partly due to poor record keeping in most ministries/departments of government and lack of incentives by the

executive to share information with Parliament, especially if such information reflects poorly on it. The committee also lacks technical support, including analytical capacity, and does not have sufficient time, resources, office accommodation and support staff to effectively carry out its functions. The committee, thus, needs to be endowed with adequate resources for it to be able to address its mandate effectively.

### Public Enterprise Management

2.1.26 After independence, GoL, like many other governments, maintained interests in a number of enterprises in Lesotho during the period when industrial policy was essentially based on a strategy of import-substitution. However, GoL embraced a programme of structural reform in 1995 to disengage the public sector from commercial activities, through privatisation, when public enterprises became a fiscal burden on government. In 1995, GoL passed the Privatisation Act 1995 and subsequently developed a privatisation programme and guidelines. The objectives of privatisation are to: (i) reduce the budgetary burden of government and release government funds for other essential services; (ii) broaden direct participation of the population in the control and ownership of productive assets; (iii) eliminate the administrative burden of government participation in commercial activities; (iv) develop entrepreneurial skills among Lesotho citizens; (iv) facilitate technical partnerships with foreign investors; and (vi) increase productive efficiency and growth in the economy.

2.1.27 Privatisation in Lesotho has so far recorded some success. Among the notable transactions, two national banks, Lesotho Bank and Lesotho Agricultural Development Bank (LADB), and the Lesotho Telecommunication Corporation, the national telecommunications company, have been privatised. Following the enactment of the Electricity Act 2000, the reforms of the Lesotho Electricity Corporation (LEC) started with a management contract to prepare the public utility for privatisation. Thereafter, bids for the LEC concession contract were received early in 2005. It is expected that the selection of the strategic investor will be completed early 2006. As part of the reforms to encourage private sector participation in the delivery of electricity and telecommunications services, the government successfully established appropriate regulatory bodies, namely the Lesotho Electricity Authority and the Lesotho Telecommunications Authority, in 2004. Several factors have complicated privatisation in Lesotho including concerns on workers' retrenchment, debt obligation of state enterprises slated for privatisation, lack of investor interest and failure to gain direct *Basotho* participation in privatised entities. Although GoL is committed to a programme for private sector development and the divestment of state-owned enterprises, the absence of a developed capital market and related institutional facilities constitutes a major challenge to the programme.

### Public Procurement System

2.1.28 Procurement of goods and services constitutes a major expenditure item for GoL. As such, the public procurement system needs to be efficient and transparent to ensure that the government not only gets the right goods and services, but also value for its money. The system's organisation and effectiveness is, therefore, critical in public financial management. Public procurement in Lesotho is guided by regulations contained in Chapter 21 of the Lesotho Financial Regulations 1973 (regulations 2101 through 2115A with amendments). The

regulations establish the Central Tender Board (CTB) and describe the procedures for dealing with tenders (calling, opening, advertisement and exemption from tendering), numbering of tenders, variations of contracts and cancellations. The regulations also spell out the process and criteria for registration of contractors. Issues related to public disposal of goods are dealt with in the Lesotho Financial Orders, Part II, 1967. The regulations also describe the procurement methods, namely, direct purchase by purchase order, shopping on the basis of three quotations and tendering. It is worth noting that Lesotho, as a member of the World Trade Organisation (WTO), is expected to develop comprehensive procurement legislation along the lines of the United Nations Commission and International Trade and Law (UNCITRAL) model. This is, however, not currently being contemplated.

2.1.29 The Lesotho Financial Regulations 1977, mandates the CTB to control and manage all procurement activities of the GoL. According to the regulations, the CTB is composed of civil servants (chairman from the Ministry of Finance and six others members drawn from various ministries and departments). There is currently no representation from non-state institutions in the CTB. The Chairman and the board members are appointed by the Minister of Finance, and are answerable to him. The Secretariat which supports the activities of the CTB, and headed by a Secretary, is currently thinly staffed and lacks qualified procurement staff.

2.1.30 All ministries and departments wishing to procure goods and services prepare own specifications and bidding documents, after authority to purchase has been given by the accounting officer, who is the principal secretary. There are no procurement units within most of the ministries and the chief accounting officers have to appoint *ad hoc* committees to prepare specifications and guidelines. There are at the same time no laid down procedures for appointing such committees, neither is their composition clear. Once the bidding documents have been prepared, they are sent to the CTB with a draft tender notice. The regulations then require that the CTB call for bids through advertisements in the national print media and radio. It needs to be noted that although each ministry remains responsible for its procurement. Municipalities and districts rely on the procurement services of the Ministry of Interior for procurement needs while state enterprises conduct their own procurement.

2.1.31 The existing procurement system in Lesotho is intended to function as a decentralised system by virtue of the fact that the ministries prepare bid packages, evaluate the bid and recommend and sign contracts with the winning bidders. In actual application, the system has effectively been operating as a centralised system because of the low approval thresholds which results in almost all the procurement being referred to the CTB. However, as part of immediate measures to improve the GoL procurement system before major reforms mentioned below are completed, higher thresholds were introduced in June 2005 so that ministries are able to carry out most of the procurement in order to expedite the procurement of goods and service and reduce the workload of the CTB. As a result of recent changes: (i) purchases under M3,000 will continue to be sourced directly from whomever is deemed to be the most appropriate supplier of the goods or services; (ii) purchases between M3,000 and M60,000 (previously only between M3,000 and M10,000) will require three written quotations while the lowest price will be accepted; and (iii) any tender resulting in a total cost in excess of M60,000 (from M10,000) will be referred to the CTB.

2.1.32 According to the regulations, the CTB receives and opens all the bids. Opening of the bids is done in the presence of bidders who wish to attend. The bids are then sent back to procuring ministry for evaluation. The evaluations at the ministry focus on the arithmetical correctness of the bid, the price and other relevant considerations, . The ministry is then expected to prepare an evaluation report and make recommendations on the winning bidder to the CTB. The CTB then reviews the recommendations and award the tender to the winner. The regulations stipulate that the CTB will award tender on the basis of “consideration of economy, efficiency and the contractual reliability of the bidders”. The contract is then signed between the procuring ministry and the winning bidder. The CTB reserves the right to reject the recommendations of the ministry in which case the process has to be started afresh.

2.1.33 An assessment of the risks associated with a procurement system requires an evaluation of a number of key institutional, organizational and operation parameters. Based on these indicators and on discussion with procurement staff and other public officials, one is inclined to conclude that the procurement system in Lesotho has a number of weaknesses. The existing procurement law and regulations are inadequate and do not provide the necessary guidance for public procurement in the country. The regulations do not give the required guidance to either the CTB or the ministries on how to conduct procurement or how to advertise, deal with open competitive bidding, bid openings and evaluations of bids. Further, the framework does not in its present form allow for the introduction of new and innovative methods of procurement.

2.1.34 Furthermore, the CTB, which plays a key role in the procurement system, is understaffed and ill equipped to handle its mandate effectively. Due to the low procurement thresholds, the CTB has been overburdened as it has been handling virtually all the procurement for the GoL. This, coupled with the centralized nature of procurement in the country, has overburdened the CTB in effect rendering it ineffective. The ineffectiveness of the CTB has slowed down government procurement process and also adversely affected the implementation of donor funded projects, including those financed by the Bank Group. Another risk/weakness associated with the procurement system in Lesotho relates to the fact that the CTB holds both executive and regulatory powers, which means that the board participates in the procurement procedures while at the same time enforcing the same procedures.

2.1.35 Private sector firms are an integral part of the any procurement system. This is because goods and services are invariably supplied by private enterprises. The participation of local private industry in procurement process in Lesotho is generally high although it is dominated by large enterprises. The current procurement law does not have provisions for empowering local entrepreneurs. The Ministry of Finance Report referred to later on recommends the establishment of a system of reservation and preferential schemes in procurement for local contractors, as is for example in South Africa. Also missing in the procurement system, to the disadvantage of the entire private sector, is an appropriate system of appeals and arbitration. Currently, any disputes between the GoL and private contractors are subject to the jurisdiction of the *Basotho* courts. Like elsewhere in many African countries, accessing justice through the court system may cause major delays. This is made worse by the fact that there is no commercial division of the High Court of Lesotho. There is, thus, need to review the whole system with a view to institutionalising procurement appeals and dispute settlement within the procurement system before resorting to courts of law.

2.1.36 Reform of public sector procurement has been high on the agenda for public sector reform in Lesotho. Indeed in 2002, a task force of MOFDP published a report entitled “Transformation and Restructuring of the National Public Procurement System”, which detailed a number of weaknesses of the procurement system in Lesotho and made far-reaching recommendations for improvement. For effectiveness and efficiency, the procurement system in Lesotho requires institutional improvements in the following (and not limited to) specific ways: (i) reviewing the legal and regulatory framework for public procurement to make it more accountable and transparent; (ii) strengthening the capacity of the CTB and its secretariat to enable it to discharge its functions more effectively (training of procurement officials is important in this regard); (iii) raising the awareness of government ministries /departments and other stakeholders on the importance of an accountable, transparent and efficient procurement system; and (iv) considering the possibility of decentralization of procurement to allow ministries and departments to carry out purchases up to a specified threshold. It is noteworthy that the World Bank prepared a Country Procurement Assessment Report in 1997, which highlighted some of the shortcomings that have been raised above. However, most of the recommendations contained in that report have been taken on board

2.1.37 In view of the role procurement plays in good public financial management, the government is looking at the various reforms in the context of the PSIRP in order to improve GoL’s procurement system. The system will be reformed with the introduction of standard procurement documentation that incorporates international best practices; the decentralization of the procurement function to line ministries; the transformation of the CTB to a regulatory body; and the professionalization of the procurement cadre by establishing a Lesotho-Based Professional Training Programme in supply chain management. Training for procurement officers through the Chartered Institute of Purchases and Supply is also being introduced.

#### Private Sector Financial Accounting and Auditing Practices

2.1.38 Although accountability in the private sector is specific to that sector, its role in governance is crucial given that the private sector is the engine of economic growth. The accounting and auditing practices of the private sector in Lesotho are generally consistent with normal practices used in market economies. All firms in Lesotho incorporated under the Companies Act 1967 are required to prepare and submit audited accounts mainly for tax purposes.

2.1.39 The accounting profession in Lesotho is governed by the Accountants Act 1999. This Act basically sets standards for accounting practice in Lesotho and enforces rules. To do this the Act in Section 3(i) establishes the Lesotho Institute of Accountants (LIA). The functions of the Institute are to, *inter alia*: (i) determine the qualifications of persons for admission as members; (ii) providing for the training, education and examination by the institute or any other body of persons practising or intending to practice the profession of accountancy; (iii) regulate the practice of the profession of accountancy in Lesotho; (iv) promote the interest of the profession of accountancy in Lesotho; (v) render pecuniary or other assistance to members or their dependants, as the institute thinks fit, with a view to protecting the welfare of members; and (vi)

carry out such acts as it thinks fit for the purpose of achieving any of the objects mentioned above.

2.1.40 The LIA is a member of a number of international and regional accounting bodies, namely, the International Accounting Standards Committee (IASC), the International Federation of Accountants (IFAC) and the East and Southern Federation of Accountants. IASC and IFAC are independent international bodies charged with the responsibility of developing and issuing international accounting standards for the preparation and presentation of audited financial statements and to promote worldwide acceptance of the standards. LIA also collaborates closely with the South African Institute of Chartered Accountants. As a member of the international accounting bodies, LIA is expected to promote the adoption and use of international standards and best practices in Lesotho.

2.1.41 Membership to the accounting profession in Lesotho is open to all persons with appropriate qualifications. To qualify, one needs to pass accountancy examinations offered by the LIA. As there are currently no national examinations, accountancy candidates take Association of Chartered Certified Accountants (ACCA) examinations, which are externally regulated. There are three levels of qualifications in the accountancy profession in Lesotho, namely, technician, certificate and professional. The basic minimum level of general education required to join the accountancy profession is the O-level of education. Currently there is only one large institution accredited to LIA, the Centre for Accounting Studies, providing accountancy training in Lesotho. There are other smaller ones not accredited to LIA providing training at the technician level.

2.1.42 Overall, the accounting profession in Lesotho is fairly well developed to meet the needs of the country. However, there is much room for improvement of the profession. One of the key areas that would require support is in the enforcement of accounting regulations in the country. The LIA is by law required to enforce its Code of Ethics to ensure that accountants operate as expected. LIA has, however, very limited capacity to carry out its regulatory function and to enforce its Code of Ethics. The LIA currently employs only two professionals, besides the Chief Executive.

### Corporate Governance

2.1.43 Like in many African countries, corporate governance is a relatively new concept in Lesotho. There is currently not much discussion on issues relating to corporate governance in Lesotho. However, it is satisfying to note that in the wake of a few but substantial international scandals involving private and public sector firms, discussion on corporate governance is emerging. An Institute of Directors under the auspices of the Lesotho Institute of Accountants (LIA) is being formed to sensitise the private sector on corporate governance issues and, hopefully come up with a Code of Good Practice for the private sector.

2.1.44 With regard to private sector legal framework, GoL has a number of instruments that are intended to regulate and facilitate industrial development and associated activities to the benefit of all stakeholders. These include: the Companies Act 1967 that governs firm registration; the Pioneer Industries Encouragement Act 1969; the Industrial Licensing Act 1969; the Export and

Import Control Act 1984 that specifies the types of goods that can be imported into Lesotho; the Customs and Excise Act 1984 that regulates collection of tariffs and duty at entry points; the Environment Act 2001 that provides guidelines and sets standards for sustainable use of the environment; the Industrial Development and Investment Bill; the Labour Code 1992; and the Financial Institutions Act 1999.

2.1.45 Although efforts are underway in Lesotho to revise and harmonise some of the laws so that they, *inter alia*, provide an enabling legal and administrative framework for a vibrant private sector to flourish, a number of impediments to private sector development still prevail in the country. The first example relates to the Companies Act 1967, which is based on the 1948 United Kingdom (UK) Companies Act and is founded on the 19<sup>th</sup> Century concept of regulation of public companies. Increasingly in most commonwealth countries that adopted the UK Companies Act, the code is being modernised and streamlined to promote investment and regulate industrial development. Key issues for reform include inflexible rules for capital structures, inappropriate formalities for private companies and protection of minority shareholders. However, the Companies Act in Lesotho remains archaic and the procedures it provides for the registration of firms are unnecessarily long and complex. It is, therefore, not in line with the government's policy aimed at attracting and promoting investment. There is, therefore, an urgent need in Lesotho to modernise the Companies Act and make it more facilitative than inhibitive.

2.1.46 Secondly, the Pioneer Industries Encouragement Act 1969 and the Industrial Licensing Act 1966 still exist although they were enacted at the time when industrial development and associated activities were heavily regulated in the country. Their original purpose was to control the entry of businesses into certain areas as well as to protect existing businesses. As a result, business enterprises are still required to have an industrial licence before they can operate in the country. This is in spite of the fact that the government no longer imposes barriers to entry into business. Likewise, businesses continue to be subjected to the Export and Import Control Act 1984, which specifies the type of goods that can be imported into Lesotho and, thus, protects local production. This is in spite of the fact that Lesotho does no longer embrace import substitution and state intervention ideals. Consequently, the rules governing the importation of goods and raw materials continue to remain vague.

2.1.47 Investors also face certain cumbersome administrative requirements. For instance, the number of government departments involved in the licensing process is large and licences for private enterprises can only be obtained in Maseru. As a result, investors find it difficult to find appropriate application points and to comply with appropriate requirements and rules. A lot of time is wasted in the process of registration to the extent that an application for a business license takes about three months. In addition to this, although foreign investors are generally treated as national investors, a clear and major exception is the Land Act, which only allows Lesotho citizens and commercial entities that are majority controller by citizens to lease land. Foreigners are only allowed to sublease land from Lesotho citizens. Ministerial approval is required in all leases and subleases.

2.1.48 It is also worth noting that Lesotho does not have a legal framework to address anti-competitive conduct by firms. Debt recovery laws and a commercial court are also not available

in Lesotho. These weaknesses in the legal and administrative framework have negative effects that have hindered industry from reaching its full growth potential. In response to the need for Lesotho to find ways of eliminating structural and institutional impediments to the growth of the private sector, the government is reviewing its whole private sector development strategy. In this regard, the government organised, with World Bank's assistance, a workshop in April 2005 which made recommendations on how some of the above mentioned constraints can be addressed. In accordance with such recommendations, GoL is undertaking measures to, among other things: review several laws and business procedures; strengthen domestic competitiveness through improving skill levels and enhancing linkages between training and industrial needs; provide basic infrastructure to reduce domestic costs for the private sector; and intensify investment promotion measures.

2.1.49 Lastly, as regards labour issues, the Labour Code Order 1992 guides both the administration of labour matters and employment of *Basotho* and *non-Basotho* people. It provides for basic worker's rights, requires employers to provide adequate working conditions for their employees and gives guidance on payment of compensation for industrial accidents and injuries. In spite of this, there are instances where issues of unsafe working conditions have been reported, particularly in some small enterprises. The law also provides workers with the right to join and form unions without prior government authority as well as to strike and, in practice, workers exercise this right. As a result of cooperative efforts of local unions and employers, labour conditions have improved in recent years, especially in the garment industry. Lesotho has ratified all the International Labour Office (ILO) fundamental Conventions on labour standards, including: (i) Worst Forms of Child Labour; (ii) Freedom of Association and Protection of the Right to Organize; (iii) Right to Organize and Collective Bargaining; (iv) Forced Labour; (v) Abolition of Forced Labour; (vi) Minimum Age; (vii) Equal Remuneration; and (viii) Discrimination. Although child trafficking is relatively rare, child labour cannot be entirely ruled out in the informal sector. To effectively implement the Conventions, GoL's capacity requires considerable strengthening.

#### Banking Sector (Financial Institutions) Solvency

2.1.50 The Financial Sector in Lesotho comprises four (4) commercial banks (with 22 branches in 2003), six (6) insurance companies, 11 insurance brokers, 34 registered money lenders and 1599 cooperative societies. A new foreign bank was licensed and began operating in 2004 and the government established the Post Bank in 2005. The latter is focusing on mobilising savings in rural areas, where access to formal banking services was reduced substantially by the collapse of state owned banks at the end of the 1990s. The sector is governed by the following Acts of Parliament: the Central Bank of Lesotho Act 2000, Exchange Control Act 1987 (as amended), Financial Institutions Act 1999, Insurance Act 1976 (as amended), Money Lenders Act 1989 (as amended), Companies Act 1967, Cooperatives Societies Act 2000, and the Societies Act 1966 (as amended).

2.1.51 The passage of the Financial Institutions Act (FIA) in 1999, which is the primary law governing the financial sector, came at a time of a banking crisis that culminated in the collapse of two big-state owned banks, Lesotho Bank and the LADB. The crisis in banking sector emphasised the need for the reform of the banking legal framework. The promulgation of the

FIA, therefore, heralded a new chapter in the banking system and supervisory developments in the country. The Act paved the way for the enforcement of prudential banking standards and principles which have been issued as regulations and guidelines. Two of these are directly relevant with respect to solvency, namely, the Financial Institutions (Internal Control System) Regulations 2000, and the Financial Institutions (Liquidity Requirements) Regulations 2000. The former require financial institutions to establish and maintain a system of strong internal control to serve as a foundation for their safe and sound operation and also to provide a useful framework for evaluating financial institutions internal control systems. They apply to all financial institutions in Lesotho. The latter are intended to ensure that banks maintain adequate liquidity and require frequent reporting and monitoring of liquidity position not only for prudential reasons, but also for purposes of implementing macro-economic policies.

2.1.52 The Supervision Department of the Central Bank of Lesotho (CBL) is in charge of the day-to-day supervision of banks and financial institutions in Lesotho. The major supervisory activities of the department include conducting off-site surveillance by analysing information submitted by the institutions being supervised and undertaking on-site inspection and/or examination of financial institutions with a view to verifying the accuracy of the submitted information, and through licensing of institutions which meet the licensing criteria such as the minimum capital requirement. The penalties for non-compliance with bank regulations are spelt out in the Sections 28, 29 and 30 of the FIA. The penalties that include fines and cancellation of business licenses are not indictable.

2.1.53 It is important to note that one of the weaknesses of the FIA is that it does not differentiate between banks and non-banks. There has, therefore, been a bias in the supervision of commercial banks as opposed to other financial institutions, which can also be attributed to the lack of technical ability to supervise the non-banking institutions, including cooperatives, in the Supervision Department.

## **2.2 Transparency**

2.2.1 Transparency entails the availability of information on all matters related to the governance process. It means that the duties and responsibilities of the public officials and the manner in which their duties are performed or delivered are known or can be known to those interested. In essence, transparency has to do with the availability of information, its accessibility and quality. There is a very close linkage between transparency and accountability. It is not possible to have accountability without transparency, otherwise it would be impossible to call into account the actions of a leader or public officer.

### Information disclosure

#### *Budget information*

2.2.2 One area in which transparency is key is the budget process. The budget is a tool for implementing national policies that affects every *Mosotho*'s live. Knowledge of the functions of the budget, its impact on the overall economy, and the role each and every *Mosotho*<sup>5</sup> can play in

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<sup>5</sup> A citizen of Lesotho.

the process is thus important. The public could appreciate the budgeting process more by having a general knowledge of the trade-offs and choices the government has to make in allocating resources to the different sectors of the economy. By being fully informed and progressing with every stage of the budget process, every *Mosotho* would be better placed to influence the budget formulation, implementation, monitoring and evaluation processes.

2.2.3 The annual budget speech is perhaps the most important budget information disclosure instrument in Lesotho. The budget statement is useful in highlighting how the budget can affect the economic and social opportunities of particular social groups in society. Although budget statements are not impartial, they are considered necessary for accountability and transparency. Also available to the public are the budget estimates and appropriation bills from Parliament. Unfortunately, these documents are more often than not too technical and detailed for public consumption.

2.2.4 The media can play an important role in the dissemination of budget information in most countries. Through news items and budget analysis, the media can be a tool for passing on critical budget information to the population. There is in Lesotho a vibrant media which is fairly independent from the state, although it highly concentrated in the Maseru.

#### *Accounting and Audit Reports*

2.2.5 It is a legal requirement in Lesotho that all public accounts be accessible to the public. Public accounts of the GoL are available to the public once they have been audited by the Auditor General and approved by Parliament. The Auditor General's report is made public once it has been tabled by the Minister of Finance in the National Assembly and members of the public can purchase copies from the government printers.

2.2.6 In line with international best practices, the banking regulation in Lesotho requires the disclosure of financial institutions reports and information. Section 42 of the Financial Institutions Regulations provides for the disclosure of such audited reports at specific time periods. It further demands that such reports be published and conspicuously displayed to reach the public as much as possible. Such accounts are usually published in the print media.

#### *Transparency in Public Procurement*

2.2.7 Transparency in public procurement is key in ensuring value for money. As indicated before, public procurement in Lesotho requires strengthening in many areas including its transparency. In accordance with Regulations 2106 of the Lesotho Financial Regulations 1973, the CTB advertises tenders on behalf of the line ministries, after these ministries have furnished the CTB with sufficient information. The CTB advertises in national newspapers. The regulations also provide that once awards are made, the CTB should notify all the bidders in writing and the award document should be available for inspection by any interested party on request to the Secretary to the CTB. It is also a requirement that all copies of contracts be sent to the Accountant General and the Auditor General for verification and record keeping. Although the procurement regulations provide for the above transparency related provisions, they are in most cases never put in practice. For instance, there are cases where bidders do not get all the

necessary information at the point of preparing bids, nor are they fully informed on the bidding results. The lack of clear procedures and guidelines for procurement makes the exercise less predictable.

2.2.8 The challenge for transparency in the procurement system in Lesotho is to create an open, genuinely competitive and transparent public procurement system. Apart from putting in place clear rules and regulations to guide the process, there is need to improve the mechanisms for information dissemination. The CTB should consider setting up an information centre covering standards specifications, standard pricing, standards documentation, evaluation criteria and commercial terms. The information should also include data on potential local and foreign suppliers to facilitate seeking quotations. This is important considering that pre-qualification of suppliers is rare and limited to large contracts. Further, to support procurement transparency, the capacity of the CTB to compile and analyse information on the number and values on awards made should be enhanced. This information should be analysed periodically to identify abnormalities in purchasing patterns.

### *General Macroeconomic Information*

2.2.9 The generation and dissemination of general macroeconomic data is important for Lesotho's socio-economic development. A key institution in the generation and provisions of this kind of information is the Bureau of Statistics of Lesotho (BSL). The Statistical Act 2001 confers on the BSL the authority to collect, collate and disseminate socio-economic information. Unfortunately, the BSL is grossly incapacitated both in terms human and technical capacity necessary to discharge its duties. Strengthening this institution is a necessary first step in improving access to public information in Lesotho.

## **2.3 Stakeholders' Participation**

2.3.1 The pillars of good governance include democracy, transparency, accountability, the proactive promotion of people's participation in decision-making and resource allocation, while protecting them from arbitrary actions by government and other forces. Democracy works well when people effectively use their freedoms to demand accountability and to participate. This is more so that the right to participation has been enunciated alongside the freedom of association, assembly and expression as fundamental to the achievement of social, economic and cultural development in various international human rights instruments. Although in Lesotho the protection of the right to freedom of association is evident in the existence of several political parties and right to organize under the labour laws, economic, social and cultural rights such as the right to economic opportunities, equality and justice that go with it remain principles of state policy only.

2.3.2 Participation promotes equality, especially in gender terms and for disadvantaged communities and ensures sustainability through ownership. The PRS process in Lesotho is a perfect example of cooperation and partnership. Unlike the conventional planning process in Lesotho, the process was guided by certain key principles that emphasise participation, inclusiveness, broad based, results-oriented, partnership, country-driven and ownership. The people of Lesotho were made an active part of the process during consultations and other

stakeholders, namely, government, traditional leaders, civil society, private sector and development partners were involved. It was said that this was the first time that the GoL worked together with civil society, private sector and development partners to produce a national policy document. According to the PRS, over 20,000 people (including men, women, youth, the disabled people, herds boys, the elderly, widows, orphans, etc.) were consulted in 200 communities covering all parts of Lesotho. The views of these people were then collated and analysed and formed the basis for the PRS document, which was approved by Cabinet in November 2004.

2.3.3 Media in Lesotho is said to be free from direct government interference. It can play an important role of a watchdog on the contribution of various stakeholders and in the dissemination of information in most countries. With the transition to democratic rule in 1993, many private and independent electronic and print media have emerged in Lesotho, which are fairly independent from the state, although they are highly concentrated in the Maseru and the National Radio station is the only one that has national coverage. This has helped to extend the freedom of expression in the country. Further, media coverage and reporting has helped to ensure transparency and accountability in the governance process. Nevertheless, continued capacity building to the media is required in order to ensure responsible coverage and reporting of developments in the country. The challenges also include the consolidation of the currently scattered pieces of legislation regulating the media, inculcating media professionalism and independence, and increasing media coverage to the rural areas of Lesotho.

### Electoral Process

2.3.4 True democracy is hinged on holding fair elections at regular intervals, allowing opposition political parties to campaign freely and setting up of an independent electoral commission to monitor polls. Judging from its political history, Lesotho's democracy has had its share of political instability since independence. Nevertheless, the successful general elections of May 2002 resulted in a return to democratic rule. This has enabled opposition parties to take seats in Parliament with a total of ten political parties now represented in the National Assembly essentially due to the MMP model on the basis which the elections were conducted. It can, therefore, be observed that political tolerance is now growing in Lesotho and this is supported by the provisions of the Constitution which recognise people's democratic rights of assembly as well as freedom of choice and expression.

2.3.5 The 1998 general elections were the first in the history of the country to be administered by the Independent Electoral Commission (IEC), which was established through Act No. 7 of 1997. The IEC is charged with the responsibility to manage elections. Prior to that, elections were organised by the Chief Electoral Officer, an office in the Public Service under the then Ministry of Law and Constitutional Affairs. As a member country of SADC, Lesotho is a signatory to SADC Principles and Guidelines Governing Democratic Elections. As such, its electoral process and IEC are consistent with such principles. However, the IEC still needs strengthening so that it can continue to create a conducive environment for free and fair elections and offer a framework for addressing disputes relating to the electoral process. In addition to this, although the elections held in May 2002 were successfully conducted, the country still faces

the challenge of proper understanding and successful implementation of the new system and promoting political tolerance.

### Decentralisation

2.3.6 Local governance and popular participation contribute towards good governance. The absence of effective community participation has been identified as a cause of the failure of many previous development initiatives, as people were often not consulted and many activities failed to benefit them. As a way of linking people to national government, a ministry responsible for local government was established in 1994 with the objective of fostering decentralisation, establishing democratic governance and local government structures. As a result, Lesotho is gradually implementing a decentralised system of Local Government within the legal framework of the Local Government Act 1997 (as amended in 2004) and the Local Government Elections Act 1998 (as amended in 2004), with the aim of establishing local authorities. It is expected that moves towards decentralisation of functions, resources and authority from central government to local authorities should improve the coordination of the public service sector and promote popular participation in order to reduce poverty. This should assist in deepening democracy and enhancing good governance, ownership and accountability in Lesotho.

2.3.7 The current goal is to devolve administrative and political authority, including responsibility for implementation, to district and sub-district levels. Government agencies at these levels will be integrated into one administrative unit. On the other hand, the functions and responsibilities will be assigned to the various levels. GoL realised that the powers, responsibilities and financing of each tier of local government need to be clearly specified and special attention needs to be paid to the relationship at a local level between traditional authorities and new democratic structures. Against this background, the first elections of local government structures were conducted in April 2005, which have led to the establishment of 128 new councils. This, however, is an interim measure since decentralisation is only meaningful if financial responsibility is also bestowed on the councils. Funds from the central government and locally generated revenues, such as taxes, levies and rates as well as donor funds, will be used to finance local government structures. In this regard, MOFDP is working with the Ministry of Local Government (MOLG) for the purpose of establishing the modalities of fiscal decentralisation, promoting accountability and transparency, as well as accounting of funds disbursed to the new institutions.

2.3.8 It is noteworthy that GoL is yet to finalise the plan for decentralising the functions and the exact role the newly elected representatives will play. Further, the government faces challenges in implementing the decentralisation process in terms of lack of capacity at MOLG level to monitor and advise the local authorities effectively and lack of additional sources of revenue for the local authorities. The other challenge is in information flow on the policy framework for the implementation of the process, which can partly be addressed through enhanced civic education for the communities. This is important in order to carry the people along, especially players in the local government structures. Capacity building is required to ensure timely and cost-effective discharge of duties by the MOLG staff who will implement the policy.

## Gender Issues

2.3.9 Lesotho is one of the few African countries with a reverse gender gap in favour of women where the female literacy rate was estimated to be 89.6 percent and the male literacy rate was 73.2 percent in 2001. Women constitute 50.6 percent of the population and it is estimated that 30.7 percent of households are headed by women, of which almost 63 percent are below the poverty line, as compared to male headed households which stands at 58 percent. A large proportion of female-headed households are vulnerable to poverty because they lack agricultural assets and have more difficulties in securing income. Rural households are forced to depend on diversified sources of livelihoods. Women are visibly active in the various sectors of the economy but they dominate the less productive areas, including the informal sector. The poor female headed households have a high degree of dependence on food purchases for food security. Poverty and household food insecurity in Lesotho reveals a strong gender dimension. Women are reported to have earned only 30.9 percent of the total national income despite their higher mean years of school.

2.3.10 In the education, girls are being favoured over boys, who are discriminated against because they are away tending cattle. This relative education advantage has enabled women to compete for employment within the country, while historically the more poorly educated men have sought employment in South Africa. As a result, women have done well in certain sectors of the economy, including health, education and manufacturing, although often in poorly paid positions. Within government, it is only at very senior levels that one finds a disproportionate number of men while in lower and middle ranking positions women predominate over men in many departments. Furthermore, despite the relative advantage of women in education, social prejudice - rather than lack of qualifications, employment regulations, or the Constitution - also bars women from getting into mainstream politics. For instance, currently, 40 percent and 33 percent of the principal secretaries and deputy principal secretaries, respectively, are women. As for cabinet ministers, 31 percent are female. Although the proportion of women in the new Parliament is almost 12 percent, up from 2.5 percent in the previous one, it is much lower than the minimum SADC benchmark of 30 percent.

2.3.11 Women also continue to suffer a high level of discrimination because aspects of the patriarchal culture have been incorporated into customary law that take women as minors and place them under the perpetual custody and protection of men. For instance, although the Land Act of 1979 is gender neutral in its provisions, the Deeds Registry Act of 1967 stipulates that no land shall be registered in the name of a married woman. Moreover, while men are adequately protected, women lack contracting powers to enter into credit agreements with commercial banks or stores on their own. They also cannot inherit land, open bank accounts or buy property without the authority from their husbands, guardians or male siblings. Gender-based violence is also on the increase, perhaps related to the return of laid off mine workers from South Africa, and it is one of the major facts that disempowers women and girls physically, physiologically, economically and exacerbates the spread of the HIV/AIDS pandemic.

2.3.12 The government has committed itself to eliminating discrimination in its legislation, policies and programme. Such commitment to gender equity manifests itself through Lesotho's

signatory to international instruments, such as the Convention on the Elimination of Discrimination against Women (CEDAW), the Beijing Platform for Action and other international and regional protocols including the Gender and Development Declaration of SADC and the African Charter on Human and People's Rights on the of Rights Women in Africa. The government also adopted the Gender and Development Policy in March 2003 in order to create a favourable environment for mainstreaming gender in the public sector. In addition, the Sexual Offences Act 2003, which consolidates all laws regulating sexual conduct and repeals those which are discriminatory and do not offer adequate protection to victims, was passed. Furthermore, the Married Persons Equality Bill (1992), which seeks to remove all restrictions on the legal capacity of a wife, is presently awaiting Cabinet approval, and the government has also given the Law Reform Commission the mandate to review all discriminatory legislation as a step in addressing gender disparities.

2.3.13 The Ministry of Gender, Youth, Sport and Recreation has the overall responsibility of ensuring the coordination of the Gender and Development Policy implementation and mainstreaming gender into the development process in collaboration with other ministries and NGOs. At present, the ministry is in the process of restructuring and crafting a National Gender Programme that is meant to operationalize the Gender and Development Policy with an additional focus on Gender and HIV/AIDS. However, the capacity of the ministry needs to be strengthened in order for GoL to efficiently implement the policy. Similarly, there is need to strengthen gender awareness sectoral strategies as well as strategies that would enhance the empowerment of grassroots women. A number of donor interventions are geared both directly and indirectly to gender mainstreaming.

#### Civil Society Organisations and Non-Governmental Organisations

2.3.14 Civil society organisations including NGOs and Community Based Organisations (CBOs) are a key component of a participatory process that helps to raise the status of vulnerable groups, build confidence and enhance the ability of people to participate in development. They have a great role to play in promoting and strengthening good governance in Lesotho. To be able to do this, the organisations themselves must be credible, strong, independent and seen to be transparent. The Societies' Act 1966, Cooperative Societies' Act 2000 and Labour Code 1992 that regulate the different CSOs do not make adequate provisions for accountability and transparency in the internal management systems of the organisations. Apart from the Labour Code Order 1992 that provides for registered trade unions in Lesotho to present audited financial statements and memberships to the Labour Commissioner annually, the Cooperative Societies Act 2000 and the Societies Act of 1966 as amended require cooperative societies and NGOs, respectively, to present reports at Annual General Meetings. About 250 NGOs and CBOs are registered under the Societies' Act.

2.3.15 The legislative framework within which CSOs operate is loose and contributes to the reasons for weak internal management systems of these organisations. While the lack of proper monitoring mechanisms in the laws undermines good governance and creates the enabling environment for indiscipline and corruption, it is also noteworthy that the absence of NGO/government dialogue compounds the problem. Apart from a draft Memorandum of Understanding to guide the relationship of government with the Lesotho Council of NGOs,

(LCN) which is still awaiting government signature, there are no current initiatives to improve the linkages and partnerships between Government and NGOs. Further, CSOs lack the capacity to monitor government transparency and accountability and do not have the skills to participate in policy dialogues with government particularly on the budget process.

### Economic Cooperation & Regional Cooperation

2.3.16 The benefits of economic cooperation and regional integration include opportunities for economic growth, increased inter-regional trade and opportunities for integrating African economies into the global economy. However, to reap these benefits, accountability and transparency mechanisms, which are prerequisites for effective implementation of economic cooperation and regional cooperation must be in place. Along with South Africa, Lesotho has established the Joint Bilateral Commission of Cooperation in areas of improvement of infrastructure in adjacent zones; simplification of cross-border procedures to facilitate the free movement of people, goods and services; guaranteed access to services with specialised nature; and assistance in developing an appropriate cross-border regulatory environment.

2.3.17 Lesotho continues to demonstrate its commitment to economic cooperation through its membership and participation in the activities of regional economic organisations, including the Southern African Development Community (SADC), Southern African Customs Union (SACU) and the Common Monetary Area (CMA). Given that regional integration is emphasised in SADC, member countries have been working towards harmonising regulatory policies to make it easier for companies to invest in the sub-region, a process which is also benefiting Lesotho in terms of improving its investment conditions. In addition to this, through its membership in SADC, the country is able to benchmark its Parliamentary and electoral processes on SADC Parliamentary forum and SADC Principles and Guidelines Governing Democratic Elections, respectively. SADC has not only enabled the country to benefit from regional development programmes, but also allowed SADC to play a role in restoring stability following the 1998 unrest. Lesotho also actively participates in SACU, one of the oldest custom unions in the world comprising the BLNS (Botswana, Lesotho, Namibia and Swaziland) countries and South Africa, which constitutes the country's main source of fiscal revenue. Further, Lesotho's trade policy is largely governed by its membership in SACU.

2.3.18 As for CMA, Lesotho's fiscal and monetary policies operate within the context of the membership of the grouping, which also includes Namibia, Swaziland and the Republic of South Africa (RSA). In terms of the CMA agreement, the national currency unit of Lesotho, the loti, is fixed at par to the RSA rand. In spite of the benefits that Lesotho derives out of the CMA arrangement – including easy availability of the rands, the elimination of exchange risk between Lesotho and RSA and macroeconomic stability – the Agreement poses some policy challenges. These largely relate to synchronisation of fiscal and monetary policies.

### Public/Private Sector Interface

2.3.19 Past relations between the private and public sectors have not demonstrated the necessary spirit of co-operation and shared agendas or vision. Clearly, this has not supported partnership and has undermined development efforts with serious negative impacts on the poor.

Furthermore, information flow from the side of government is weak and GoL has no concrete policy to encourage private/public sector dialogue. This is compounded by several challenges facing the private sector such as lack of a strong voice, lack of capacity, lack of knowledge about corporate governance and lack of organized structure. The Lesotho Chamber of Commerce and Industry (LCCI) is faced with a couple of challenges which need to be resolved, including lack of capacity, if it is to play a more proactive role in its interactions with government. Training programmes for leaders of LCCI and other heads of private sector institutions and institutional capacity building are required to strengthen the corporate governance structures of the Chamber.

2.3.20 Textile investors, however, seem to enjoy government's patronage. An inter-ministerial forum of the Ministry of Trade and Industry and the investors in the textile industry create an opportunity for dialogue between them. Recently too, BIZNET, an NGO aimed at promoting private-public sector dialogue, was set up to address this issue. GoL's new commitment to the principles of partnership, inclusiveness and national ownership as seen in the PRS process is encouraging and this is based on the assumption that government, as the main player, will continue to facilitate the participation of all relevant stakeholders (including the private sector and development partners) and develop a conducive working environment that promotes co-operation, inter-dependence and inter-agency working.

## **2.4 Legal and Judicial Systems**

2.4.1 The legal and judicial systems are crucial to the success of governance because of their critical role of enacting and interpreting laws, resolving disputes and conflicts, including those relating to the constitutional propriety of legislation and other government acts, as well as redressing grievances and injustices. These functions are crucial to ensuring peace and stability, without which good governance cannot thrive. Although enacted by the Military Council, the Constitution which is the *grundnorm* of Lesotho, was passed in 1993, after extensive deliberations by a National Constituent Assembly, which produced a draft constitution after widespread consultations by a National Constitution Commission that finally obtained a consensus among the people. Its provisions are supreme and any other law that is inconsistent with it, to the extent of the inconsistency, shall be void. Parliament has the power to alter the Constitution by a majority vote of the National Assembly and the Senate, and requires assent by the King but amendment of some of the sections requires a referendum in addition to the above.

### Role and Responsibilities

2.4.2 In as much as there is a fairly well organised separation of powers in place, in terms of performance, the independence of the three arms of government, namely, the executive, legislature and the judiciary, may be in question. Notably, the checks and balances do not seem to be in place as the executive's transparency and accountability need strengthening, the legislative and oversight structures and systems are inadequate, while the judiciary lacks financial autonomy and independence. The public sector financial management system is weak and Parliament lacks portfolio committees that could facilitate the production of quality legislation and the monitoring of the executive arm of government. Links between the electorate and members of Parliament are almost non-existent, due to poor accountability. These impair the efficiency and effectiveness of Parliament. In terms of output, the judiciary is said to be slow in

response and there is a lack of confidence in the capacity and political neutrality of law enforcement agencies mandated to investigate crimes, enforce the law and protect the constitution.

2.4.3 While there is a considerable respect for the rule of law, there are disconcerting delays in the dispensation of justice and a general lack of trust and confidence in the capacity and political neutrality of law enforcement agencies mandated to investigate crimes, enforce the law and protect the constitution. A major challenge is the absence of an adequate commercial law structure that affords sufficient protection to the lender against delinquent borrowers which can lead to reluctance on the part of banks to embark on lending activities and contribute significantly to the destabilization of the financial system. The establishment of a commercial court as well as legal procedures for debt recovery is clearly a step towards promoting financial stability and encouraging private sector lending in the country.

2.4.4 As a direct response to a long standing request from bankers, a Commercial Division of the High Court of Lesotho was established in May 2001, with the objective of providing the necessary structure for handling legal actions arising from commercial transactions. However, the progress in making the court operational was slow given that legal practitioners were reluctant to utilise it because it was felt that its procedures were cumbersome. As a result, only four cases were filed in 2003 as commercial cases and none was disposed of. The Commercial Court has, therefore, failed to operate and, consequently, commercial cases continue to be heard by regular High Courts that are already overburdened by regular cases. This has prompted CBL, in collaboration with the High Court, to pursue measures, including training and study tours for commercial lawyers and other stakeholders, in order to ensure that the Commercial Court works in Lesotho to facilitate litigation in cases of default and, thereby, enhance access to credit.

2.4.5 The more common mechanism for resolving disputes is litigation, i.e. taking legal action, a mechanism that has been found to be costly, time consuming, complex and shrouded in mystery for the lay man. An alternative Dispute Resolution mechanism which eliminates the above difficulties is presently applied in labour cases under the Labour Code (Amendment) Act 2000. The Act established the Directorate of Dispute Prevention and Resolution (DDPR) - an independent, juristic body comprising the Director, the Deputy Director, conciliators and arbitrators and support staff – that is funded by monies appropriated by Parliament. Its mandate includes the provision of an independent, fair, effective, simple, less formal and affordable dispute prevention and resolution system. Under the Act, conciliators adopt dialogue, negotiation and mediation to resolve disputes and parties are provided the opportunity to talk to each other, make offers and reach a compromise. ADR system is user-friendly, simple, time-saving and cost effective. This is evident in the record of the DDPR which show that in 2004, out of the 1,995 cases that were referred to DDPR for resolution, 1,864 were resolved completely, a record that is a far cry in the regular courts. Extending ADR to other areas of law could, therefore, help to relieve the backlog of cases in the courts.

2.4.6 The major challenges that GoL still has to contend with concerning governance are empowering the legislature to carry out the oversight function and improving the justice sector to deal with delays in the justice system.

## Law Reform

2.4.7 The Lesotho Law Reform Commission (LLRC) is a statutory body established by the Law Reform Commission Act 1993 to review the laws of Lesotho with a view to modernizing and bringing them in accord with current conditions, eliminating defects and simplifying them. The Commission consists of eight part time Commissioners with a full time secretariat headed by a counsel. In line with this mandate, LLRC is reviewing obsolete and outdated laws, such as the Pioneer Industries Encouragement Act (1969) and the Industrial Licensing Act (1969) that are intended to promote investment and regulate industrial development; the Companies Act 1967, which governs the incorporation and registration of companies in Lesotho; the Exchange Control Act 1987 (as amended) which governs foreign exchange transactions between sellers and buyers; the Societies' Act 1966; and the Money Lenders Act 1989 (as amended).

2.4.8 The proposal to amend the Money Lenders Act 1989 is aimed at, among other things: bringing money lending activity formally as part of the financial sector; revising the maximum interest rate prescribed by the Act which is considered too low as it squeezes the margins of money lenders and hence makes their businesses unsustainable; and repealing the provision that prohibits money lenders from advertising their business which impacts negatively on competition. The Insurance Act of 1976 and the Marriage Act of Lesotho are also being reviewed to bring them in line with international standards and strengthen their enforcement mechanisms. Among legislation which CBL is proposing for reform is the repeal of clause 3(1)(b) of the Societies Act 1966 to allow groups to engage in profit making activities. An Access to Information law, which is expected to deepen democracy and enable the public to have an insight into the policies and programmes of government, has been drafted by LLRC.

2.4.9 Although Lesotho has ratified almost all ILO and human rights conventions and incorporated almost all of them into the national laws, several other laws are still outdated. The Insolvency Proclamation Order 1957, for example, patterned along the Roman Dutch law which provides for bankruptcy and re-organization is yet to be updated. Some of the areas the LLRC is working on are a law to provide for the rights of victims, a law to integrate ADR mechanisms and processes into the justice system, laws to improve the administration of justice, adoption laws, codification of media laws, as well as the harmonization of customary laws and the common law. Consultations revealed that statutes, once they have been passed by Parliament and have received royal assent, are published regularly and quickly in the Gazette, but accessibility to them is limited as they are usually published in English language, a language foreign to many *Basotho*.

2.4.10 Given the enormity of the problem of law reform in Lesotho, LLRC needs to be strengthened to be able to cope with the huge responsibility and enormous workload. Its progress is hampered by understaffing, insufficient number of researchers to handle the ever-increasing load of research, inadequate professional skills, lack of full-time staff at commissioner level, slow pace of processing bills by Cabinet, slow decision-making, lack of access to laws and legal information, absence of training programmes, lack of resources and lack of autonomy. Presently, bills are passed through the Minister for Law to the Cabinet before they are sent to Parliament. To be effective in implementing its mandate, LLRC should be autonomous and accountable to a Parliamentary Portfolio Committee for speedy processing of draft bills for Parliamentary debate.

## Human Rights

2.4.11 A country's recognition and respect for basic human rights of its people is at the very core of the quality of its governance. Although the 1993 Constitution of Lesotho guarantees fundamental human-rights and freedom to all persons regardless of race, colour, sex, language, religion and political or other opinion, there are several social, cultural and economic rights which are not justiciable and are only principles of state policy based on the availability of resources. Yet, these are the rights that embody the immediate and pressing survival needs of the people. It is commendable that institutions of protection, such as the courts, Police Complaints Commission and the Ombudsman, have been established to give practical effect to these constitutional rights. However, the mandate of the Ombudsman is limited to cases of administrative malpractice bordering on unfair practices and procedures relating to actions of government officers and public bodies and cannot investigate some higher offices in government, such as members of the Cabinet, the judiciary and the palace. Further, although Lesotho has ratified or acceded to most of the principal UN Human Rights Treaties, including; International Covenant on Civil and Political Rights 1996; International Covenant on Economic, Social and Cultural Rights 1996; Convention Against Torture 1981; and International Convention on Elimination of All Forms of Racial Discrimination, a Human Rights Commission to deal with infringement of human rights of the ordinary *Basotho* in line with its international commitment to the Vienna Declaration on Human Rights 1993 has still not yet materialised. However, preparations are at an advanced stage to have the Commission in place before the end of 2006.

2.4.12 Persons charged with criminal offences have substantive rights at every stage of the proceedings under the Constitution. By contrast, there are no substantive and procedural provisions in the Constitution protecting the rights of the victims. This disparity defeats the spirit of the equality clause in the Constitution. This notwithstanding, both state and non-state organisations are already involved in the process of promoting human rights culture through policy advocacy and civic education. GoL is addressing some concerns regarding the inadequate legal protection for vulnerable groups through a Pensions Scheme for the elderly in November 2004 and the establishment of LLRC to harmonise laws relating to the rights of women and a policy on HIV/AIDS.

## Independence of judiciary

2.4.13 The Constitution of Lesotho provides for the independence of the courts in the performance of their functions and their freedom from interference. It is only a strong and independent judiciary that can be seen as the 'last hope of the common man' in terms of security and protection from arbitrariness of government or other forces. The judiciary in Lesotho has some shortcomings, lacks independence in several respects and hardly enjoys the confidence of the people. For instance, the courts lack basic tools to function efficiently and the High Court, although it is housed in a modern building, does not have some of the statutes due to lack of financial resources. Furthermore, the capital and recurrent budgets of the judiciary, including administrative matters such as employment of support staff, are controlled by the executive arm. This situation compromises the independence of the judiciary. International best practices in the area of appointment of judicial officers, particularly the Chief Justice and the President of the

Court of Appeal, also require that nominations to such positions emanate from the Judicial Service Commission and be sent to Parliament for confirmation. However, in Lesotho, the Chief Justice of the High Court and the President of the Court of Appeal are appointed by the King on the advice of the Prime Minister, who is the head of the executive arm of government.

2.4.14 Judges of the High Court are appointed by the King on the advice of the Judicial Service Commission (JSC), a body that has been faulted for under-representation of other stakeholders from the justice sector, such as the magistracy, the Law Society and the Faculty of Law of the National University of Lesotho<sup>6</sup>. Judges are said to be well remunerated and the fringe benefits make up for any deficiencies. Another concern is that High Court Judges in Lesotho serve as *ad hoc* judges of the Court of Appeal and, although it is argued that they do not sit on the Appeal Panel reviewing their own judgments, this situation raises some ethical questions. Furthermore, while magistrates operate within the justice sector, they are not regarded as judicial officers but are regulated by public service rules. This state of affairs puts the system of administration of justice at risk and undermines its independence. However, in order to enhance the independence of the judiciary from the executive, including appointments of judges, a Judiciary Administrative Bill has been drafted and has already been positively received by Cabinet. It is scheduled for Cabinet presentation in 2006. It has also been suggested that the Law Society should start lobbying for the Constitution to be changed for the composition of the JSC to be more inclusive.

2.4.15 The doctrine of precedence is very crucial in the administration of justice and the sustenance of the independence of the judiciary. This doctrine can only make sense if a sustainable law reporting system is in place that allows decisions of the courts to be accessible to the public. The only existing law reports are the Court of Appeal Reports published by a private individual and the High Court reports published by the Law Society, a statutory professional body of legal practitioners established by the Law Society's Act 1983 to promote reforms and improvements in the law and the administration of justice. These reports are not up to date. The judiciary is unable to undertake a Law Reporting project due to lack of resources and skilled manpower.

2.4.16 Capacity building and training required to strengthen the independence of legal and judicial officers are lacking. A programme of systematic and regular legal and judicial education for staff of the Ministry of Law and Constitutional Affairs, lawyers, judges, magistrates, and local court administrators is necessary for the promotion and strengthening of competency, efficiency, effectiveness and impartiality of the judiciary. The training of judicial officers, magistrates and local court administrators on alternative methods to imprisonment will also help in decongesting the prisons. There are plans to renovate the old High Court building and use it as a training institute for judicial officers, if the judiciary is able to secure funding.

### Judicial Reform

2.4.17 A strong, independent and well equipped judiciary, whose decisions are consistently enforced and a court administration that ensures cases are dealt with expeditiously and at reasonable cost to the parties are basic to the promotion of the rule of law. Similarly, the existence of honest law enforcement agencies that effectively carry out court decisions,

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<sup>6</sup> The Law Society did not want to be included in the JSC at the time it was being set up.

implement sanctions against corrupt political officials, as well as ensure improved access to justice by the poor and vulnerable are important first steps to achieving good governance. Consultation revealed major concerns in the areas of slow investigation of cases by the police, lack of adequate manpower and administrative skills for proper case management in the courts, huge backlogs of cases in courts leading to long detention of suspects in prisons, worsening the overcrowding in the prisons and placing a heavy burden on prison administration. Overcrowded prisons severely hamper all rehabilitation efforts as they become breeding places for hardened criminals, who increase the rate of crime on their release. In addition to this, investigations conducted by the Law Society revealed that a systematic violation of rights of suspects and convicts in prison is ongoing. These problems hinder the achievement of the main goal of the justice system, which is the reduction and control of crime.

2.4.18 Legal aid for the poor is also limited and available only in Maseru where it is out of reach of many people. However, it is expected that the ongoing decentralisation process will address the problem of access. The juvenile justice system needs to be overhauled as the Juvenile Training Centre is not operated as an Approved School or reform centre and there is no Borstal Home for convicts between 17 and 21 years. Although a broad programme of restorative justice involving traditional chiefs, community based structures, etc., is being proposed, the constraints of funds and capacity are present. The Children Protection Act 1988 has, however, been amended and is waiting for the submission to Parliament. The amendment is aimed at addressing some of the concerns mentioned above.

2.4.19 Case management/record keeping system, which is crucial to the judicial system, is not well organised because it is still done manually and there is no modern case tracking mechanism. This, coupled with understaffing in the judiciary, makes retrieval of files difficult and results in long delays. Cases are not handled expeditiously resulting in backlog. One of the reasons for this is that although the High Courts and Court of Appeal have been automated, the courts lack adequate professional staff to transcribe court proceedings promptly. Furthermore, the Speedy Courts Trial Act 2002 that places deadlines on the period within which cases must be filed, heard and disposed of has been implemented but its enforcement system is weak. Through the Lesotho Sector Development Programme, the justice sector is receiving support from the UK's Department for International Development (DfID) to address some of the challenges the sector is facing.

## **2.5 Combating Corruption & Money Laundering**

### **Combating Corruption**

2.5.1 Generally, lack of good governance provides the enabling environment for corruption and malpractices by political leaders and public officials. Discussions with a wide range of actors, including private sector representatives, yielded the result that corruption, though present in the country, is not endemic. However, the potential for corruption, given the weak legal and regulatory system, is real. Added to this is the fact that public finance management system is inadequate. Table 2 shows how Lesotho compares with other countries as regards the

Transparency International Corruption Perceptions Index (CPI)<sup>7</sup>. According to the index, Lesotho is ranked 70 out of 158 countries covered by the survey<sup>8</sup>.

2.5.2 The Prevention of Corruption and Economic Offences Act No. 5 of 1999 is the law that provides for the establishment of the anti-corruption Directorate with powers of investigating and prosecuting suspected cases of corruption and economic crimes and sanctions for proven cases of corruption and corrupt practices in Lesotho. Offences under the Act include corruption by a public officer by permitting his public conduct to be influenced by a gift, promise, etc.; acceptance of bribes after doing an act; corrupting a public officer by directly influencing his conduct in respect of the duties of his office by a gift, promise, etc.; conflict of interest; bribery in relation to auctions; cheating of public revenue; possession of unexplained property; corruption in respect of official transactions; acceptance of bribe by a public officer; promise of bribe to a public officer after doing an act; corrupt transaction by or with agents; and bribery for giving assistance in regard to contracts. Sanctions for offences range between M 1,000 and M 10,000 fines or imprisonment for terms between 1 year and 10 years. These sanctions are considered to be grossly inadequate and not able to serve any deterrent purpose.

| Table 2: Transparency International Corruption Perceptions Index (CPI) 2005 |             |               |                |
|-----------------------------------------------------------------------------|-------------|---------------|----------------|
| Country Rank                                                                |             | Country       | 2005 CPI Score |
| Worldwide                                                                   | Sub-Saharan |               |                |
| SADC Countries                                                              |             |               |                |
| 32                                                                          | 1           | Botswana      | 5.9            |
| 46                                                                          | 3           | South African | 4.5            |
| 47                                                                          | 4           | Namibia       | 4.3            |
| 51                                                                          | 5           | Mauritius     | 4.2            |
| 70                                                                          | 8           | Lesotho       | 3.4            |
| 88                                                                          | 14          | Tanzania      | 2.9            |
| 97                                                                          | 18          | Malawi        | 2.8            |
| 97                                                                          | 18          | Mozambique    | 2.8            |
| 103                                                                         | 22          | Swaziland     | 2.7            |
| 107                                                                         | 24          | Zambia        | 2.6            |
| 107                                                                         | 24          | Zambia        | 2.6            |
| 151                                                                         | 40          | Angola        | 2.0            |
| Most Corrupt Sub-Saharan Countries                                          |             |               |                |
| 152                                                                         | 41          | Cote d'Ivoire | 1.9            |
| 152                                                                         | 41          | Nigeria       | 1.9            |
| 158                                                                         | 44          | Chad          | 1.7            |

Source: Transparency International Corruption Perceptions Index 2005 ([www.transparency.org](http://www.transparency.org))

2.5.3 The establishment of the Directorate on Corruption and Economic Offences (DCEO) in April 2003 attests to GoL's commitment to fight corruption. The Directorate is conferred with powers to investigate suspected cases of corruption and economic crimes with the exception of the King who enjoys immunity from investigation and prosecution under the Act. It is also charged with the responsibility of educating the public against the evils of corruption and fostering public support in combating corruption, among others. Its functions include examining the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices, secure the revision of methods of work or procedures that may be conducive to corrupt practices, advise government and public bodies on ways in which corrupt practices may be eliminated, and on change in practices or procedures necessary to reduce the likelihood of corrupt practices.

<sup>7</sup> The TI CPI ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of business people and analysts from among the world, including experts who are locals in the countries evaluated.

<sup>8</sup> Lesotho is covered by the CPI for the first time.

2.5.4 The integrity and effectiveness of the directorate is, however, hampered by inadequate financial and human resources and infrastructure, bureaucratic bottlenecks and inadequate professional skills. This is essentially due to the fact that DCEO is included in the civil service structure and, hence, is subjected to Public Service Regulations. These constraints have created a serious problem of lack of capacity for effective and efficient execution of DCEO's mandate which is based on four major areas, namely, education, prevention, investigation and prosecution. The second major constraint for DCEO's effectiveness relates to the weaknesses in the legislative framework against corruption and economic offences, hence the need to review the Prevention of Corruption and Economic Offences Act 1999. The globally accepted practice is for anti-corruption agencies, such as DCEO, to be directly answerable to the Head of State or Parliament. This cuts down on the bureaucratic bottlenecks that usually slow down the operations in situations where the agencies are located within government ministries. Strengthening the capacity of DCEO in all aspects of its operations, but mainly through training of the personnel for acquisition of additional professional skills, such as forensic and surveillance investigation, is critical. This would enable the strengthening of operational and procedural systems within various government ministries, especially in accounting, procurement and tendering sections, for prevention of corruption practices. Furthermore, it is only when there is adequate capacity that proper case management system could be adopted so as to improve the efficiency of the directorate.

2.5.5 There is political will to undertake reforms aimed at improving the effectiveness of DCEO. In this regard, a proposal for amendment of the Prevention of Corruption and Economic offences Act has already been considered by Cabinet and could be tabled in Parliament in 2006 with the aim of bringing it in line with the UN Convention Against Corruption in order to enhance the independence of DCEO.

### Money Laundering

2.5.6 Although Lesotho adopted the UN Palermo Convention Against Transnational Organised Crime, which purpose is to promote coordination to prevent and combat transnational organised crime more efficiently, there is no law on money laundering and the Anti-Corruption Act did not make any provisions in that area. However, for a number of years, the Central Bank of Lesotho has been pursuing efforts aimed at combating money laundering through the establishment of the Anti-Money Laundering Task Team in the 1999. The task team, which comprises the Ministry of Finance and Development Planning, Central Bank of Lesotho, Lesotho Employer's Association, Law Society of Lesotho, Parliamentary Counsel, Commissioner of Police and Interpol, and all other banking institutions, has to-date been instrumental in developing national anti money laundering measures in line with international standards. This process has led to the drafting of the Money Laundering and Proceeds of Crime Bill, which could be presented to Parliament in 2006. It is also noteworthy that in an effort to assist financial institutions detect and recognise the suspicious and related money laundering activities, the task team issued the Financial Institutions (Anti-Money Laundering) Guidelines 2000 the banking sector.

2.5.7 Lesotho also signed the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) Memorandum of Understanding (MoU) in 2003. ESAAMLG was established by SADC member countries in 1999. By signing the MoU, Lesotho undertook to work towards the

highest international standards in the fight against laundering of proceeds of crimes and to implement 40 recommendations of the Financial Action Task Force (FATF) on money laundering. Further, Lesotho volunteered to be assessed as regards its compliance with the FATF 40 recommendations as well as eight special recommendations on anti-money laundering and combating financing of terrorism (AML/CFT). The evaluation, which was conducted in June and July 2004, revealed that most pieces of Lesotho's legislation have not included AML/CFT measures and identified numerous gaps in the legislation governing the financial sector. It is, therefore, important for GoL to expedite the enactment of the Money Laundering and Proceeds of Crime Bill in order to give assurance to the international community as to the determination of Lesotho to fight all forms of economic and commercial crime.

### **III. GOVERNMENT'S GOVERNANCE AGENDA**

3.1 Good governance rides high in the current agenda for the GoL and is viewed as the basis to achieve accelerated growth and poverty reduction. In fact governance is one of the main pillars of the recently concluded National Vision for Lesotho, commonly referred to as Vision 2020. According to this document, governance challenges for Lesotho include the "empowering of the legislature to carry out the oversight function, improving the judiciary to deal with delays in the justice system and strengthening the public service for effective service delivery and accountability".

3.2 Over the medium-term, the overall goal of GoL is articulated in its PRS. The PRS process, which involved widespread and comprehensive consultations, identified eight priority areas, namely: employment creation; improving agricultural production and food security; infrastructure development; deepening democracy, governance, safety and food security; improving access to health care and social welfare; improving access and quality of the education system; improving environmental management and conservation; and improving public service delivery. The process also identified critical cross-cutting issues, namely; combating HIV/AIDS; and gender, youth and children.

3.3 The PRS recognises that governance is one of the missing and weak links in its efforts at poverty reduction. In this regard, its overall objectives are to deepen democracy, improve governance at all levels, increase safety and security, and improve the efficiency of the justice system. To achieve these objectives, the strategies articulated in the PRS focus, *inter alia*, on: promoting national unity and strengthening the formal conflict management structures; maintaining the capacity of the Independent Electoral Commission; improving the legislative efficiency of Parliament; strengthening the DCEO; strengthening accounting, auditing and tendering processes; creating and strengthening structures for public participation in governance; reducing the high rate of crime; and speeding up justice.

3.4 Central to the attainment of the national development goals in the Vision 2020 and the success of its efforts to implement the PRS, GoL has embarked on an ambitious PSIRP in response to the need to increase the efficiency and effectiveness of the public sector. Details of the PSIRP are given in Box 2. As highlighted in the box, Lesotho is pursuing a number of reforms in order to strengthen good governance in the country. Through the PSIRP, GoL has

already started undertaking measures to enhance public financial management systems by way of: (i) developing and implementing integrated planning and budgeting processes based around MTEF approach; (ii) strengthening the Accountant General's office through reorganisation, training and replacement of the financial management system; (iii) strengthening the role of oversight through a new Audit Act that is ready for submission to Cabinet; and, (iv) undertaking reforms of the public procurement system to introduce standard procurement documentation that incorporates: international best practices, introduce revised procurement thresholds, decentralise the procurement function to line ministries, transforming CTB to a regulatory body and making the procurement cadre professional by establishing a Lesotho-Based Professional Training Programme in supply chain management.

### **Box 3: Public Sector Improvement and Reform Programme (PSIRP)**

The PSIRP is a government initiative that is being formulated in collaboration with development partners in response to the need to strengthen good governance as a basis to achieve accelerated growth and poverty reduction. It is a multi-dimensional reform package and its objectives are to improve the effectiveness and efficiency of public service delivery and public financial management. It is, therefore, central to the success of the efforts to implement PRS objectives. GoL understands that public sector improvement and reform programmes often fail because projects tend to be too complex and attempt to do too much and too quickly with a low capacity base. Consequently, Phase I of the PSIRP sets a horizon with a focus on getting the basics right in few key components as follows, of which public financial management sub-programme is a major component:

- a) *Component I: Improving Public Financial Management and Accountability* – seeks to improve public financial management through: (i) a shift to MTEF performance budgeting approach starting from 2005/06 financial year, supported by the development of a macroeconomic model, to facilitate the achievement of the government's poverty reduction and other development goals; (ii) the phased replacement of the government of Lesotho Financial Information System (GOLFIS) through the introduction of an integrated budgeting and financial management information system (IFMIS); and (iii) public procurement reform. In addition, the reform programme will strengthen the operation of the Auditor General's office and assist the Public Accounts Committee to execute its oversight role effectively.
- b) *Component II: Civil Service Reform* - this is to be implemented through a series of key activities that include an impact assessment of HIV/AIDS for the whole public sector, monitoring of implementation in carefully selected priority areas and conducting of performance appraisals and incentives for officers in top PRS priority areas.
- c) *Component III: Decentralisation for Service Delivery* - GoL is committed to ensuring the participation of *Basotho* in the development process. This component of the projects is aimed at ensuring that the legislative, fiscal and institutional framework is in place to implement the provisions of the Local Government Act.

To implement PSIRP, a secretariat is already in place to coordinate the activities of the programme. The secretariat has already developed a programme of activities and an implementation matrix for Phase I activities. As a result, some development partners have already pledged their assistance to some project activities, especially in connection with Component I.

3.5 GoL established the Law Reform Commission (LLRC) in 1997 to review the laws of Lesotho with a view to the systematic development and reform of the law. In 2002, the Lesotho Justice Sector Reform Programme was packaged to supplement the National Vision and the PRS. These, including the approval of the National Gender Policy in March 2003, attest to GoL's commitment to deal with some of the governance problems in the country. To address the problem of gender discrimination and violence, the Sexual Offences Act 2003, which

consolidates all laws regulating sexual conduct and repeals those which are discriminatory and do not offer adequate protection to victims, was passed. Furthermore, the Married Persons Equality Bill (1992), which seeks to remove all restrictions on the legal capacity of a wife, is presently awaiting Cabinet approval.

3.6 A number of other bills aimed at improving the delivery of justice in Lesotho have been submitted to Parliament, namely: the Judicial Education Institute Bill that is intended to provide professional training to judicial officers; the Council on Law Reporting Bill; and the Administration of Justice Bill that seeks to improve the role of the JSC in the appointment of the Chief Justice and the President of the Court of Appeal and envisages the appointment of an Administrator of the judiciary in order to remove the judiciary from direct political control. Other laws that have received Cabinet's green light and are ready to be tabled for the consideration by Parliament include the amendment to the Prevention of Corruption and Economic Offences of 1999, the amendment to the Children Protection Act 1988 and the Money Laundering Bill. The government and CBL are also collaborating to ensure that a commercial court becomes operational. Lastly, GoL is streamlining business licensing procedures and reviewing several laws to promote private sector development in the country.

3.7 Another important development with regard to the budget process is the establishment of a revenue authority in Lesotho. Parliament passed a law establishing the Lesotho Revenue Authority (LRA), which received royal authority in 2001, and the Authority becoming functional in January 2003. The LRA is a statutory body charged with the mandate of assessing, collecting and accounting for the tax revenues on behalf of the GoL. The main reasons for establishing the Authority, as opposed to the previous decentralized system, was to enhance the efficiency and effectiveness of the revenue collection and to provide improved service to the public.

#### **IV. DONOR COORDINATION IN GOVERNANCE AND POTENTIAL AREAS FOR BANK GROUP INTERVENTION**

##### **4.1 Donor Coordination in Governance**

4.1.1 The Loan and Guarantee Act of 1967 designates MOFDP as the sole authority in Lesotho to raise external loans and negotiate the terms and conditions for such loans. The position of GoL, following from this legal requirement, is that the ministry is the responsible agency for coordinating both initiation and preparation of development projects. However, in view of acute shortage of qualified, trained and skilled personnel, which is a generic problem in Lesotho, MOFDP has not been able to play its aid coordination role effectively. For this reason, the capacity of MOFDP for aid coordination with development partners requires strengthening.

4.1.2 To improve their effectiveness, development partners (bilateral and multilateral) in Lesotho have outside the government framework established mechanisms for consultation and coordination, on a wide range of intervention areas. The UNDP is charged with the responsibility for convening all donors for consultation and coordination on governance issues. In addition to this, all European development partners with a field presence in Lesotho, namely DCI, DfID, European Union (EU), and German Technical Assistance/Kreditanstalt für Wiederaufbau

(GTZ/KfW), have come up with their own mechanism, known as European Donor Agencies (EDAL), which enables them to effectively coordinate their activities in the country.

## 4.2 Some Specific Donor Interventions

4.2.1 In recent times, the PSIRP has provided the framework for development partners, especially EDAL, to provide assistance to GoL in a harmonised and coordinated manner. The government has prepared costed matrices by outcome and outputs as regards Component I only of the PSIRP, which are being used for soliciting assistance from cooperating partners. So far, DCI, DfID, EU and the GTZ/KfW had pledged to provide some assistance to GoL to enable it to successfully implement the PSIRP. It is worth noting that GoL has not yet costed the other two components.

4.2.2 DfID: On governance related issues, through the PRS Foundation Programme amounting to £3 million for a period of three year (2004-2007), DfID is providing support for: strengthening the government's poverty monitoring function; development of a dynamic and sustainable civil society engaged in monitoring and shaping PRS implementation; strengthening GoL's public finance management systems, including accountability; strengthening government revenue collection through the establishment of LRA; and supporting GoL to coordinate donor activities around PRS and PSIRP more effectively. To enhance financial public financial management, DfID also is supporting GoL reforms of the procurement system. Further, DfID is providing support to the PRS Priority Support Programme, amounting to £7.5 million over a three to five year period, which is essentially focusing on mitigating the impact of HIV/AIDS, job creation by improving investment climate, and improving food security. In addition to this, through the Lesotho Justice Sector programme, DfID is providing assistance for the development of the justice sector so that it is capable of developing and implementing pro-poor policies.

4.2.3 European Union: Complementing its on-going capacity building activities in MOFDP and falling within the government's PSIRP, in December 2003, the EU signed with GoL a Capacity Building in Economic Planning Project (CBEPP) costing Euro 17.5 million aimed at addressing institutional and analytical constraints within MOFDP. The project is intended to strengthen GoL's capacity in macroeconomic management, the collection and analysis of statistics, sectoral planning, demographic research and population and manpower modelling. Out of the amount allocated for the CBEPP, EU has pledged approximately Euro 5.6 million towards the PSIRP, which will specifically be used to provide support for: improving macroeconomic planning; strengthening the capacity of the Bureau of Statistics; and developing decentralised financial management systems.

4.2.4 DCI: On governance, support from DCI is currently focused on strengthening the role of the civil society in PRS monitoring, parliamentary reform, office of the Ombudsman and election issues. Through the PSIRP, DCI has also pledged some assistance towards, *inter alia*, training for budget and finance officers in line ministries and local authorities, establishing resource envelope for financing local authorities, establishing appropriate legislations for all financial operations, strengthening internal controls within the public service, restructuring the Central Tender Board and improving public service management.

4.2.5 GTZ: Support from GTZ is focused on the decentralisation process as regards governance issues. This is essentially in the form of technical assistance.

4.2.6 United Nations Development Programme (UNDP): Concerning governance, through its Third Country Programme for the period 2005-2007, UNDP is assisting Lesotho to deepen democratic governance by providing support for: (i) strengthening internal organisation of the Legislature and training Parliamentary members and staff for better oversight roles; (ii) putting in place National Decentralisation Strategies and developing Gender-Sensitive Local-Based Planning; and (iii) strengthening Public Sector Reform and Transparency and Accountability Institutions. UNDP is also providing support for strengthening the oversight role of Parliament by assisting the office of the Speaker, supporting the establishment of Portfolio Committees and a Parliamentary Reform Committee. It is also assisting key line ministries in the development of sector decentralisation plan.

4.2.7 World Bank: Currently, there is no specific on-going support by the World Bank in the area of governance. However, once the level of assistance for the PSIRP from various development partners has been concretised, GoL intends to approach the World Bank to request it to cover the financing gap. The World Bank's areas of close collaboration with GoL include the PRSP, public sector reform, financial sector reform and the Integrated Framework for Trade.

**Table 3: Areas of Intervention on Good Governance by Key Development Partners**

| Areas                                  | DCI | DfID | EU | GTZ | UNDP | WB |
|----------------------------------------|-----|------|----|-----|------|----|
| Public finance & budgeting             | X   | X    | X  |     |      |    |
| Planning, budgeting & MTEF             | X   | X    | X  |     |      |    |
| Macroeconomic management               |     | X    | X  | X   |      |    |
| Revenue collection                     | X   | X    |    |     |      |    |
| Procurement                            | X   | X    |    |     |      |    |
| Parliamentary reform & election issues | X   |      | X  |     | X    |    |
| Public sector reform                   |     |      |    |     |      | X  |
| Financial sector reform                |     |      |    |     |      | X  |
| Decentralisation                       | X   |      | X  | X   | X    |    |
| Legal & justice sector reform          |     | X    |    |     |      |    |
| Civil societies                        | X   | X    |    |     |      |    |
| Combating corruption                   |     | X    |    |     |      |    |

### 4.3 Previous Bank Group Interventions in Governance

4.3.1 The Bank Group has not financed any governance specific intervention in Lesotho. However, it has supported GoL by providing assistance through two institutional support projects that have a bearing on governance in the country. One project focused on strengthening institutional capacity of the MOFDP. It was approved in September 1991 for a grant amount of UA 0.77 million. The main objective of the project was to strengthen the capacity of the government in macroeconomic and sectoral planning, programming and coordination of recurrent and capital budgeting through the provision of: (i) technical assistance (TA) to the Department of Economic Corporation and the Department of Sectoral Programming; (ii) training in capital budgeting, macroeconomic analysis and modelling, project analysis, taxation,

accountancy and customs and excise management; and (iii) computers to the Customs and Excise Department and the Chief Financial Controller's office.

4.3.2 The second project is an Institutional Support Project to the MOFDP and the Ministry of Public Works and Transport (MOPWT) approved in November 2004 for a grant amount of UA 0.79 million. The project focuses on supporting capacity building activities in the areas of planning, financial and budget management in MOFDP and in the areas of policy formulation, project management, environmental management, budgeting and financial management in MOPWT.

#### **4.4 Potential Areas for Bank Intervention**

4.4.1 It can be observed from the assessment in the foregoing chapters that Lesotho faces a number of challenges in the overall governance framework. Specifically, the country faces formidable challenges in the areas related to accountability, transparency, stakeholders' participation, combating corruption, and the legal and the judicial systems. As highlighted above, GoL is already taking steps to address some of the weaknesses, most notably through the PRS and the PSIRP. There are, therefore, a number of measures that require the attention of both the government and development partners.

4.4.2 The potential proposed areas for Bank Group intervention to enhance governance in Lesotho are determined on the basis of the priority needs identified in this report. The selected areas would take into account the fact that the Bank Group's focus would be selective and on a few key governance areas where it has comparative advantages. In addition to this, Bank support should of necessity complement the current efforts by the government and interventions of other development partners in Lesotho. In this spirit, they would be closely aligned with Lesotho's PRS and the PSIRP provides an ideal framework within which the Bank Group could channel future intervention in support of good governance in Lesotho. Thus, drawing on the findings of the CGP, the Bank Group would explore the possibilities of supporting the country, in the context of the PSIRP, in its efforts aimed at improving public financial management systems and building the capacity for the decentralization process.

4.4.3 The CGP will also serve as the main instrument to guide the Bank Group's dialogue with government on all aspects of governance. The shortcomings identified by the governance profile are a challenge for the Bank Group and other development partners to engage in dialogue with GoL, especially in view of the government's commitment, as manifested by its recent efforts, to strengthen good governance as a basis to achieve accelerated growth the poverty reduction. The CGP has identified weaknesses in governance in the areas of public financial management, public procurement, anti-corruption measures and the administration of justice, among other things. The Bank Group's dialogue with GoL will, thus, focus on such issues.

## **V. CONCLUSION AND RECOMMENDATIONS**

### **5.1 Conclusion**

The Government of Lesotho has shown its commitment to promoting good governance by embarking on several legal and financial management reforms under the PSRIP that are aimed at improving the framework for implementation of its good governance agenda. In addition to this, the principles of good governance are included in the country's PRS, which recognises that governance is one of the missing and weak links in the government's efforts at poverty reduction. While some of the reforms are already well advanced, there are others whose implementation has been proceeding slowly. Although the recent initiatives by GoL to improve governance in Lesotho are commendable, there is scope for further intervention and the Bank should, therefore, build on the commitment by the government to address the governance issues by continuing to lend its support to GoL for the purpose of improving governance.

### **5.2 Recommendations**

5.2.1 It is recommended that the Bank Group should continue to support the Government of Lesotho's efforts to implement its good governance agenda. In this regard, the Bank should:

- a) draw from the findings contained in this CGP in order to design a programme that would support key governance issues in the country;
- b) maintain dialogue with government and stakeholders on governance challenges and other emerging governance issues in the country and propose ways of addressing them; and
- c) enhance its collaboration with other development partners in order to ensure that there is complementarity between its interventions and theirs in the area of governance in Lesotho.

5.2.2 This CGP for Lesotho is circulated to the Boards of Directors for the purpose of information sharing.

## Kingdom of Lesotho Country Governance Profile List of Statutes

| S/N | Subject/Full Title of Law                                                                | Entered into Force              |
|-----|------------------------------------------------------------------------------------------|---------------------------------|
| 1.  | The Constitution of Lesotho                                                              | 2 <sup>nd</sup> April, 1993     |
| 2.  | The Finance Order                                                                        | 1 <sup>st</sup> April 1988      |
| 3.  | Finance Regulations                                                                      | 1973                            |
| 4.  | The Finance and Audit Order                                                              | 1970                            |
| 5.  | Audit Act                                                                                | 1973                            |
| 6.  | Financial Institutions Act                                                               | 20 <sup>th</sup> August 1999    |
| 7.  | Central Bank of Lesotho (Collective Investment Schemes) Regulations                      | July 19 <sup>th</sup> , 2001    |
| 8.  | Building Finance Institutions Act                                                        | 1976                            |
| 9.  | Privatisation Bill                                                                       | September 1995                  |
| 10. | Statistical Act                                                                          | 2001                            |
| 11. | The Sexual offences Act                                                                  | 22 <sup>nd</sup> April 2003     |
| 12. | Speedy Court Trial Act                                                                   | 2002                            |
| 13. | Local Government Act                                                                     | 1966, 1997 & 1998               |
| 14. | Law Reform Act                                                                           | 1993                            |
| 15. | The Trading Enterprises Law 1988                                                         |                                 |
| 16. | The General Law Proclamation 2B                                                          | 1884                            |
| 17. | Trade Unions & Trade Disputes Law                                                        | 1964                            |
| 18. | Labour Code Order                                                                        | 1992                            |
| 19. | Labour Code (Directorate of Disputes Prevention and Resolution) Regulations Legal Notice | 2001                            |
| 20. | Labour Code (Codes of Good Practice) Notice                                              | 2003                            |
| 21. | Labour Code (Conciliation and Arbitration Guidelines) Notice                             | 2004                            |
| 22. | The Labour Code (Amendment) Act                                                          | 2000                            |
| 23. | Insolvency Proclamation Order                                                            | 1957                            |
| 24. | Trade Union Registration Order and Regulations                                           | 1949                            |
| 25. | Exchange Control Act                                                                     | 1987                            |
| 26. | National Assembly Election Order                                                         | 1992                            |
| 27. | Public Service Order                                                                     | 1970                            |
| 28. | Central Bank of Lesotho Act, 2000                                                        | August 2000                     |
| 29. | Companies Act                                                                            | 1967                            |
| 30. | Pensions Proclamation                                                                    | 1964                            |
| 31. | Pensions Scheme (Corporate Bodies) Act                                                   | 1979                            |
| 32. | Accountants Act                                                                          | 1977                            |
| 33. | Electoral Act                                                                            | 1968                            |
| 34. | National Assembly Election Order                                                         | 1992                            |
| 35. | Trade Marks Act,                                                                         | 8 <sup>th</sup> August 1984     |
| 36. | Patents Act                                                                              | 8 <sup>th</sup> August 1984     |
| 37. | The Cooperative Societies Act                                                            | 2000                            |
| 38. | Societies Act                                                                            | 1966                            |
| 39. | Law Society's Act 1983                                                                   |                                 |
| 40. | Prevention of Corruption and Economic Offences, Act                                      | 12 <sup>th</sup> August, 1999   |
| 41. | Ombudsman Act                                                                            | 12 <sup>th</sup> September 1996 |
| 42. | Police Service Act                                                                       | 12 <sup>th</sup> May 1998       |
| 43. | Exchange Control Order                                                                   | 1987                            |
| 44. | Civil procedure and Evidence Act                                                         | 1981                            |
| 45. | Insurance Act                                                                            | 1976                            |

|     |                                                                                                    |                                |
|-----|----------------------------------------------------------------------------------------------------|--------------------------------|
| 46. | Insurance Regulations                                                                              | 1985                           |
| 47. | Privatisation Act                                                                                  | 1995                           |
| 48. | Approved Privatisation Scheme Notice                                                               | 17 <sup>th</sup> June 2002     |
| 49. | Financial Institutions (Ancillary Financial Service Providers)(Licensing Requirements) Regulations | 19 <sup>th</sup> December 2003 |
| 50. | Financial Institutions (Internal Control Systems) Regulations                                      | 28 <sup>th</sup> December 2000 |
| 51. | Financial Institutions (Anti-Money Laundering) Guidelines                                          | 28 <sup>th</sup> December 2000 |
| 52. | Financial Institutions (Liquidity Requirements) Regulations                                        | 28 <sup>th</sup> December 2000 |
| 53. | Financial Institutions (Licensing Requirements) Regulations                                        | 24 <sup>th</sup> November 1999 |
| 54. | Financial Institutions (Risk-Based Capital Requirements) Regulations 1                             | 24 <sup>th</sup> November 1999 |
| 55. | Financial Institutions (Loan Portfolio Classification) Regulations                                 | 24 <sup>th</sup> November 1999 |
| 56. | Financial Institutions (Lending Limits) Regulations                                                | 24 <sup>th</sup> November 1999 |
| 57. | Public Service Act 2005                                                                            | 12 <sup>th</sup> January 2005  |
| 58. | Public Service (Amendment) Act 2005                                                                | 8 <sup>th</sup> August 2005    |

1. **The Finance Order 1988:** makes provision for the control and management of public funds of Lesotho. It provides that the minister shall have the management, supervision, control, direction of all matters relating to financial affairs of the Government of Lesotho, which are not by law assigned to any appropriate minister. Within a period of six months after the close of each financial year, the Accountant General shall sign, date and submit to the PS for submission to the Auditor General, accounts showing fully the financial position of the Consolidated Fund and other funds on the first day of such financial year. The minister's approval is required for the Principal Secretary (PS) to surcharge a public officer who has mismanaged funds or failed to comply with regulations.

2. **The Finance and Audit Order No. 7 of 1970:** provides for the control, management and audit of public funds of Lesotho and for the powers and duties of the Auditor General. These duties include to satisfy himself that all monies that have been appropriated by the Council of Ministers and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it. At least once a year to audit and report on the public accounts of Lesotho, the accounts of all governmental officers and authorities, and the accounts of all courts in Lesotho; and that all reasonable precautions have been taken to safeguard the collection of public monies and that the laws, regulations, orders, etc. relating thereto have been duly observed.

3. **The Audit Act of 1973:** makes provisions for the audit and presentation of public accounts. This is also contained in Section 117 of the Lesotho Constitution. These provisions require that the Auditor General shall examine the necessary accounts relating to the Consolidated Fund and other public funds and ascertain whether such reports are properly kept and that money has been expended for purposes for which it was appropriated by the National Assembly.

4. **Financial Institutions Act 1999:** repealed and replaced the FIA 1973, establishes a clear and consistent framework for supervising licensed institutions by the Central Bank of Lesotho (CBL) which now has the operational independence to respond quickly and decisively to problems and issues confronting the financial system. It allows sufficient flexibility in establishing minimum capital, liquidity requirements, loan limits and in issuing other prudential regulations aimed at attaining full compliance with the Basel Core Principles for Effective banking Supervision. It empowers the Supervision Department of CBL to monitor the activities of the licensed institutions to safeguard the financial soundness of the financial system in Lesotho and to ensure compliance with the laws and regulations.

5. **Central Bank of Lesotho (Collective Investment Schemes) Regulations 2001:** is the legal framework for regulating and supervising collective investment schemes with a view to encouraging growth of such capital instruments without compromising the investor protection.

6. **Privatisation Bill 1995:** provides for the establishment of the Privatisation Unit in the Ministry of Finance and the appointment of the Private Sector Advisory Committee. It is aimed, among other things, at divesting GoL of shareholdings in public enterprises.
7. **Financial Institutions (Licensing Requirements) Regulations 1999:** to establish clear and objective criteria for reviewing applications to engage in banking or credit business and to outline the procedure to be followed in the licensing process.
8. **Financial Institutions (Risk-based Capital Requirements) Regulations 1999:** to ensure that each bank maintains an adequate level of capital to protect its depositors and creditors and to promote public confidence etc.
9. **Financial Institutions (Loan Portfolio Classification) Regulations 1999:** to ensure that all loans and advances from financial institutions are regularly evaluated using objective classification criteria; that the accounting treatment of accrued but uncollected interest on non-performing accounts of financial institutions is in accordance with internationally-accepted accounting principles; and that the allowance for loan losses or provisioning is maintained at an adequate level at all times.
10. **Financial Institutions (Lending Limits) Regulations 1999:** to prevent a financial institution from making unduly large exposure to a single borrower or a group of connected borrowers or to any one of its directors or officers or to any other related persons under section 25 of the Financial Institutions Act 1999 and to ensure that all insider loans and advances made by a financial institution are on terms not more favourable than those afforded other borrowers.
11. **Financial Institutions (Internal Control Systems) Regulations 2000:** to require financial institutions to establish and maintain a system of strong internal controls which shall serve as a foundations for their safe and sound operation; and provide a useful framework for evaluating a financial institutions' internal control systems.
12. **Financial Institutions (Anti-Money Laundering Guidelines) Regulations 2000:** made in pursuance of section 71 of the Financial Institutions Act 1999 meant to require financial institutions to establish and maintain specific policies and procedures to guard against the use of financial system for the purpose of money laundering; to enable financial institutions to recognise suspicious transactions and to provide an audit trail of transactions with customers who come under investigation; and to require financial institutions to submit reports and to disclose information on large cash transactions and suspicious transactions.
13. **Financial Institutions (Liquidity requirements) Regulations 2000:** intended to ensure that a bank maintains adequate liquidity and require frequent reporting and monitoring of liquidity position not only for prudential reasons but also for purposes of implementing macro economic policies.
14. **Financial Institutions (Ancillary Financial Service Providers) (Licensing Requirements) Regulations 2003:** to establish clear and objective criteria for regulation and supervision of persons or institutions licensed to provide ancillary financial services.
15. **Accountants Act No. 9 of 1977:** provides for registration of accountants, establishes the Institute of Accountants and provides for disciplinary procedures and penalties for non-compliance with the rules.
16. **Exchange Control Act 1987 (as amended):** governs foreign exchange transactions between sellers and buyers. The main objectives are to ensure timely repatriation into Lesotho of all foreign currency acquired by residents of Lesotho; to prevent the loss of foreign currency resources through the transfer abroad of real or financial capital assets in Lesotho; and to constitute an effective system of control, over the inward and outward movement of financial and real assets, while at the same time avoiding interference with the efficient operation of the commercial, industrial and financial system of the country.
17. **Exchange Control Order 1987:** to consolidate and amend the law relating to the control of dealings in gold, goods, currency and securities; to provide for matters directly or indirectly relating to or affecting or having a bearing thereon. It empowers the minister to make regulations in regard to any matter directly or indirectly relating to or affecting or having a bearing upon currency, banking or exchanges and prohibition or restricting dealings in or

possession of gold, goods, currency or securities. The minister is empowered to give direction of a general or specific nature relating to exchange control, to the Central Bank, and the Central Bank shall be bound to comply with any such directions. The regulations may provide for acts or omissions which constitute criminal offences relating to or arising from dealings or transactions in or possession of gold, goods, currency or securities and prescribe penalties therefor.

**18. Pensions Scheme (Corporate Bodies) Act 1979:** provides for the transfer of the Statutory Bodies Pension Fund to the Lesotho National Insurance Company (LNIC) for the regulation of the operation by that company of a Pensions Scheme for employees of corporate bodies.

**19. Insolvency Proclamation Order 1957:** provides that an insolvent debtor or his agent or a person entrusted with the administration of the estate of a deceased insolvent debtor or of an insolvent debtor who is incapable of managing his own affairs, may petition the court for the acceptance of the surrender of the debtors estate for the benefit of his creditors. The court may direct the petitioner or any other person to appear and be examined before the court before accepting or declining a surrender.

**20. Money lenders Act 1989 (as amended):** was passed to curb the activities of the lender who spuriously conducted their businesses. It provides for the licensing regime, outlaws harsh interest rates, etc.

**21. Building Finance Act 1976 (as amended):** provides for the control of building finance institutions.

**22. The Trading Enterprises Law 1988:** regulates the issuance of license. An application for license takes about three months and decision-making is generally slow.

**23. Prevention of Corruption and Economic offences, Act 1999:** to provide for the establishment of a Directorate on Corruption and Economic Crimes; and to make provision for the prevention of corruption and confer power on the Directorate to investigate suspected cases of corruption and economic crimes.

**24. Police Service Act 1998:** provides for the organisation, administration and discipline of the police service.

**25. Public Service Act 2005:** aimed at developing and maintaining a stable, efficient and effectively managed public service.

**26. Public Service (Amendment) Act 2005:** makes provision for the power to discipline public officers to be vested in the management and the power to terminate their appointments for disciplinary reasons to be vested in the Head of Department.

**27. Labour Code Order No. 24 of 1992:** provides for registration of Trade Unions in Lesotho and requires the Unions to provide audited financial statements and audited memberships to the Labour Commissioner annually.

**28. The Labour Code (Amendment) Act No. 3 of 2000** established the Labour Court and the Labour Appeal Court and provides for their functions and the appointment of a Registrar and deputy Registrars of the Labour Court by the Judicial Service Commission (JSC), after consultation with the Industrial Relations Council (IRC). It also amends the Labour Code Order 1992:

- to establish the following:
  - o Industrial Relations Council – its appointment and functions;
  - o Office of the Director of Dispute Prevention and Resolution - its appointment and functions;
  - o A Labour Court and Labour Appeal Court – appointment and tenure of the President and Deputy President of the Labour Court;
- to provide for the conciliation and arbitration of disputes;
- to authorize the minister to appoint a conciliator to prevent or resolve disputes; and
- to provide for the prevention of disputes by making the failure to bargain in good faith an unfair labour practice.

**29. Labour Code (Directorate of Disputes Prevention and Resolution) Regulations Legal Notice No. 194, of 2001:** This was passed pursuant to section 240 of the Labour Code Order 1992 and makes provisions for the

procedure to be adopted in referral and filing of cases before DDPR; service of processes on an employee, trade union, employer, employers' organization, parties and forms of service; jurisdiction of conciliators and arbitrators; proceedings of conciliation and arbitration and pre-arbitration conferences; production of documents; joinder, substitution of parties etc.

**30. Labour Code (Codes of Good Practice) Notice 2003:** also made pursuant to section 240 of the Labour Code Order 1992 after consultation with the Industrial Relations Council and makes provisions for the codes of good practice.

**31. Labour Code (Conciliation and Arbitration Guidelines) Notice No. 1 of 2004:** lays down general principles to guide conciliators and arbitrators in the exercise of their powers and functions. It is made pursuant to section 46 of the Labour Code Order and lays down general principles to guide conciliators and arbitrators in the exercise of their powers and functions. It also assists parties to a dispute to know how conciliation is likely to be conducted and what the conciliators expect from them. It is made in two parts. The first part deals with conciliation – defines the term and sets out the fundamental principles, the cases that may be conciliated, model form of the proceedings, jurisdiction, postponements etc. The second part deals with arbitration along the same lines as above. The Notice defines dispute of interest as a dispute between an employer or an employers' organization on the one hand and an employee or trade union on the other concerning a labour matter which the employee does not have a right to. It excludes any dispute that the Labour Code requires to be resolved by adjudication or arbitration. It concerns existing rights while disputes of interest, when resolved, create new rights. The distinction can be demonstrated by an example of a dispute where an employer pays an employee less than the agreed rate – this is a dispute of right which may be referred to arbitration. If an employer refuses to increase the agreed rate, a dispute over that refusal is a dispute of interest and may only be resolved by agreement, which may have to be induced by resort to industrial action. One exception to disputes of interest that are referred to arbitration are essential services or by agreement.

**32. National Assembly Election Order 1992:** provides for the registration of electors and the conduct of election of members of the national Assembly.

**33. Ombudsman Act 1996:** which provides for the exercise of the functions of the office of the Ombudsman established under section 134 of the Constitution.

**34. Trade Marks Act, No. 31 1984:** provides for the registration and protection of trade marks and good services. It establishes the Trade marks Registry with a Registrar and Deputy Registrar. It provides for registrability requirements, procedures for application etc.

**35. Patents Act 1984:** provides for registration of and protection of patents.

**36. Central Bank of Lesotho Act 2000:** administers unit trusts. It recognises the CBL's independence to enable it to make meaningful contribution to the development of the country's economy, take appropriate action in ensuring delivery of its supervisory mandate, and to enable it to achieve its main objective of price stability. It stipulates ten functions for the bank among which are to license of register and supervise institutions pursuant to the Financial Institutions Act 1976; to monitor and supervise capital markets; to formulate, adopt and execute the foreign exchange policy.

**37. Companies Act 1967:** governs the incorporation and registration of companies in Lesotho.

**38. Pensions Proclamation 1964:** amends and consolidates the law relating to the granting of pensions and of superannuation and other allowances in respect of persons employed in the public service of Lesotho Government.

**39. Speedy Court Trial Act 2003:** was promulgated to alleviate the problem of prison congestion as a result of slow speed of cases in the courts. It provides among other things that Judges must deliver judgment in a case they hear within two weeks of commencement of the cases. Sanctions as well as automatic release of a suspect who remains in custody for over 60 days are provided for in the law.

- 40. The Cooperative Societies Act 2000:** provides for the registration of Cooperative Societies and for annual report to members through AGMs. Audited statements are not required.
- 41. Societies Act of 1966:** as amended provides for registration and dissolution of societies. Under this Act, organisations are required to report to their members through Annual General Meetings (AGM), and audited statements are a requirement.
- 42. Law Society's Act 1983:** established the Law Society of Lesotho as a statutory professional body for legal practitioners whose objects as set out in section 4 of the Act are, amongst other things, to promote reforms and improvements in the law; to assist in the administration of justice; and to suppress dishonourable conduct and practices. It also has a duty to protect the independence of the judiciary.
- 43. The General Law Proclamation 2B of 1884:** that established Lesotho's dual legal system not only provides for the continued application of Sesotho Customary Law, but also makes room for the application of "the law for the time being in force in the Colony of the Cape of Good Hope".
- 44. Insurance Act 1976 (as amended):** provides the supervisory framework and the licensing regime of the insurance business in Lesotho.
- 45. Trade Union Registration Regulations:** provides guidelines for the registration of a trade union.
- 46. Law Reform Commission Order 1988:** establishes a law reform commission consisting of a Chairman, who shall be a judge of the High Court and such other members not exceeding 4 as the King may appoint.

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