



The Lesotho National Dialogue and Stabilization Project

Media Sector Reforms

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1.0 Executive Summary

Lesotho has embarked on a comprehensive and watershed reforms exercise, which is participatory and engaging. The multi-sectoral and multi-stakeholder reforms seek to create a Lesotho that Basotho want¹. The reforms are intended to create a just, peaceful and stable country, this after the Kingdom traversed a nasty political trajectory since independence. Lesotho has for the last 50 years of independence been characterised by incessant intra-party and interparty conflicts. After installation of the first coalition government post the 2012 national assembly elections, commotion erupted within partners in the coalition government. This conflict spilled into the domain of society and rendered Lesotho to instability. This necessitated the intervention of the Southern African Development Community (SADC), which spelled out proposals for a comprehensive reforms programme.

Given the primacy of the media as a precondition for democratisation of society and the resultant development, it should have the requisite capacity to execute its mandate. The media has also been broached as a catalyst and an agent of political, economic, social, technological and socio-economic development of society. The latter function is premised on the notion that the media mirrors the society in which it operates and vice-versa. The media has been founded as an agenda-setter within society.

Members of society who participated in the in-district consultations, plenary 1 media consultation as well as the diaspora have voiced the issue of a perceived notion that the Lesotho National Broadcasting Service (LNBS) is used as a mouthpiece of the government. They charge that LNBS is used as a propaganda tool by the political class. As a state-owned broadcaster, it is just part of the Ministry of Communications, Science & Technology, and as a result, its operations depend on the government of the day. A proposal submitted by the people is that the state-owned broadcaster has to be transformed into a public sector broadcaster. This it is felt, will ensure that it is editorially independent from state interference. The

¹ The Lesotho We Want: Dialogue and Reforms for National Transformation (Vision, Overview and roadmap)

approach is also said to insulate the broadcaster from political interference. It is also intended to ensure that it operates professionally, within bounds of internationally-accepted standards for broadcasting media.

Basotho also complained about political control of the frequency spectrum distribution and usage. This challenge stems from the fact that the communications regulator, the Lesotho Communications Authority (LCA) is mandated to regulate the communications sector based on best practices, standards and dynamics in frequency spectrum distribution. However, what obtains practically is that the government, through the Ministry of Communications, Science & Technology usurps the authority vested in the LCA and gets involved in spectrum distribution. Proposal from Basotho is that LCA should be governed by a professional board of directors elected on merit, through a fair, competitive and meritorious recruitment process. This is to ensure that LCA is institutionally and functionally governed by an independent and professional board, which reports directly to parliament. The practice in other jurisdictions, which is in line with international standards is that parastatals like the LCA have to be insulated from state interference by act of law.

Another issue that has been highlighted by Basotho during the in-district and diaspora consultations was that of poor professional and capacity constraints bedevilling the media sector. Basotho have felt that media practitioners and journalists are wanting in terms of good news production. This is attributed to acute skills shortages in the sector. As a remedy, a proposal is that employers in the media houses have to send their practitioners for short-course training for sharpening of their skills while on the job. It is also proposed that entrants into the journalism practice should hold a minimum of a degree in journalism for the intermediate and ongoing skills development in the long-term. Furthermore, it is proposed that minimum standards for media practice have to be set, especially for cub reporters.

Basotho have further argued that the media is not sufficiently regulated. Basotho have felt that media has become a loose cannon, which does as it desires. It does not uphold cardinal canons of the journalism profession such as accuracy, avoidance of bias, balance, truthfulness and observance of public interest, respect for the privacy rights of others as well as limitation to harm. Basotho have proposed an

effective regulatory regime for the media sector. This will put the media on a good cause with societal expectations. This involves both self and co-regulatory systems. What has been proposed is a National Code of Ethical Conduct and Practice. Two regulatory platforms that have been proposed are an independent media council and a media ombudsman. Media houses should also establish their own internal media ombudsmen.

Also, it has been felt that the right to freedom of expression of opinion and that of the media are not protected under the law. The state of affairs is that the Constitution of Lesotho (1993) enshrines this right enjoyed by members of society. A contention that is put forth is that it excludes the freedom of the media. Proposal is that Section 14 (1) of the Constitution of the land has to be amended to include media freedom. Another issue was that the Constitution takes away the freedom through safeguard measures, which are provided under Section 14 (2) and (3).

Added to the predicament of a limited constitution in the legal fraternity is that of draconian, outmoded and archaic laws, which infringe on freedom of expression of opinion. These repressive laws, some of which date as back as a century ago, still occupy Lesotho's statute books today. A repressive legislative framework is not a welcome development in a democratic dispensation that Lesotho desires to be in the near future.

Further on the part of the freedom of expression of opinion, proposal is that the government should ratify and domesticate international instruments providing for freedom of expression of opinion. There are a number of regional and international conventions, treaties and charters, which Lesotho has signed and ratified as commitment to the ethos of freedom of expression of opinion and of the media. But without domestication, this commitment is not complete.

There is also abuse of freedom of expression of opinion by the media sector. Feeling is that players in the media sector overstep parameters of enjoyment of freedom of expression by not observing the reputations and privacy rights of others people. It is argued that journalists and media practitioners tend to assume that freedom of expression is absolute. This is suspected to be a result of weak media regulation.

Suggestion is also that to avoid creating a *laissez faire* society, where there is no respect for others' rights, a Code of Ethical Conduct and Practice has to be put in place to regulate the behaviour and conduct of those on the coalface of practice in the media industry.

The wide consultations with members of society also observed that another media's shortfall is that it does not represent all shades of society. It is said that there are internal gender, youth and disability disparities within the media sector, with the male folk dominating the sector. While youth are many in the media practice, they only serve at reporting level, but do not occupy strategic positions of higher decision-making such as at editor, manager and proprietor levels. Women also fall on the way side in terms of their representation in the media sector in strategic areas of higher decision-making. Also, ownership in the media sector is largely dominated by the male folk. Most media outlets – broadcasting and print media sectors are owned and managed by male owners and editors. Women, youth and the disabled only feature as writers and reporters. Proposal is that the envisaged and largely mooted media policy has to provide for a quota system to address the observed gender, age and disability imbalances.

It has also emerged during the consultations that the media does not promote diversity of society, particularly in a country that is largely homogenous like Lesotho. The diversities being referred to are cultural and linguistic in nature. Basotho exhibit a multi-cultural character though there are few cultural differences. The clans and totems among Basotho exhibit these cultural differences. There are minority cultures that have been subsumed into the dominant Basotho culture, but which have their own distinct cultural behaviours, traits, values and beliefs – Amakhosa and Baphuthi, who are mostly found in the southern region of the country. Their languages are not used in the media. Proposal is therefore that the envisaged media policy makes it compulsory for media houses, especially radio and television to have news bulletins written and presented in *Isixhosa* and *Sephuthi*. This measure is calculated to ensure that these minority members of society are not marginalised, but are integrated into the larger society.

Another critical issue that consultations have revealed is that of access to information by media practitioners and members of society. This shortfall is suspected to be a result of channels of communication, which are felt to be inadequate to afford members of society and the media access to information held by government, the private sector and civil society. Government's public relations officers lack the authority to release government-held information. Government and private bodies' websites are not frequently being updated with fresh information. Proposal is that the National Draft Communication Strategy has to be revamped so that it considers latest development in the media and communications sectors – particularly the social media platforms. Also, an access to and receipt of information policy has to be formulated. This will lead to the enactment of the access to and receipt of information act. There is an Access to and Receipt of Information Bill (2000), which has not been passed by parliament into law for the last two decades.

Basotho further complained about lack of sustainability of growth and development of the media sector. Issues that surfaced include high licensing fees and advertising that is distributed by government, which disenfranchises the media. Proposal is that there should be independent advertising agencies through which advertisements are channelled before they are sent to media houses. Furthermore, media ownership does not support growth and development of the media.

Basotho have voiced a concern that the media establishments get advertising from predominantly one source, which is the government. As a result, the government uses this anomaly to its advantage by dangling the carrot, selectively using advertising as a weapon to punish critical media while rewarding supportive or pliant ones. This challenge stems from a weak private sector, leading to a weak economy, which is not able to support the media, giving the government ammunition to use advertising as a political tool. This challenge is further propounded by delays in payments to media houses when government has advertised. Advertising is the main source of funding for media establishment and they largely rely on it, so these challenges present a catastrophic disaster in terms of sustainability of the media. A proposed intervention is that there is need for discussions towards an impartial,

efficient and timely government advertising mechanisms in line with practices considered above-board.

Basotho have also expressed the concern that the media does not effectively support the reforms agenda. First, the reforms do not utilise the media as a catalyst that can promote the buy-in of Basotho into the exercise. Second, the media does not proactively take initiative to canvass the reforms to the wide society. A proposed strategy is that the media has to be fully incorporated into the current and future legal and political reform initiatives.

The sectoral consultation reports expressed concerned of absence of cyber security and internet regulation law in Lesotho. The organised civil groups across various sectors of the society want the cyber security and internet regulation law to be accompanied by national information and media literacy programmes to help Basotho interact effectively with the media so as to curb fake news, disinformation and lies on the media and in particular social media. Lastly, the people of Lesotho demand news reportage covering every sector of society as opposed to a politically-skewed reportage that focus selectively on political stories. They want media reports to reflect development on all aspects of life in Lesotho.

2.0 Background context and rationale

2.1 Overall positioning of the media in the reforms

In the context of this media sector reforms for Lesotho, the media landscape comprises broadcasting media which includes 27 radio stations, including terrestrial and online radio stations. There is one television station. The print media sector is made of newspapers and magazines. There are currently nine newspapers and three magazines. The internet-based media includes social media platforms - facebook, WhatsApp, Instagram and Twitter as well as websites.

2.2 Broadcasting sector

2.2.1 Radio industry

The radio industry is made of state-owned radio stations (2), commercial radio stations (11), community radio stations (4) and religious/commercial (4). One is owned by an institution of tertiary education. For television, it has since 1988 been only one (Lesotho Television) and remains a state-run broadcaster that is subject to the government of the day. The private radio broadcasting sector has afforded Basotho an alternative to the state-run media, which has historically been less critical of government and presented a one-sided view to Basotho.

Private radio stations have historically had more advantages over other forms of media. Radio has proven to surpass other forms of media in Lesotho because it is affordable. Like anywhere else, radio has proven to be more accessible than other media forms such as newspapers and television. It is now accessible at time, anywhere. For example, listeners access it in their vehicles in the morning when they go to work as they drive, during lunch when they are eating or anywhere including when their vehicles are taken for a car wash, as it is being washed, they listen to radio. As a result of the above-mentioned accessibility advantages of radio, affordability and accessibility, radio is resultantly more reliable when compared with other media. However, of the 27 radio stations on air currently, only two reach the

countrywide while the rest reach only certain districts of the country. Another critical challenge facing radio stations is that of capacity.

Due to challenges of profit-making, which is made impossible by factors mentioned below, radio stations do not afford to pay for the license charges. As a result, they are not able to expand their reach to other areas of the country or to cover the countrywide as it is desired. Capacity is two-pronged, covering internal capacity of radio stations as regards a weak human resource base as most of them are understaffed. Another challenge besetting growth of the radio industry is that the Government still remains the main advertiser due to a small and underdeveloped private sector. Where the Government has monopoly of advertising, the replete implications this has is that it dangles the carrot by choosing radio stations it can advertise with and sideline those it views in the negative light.

2.2.2 Television

Lesotho has only one television, Lesotho Television, which is owned by the Lesotho National Broadcasting Service (LNBS). It is a state-owned and run television. Its operations depend on the government of the day. It has been largely criticised for propagating only the government policy, giving under priority to government ministries and departments to the exclusion of other sectors. Television broadcasting growth has been minimal in Lesotho, given that there has since 1988, been only one television station, Lesotho Television. This is state-run as mentioned above and is limited to state control. The LNBS does not have material power to ensure editorial independence at the broadcaster and suffers capacity due to a weak budget. Lesotho Television is limited by budgetary constraints to expand to an extent it is at international levels. It is not found on DSTV for instance due to inability to pay for the DSTV license.

2.3 The print media sector

2.3.1 Newspapers and magazines

The print media sector is composed of publications – newspapers, and magazines. The newspaper industry's growth has been stunted in comparison with the radio industry, which has grown exponentially. There are many reasons for the stunted growth of the industry. Heavy printing costs have malnourished the birth and sustainability of newspapers. Many newspaper titles that have been born have come and gone and new ones have also joined the sector, but only failing to sustain due to inability to meet operational costs of printing, distribution and recruiting qualified personnel in the field.

Other challenges facing the print media sector include skewed advertising that does not support their revenue generation mechanisms. Newspapers and magazines also rely on the underdeveloped private sector and the government for advertising. As mentioned earlier, where the government has an upper hand on advertising, it dangles the carrot and favours some media houses against others.

Newspapers germinate, go for three years and later fail to breakeven and close shop. The reason is that they lack continued advertising that can sustain them for at least the first three years since their birth. Another major blow for newspapers and magazines' growth is heavy printing costs, which consume a larger proportion of newspapers and magazines' share of profits. The fact that the media sector is not lucrative, players in the sector leave to find greener pastures elsewhere, particularly in the private and civil society sectors.

The news content in the print media is largely skewed towards one segment of society – partisan politics. Other fields like economic reporting, health reporting, court reporting, parliamentary reporting, investigative reporting and international reporting suffer a lot. Also, there is no analytical content that presents news behind news. Even with the advent of social media platforms that have ravaged the traditional news production systems, the print media sector does not seem to have crafted creative ways to offset this development.

Table 1: Landscape of radio stations in Lesotho

#	RADIO STATION	FREQUENCY	TYPE	OWNERSHIP	REACH
1	MAFETENG COMMUNITY FM/MW	107.7MGH	Community	Private	Community (Mafeteng)
2	RADIO LESOTHO FM/MW	93.3 MGH	State-run	State-owned	Countrywide
3	MOAFRIKA FM	89.7 MGH	Commercial	Private	Covers certain districts
4	TŠENOLO FM	104.6 MGH	Commercial	Private	Covers certain districts
5	HARVEST FM	98.9 MGH	Commercial	Private	Covers certain districts
6	KEL RADIO FM	104.2 MGH	Religious/Commercial	Church-owned	Covers certain districts
7	RADIO MARIA	103.3MGH	Religious/Commercial	Church-owned	Covers certain districts
8	PEOPLE'S CHOICE FM	95.6 MGH	Commercial	Private	Covers certain districts
9	ULTIMATE RADIO	99.8 MGH	State-run	State-owned	Covers certain districts
10	MXL Space Age FM	91.0 MGH	Commercial	Private	Covers certain districts
11	357 FM	94.3mhz	Commercial	Private	Covers Maseru
12	BOKAMOSO FM	97.1MHZ	Commercial	Private	Covers certain districts
13	JESU-KE-KARABO FM	105.2MHZ	Religious/Commercial	Church-owned	Covers certain districts
14	DOPE FM	103.6 MGH	Community	Private	Community (Roma)
15	MOTJOLI FM	87.9MGH	Community	Private	Community (Thaba-Tseka)
16	MOELING MULTI MEDIA	91.2MGH	Community	Private	Community (Botha-Bothe)
17	MOSE-HO-SEAKA FM	99.8MGH	Community	Private	Community (Quthing)
18	MOLISA-EA-MOLEMO FM	100.6MGH	Commercial	Private	Covers certain district
19	VOICE OF GOD	106.0MGH	Religious/Commercial	Church-owned	Covers certain districts
20	SKY ALPHA ONLINE RADIO		Commercial	Private	Covers certain districts
21	PEOPLE ON THE MOVE FM		Commercial	Private	Covers certain districts
22	THATO FM		Commercial	Private	Covers certain districts
23	THE HUB		Commercial	Private	Covers certain districts
24	QACHA'S NEK FM		Community	Private	Community (Mafeteng)
25	MOHALE FM		Community	Private	Community (Mafeteng)
26	THABA-PHATSOA COMMUNITY RADIO		Community	Private	Community (Mafeteng)
27	SOUL ONLINE RADIO FM		Commercial	Private	Covers certain districts

Newspapers

MEDIUM	CATEGORY/OWNERSHIP	COVERAGE	LANGUAGE	CONTENT ORIENTATION
Moeletsi oa Basotho	Roman Catholic Church	Covers certain districts	Sesotho	Political/development
Lesotho Times	Private and Commercial	Covers certain districts	English	General/develop
Public Eye	Private and commercial	Covers certain districts	English	General/development
Mosotho Newspaper	Vernacular, Private and Commercial	Covers certain districts	Sesotho	Political/development
Informative Newspaper	Private and Commercial	Covers certain districts	English	General/development
Sunday Express	Private and Commercial	Covers certain districts	English	Political/development
News Day	Private and Commercial	Covers certain districts	English	Political/development
The Nation	Private and Commercial	Covers certain districts	English	Political/development
The Post	Private and Commercial	Covers certain districts	English	Political/development
Maseru Metro	Private and Commercial	Covers certain districts	English	Political/development
The Reporter	Private and Commercial	Covers certain districts	English	Political/development
Lentsoe la Basotho	Government-owned	Covers certain districts	Sesotho	Government Policy

Misa's Paper on Access to Information

Magazines

MEDIUM	CATEGORY/OWNERSHIP	COVERAGE	
Finite	Private and commercial	Covers certain districts	General/development
Faith Magazine	Private and commercial	Covers certain districts	General/development
The Silo Magazine	Private and commercial	Covers certain districts	Agricultural and horticultural

2.4 Social media platforms used by Basotho

- Snap chat
- Pinterest
- Instagram
- Facebook
- Twitter
- Linkeldn
- Youtube

In the context of this media reforms report, the above-mentioned define the media sector in Lesotho.

In Lesotho the media by virtue of its role as a platform for information exchange, agenda-setter and a freedom of expression tool, is a cross-cutting and integral part in the broader affairs of the country. Indeed, the various reform sectors in the "The Lesotho We Want" process have elements of media and communications. It is with the hindsight of multilevel role of the media that the sector has been heavily involved in a long history of political instability and security challenges facing Lesotho.

These challenges alluded to above ultimately placed the country high on the Southern Africa Development Community (SADC) agenda and necessitated the current push for comprehensive reforms. For instance, the SADC Observer Mission in Lesotho (SOMILES) as an important arm of SADC, expressed the need for media legal reforms as a result of an evidently negative role that the media has played in the country's past political instability.

The instability has been occasioned by several factors including²: weak and politicized state, security and governance institutions; elite dominance of the political space; continuous splintering of leader-centred political parties that are marked by poor management and weak internal democracy. These factors run

² NDPC Terms of Reference Expert Consultancy

counter to the principles of effective and democratic governance and sustainable development; and have resulted in a climate of extended uncertainty, inefficiency, and retrogression in all spheres of life. The media sector has been impacted by these factors or contributed to these challenges.

The need for media reforms has been on the agenda of a number of organizations. One of the main bodies that has sustained the media reforms agenda is the Media Institute of Southern Africa (MISA), Lesotho chapter, which has undertaken policy advocacy campaigns for over a decade. However, political administrations have come and gone without paying attention to the adverse effects of a media set up-underpinned by lack of professionalism and its impact on the entire societal good. While the policy advocacy work of MISA Lesotho has continued without success, there have also been some notable initiatives. These were given credence by the obvious political polarization in the media sector, which affected other sectors of the country. The list of such initiatives included the Open Society Initiative for Southern Africa (OSISA), which supported projects on Broadcasters' Peace Building in 2015 and Election Multimedia Reporting in 2017 in contributing to peaceful holding of the snap national assembly elections fundamental reforms in Lesotho. Along with the projects, there were also initiatives to review the legal framework of Lesotho to inform the media reforms agenda way before the SADC decision to place Lesotho on the body's agenda as politically-unstable country in the region.³ As a civil society organization specifically with interest to media development, MISA-Lesotho has played a complementarity role to both the Government of Lesotho and other development partners, locally and internationally. It is therefore understandable that MISA-Lesotho's initiatives could not attract the necessary attention on the need for media sector's reforms. Inclusion of the media in SADC-recommended national policy and legal reforms is therefore an important opportunity for the sector and the entire nation. This is given the negative role that the media has played in promoting Lesotho's political instability.

³ (a) Undue Restriction Report in 2006 edited by Raymond Louw, (b) Media Law Handbook in Southern Africa Volume 2 by Professor Justine Limpitlwe in 2012. (c) Media Law Review by Advocate Barbie Nkhahle commissioned by MISA Lesotho in 2018

It is greatly agreeable that the national reforms with a view to stabilize Lesotho have been a subject of several reports and communiqués under the auspices of SADC. These reports include the one by other international organizations such as The Commonwealth Secretariat; commitments in coalition agreements; and a matter of public debate. In the June 2015 Final Facilitator’s Report, for instance, SOMILES recommended some urgent reforms including, among others, amendments to the Lesotho Defense Force and the Lesotho Mounted Police Service (LMPS) Acts to remove overlapping mandates; implementation of the 2013 Commonwealth Envoy recommendations⁴ on coalition governments and the reform of the civil service; analysis of the Mixed-Member Proportional (MMP) electoral system and its implications for government stability; ensuring the independence of the judiciary; and relevant constitutional reforms. Political instability and security uncertainties are also well noted in the SADC Commission of Inquiry on the Death of Lt. Gen. Maaparankoe Mahao (The Phumaphi Report) of 2016; and by the Commonwealth Envoy’s 2014 report.

2.5 Media and Lesotho’s political instability

On assuming power in April 2015, the second coalition government, through The Coalition Agreement for Stability and Reform, pledged to be a “reformist government.” It pledged to undertake comprehensive constitutional, institutional and sector reforms, including a review of laws governing elections and parliament to address the new reality of coalition politics and ensure political stability. Despite efforts of the second coalition government and a strong push by SADC, the reforms did not get underway. The eventual collapse of the second coalition government in March 2017 led to a snap election on 3 June 2017. Lessons learnt from previous attempts to implement the reforms suggest that there is a need for a broad national consensus in support of the reforms. These lessons have consequently informed a proposal for the National Multi-

⁴ Dr. Rajen Prasad (2013) “Sustaining Coalition Governments in the Kingdom of Lesotho: Scoping study of suggested reforms for the Government of Lesotho.” The Commonwealth Secretariat.

Stakeholder Dialogue (MSND), contained in this document, as an integral part of the reform process.

Prior to the 3 June 2017 snap election, majority of the twenty-six political parties which took part in that poll, including the four coalition partners now in government, signed 'The Reforms Pledge.' The pledge affirmed commitment of parties across Lesotho's political spectrum, in and outside of parliament, to prioritize reforms after the elections. During his inauguration on 16 June 2017 and on other occasions thereafter, Prime Minister Thomas Thabane reiterated his commitment to a process of home-grown reforms. In the same vein, while opening the 10th Parliament, King Letsie III, emphasized the need to prioritise the reforms. In the Coalition Agreement for National Unity, Reconciliation, Peace and Stability, the four-party Coalition Government lists one of its Core Objectives as: "To undertake constitutional, political, security and administrative reforms in an independent and inclusive reform process" (emphasis in the original.) The Coalition lists the areas of reform as, public service, parliament, judiciary, security sector, decentralization and the review and amendment of the constitution. The Coalition undertakes "to implement all reform proposals outlined by both SOMILES and the Commonwealth (New Zealand Reforms) that do not require constitutional amendments and lengthy legislative processes."

2.6 Media reforms and media for the reforms

Although the media was left out of the reforms' roadmapⁱ, this omission has since been redressed, with the media being now included as part of the reform process. Apart from the fact that the media sector itself needs reforms, it is also evident that it plays a facilitative role in other sectors earmarked for reforms. This can be seen in the various sections of the roadmap document. Under the "guiding principles" section for instance, the need for national ownership, the importance of inclusivity and participation, the place of transparency and accountability and an approach steeped in the ethos of dialogue and consensus building are capturedⁱⁱ. All these speak to the facilitative role of the media specifically and communication more generally in the reform process.

Intra-media sector reforms and the leveraging of media for the reforms features in the reforms, which are planned for all identified sectors. For instance, under objective 3 of political and constitutional reforms, it is anticipated that the media would be part and parcel for “openly advertising positions, announcing candidates, public interviews and vetting ...” with regards to changes to constitutional office holdersⁱⁱⁱ. Under objective 5 of the same section sector (politics and constitution), it is expected that “... mechanisms for involving the public [and] building inclusion” will be included in the process leading to the establishment of the constitution review process. In the security sector, the targeted reforms include the need to “facilitate public communications” and “enhanced communication with the public”^{iv}, both being issues that need specialized media operations and personnel. The justice sector reforms note “...public outreach programs [and] increased access to legal information”, while at the same time observing weakness in communication as one of the constraints leading to legal backlogs in the courts of law^v. Moreover, it is noted that the justice system is beset by poor public perceptions and confidence ... “coupled by low levels of public knowledge about their rights”^{vi}, a perspective that implies the need for information, education and communication strategies. In a challenge that anticipates reforms towards access to public information and freedom of information reforms, “inadequate capacity of technical staff within other ministries to collate information ... [and] ... lack of available data ...” are pointed out as challenges for the justice sector.

2.7 Media dimensions which warranted reform of the sector

The media is entrusted to create platforms for expression of opinion and exchange of views among Basotho, hence, this necessitated media legal reforms. The media is also a platform for information dissemination of information to enable effective and informed decisions on a vast pool of national developmental issues. Therefore, the media should play a catalytic role within society, and to perform this role, it should have the requisite capacity.

Despite the fact that SOMILES recommended review of the media legal reforms, a snapshot of the daily operations in the sector reveals that the media has become a platform for political polarization, especially radio stations. This became clear in a run-up to the 2012 national assembly elections that gave birth to the first coalition government in Lesotho. The following shortfalls and deficiencies have been observed in the manner and character of local media reporting, which warrant attention a reform:

- Partisanship within the media fraternity, which has become order of the day,
- Reporting that is slanted towards certain political ends, coupled with overt alignment with certain political parties by certain media practitioners
- Weak capacity in terms of numbers of reporters, especially for crucial and critical new beats such as investigations, politics, national development economic, business and financial matters, environmental issues, gender and child issues, sports and recreation etc,
- Weak capacity in terms of relevant skills and expertise required in various but key fields of focus mentioned above, which weakens the quality of news produced,
- Poor editing capacity which is caused by the profession's lack of job security as well as retention as many qualified journalists join the corporate world for lucrative public relations, marketing and corporate communication positions,
- Poor capacity-building initiatives within news rooms with short courses addressing critical areas such as effective news writing, sub-editing and many others that require skills development as journalists and media practitioners think of long-term advancement of their careers,
- Media's overreliance on advertising from government and the private sector, which triggers dangling of carrot, which results in loss of editorial

independence and operational autonomy, hence leading to content bias to serve vested and selfish interests,

- A media sector that is not satisfactorily rewarding those working in it across the board, causing structural unemployment within the profession and also leading to temptations of receipt and acceptance of bribes, gifts and other practices that are alien to the professional conduct of an ideal media practitioner and journalist,
- A hugely fragmented media sector as a result of partisan affiliation by the proprietors of the big media houses and alignment to various political formations, leading to non-observance of the cardinal tenets of professional journalism practice.

3.0 Aims and Objectives

3.1 Objectives⁵

The media sector objectives of the reforms are drawn from the overall aims and objectives of the reforms, which is to facilitate the national transformation of Lesotho to a just, prosperous and stable society. The overall objectives are:

- a. The promotion of long-term national stability, unity and reconciliation;
- b. The creation of professional, functioning and effective institutions for the efficient management of public affairs, service delivery and development;
- c. Building a national consensus on and implementation of constitutional changes as needed.

The specific objectives of the reforms include:

- Promotion of stakeholder consensus on the reforms and long-term national unity and reconciliation;
- Reform and re-organization of the security establishment to ensure fitness for purpose and responsiveness to the country's needs;
- Reform and creation of an effective, efficient, professional and result-oriented civil service for enhanced service and development;
- Review and reform of the justice sector to ensure greater justice, rule of law and protection of human rights
- Review and reform of critical institutions such as parliament and relevant legislation, including that pertaining to elections and representation, to ensure enhanced institutional independence and stability of politics
- Generate consensus on an inclusive mechanism to undertake review of the constitution for its alignment to the needs of present-day Lesotho,

⁵ The Lesotho We Want: Dialogue and Reforms for National Transformation

Therefore, media reform objectives are as follows:

- Reforms will be undertaken to enhance the institutional, professional and legal capacities of the media sector to play an advocacy, lobbying, monitoring and checks-and-balance roles with regards to the reform process generally and the various media, information and communications fields specifically,
- Reforms will be undertaken to ensure fair, consistent and robust regulation of public and private media in terms of ownership and/or management as well as content production and dissemination in manner that promotes independent and pluralistic media underpinned openness and transparency without breaching societal and individual values:
 - Policy and legal measures will be put in place to ensure fair distribution of national media resources such as frequency spectrums,
 - There shall be clear distinctions between the policy roles of the government and bodies established to oversee regulatory functions in the media sector,
- Reforms will be undertaken to ensure that the citizenry enjoy internationally recognized media freedoms through policy and legal mechanisms including but not be limited to media freedoms including conventional and digital media, access to information and freedom of information,

Classification and implementation proposals

ISSUE	CHALLENGE	CURRENT STATUS QUO	POSSIBLE SOLUTIONS	TIME FRAME			RESPONSIBILITY
				Short-term	Medium-term	Long-term	
State-controlled media	Perception of the Lesotho National Broadcasting Services (LNBS) as a government and political mouthpiece	LNBS is a state-owned and run broadcaster, situated in the Ministry of Communications, Science & Technology and whose operations depend on the government of the day.	Transformation of LNBS from a state broadcaster into an independent public service broadcaster rather than a propaganda platform for sitting governments and political elites	Develop a white paper leading to LNBS' autonomy from the Ministry of Communications, Science & Technology	Formulate a Lesotho public service broadcasting policy incorporating, its functions and governance, linkage with other arms of governance, etc.	Borrowing from the LNBS policy, the public service broadcasting act will legally delink the LNBS from state control and outlines roles and responsibilities of a public service broadcaster	Ministry of Communications, Science & Technology, broadcast industry stakeholders, broadcast media practitioners
			Appoint an independent and professional board of directors ^{vii} for LNBS to promote editorial independence and the requisite professional	The white paper presented to cabinet proposes composition of the LNBS board, which reflects the professional and cultural diversities of the Basotho nation	The public service broadcasting policy will state the composition of the LNBS board and the qualifications for persons to be appointed to the	The Public Service Broadcasting Act promulgated by parliament establishing the LNBS as a public service broadcaster, will confer parliament with powers to	The Transformed LNBS, Ministry of Communication, Science & Technology, broadcast sector stakeholders, parliament

			conduct and practice at the broadcaster		board	appoint a board	
Government's political influence over state-owned agencies	Government-cum-political control of frequency spectrum distribution and usage	Although the LCA's mandate entails granting licences to operators; promoting fair competition; approving tariffs; managing the radio frequency spectrum; this is done under direct control of the Ministry	The Lesotho Communications Authority (LCA) should be granted institutional and operational autonomy under the law	Develop a white paper for the Cabinet proposing the amendment of the LCA Act to grant it institutional and operational autonomy as the sector regulator ^{viii}	The Communication Policy (2008) ^{ix} should be reviewed to provide for institutional and operational autonomy of LCA	LCA Act 2004 has to be amended to cater for the envisaged institutional and operational autonomy of LCA, distinct from the Ministry	The Transformed LCA, Ministry of Communication, Science & Technology, broadcast sector stakeholders, parliament, the International Telecommunication Union
			An independent board and a secretariat should be appointed through a competitive and meritorious approach and	Develop an information paper proposing amendment to the Communications Policy (2008) and the LCA Act 2004 on appointment	Review the Communication Policy (2008) with a view to establishing a system for the appointment of the LCA boards based on merit	The amended LCA Act as proposed above has to also provide for appointment of the LCA board based on merit and in	The Transformed LCA, Ministry of Communication, Science & Technology, broadcast sector stakeholders, parliament, the International

			allowed to perform their managerial and oversight functions independent of government interference especially with regards to the distribution and management of frequency spectrum	of LCA board ^x including open expressions of interests to serve as well as transparent recruitment processes. This would lead to transparent and equitable distribution of frequency spectrum in line with international best practice ^{xi}	and in adherence to international practices and standards	conformity with international standards and best practices	Telecommunication Union
Access to advertising by the broadcasting sector in Lesotho	Unsustainably high radio licensing and issuance fees by the LCA coupled with delays in the payments of government advertising	With roles and responsibilities of the LCA board expressly articulated in the LCA Act, (amended as proposed), it will operate professionally, within the confines of its	Seek strategies to reduce license fees to affordable levels for radio stations to include issues of radio while addressing the issue of government disconnecting stations from	Director of Communications to produce an information paper for presentation to Cabinet by the Minister of Communications, Science & Technology proposing reduced licensing	A Policy proposing revamping of the current Universal Access Fund should be formulated with the objective of addressing issues such as spectrum expansion,	A bill should be sent to parliament for a more vigorous universal access service for radio stations	

		Charter leading to public confidence	transmitters without notice	fees for radio stations	transmitters and antennas and other challenges		
Capacity of media practitioners to perform their fiduciary roles effectively	Poor professional capacity and constrained skill sets	There are acute skills shortages in the media sector, which contribute to the poor production of news content.	Enhance the training, capacity building and skills development ^{xii} for media owners, editors and practitioners	A white paper proposing curriculum and syllabus change for the institutions offering long, medium and short courses to be revised to include journalism and media studies, in line with international best practice such as the UNESCO model	Develop a policy on media and journalistic training for degree, certificate and short courses to be offered by national institutions for practising professionals	Include media and journalism training in the relevant acts in the ministries responsible for education and communications	Ministry of Communication, Science & Technology. Ministry of Education, National University of Lesotho, UNESCO, Institute for Development Management (IDM), Lesotho National University, Limkokwing University of Creative Technology (LUCT), Council on Higher Education, MISA-Lesotho, media and journalism sector stakeholders

		There is no professional guidance and no inhouse media training initiatives	There should be a department in the Ministry of Communications for training of local journalists on thematic issues depending on government development projects	Develop a white paper on the establishment of a department for training of journalists within the Ministry of Communications	Formulate a policy establishing of a department for training of journalists within the Ministry of Communications	Develop a bill that proposes an act that establishes of a department for training of journalists within the Ministry of Communications	Ministry of Communication, Science & Technology
		Media houses do not send their practitioners to journalism courses offered regionally and internationally	Media owners should be bound to build the capacity of their employees which is stipulated as conditions for when licenses	Develop a white paper proposing a policy that binds media owners to build the capacity of their employees which is stipulated as conditions for when licenses	Formulate a policy that binds media owners to build the capacity of their employees which is stipulated as conditions for when licenses	Enact a law that that binds media owners to build the capacity of their employees which is stipulated as conditions for when licenses	Ministry of Communication, Science & Technology

		On training sessions conducted for media practitioners, there is no follow-up to track progress as a result of lack of cooperation between media owners and media advocacy institutions	Media owners should be bound to build the capacity of their employees which is stipulated as conditions for when licenses	Develop a white paper proposing a policy that binds media owners to build the capacity of their employees which is stipulated as conditions for when licenses	Develop a white paper proposing a policy that binds media owners to build the capacity of their employees which is stipulated as conditions for when licenses	Enact a law that binds media owners to build the capacity of their employees which is stipulated as conditions for when licenses	Ministry of Communication, Science & Technology.
	Part of the challenge is that Lesotho has very few training institutes for journalism and media studies	There is unethical conduct and practice exhibited by media practitioners and journalists, which is a result of the acute skills deficiencies, which manifest themselves in the manner news is gathered and	Encourage various regional and international training organisations and centres of excellence to offer courses to media practitioners and journalists.	An information paper has to be prepared by the Director of Communication at the Ministry of Communications, Science & Technology, advising the Minister to call players in the field for adoption of the	The envisaged Higher Education Policy has to advocate for inception of a Journalism Training Centre that will offer journalism and media short courses	A cabinet information paper should propose the inclusion of undergraduate and postgraduate degrees in journalism and media studies by institutions of higher	

		packaged and delivered to the ultimate consumers.		Draft Media Policy			
Recruitment of personnel in the media sector	Faulty recruitment of media practitioners poses a challenge on adherence to professional standards of practice	Media houses do not employ professionally qualified media practitioners, but engage interns and volunteers who are fresh from schools, with no requisite expertise and experiences to play their trade in the profession.	The envisaged media policy will stipulate minimum entry requirements for practising in the journalism profession, and the need for media owners to employ only qualifying practitioners as well as set out an accreditation mechanism	Bring together all payers in the field to a summit to discuss the need for code of ethics, conduct and practice of journalism ^{xiii}	Stakeholders from the government and the media sector to agree on and approve a media policy incorporating a code of conduct and ethics.	Adherence to the mechanisms put in place for the upholding of a code of ethics, conduct and practice of journalism by players in the media sector	
Media regulation	The media sector is not sufficiently regulated	The local media flouts the cardinal tenets which underpin the journalism profession as a	A two-pronged regulatory regime for the media sector is proposed. This involves the self-	The process leading to the establishment of a regulatory mechanism should involve	A benchmarking exercise has to be embarked upon to learn best practices in selected	Based on consultations in the short and medium-term periods, a press or media council	

		result of a weak media regulatory regime	regulation and co-regulation. A co-regulatory regime brings together the government and industry to negotiate the rules of the game for those in the sector.	the general public, media stakeholders, the legislature and the legal profession in order to garner a broad inclusive support	countries on the most appropriate media regulatory systems for Lesotho,	forged in an act of parliament should be established and provided with human and financial resources to commence its work	
Media and the national development agenda	The media has become a dangerous weapon that undermines the long-term democratisation of society and the resultant development agenda.	The local media promotes vitriol, wedge divisions among Basotho and have become platforms for the polarisation of society	Strong and effective regulatory structures such as a media council and media ombudsman will ensure that media practitioners, media owners and editors toe the line of supporting a	Formulate a Media Development Policy to provide for short courses training. This project has to be driven by government and supported by the private sector.	A resource mobilisation strategy, a fund is created and sustainably managed in support of the development of the local media	The media regulatory framework should be insulated from state control	Media players, advocacy groups and interested parties

			democratic consolidation agenda by operating within the confines of set out principles				
Protection of citizens' rights in the media	Inadequate recourses for citizens to have their rights protected when aggrieved by media	Members of society are not protected from vitriol, vulgar language, and also the sanctity of the journalism profession is at stake	Proper regulatory systems should be put in place to perform their mandate effectively to ensure that media practitioners, media editors and media owners are aligned with the democratic consolidation agenda	A white paper for establishment of a review commission proposes the establishment of a media professional code of conduct and practice	Cabinet adopts the proposal for the establishment of the review commission for the media regulatory regime of Lesotho	Proposals from the review commission are inculcated into the agreed regulatory mechanism incorporating the role of the media for democratic consolidation	

<p>Protection of media freedom in the Constitution</p>	<p>Right to freedom of expression generally and media freedom not specifically and sufficiently protected under the Constitution</p>	<p>The Constitution of Lesotho (1993) enshrines the right to freedom of expression of opinion that is enjoyed by members of society. However, this right does not expressly include the freedom of the media</p>	<p>Amendment to the sections on the freedom of expression in the Constitution of Lesotho in conformity with best practice</p>	<p>A white paper proposing an amendment to the Constitution (Section 14) to expressly provide for media freedom is developed</p>	<p>An amendment bill to the Constitution is crafted leading to the constitutional amendment (Section 14)</p>	<p>Lesotho Constitution (1993) is amended by parliament (Section 14) to expressly provide for media freedom</p>	<p>Ministry of Justice and Correctional Service, media stakeholders, parliament, the African Union, The UN Human Rights Council</p>
			<p>In order to expressly guarantee freedom of expression of the media under the Constitution, the Constitution has to be amended to expressly provide for media freedoms while upholding</p>	<p>Review constitutions in other countries that specifically include media freedoms in their constitutions along with the supportive laws and regulations</p>	<p>The amended sections dealing with freedom of expression should have an explicit section guaranteeing media freedoms including but not limited to: ownership and editorial</p>	<p>The relevant acts of parliament and subsidiary regulations are enacted to interpret and ensure respect for freedom of expression and media freedoms</p>	

			freedom of expression guarantees				
		Section 14 (2) and (3) of the Constitution of Lesotho (1993) introduces widely phrased limitations to freedom of expression, in the interest of defending public safety, public order, public morality or health.	Section 14 (2) and (3) of the Constitution of Lesotho should be explicit in terms of instances where limitations of freedom of expression and freedom of the media is justifiable	A review of the constitutions in other jurisdictions spelling out the circumstances under which freedom of expression and media freedoms may be regulated	The amended sections of the Constitution dealing with freedom of expression and media freedoms to set out specific instances in which freedom of expression and media freedom may reasonably be limited	Specific laws and regulations upholding freedom of expression and media freedoms be enacted in such a way as to justifiably qualify instances when freedom of expression and media freedoms may	
Media and freedom of expression of opinion	There is perceived abuse of freedom of expression and of the media by media establishments and practitioners	The Constitution of Lesotho (1993) narrowly defines checks-and-balances to regulate misuse of freedom of	A review of cases in which media establishments and practitioners in Lesotho and elsewhere have	A bill is prepared that gives effect to amendment of the Constitution to provide for the exceptional cases or circumstances	The enactment of laws and regulations operationalising exceptional circumstances under which		

		expression and media freedom by media establishments and practitioners on the Laissez-faire assumption that media freedom is absolute.	acted irresponsibly thereby causing chaos of harming society under the guise of freedom of expression and media freedom	where freedom of expression rights and media freedoms may be restricted or set aside in the interest of and sensitivity to the interests of wider society and as a means of controlling the excess of the media	freedom of expression and media freedoms can be set aside or restricted		
Legal framework and freedom of expression	Furthermore, there exist laws that are archaic, outmoded and draconian ^{xiv} which restrict or potentially inhibit freedom of expression and media freedom	Constitutional provisions in the sections on freedom of expression roll back these freedoms by allowing other pieces of legislation to abridge the rights in the service of protecting the reputations and	Review all Laws that unjustifiably prohibit freedom of expression of opinion with intent to amend and repeal them, especially those that are inimical to freedom of expression and freedom	A white paper proposing establishment of a media law reform entity which will be seized of amending or repealing laws and regulations that defeat the right to expression and to media freedoms	A bill that proposes establishment of a media law reform entity which will be seized of amending or repealing laws and regulations that defeat the right to expression and to media	A media law reform entity is established to consider all laws that should be amended, repealed or new ones promulgated is established	Parliament amends and/or repeals laws identified by the media law reform entity as defeating the tenets of freedom of expression and media freedom while enacting new ones

		interests of some elites ^{xv}			freedoms		
		The government of Lesotho is signatory to a number of regional and international treaties, charters ^{xvi} and conventions providing for freedom of expression, but these have not been domesticated through laws and other instruments ^{xvii} thus impeding implementation	Government should ratify and domesticate international instruments providing for freedom of expression and of media freedom	A white paper explaining and listing the international declarations, treaties, charters and conventions that Lesotho has to ratify (if it has only signed) is developed			
Media freedom and international practice	The Government of Lesotho is slow to domesticate regional and international	The government of Lesotho is signatory to a number of regional and	The Government should ratify and domesticate international instruments	A white paper explaining and listing the international declarations,	Information paper submitted to Cabinet leading to the process of	The enactment of laws and regulations to domesticate and operationalise	

	treaties, charters ^{xviii} and conventions providing for freedom of expression through laws and other instruments ^{xix} , thus impeding their implementation,	international treaties, charters ^{xx} and conventions providing for freedom of expression, but these have not been domesticated through laws and other instruments ^{xxi}	providing for freedom of expression and of media freedom	treaties, charters and conventions that Lesotho has to ratify (if it has only signed) is developed	promulgation of laws domesticating regional and international declarations, treaties, charters and conventions protecting freedom of opinion and media freedoms	treaties, charters and conventions protecting freedom of expression and media freedom	
Media and promotion of diversity of society	The media marginalises sections of society on the basis of gender, age and disability, partly due to the concentration of the media in the hands of a few self-interested and politically connected proprietors.	The media sector is male-dominated at the journalism practice as well as managerial and ownership levels and with evident discrimination against women, children, youth and disabilities. It is also largely owned by foreign	Ensure representation of all shades of society – gender, children, youth and persons with disabilities in the media and put in place regulations to curb media concentration The government and the media industry should	Develop an information paper proposing a policy enabling the mainstreaming of the marginalised voices in the media sector through quotas and affirmative action for women and persons with disabilities in terms of positions of higher decision-	A Bill proposing the mainstreaming of marginalised groups, equity in content and programming, and anti-media concentration is debated and adopted by cabinet	Laws and regulations providing for mainstreaming of gender, persons with disabilities and the youth in the decision-making, content and programming, and curbing media concentration are enacted and	Ministry of gender and youth, sports and recreation, media stakeholders, women organisations, youth organizations, organizations of persons with disabilities, UN Women

		proprietors, who also have no regard for its growth and development	adopt an affirmative action policy as equality and equity would otherwise not be achieved without such an intervention.	making, in the allocation of content and programming, and regulate media ownership to curb dominance by connected elites		adhered to	
State of investigative journalism in Lesotho	The media, especially newspapers, are not able to sponsor serious investigations of large-scale corruption, graft and/or unresolved murders within society or some other wrongdoing within society	Major scandals, abuses of power, corruption and ills, especially those committed by the political elite go scot free because the media is weak in investigative journalism	Promote support for investigative journalism as means of promoting transparent and accountable governance	Regulations should be put in place to ensure that media owners contribute to the professional development of the sector beyond the profit motive Media assistance strategies should be put in place to support investigative journalism	Media stakeholders develop strategies for publicity on the inclusion of marginalised voices as well as ensuring that media establishments meet the requirement of media development in support of weak journalistic practices such	Mainstreaming of marginalised sections of society becomes standard practice in the course of setting up media establishments, recruitment and employment as well as in content and programming that is sensitive to their interests as well as media assistance for enfeebled	

					as investigative journalism	practices	
Media and cultural pluralism of society	The media does not represent and promote the plurality and diversity of the seemingly homogenous nation	The media sector is widely accused of not promoting societal diversity by concentrating on only some cultural and geographical segments of society to the total exclusion of others.	Media should promote diversity of society in terms of cultural and linguistic diversities through content diversification and support for community media	A white paper proposing review of the draft media policy to bind media houses to reflect the diversity of Lesotho society in cultural and linguistic diversities and for the support of community media	A Bill is prepared that paves the way for promulgation of act that binds mainstream and community media to reflect the diversity of Lesotho society in cultural and linguistic diversities	A cultural diversity act which includes media development strategies is promulgated to bind media houses to reflect the diversity of Lesotho society in cultural and linguistic diversities	Ministry of gender and youth, sports and recreation, UNESCO, cultural organizations
Access to public information	Poor freedom of, and access to public information	Channels and procedures for access to information held by government and other private bodies are either outdated, too cumbersome,	Develop a comprehensive communication strategy upholding the right to information in conformity with best practice in	Review the draft communication strategy, including the updating of the now outdated Communication Policy (2008), to stipulate how	The reviewed communication strategy is circulated to public relations officers in all government departments to get common	Communication Strategy is implemented by government public relations officers and information officers to enhance the	The Ministry of Communication, Science & Technology, Media stakeholders, internet service providers

		inclined towards opaqueness or not adequate to afford members of society and the media easy access to information held by these bodies	access to public and private information	information should flow from the government to users in an accessible manner	understanding on the strategy as well as to the media practitioners and the general public	right of access to information	
Social media and access to government-held information	The public does not access government-held information though it largely uses social media platforms as outmoded confidentiality laws and regulations are still in place	Although digital media platforms, such as social media and websites, are available to the government, they have not been leveraged to enhance access to information by the public	Government should leverage on digital and social media platforms by revamping the websites and web portals of government ministries and departments as well adopting social media platforms such as twitter, Instagram and YouTube, Facebook as	A white paper proposing a review of the Communication Policy (2008) should be developed to bring it up to date with the digital revolution while at the same time retaining suitable traditional media platforms such as print media (brochures, fliers, pamphlets) and broadcast media	A draft communication policy incorporating digital media should be send to the cabinet for deliberation and adoption	Enactment of laws to promote and guide the dissemination of government information to the public	The Ministry of Communication, Science & Technology

			means of disseminating public information,	(public service announcements)			
Media and advertising	Media relies heavily on government advertising as a result of a weak economy and falls to the trap of biased and partisan selection of media outlets to advertise with by government	Whilst government advertising is the main source of funding for media establishment (in view of a weak media economy), it is beset by challenges such as selectivity and bias, using advertising to punish critical media while rewarding supportive or pliant media, using advertising as a political tool, delays in payments	Discussions towards an impartial, efficient and timely government advertising mechanisms in line with practices considered above-board in consideration of factors guiding the selected advertising platforms - listenership and viewership for electronic media and circulation figures for print media	A white paper proposing an impartial advertising mechanism in consultation with stakeholders such as media establishments and advertising industry players and borrowing from best practice elsewhere	A government advertising white paper, incorporating advertising standards and procedures in alignment with related laws such as those on procurement should be presented to the cabinet for debate and approval	A government advertising bill should be sent to parliament, proposing promulgation of a law that governs advertising standards and procedures	Ministry of Communication, Science and Technology, the media industry, the advertising and PR industry

<p>Media and the reform agenda</p>	<p>Media not playing an effective role in the reform agenda</p>	<p>The media does not effectively support the reforms agenda. First, the reforms do not utilise the media as a catalyst that can promote the buy-in of Basotho into the exercise. Second, the media does not proactively take initiative to canvass the reforms to the wide society</p>	<p>Fully incorporate media into the current and future legal and political reform initiatives</p>	<p>Develop a communication strategy specifically for the reform process</p>	<p>Establish a media and communications unit in the envisaged reform agency</p>	<p>Ensure the inclusion of media and communications components in all peace building and conflict resolution mechanisms and laws</p>	<p>The Lesotho National Leaders Forum, National Dialogue Planning Committee, UNDP</p>
<p>Media and social cohesion within society</p>	<p>The media in Lesotho is broadly perceived as divisive and politically motivated with the bulk of media reports on political rather than</p>	<p>There is general feeling among consumers of media content that there are acute skills shortages in the media sector, which contribute</p>	<p>The envisaged media policy has to stipulate quotas for news categories – economic issues, parliamentary issues, social issues, foreign</p>	<p>Draft an information paper proposing a policy which will dictate equitable coverage of all issues</p>	<p>Formulate a policy that provides for quotas in terms of coverage of national issues</p>	<p>Develop a Bill which is sent to parliament proposing equity in terms of reportage of national issues</p>	<p>Ministry of Communications, Science & Technology</p>

	developmental issues	to the poor production of news content	issues, developmental issues, sports and recreation as well as issues of gender, health and environment				
Cybersecurity crimes and social media	Investigation of cybersecurity crime is currently very difficult	In the absence of cybercrime legislation, it becomes difficult to fight cybercrimes. This is being exacerbated by the explosion of social media platforms, which are difficult to control	Government has to formulate a cybersecurity policy and finally enact a law on cybercrimes The policy should also include measures to curtail social media as conduits for cybercrimes	Develop a white paper proposing formulation of a policy on cybercrimes	Formulate a policy that protects media and communication users against cybercrimes	Draft a Bill proposing enactment of a law that protects communication and media users against cybercrimes	Ministry of Communications, Science & Technology
Social media platforms and news production	Explosion of use of social media has created proliferation of fake news, creating credibility	In the absence of cybercrime legislation, it becomes difficult to fight cybercrimes. This	The Government must develop a policy on how to curb fake information that is being	Formulate a policy that protects media and communication users against	Draft a Bill proposing enactment of a law that protects communication and media users	Enact a law that protects communication and media users against cybercrimes	Ministry of Communications, Science & Technology

	changes as there is not clear verification system for facts	is being exacerbated by the explosion of social media platforms, which are difficult to control	conveyed by social media platforms as this has far-reaching implications on building a society that is prone to lies and misinformation by the social media platforms	cybercrimes	against cybercrimes		
Library, information and archiving systems	There is no comprehensive library and archiving system for storing crucial information repository about historical issues of Lesotho	Absence of a clear system of creation of a repository of crucial historical information that would benefit future generations or could be referred to now is a void that will be difficult to close	Develop a comprehensive library and information system for preserving cultural and historical data	Develop a white paper proposing development comprehensive library and archiving system for storing crucial information repository about historical issues of Lesotho	Develop a bill proposing enactment of a law that creates a comprehensive system of information archiving and creation of a repository of historical data	Enact a law that creates a comprehensive information archiving system	Ministry of Communications, Science & Technology

<p>Governance on the internet and the social media platforms</p>	<p>Poor governance and regulation on the internet and the social media platforms to safeguard accountability of users of these platforms</p>	<p>The Internet including platforms that are available on the internet such as the social media have become forums for irresponsible exchange of information where some people take the liberty to insult others and even embark on criminal activities, knowing it is difficult to track them</p>	<p>Develop a system of registering mobile phones in order to track abusers of social media platforms and for effective regulation of the usage of social media</p>	<p>Develop a white paper proposing a policy on registration of mobile phones to pave way for a regulatory regime that protects users of social media</p>	<p>An internet governance policy is formulated to ensure that mobile phone users are held accountable for what they say on social media platforms</p>	<p>A law that ensures governance on the internet and also regulates social media platforms is promulgated to promote accountability of users</p>	<p>Ministry of Communications, Science & Lesotho Communications Authority</p>
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4.0 Conclusion

A conclusion that is drawn from the public consultations is that Basotho's views expressed correlate with globally and agreed instruments, which are globally used to assess development of the media in countries that have signed ratified international instruments like Lesotho. Lesotho subscribes to the International Covenant on Civil & Political Rights (ICCPR). Article 19 of the ICCPR is on freedom of expression of opinion and freedom of the media. **ICCPR states thus:**

Article 19 of the International Covenant on Civil and Political Rights, states thus:

Everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (Article 19, ICCPR).

Article 09 of the African Charter on Human and Peoples' Rights safeguards citizens' rights to freedom to access information. It states thus:

Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law (Article 09, ACHPR, 1987).

Section II (Article 17-23) of the Protocol on Culture, Information and Sport (2001)

Critical analysis of the views from in-district consultations, the diaspora and written submissions on media legal reforms demonstrate Basotho's desire for full realisation of the spirit of the instruments by the Government of Lesotho. Therefore, the legal media reforms present an opportunity for the government of Lesotho to not only respond to the needs of the people, but also to comply with the aspirations set out in the internationally-agreed instruments on freedom of expression and freedom of the media. Challenges facing the media in Lesotho appear to not be only in respect of the legal reforms, but the extent of issues of capacity-building of the media, consumers of media content. Therefore, this calls

for a media legal reforms programme that goes hand-in-glove with capacity-building (formal and informal). For instance, journalists should be equipped skills for production of news for both conventional and emerging media. On the other hand, consumers need information and media literacy informal trading sessions to enable them to engage with media content in their civic participation. The media legal reform programme presents an opportunity for ongoing media reforms

This report is a foundation on which the media legal reforms can be based. This says that implementation of the recommendations will involve a number of actors. Some of these are media managers, media practitioners, media associations, academic and statutory institutions.

It has been realised that issues of freedom of expression and media freedom are affected by other sectors, as a result other thematic area have to take note that they do not negatively affect the media sector. There is a list of pieces of legislation, including the constitution^{xxii}, which are not friendly to media freedom. It has also been realised that the reforms exercise has missed a grand opportunity to utilise the media as a catalyst and platform for engagement of the people to garner their buy-in. The media has, to a little extent, been used to inform, educate and persuade members of society about the reforms. In like manner, the media has also missed an opportunity to canvass the cause of democratic consolidation and the resultant development agenda through the reforms.

The issues and challenges relating to the reform process fall into various areas and categories. In this section, conclusions and recommendations are made as guiding notes towards the implementation of the media sector reforms based on the broad classifications in which the challenges fall. It should be stated at the outset that all the issues and challenges are important and urgent. However, the extent of the challenges is such that some would have to be prioritised.

Policy and regulation and media development

The classification shows that there are seven issues that fall strongly in the policy and regulatory category (1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7) compared to the two that strongly fall in the media development category (1.3 and 1.7). Thus, challenges to do with policy and regulations require more dedicated attention compared to media development issues. This is

because the policy and regulatory reforms such as setting up a media or press council would lay the foundation for media development reforms such as training and professionalism. In other words, policy and regulatory reforms are likely to lead to media development rather than the other way.

Quick win issues

Of the policy and regulatory issues, some can serve as quick wins as they may, in the interim period, only require goodwill from the government, the political class and the media sector. These quick win, goodwill-based issues that can be implemented based on “informal” policy are: marginalisation of sections of the Lesotho community, government advertisement and the role of the media in the reform process. The organisations leading the reforms process can almost immediately lobbying media establishments on the need for diversity in media coverage as well as the need to promote the reform agenda. Similarly, the NDPC and the Lesotho National Leaders Forum can start lobbying the government on the need for equitable distribution of advertisement resources. This would lead to the production of media content to not only support the reforms agenda but also provide indications of the kind of media that Lesotho deserves.

Medium- and longer-term issues

Policy and regulatory issues dealing with media freedoms are relatively easier to implement compared to those to do with the reform and transformation of institutions such as the LNBS and the LCA. For instance, the right to information and media self-regulation issues can benefit from international treaties and international best practice while the transformation of frequency spectrum might require widespread consultations and rigorous policy and legal thinking. It is thus recommended that right to inform issues and the potential for media self-regulation be considered in the medium term even as steps are taken towards the transformation of the LNBS and LCA. In the interim period however, the LNBS and the LCA should be encouraged to start operating on the basis of international best practice.

Responsibilities: Government, media and international organisations

Government

Based on the analysis of the issues, the responsible entities fall into four broad categories: the government (or the state), which, for the purposes of this report, can be further divided into the executive (ministries and departments) and parliament; the media sector, which can

be divided into media owners and establishments, practicing journalists and media organisations; wider society which comprises interested parties such as gender-based organisations and the legal fraternity and, international organizations, especially UN agencies.

Evidently the state is the most responsible in the media reforms process implying that the reforms should be targeted at the government. This is because a critical appraisal of the challenges faced by the sector arise out of; government control of entities such as LNBS and LCA, failure of parliament as an arm of the state to promulgate regulatory and right to information and media instruments, and, favouritism in the allocation and distribution of media-based resources such as advertising. As such, the buy-in of the state is critical of the media sector reforms are to succeed.

The media

While the media sector may be negatively impacted by the weaknesses emanating from the government, the analysis indicates that it is also responsible for some of the challenges. For instance, the sector should be proactive rather than wait to be co-opted into the reform agenda. Indeed, some of the media challenges, including professional and capacity weaknesses and various forms of impartiality can be undertaken without government intervention. It may be a matter of priority that a meeting between the media sector and the NDPC be convened as soon as practically possible to discuss the issues raised in this report. Even more important and perhaps urgent is the need for the development of a communication strategy for the reform process.

International organisations

The analysis shows that media sector reforms are not a matter confined to Lesotho as they have many international dimensions. The international community has an interest in Lesotho media that contributes to a peaceful society rather than one that fuels animosity. To this end, the reform process would not only benefit from international benchmarks providing for good and sound media but also the potential for deriving human, knowledge and financial support. To this end, a roundtable between the NDPC, representative of the media sector and international organisations responsible for media and communications, should be convened. This is particularly so with regards to UN agencies captured in the matrix section of this report.

5.0 Recommendations

- To activate suggested actors' involvement, a clearly defined working structure taking note of reforms plan should be in place.
- The media sector reforms report has to be considered as a guide to inform reforms in other sectors in line with internationally set standards – namely Article 19 of the International Covenant on Civil and Political Rights (), Article 09 of the African Charter on Human and People's Rights (1987) and the Protocol on Culture, Information and Sport (2001),
- The reforms exercise should leverage on the media platforms to use them as vehicles for garnering the support and buy-in of Basotho,
- The media sector should also take a conscious and deliberate effort to inform and educate Basotho on the reforms as well as garner their buy-in. it should participate in the reforms process as a partner.

Table of References on Media Reforms

Sources	Section	Pages
The Youth Observer Mission Report by Consolidated Youth Observer Mission	3.8 Media	18-19
Sectoral Consultations Matrix Report by Lesotho Council of NGO's (LCN)	Media Sector	110-112
Voices of Forgotten Sectors of Basotho Society (The Lesotho I want campaign) by DPE	Media	4,7,9,16,19,26,30,35
Linking Community Voices; Taking the New Zealand Report to the people by DPE	Community Voices on Necessary Reforms	17-31
The Lesotho National Federation of Organisations of the Disabled (LNFOD) position on the constitutional, parliamentary, judiciary, public services, security, media, economy and public sector reforms by LNFOD	Media Reforms	9-10

Appendices

1. SADC Commission of Inquiry into circumstances surrounding the death of Brigadier Maaparankoe Mahao,
2. Lesotho Telecommunications Authority (Broadcasting Rules, 2004),
3. Lesotho Communications Policy (2008),
4. Article 09 of the African Charter on Human & People's Rights,
5. Article 19 of the International Covenant on Civil & Political Rights,
6. The Constitution of Lesotho (1993), Section 14 (1), (2 – a, b and C) and (3) and (4),
7. Section II of the Protocol on Culture, Information and Sport (Articles 17-23)
8. MISA-Lesotho Position Paper on the Multisectoral Reforms (Lesotho Media Landscape)

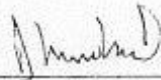


**SADC COMMISSION OF INQUIRY INTO THE
CIRCUMSTANCES SURROUNDING THE DEATH
OF BRIGADIER MAAPARANKOE MAHAO**

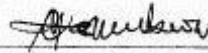
Final Report



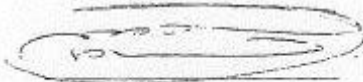
Mpaphi Passevil Phumaphi
Chairman of the Commission



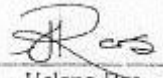
Davie S. Mtachi



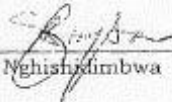
Charles Tarumbwa



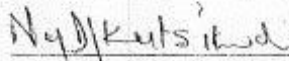
Noel Ndhlovu



Helena Ras



Silvanus L. Nghishu Simbwa



Douglas J. Nyakutsikwa



Anthony Wally



Gopolang Mogotsi



Hermanus Elbrink

Signed on the 05th Day of November 2015.

ANNEXURE I - PHUMAPHI REPORT

6

SADC COMMISSION OF INQUIRY
TO THE KINGDOM OF LESOTHO

SECRET

20/7/2015 - 6/11/2015

J. RECOMMENDATIONS

138. With the testimonies and analysis of matters relevant to the mandate of the Commission, and in the interest of finding peace for the Kingdom of Lesotho, and bringing closure to the killing of Brigadier Mahao, the Commission proffers here below, some recommendations for consideration:

- a. *The Government of Lesotho should ensure that the criminal investigations on the death of Brigadier Mahao be pursued vigorously and that the LMPS is empowered and resourced accordingly. The investigation should be conducted expeditiously and comprehensively without any hindrances and that all physical evidence be surrendered. The finality of the investigations should lead to a transparent course of justice.*

- b. *The general discontent of some Basotho with the Commander of LDF, Lieutenant General Kamoli and the conduct of the LDF under his command is disconcerting. In the interest of restoring trust and acceptance of the LDF to the Basotho nation, it is strongly recommended that Lieutenant General Kamoli be relieved of his duties as Commander LDF, and all LDF officers implicated in cases of murder, attempted murder and treason be suspended while investigations in their cases proceed in line with international best practice. See (Annex 9) for the list of cases.*

- c. *The Commission has observed that some of the political and security problems peculiar to the Kingdom of Lesotho emanate from the Constitution of the Lesotho. The deficiencies and overlaps in the*

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constitution with regard to mandates of security institutions, need to be looked into urgently with a comprehensive strategy to reform them.

- ✦ The Commission has noted that SOMILES report covers extensively the areas of reform (*constitution, security sector, public service and information and media*) pertaining to the Kingdom. To avoid repetition, the Commission therefore recommends an accelerated implementation of the reforms encapsulated in the SOMILES report. SADC should come up with a direct strategy on how to assist Lesotho in the implementation of these reforms, and that the Lesotho Oversight Committee, established by the 3rd July 2015 Double Troika is operationalised.

- d. Evidence before the Commission in respect of the mutiny, is that the alleged mutineers intended to kill 13 members of the LDF. Further, it shows that some of the complainants in the court martial, participated in the arrest of the suspects, which is a clear conflict situation, as they have personal interest in the cases. When this evidence is taken into consideration with that of the suspects subjected to torture, the object being to extract confessions from them, as well as the evidence that Lt General Kamoli himself, when he was reappointed as Commander of the LDF, stated that he would deal with those who celebrated this termination in 2014, it makes the whole case of mutiny highly suspect.

In these circumstances, we recommend a facilitation of an amnesty that will cover the detained mutiny suspects and ensure the safe return of all members of the LDF who have fled Lesotho in fear for their lives.

'ANNEXURE 2'



LESOTHO
Government Gazette
EXTRAORDINARY

Vol. XLIX Wednesday - 14th April, 2004 No. 38

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	ACT
7	Lesotho Telecommunications Authority (Amended) 290 Rules 2004

Published by the Authority of His Majesty the King

LEGAL NOTICE NO. 71 OF 2004**LESOTHO TELECOMMUNICATIONS AUTHORITY
(BROADCASTING) RULES 2004****Arrangement of Rules****Rule****PART I
PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART II
RECORDS**

3. Records to be kept by licensees
4. Submission of records to the Authority
5. Production of records

**PART III
CODE OF PRACTICE**

6. Community standards
7. Protection of children
8. Fairness, accuracy and impartiality in news and information programmes
9. News and information programmes on controversial issues
10. Conduct of interviews
11. Comments
12. Privacy
13. Payment for information obtained from criminals
14. Party-political broadcast and advertisements

**PART IV
ADVERTISEMENTS AND SPONSORSHIP CODE**

15. Community standards, accuracy and fairness in advertisements
16. Scheduling of advertisements
17. Sponsorship

deration to a broadcaster; and

- (b) which is intended or calculated to advance the interests, beliefs or object of any political party;

“**political party**” means a party, or any alliance of parties, which is registered as a political party under the laws of Lesotho, or which has publicly declared its intentions to register as a political party or to contest elections on a local or national level, or any alliance of such parties;

“**programme**”, except as and where otherwise indicated, means sounds that are intended to inform, enlighten or entertain or advertise or sponsorship matter, whether or not of a commercial kind;

“**sponsorship**” means any item of publicity, other than an advertisement, broadcast in return for payment or any other valuable consideration to a broadcaster;

“**station**” means one or more transmitters or receivers or a combination of transmitters and receivers including the accessory equipment necessary at one location for carrying on a radio communication service;

“**the Act**” means the Lesotho Telecommunications Authority Act 2000.

PART II RECORDS

Records to be kept by licensee

1. (1) A licensee shall retain the following documents for the duration of the licence period, or such other period as the Authority may determine:
 - (a) the documents of incorporation of the company in whose name the broadcasting licence is being held, and any amendment approved by the Authority;
 - (b) the Shareholders' Agreement which was contained in the application for the licence and any amendments approved by the Authority;
 - (c) the annual audited financial statements reflecting the gross and net income of the licensee in respect of its broadcasting service;

- (d) resolutions of the board of directors;
 - (e) records of employees; showing number of employees, positions occupied, qualifications and citizenship;
 - (f) weekly programme schedules;
 - (g) daily programme logs showing programme categories and time allocated to each category;
 - (h) advertising logs showing all advertisements broadcast, the number of minutes of advertising per hour and advertising rate cards;
 - (i) detailed sponsorship logs;
 - (j) a list of music tracks played on the radio station indicating the music format, the percentage Sesotho music of total music played and percentage African music of total music played;
 - (k) a list of complaints received and responses to complaints by the licensee.
- (2) Original recordings of all programmes broadcast shall be retained by the licensee for a period of at least 3 months.

Submission of records to the Authority

4. (1) The records set out in rule 3(1)(e) shall be submitted to the Authority within 3 months after the licensee's financial year-end.
- (2) Records referred to in rule 3 shall be submitted to the Authority on request.

Production of records

5. A licensee shall produce, on demand, or on such other date as the Authority may specify, any record or document, specified in rule 3 or such other record or document which the Authority may require.

**PART III
CODE OF PRACTICE**

Community standards

6. A licensee shall not broadcast content which, measured by contemporary community standards -

- (a) offends against good taste or decency;
- (b) contains the gratuitous use of offensive language, including blasphemy;
- (c) presents sexual matters in a gratuitous, explicit and offensive manner;
- (d) glorifies violence;
- (e) is likely to incite crime or lead to disorder; or
- (f) is likely to incite or perpetuate hatred against or gratuitously vilifies any person or section of the community on account of race, ethnicity, nationality, gender, marital status, sexual preference, age, physical or mental disability, religion or culture.

Protection of children

7. (1) When broadcasting programmes where a large number of children may be expected to be listening, a licensee shall exercise due care in avoiding content which may disturb or be harmful to children which includes, but is not limited to -

- (a) offensive language; or
- (b) explicit sexual or violent material, including music with violent or sexually explicit lyrics.

(2) In determining when children are part of the audience, a licensee shall take into account available audience research as well as the time of broadcast.

Fairness, accuracy and impartiality in news and information programmes

8. (1) A licensee shall report news and information accurately, fairly and impartially.

(2) News and information shall be presented in the correct context and in a balanced manner without intentional or negligent departure from the facts, whether through:

- (a) distortion, exaggeration or misinterpretation;
- (b) material omissions; or
- (c) summarising or editing.

(3) A licensee may only present as fact, matters which may reasonably be true, having regard to the source of the news or information, and facts shall be broadcast fairly with due regard to context and importance.

(4) Where reports are not based on fact or are founded on opinion, supposition, rumours or allegations, a licensee shall present it in such a manner as to indicate clearly that this is the case.

(5) Where there is a reason to doubt the correctness of a report and it is practical to verify the correctness thereof, it shall be verified. Where such verification is not practical, this fact shall be mentioned in the report.

(6) Corrections of factual errors shall be broadcast without reservation as soon as reasonably possible after the original error.

(7) Corrections of errors shall be presented with such a degree of prominence and timing as may be adequate and fair so as to easily attract attention, and shall include an apology where appropriate.

News and information programmes on controversial issues

9. (1) A licensee shall ensure that, in reporting on controversial issues of political, industrial or public importance, an appropriate range of views are reported either within a single programme or in a series of programmes which are as adjacent as reasonably possible.

(2) When covering controversial issues of political, industrial or public importance during phone-in programmes, a licensee shall ensure that a wide range of opinions is represented over a reasonable period of time.

(3) A person or organization whose views have been criticized during a

**PART V
COMPLAINTS AND INVESTIGATIONS**

✕ **Rights of complainants**

18. In dealing with all complaints, a licensee shall ensure that complainants are advised that they have the right to refer the complaint to the Authority if they are dissatisfied with the licensee's response to the complaint.

✕ **Request for copy of the programme**

19. Any person who has reason to believe that he or she has been unfairly treated in any programme may request from a licensee a copy of the relevant programme and such request shall not be unreasonably turned down by the licensee.

✕ **Licensee to abide and co-operate**

20. A licensee shall abide by and co-operate with all such complaints, monitoring and investigation procedures as are initiated by the Authority from time to time by, inter alia -

- (a) submitting, on request, any recordings or documentation required by the Authority;
- (b) responding to queries from the Authority relating to allegations of non-compliance with licence Conditions, Rules, Regulations or the Act;
- (c) submitting, where requested, written reports or written responses to allegations of non-compliance with licence Conditions, Regulations or the Act; and
- (d) appearing, when requested, before the Authority during any adjudication of a complaint or investigation inquiry into alleged non-compliance with licence conditions, Rules, Regulations or the Act.

✕ **Rights of licensee**

21. Whenever the Authority intends to hold any investigation into a suspected breach of the licence conditions or investigate any complaint relating to a

licensee's failure or refusal to deal with any complaint or the unsatisfactory handling of any complaint by a member of the public, the Authority shall invite the licensee to make a written or oral representations within such period specified by the Authority.

Penalty

22. In the event of a finding that a licensee has failed to comply with or has breached a licence condition, the Authority may impose such fine or penalty and make such directive as it deems necessary.

**PART VI
AMENDMENT OF LICENCE CONDITIONS**

Amendments by the Authority

23. The Authority may amend or vary licence conditions:

- (a) if the amendment will not cause substantial prejudice to the licensee; and
- (b) to such extent as may be necessary by virtue of any bilateral, multilateral or international agreement or convention relating to broadcasting by which Lesotho is bound.
- (c) where the Authority seeks to vary or amend any licence condition, the Authority shall give a 60 days notice of its intention to the licensee.
- (d) such notice of the proposed amendment and the reason for such amendment or variation shall clearly and fully set out the reason for the proposed amendment or variation.
- (e) such notice shall invite the licensee to make written representations to the intended amendment or variation.
- (f) the licensee shall make such representations within 30 days.
- (g) the Authority shall take into consideration the representations of the licensee prior to making its decision on the proposed amendment.

"ANNEXURE 3"

**Ministry of Communications, Science and
Technology**

Lesotho Communications Policy 2008

3 The Communications Policy

The Communications Policy addresses the institutional framework for the regulation of the communications sector, and establishes the policies that the Government will use to guide the development of the sector.¹ The new policy provides the basis for the Communications Act, which will replace the LTA Act and the Post Office Act.

The Communications Policy adopts an integrated regulatory regime governing the telecommunications, broadcasting, and postal sector (collectively, the Communications sector). The policy aims to achieve the following four goals.

- *Regulatory reform.* The policy will strengthen the regulatory capacity of the Lesotho Communications Authority (LCA).
- *Convergence.* The Policy will reflect and promote the convergence of services and networks based on the Internet.
- *Universal Service.* The Policy will foster universal access to a diverse range of high-quality communications services at affordable prices, including advanced networks, in order to enable Lesotho to participate in the global information society.
- *Competition.* The Policy will promote a competitive communications market. In particular, the policy will facilitate the cooperative deployment and sharing of infrastructure, thereby avoiding duplicative deployment of infrastructure while promoting service-based competition.

Southern Africa Development Community Protocol on Transport, Communications, and Meteorology

The Communications Policy is consistent with the Southern African Development Community's Protocol on Transport, Communications, and Meteorology, to which Lesotho is a signatory. In particular, as required by the Protocol, the Government will:

- establish a universal service policy that identifies specific services, establishes priorities, and measures progress;
- promote a coordinated approach to the regulation of the telecommunications and broadcasting sector;
- encourage private sector investment in network infrastructure;

¹ In this Policy Statement, the term "communications" is used to refer collectively to telecommunications, broadcasting, and postal services.

- ensure the existence of an independent regulator with responsibility for establishing universal service obligations, licensing providers, managing radiofrequency, setting interconnection guidelines, and establishing technical standards;
- commercialize the post office and subject it to the authority of an independent regulator;
- promote availability of affordable, good quality universal postal services;
- identify those "reserved" postal services that will not be subject to competition; and
- establish a framework for the provision of non-reserved postal services, in a competitive environment, by private sector participants.

WTO Reference Paper

Although Lesotho has not signed the WTO Telecom Reference Paper, the converged regulatory regime is also consistent with the standards established in that document. Specifically, as provided for in the Reference Paper, the Government will:

- adopt safeguards to prevent anti-competitive practices by entities with significant market power;
- adopt transparent procedures to facilitate the adoption of agreements that allow for non-discriminatory interconnection, at cost-oriented prices, to the transport facilities of entities that have significant market power;
- adopt a transparent, non-discriminatory, and competitively neutral universal service regime;
- make licensing criteria, and the terms of individual licenses, publicly available;
- ensure regulatory independence; and
- establish objective, timely, and transparent procedures governing the allocation of scarce resources.

The WTO Reference Paper was intended to be adopted as standard practice for the telecommunications sector. However, these principles are applicable, to a significant extent, to all three communications sectors.

3.1 Institutional Framework

The Communications Act will integrate the regulation of the telecommunications, broadcasting, and postal sectors. The Lesotho Communications Authority (LCA) will be restructured, and will be given authority to regulate all three sectors.

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3.1 Institutional Framework

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✦ Adoption of a converged regulatory regime will achieve multiple goals.

- A converged regulatory regime will reflect the development of technology and changing industry structure. Historically, telecommunications, broadcasting, and postal were distinct sectors, provided by different operators, over different infrastructures. As a result of the growth of IP technology, the boundaries among services involving the distribution of information are eroding. For example, voice communications, video content, and electronic mail can all be carried over a single network. These trends will accelerate in the years to come. The converged regulatory regime will reflect this significant development.
- Adoption of a converged regulatory regime will result in significant administrative efficiencies. There are a number of regulatory functions that are relevant in all three communications sectors. These include: granting of authorizations (licensing), competition management, consumer protection (including rate regulation), regulating inter-operator relations (including interconnection and access to infrastructure), promoting universal service, and enforcement. After the adoption of the Communications Act of 2008, LCA will be re-organized by function. For example, one office will deal with licensing issues applicable to all three sectors, thereby allowing efficient utilization of personnel.
- Adoption of a converged regulatory regime will facilitate a consistent regulatory regime that can harness the resources of all sectors. For example, LCA will facilitate the sharing of infrastructure by telecommunications providers and broadcasters. Similarly, LCA will promote the use of post offices as telephone and Internet access points.

After the adoption of the new Communications Act, LCA will perform all of the functions typically performed by a sectoral regulator. At present, there is no national competition authority. As a result, the Authority will also assume full responsibility for the enforcement of prohibitions against anti-competitive conduct (whether unilateral or concerted) in the telecommunications, broadcasting, and postal sectors, as well as the review of mergers involving licensees – at least until such time as a national competition authority has been established.

✦ 3.1.1 The Role of the Government and the Regulator

The Act will clearly define the respective roles of the Ministry and the LCA.

The Minister will be responsible, consistent with the requirements of the Act, for establishing basic policy for the telecommunications, broadcasting, and postal sectors, and for representing Lesotho on international matters relevant to these sectors. The Minister will also have ultimate responsibility for ensuring that the Authority acts consistently with law and established policy. However, the Minister will not participate in, or seek to influence, the initial decisions of the Authority regarding operational or technical matters – such as whether to grant a license to a particular applicant, approve an interconnection agreement, or adopt a particular technical standard.

The LCA will serve as an independent regulator. In making its decisions, LCA will act in a manner free from political interference, influence, or considerations. In addition, LCA will show no favouritism to any licensee, including any entity in which the Government continues to have an ownership interest. Such regulatory independence is mandated by Lesotho's international obligations, and is consistent with international best practice.² Moreover, maintaining regulatory independence is essential to ensure the confidence of both foreign donors and private sector investors, who must play a critical role in the development of Lesotho's communications sector.

At the same time, LCA will act in a manner that is consistent with the provision of the Communications Act, and any other applicable legislation, as well as the policies established by the Minister. The Act will establish measures that ensure that the Authority is held accountable for its actions.

3.1.2 Measures to Balance Regulatory Independence and Accountability

The Act will embody provisions designed to strike the proper balance between regulatory independence and accountability.

Board Selection

The powers of the Authority will continue to be exercised by the Chief Executive and the Board of Directors. The Chief Executive, following the recommendation by the Board of Directors, will be appointed by the Minister on a contract of not more than three-years duration. The Minister may remove the CEO, for cause. The CEO will be eligible for a contract extension.

The Minister will nominate the six members to serve on the Board, including the Chairman. The Minister will be required to solicit recommendations and to nominate qualified persons with a broad range of views and technical skills. The Minister's nominations must be approved by a simple majority vote of the National Assembly. Once approved, the Chairman and the other members of the Board will serve for a three-year term, and may only be removed, for cause, by a two-thirds vote of the National Assembly. The Chairman and the other members of the Board will be eligible for re-nomination to additional three-year terms.

² The principle of regulatory independence is embodied in the Southern Africa Development Community Protocol on Transport, Communications, and Meteorology, to which Lesotho is a signatory ("Member States shall . . . establish autonomous, independent national regulatory bodies . . ."), to which Lesotho is a signatory, as well as in the World Trade Organization's Telecommunications Reference Paper (telecommunications regulatory bodies must be "separate from, and not accountable to any supplier of basic telecommunications services").

Review of Decisions

Any party that is not satisfied with a decision made by the Authority will have the right to request a review of that decision.

- First, the party may seek reconsideration from the Authority. If, following reconsideration, LCA determines that it will not alter its decision, it will be required to explain, in writing, why it did not find the arguments of the party to be persuasive.
- If the party is not satisfied with the reconsideration decision, the party may request review by the Minister. The Minister's review will be narrow. The Minister may only vacate the Authority's decision if he concludes, based on the record, that the decision is: (1) inconsistent with law or established policy; (2) procedurally improper; (3) not supported by substantial evidence or (4) arbitrary and capricious. In such cases, the Minister will issue a written decision explaining the basis for his determination, and will remand the decision to the Authority. The Authority will then be required to respond in a manner that is consistent with the Minister's determination. If necessary, the Minister will appoint a qualified individual (or individuals) to assist with any or all aspects of this oversight function.
- Finally, any party may seek judicial review of the Minister's decision to uphold or vacate the Authority's decision.

The Act will specify deadlines for each stage of the review process to ensure a timely response for the party that has sought review.

☞ **3.1.3 Regulatory Principles**

In performing its functions, the LCA will be guided by the following regulatory principles:

Protection of consumers

In carrying out its functions, LCA's primary obligation will be to protect the interests of consumers. The need for consumer protection is greatest in non-competitive markets. However, where appropriate, LCA will adopt rules applicable to all market participants.

Promotion and Preservation of Competition

LCA will seek to promote competition, wherever feasible. This will include removing legal barriers to market entry and service provision, as well as taking affirmative actions to reduce the cost of entry. Where competition exists, LCA will take necessary actions to preserve and, where feasible, enhance that competition.

Transparent and Reasoned Decision-making

LCA will be a transparent regulator. LCA will solicit input from industry and end-users prior to making significant decisions. LCA will also make all decisions based on the record before it, and will provide a reasoned explanation for its actions. Except where confidential information is involved, LCA will publish its decisions in a means that is readily accessible to the public, including publication on its website.

Avoidance of Unnecessary Delay

LCA will seek to make all decisions promptly. In particular, LCA will make decisions within timeframes to be specified in the Communications Act.

Technological Neutrality

LCA will make its decisions on a technology-neutral basis. To the extent feasible, Licensees seeking to provide comparable services will be subject to comparable regulations, regardless of the technology that they propose to use. LCA will not restrict the use of specific technologies without a compelling justification.

While recognizing the benefits of technology-neutral regulation, the LCA will not automatically impose legacy regulations on new technologies or operators. Rather, before extending legacy regulation, LCA will consider whether new participants have market power, or whether compelling policy considerations justify imposition of regulation. LCA will also consider the extent to which application of such regulations would have an adverse effect on service deployment and, ultimately, consumers.

Minimizing regulatory burdens

LCA will seek to ensure that regulations are no more burdensome than necessary. Where feasible, regulations will focus on those licensees with significant market power, while reducing the regulatory burden on smaller operators that are subject to competitive market forces. In addition, as competition develops, LCA will take actions to eliminate regulations that are no longer necessary. To do so, LCA will conduct a periodic review of regulations. LCA will also be given authority to “forbear” from enforcing statutory provisions that are no longer necessary as a result of the growth of competition.

Effective Enforcement

LCA will take effective action to enforce its regulations. LCA will adopt investigation and enforcement procedures that are proportionate, transparent, non-discriminatory, and consistent in

their application. Where appropriate, LCA will request regular reports from select operators, and will request additional information in case of an investigation. LCA will impose penalties that are severe enough to act as an effective deterrent, while being proportionate and non-discriminatory. In serious cases that warrant imposition of criminal sanctions – such as fraudulent or destructive conduct – LCA will refer matters to the courts for judicial enforcement.

3.1.4 Functions of the LCA

As a converged regulator, LCA will perform the following principal functions, which are applicable to all three communications sectors. LCA will be reorganized along these functional lines.

Authorisation

LCA will perform several functions relating to the granting of authority to provide services or use equipment.

- *Licensing.* LCA will publish licensing criteria designed to facilitate new entry, and will award licenses in a technology-neutral fashion in order to facilitate the deployment of new technologies and reap the benefits of convergence. License fees will be published in advance, and will be set at a reasonable level.
- *Allocation and assignment of scarce resources.* LCA will be responsible for allocating scarce resources, such as radio spectrum and telephone numbers.³ LCA will ensure efficient usage of these resources, while promoting entry and innovation in new advanced wireless networks. As long as spectrum supply remains available, fees will remain low. As demand increases, however, fees will be raised in order to ensure that resources are made available for efficient use. LCA will not use auctions to allocate scarce resources.
- *Technical standards.* LCA will adopt and enforce technical standards governing both services and equipment. These standards will be imposed, where needed, to ensure compatibility between networks and customer premise equipment, prevent interference, and adopt international standards to benefit from lower prices resulting from scale economies.

³ The Policy recognizes the importance of another scarce resource, Internet Domain Names, whose assignments are critical to the formation of a well-functioning information society. In order to ensure the involvement of all relevant stakeholders, the Government will facilitate the creation of an independent body for both assigning this resource and also interacting with ICANN and other relevant international bodies involved in Internet resource allocation.

Competition Management

LCA will seek to facilitate competition. To do so, LCA will identify licensees that have significant market power, and will subject those licensees to heightened regulatory obligations. LCA will also adopt general competitive safeguards, rules governing anti-competitive conduct, and guidelines to review mergers involving Licensees. Finally, LCA will identify any markets, such as basic letter service, in which competition should be prohibited or restricted.

Consumer Protection

LCA will perform several functions designed to protect retail end-users. As noted above, the need for consumer protection is greatest in markets that are not yet subject to effective competition. Therefore, in such markets, LCA will review rates for communications services and will adopt and enforce appropriate Quality of Service (QoS) standards. In markets that are subject to effective competition, LCA will adopt measure to protect consumers from coercive or misleading conduct, and to protect privacy. LCA will also assist in the resolution of disputes between Licensees and consumers.

Inter-operator Relations

LCA will regulate the relationship between service providers. This will include overseeing agreements between operators that involve interconnection of their distribution networks, access by one operator to the network of another operator, or the sharing of facilities by multiple operators. LCA will also oversee the wholesale market. This will include regulating wholesale rates and, where necessary, requiring the provision of wholesale services at appropriate rates.

Universal Service

LCA will serve as a treasurer in the implementation of Universal Service Strategy to promote access to communication services in remote areas of the country. This will involve the establishment of a Universal Service Fund (USF) that will be administered by a Universal Service Fund Committee (USFC) of which LCA will be a member. The USFC will develop universal service goals and annual plans to meet those goals by collecting contributions to the USF and allocating them towards the deployment of infrastructure.

Enforcement

LCA will conduct investigations and take enforcement action in any case in which a party has contravened its rules. This will include enforcement of prohibitions against anti-competitive conduct and content regulations.

3.2 Strategies relating to the specific communications sectors

Although the Communications Policy applies to all three communications sectors, the Government will carry out a number of actions specific to each sector.

3.2.1 Telecommunications Sector

The telecommunications sector has grown significantly in Lesotho. However, penetration rates remain low. Only three percent of Basotho subscribe to a wireline telephone service, and there is no competition in the wireline market. Over twenty percent of Basotho subscribe to a wireless service, which has limited competition between two operators. There have been no other entrants into the wireless or wireline market. Finally, Internet access is still nascent, with only two percent of residents subscribing to Internet services, with additional access at Internet cafes, primarily in Maseru.

At the same time, infrastructure deployment remains inadequate. Indeed, more than half of the geographic area of the country is not covered by any wireline or wireless network. International connectivity is limited because of Lesotho's reliance on South Africa for terrestrial access.

The fundamental goals of the Communications Policy in the telecommunications sector are:

- to facilitate the deployment of infrastructure to currently unserved portions of the country;
- to provide additional means for non-subscribers to access telecommunications services; and
- to foster advanced communications networks and increased competition in the sector.

To achieve these goals, the Government will take a number of actions. First, the Government will seek to facilitate cooperative efforts to deploy infrastructure in currently unserved areas. Second, the Government will seek to promote telecommunications and Internet access points throughout the Country. Third, Government will remove technology-based and other regulatory restrictions that may impede new market entry, particularly of advanced networks and services.

Access gaps

The Government will take significant actions to close the "access gap" in the telecommunications sector. First, the Communications Act will establish a Universal Service Fund Committee. Second, LCA will use its licensing authority to promote service roll-out. Finally, Government will take other measures to promote universal access.

- *Universal service.* The Government seeks to ensure that all Basotho have access to basic domestic and international telephony services and Internet access. This will be applied in a technology-neutral fashion, covering both fixed and mobile networks, and both traditional or

VoIP telephony. The Government is also committed to nationwide availability of broadcast and basic postal services. There will be a number of elements of the universal service strategy.

- *Universal Service Fund Committee.* The Communications Act will establish a Universal Service Fund Committee, in which the Ministry, LCA, and other relevant government agencies will participate. The USFC will establish an annual universal service plan, with specific and quantifiable performance measures. The USFC will also monitor the program, and report annually regarding the achievement of the goals that it has established.
- *Contributions.* All licensed telecommunications operators will be required to make a contribution to the Universal Service Fund (USF) of no more than two percent of their net operating income from the provision of telecommunications services in Lesotho. The Government will also explore the feasibility of having other licensed communications operators in the broadcasting and postal sectors contribute to the Fund in return for qualifying to receive funds to help to promote access. Contributions may also come from the LCA, the Government, and development partners.
- *Expenditure.* Revenue from the USF will be used to subsidize the deployment of infrastructure to remote, currently unserved areas of the country, which may be used by licensed operators from all sectors, including both fixed and mobile networks, broadcasters, and postal carriers. For example, funds may be used for construction of: towers and backhaul facilities in remote areas of the country; tele-centres in under-served areas, using both public facilities (such as post offices) and private facilities; and an Internet Exchange Point (IXP) in order to promote the efficient use of infrastructure for Internet peering.
- *Access requirements.* Once infrastructure has been deployed, USFC will ensure non-discriminatory access to that infrastructure.
- *Licensing.* LCA will use licensing conditions to promote deployment. For instance:
 - LCA will include coverage requirement in spectrum licenses, such as those for fixed wireless or WiMAX, that extend beyond currently served customers.
 - LCA will include wholesale or sharing requirements that would provide sufficient reimbursement to the investing operator while fostering retail competition.
- *Other Government action.* The Government may assist the USFC in meeting universal service goals in several ways. As noted above, the Government may provide funding to the Universal Service Fund. Second, the Government may make its own infrastructure available to operators, including existing communications infrastructure as well as other relevant infrastructure such as that used for the distribution of electricity.

Convergence

The Government encourages deployment of converged technologies. The policy applies to both networks and services. Networks can include advanced communications networks such as WiMAX and next generation networks (NGN), which are optimized to provide Internet services and may be less expensive to implement than traditional technologies. Services can include offerings such as voice over IP (VoIP) and IP television (IPTV) that provide substitutes for existing services over the Internet, and often include features unavailable with existing technologies.

The Government will promote access to convergent services by eliminating non-technology neutral regulations. Specifically, operators will not be required to deploy, or prohibited from deploying, any specific technology to provide the network or service. For example, providers of fixed telecommunications services would be free to use fixed wireless links, as well as copper wire or fibre, to provide "last mile" connectivity. LCA will also adopt a clear policy allowing the provision of VoIP services.

Competition

The Government will take the following actions to promote competition. Given Lesotho's small population, level of development, and geographic characteristics, deployment of competitive infrastructure seems unlikely in the short to intermediate term. Therefore, the Government will seek to promote service-based competition. In addition, LCA will adopt competitive safeguards to restrain the ability of operators with significant market power to act anti-competitively, while easing regulatory burdens on entrants and operators in competitive markets. This will be accomplished as follows.

- *Interconnection.* LCA will facilitate interconnection between operators, particularly where one of the operators has significant market power. Interconnection agreements will be timely, non-discriminatory, cost-oriented, unbundled, and transparent.
 - LCA will identify operators that have significant market power.
 - Any operator with significant market power will be required to allow physical interconnection, at any technically feasible location, at forward-looking, cost-based prices. The LCA will determine both the methodology for setting interconnection rates and also determine the cost-based rates, after which a price cap will be imposed to keep the rates at or below those rates over time.
 - LCA may also specify certain Interconnection Related Services and Mandatory Wholesale Services that the SMP operator must provide upon request, at cost-based prices.

- The LCA will review interconnection agreements between operators with SMP and other operators, and will approve them, unless they do not meet certain basic requirements. For example, LCA may also reject agreements that set termination rates at levels that could facilitate retail price fixing.
- LCA will also have the authority to require operators with significant market power to adopt a Reference Interconnection Offer (RIO), which would contain a standardized set of prices, terms, and conditions on which the operator will interconnect, exchange traffic, and provide access to facilities.
- In the case of interconnection agreements that do not involve an operator with significant market power, the agreement will become effective once filed at LCA, subject to review where necessary.
- *Rate regulation.* Retail rate regulation will be imposed on operators with SMP in a market, where retail tariffs will be subject to a price cap. As a rule, SMP operators will be required to file tariffs to ensure that the prices are cost-oriented, but LCA will have the authority to forgo from this requirement, for instance, allowing price decreases without notification.
- *Quality of service.* Operators will be required to meet quality of service parameters and must file regular reports on their QoS, based on parameters to be determined by the LCA.
- *Facilities access.* LCA will require that operators that have deployed infrastructure that cannot economically be duplicated provide competitive access at cost-based prices (including a reasonable return on investment).
- *New entry.* LCA will seek to promote entry of new operators to provide wireless and wireline services, both in competition with existing operators for voice services and also offering new services such as WiMAX.
- *International services.* LCA has previously liberalised the provision of international gateway service, and will encourage operators to share existing facilities, and jointly deploy new facilities, where appropriate. In addition, LCA will establish a carrier pre-selection regime, which will enable users to access the international provider of their choice by dialing a standard international code. Finally, as discussed above, LCA will clearly authorize the provision of VoIP services.

3.2.2 Broadcast

The broadcast sector is growing, particularly with a number of new commercial and private radio stations operating. However, competition with the state broadcaster is limited, particularly in areas outside of Maseru, by the lack of widespread transmission infrastructure. In addition, there is uncertainty over broadcasting regulations relating to content.

In order to foster the development of the broadcasting sector, the Government will take the following actions.

- The Government will establish a clear legal framework for the sector in the Communications Act.
- The Government will corporatize the Lesotho National Broadcasting Service.
- The Government will facilitate deployment of transmission infrastructure throughout the country.
- The Government will adopt a transparent, non-discriminatory regime for the regulation of content.
- The Government will promote the provision of Internet-based "New Media" services.

Regulatory Reforms

The Government will take several actions to reform the existing regulatory regime.

- *Broadcast Classifications.* While convergence is erasing distinctions between services, there is a fundamental difference between broadcasting and telecommunications that will be accounted for in the Communications Act. Telecommunications involves the carriage of the user's choice of content between two points specified by the user, while broadcasting involves the carriage of content, provided by the broadcaster, to multiple points. While many regulatory requirements are appropriate for all three ICT sectors, certain policies are not. For example, rules governing rate regulation have no applicability to free over-the-air broadcast services.

Within broadcasting, the Communication Act will establish four categories of broadcasters: public service broadcasting, community broadcasting, private broadcasting, and commercial broadcasting. Each category will differ by ownership, purpose, and coverage requirements.

- *Public Service Broadcaster.* The Lesotho National Broadcasting Service (LNBS) will be transformed from a state broadcaster into a public service broadcaster. This will entail corporatizing the LNBS and making it accountable to an independent board with the goal of serving the public interest. The public service broadcaster will have editorial independence and any content restrictions or requirements will be contained in its charter, along with a clear source of funding for operations and expansion.
- *Content Regulation.* The new law will seek to strike a careful balance. The law will seek to promote freedom of expression, diversity, and the free flow of information and ideas. At the same time, however, the law will recognize that – in certain, narrow, clearly defined circumstances – the Government will have authority to impose content restrictions. The law will make clear the specific circumstances in which content restrictions are justified, and will

establish a transparent non-discriminatory procedure that will be followed before any sanction is imposed on an offending broadcaster. In addition, the law will establish a procedure for notifying a licensee of any complaints, and for adjudicating the matter. Finally, a Broadcast Dispute Resolution Panel, which will consist of industry representatives, will be empowered to resolve content disputes and make recommendations to the LCA for enforcement of the Communications Act and all relevant license conditions.

- *Digital Migration.* The government will initiate the planning for the digital migration that the ITU has recommended take place before 2015. In order to minimize the cost of the migration to both broadcasters and consumers, the Government will begin to plan this transition in 2008. The first issue will be to commission a cost study in order to determine when broadcasters should begin to purchase digital broadcasting equipment by weighing any falling costs of such equipment against the need to encourage consumers to begin to purchase digital receivers when they buy new or replacement televisions or radios. This will also be a function of the falling cost of such equipment and the analog to digital converters that will allow them to receive programming that has not yet gone digital. At that time, the LCA will assign digital spectrum to the broadcasters, with provisions for when the analog services will be terminated and the analog spectrum returned to the Government.

Access Gaps

The Government will take two actions to reduce the access gap in the broadcasting sector. First, the Government will promote the efficient sharing of existing infrastructure. Second, the Government will foster shared deployment of new infrastructure in unserved or underserved areas.

- *Transmission Infrastructure.* LNBS will be required to provide all licensed broadcasters with access to its transmission infrastructure under reasonable and non-discriminatory terms. After corporatization, the LNBS Board will propose rates and terms and conditions for access that must be approved by the LCA and made public. LNBS will be required to adopt QoS standards and rules governing suspension of access to its infrastructure. In general, LNBS will only be able to suspend or discontinue service to a competing operator where: (1) service provision is not technically possible or is likely to cause technical harm to the network; (2) the user has failed to pay for service provided or otherwise materially breached its service agreement and, after being notified, failed to remedy the breach; or (3) LNBS receives a written direction from LCA or a court of competent jurisdiction directing it to suspend service.
- *Deployment.* LNBS will participate in infrastructure deployment and sharing arrangements with other providers, including telecommunications operators, in order to reduce the cost of deployment and increase coverage. In particular, LNBS (along with other broadcasting licensees), will contribute, as appropriate, in the USF, and will then be able to have cost-based access to any facilities funded by the USF.

AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:
 - a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

- c) the right to defence, including the right to be defended by counsel of his choice;
- d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligations of solidarity provided for in Article 29 no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedom of others.

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

Article 18. 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19. 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20. 1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22. 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize¹ to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

¹ United Nations, *Treaty Series*, vol. 68, p. 17.
Vol. 999, I-14668



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Freedom of expression

14. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) for the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in subsection (2)(a) or for any of the purposes specified in subsection (2)(b) or (c).

(4) Any person who feels aggrieved by statements or ideas disseminated to the public in general by a medium of communication has the right to reply or to require a correction to be made using the same medium, under such conditions as the law may establish.



PROTOCOL

ON

CULTURE, INFORMATION

AND SPORT



**SECTION II
INFORMATION**

**ARTICLE 17
OBJECTIVES**

In fulfilment of the principles of this Protocol, State Parties shall co-operate in the area of information in order to attain the following objectives:

- a) co-operate and collaborate in the promotion, establishment and growth of community, commercial, public, regional and global media for free flow of information;
- b) strengthen public information institutions to be effective gatherers and disseminators of information and news;
- c) develop and promote regional culture, opinion and talent by increasing local content in the media such as magazines, radio, television, video, film and new information technologies;
- d) take positive measures to narrow the information gap between the rural and urban areas by increasing the coverage of the mass media, whether private, public or community-based;
- e) encourage the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication;
- f) ensure that the media are adequately sensitised on gender issues so as to promote gender equality and equity in information dissemination;
- g) build public faith and accountability in information institutions by enhancing local, national and regional ownership;
- h) turn organs of communication into genuine and credible market places of ideas by encouraging diversity, breadth and professionalism in ownership and editorial policy;
- i) place communication at the disposal of communities, nation-states and SADC for the articulation and development of a tolerant, multicultural, multi-ethnic and multilingual regional culture in the global context;



- j) utilise communication to build and strengthen solidarity and understanding with other communities, especially those from the developing world; and
- k) co-operate in the protection of children from harmful information and cultural products, as well as in strengthening children's self-expression and access to the means of communication.

ARTICLE 18 INFORMATION POLICIES

1. State Parties shall formulate and harmonise information policies after thorough consultations involving appropriate stakeholders and civil society.
2. State Parties shall establish, publicise widely and implement information policies of SADC.
3. State Parties shall establish and strengthen the institutional framework for the implementation of information policies.
4. State Parties shall create political and economic environment conducive to the growth of ethical, diverse and pluralistic media.
5. State Parties shall promote specialised training of journalists in the areas of culture and sports to improve the coverage of these areas.

ARTICLE 19 INFORMATION AVAILABILITY

1. State Parties agree to co-operate in improving the free flow of information within the Region.
2. State Parties shall co-operate in capacity building in the creation of media for the dissemination of data and encourage information dissemination and sharing through networking of news agencies in the Region.
3. State Parties shall engage in an extensive publicity campaign of SADC objectives, programmes, projects, activities and achievements.



4. State Parties shall encourage news agencies, in the Region, to establish a SADC News Agencies' Pool which, with computerised interconnection, will ensure efficiency and effective exchange of news and information.
5. State Parties shall give more financial and editorial autonomy to the news pool to enhance the professional competence and credibility to media practitioners.
6. State Parties shall co-operate in joint investments, production and exchange of film, video and audio information products in order to reduce reliance on imported information and cultural products.
7. There shall be a SADC Media Award which is intended to encourage and recognise the work of journalists that promote regional integration in the fields of print, radio, television and photo journalism.

**ARTICLE 20
FREEDOM OF THE MEDIA**

State Parties shall take necessary measures to ensure the development of media that are editorially independent and conscious of their obligations to the public and greater society.

**ARTICLE 21
CODE OF ETHICS**

State Parties shall encourage the establishment or strengthening of codes of ethics to boost public confidence and professionalism in the information sub-sector.

**ARTICLE 22
SADC ACCREDITATION**

State Parties shall establish a regionally and internationally recognised SADC accreditation system or procedure for media practitioners with specific guidelines in order to facilitate the work of such personnel in the rest of the world.



**ARTICLE 23
INFORMATION INFRASTRUCTURE**

1. State Parties shall upgrade media infrastructure for communication in the urban and rural areas to ensure access to more stakeholders through the media.
2. State Parties shall promote the role of archives, libraries, museums, cultural villages and similar services as information providers.
3. State Parties shall co-operate in the development of new communication technologies, including satellite broadcasting, as a countervail to threats to collective sovereignty from global media.

**SECTION III
SPORT**

**ARTICLE 24
OBJECTIVES**

In fulfilment of the principles of this Protocol, State Parties agree to co-operate in the area of Sport in order to attain the following objectives:

- a) promote regional integration through sport and recreation;
- b) promote the participation of key stakeholders in organising and sponsoring sports and recreation programmes and activities;
- c) promote and facilitate the organisation of training programmes for sports personnel;
- d) promote active participation by stakeholders in sport and recreation activities with special emphasis on women, children and persons with disabilities; and
- e) foster the spirit of fair play, mutual respect, ethical and moral principles in sport as well as fighting doping and drugs.

POSITION PAPER
FOR MULTI-SECTORAL REFORMS

Media Reforms

MISA
LESOTHO

5.5.3 The Print Media Sector

The print media sector is composed of publications – newspapers, and magazines. The newspaper industry's growth has been stunted in comparison with the radio industry, which has grown exponentially as earlier mentioned. There are many reasons for the stunted growth of the industry.

Heavy printing costs have malnourished the birth and sustainability of newspapers. Many newspaper titles that have been born have come and gone and new ones have also joined the sector. They have however failed to sustain due to inability to meet operational costs of printing, distribution and recruitment of qualified personnel.

Other challenges facing the print media sector include skewed advertising that does not support their revenue generation mechanisms. Newspapers and magazines also rely on the underdeveloped private sector and the government for advertising. As mentioned earlier, where the government has an upper hand on advertising, it dangles the carrot and favours some media houses against others.

Table 2: Landscape of the Newspaper Industry

NEWSPAPER	OWNERSHIP	FOCUS	COVERAGE
Morija	Government-owned	Covers certain districts	General/development
Mosotele la Basotho	Roman Catholic Church	Covers certain districts	General/development
Lesotho Times	Private and Commercial	Covers certain districts	General/development
Public Eye	Private and Commercial	Covers certain districts	General/development
Mosho Newspaper	Private and Commercial	Covers certain districts	General/development
Informative Newspaper	Private and Commercial	Covers certain districts	General/development
Sunday Express	Private and Commercial	Covers certain districts	General/development
News Daily	Private and Commercial	Covers certain districts	General/development
The Nation	Private and Commercial	Covers certain districts	General/development
The Post	Private and Commercial	Covers certain districts	General/development
Mosotele Metro	Private and Commercial	Covers certain districts	General/development
The Reporter	Private and Commercial	Covers certain districts	General/development
Lesotho la Basotho	Government-owned	Covers certain districts	Government Policy

Misa's Paper on Access to Information

Table 3: Landscape of Magazine Industry

MAGAZINE	OWNERSHIP	FOCUS	COVERAGE
Anchor Magazine	Private and commercial	Covers certain districts	General/development
Faith Magazine	Private and commercial	Covers certain districts	General/development
Faith Magazine	Private and commercial	Covers certain districts	General/development
The Star Magazine	Private and commercial	Covers certain districts	Agricultural and horticultural

Eubora, Focus of Lesotho Art of Lesotho Magazines

Below is a radio broadcasting landscape. The radio industry is made of state-owned radio stations (2), commercial radio stations (11), community radio stations (4) and religious/commercial (3). One is owned by an institution of tertiary education. For television, it has since 1988 been only one (Lesotho Television) and remains a state-run broadcaster that is subject to the government of the day.

The private radio broadcasting sector has afforded Basotho an alternative to the state-run media, which has historically been less critical of government and presented a one-sided view to Basotho. Private radio stations have historically had the following advantages to Basotho listeners:

Table 2: Landscape of radio stations in Lesotho

#	RADIO STATION	FREQUENCY	TYPE	OWNERSHIP	REACH
1	MAFETENG COMMUNITY FMMW	107.7MCH	Community	Private	Community (Mafeteng)
2	RADIO LESOTHO FMMW	93.3 MGH	State-run	State-owned	Countrywide
3	MOA-FRIKA FM	89.7 MGH	Commercial	Private	Covers certain districts
4	TSENOLO FM	104.6 MGH	Commercial	Private	Covers certain districts
5	HARVEST FM	98.9 MGH	Commercial	Private	Covers certain districts
6	KEL RADIO FM	104.2 MGH	Religious/Commercial	Church-owned	Covers certain districts
7	RADIO MARIA	103.3MGH	Religious/Commercial	Church-owned	Covers certain districts
8	PEOPLE'S CHOICE FM	95.5 MGH	Commercial	Private	Covers certain districts
9	ULTIMATE RADIO	99.8 MGH	State-run	State-owned	Covers certain districts
10	MOXAL SPACE AGE FM	91.0 MGH	Commercial	Private	Covers certain districts
11	357 FM	94.3mhz	Commercial	Private	Covers Maseru
12	BOJANGSO FM	97.1MHz	Commercial	Private	Covers certain districts
13	JESUKE-KARABO FM	105.2MHz	Religious/Commercial	Church-owned	Covers certain districts
14	DOPE FM	103.5 MGH	Educational	Private	Community (Roma)
15	MOTJOLI FM	87.9MGH	Community	Private	Community (Thaba-Tseka)
16	MOELING MULTI MEDIA	91.2MGH	Community	Private	Community (Botha-Bothe)
17	MOSEHO-SEAMA FM	99.8MGH	Community	Private	Community (Cuthing)
18	MOLISA-EA-MOLENO FM	100.5MGH	Commercial	Private	Covers certain district

LWE SICO (2008: 7)

End notes

- ⁱ See "The Lesotho We Want: Dialogue and Reforms for National Transformation"
- ⁱⁱ See "The Lesotho We Want: Dialogue and Reforms for National Transformation", page 8
- ⁱⁱⁱ See "The Lesotho We Want: Dialogue and Reforms for National Transformation", page 11
- ^{iv} See "The Lesotho We Want: Dialogue and Reforms for National Transformation", page 15
- ^v See "The Lesotho We Want: Dialogue and Reforms for National Transformation", page 16
- ^{vi} See "The Lesotho We Want: Dialogue and Reforms for National Transformation", page 17
- ^{vii} See "A Model Public Service Broadcasting Law", Article 19, 2005 for approaches to establishing a public service broadcasting board of directors or board of governors
- ^{viii} See "Guidance on the regulatory framework for national spectrum management", International Telecommunication Union (ITU), 2018, especially pages 18-20 on spectrum management
- ^{ix} As evident in "Lesotho Communications Policy 2008" the Lesotho Communications Authority is expressly under the control of the Ministry and the minister of Communications, Science and Technology when the standard practice in many countries is that the "authority" is at least quasi-independent of the Ministry
- ^x See "Guidance on the regulatory framework for national spectrum management", International Telecommunication Union (ITU), 2018 on best practice in appointing boards in various countries
- ^{xi} See "Media Development Indicators: A framework for assessing media development", UNESCO, 2008, pages 38-43 on frequency spectrum distribution
- ^{xii} See "Media Development Indicators: A framework for assessing media development", UNESCO, 2008, pages 71-76 provides indicators on capacity building through education that can be leveraged
- ^{xiii} See "The Press Code of Ethics and Conduct for South African Print and Online Media", the Press Council of South Africa, available at: <https://www.presscouncil.org.za/sa-press-code/> and "Code of Conduct for the Practice of Journalism in Kenya", The Media Council of Kenya (2013)
- ^{xiv} A list of these laws and their sections that are felt to be repressive is attached as an appendix at the end of the report.
- ^{xv} See for instance, Article 169 of "the African Charter on Human and People's Rights, 1981/1986
- ^{xvi} Significantly, the Article 19 of the "The Universal Declaration of Human Rights", UN, the "Declaration of Principles on Freedom of Expression in Africa" The African Union, 2002; Article 9 of "the African charter on human and people's rights", 1981/1986
- ^{xvii} These instruments are attached as appendix at the end of Report
- ^{xviii} Significantly, the Article 19 of the "The Universal Declaration of Human Rights", UN, the "Declaration of Principles on Freedom of Expression in Africa" The African Union, 2002; Article 9 of "the African charter on human and people's rights", 1981/1986
- ^{xix} These instruments are attached as appendix at the end of Report

^{xx} Significantly, the Article 19 of the “The Universal Declaration of Human Rights”, UN, the “Declaration of Principles on Freedom of Expression in Africa” The African Union, 2002; Article 9 of “the African charter on human and people’s rights”, 1981/1986

^{xxi} These instruments are attached as appendix at the end of Report

^{xxii} Refer to the Media Institute of Southern Africa (MISA-Lesotho) Media Lesotho Law Review (November, 2018