

# THE TRANSITION AND FORMATION OF GOVERNMENT AFTER LESOTHO'S 2022 ELECTIONS

*Hoolo 'Nyane*

Hoolo 'Nyane is an associate professor and head of the Department of Public and Environmental Law, School of Law, University of Limpopo

## ABSTRACT

*The process of transitioning from one government to another and forming a new government after elections in Lesotho is often fraught with controversy and uncertainty. These problems can be attributed, by and large, to the lack of adequate rules and consistent constitutional practice. The 2022 elections have once again shone the spotlight on these longstanding problems. Like all other elections since 2012, the 2022 elections were inconclusive: no political party received an outright majority to form a government. Since the country uses a parliamentary system, the government depends on the confidence of the National Assembly and the life of the government is pegged to the life of Parliament. The end of the parliamentary term effectively means the end of the government. In terms of the Constitution, once Parliament is dissolved, elections must be held within three months. Within one month after the elections, a new Parliament must sit. While the Constitution provides for the appointment of the prime minister – the king appoints as prime minister a member of the National Assembly who will have the confidence of the House – there are no rules stipulating how the confidence of the House is to be determined. Likewise, the government's position between the dissolution of Parliament and the forming of a new government is often opaque and precarious. This article examines these inadequacies in the context of the 2022 elections. The article uses content analysis – the examination of primary and secondary documents – to analyse the activities that took place during the transition and formation of a new government in the 2022 elections. The article concludes that the 2022 elections serve to confirm a longstanding problem of inadequate rules and consistent practice relating to the transition and formation of government.*

**Keywords:** Lesotho 2022 elections, formation of government, caretaker government, transition, Constitution of Lesotho

## INTRODUCTION

Lesotho's 2022 elections have once again highlighted the perennial problems of inadequate rules and the inconsistency relating to the transition and formation of a government in the mountain kingdom. In terms of the Constitution, an electoral cycle lasts for five years, with the possibility of early termination (Constitution of Lesotho 1993, section 83). Since 2012 parliaments have lasted, on average, three years, due to the instability of coalition governments, with most governments collapsing before the end of a five-year cycle (Weisfelder 2015; 'Nyane & Kapa 2021). The introduction of the Ninth Amendment to the Constitution in 2020 halted this trend to some extent. The Amendment provides that the prime minister no longer enjoys the privilege of advising the king to dissolve Parliament when the prime minister loses the confidence of the National Assembly; previous prime ministers had invoked this power in 2015 and 2017 to ensure the early dissolution of Parliament. The immediate effect of the Ninth Amendment to the Constitution became clear in 2020 when the government transitioned from Prime Minister Thomas Thabane to Prime Minister Moeketsi Majoro without the need to dissolve Parliament and subsequently hold elections (Southall 2022).

The run-up to the 2022 elections was preceded by the official dissolution of Parliament on 14 July 2022. This Parliament was elected in 2017, so it had run its entire five-year course for the first time since the advent of coalition politics in 2012. When Parliament was dissolved at the end of its constitutional term, it was still seized with the much-anticipated Tenth Amendment to the Constitution Bill (2022), the flagship law for the constitutional reforms that had virtually held the country to ransom since 2012 (Monyake 2022). At midnight on 13 July 2022, the National Assembly had not yet finished enacting the Bill, let alone sending it out for Royal Assent. Hence, by operation of the law, Parliament was dissolved before the Tenth Amendment to the Constitution Bill was enacted. This was a clear embarrassment for the government as it had committed to the nation and to the international community that the Bill would pass before the dissolution of Parliament (Louw-Vaudran 2022). Parliament was later recalled on the flawed grounds that the failure to pass such a Bill constituted a state of emergency, allowing the dissolved Parliament to be recalled. Both the High Court and the Court of Appeal correctly invalidated such a recall of Parliament and all the legislative work done by the recalled Parliament (*Boloetse v His Majesty the King* (Cons. No. 0013/0015/2022) [2022] LSHC 2022).

In terms of Westminster caretaker conventions, the dissolution of Parliament spells the start of a caretaker period. Caretaker conventions are based on a salutary theory of Westminster constitutional design that government is based on the confidence of the popular chamber of Parliament (Boston et al. 1998; Simms 2011).

In Lesotho's case, the National Assembly is the popular chamber of Parliament. During the caretaker period, the government rules on the basis of caretaker conventions until a new government is installed after elections. This may be a relatively long period. In terms of the Constitution of Lesotho, once Parliament is dissolved, elections must be held within three months. Thereafter, Parliament must have its first sitting – to swear in new members and elect presiding officers – within 30 days, after which the king may appoint the prime minister (Constitution of Lesotho 1993, section 87). The Constitution does not stipulate when the king must appoint a new government. The entire period between the dissolution of Parliament and the installation of a new government lacks detailed guidelines. It depends largely on convention, practice and general principles governing caretaker governments. The powers of the government and the status of members of parliament in the period between the dissolution of Parliament and the new Parliament after the elections are also unclear.

Once again, in 2022, there was an uproar when it became clear that members of parliament were still receiving salaries after the dissolution of Parliament. Likewise, after the dissolution of Parliament, the government's activities raised a fundamental constitutional question. Much to the chagrin of many observers of constitutional developments, Prime Minister Majoro and his ministers continued with government business as normal; this included appointing diplomatic envoys and dismissing the Commissioner of Police. The same uncertainty about the caretaker period exists around the formation of a new government. The Constitution provides that the king appoints a member of the National Assembly who is the leader of a political party or coalition of parties that will command the majority in the National Assembly (Constitution of Lesotho 1993, section 87(2)). However, there is no judicial authority on when – whether immediately after the announcement of elections or after the first sitting of Parliament – the king appoints such a person. In terms of existing judicial authority, any member, and not necessarily a political party leader, can be appointed prime minister (*Mokhehle v Qhobela and Others* CIV/APN/75/1997).

After the 2022 elections, two incidents related to the transition and formation of the government merit a thoroughgoing analysis. The first incident was the resignation of former Prime Minister Majoro. On 14 October 2022 he resigned from the government, after which the king appointed him to act as prime minister pending the appointment of a new prime minister (SABC 2022). This practice is not new as in the past, when prime ministers have resigned after elections, the king has appointed them to act in the interim. The second incident was the appointment of the new prime minister. On 20 October 2022, the king released a Gazette in terms of which he, 'pursuant to section 87(1) and (2) of the Constitution and acting in accordance with the advice of the Council of State as the Prime Minister of

Lesotho' (Legal Notice 104 of 2022), appointed Samuel Ntsokoane Matekane as the new prime minister of Lesotho. At the time, the outgoing prime minister, Majoro, was still holding the instrument from the king 'to act' as prime minister. These incidents demonstrate that the law and practice concerning the new government's caretaking, transition and formation are still uncertain and obscure.

Hence, this article analyses the practices relating to the caretaking, transition and formation of a new government before and after the 2022 elections in Lesotho. The central thesis is that a lack of consistent practice and insufficient guidelines often render this sensitive period in the electoral cycle susceptible to the cyclical disputes that have characterised electoral politics in Lesotho.

This article uses content analysis as its methodology. The article analyses the Constitution, other statutory instruments such as Government Gazettes, decided cases, and secondary data in the form of newspapers and literature on caretaker conventions, transition and government formation. The article is divided into five main parts: the introduction; a brief background to government design in Lesotho; the conceptual framework; an analysis of significant developments during the 2020 elections; and the conclusion.

#### A BRIEF BACKGROUND TO GOVERNMENT DESIGN IN LESOTHO

Although Lesotho adopted the new Constitution as recently as 1993, the design of the government is still based on the British model of government inherited upon independence in 1966. Matlosa (1997, p. 95) captures this accurately: '[a]fter independence, the country inherited the Westminster model of government which was to ensure parliamentary democracy after the image of its colonial metropole-Britain'. This insistence on modelling the government system on British system has eluded all reform efforts on this design so far. It contrasts sharply with the general pattern that African countries followed after independence. While Westminster still has traces – as seen in the practices of parliament, judiciary and even the executive – in the many African countries that are former British colonies, most of them departed markedly from the classical Westminster design.

Upon independence, African countries retained parliamentarism, the legacy of the colonial era; but soon thereafter, most of them transitioned to presidential and quasi-presidential systems. As Robinson and Torvik (2016, p. 908) observe: 'at the time of independence, parliamentary constitutions outnumbered presidential constitutions ... in Africa. Yet ... country after country, there was a switch towards presidentialism. This happens both in Francophone and Anglophone countries'. Currently, there are only three monarchies throughout post-colonial Africa; Morocco, Lesotho, and Eswatini (formerly Swaziland) (Middleton 2015, p. 202).

However, in Anglophone Africa, only Lesotho and Eswatini remain monarchies. Robinson and Torvik (*ibid.*) observe further that:

At the time of independence, parliamentary constitutions outnumbered presidential constitutions 4 to 1 in Africa. Yet, in country after country, there was a switch towards presidentialism. ... None of the countries that started out with a presidential constitution has adopted a parliamentary constitution. Even in the wave of democracy that has swept over Africa since the 1990s, no country has yet made such a transition.

Lesotho is the only African country with a government that fundamentally resembles the British model (Macartney 1970). Eswatini, which at independence in 1968 also had a classical Westminster design of government, veered towards absolutism in 1973, thereby radically departing from the Westminster model (Proctor 1973; Baloro 1994). In 1993, when Lesotho returned to constitutional democracy with a new constitution, it retained the same design that was adopted at independence. The key features of this design are: the monarch is constitutional; the head of government is the prime minister; the cabinet is derived from parliament; the parliament is bicameral; the people elect a parliament, which in turn produces government; the judiciary is based on British traditions; and the civil service follows British conventions. Theoretically, the system is undergirded by four pillars: it is democratic; it is parliamentary; it is monarchical; and it is a cabinet system (Jennings 1969, p. 13). In elaborating on these four pillars, Jennings (*ibid.*) argues that the system:

...[it]is democratic because it is carried on in the name of the people according to doctrines freely accepted by or acceptable to the people at a general election. It is parliamentary because the people are for the time being represented by the [National Assembly]... . It is monarchical because the titular head of the State is a Sovereign who is the representative for the time being of a dynasty established by law. It is a Cabinet system because responsibility rests, subject to the [National Assembly] and the people, not in a single individual but on a committee of politicians sitting in Cabinet.

These theoretical linchpins directly affect how power transits from one government to another and how a new government is formed. Overall, elections remain important because of the pre-eminence of the principle of democracy. Although the people do not elect the government directly, the government is in the people's

name. Despite democracy being such an integral part of the system, it has had a chequered development since the return to electoral politics in 1993. While the country has held elections and, on some occasions, managed peaceful transitions of power from one government to another, Matlosa and Shale (2008, p. 140) correctly note that 'one prominent feature of the country's political history has been its political instability'.

Since 2012, the country's landscape drifted from single-party governments to coalitions. However, Kapa observes that the shift started earlier. In the run-up to the 2007 elections, political parties formed pre-election alliances which did not culminate with a coalition government; these had started in 2012. Booysen (2015, p. 430) describes this period as an era of 'serial, unstable, vacillating coalition governments'. During an era of hung parliaments, the question of how government forms and how it transits from one ruler to another remains fundamentally important.

The monarch is the titular head of government. The Constitution still makes him or her an indivisible head of the three key branches of government: the executive, the parliament and the judiciary. As Nwafor (2013, p. 58) observes: '[i]n Lesotho, the Constitution is fashioned closely along the Westminster concept of separation of powers, with, however, the peculiarity of a constitutional monarch whose powers cut across the functions of the three arms of government'. Thus, as a Westminster design, Lesotho maintains a weaker separation of powers as there is no clear separation between parliament and the executive. Despite this weaker separation of powers, superior courts in Lesotho often assert that the separation of powers is one of the key features of the constitutional design. In the case of *Swissbourgh Diamond Mines (Pty) v Military Council of Lesotho* (LLR 1991-96, 1481), former Chief Justice Cullinan noted that: 'throughout the ever changing constitutional pattern of the Kingdom a golden thread of the separation of powers is always to be seen'. In like manner, in *Judicial Officers' Association of Lesotho and Another v The Right Honourable The Prime Minister Pakalitha Mosisili NO and Others* (CONST/C/3/2005) [2006] LSHC 32 (4 July 2006), para. 79), Majara reaffirmed that '[t]he Constitution further establishes the three arms of government being the legislature, the executive and the judiciary, all of which are governed under its different Chapters'.

The monarch retains antique prerogatives similar to those of the monarch in the United Kingdom, such as the power to appoint a prime minister, the summoning, prorogation and dissolution of parliament, and the appointment of judges. These prerogatives have indeed been attenuated over time by the ascendancy of democracy: they are no longer within the absolute discretion of the monarch. When Lesotho first gained independence in 1966, the king had two types of power: those that he could exercise 'on advice' and those that could be



exercised in his own 'deliberate judgement'. Intriguingly, the power to appoint the prime minister was within his 'deliberate judgement' (Constitution of Lesotho 1996, sec 76(2)). Under the present design, all the powers and prerogatives of the king are exercised subject to the 'advice' by various institutions created by the Constitution.

## PROBLEMATISING TRANSITION AND FORMATION IN A WESTMINSTER-BASED DESIGN

### *Classical Westminster Principles*

The transition from one government to another is a critical stage in a system of government based on the Westminster design; it needs to be handled with care and circumspection (Martin & Stevenson 2001). Hart and Uhr (2011, p.1) note that: '[t]he peaceful transition of power from one set of hands to another is one of the basic features of a working democracy'. Both the transition and the formation of a new government in a Westminster-based constitutional system are based on one overarching principle: government must at all material times be based on the confidence of the representative chamber of parliament (Heasman 1960; Galligan & Brenton 2015). In a Westminster-based system, a caretaker government arises in two related but distinct circumstances: when the government loses the confidence of the popular chamber of parliament, and when the life of parliament ends. The overarching presumption that binds the two circumstances together is that, in terms of the parliamentary design, the government exists because of the confidence it enjoys from the representative chamber of parliament (Schleiter & Belu 2015).

Hence, when the House has withdrawn its confidence in the government, or the life of Parliament has ended, the government of the day exists without its foundational theory; it is no longer based on the confidence of the House (Boston et al. 1998). In an ideal situation, the life of the government would have to cease and a new government formed. However, since preparation for the formation of the government must be preceded by elections, there must be a caretaker government before a new government can be formed after the elections. It normally takes some time to prepare for elections once the life of Parliament has ended. In the case of Lesotho, an election must be organised within three months of the date of the dissolution of Parliament. So, the period during which the government is in office without the confidence of the representative House, the National Assembly, often evokes controversy.

The usual questions concern (a) the powers of such a government; (b) the length of time that such government must be in office; and (c), much more importantly, the process by which power transits from one government to

another (Boston et al. 1998). Westminster systems have developed a new set of principles to regulate government conduct during the caretaker period, that is when the government exists without confidence. This set of principles has been styled caretaker conventions. During this period it is generally accepted that ‘with the dissolution of the House, the Executive cannot be held accountable for its decisions in the normal manner, and that every general election carries the possibility of a change of government’ (Australian Government 2021, p. 2). The origins of caretaker conventions lie in British constitutional history. Schleiter and Belu (2015, p. 229) contend that caretaker conventions ‘exist to ensure that the country is never left without a fully functioning executive and to prevent a government whose democratic mandate has expired from making decisions that will inappropriately bind the incoming government’.

The theoretical underpinning of these conventions is that a government in a Westminster-based constitutional design is deemed responsible to parliament. This responsibility is encapsulated in the time-honoured doctrine of responsible government. The doctrine of responsible government is ‘a constitutional and political doctrine that refers to the Executive Government’s accountability to the Parliament’ (Lipton 1997, p. 195). It is intricately linked to the Westminster conception that government in a Westminster constitutional design is parliamentary. It is best operationalised through the principle of ministerial responsibility. Ministers are responsible to parliament and are both individually and collectively responsible. Lipton (1997) asserts that a triangulated relationship exists between the executive, parliament and the electorate. In that relationship, parliament has power over the executive because it is the elected arm of government, elected directly by the voters. Hence, ‘this is why the doctrine of responsible government is closely linked with ideas of representative democracy. The Executive government is responsible to the Parliament because Parliament is ultimately accountable to the electorate’ (Lipton 1997, pp. 194-195).

The golden thread that runs through this triangle is the principle of democracy. In the end, power reposes in the people (*demos*) who ‘delegate’ it to parliament, which in turn chooses the government (Bogdanor 2009). Jennings (1969, p. 13) captures this more succinctly when he states that a parliamentary system of government is democratic ‘because it is carried on in the name of the people according to doctrines freely accepted by or acceptable to the people at a general election’.

Hence, when parliament has withdrawn its confidence in the government, or the life of a parliament has ended – either because it has run its course or because of early dissolution – the government that remains in power is called a ‘transitional government’ or a ‘caretaker government’ (Klein 1977). While the government in a parliamentary democracy turns on the confidence of parliament, the principle of



necessity also dictates that a country cannot be without a functioning executive at any given time. A caretaker government serves this latter purpose; its duration is limited, and its powers are highly constrained (Dandoy & Terrière 2021). The principles that regulate a caretaker government are often opaque and context-based. Nevertheless, the literature on caretaker periods demonstrates some semblance of consensus about the two principles governing caretaker periods. The first principle is that the caretaker government cannot resign. This principle relates symbiotically to the purpose of caretaker governments to ensure that there is no vacuum in government. The caretaker government, therefore, holds the fort until a new government is appointed. The second principle is that a caretaker government must maintain the policy *status quo*. What constitutes the policy *status quo* is often uncertain. Governing is a dynamic enterprise: at every turn, the government may be required to make decisions as dictated by practical exigencies. There is, therefore, hardly any consensus about what constitutes the ‘policy *status quo*’. Nevertheless, the literature on caretaker conventions points to three strands of this principle: (a) refraining from making major policy decisions that are likely to commit an incoming government (Boston et al. 1998, pp. 635–636); (b) avoiding making significant appointments; and (c) avoiding the signing of major contracts.

After completing the transition, the moment to form a new government arises. Even in the formation of the government, like during the transition, the animating doctrine of confidence still looms large. Government must at all times be based on the confidence of parliament. This is the prime consideration when the Crown chooses the person to form a government. When appointing the prime minister, the Crown is enjoined to appoint a person who will form a stable government because that person has the confidence of the house. The formation of government starts with the appointment of the prime minister, which is a classic royal prerogative.

However, the ascendancy of democracy has linked the appointment with the principle of electoral democracy, which is manifested in the popular chamber of parliament – the National Assembly in the case of Lesotho and the House of Commons in the case of the United Kingdom. The general principles that have evolved in relation to Lesotho have been adequately canvassed in contemporary literature (Nyane 2016). The main thrust of this article is to gauge how the country applied these well-established principles in the 2022 elections. The following section focuses on this aspect.

### *Lessons from Selected African Countries*

As earlier indicated, most African countries have transitioned from parliamentary designs to presidential and quasi-presidential systems. Hence, lessons for them

and Lesotho – the only country in Anglophone Africa that retains constitutional monarchism – must be approached with great circumspection. As an African country, and in the spirit of decolonisation, Lesotho may find it preferable to align with African patterns rather than cling to the antiquated Westminster design which has its roots in the colonial era. This is in keeping with decoloniality which is ‘not only a long-standing political and epistemological movement aimed at liberation of (ex-)colonized peoples from global coloniality but also a way of thinking, knowing, and doing’ (Ndlovu-Gatsheni 2015, p. 485). According to Le Vine (1997, p. 181): ‘European constitutional forms cannot be expected to take root in African political soil, much less grow and flourish, since they are based on essentially alien predicates and principles’.

The two African systems that may influence Lesotho are those of Botswana and South Africa. While these two systems are quasi-presidential – in that the head of state is the president who is not directly elected – they have a process of forming a government based on an investiture vote. An investiture vote is a process through which members of a parliament positively elect the head of the government or show confidence in the preferred government (Bergman 1993a; Bergman 1993b). As demonstrated above, since classic Westminster designs are based on negative parliamentarism, the parliament does vote for the prime minister.

The Constitution of Botswana (1966) provides for an interesting transition and formation of a government. According to section 32 of their Constitution, the president is nominated by parliamentary candidates before elections. The general election remains parliamentary and not presidential. However, in terms of section 32(2) of the Constitution regarding nomination of the president, ‘the nomination of a candidate in an election of a President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than 1 000 persons registered as voters for the purpose of elections to the Assembly’. This means that although the nomination process is mainly parliamentary, there is a way in which the voter participates in the president’s nomination, and not the direct election. According to 32(3)(d), any presidential candidate ‘for whom support has been declared...by not less than such number of persons elected as Members of the National Assembly in the Parliamentary election as corresponds to more than half the total number of seats for Elected Members in the Assembly’ is declared as president. Although the transition and formation of the government ensure that the members of parliament actively choose the president, Botswana’s transition regime has another layer of complication. This has attracted trenchant criticism claiming that it is undemocratic as it implies an automatic succession to the presidency (Good &

Taylor, 2000; Molomo 2000; Ookeditse 2020). In Botswana, the transition starts a year before the general election when the incumbent president steps down, and the vice president becomes the caretaker president until after the elections. The vice president of Botswana is any elected member of parliament whom the president chooses.

The South African transition and formation of a government regime is a simpler version of the investiture vote. In South Africa, general elections are legislative: the people elect Parliament and Parliament, in turn, elects the president. According to section 86(1) of the Constitution of South Africa(1996), 'at its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President'. After the election by the National Assembly, the president ceases to be a member of the parliament. Although the South African version of investiture is simple, it has received criticism that it does not have 'specific provisions regulating the formation and functioning of coalition governments in the national, provincial and local spheres of government' (de Vos 2021). The cases of Botswana and South Africa must be treated with caution when compared with Lesotho. Unlike Lesotho, the two systems have made marked departures away from the Westminster design. The lesson to be taken from these two countries is certainty in the choice of the head of government: the problem with which Lesotho continues to struggle.

## THE FORMATION OF GOVERNMENT DURING THE 2022 ELECTIONS

### *Transition and Caretaking*

The Constitution of Lesotho does not have elaborate guidelines on transition and caretaking, and constitutional practice lacks consistency. Nevertheless, an analysis of the constitutional framework is the safest point of departure for analysing what transpired with the transition in 2022. The Constitution of Lesotho provides that once Parliament has been dissolved, elections must be held within three months (Constitution of Lesotho 1993, section 84(1)). Within 30 days of holding the elections, the new Parliament must have its first meeting. There is no provision on when a new government must be formed, and there is no provision for the powers of government during two critical phases of the transition: the period between dissolution and elections, and the period between elections and the formation of a new government. To remedy the constitutional deficiencies in the transition, Parliament enacted the Ninth Amendment to the Constitution (2020). The Amendment provides as follows:

- (5) Where the office of the Prime Minister is vacant, there shall be a caretaker Government which shall be headed by the Deputy Prime Minister acting as Prime Minister.
- (6) The caretaker Government shall serve prior to the dissolution under subsection (4)(c), until the holding of the next general election.
- (7) The powers of the Prime Minister or Deputy Prime Minister as a caretaker Government are limited in their function, serving only to maintain the status quo.

The Amendment is inelegantly drafted. This 2020 Amendment is the first time that the Constitution has introduced the notion of a caretaker government. Instead of providing the conditions under which a caretaker government will arise, it provides that there shall be a caretaker government 'where the office of the Prime Minister is vacant'. Thereafter it provides for the caretaker period 'prior to the dissolution under subsection (4)(c), until the holding of the next general election'. This is equally problematic. It is unclear what 'prior to dissolution' means because before Parliament is dissolved, the government cannot be regarded as a caretaker government. As indicated above, the government generally becomes a caretaker when it governs without the confidence of the House: when such confidence has been officially withdrawn through a formal motion; when Parliament has been formally dissolved; or when the new Parliament has been sworn in, but the new government has not yet been appointed.

Furthermore, the Amendment's attempt to codify one of the most important caretaker conventions – that a caretaker government shall maintain the policy *status quo* – has drafting problems. Subsection (7) provides that the powers of a caretaker prime minister or deputy prime minister 'are limited in their function, serving only to maintain the status quo'. This formulation is an inelegant codification of caretaker conventions. It is, therefore, arguably responsible for the confusion about what should happen during transitional periods in Lesotho.

An attempt was made to improve the transition and caretaking provision of the Constitution with the enactment of the now-invalid Tenth Amendment to the Constitution Act of 2022. Section 83C(1) of the Act provided that:

There shall be a caretaker government immediately after the dissolution of Parliament and the person who held the office of Prime Minister and his or her Cabinet immediately before dissolution, shall continue as a caretaker government until a new Prime Minister and cabinet is appointed in terms of this Constitution.

Furthermore, section 83C(2) codified the well-known principles of a caretaker government, that a caretaker government shall not: '(a) implement any major

policy initiatives; (b) make appointments of major significance; or (c) enter into major contracts, agreements or undertakings'. This drafting is better than that of the Ninth Amendment to the Constitution Act of 2020. The Tenth Amendment accurately provides that the caretaker government should start immediately after the dissolution of Parliament, and thereafter the prime minister shall be regarded as a caretaker prime minister. And it accurately captures the powers of government in that transitional government. However, the Amendment, when it is reintroduced in future, may have to provide for the resignation of an outgoing prime minister and the status of other political institutions, such as the cabinet and the members of parliament.

During the 2022 elections, the usual confusion about transition and caretaking ensued. The tenth Parliament was officially dissolved on 14 July 2022 by the king in a notice in the Government Gazette. While Parliament was dissolved, Prime Minister Majoro and his cabinet remained in office. The position of government after its dissolution remained opaque. While in office, the prime minister declared a state of emergency, which became a precursor to the dissolved Parliament's recall. Indeed, Parliament was recalled to pass an abortive Tenth Amendment to the Constitution (2022). The caretaker principle of observing the policy *status quo* was thus not adhered to.

These reforms were indisputably intended to usher in huge changes in the country even though they were going to be passed by a Parliament whose five-year tenure had expired. Perhaps out of desperation, the government sought to justify the recall of Parliament from dissolution under section 84(2) of the Constitution, which permits the recall of Parliament when the country is in 'a state of war or of a state of emergency'. The section goes further to provide that 'the King shall recall the Parliament that has been dissolved and that Parliament shall be deemed to be the Parliament for the time being (and the members of the dissolved Parliament shall be deemed to be the members of the recalled Parliament)'. Clearly, as both the High Court and the Court of Appeal agreed in *Boloetse v His Majesty the King* (2022), the drafters' purpose could not have been that the section could be used to extend the life of a Parliament whose constitutional term has expired. Rather, the intention was to ensure that a recalled Parliament deal only with matters incidental to the emergency that necessitated its recall.

Confusion also ensued after the elections that were held on 7 October 2022. In principle, the period between elections and the formation of a new government presents a new set of questions for caretaker governments, because the people have already spoken about the structure of the new Parliament. Thus, the principle of democracy, which is the bedrock of parliamentary practice in Lesotho, begins to dictate the new government's form. This is an opportune moment for the prime minister and the cabinet to decide whether to resign. The Constitution of

Lesotho does not provide for this period either. It can therefore draw from the Westminster conventions. The cardinal convention regulating caretaker periods is that a caretaker government cannot resign. The conventions and their normative justification are captured accurately by Schleiter and Belu (2015, p. 4) thus:

In all countries, even those that do not recognise any other limitations on the caretaker government's powers (e.g. Ireland, Israel or Germany), the caretaker cabinet is constitutionally unable to resign until its successor has been appointed. By placing this requirement on "acting", "continuing" or "managing" governments, as they are respectively referred to, parliamentary systems ensure that the country is never left without a functioning executive.

Contrary to this convention, the day after the Independent Electoral Commission (IEC) announced the election results on 13 October 2022, Prime Minister Majoro resigned. According to his office, 'His Majesty accepted the letter [of resignation] and further asked Dr Majoro to hold [the] fort until the swearing in of the new Prime Minister' (Office of the Prime Minister, 2022). It is imperative to note that the election results returned a hung Parliament: no political party had a conclusive majority to form a government alone. A hung Parliament presents a much more complicated scenario for caretaker governments because it typically takes longer to clarify who the next prime minister will be. In England, an attempt has been made to codify the convention through a Cabinet Manual (§ 2.12), which provides as follows:

Where an election does not result in an overall majority for a single party, the incumbent government remains in office unless and until the Prime Minister tenders his or her resignation and the government's resignation to the Sovereign. An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative.

The first meeting of the National Assembly was held on 25 October 2022. At the time of the prime minister's resignation, the National Assembly had not yet met. Hence, it seems that the prime minister resigned prematurely. It is important to note that the manner of the prime minister's resignation was not unique. In 2012 the prime minister did the same: he resigned after the announcement of election results and was consequently requested by the king to act. It is unclear where



this practice of requesting caretaker prime ministers to act comes from because, in principle, a caretaker prime minister is already acting. Furthermore, it would seem that there is no provision in the Constitution of Lesotho nor an established convention which regulates the King's decision to ask a caretaker prime minister 'to act'.

**Table 1: Important dates in the transition of government during the 2022 elections**

Date	Activity
14 July 2022	Parliament dissolved
16 August 2022	Declaration of State of Emergency
24 August 2022	Parliament recalled from dissolution on account of the State of Emergency
7 October 2022	National Assembly elections
11 October 2022	Revolution for Prosperity (RFP), Movement for Economic Change (MEC) and Alliance of Democrats (AD) announce a majority coalition
13 October 2022	Announcement of election results by the IEC. No party with an outright majority
14 October 2022	Prime Minister Majoro resigns, and king requests him 'to act'
19 October 2022	Prime Minister Majoro meets Matekane in his office 'to consult on the transition to the new government'
20 October 2022	The king appoints the new prime minister, Samuel Ntsokoane Matekane
25 October 2022	The first meeting of the National Assembly to take the oath of office and elect the Speaker and Deputy Speaker
28 October 2022	Inauguration and swearing-in of the new Prime Minister Matekane; the official handover from the outgoing Prime Minister Majoro to the new Prime Minister Matekane
4 November 2022	Swearing-in of a 15-member cabinet

Source: Compiled by author from Appointment of Prime Minister Legal Notice 104 of 2022; and Legal Notice 100 of 2022

As indicated in Table 1, another anomaly was the appointment of incoming Prime Minister Matekane. The king's Gazette appointing the new prime minister is dated 20 October 2022. At that time, two prime ministers were in office: Majoro and Matekane. While it is not clear how the two operated in practice, legally, the

outgoing prime minister officially left office at the time of inauguration, and the handover was organised on 28 October 2022. This is the date which was supposed to be the effective date for his resignation. The king's Gazette, which appointed the incoming prime minister with effect from 20 October 2022, is also flawed in two fundamental respects. First, it was issued before the sitting of the National Assembly. As will be discussed in more detail in the next section, the extra-parliamentary announcement of the majority coalition on 11 October 2022 and the official announcement of the results by the IEC on 13 October 2022 do suffice to meet the requirements of section 87(2) of the Constitution. Second, a practice of the Council of State – the institution that advises the king on the appointment of the prime minister in terms of the Constitution – is to advise the king to appoint someone as the 'prime minister designate'. This practice had been used before Matekane's appointment; it also happened in May 2020 when the Council of State advised the king to appoint Moeketsi Majoro as the 'prime minister designate' before the resignation of the then Prime Minister Thomas Thabane (Posholi 2020). The ultimate effect of this mode of appointment is to have two prime ministers in office at any given time. Neither the Constitution nor the convention sanctions this practice. In terms of the Constitution, there is one prime minister, whom the king appoints in terms of section 87(2) of the Constitution. The king does not have the power to appoint someone 'to act' as prime minister or as 'prime minister designate' (Motanyane 2020).

### *Forming a New Government*

Forming a government is the ultimate goal of political contestation. Although the people do not elect their government directly in Westminster style, there is a symbiotic relationship between the elections and the government formed thereafter. The doctrine of democracy binds together the voter and the government. Democracy is the golden thread that runs from the voter through parliament to the resulting government. Jennings (1969, p. 14) captures the essence of a parliamentary democracy thus: "[t]he House of Commons and the Cabinet are the instruments of democracy. The prerogative of the Crown and, to a less degree, the powers of the aristocracy, have been subordinated to public opinion'. Hence, the confidence of the elected chamber of parliament is the bedrock of government in a parliamentary system: government must at all material times enjoy the confidence of parliament.

The principle of democracy is not diminished in a parliamentary system in juxtaposition to a presidential system where the people elect government directly. In a parliamentary system like Lesotho's, the people elect Parliament and Parliament, on the basis of the majority, produces government. Parliament

clothes the government with a garb of democracy through confidence, which is the manifestation of the majority of the members of the representative chamber of Parliament. Jennings (1969, p. 14) sums up the triangulation thus: '[t]he appeal of the respective parties to the electorate and the choice of the electorate determine the party composition of the House of Commons. The party composition of the House of Commons determines the party origin of the Cabinet'. Hence, confidence in government is important after elections and remains the basis of government for the entire life of parliament. To that end, the United Kingdom Cabinet Manual (2010, sec. 2.7) provides: 'the ability of a government to command the confidence of the elected House of Commons is central to its authority to govern'.

Although the Constitution of Lesotho has limited rules on the formation of the government, it at least embodies the basic principle that government must be based on the confidence of the National Assembly. Section 87(2) of the Constitution, which forms the basis of the formation of the Government in Lesotho, needs to be quoted in full because it is relevant for the subsequent critique of what happened in Lesotho after the 2022 elections. The section provides:

The King shall appoint as Prime Minister the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the National Assembly.

The section has been the subject of judicial and scholarly engagement (*Mokhehle v Qhobela and Others* 1997; Nyane 2016). Nevertheless, it continues to elude the institutions responsible for its implementation: the king, the National Assembly and the Council of State. The section has four constituent parts that need to be examined in view of what happened in the aftermath of the 2022 elections. Firstly, the prime minister's appointment is a prerogative of the king, not of Parliament or the voters. This prerogative has its origins in British constitutional practice.

Secondly, the prime minister must be a member of the National Assembly. Lesotho has a bicameral Parliament comprising the Senate and the National Assembly. The National Assembly is the elected chamber of Parliament, while the Senate is both appointed and hereditary (Constitution of Lesotho 1993, sec. 55). Hence, by operation of the principle of democracy, the prime minister is appointed from the popular (elected) chamber of Parliament.

In 2002, the country adopted a mixed member proportional (MMP) electoral system. Consequently, members of the National Assembly come in two streams: 40 members are elected based on proportional representation (PR), and 80 members are elected on a constituency-based system. The total number of members of the National Assembly is 120. Since adopting the mixed electoral system, the country

has never had a prime minister elected on the basis of proportional representation; all prime ministers since 2002 have been constituency representatives. However, in terms of the Constitution, it is immaterial whether this is a constituency representative or a PR-elected member.

There is normally no controversy about this part. Since independence, the prime minister has always been a member of the National Assembly. Controversy often arises when one becomes a member of the Assembly. This intractable question has not yet received judicial attention in Lesotho. However, section 71(1) of the Constitution points to the direction that one becomes a member of the National Assembly after subscribing to the oath of office as such. The section provides that every member of either house of Parliament shall, before taking a seat in the house, 'take and subscribe the oath of allegiance before the House, but a member may before taking and subscribing that oath take part in the election of the President or of the Speaker'.

The section seems straightforward. While the political processes will have indicated who will be the prime minister, it is not constitutionally correct to appoint a person to be a prime minister before such a person has become a member of the National Assembly in terms of section 71(1) of the Constitution. After the release of a gazette that officially announces the results, the king often goes ahead with the appointment, even before the first sitting of the National Assembly.

This practice recurred in 2022. As demonstrated in Table 1 above, the National Assembly first sat on 25 October 2022, yet the king appointed Matekane as the new prime minister before he could become a member of the National Assembly; the Gazette that appointed the new prime minister is dated 20 October 2022. Indeed, by all accounts, the political indications were that Matekane was set to be the new prime minister. After his party, the RFP, fell short of an outright majority by only five votes, the party announced a majority coalition with the MEC and the AD on 11 October 2022 to compensate for that deficit. However, the two political and extra-parliamentary processes – the official announcement of results and the announcement of the majority coalition – do not suffice for the king to proceed with the prime minister's appointment.

Thirdly, the National Assembly member who is appointed prime minister must 'appear' before the Council of State to be the leader of the political party or coalition of political parties that will obtain the confidence of the House. This resonates more closely with the British convention. In terms of this convention, the leader must 'appear' before the king; there is no election. However, what has always been a subject of intense disagreement in Lesotho is the role of the National Assembly in the choice of the prime minister. One view is that election by the National Assembly is implied in the section because there is no way that the king can know whether the prime minister has the confidence of the House without the House having expressed itself on the subject.

**Table 2: The votes and seats of parties that formed a governing coalition**

Party	Total Votes	Seats in the National Assembly	Popularity (%)
RFP	199 867	56 <sup>1</sup>	38.89
AD	20 798	5 <sup>2</sup>	4.02
MEC	17 093	4	3.34

Source: Independent Electoral Commission website, [www.iec.org.ls](http://www.iec.org.ls)

Another view is that in exercising the prerogative to appoint the prime minister, the king does not need a positive (investiture) vote. To address the controversy, the Ninth Amendment to the Constitution added the Speaker of the National Assembly to the list of advisors to the king on the appointment. Section 90A(1) of the Amendment provides:

Notwithstanding the provisions of section 87(1) and (2), the King shall, upon the death, retirement or resignation of the prime minister, appoint a member of the National Assembly who appears to be the leader of the political party or coalition of political parties that commands the majority of the members of the National Assembly, as the prime minister, on the advice of the Speaker.

The new section does not necessarily alter the original section 87(2) of the Constitution. It adds the Speaker as another advisor to the king in addition to the Council of State. In a real legal sense, this new section is superfluous: it does not add much value to the pre-existing legal framework. The Speaker is a member of the Council of State in terms of the Constitution. She or he is part of the Council of State when the council considers the factors determining whether someone can be appointed prime minister. In any case, even these factors are fairly straightforward. They include but are not necessarily limited to, the results of elections as officially declared by the IEC, the coalition agreements where applicable, and the political dynamics during the first meeting of the National Assembly. Should there be congruence between these three key factors, it cannot be hard for the Council of State to advise the king to appoint the person who ‘appears’ to be the leader of the party or coalition that will command the majority of the members of the National Assembly.

1 When the government was formed, the RFP had 56 seats in the National Assembly. After the party later won a by-election in the Stadium Area constituency, the number increased to 57.

2 At the time of going to print the IEC had gone to court to seek the reallocation of PR seats, which would see the AD being deprived of one seat.

In 2022, although the king had appointed Matekane as prime minister before the first sitting of the National Assembly, there was congruence between these above-mentioned important factors. The IEC released the results on 13 October 2022. Although the results showed that no party had an outright majority, the RFP had 56 seats which was only five seats shy of an outright majority (Legal Notice 100 of 2022). Therefore, it was apparent that it would not be hard for the RFP to court one or two of the smaller parties to put together a majority coalition. Indeed, the RFP easily won over the MEC with four seats and the AD with five seats to form a majority coalition with 65 seats. As was expected, in terms of the coalition agreement the partners agreed that the prime minister would come from the senior partner, the RFP. In keeping with the other two factors – the election results and the coalition agreement – when the National Assembly first sat on 25 October 2022, the coalition candidates for the Speaker and Deputy Speaker positions were comfortably elected. The two candidates were Tlohang Sekhamane for Speaker and Tšepang Tšita-Mosena for Deputy, both from coalition partners RFP and MEC, respectively.

Fourth, the person appointed as prime minister must be a leader of a political party or coalition of political parties that will command the majority of the members of the National Assembly. The practice in Lesotho is that the leader of the political party that wins the elections becomes the prime minister. While a party leader is often considered to be more influential in a presidential system, studies indicate that there is little difference in how voters relate to a party leader in both presidential and parliamentary systems. According to Bean (1993, p. 112): ‘...attitudes to party leaders do have a significant influence on the vote in countries such as Britain, Canada, Australia, and New Zealand’. Hence, even during elections, the faces of parties’ leaders are hugely crucial because the voters know the potential prime ministers.

In most cases, that image of the prime minister is more important than that of the constituency candidates. Since 1993, when Lesotho returned to electoral politics under the new Constitution, only one person has become prime minister without being the leader of a political party. In May 2020, Majoro was appointed prime minister upon the resignation of the All Basotho Convention (ABC) leader Motsoahae Thabane. In March 2022, Majoro, a member of the then-ruling ABC, received the support of the ABC caucus. The appointment of a party member who is not a leader of that party is not entirely without precedent in the history of Lesotho. According to Khaketla (1972), in 1965 the deputy leader of the Basotho National Party (BNP), Sekhonyana Nehemia Maseribane, became the first prime minister of Lesotho because the leader of the BNP, Leabua Jonathan, had lost the election in his constituency. His deputy in the party, Maseribane, became



the prime minister for about two months under the 1965 Constitution, whose formation of government clause was the same as section 87(2) of the present Constitution.

Indeed, it is not unheard of for a person who is not a political party leader to become the prime minister. What is important is that the person must have the confidence of a majority of the members of the National Assembly. In that way, the person is effectively the parliamentary leader of the party or coalition of parties. Notwithstanding the lack of judicial authority interpreting section 87(2), the topic of who a political party's leader is for the purpose of being a prime minister, once received judicial attention in the case of *Mokhehle v Molapo Qhobela and Others* (1997). There the High Court confirmed that for a person to be the prime minister, she or he simply needs the support of the members of the National Assembly. The court said that 'the position of prime minister depends on the support of the majority of elected members of parliament who are elected to serve for a five-year term'. Hence, the word leader is not taken literally to mean a leader of an extra-parliamentary party. It means someone who can command a majority of the member of the National Assembly.

## CONCLUSION AND RECOMMENDATIONS

This article investigated the application of the principles for the transition and formation of government during Lesotho's 2022 elections. It traced the practice and behaviour of constitutional structures from the dissolution of Parliament on 14 July 2022 until the last activity on the calendar: the cabinet's swearing-in on 4 November 2022. The entire period is properly characterised as a caretaker period. During this period government is transitional and is a caretaker for all intents and purposes. Its activities must be limited to the policy *status quo*. The article demonstrates that the principle that a caretaker government must maintain the policy *status quo* is an elusive practice for governments in Lesotho. The matter is compounded by a lack of constitutional and legislative rules guiding the situation.

As demonstrated in the preceding analysis, the changes made in 2020 through the Ninth Amendment to the Constitution only exacerbated instead of ameliorating the problem. The situation did not improve in 2022 when the government continued its business as usual. The most significant concern is that the government sought to restart the massive reform programme after Parliament's dissolution. Mindful of the importance of Parliament to that reform programme, the government improperly facilitated the recall of Parliament under the false pretence that there was a state of emergency. As demonstrated, the recall of Parliament was against all the major tenets of constitutional democracy (*Boloetse v His Majesty the King* 2022). Extending the term of Parliament is tantamount to

imposing unelected and therefore illegitimate public representatives on the electorate. Hence, such a Parliament cannot legitimise the government.

The handling of the government's formation processes was also irregular. The king's appointment of the prime minister before the first sitting of the National Assembly was irregular. The appointment of a prime minister based on extra-parliamentary coalition agreements and the mere announcement of results by the IEC was premature. As demonstrated, the person appointed prime minister must be 'a member of the National Assembly'. This accords well with the principle of confidence: the government must at all material times enjoy the confidence of the National Assembly. Although the country does not use an investiture vote for the prime minister, logically, the government cannot exist before the National Assembly exists. In a parliamentary system like Lesotho's, the cabinet is a parliamentary committee (Bagehot 1867). It therefore cannot exist before the parliament is sworn in.

Another practice which did not necessarily start in 2022 but also occurred in 2022 was when the outgoing prime minister resigned and was then reappointed in an acting capacity. This offends two principles: firstly, that a caretaker prime minister cannot resign; and secondly that a caretaker prime minister is an acting prime minister. Besides, the Constitution does not provide for the reappointment on an acting basis of a prime minister who has resigned. The proper arrangement is that the caretaker prime minister is already acting; there is no need to appoint him as such. He will formally resign when the king is ready to appoint a new prime minister. To ensure that there is no vacuum in government, the outgoing prime minister leaves office upon the arrival of the new prime minister.

The inconsistencies that occurred in the 2022 elections lend further credence to the longstanding calls for the codification of conventions relating to the transition and formation of the government (Commonwealth Secretariat 2012; Mwangi 2016; Monyake 2022). The intervention of the Ninth Amendment to the Constitution (2020) to arrest the problems associated with the transition and formation of the government is proving inadequate. In fact, it aggravates the situation in two fundamental respects. Firstly, it confuses the appointment process of the prime minister by introducing the Speaker as one of the advisers in the appointment process, without amending the original section 87(2) of the Constitution. Secondly, on caretaker principles, it amends section 83, which provides that 'where the office of the Prime Minister is vacant, there shall be a caretaker Government which shall be headed by the Deputy Prime Minister acting as Prime Minister'. The section complicates the already problematic formation of the government legislative regime. When the prime minister's office is vacant, the king appoints a new prime minister. The acting role of the deputy prime minister

may be limited to unforeseen circumstances such as death. Ordinarily, the king should be able to appoint a new prime minister without much difficulty.

The country must codify the principles of transition and formation of government into constitutional provisions. Section 87(2) of the Constitution, which is the current flagship provision on government formation, needs to be revised. The section is based on antiquated Westminster conventions. The provision is a source of constant uncertainty and inconsistent practice in forming a government in Lesotho. Inconsistencies relating to the transition and formation of a government only lay bare the longstanding call for constitutional changes (Commonwealth Secretariat 2012; Mwangi 2016; Nyane 2016; Monyake 2022).

There are two basic ways to arrest the problems related to formation. The first is to introduce an investiture vote: members of the National Assembly must directly elect the prime minister in their first sitting. The second is to introduce the rules governing the formation of government in the case of a hung parliament. These provisions would recognise coalition agreements and make rules relating to the right to form a government in the event of a hung parliament. In the run-up to drafting the Tenth Amendment to the Constitution – within the National Reforms Authority - the provisions relating to government formation were well-drafted. The problems arose when the government and Parliament sought to change the Bill. On transition and caretaking, the Ninth Amendment to the Constitution Act (2020) provisions must be repealed as they are confusing and not in keeping with the established caretaker conventions.

#### ----- REFERENCES -----

- Australian Government 2021, *Guidance on Caretaker Conventions*. Available at <https://www.pmc.gov.au/publications/guidance-caretaker-conventions>.
- Bagehot, W 1867, *The English Constitution*, Chapman & Hall, London.
- Baloro, J 1994, The development of Swaziland's constitution: monarchical responses to modern challenges, *Journal of African Law*, vol. 38 no. 1, pp. 19-34.
- Bean, C 1993, 'The Electoral Influence of Party Leader Images in Australia and New Zealand', *Comparative Political Studies*, vol. 26, no 1, pp. 111-132.
- Bergman, T 1993a, 'Constitutional design and government formation: The expected consequences of negative parliamentarism', *Scandinavian Political Studies*, vol. 16, no. 4, pp. 285-304.
- Bergman, T 1993b, 'Formation rules and minority governments', *European Journal of Political Research*, vol. 23, no. 1, pp. 55-66.
- Bogdanor, V 2009, *The New British Constitution*, Bloomsbury, Oxford.
- Booyesen, S 2015, 'The 2015 parliamentary elections in Lesotho', *Electoral Studies*, vol. 100, no. 40, pp. 430-433.

- Boston, J, Levine, S, McLeay, E & Roberts, NS, 1998, 'Caretaker government and the evolution of caretaker conventions in New Zealand', *Victoria University of Wellington Law Review*, vol. 28, pp. 629-649.
- Commonwealth Secretariat, 2012, *Report of the Commonwealth Observer Group*, Lesotho Parliamentary Elections, 26 May 2012.
- Constitution of South Africa 1996, Government Printer, Pretoria.
- Constitution of Botswana 1966, Government Printer, Gaborone.
- Constitution of Lesotho 1966, Government Printer, Maseru.
- Constitution of Lesotho 1993, Government Printer, Maseru.
- Dandoy, R & Terrière, L 2021, 'Caretaker governments in Belgium: The new normal?' In D Caluwaerts & M Reuchamps, *Belgian Exceptionalism: Belgian Politics between Realism and Surrealism*, Routledge, New York, pp. 123-137.
- de Vos, P 2021, 'The constitutional-legal dimensions of coalition politics and government in South Africa', in S Booysen (ed), *Marriages of Inconvenience: The Politics of Coalitions in South Africa*, MISTRA, Johannesburg.
- Galligan, B & Brenton, S 2015, *Constitutional conventions in Westminster systems*, Cambridge University Press, Cambridge.
- Good, K & Taylor, I 2000, 'Botswana: A Minimalist Democracy', *Democratisation*, vol. 15, no. 4, pp. 750-65.
- Hart, P & Uhr, J 2011, 'Power Transitions and Leadership Successions in Government', In P Hart, & Uhr (eds) *How power changes hands. Understanding governance series*, Palgrave Macmillan, London.
- Heasman, DJ 1960, 'The monarch, the prime minister, and the dissolution of parliament', *Parliamentary Affairs*, vol. 14, pp. 94-107.
- Jennings, I 1969, *Cabinet government*, Cambridge University Press, Cambridge.
- Kapa, MA 2008, 'The politics of coalition formation and democracy in Lesotho', *Politikon*, vol. 35, no. 3, pp. 339-356.
- Khaketla, BM 1972, *Lesotho, 1970: An African coup under the microscope*, University of California Press, California.
- Klein, C 1977, 'The powers of the caretaker government: Are they really unlimited?' *Israel Law Review*, vol. 12, no. 3, pp. 271-287.
- Le Vine, VT 1997, The fall and rise of constitutionalism in West Africa, *The Journal of Modern African Studies*, vol. 35, pp. 181-206.
- Lipton, J 1997, 'Responsible government, representative democracy and the Senate: options for reform', *University of Queensland Law Journal*, vol. 19, no. 2, pp. 194-214.
- Louw-Vaudran, L 2022, 'Lesotho reforms hang in the balance ahead of elections', 29 September 2022. Available at <https://issafrica.org/iss-today/lesotho-reforms-hang-in-the-balance-ahead-of-elections>.
- Macartney, WA 1970, 'African Westminster? The Parliament of Lesotho', *Parliamentary Affairs*, vol. 23, pp. 121-140.

- Martin, LW & Stevenson, RT 2001, 'Government formation in parliamentary democracies', *American Journal of Political Science*, vol. 45, no. 1, pp. 33-50.
- Matlosa, K & Shale, V 2008, 'The impact of floor crossing on electoral politics and representative democracy in Lesotho', *Journal of African Elections*, vol. 7, no. 1, pp. 138-152.
- Matlosa, K 1997, 'Political instability and elections: a case study of Lesotho', *Lesotho Social Sciences Review*, vol. 3 no.2, pp. 93-107.
- Middleton, J 2015, *World Monarchies and Dynasties*, Routledge, New York.
- Molomo, M 2000, 'Democracy under siege: The presidency and executive powers in Botswana', *Pula: Botswana Journal of African Studies*, vol. 14, no. 1 pp. 95-108.
- Monyake, M 2022, 'Assurance dilemmas of the endangered institutional reforms process in Lesotho', *Canadian Journal of African Studies*, vol. 56, no. 1, pp. 181-198.
- Motanyane, S 2020, *Appointment of prime minister designate: Hon Dr Moeketsi Majoro (MP)*, A letter dated 13 May 2020.
- Mwangi, OG 2016, 'State fragility and electoral reforms in Lesotho', in D Olowu & P Chanie (eds), *State Fragility and State Building in Africa: Cases from Eastern and Southern Africa*, Springer, Dordrecht.
- Ndlovu-Gatsheni, SJ 2015, Decoloniality as the future of Africa, *History Compass*, vol. 13, no. 10, pp. 485-496.
- Nwafor, AO 2013, 'The Lesotho constitution and doctrine of separation of powers: reflections on the judicial attitude', *African Journal of Legal Studies*, vol. 6, no. 1, pp. 49-68.
- 'Nyane, H 2016, 'Formation of a government in Lesotho in the case of a hung parliament', *Law, Democracy & Development*, vol. 20, no. 1, pp. 174-191.
- 'Nyane, H & Kapa, MA (eds) 2021, *Coalition Politics in Lesotho: A Multi-disciplinary Study of Coalitions and their Implications for Governance*, African Sun Media, Stellenbosch.
- Ookeditse, L 2021, 'The "burden of expectation" and political instability: A case for direct election of the President of Botswana', *African Security Review*, vol. 30, no. 1, pp. 121-136.
- Posholi, M 2020, *Appointment of prime minister designate*. A letter dated 18 May 2020.
- Proctor, JH 1973, 'Traditionalism and parliamentary government in Swaziland', *African Affairs*, vol. 72, no. 288, pp. 273-287.
- Robinson, JA & Torvik, R 2016, 'Endogenous presidentialism', *Journal of the European Economic Association*, vol. 14, no. 4, pp. 907-942.
- Schleiter, P & Belu, V 2015, The challenge of periods of caretaker government in the UK, *Parliamentary Affairs*, vol. 68, no. 2, pp. 229-247.
- Simms, M 2011, 'Westminster norms and caretaker conventions: Australian and New Zealand transition debates', in P Hart & Uhr (eds) *How power changes hands. Understanding governance series*, Palgrave Macmillan, London.

SABC 2022, *Lesotho Prime Minister Moeketsi Majoro resigns*, 14 October 2022. Available at <https://www.sabcnews.com/sabcnews/lesotho-prime-minister-moeketsi-majoro-resigns/> (accessed on 15 January 2023)

Southall, R 2022, 'Lesotho', *Africa Yearbook*, vol. 18, pp. 472-478.

United Kingdom Cabinet Manual, 2010. Available at <https://www.gov.uk/government/publications/cabinet-manual> (accessed on 3 December 2022).

Weisfelder, RF 2015, 'Free elections and political instability in Lesotho' *Journal of African Elections*, vol. 14, no. 2, pp. 50-80.